

Conduct of financial institutions review

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27 May 2021

Current status

The Financial Markets (Conduct of Institutions) Amendment Bill (the Bill) amends the Financial Markets Conduct Act 2013 (FMCA) by inserting a new subpart 6A into the FMCA.

The Bill will require certain financial institutions to be licensed in respect of their general conduct towards consumers. This licence will be a new type of market services licence with a similar licensing framework as that for other types of market services licences. The licensing regime will be monitored and enforced by the Financial Markets Authority.

The Bill is currently awaiting its second reading. The regime will also require regulations to support its operation. These will be developed following a further policy and consultation process.

The Ministry of Business Innovation and Enterprise (MBIE) released two discussions documents in April 2021 and an accompanying round of public consultation on these documents with a deadline of 5pm on Friday, 18 June 2021. The discussion documents are titled:

- Treatment of intermediaries under the new regime for the conduct of financial institutions
- Regulations to support the new regime for the conduct of financial institutions.

If you would like advice on the Bill or assistance with planning a submission on the discussion documents, please contact a member of our [financial services regulation team](#).

Background

Australian Royal Commission Report

On 14 December 2017, the Australian Royal Commission (ARC) was established to investigate misconduct in the banking, superannuation, and financial services industry. Over the course of 2018 and 2019, the ARC published [an interim report and final report](#) detailing poor treatment of customers across different parts of Australia's financial services industry.

Financial Markets Authority and the Reserve Bank of New Zealand Joint Conduct and Culture Reviews

Misconduct cases in the UK, US, Australia, and other overseas jurisdictions raised concerns with the Financial Markets Authority (FMA) and the Reserve Bank of New Zealand (RBNZ), the two key regulators of New Zealand's financial markets, about whether the same issues could exist in New Zealand, especially as New Zealand's four largest banks are Australian owned.

In response, the RBNZ and FMA launched a joint review into the conduct and culture in the New Zealand financial sector and produced two reports:

- The first [report](#), published in November 2018, focused on retail banks. This found weaknesses in systems and processes as well as a small number of issues related to poor conduct by bank staff. Consequently, the review recommended ways to improve oversight, controls, and processes
- The second [report](#), published in January 2019, focused on life insurers. The review found extensive weaknesses in life insurers systems and controls such as in the approach of identifying, managing and remediating conduct risks and issues. This contributed significantly to poor customer outcomes. As insurers' products are often sold by intermediaries, many insurers believed they had no responsibility for customer outcomes and made little effort towards consumer experience. RBNZ and the FMA provided specific findings to each individual life insurer as well as general suggestions for improvement.

Both these reports focussed on finding solutions to ensure sufficient levels of consumer confidence exist in the New Zealand financial system, and that confidence is both justified and sustainable. While the reports did not find widespread conduct and culture issues in New Zealand, they highlighted issues in how conduct risk is managed and a lack of focus on customer outcomes.

It became evident there was a gap in how financial institutions are regulated in New Zealand. This increases the potential for more widespread consumer harm in the long-term.

Regulatory review

MBIE public consultation

On 27 April 2019, the Ministry of Business Innovation and Enterprise (MBIE) announced a round of public consultation and released an accompanying [options paper](#) and [consumer summary](#). The consumer summary identified the following key problems:

- An imbalance of power between financial institutions and consumers
- Some products are not designed with good customer outcomes in mind
- Sales are prioritised over good customer outcomes
- There are weak systems and controls to manage conduct risk
- There is a lack of accountability to ensure good conduct.

MBIE received [85 submissions](#) for this consultation before submissions were closed on 7 June 2019.

Cabinet Paper and Regulatory Impact Statement

On 25 September 2019, in response to the RBNZ/FMA reviews, the public consultation and departmental consultations, the Minister for Commerce and Consumer Affairs proactively released a [cabinet paper](#) recommending legislation be introduced to address the real risk of harm to customers of financial institutions. The document included the proposal to create a licensing regime for banks, insurers and non-bank deposit takers (NBDTs) in respect of their general conduct.

On 9 December 2019, MBIE also published a [regulatory impact statement](#) in regards to the proposed regulatory regime.

Legislative process

Bill introduced to Parliament

In December 2019, a further [cabinet paper](#) was proactively released seeking approval to introduce the Financial Markets (Conduct of Institutions) Amendment Bill (the Bill) into the Parliament and seeking policy decisions.

On 11 December 2019, the Bill was introduced to Parliament. On 12 February 2020, the Bill had its first reading.

Select Committee

The Bill was referred to the 'Finance and Expenditure Committee' (FEC), which announced a round of public consultation that closed on 30 April 2020. The select committee published its [report](#) on 7 August 2020.

The FEC's key recommendations included insertion of a regulation-making power that would allow regulations to be made that would exempt specified types of financial institutions from the requirement to hold a licence, an extension of the maximum transitional period for the Bill to come into force once it receives Royal assent (from two years to three years) and for there to be more clarity about the central, substantive, fair conduct principle set out in the Bill.

Consultation – Discussion Document on the Treatment of Intermediaries of Financial Institutions

The Bill places requirements on financial institutions (eg banks, insurers and non-bank deposit takers) to oversee and train any intermediaries distributing or managing their products (eg mortgage or insurance brokers) to ensure good outcomes for consumers.

MBIE is seeking submissions in light of concerns raised by stakeholders on issues such as:

- Compliance with the proposed oversight and training requirements being too expensive and resource-intensive
- Certain obligations introduced being redundant as they may potentially overlap with or duplicate conduct regulation provisions created by the Financial Services Legislation Amendment Act 2019.

The [discussion document](#) released seeks feedback on matters such as the definitions of intermediaries as well as 'agents' and 'employees' of financial institutions. The document also offers several proposals on the obligations for intermediaries, employees and agents.

Consultation – Discussion Document on Regulations

The Bill amends the Financial Markets Conduct Act 2013 and contains several regulation-making powers to support its operation, including powers to make regulations around the content and publication of fair conduct programmes, sales incentives and other discrete issues.

The [discussion document](#) released seeks feedback on matters such as the regulation of sales incentives offered or provided by financial institutions and intermediaries and details relating to the fair conduct programmes.

Next steps

The Bill is now awaiting its second reading. Then it will go through Committee of the Whole House and third reading before being passed.

The feedback MBIE receives from the consultation document titled "Treatment of intermediaries under the new regime for the conduct of financial institutions" will be used to advise the Government on whether any amendments should be made to the Bill. Any potential amendments would be made via a Supplementary Order Paper at Committee of the whole House stage later in 2021.

The feedback MBIE receives from the consultation document titled "Regulations to support the new regime for the conduct of financial institutions" will be used to advise the Government later in 2021 on what regulations are necessary to support the new conduct regime.

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