AMERICAN INCOME LIFE
insurance company

1200 Wooded Acres • Waco, TX 76710

Privacy of natural persons

18 June 2021

Financial Markets Policy
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
By email: financialconduct@mbie.govt.nz.

Regulations to support the new regime for the conduct of financial institutions: American Income Life Insurance Company submissions

1. Please find attached the submissions of American Income Life Insurance Company (*AIL*) on the Ministry of Business, Innovation and Employment's Discussion document, *Regulations to support the new regime for the conduct of financial institutions* (April 2021).

2. AIL is a life insurer selling mainly to communities, including lower income households and migrant workers, that traditionally have not been well-served by other insurers in New Zealand.

3. It is one of the few life insurers that specifically services this market segment in New Zealand. AIL focuses mostly on selling level premium term life contracts, which remain affordable to members as they get older, avoiding the steep premium increases of yearly renewable plans.

4. AIL operates a branch in New Zealand. AIL of New Zealand Limited, which is a financial advice provider operating under a transitional licence issued by the Financial Markets Authority distributes AIL's policies in New Zealand. AIL of New Zealand Limited engages financial advisers, who provide financial advice on AIL's insurance products on behalf of AIL of New Zealand Limited.

5. AIL has assets held in a dedicated Custodial Fund that ensures the protection of its New Zealand policyholders. Its home office is registered in the State of Indiana in the USA.

6. Please contact me should you have any questions or would like AIL to expand on any of the matters discussed in the submissions.

Yours sincerely

Privacy of natural persons

Senior Vice President, General Counsel and Secretary

Regulations to support the new regime for the conduct of financial institutions

Your name and organisation

Name	Privacy of natural persons
Email	
Organisation/Iwi	American Income Life Insurance Company (AIL)

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

☐ The Privacy Act 1993 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at ***www.mbie.govt.nz***. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

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Please check if your submission contains confidential information:

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

The submissions on question 19 contains confidential information about AIL's remuneration arrangements and, accordingly, disclosure of this information would be likely unreasonably to prejudice the commercial position of AIL (section 9(2)(b)) of the Official Information Act 1982).

Requirements for fair conduct programmes	
	Do you have any comments on the status quo i.e. no further regulations to support the minimum requirements for fair conduct programmes in the Bill?
1	MBIE should cautiously assess the impact of the regulations to ensure that they do not impose overly burdensome requirements on overseas financial institutions, specifically insurers. When doing so, MBIE should firmly keep in mind that: (a) overseas financial institutions need to not only comply with the regulatory requirements of their home jurisdictions, but also with the New Zealand regulatory requirements and, when it is enacted, the new conduct regime established by the Financial Markets (Conduct of Institutions) Amendment Bill (Bill); (b) New Zealand is heavily dependent on overseas insurers and their contribution strengthens the robustness of the New Zealand financial sector and provides increase choice for New Zealand consumers; and (c) if overseas financial institutions consider that the new requirements proposed to be imposed by the regulations are impractical, overly burdensome or unjustifiably increase compliance costs, there is the significant risk that they will curtail, if not cease entirely, their New Zealand operations. Related to this, MBIE should take account of how financial institutions and intermediaries are effectively already giving meeting the new regime's requirements: (a) Where the market is meeting those obligations, MBIE should align the regulations with that market practice or, even more preferably, avoid imposing regulations altogether. (b) The new regime was proposed in response to the Financial Market Authority and Reserve Bank's Conduct and Culture review findings. Financial institutions and their intermediaries have been actively making changes to meet the regulators' Conduct and Culture expectations, with the result that the Bill will be enacted in a distinctly different environment. (c) The changes made by financial institutions should be considered to reduce to some extent the policy justification for imposing restrictive conduct requirements. Further, if it decides against recommending regulations that clarify the meaning of the Bill, MBIE should recommend that changes be made to the Bill itself to improve the precision of the substantive obligations: (a) In the "fair conduct principle" definition in section 446B(2), the word "includes" should be replaced with "means", so as to make the list of fairness factors an exhaustive one. This change would reduce the uncertainty inherent in the vague and subjective "fairness" concept used in "treat consumers fairly". The vague and subjective nature of the "fairness" concept makes it difficult for financial institutions to design their policies, processes, systems and controls "to ensure" their compliance with the fair conduct principle, as will be required by section 446G(3). It is simply unrealistic to expect financial institutions to, as the Select Committee envisaged, to discern "changing societal norms", which will almost always be contestable, and to design policies, process, systems and controls to ensure compliance with them.

(b) Amend section 446G(3) so that financial institutions are required to take "reasonable steps", rather than "to ensure" the financial institution's compliance with the fair conduct principle. This would result in section 446G(3) imposing a more realistic obligation and would align it with other obligations imposed by the Bill, for example, section 431K. As currently drafted, section 446G(3) can be read as requiring financial institutions to take unreasonable steps to ensure compliance with the fair conduct principle.

(c) Amend section 446G(2) to clarify that compliance with section 446M and any further prescribed requirements would be sufficient for the purposes of section 446G(3).

The above changes should be made through changes to the Bill. Clarification should not be provided by way of regulator guidance, which is unsatisfactory and inefficient means for these purposes.

2

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(a)?

Clarifications to the Bill suggested in the response to question 1 above will reduce the need for Regulations.

3

Do you have any comments on the proposals regarding distribution of relevant services and associated products? We are particularly interested in how these proposals may be implemented.

AIL submits that the term "managing" should be deleted from section 446M(1)(ab) because, as the Discussion document observes, the term is unclear (at [50]).

Further, AIL submits that the proposals for fleshing out this requirement identified in the Discussion document are unnecessary because there is no regulatory gap to be filled here.

(a) The Discussion document suggests that under any regulations financial institutions and their intermediaries would need to consider whether their existing distribution methods and processes (for example, agency agreements) are consistent with ensuring financial products and services are likely to be distributed to an identified group of likely consumers, and suggests that this could include factors such as how the product is marketed and the sales practices are adopted; and MBIE anticipates that a financial institution, before a product is distributed, will have some form of distribution strategy in place, which would include setting out situations in which a review may be required.

(b) However, financial institutions and their intermediaries will already have distribution strategies in place that seek to market it to the consumers for whom the product is suited – this is basic commercial practice. Advertising and sales practices are already regulated under the Fair Trading Act 1986, Consumer Guarantees Act 1993, and the Advertising Standards Code. Again, it is basic commercial practice for agency agreements to require that intermediaries comply with all applicable laws, including the aforementioned legislation and Code.

(c) In the case of FSLAA intermediaries, financial institutions should be able to assume that they will distribute their products and services to the consumers for whom they are designed because of the FSLAA intermediaries' obligations when providing financial advice on the financial institution's products and services – specifically the duty to exercise care, diligence and skill (section 431L of the FMCA) and the Standard of ensuring that the financial advice is suitable for the client, having regard to the

	nature and scope of the financial advice (Standard 3 of the Code of Professional Conduct for Financial Advice Services). It is unclear whether section 446M(1)(ab) would be breached by insurance policies which are designed for only a specific group of AIL's customers and not for others. Adding "a class of" before "Customers" in the second line would add clarity in this respect.
4	Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(ac)?
	AIL considers that no regulations are necessary to support section 446(1)(ac).
5	Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bb) to (bd)? Please refer to the response to question 1 above. Please refer to the response to question 6 in AIL's submission on the *Treatment of intermediaries under the new regime for the conduct of financial institutions*: FSLAA intermediaries, employees and agents who are FAPs or engaged by FAPs should be excluded entirely from sections 446M(1)(bb) to (bd)). The obligations under sections 446(1)(bb) to (bd) are unnecessarily burdensome and duplicative if the persons are subject to the FSLAA obligations.
6	Do you have any comments on the proposal to specify further minimum requirements regarding remediation of issues? Are there any further specific remediation principles that should be specified in regulations? AIL submits that no further regulation is necessary, and that the proposed additional prescription would be unhelpful, is unbalanced and focuses too heavily on monetary compensation when the best form of remediation may be prevention of reoccurrence. The remediation principles should ensure that a nuanced and holistic approach is taken to remediation – that any regulations prescribing remediation requirements adequately recognise that the form of remediation should be an appropriate response taking into account all the relevant circumstances of the particular case, including taking a balanced approach to the needs of all the parties and, as the Discussion document acknowledges, ensuring any response is practical and commercially efficient. For example the costs of remediation should not be disproportionately higher than any harm caused. Accordingly, remediation does not necessarily need to involve payment of monetary compensation when non-monetary responses may be appropriate and sufficient. In additional suitable de minimus thresholds should be included to ensure that remediation is not required when the customer impact is immaterial. In those circumstances the costs of remediation would outweigh the benefits. These points should be added to the list of principles in any remediation regulations. In determining what is appropriate remediation, financial institutions should be given latitude to balance various, sometimes conflicting, factors such as: (a) the nature and extent of the detriment consumers have been shown to have suffered as a direct result of the conduct; (b) the culpability of the parties for the customer outcomes; and (c) the implications of undertaking any particular form of remediation on the financial institution and other consumers;

to ensure that a commercially practical solution is achieved.

It would be useful for the above to be added to the list of principles so as to permit financial institutions to take a practical and suitable response to remediation.

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(be)?

Section 446M(1)(be) needs to be redrafted entirely – as currently drafted it is too uncertain and too unbalanced.

While the words "so far as is reasonably practicable" were added to incorporate some form of balancing exercise, AIL submits that the current drafting is lopsided insofar as it only recognises – and implicitly gives priority to in that balancing exercise – the avoidance of the actual or potential adverse effects of incentives on consumers' interests.

There is insufficient recognition in section 446M(1)(be) that financial institutions must, in designing remuneration systems, have regard to, and balance, a wide array of factors, including:

(a) the need to incentivise their staff and staff to sell insurance policies which benefit customers, and in a way that reflects the particularities of their operations;

(b) remunerate in a manner that is sustainable and maintains and enhances the commercial viability of the financial institution, particularly through sustaining of existing business and the growth of new business;

(c) the various roles, qualifications and experience their intermediaries and staff and their comparable value to the financial institution, including the risks they manage and are exposed to;

(d) take account of any agreements and understandings with unions and employee groups;

(e) the need to provide remuneration that provides intermediaries and staff with sufficient income to live and achieve their financial and life style goals; and

(f) the need to offer commercially attractive remuneration that attracts and retains talent.

As currently drafted, financial institutions could not take account of the above factors, and other relevant factors, because of the primacy that is given in section 446M(1)(be) to the avoidance of adverse effects of incentives on consumers' interests. This creates the material risk that, as currently written, section 446M(1)(be) will distort financial institutions' decision making with respect to remuneration structures.

AIL submits that section 446M(1)(be) should be redrafted so it better reflects the holistic assessment that financial institutions must undertake when designing their remuneration systems, and more expressly recognises that balancing between competing factors needs to occur and that financial institutions should be given a suitable margin of appreciation that allows them sufficient space to design the remuneration systems that best meets the particularities of their operations.

Further, it is simply unclear what section 446M(1)(be) requires financial institutions to do. If it is to be retained, section 446M(1)(be) should specify with some precision what financial institutions need to do in order to have "effective policies, processes, systems and controls" with respect to the designing and managing of incentives. As noted above, the design of remuneration systems is a complex exercise for financial institutions and this lack of clarity is simply unhelpful and, due to the primacy given to the avoidance of adverse effects to consumers, potentially

	distortionary. AIL submits that section 446M(1)(be) should be amended to: (a) specifically recognise that financial institutions must take into account and balance a wider array of factors when designing and managing incentives; (b) replace the words "so far as is reasonably practicable" with a more realistic obligation to "take such steps as are reasonable in the circumstances", which will provide financial institutions with desirable margin of appreciation as they negotiate the complexities of their operations; (c) expressly provide that the paying of linear commissions is a means by which financial institutions can meet the obligation imposed by section 446M(1)(be), consistent with the former Minister's and others assurances that only volume and value targeted remuneration is to be prohibited; and (d) specify with greater precision what actions financial institutions need to undertake through their policies, processes, systems and controls to demonstrate they have complied with section 446M)(1)(be).
	Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bf)?
8	Consistent with the response to question 1 above, MBIE should ensure that any communication obligations imposed are not unreasonably burdensome. AIL agrees that no regulations are necessary to support section 446M(1)(bf).
	Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(d)?
9	Please refer to the response to question 1 above. AIL agrees that no regulations are necessary to support section 446M(1)(d).
	Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?
10	Any complaints handling requirements should be consistent with the internal complaints process condition that is imposed in the full financial advice provider licence, and would be suitably adopted in licence conditions in the same way as it is regulated for financial advisers (to avoid an inconsistency in approach).
	Do you have any comments on the proposals to specify further minimum requirements regarding claims handling and settlement?
11	While AIL agrees with the Discussion paper's observation (at [94]) that the "handling and settlement of insurance claims may be the most important and meaningful interaction for consumers with their insurer", MBIE needs to keep firmly in mind that handling and settlement of claims is often fraught with complexity for insurers. When considering a claim, insurers need to consider: (a) the terms of the policy, including any exclusions; (b) the information disclosed by the policyholder when first applying and at any renewal or variation of the policy; (c) the nature of the evidence provided by the claimant, including in some cases reviewing extensive medical files; (d) the individual circumstances of the claimant and the claim; and (e) in borderline or unusual claims, have regard to its interests, including

	considering the precedent that settling the claim would set and how to exercise any discretions given under the terms of the policy, as well as those of the claimant and the other policyholders. It is not uncommon for claimants to provide insufficient information or detail about their claim, with the result that the claims process becomes protracted. And while a claimant may suffer detriment if their claim is not handled and settled in a fair and timely manner, so too insurers and their policyholders suffer detriment if they pay claims to those who are not eligible because their evaluation has to be truncated by prescriptive timeframes. Therefore, any regulatory requirements regarding claims handling and settlement must recognise these realities and ensure that there is a proper balance between the needs of consumers to achieve timely handling and settlement, and the insurers and other policyholders' interests in ensuring that claims are properly investigated and determined. Any regulatory requirements should not compromise financial institutions' ability to challenge claims where they have reasonable grounds for doing so. Accordingly, AIL is strongly opposed to regulations containing any prescribed period with which claims must be determined – this would simply be impracticable given the myriad of circumstances each individual claim may present.
12	Do you have any comments on the proposed definition of 'handling and settling a claim under an insurance contract' means? If so, why?
	No comments.
	Do you have any comments on the discussion regarding customer vulnerability?
13	It is doubtful that regulations could usefully clarify the vulnerable customer related obligations: the term "vulnerable customer" eludes precise definition, and it is not possible to prescribe in advance how a financial institution should respond to any particular vulnerable customer's needs given that they can be expected to be unique. It is better that financial institutions are given flexibility to respond to those needs, so to guard against a one-size fits all approach, and that market practice is given time to develop in this area as financial institutions build up their knowledge as to how best to meet vulnerable customers' needs. Developing guidance (with useful case studies) similar to that issued by the United Kingdom Financial Conduct Authority, and developed in consultation with appropriate specialist organisations such as the Human Rights Commission, community groups and financial institutions, would be a better response if financial institutions require further clarity about their vulnerable customer obligations under the Bill.
	Do you have comments regarding the option of including vulnerable consumers in section 446M(1A)?
14	If any amendment is recommended by MBIE, it is preferable that this is to amend section 446M(1A) to specify "the types of consumers it deals with (including vulnerable customers)". This amendment would make explicit what is already latent in this factor and, accordingly, changing the Bill to identify vulnerable customers as a separate factor, in addition to the types of consumers, seems unnecessary. Specifying vulnerable customers as a separate factor creates the risk that financial institutions will consider the needs of vulnerable customers separately to the needs of other types of consumers. This would be undesirable because:

(a) there will be overlap between the needs of vulnerable customers and other types of consumers, and, indeed, particular consumers may move in and out of the vulnerable customer category over a period of time; and

(b) financial institutions will need to consider the implications of the various approaches to meeting vulnerable customers' needs on how they provide products and services to other types of consumers, and balance any conflicts just as they already do when considering the needs of their various consumer groups.

15	Do you think any further factors should be added by regulations to the list under section 446M(1A)?
	No.
16	Do you think any other regulations that could be made under new section 546(1)(oa) are necessary or desirable? Please provide reasons for your comments.
	Please refer to the response to question 1 above. No further regulations are necessary or desirable.

Sales incentives

17	Do you have any comments on the Status Quo (no regulations)?

MBIE should not recommend regulations that go beyond the scope of the Cabinet decision to prohibit incentives solely based on value or volume targets. Accordingly, the regulations should not seek to regulate incentives generally and, in particular, they should not:

(a) target what are perceived to be overly high upfront commissions, because the risk associated with them are addressed by the financial advice disclosure requirements;

(b) cover sales-based metrics not involving value or volume targets; and

(c) prohibit soft commissions entirely where eligibility is not based on value or volume targets, especially those that may assist in improving customer outcomes, for example, training and business tools.

In order that the Bill more accurately reflects the Cabinet decision, MBIE should recommend that the Bill be amended as follows:

(a) the word "targets" is added to the value and volume part of the "incentive" definition; and

(b) soft commission defined separately and with exclusions for soft commissions that do not pose unacceptable risks to consumers and in fact may be beneficial to the achievement of good customer outcomes, such as training and business tools.

While it would be inconsistent with the Cabinet decision if MBIE were not to recommend any regulations, MBIE still has latitude to make recommendations on how broadly the prohibition is drafted and as to what exclusions are permitted. Further, the Cabinet decision was made before several significant developments, which MBIE should now consider to ensure that the incentive regulations align with those developments.

The subsequent developments are:

(a) Under the new financial advice regime, Parliament express permits FSLAA regulated intermediaries to manage conflicts of interest (including those relating to incentives) by requiring them to take all reasonable steps to

ensure that the advice is not materially influenced by any conflicts of interest and, to reinforce this obligation, Parliament has empowered clients through requiring FSLAA intermediaries to disclose commissions and other incentives, thereby enabling clients to assess their degree of influence, if any, on the advice they are given.

(b) If adopted, section 546(5) would obligate the Minister to make a recommendation for incentive regulations only if the Minister has had regard to specific matters, including:

- the regulations are likely to appropriately reduce or manage conflicts or potential conflicts between the interests of consumers and the interests of persons who would otherwise be entitled to receive incentives, or otherwise mitigate or avoid the actual or potential adverse effects of incentives on the interests of consumers; and
- the likely effect of the regulations on the availability of financial advice, financial services and financial advice products and on the financial services industry generally.

(c) Financial institutions (including AIL) and their intermediaries have been making changes to their remuneration systems to meet the Conduct and Culture review expectations of the Financial Markets Authority and the Reserve Bank – in particular, they have been eliminating or decreasing the use of sales-linked metrics for assessing incentive entitlements, and incorporating increased controls, such as conduct gates and balanced scorecards.

In seeking to implement the Cabinet decision, MBIE should consider these subsequent developments and ensure that the resulting incentives regulations are consistent with them:

(a) Given the existing obligations to manage conflicts of interest and disclose commissions and other incentives, the incentives regulations should not apply to FSLAA intermediaries when they give regulated financial advice or, at the very most, those regulations should impose lesser restrictions on them.

(b) MBIE should consider that a narrower prohibition is sufficient to appropriately reduce or manage (actual or potential) conflicts of interest, or to mitigate or avoid actual or potential adverse effects for consumers, of incentives given the changes to remuneration arrangements by financial institutions and intermediaries to meet the Conduct and Culture review expectations.

(c) MBIE needs to assess the likely effect of the proposed incentives regulations on the availability of financial advice, financial services and financial advice products and on the financial services industry generally, as will be required by section 546(5) if it is adopted.

(d) MBIE should consider and encourage the positive benefits of incentives.

	Do you have any comments on the option to prohibit sales incentives based on volume or value targets?
18	AIL supports the proposed prohibition provided that MBIE adopts a moderate position by recommending that: (a) the "incentives" definition is amended to include the word "targets"; (b) linear incentives are not prohibited, and there is an exclusion for them in the regulations; and (c) the incentives regulations contain exclusions for circumstances where sales incentives based on volume or value targets do not give rise to unacceptable

	risks for consumers because, for example, controls such as conduct gateways and balanced scorecards are incorporated to reduce or manage such risks to an acceptable level.
	What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value based targets?
19	Confidential information entrusted to the Government
	Do you have any feedback on a more principle-based approach to prohibiting some incentives?
20	AIL does not support a principles-based approach as it inherently creates uncertainty. The designing of remuneration arrangements is complex and involves balancing numerous factors and, accordingly, it unhelpful for there to be uncertainty as to the legal requirements for remuneration. However, poorly drafted prescription can also provide poor legislative outcomes and should also be avoided if it fails to prohibit solely those behaviours which cause the actual harm the legislation is seeking to prevent, or imposes impractical requirements which can be avoided.

	How could a more principles-based approach to prohibiting some incentives be made workable?
21	As stated in the response to question 20 above, AIL does not support the adoption of a more principles-based approach. However, if a principled-based approach is adopted, behaviours which have commiserate compensating benefits or do not directly cause the harm the legislation is designed to prevent, should be expressly excluded through "safe harbours" to minimise the adverse impact of the prohibitions, and provide the desirable certainty the industry needs to function efficiently.
	If a more principles-based option was chosen, should there be some incentives specifically excluded?
22	A more principles-based approach should not be adopted for the reasons identified in the response to question 20 above. However, if a principled-based approach is adopted, behaviours which have commiserate compensating benefits or do not directly cause the harm the legislation is designed to prevent, should be expressly excluded through "safe harbours" to minimise the adverse impact of the prohibitions, and provide the desirable certainty the industry needs to function efficiently.
	Do you think there are any other viable options other than what has been put forward by this discussion document? Please explain in detail.
23	If a more principles-based approach is adopted, the principles should allow exceptions (including through the FMA under section 556) where financial institutions can demonstrate that, due to their remuneration arrangements having adequate controls, otherwise prohibited incentives are permitted.
	Are there sales incentives based on volume or value targets that should be excluded from the regulations (i.e. allowed to be offered/given)?
24	Yes: sales incentives based on volume or value targets should be allowed where adequate controls have been incorporated into the remuneration arrangements to reduce risks to consumers to acceptable levels. APRA's *Prudential Practice Guide Draft CPG 511 Remuneration* (30 April 2021) and the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry supports the proposition that such controls can be used to reduce risks to consumers to an acceptable level. In its recently released for consultation guide, *Prudential Practice Guide Draft CPG 511 Remuneration* (30 April 20201), APRA is proposing to take an approach whereby sales-metrics, and even remuneration "primarily based in sales volumes", may be permitted provided that financial entities adequately identify, manage and monitor risks, including incorporating appropriate controls, and that their remuneration frameworks are designed and reviewed by a Board Remuneration Committee. In preparing the draft Guide, APRA was giving effect to the recommendation of the Australian Royal Commission that APRA must revise its prudential standards and guidance about remuneration. In reaching this recommendation, the Australian Royal Commission stated (Final report, volume 1, at page 345): *"APRA must bear steadily in mind that entities can and should use both the design and the implementation of remuneration and incentive systems to reduce the risk of misconduct."* In doing so, the Australian Royal Commission did not recommend the prohibition of incentives based on volume or value targets, but rather took the more moderate approach that APRA has adopted that incentives may be based value and volume

	sales metrics if the remuneration frameworks are designed and implemented in such a way to reduce risks to consumers. Unless the proposed prohibition on value or volume targets is reduced in its scope, or exclusions are permitted where financial institutions have adequate controls in their remuneration arrangements to reduce consumer risks to an acceptable level, New Zealand will be taking a more restrictive approach than Australia. It would not be justified for New Zealand to take a more restrictive approach to that recommended by the Australian Royal Commission and adopted by APRA. It has been acknowledged by the Government and the regulators that the conduct and culture issues in New Zealand were not as widespread as those found in Australia. AIL submits that are no other differences between the two countries that demonstrably support different approaches.
	Do you think there are any types of incentives that should be excluded from the regulations? Please provide reasons for your comments.
25	AIL supports the exclusion of incentives discussed in the Discussion Document, including salaries, performance benefits, linear or flat line sales incentives, remuneration based on aspects other than sales and disincentives. These exclusions should be carried forward and applied to section 446M(be). As mentioned, sales incentives based on volume or value targets should also be allowed where adequate controls have been incorporated into the remuneration arrangements to reduce risks to consumers to acceptable levels. Also as mentioned, where volume or value target based incentives promote good customer outcomes, for example, access to software, business tools and training, they should not be prohibited.
	Do you think that the scope of who can be covered by the regulations poses a risk of unintentionally capturing other intermediaries that are paid incentives but should not be covered?
26	The scope needs to be refined further to narrow subparagraph (b) so that it does not unintentionally capture intermediaries that should not be covered. As currently drafted, subparagraph (b) would appear to cover back-room administrative employees and agents who have no or limited customer interaction and, as such, remuneration based on volume or value targets would not appear to give rise to material risks for consumers.
27	Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should apply to all staff? Why/why not?
	No. The restrictions should apply solely to staff who engage directly with customers. Please refer to the response to question 26 above.
28	Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should only apply to frontline staff and their managers? Why/why not?
	AIL submits that the restrictions should apply solely to staff who engage directly with customers.
29	Do you think that external incentives should apply to any incentive paid to an agent, contractor or intermediary? Why/why not?
	No comment.
30	Do you agree that both individual and collective incentives should be covered?

	Why/why not?
	Collective incentives should be excluded because their shared nature greatly diminishes the effect of the incentive on an individual sale, so any potential harm would be greatly diminished.
31	Do you have any other comments on the discussion related to incentives?
	No further comment.
	Requirement to publish information about fair conduct programmes
32	Is more detail needed to outline what information should be published regarding financial institutions' fair conduct programmes to assist financial institutions to meet this requirement, or to assist consumers in their interactions with financial institutions?
	No. AIL supports Option1. Further prescribed disclosure is unnecessary and its restrictions would cause more harm than benefit.
33	Do you have any comments on the options outlined above? What do you think the costs and benefits would be to financial institutions and consumers of the two options?
	AIL supports Option1. Further prescribed disclosure is unnecessary and its restrictions would cause more harm than benefit.
34	This discussion document outlines two options regarding the requirement to publish information about the fair conduct programmes. Do you have any other viable options?
	No comment. AIL supports Option1.
	Calling in contracts of insurance as financial products under Part 2
35	Do you have any comments on the proposal to declare contracts of insurance as financial products under Part 2?
	AIL submits that this proposed declaration is unnecessary because: (a) there is already adequate protections under the duty of good faith (which is unique to insurers), Fair Trading Act, FMCA (through the FSLAA provisions, including section 431P (false or misleading statements or omissions)), and the Consumer Guarantees Act (Guarantee as to reasonable care and skill, guarantee as to fitness for particular purpose, guarantee as to time of completion and guarantee as to price) which expressly is applied to insurance policies (but not other financial products). The proposed declaration would cause regulatory duplication as there is no regulatory gap to fill in this case; and (b) the unsubstantiated representations prohibitions are unsuited to insurance because of the range of relevant information required to be provided in this context and the need to make assumptions (rather than verify facts). The information required to make a proper consideration of an insurance policy could be constrained if all disclosures have to be substantiated.

Exclusions of certain occupations or activities from the definition of intermediary	
36	Do you think it would be appropriate to exclude people who are subject to professional regulation from the definition of an intermediary (e.g. lawyers, accountants, engineers)?
	No comment.
	Do you think that any other occupations or activities should be excluded from the new proposed definition of an "intermediary"? If so, why?
37	Yes, all financial advice providers and financial advisers or nominated representatives engaged by them should be excluded from the definition of "intermediary" on the basis that the changes to the FMCA on 15 March 2021 (including particularly Code Standard 1: Treat Clients Fairly and section 431K: Duty to give priority to clients interests) adequately address any fair conduct risks to consumers. Applying the Bill to FSLAA intermediaries would cause unnecessary and substantial duplication and inefficiency.
Other comments	

For intermediaries, "consumer" has different definitions depending on whether the intermediary is providing an insurance function or a financial advice and client money handling function. When performing an insurance function, the definition in section 446S(1) rightly links to "personal, domestic or household purposes" through the definition of a "consumer insurance contract". Whereas in the financial advice and client money handling context, the definition adopts a far broader "retail client" definition. The two approaches cause confusion.

The Bill should apply consistently only to customers who ordinarily are regarded as "consumers" (ie, persons who acquire a financial institution's products and associated services of a kind ordinarily acquired for personal, domestic, or household use or consumption). It should not extend in some contexts to "retail clients" as that term is defined in the FMCA.

The term "retail client" can include sophisticated investors who can be expected to have the resources and knowledge to ensure they are treated fairly. Therefore, the Bill should not extend to them.

For intermediaries and financial institutions, the approach is inconsistent and confusing. Section 446M which imposes obligations on intermediaries only works sensibly if the financial institution and the intermediary apply the insurer's fair conduct programme to the same persons. However, the drafting is not clear on this point, and should be clarified.

It would make little sense to require a financial institution to have a fair conduct programme in respect of consumers, and require that financial institution to establish processes, train, seek assurances, set conduct expectations, establish misconduct penalties and monitor intermediaries in respect of a different, broader class of customers.

AIL submits that the definition in section 446S(1)(d) of "consumer" should be amended so intermediaries adopt the same definition as the financial institution for whom they are providing the services.