

## MBIE – Options paper

### Conduct of Financial Institutions

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#### Introduction

Fisher Funds Management Limited is committed to delivering good outcomes for clients by managing our business in accordance with our agreed Conduct Principles and adhering to our Board-approved Conduct Management Programme. The Principles and Programme encourage and support colleagues to behave in ways that achieve good outcomes for our clients.

Fisher Funds plays a pivotal role in helping over a quarter of a million Kiwis enjoy better lives by delivering great investment returns and providing outstanding client service, including financial advice at no extra charge.

We're able to deliver on our brand promise by building and retaining the trust and confidence of our clients, colleagues, business partners and communities.

Fisher Funds is a majority New Zealand-owned company with a deeply embedded culture of service and client centricity. Our team is committed to growing our clients' wealth and enabling them to live better lives.

Our financial advice teams, investment team and our client services team are based in New Zealand to give us a deep understanding of our clients and their goals.

We have one of New Zealand's largest and most experienced investment teams.

We are licensed by the Financial Markets Authority to hold a managed investment scheme (MIS) manager licence and a discretionary investment management services licence.

We are a qualifying financial entity (QFE) with 27 QFE advisers and additionally employ 9 authorised financial advisers.

## Summary and recommendation

Fisher Funds fully supports MBIE's high-level desired outcome of ensuring **that conduct and culture in the financial sector is delivering good outcomes for all customers.**

Our view is that **all financial institutions should be subject to conduct regulation.**

We also support MBIE's proposal for a principles-based set of duties which recognises that conduct and culture requirements should be appropriate and proportionate to financial institutions' attributes (size, scale, complexity, and business model) whilst also taking into account the particular conduct risks that different types of financial institutions present.

### **Banks and insurers**

Our view is that banks and insurers should be required to hold a specific conduct licence

This is a risk-based approach recognising that banks are complex entities, encompassing disparate functions with diffuse oversight and monitoring structures. They typically offer a breadth of products from complex financial instruments to individual savings accounts, not all of which are regulated in the same manner or by the same regulatory body.

Bank customers reflect the multi-dimensional nature of banks' functions and product ranges and are generally made up of groups sharing different interests, ranging from large corporates with potentially complex needs; to small business owners seeking credit; through to the retail banking client who visits their local branch.

Conduct governance is frequently widely distributed across various subsidiary bank boards and management layers which creates significant challenges for the ultimately responsible (parent) board because of the degrees of separation between the parent board, subsidiary boards and the end customer.

The message from the parent board to frontline staff can get distorted or at best muted as a consequence of the distance it has to travel to reach this group.

Further, conduct regulation is unevenly and incompletely spread across the Reserve Bank and the FMA.

Our view that banks should be required to hold a separate conduct licence is further strengthened by the evidence reported in the FMA and RBNZ reviews of conduct and culture in New Zealand retail banks and insurers, and is also being informed by the findings of the Australian Royal Commission.

Although the local reviews did not find evidence of the egregious conduct displayed by Australian banks and insurers, we are mindful that our larger local banks are Australian owned, which potentially puts them at risk of conduct contagion.

Although most banks and insurers also hold managed investment scheme manager licences, substantive parts of banks' and insurers' core business are largely unregulated from a conduct perspective with the potential for poor outcomes for clients.

### **Non-bank/insurer licensed MIS managers**

The higher risk of misconduct posed by banks and insurers can be contrasted with the much lower risk posed by licensed managed investment scheme (**MIS**) managers (excluding banks and insurers), whose business is primarily offering retail products regulated under the Financial Markets Conduct Act.

Licensed MIS managers (excluding banks and insurers) are typically much smaller, locally domiciled entities with a singular focus on their target audience which is generally made up of retail investors whose purpose is to grow their savings predominately for use in retirement or for other life events.

Licensed MIS managers' (excluding banks and insurers) product suite reflects their specialist business focus and usually comprises a limited retail product suite made up of less complex

products e.g. KiwiSaver schemes; workplace savings schemes; master trust schemes; and managed funds.

These MIS Managers' smaller size, limited product offering and specialist focus on investing for their clients leads to more homogenous entities, typically with flatter organisational structures and a consequent close proximity between the frontline, leadership and the board.

Conduct governance and monitoring by the board is more easily achieved because of this nexus between frontline and leadership which means that the conduct message is more likely to be received throughout the organisation in a clear, consistent manner.

With respect to such licensed managed investment scheme (MIS) managers, the existing MIS regulatory and licensing framework already overseen by FMA operates as conduct regulation across all or a significantly material part of their businesses.

### Recommendation

We believe that our recommended approach of:

- (i) requiring a specific conduct licence for banks and insurers; and
- (ii) managing conduct regulation for low-risk, licensed managed investment scheme (MIS) managers (excluding banks and insurers) through the existing MIS regulatory and licensing framework already overseen by FMA

is the most effective and efficient means of achieving good client outcomes throughout the financial services sector.

We are of the view that an additional conduct licence for low-risk, licensed managed investment scheme (MIS) managers (excluding banks and insurers) would be duplicative, costly and would not materially reduce the already low residual conduct risk in the non-bank / non-insurer licensed MIS sector.

We would be happy to discuss our submission in person or to provide further information to assist MBIE and/or the Minister.

## Options for overarching duties

1.	<p>Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• do you agree with the pros and cons of each duty?</li> <li>• do you have any estimates of the size of the costs and benefits of these options?</li> <li>• are there other impacts that are not identified?</li> </ul>
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Ans.	<p><b>Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?</b></p> <p>Fisher Funds agrees with and endorses each of the six overarching duties. We believe that all of them should be included in the conduct regime.</p> <p><b>Are there other duties that should be considered?</b></p> <p>Fisher Funds believes that there should also be a duty to safeguard clients' confidential information and personal financial data.</p> <p>In order to achieve good client outcomes and to enhance conduct and culture in financial institutions, it will be necessary for such institutions to better understand their clients' particular characteristics and needs. This will result in financial institutions collecting and storing richer client data and records of their own interactions with their clients.</p>
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	<p>This increases the requirement for stronger data protection and more robust internal control processes to reduce the risk of data loss, inappropriate data sharing, or vulnerability to cyber-attacks.</p> <ul style="list-style-type: none"> <li> <b>do you agree with the pros and cons of each duty?</b>            We agree with the general tone of most of the pros and cons associated with each duty. In particular, we support the pro comment regarding Option 1 (<i>Duty to consider and prioritise the customer's interest, to the extent reasonably practicable</i>) that the duty is principles based, not prescriptive.             We are of the view that a principles-based set of duties is the most effective approach to enhancing conduct and culture in financial institutions as it enables financial institutions to right-size the duties to their own business models, whilst also taking into account their particular conduct risks.             As such, we don't agree with the comment that <i>'as the duty is not prescriptive, there will be some uncertainty about how to comply.'</i>             We also note the comment in respect of Option 4 (<i>Requirement to have the systems and controls in place that support good conduct and address poor conduct</i>) that this will increase costs for financial institutions and the regulators.             We are of the view that such costs will largely be proportionate to the extent to which certain financial institutions, namely banks and insurers, will need to re-mediate their conduct and culture shortcomings, as identified in the FMA and RBNZ reviews.             The costs for very low conduct-risk financial institutions such as licensed managed investment scheme (MIS) managers (excluding banks and insurers) should be proportionate to that lower level of risk and can be achieved by regulating licensed MIS managers' conduct through the existing MIS regulatory and licensing framework.             This two-pronged approach delivers on the objective of making all financial institutions subject to conduct regulation whilst taking a proportionate and risk based approach.         </li> <li> <b>do you have any estimates of the size of the costs and benefits of these options?</b>            Until the full range of duties is agreed and the model(s) for their implementation is confirmed, it will not be possible to accurately estimate costs.             However, investment in conduct-related awareness and training; reviewing culture, strategy, and operations for conduct alignment; developing and implementing new metrics to assess and manage conduct; and enhancing communication methodologies and feedback loops with clients is likely to cost licensed managed investment scheme managers (excluding banks and insurers) upwards of \$500,000.         </li> <li> <b>are there other impacts that are not identified?</b>            No.         </li> </ul>
2.	<p>Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) or focus on conflicts of interest that arise through remuneration?</p>

	What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives?
Ans.	<p><b>Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) or focus on conflicts of interest that arise through remuneration?</b></p> <p>We are of the view that the overarching duty for managing conflicts of interest should be general (as it is currently worded) on the basis that conflicts of interest arising through remuneration are only a sub-set of a broader category of conflicts.</p> <p>As the findings from the FMA and RBNZ review of conduct and culture in New Zealand retail banks and insurers noted, there are inherent conflicts of interest in the provision of financial services, not all of which can be addressed by changes to remuneration and incentive structures.</p> <p><b>What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives?</b></p> <p>Potential conflicts of interest can arise through the vertical integration of financial institutions that manufacture financial products as well as providing advice and/or selling the products.</p>
3.	Is a code of practice required to provide greater certainty about what each overarching duty means in practice?
Ans.	<p><b>Is a code of practice required to provide greater certainty about what each overarching duty means in practice?</b></p> <p>On the basis that the overarching duties are principles-based, we do not see the need for a code of practice.</p> <p>A principles-based set of duties enables financial institutions to tailor the duties to their particular business model and to the nature and level of their conduct risk.</p> <p>Given the range of products, distribution channels, and remuneration structures in financial institutions, we believe that to codify the duties would result in unnecessary complexity and encourage box-ticking compliance.</p>
<b>Options to improve product design</b>	
4.	<p>Which options for improving product design do you prefer and why?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons of the options?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>Which options for improving product design do you prefer and why?</b></p> <p>In our view, most product manufacturers already follow product development processes, which include early identification of the target market for their products.</p> <p>This is certainly the case for product manufacturers in the licensed managed investment scheme (MIS) sector (excluding banks and insurers). Such licensed MIS managers typically operate smaller, more specialised businesses generally with a limited range of non-complex products which are widely available in the</p>

	<p>market and can be easily compared e.g. KiwiSaver scheme membership; workplace savings schemes; master trusts; and other managed investment products.</p> <p>This in turn makes for simpler identification of target markets and enables the licensed MIS Manager to bring a keen focus to bear on conduct issues relating to those markets.</p> <p>This situation can be contrasted with banks and insurers who offer a breadth of complex and simple products across disparate target audiences. This greater range of products and the greater complexity many of them possess increases the potential for information asymmetry and mis-selling both within and outside their target markets.</p> <p>We support the following options, in order of preference, for improving product design:</p> <p><b>Option 3</b> – <i>Requirement for manufacturers to identify intended audience for products AND a requirement for distributors to have regard to the intended audience when placing the product.</i></p> <p><b>Option 1</b> – <i>Give the regulator the power to ban or stop the distribution of specific products</i></p> <ul style="list-style-type: none"> <li>• <b>Do you agree with the pros and cons of the options?</b>  <b>Option 3</b> – we agree that this option provides a measure of assurance to customers that the product they are being sold is suitable for them.  We also agree that there may be customers outside the target market for whom the product may still be suitable which may require particular measures to manage.</li> <li>• <b>Are there other impacts that are not identified?</b>  Notwithstanding the requirement for the product manufacturer to identify the intended audience for the product and the extension of this obligation to the distributor, there will be situations outside either party's control e.g. where the product is self-selected by a client or otherwise acquired on a no-advice basis.</li> <li>• <b>Are there other options that should be considered?</b>  We also support Option 1 but note that (a) it only comes into play after the product has been made available in the market; and (b) it may be difficult for the regulator to determine the standard of proof required to prove the 'very poor outcomes' test.</li> <li>• <b>Do you have any estimates of the size of the costs and benefits of the options?</b>  The options will require all entities to focus more closely on and devote more resource to their product design, in particular their engagement with current and potential clients. This will add more steps to the development process but should result in products that are better suited to and understood by their target audiences.</li> </ul>
5.	If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why.
Ans.	If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why.

	<p>We are of the view that many bank and insurance products make this option more necessary for banks and insurers than it would be for manufacturers of the simpler product ranges typically offered by licensed managed investment scheme (MIS) managers (excluding banks and insurers).</p> <p>Our view would appear to be borne out by the findings of the FMA and RBNZ reviews of conduct and culture in New Zealand retail banks and insurers and the Australian Royal Commission, which called out the need for greater conduct regulation, particularly with respect to products issued by banks and insurers and their sales practices.</p>
<b>Options to improve product distribution</b>	
6.	<p>Which options to improve product distribution do you prefer and why?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons of the options?</li> <li>• Are there other impacts that are not identified -- such as unintended consequences or impacts on particular business models?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>Which options to improve product distribution do you prefer and why?</b></p> <p>We support the following options, in order of preference, for improving product distribution:</p> <p><b>Option 5:</b> <i>A duty on manufacturers to take reasonable steps to ensure the sales of its products are likely to lead to good customer outcomes.</i></p> <p><b>Option 1:</b> <i>A duty to design remuneration and incentives in a manner that is likely to promote good customer outcomes.</i></p> <p><b>Option 2:</b> <i>Ban target-based remuneration and incentives, including soft commission (applies to both in-house and to intermediaries).</i></p> <hr/> <p><b>Option 5 - A duty on manufacturers to take reasonable steps to ensure the sales of its products are likely to lead to good customer outcomes</b></p> <ul style="list-style-type: none"> <li>• <b>Do you agree with the pros and cons of the options?</b> This appears to be an extension of Option 3 (<i>Requirement for manufacturers to identify intended audience for products AND a requirement for distributors to have regard to the intended audience when placing the product.</i>) from the previous section.</li> </ul> <p>We understand from MBIE's comments around this option that it doesn't go so far as to impose a duty on the product manufacturer to look through the distributors' delivery of its product but instead requires the manufacturer to exercise appropriate client-focussed due diligence in its selection and oversight of its distributors.</p> <p>We agree that this duty should apply to both direct advised and non-advised sales, notwithstanding that under the current financial advice reforms advisers themselves have a duty to assess the suitability of their advice before providing it.</p>

- **Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models?**

There are circumstances where the duty on the product manufacturer may not be appropriate e.g. where the products are made available on a wrap platform through an adviser but the individual identity and characteristics of the end-client are not visible to the product manufacturer.

- **Are there other options that should be considered?**  
No.
- **Do you have any estimates of the size of the costs and benefits of the options?**

Any estimate of the size of the costs and benefits will be influenced by the approach taken e.g. whether both advised and non-advised sales are included and how far the duty extends where there is no direct nexus between the product manufacturer and the end-client.

**Option 1 – A duty to design remuneration and incentives in a manner that is likely to promote good customer outcomes.**

- **Do you agree with the pros and cons of the options?**  
We agree with the pros and cons of this option and recognise that poor client outcomes can increase when remuneration and incentives are highly focussed on sales performance and lack appropriate controls.
- **Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models?**

Whilst MBIE has identified that this option may create uncertainty for financial institutions that they are compliant with the duty, we recognise that the onus is on the institution to demonstrate how the design of their incentives delivers good client outcomes.

This option also provides scope for financial institutions to design and implement remuneration and incentive arrangements, with robust and proportionate controls, that are best suited to their business model and the objective of good client outcomes.

**Are there other options that should be considered?**

No.

- **Do you have any estimates of the size of the costs and benefits of the options?**

The cost of reviewing and re-designing remuneration structures with a stronger client-outcome perspective could be significant where, for example, variations to individual employment contracts are required.

**Option 2 – Ban target-based remuneration and incentives, including soft commission (applies to both in-house and to intermediaries).**

- **Do you agree with the pros and cons of the options?**  
We agree with the pros and cons of this Option.

However, we believe that there are circumstances where target-based remuneration or incentives, with strong controls, may be an appropriate means to communicate to staff that a sale can be a good outcome.

	<p>For example, where an adviser has first assessed a client's particular circumstances and objectives, has determined the suitability of a particular product for that client, communicates product information clearly to the client, ascertains that the advice is understood by the client, and makes the sale to the client – there is a good client outcome.</p> <p>Sales made by licensed managed investment scheme (MIS) Managers (excluding banks and insurers) are typically of low risk retail products, generally known and understood in the market e.g. KiwiSaver scheme membership, workplace savings schemes, master trusts, and other managed investment schemes. Because of this, there is a high level of product comparability available to the potential client and, with respect to KiwiSaver schemes and managed funds, easy portability within the market with no loss to the client.</p> <p>The product manufacturer having first satisfied itself that its controls are adequate and operating effectively, should be able to communicate to staff its expectations regarding sales e.g. number of expected client interactions, whether they result in sales or not, and should be able to use sales incentives (with controls) as guidance for staff of the level of sales necessary for the business to be sustainable and to meet the reasonable expectations of clients.</p> <p>In any case, we seek further clarity regarding the proposal not to ban linear or flat-line remuneration.</p> <ul style="list-style-type: none"> <li>• <b>Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models?</b> Notwithstanding that remuneration and incentives must be designed with good client outcomes in mind, financial institutions need to be able to manage productivity to maintain a sustainable business for the benefit of all stakeholders, including clients.</li> <li>• <b>Are there other options that should be considered?</b> No.</li> <li>• <b>Do you have any estimates of the size of the costs and benefits of the options?</b> The cost of reviewing and re-designing remuneration structures with a stronger client-outcome perspective could be significant where, for example, remuneration structures are changed and variations to individual employment contracts are required.</li> </ul>
7.	<p>To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use.</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• What are common structures, average amounts of remuneration/commissions, qualifying criteria etc.?</li> </ul>
Ans.	<p><b>What are common structures, average amounts of remuneration / commissions, qualifying criteria etc.?</b></p> <p>Generally, in-house remuneration structures in financial institutions require volume and/or value targets to be achieved by frontline staff to qualify for incentives.</p> <p>Common commission structures payable to intermediaries typically include flat-line remuneration and may also include additional incentives payable to adviser</p>

	groups to support their members' professional development. We understand that non-monetary (soft) commissions (previously common in the insurance sector) have largely been eliminated.
<b>Options relating specifically to insurance claims – N/A</b>	
<b>Options for tools to ensure compliance</b>	
11.	<p>Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?</b></p> <p>Fisher Funds supports Option 1 - <i>to empower and resource the FMA to monitor and enforce compliance.</i></p> <p>As a managed investment scheme (MIS) manager licensed by the FMA and supervised by a licensed supervisor, we are strongly of the view that conduct regulation within the MIS sector (excluding banks and insurers) can best be achieved through the existing MIS regulatory and supervisory framework.</p> <p>An additional licence for licensed MIS managers (excluding banks and insurers) would be duplicative, costly and would not materially reduce the already very low conduct risk within this sector.</p> <p><b>Do you agree with the pros and cons?</b></p> <p>We agree with the comment that there will be increased costs to fund the FMA to undertake a more conduct-focussed role.</p> <p>For this reason, we believe that a risk-based approach should be taken and that conduct regulation for licensed MIS managers (excluding banks and insurers) should be managed through the existing MIS regulatory and supervisory framework.</p> <p>In any case, there is an argument that increased costs should be met by the Government on the basis that good conduct within financial institutions promotes the confident and informed participation of businesses, investors, and consumers in financial markets and promotes and facilitates the development of fair, efficient, and transparent financial markets.</p> <p>These goals transcend the interests of investors in financial institutions' products and contribute to the broader social and economic goals to the benefit of all New Zealanders.</p> <ul style="list-style-type: none"> <li>• <b>Are there other impacts that are not identified?</b> Depending on the options chosen and the final shape of conduct regulation, there is the potential that costs to the industry could create a barrier to new entrants and/or create the potential for costs to be passed onto clients.</li> </ul> <p>The risk that costs could be passed onto clients could be mitigated by adopting our recommended approach for regulating licensed managed</p>

	<p>investment scheme (MIS) managers (excluding banks and insurers) by leveraging the existing MIS regulatory and licensing framework.</p> <ul style="list-style-type: none"> <li>• <b>Are there other options that should be considered?</b> No.</li> <li>• <b>Do you have any estimates of the size of the costs and benefits of the options?</b> Until the final shape of the options emerges, it is difficult to estimate costs and benefits. <p>We note however that costs are likely to be lower and the conduct benefits higher where licensed managers of managed investment schemes (MIS) (other than banks and insurers) are regulated for conduct by the FMA through the existing MIS regulatory and licensing framework.</p> </li></ul>
12.	<p>What is your feedback on the option to require banks and insurers to obtain a conduct licence?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>What is your feedback on the option to require banks and insurers to obtain a conduct licence?</b></p> <p>We are of the view that banks and insurers should obtain a specific conduct licence.</p> <p>We believe that this view is consistent with the findings of the FMA and RBNZ reviews of conduct and culture in New Zealand retail banks and insurers and the Australian Royal Commission.</p> <p>Notwithstanding that certain New Zealand banks and insurers already hold managed investment scheme (MIS) licences, such licences generally regulate only a small part of their business, from a conduct perspective.</p> <p>The extent of banks' and insurers' core business activities excluded from MIS coverage is such that these financial institutions are effectively unregulated from a conduct perspective.</p> <ul style="list-style-type: none"> <li>• <b>Do you agree with the pros and cons?</b> We agree that banks and insurers being required to obtain an entity-level conduct licence would better enable this sector to understand what is required of it and provide greater certainty and direction for their conduct re-mediation efforts. <p>Notwithstanding that the requirement for a conduct licence for banks may create a de facto dual licensing regime with the Reserve Bank, we are of the view that the purpose and effect of the two licences is fundamentally different and should not cause friction between the two regulators.</p> <p>The RBNZ licence is primarily targetted at financial strength, capital, liquidity, credit and the governance structures necessary to maintain them, not conduct.</p> </li></ul>

	<ul style="list-style-type: none"> <li>• <b>Are there other impacts that are not identified?</b> No.</li> <li>• <b>Are there other options that should be considered?</b> No.</li> <li>• <b>Do you have any estimates of the size of the costs and benefits of the options?</b> We are of the view that any additional costs to banks and insurers of this option are offset by a reduction in their conduct risk and are commensurate with the conduct benefits expected to accrue to their clients.</li> </ul>
13.	<p>What is your feedback on the option which discusses a broad range of regulatory tools?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>What is your feedback on the option which discusses a broad range of regulatory tools?</b></p> <p>We are of the view that the broad range of regulatory tools is appropriate for the enforcement of conduct regulation but submit that most of these tools are already available to the FMA in respect of licensed managed investment scheme (MIS) managers.</p> <p>We confirm our stated position of supporting conduct regulation for all financial institutions with banks and insurers being required to obtain a specific conduct licence, but licensed managed investment scheme (MIS) managers (excluding banks and insurers) being regulated by the FMA, through the existing MIS regulatory and supervisory framework.</p>
14.	<p>Do you think that the maximum pecuniary penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Is there a case for making the penalties higher?</li> </ul>
Ans.	<p><b>Do you think that the maximum pecuniary penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties?</b></p> <p>We are of the view that the maximum pecuniary penalties for breaches of any conduct duties should be the same as the existing FMCA penalties.</p>
15.	<p>What is your feedback on the option of executive accountability?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>

Ans.	<p><b>What is your feedback on the option of executive accountability?</b></p> <p>In the absence of evidence in the New Zealand market of the egregious behaviour demonstrated by Australian banks and insurers, we do not support the option of executive accountability.</p> <p>We re-iterate our view that that all financial institutions should be subject to conduct regulation and that banks and insurers should be required to hold a specific conduct licence.</p> <p>Taking a risk-based approach to conduct, we endorse the approach whereby licensed managers of managed investment schemes (other than banks and insurers) should continue to be regulated by the FMA through the existing MIS regulatory and supervisory framework.</p> <ul style="list-style-type: none"> <li>• <b>Do you agree with the pros and cons?</b> We agree that an executive accountability regime may incentivise directors and managers to monitor compliance with conduct requirements but dispute that this mechanism, of itself, promotes good outcomes for clients. <p>We agree that an executive accountability regime has the potential to add significant costs to local financial institutions.</p> </li> <li>• <b>Are there other impacts that are not identified?</b> There would be no need for entity conduct licensing in the event executive accountability is introduced to banks and insurers. If both options were adopted, this could make consistency in conduct regulation throughout the industry more difficult to achieve. </li> <li>• <b>Are there other options that should be considered?</b> No. </li> <li>• <b>Do you have any estimates of the size of the costs and benefits of the options?</b> We are of the view that the option of executive accountability may be one of the most expensive options to implement and would impose costs without regard for the level of conduct risk in different financial institutions. <p>If it was extended to non-banks and non-insurers, it would unduly penalise smaller, specialist licensed managed investment scheme managers as the cost of the machinery for implementing and maintaining an executive accountability regime would be disproportionate to the level of their conduct risk.</p> </li> </ul>
16.	<p>What is your feedback on the whistleblowing option?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>What is your feedback on the whistleblowing option?</b></p> <p>As MBIE's Options paper notes, most mature financial institutions already have whistle-blowing mechanisms in place. Furthermore, their existence in banks</p>

	<p>and insurers in Australia was not sufficiently effective in preventing some of the more egregious conduct breaches uncovered by the Royal Commission.</p> <p>Whilst we support organisational initiatives that encourage whistle-blowing, the nature of this activity is such that it doesn't so much serve to promote good conduct but operates more as another detective tool when misconduct has already occurred.</p>
17.	<p>What is your feedback on the option of regular reporting on the industry?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>What is your feedback on the option of regular reporting on the industry?</b></p> <p>As a licensed managed investment scheme (MIS) manager, we already report regularly to the regulator and supervisor on a range of issues from product and service level performance to entity-level matters.</p> <p>Our concern at relying on this option, is that it may generate a considerable amount of information for the regulator at a cost to financial institutions that is disproportionate to its value to the regulator or to its effectiveness in achieving good outcomes for clients.</p>
18.	<p>What is your feedback on the role of industry bodies?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons?</li> <li>• Are there other impacts that are not identified?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of the options?</li> </ul>
Ans.	<p><b>What is your feedback on the role of industry bodies?</b></p> <p>We are of the view that industry bodies have an important role to play in advocating on behalf of their members and furthering professionalism within their membership base.</p> <p>However, membership of industry bodies is voluntary and there may be more than one industry body that a financial institution is eligible to join.</p> <p>Accordingly, industry bodies may not always be able to speak with a single voice.</p> <ul style="list-style-type: none"> <li>• <b>Do you agree with the pros and cons?</b> We agree with the cons inasmuch as this option would require mandatory membership of an industry body, which could be considered inconsistent with the right of free association.</li> </ul> <p>We also agree with the con which calls out that industry bodies have not always been effective at self-regulating in the past and we would not necessarily expect a different outcome with respect to self-regulation of conduct across disparate financial institutions.</p> <ul style="list-style-type: none"> <li>• <b>Are there other impacts that are not identified?</b></li> </ul>

	<p>Where industry bodies are made up of large, well resourced members and smaller, less well resourced members, the views of the larger group may prevail notwithstanding that they may not be universally agreed within the industry body.</p> <ul style="list-style-type: none"> <li>• <b>Are there other options that should be considered?</b> No</li> <li>• <b>Do you have any estimates of the size of the costs and benefits of the options?</b> This option could be expected to be expensive if membership is to be mandatory for all financial institutions. It is also likely that new industry bodies would emerge to cater for the niche interests of financial institution sub-groups. Financial institutions may feel the need to belong to multiple industry groups to ensure their interests are fully represented.</li> </ul>
<b>Who should the conduct regulation apply to?</b>	
<b>19.</b>	<p>What is your feedback on the options regarding who the conduct regime should apply to?</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>• Do you agree with the pros and cons of the options?</li> <li>• Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions?</li> <li>• Are there other options that should be considered?</li> <li>• Do you have any estimates of the size of the costs and benefits of these options?</li> <li>• Which options do you prefer and why?</li> </ul>
<b>Ans.</b>	<p><b>Who the conduct regime should apply to?</b></p> <p>Fisher Funds' view is that <b>all financial institutions should be subject to conduct regulation.</b></p> <p>We support a principles-based set of duties recognising that conduct and culture requirements should be proportionate to financial institutions' attributes (size, scale and business model) whilst also taking into account the particular conduct risks that different types of institutions present.</p> <p>Our view is that banks and insurers should be required to hold a specific conduct licence.</p> <p>This would go some way towards addressing the findings in the Reserve Bank / FMA review of conduct and culture in New Zealand retail banks, which called out the "lack of specific regulatory requirements in relation to conduct across the banking sector, particularly in respect of the delivery of banking products distributed without financial advice."<sup>1</sup></p> <p>Neither the Reserve Bank nor the FMA has conduct coverage across the substantive part of banks' business.</p>

<sup>1</sup> Bank Conduct and Culture – Findings from an FMA and RBNZ review of conduct and culture in New Zealand retail banks, November 2018

By contrast and as stated earlier in our submission, we believe that the risk of poor client outcomes is very low in the regulated sector comprised of licensed managed investment scheme (MIS) managers (excluding banks and insurers).

The substantive parts of the business and the products of such MIS managers are:

- subject to licensing and oversight by Financial Markets Authority;
- closely monitored at an entity and product level by licensed supervisors;
- subject to initial regulatory review and on-going oversight and reporting in respect of their products; and
- their limited range of more vanilla products are typically sold on an advised basis.

Accordingly, we are of the view that conduct regulation within the licensed MIS sector (excluding banks and insurers) can best be achieved through the existing MIS regulatory and supervisory framework, currently overseen by FMA

An additional licence would be duplicative, costly and would not materially reduce the already low residual conduct risk in the licensed MIS sector (excluding banks and insurers).

- **Do you agree with the pros and cons of the options?**

We believe that there is no compelling evidence that there is misconduct in the licensed MIS sector (excluding banks and insurers) to any level of materiality sufficient to warrant the imposition of a further licence.

- **Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions?**

We agree with the observation that obtaining an additional licence would impose disproportionate regulatory costs on certain financial institutions, such as licensed managers of managed investment schemes (excluding banks and insurers).

- **Are there other options that should be considered?**

As discussed above, we support conduct regulation of all financial institutions but believe that the existing regulatory and supervisory framework for licensed managed investment scheme (MIS) managers (excluding banks and insurers) provides a robust, cost-effective and proportionate approach to achieving universal conduct regulation.

- **Do you have any estimates of the size of the costs and benefits of these options?**

We believe that the cost of utilising the existing regulatory and supervisory framework for licensed managed investment scheme (MIS) managers (excluding banks and insurers) and a separate licence for banks and insurers is a cost-effective way of achieving universal conduct coverage within financial institutions and is proportionate to the level of risk.

- **Which options do you prefer and why?**

We prefer Option 2 (*Apply to all financial services providers that offer similar services to banks and insurers*), subject to the existing MIS regulatory and supervisory framework being the most appropriate conduct regulation mechanism for licensed managed investment scheme (MIS) managers (excluding banks and insurers).

## Use and release of information

The *Privacy Act 1993* applies to submissions. You may choose how your personal information is used.

Unless otherwise requested, we may also share submissions received with relevant government agencies such as the Financial Markets Authority.

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We intend to upload submissions to our website. Can we include your submission on the website?

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