FIRST Union submission

To the

Ministry of Business, Innovation and Employment

Regarding

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

Financial Markets (Conduct of Institutions) Amendment Bill

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1. INTRODUCTION

1.1 FIRST Union is a private sector trade union with 30,000 members in the retail, finance, commerce, transport, logistics and manufacturing sectors.

1.2 We have 3,000 members in the finance sector, with around 2,500 working in the Big Four banks (ANZ, ASB, BNZ and Westpac).

1.3 We understand that the purpose of the Financial Market Conduct Act 2013 is around ensuring the "confident and informed participation of businesses, investors, and consumers in the financial markets"[1] and that the regulations contained in the Financial aim to support that by ensuring financial institutions implement fair conduct programmes.

1.4 FIRST Union supports this regulatory process. The fair conduct principle elucidated in the proposed Section 446B reflects the standard of consumer engagement that bank workers measure themselves against. However at the same time our members experience first-hand the impact of arguably unfair conduct – particularly the use of targets – and that any attempts to regulate these behaviours will impact the way bank workers carry out their job.

1.5 The first part of this submission will provide a brief history of the FIRST Union campaign to end targets and the impact of this on the banks. The second part of the submission will look at how targets have evolved in the modern environment, based on surveying of bank workers. The third part of the submission respond to questions from the Discussion Document around fair conduct programmes and the impact of the regulation of sales incentives on workers. Questions are in italics. Responses have not been provided to all questions have answered, while some questions have been answered collectively.

[1] Section (3)(a) Financial Market Conduct Act 2013.

2. SERVICE BEFORE SALES

2.1 Targets and sales incentives have been a major concern of workers in the finance sector for at least a decade now. In a 2013 paper the union argued that the stress and pressure to sell financial products was promoting unsafe indebtedness and undermining financial stability, noting that “workers ought to be regarded as the ‘canary in the mine’ for gauging financial stability”.[2]

2.2 The Service Before Sales campaign was publicly launched in June 2017, highlighting the impact of incentives on workers.[3] That campaign was extremely successful in bringing bank worker stories out of the shadows and highlighting the perverse impact they had on workers’ lives and livelihoods.

2.3 In December 2017 the Australian Government established the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, following revelations in the media of a culture of greed and concerns of mis-selling. Given that ~85% of the NZ banking industry was owned by the Big 4 Australian banks, similar concerns were raised in the NZ environment.

2.4 In 2018 the FMA and RBNZ announced a review into the conduct and culture in New Zealand, publishing their findings in November 2018. Some recommendations of that review focused around designing incentives that sustained good customer outcomes, including the removal of sales measures, with an expectation that banks “implement changes to their incentives programmes no later than the first performance year after 30 September [2019].”[4]

2.5 As member activism grew and workers became more outspoken, banks themselves began to take steps to safeguard their public image. Given the public perception of banks in 2018 and the strong support by the public for bank workers, the decision by banks to remove sales targets was ultimately a pragmatic one.[5]

2.6 Despite the voluntary removal of sales targets, bank workers continued to report pressure to sell financial products. In a June 2019 poll of members in the banking sector, 55% said pressure to sell was the same or worse than a year prior, when sales targets were still in place.[6]

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[2] FIRST Union “Women and work in the New Zealand banking industry: Targets and debt following the crisis” (22 November 2013). Available at: https://www.interest.co.nz/sites/default/files/Women-and-work-in-NZ-banking-industry.pdf

[3] See e.g. Susan Edmunds “Bank staff may be forced to sell debt to consumers who can’t pay – union” (19 June 2017) *stuff.co.nz*. Available at: https://www.stuff.co.nz/business/93787612/union-launches-campaign-to-ease-bank-sales-targets

[4] “Bank Conduct and Culture: Findings from an FMA and RBNZ review of conduct and culture in New Zealand retail banks” (November 2018) p11. Available at: https://www.fma.govt.nz/assets/Reports/Bank-Conduct-and-Culture-Review.pdf

[5] ANZ announced it was removing targets in August 2018, with other banks following suit soon after. https://www.rnz.co.nz/news/business/363692/anz-to-remove-stressful-sales-targets-for-frontline-staff

[6] FIRST Union media release “Bank Tellers relieved that sales targets are gone for good” (25 June 2019). Available at: https://www.scoop.co.nz/stories/PO1906/S00288/bank-tellers-relieved-that-sales-targets-are-gone-for-good.htm

3. TARGETS AND BANK PERFORMANCE

3.1 The union believes that targets, however expressed, have a historical driver of bank profitability. We are concerned that the re-implementation of targets through other terminology enables banks to capitalise on the current post-covid fiscal stimulus in a way that puts undue pressure on workers and could result in the mis-selling of financial products to consumers.

3.2 Figure 1 shows NZ's Big 4 bank profits over the last five years, showing that the removal of targets did coincide with a net decline in profits of 3 percent in the 2018 – 2019 financial year. That decline suggests that there's a reasonable possibility that targets had previously resulted in the sale of financial products or services that were not appropriate for consumers.

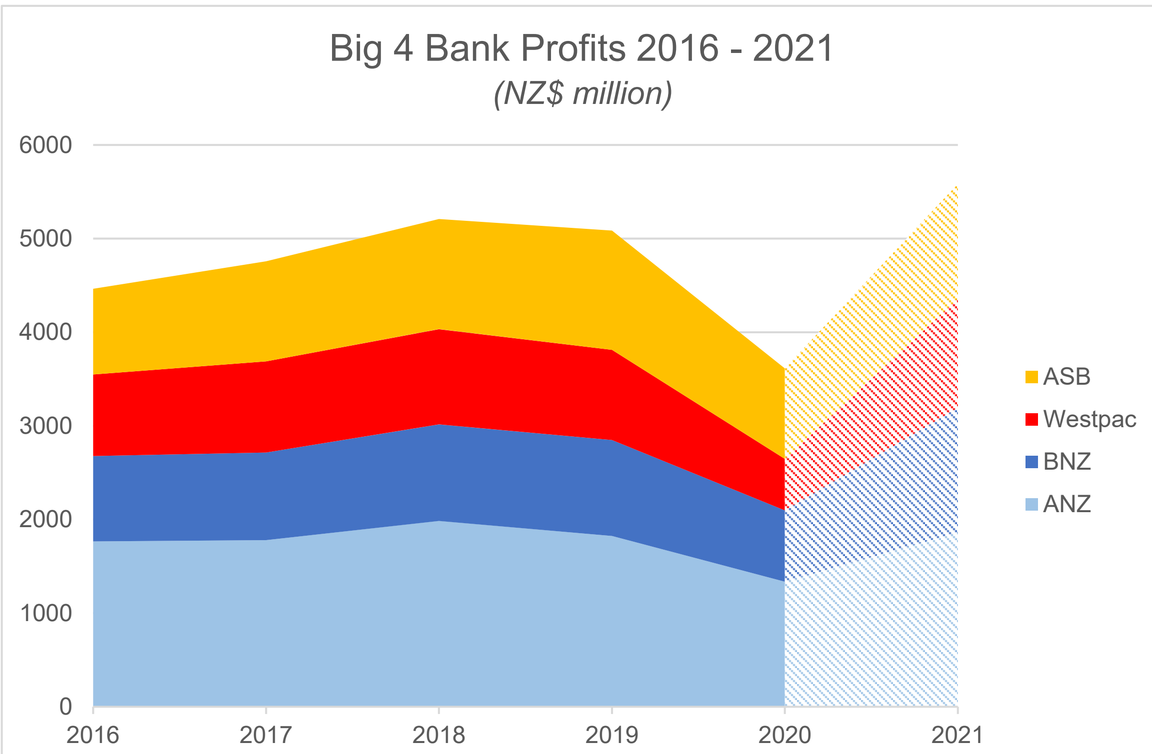

Figure 1: NZ Big Four bank profits. 2016 – 2020 data is taken from bank annual reports, 2021 indicative data is the result of doubling interim profits.

3.3 The short-term impact of the COVID-19 pandemic on big 4 bank profitability was much greater than this – almost 27 percent,[7] however they also appear to be major beneficiaries of post-COVID recovery financing. NZ bank profitability is closely correlated with house prices, with mortgages representing more than two-thirds of bank lending.[8] In the wake of the crisis, RBNZ's significant monetary stimulus push up house prices, with

[7] Part of this decline is attributable to the 54,000 people who took mortgage holidays, as well as a period of diminished lending during the pandemic when open homes were impossible.
[8] Bernard Hickey "Our housing market is too big to fail" (28 August 2020) *Newsroom.co*.nz. Available at: https://www.newsroom.co.nz/our-housing-market-is-too-big-to-fail

the intended resulted that homeowners whose asset accumulates in value feel wealthier and spend more.[9]

3.4 Interim 2021 results demonstrate the positive impact banks have experienced through this monetary stimulus channel. If full year profits continue to increase at the current rate, the Big 4 banks would experience a more than 50 percent profit increase to achieve record profitability (see the shaded area on Figure 1). There are reasons to suggest that this would be a conservative projection; RBNZ data shows that new residential mortgage lending in March 2021 is almost double what it was March 2019.[10] Despite further measures to discourage investor activity in the housing market, average sales prices continue to rise the national average hit $820,000 in May 2021 for the first time - meaning more borrowing activity for banks.

3.5 Bank profits have similarly been boosted by the ongoing reduction of labour costs at the branch level, as rural branches have been closed down. While we note a general commitment of the banks to ensuring ongoing work for staff in different part of their operations, workers that take redundancy are generally not replaced. Figure 2 shows

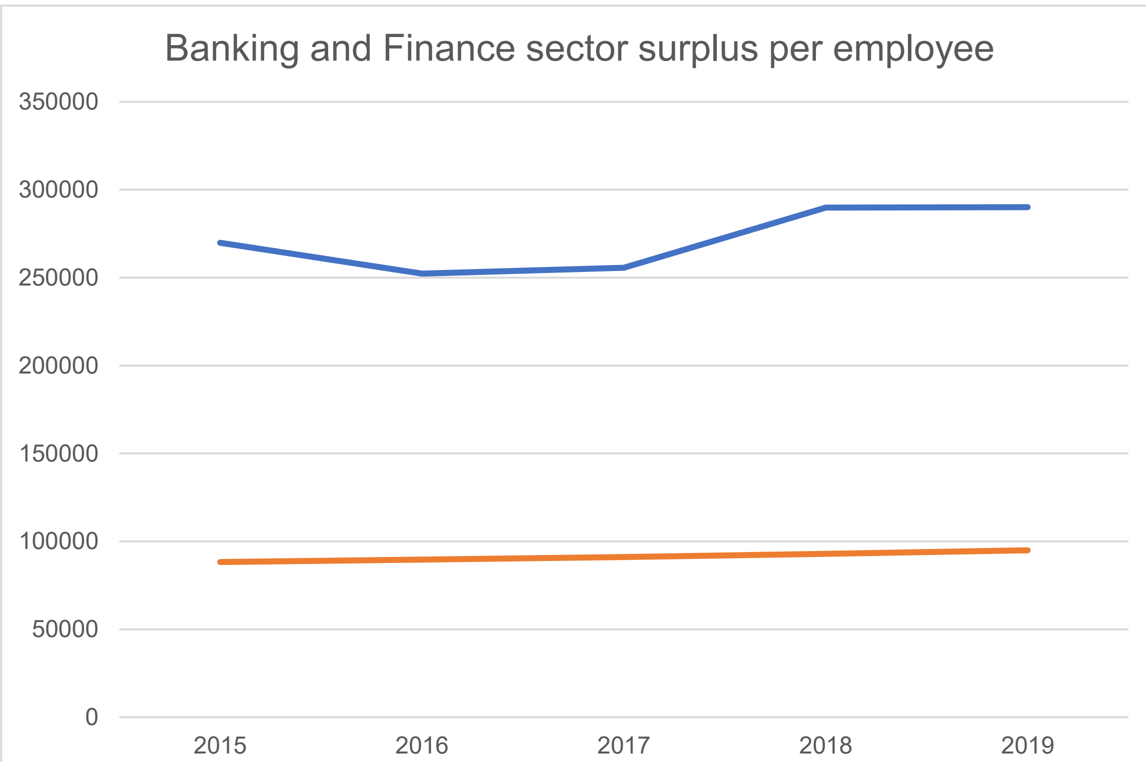

Figure 2: These data are derived from Annual Enterprise Survey data.

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[9] RBNZ research has found that households in New Zealand vary their consumption in response to changes in housing wealth, with a 10% increase in house prices resulting in a 1% increase in consumption. *See* Martin Wong "Revisiting the Wealth Effect on Consumption in New Zealand" (30 March 2017) *Reserve Bank of New Zealand*. Available at: https://www.rbnz.govt.nz/research-and-publications/analytical-notes/2017/an2017-03

[10] "New residential mortgage lending by borrower type – C31" (26 May 2021) *Reserve Bank of New Zealand*. Available at: https://www.rbnz.govt.nz/statistics/c31

data from Annual Enterprise Survey up to 2019 (2020 data will be released in August), showing that for every dollar paid out in wages the industry generates three dollars in pre-tax profit. While the 2019 average wage across the industry from that data is $92,853, this figure is heavily skewed by higher paid staff, most of which have never been subject to target pressure. Compare this to the average income of a bank worker – around $50,000 - $70,000 per year, depending on experience and seniority.

3.6 The current economic situation continues to generate ongoing pressure on workers in the banking sector, as a recent survey of bank workers undertaken for this submission shows. Across all roles involved in selling products and making referrals, 75 percent of workers noted they had experienced pressure to sell products in the last six months. Amongst workers in lending roles, 80 percent of respondents – (those involved in secured and unsecured lending, and those involved only in unsecured lending) said they had experienced pressure in the last six months to sell products. (See Figure 3).

In the last 6 months have you felt any pressure to sell financial products to customers?

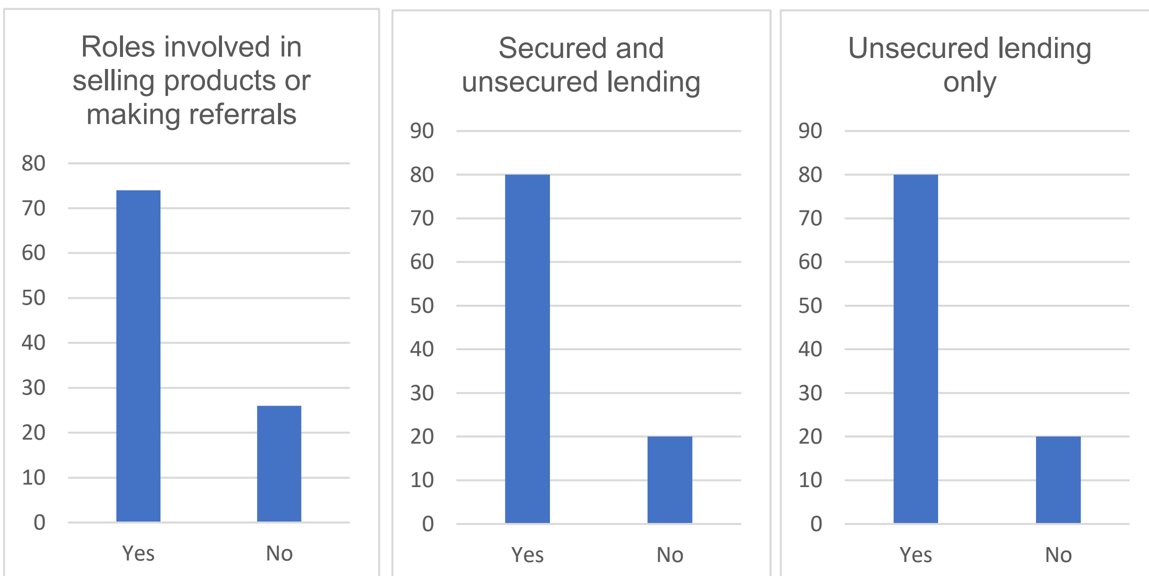

Figure 3: These data are from surveys carried out by FIRST Union in June 2021.

3.7 Only one in five workers (18 percent) said that the pressure to sell financial products is less than a year ago, with nearly half (47 percent) saying it is the same and more than a third (35 percent) saying it is more (Figure 4).

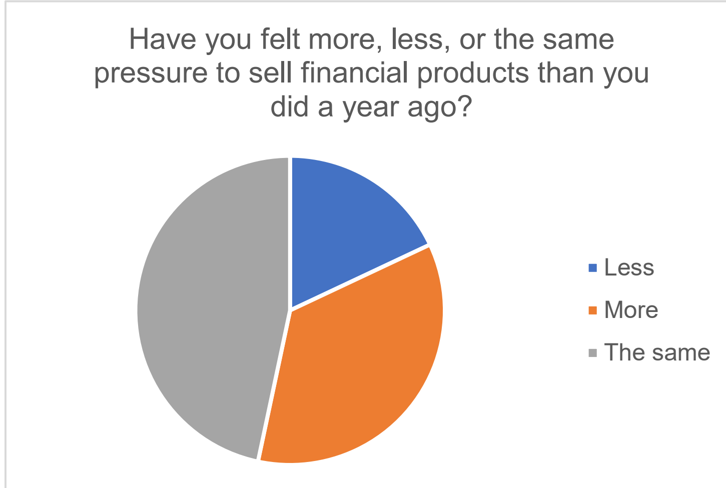

Figure 4

3.8 More than two-thirds of surveyed bank workers said they felt pressure to sell particular products more than others. The most pressure on the sale of life insurance, followed by home loans, then general insurance (Figure 5). Note that respondents were free to choose as many options as they could in this question, so these figures should not be interpreted as percentages.

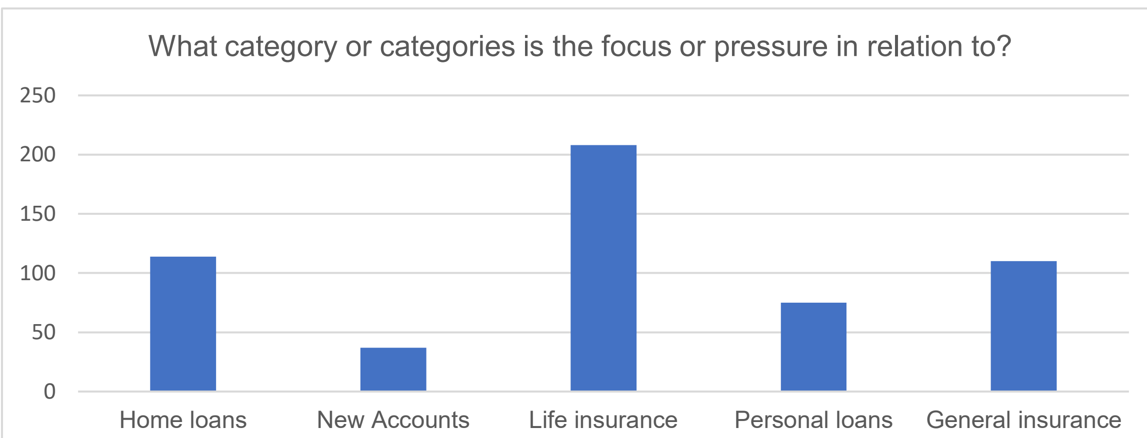

Figure 5.

3.9 A significant proportion of bank workers believe this is resulting in mis-selling of financial products. 44% of surveyed workers said they believed that pressure within their branch or department has resulted in customers being sold an inappropriate financial product, with 7% saying this occurs 'often' and a further 7% saying this occurs 'all the time' (Figure 6).

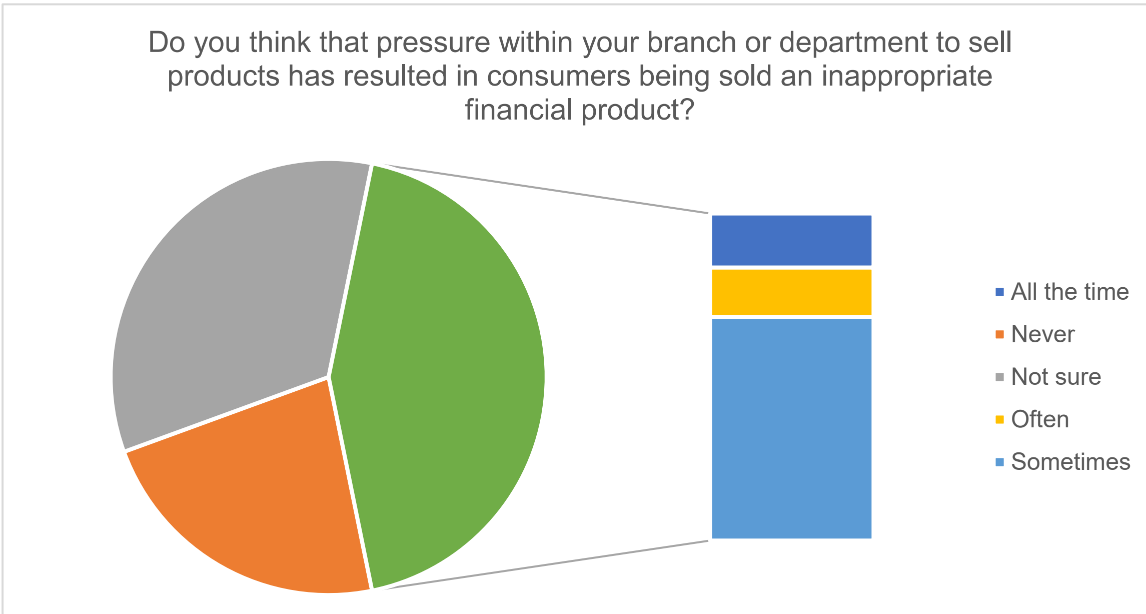

Figure 6.

4. RESPONSES TO SPECIFIC QUESTIONS FROM THE DISCUSSION DOCUMENT

Requirements for fair conduct programmes

1. *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?*

We do not think the status quo is working, as the evidence presented at [3.6 – 3.9] suggests that workers are still subject to significant pressure to sell financial products, that is resulting in mis-selling of products. This appears in violation of the requirements of the fair conduct principle laid out in Section 446B of the Bill, that includes 'paying due regard to consumers', 'ensuring that the relevant services and associated products that the financial institution provides are likely to meet the requirement and objective of likely consumers', and consumers are 'not subjecting consumers to unfair pressure or tactics or undue influence'.[11]

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

The union agrees at this stage that there is no additional regulations to implement the provision, however given this is uncharted territory we think the FMA must maintain the freedom to regulate. There may be problems that become apparent in the future, and the freedom to regulate without having to gain Parliamentary assent may be crucial to ensuring consumers are subject to fair conduct. Additionally, a one-size-fits-all approach that means a greater relative regulatory burden on smaller financial institutions, which makes it easier for larger banks to expand their market share.

3. *Do you have any comments on the proposals regarding distribution of relevant services and associated products?*

We are not opposed to the option mentioned in para [52] of the Discussion Document to require financial institutions to include obligations in fair conduct programmes for identifying likely consumers and likely requirements and objectives for services and products, and ensuring there are processes and policies for ensuring consumers get the right products for them. However we are concerned that additional regulatory processes would fall onto our members without any change in the administration of workloads or work pressure. This concern is closely aligned with the union position that sales pressure still exists, with targets evolving based on new language (see Annex 1).

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

We agree that the compliance obligations highlighted in 446M(1)(ac) – clearly defined roles and responsibilities, record-keeping and regular and comprehensive reporting on

[11] Section 446B(2) of the Financial Markets (Conduct of Institutions) Amendment Bill.

risks – are necessary parts of having a fair conduct programme. Our concern, as with the previous question, is that these roles and responsibilities will be shouldered by existing staff without any further direction to financial institutions regarding to ensuring staffing requirements are commensurate to these needs.

Almost half of surveyed bank workers – 47 percent – said they did not feel that the bank was appropriately supporting and coaching them through the current regulatory and compliance changes (See Figure 7). This may because the regulatory processes are still being developed and it has not yet been confirmed what precise obligations banks will be subject to. However workers also expressed their concerns that new compliance obligations will result in an increased workload. Workloads have increased significantly since the covid crisis began, and many workers reported having to do extra hours in the evening just to keep on top. Many also mentioned additional stress levels and mental health issues as a result of this.

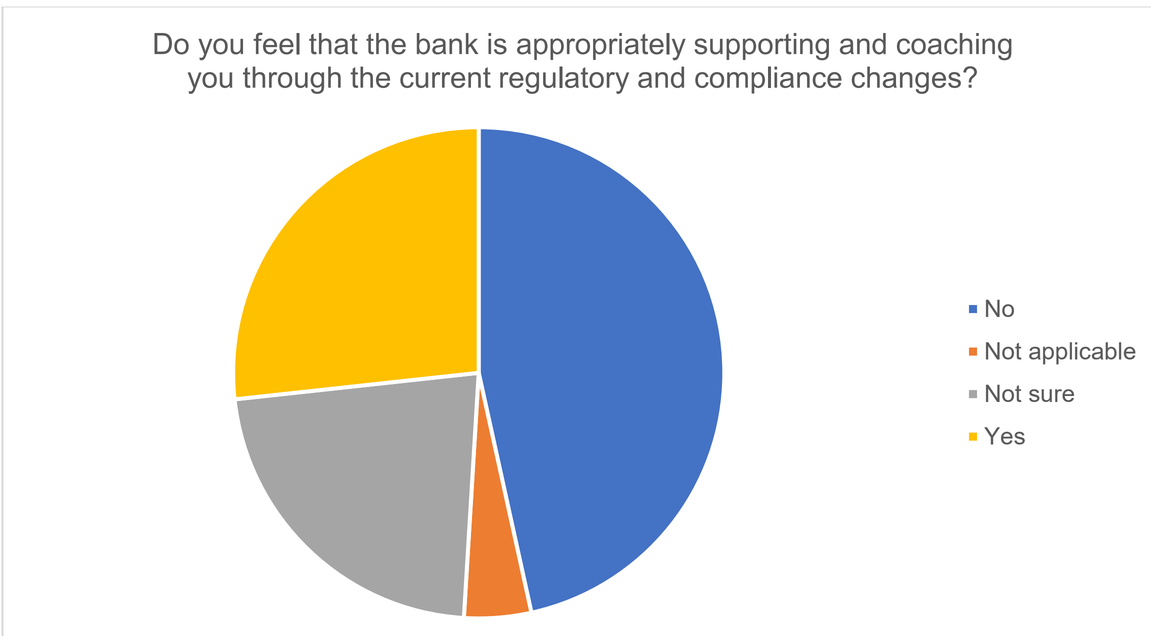

Figure 7

5. *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?*

   We support the proposal in the discussion document at [66] of adding minimum standards with respect to systems and processes regarding remediation. We would supplement this proposal with a requirement that workers are not punished or subjected to disciplinary action due to failures to satisfy targets.

6. *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)?*

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

The union does not have a strong opinion on the need for further regulation to support the implementations of 446M(1)(bb),(bd),(be), (bf) and (d) however we think the FMA and MBIE should preserve an inherent power to regulate fair conduct without having resort to Parliament.

10. *Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?*
11. *Do you have any comments on the proposals to specify further minimum requirements regarding claims handling?*

We support the option to prescribe further minimum requirements that ensure readability and clear presentation for both consumer complaints handling and claims handling, and think the approach should be uniform across the industry. The precise form and content of this approach could be developed through tripartite discussion and aim to embody the fair conduct principle.

13. *Do you have any comments on the discussion regarding customer vulnerability?*
14. *Do you have comments regarding the option of including vulnerable consumers in section 446M(1A)?*
15. *Do you think any further factors should be added by regulations to the list under section 446M(1A)?*

As a multi-industry private sector union, we represent people from all walks of life, some of whom are very educated and some of whom have next to no financial literacy. Our members in the industry are proud when they are able to find the right financial solutions that work for the customer, even if that includes no solution. We think that the proposal in 446M(1)(ab) for financial institutions to have systems and processes when designing and managing the provision of relevant information as well as risk management tools is a good one, but as with claims handling issues think this would be a good area to have a uniform approach, designed in a tripartite manner.

Sales incentives (446N and 446O)

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

The survey results mentioned in [3.6 – 3.8] indicate that the status quo has not relieved pressure on workers to sell financial goods and services, and we believe it has resulted in mis-selling. For this reason we believe that the proposed regulation is a necessary step for consumers and workers.

18. *Do you have any comments on the option to prohibit sales incentives based on volume or value targets?*

The union strongly supports the prohibition of sales incentives based on volume or value, however we do not think this is broad enough to encapsulate all of the language used by banks and their branch managers to express this. We asked members to provide some of this terminology, which are listed in Annex 1. Many workers noted that these are often expressed in numerical terms, such that workers are required to have a certain number of needs-based conversations in a week, that should lead to a certain number of product referrals during that period. Competition between branches on the volume of lending or products sold is still a reality for many workers.

In light of this, we think there is space for an ongoing tripartite working group in which the FMA can mediate discussions on how to best ensure compliance with the prohibition of sales incentives, and to ensure that the evolving language used by financial institutions best serves consumers needs.

19. *What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value based targets?*

As mentioned at [3.2], the formal abolition of sales targets did coincide with a 3 percent decline in profits for the Big Four banks, however it is unclear whether there is a causal relationship here. Given the believe that bank pressure still results in consumer mis-selling, we think that the prohibition of sales incentives would have a slight moderate impact on bank profits. However at the same time it may go some way towards bridging some of the underlying mistrust that consumers feel towards banks, with a June 2020 Consumer NZ survey noting that the proportion of bank customers reporting problems in the past year had risen from 11 to 18 percent.[12]

20. *Do you have any feedback on a more principle-based approach to prohibiting some incentives?*
21. *How could a more principles-based approach to prohibiting some incentives be made workable?*
22. *If a more principles-based option was chosen, should there be some incentives specifically excluded?*

The union thinks a principle-based approach in reference to the fair conduct principle in Section 446M has the potential to capture some of the language mentioned in Annex 1 of this submission that is used to pressure bank workers to make sales without regard to consumers' best interests. However it is unclear at this stage how these incentives would be policed.

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[12] Rob Stock "Consumer NZ: Nearly one in five had a problem with their bank in past year" (17 June 2021). *Stuff.co.nz*. Available at: https://www.stuff.co.nz/business/125451427/consumer-nz-nearly-one-in-five-had-a-problem-with-their-bank-in-past-year

24. *Do you think there are any types of incentives other than those discussed in the paper that should be excluded from the regulations? Please provide reasons for your comments.*

Throughout the service before sales campaign, the union has consistently noted how negative incentive factors influence the kind of sales made by workers. The discussion document mentions disincentives at para [172] in its list of forms of incentive that would not be included within the scope of the regulation. Examples of these disincentives would be disciplinary action (including termination) for not achieving sales targets , which still happens in banks today. The Document considers that these employment protections would be sufficiently covered by the Wages Protection Act 1983 and Good faith obligations under the Employment Relations Act 2000. In reality, with months-long delays in accessing our employment relations machinery mean that many workers experience negative employment prospects as a result of not reaching targets. While these job security impacts are not as bad as before the removal of sales targets, sales pressure is growing and disciplinary action still proceeds against workers who the bank deems have not measured up to whatever language is now being used to express targets in that given branch.

25. *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. *Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should apply to all staff? Why/why not?*
27. *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?*

The discussion document notes that the scope of regulation should only be applied to those involved in the "chain of distribution", which we think likely only includes frontline staff and their managers, however it depends how those groups are defined. We think the terminology used in (b) "carrying out other services that are preparatory to [financial service or product] contracts being entered into", are sufficiently broad to cover all workers that are currently subject to targets.

29. *Do you agree that both individual and collective incentives should be covered? Why/why not?*

Yes, both individual and collective incentives should be covered. In our survey some workers indicated that their branch's performance was being compared to other stores in nearby or similar areas.

30. *Do you have any other comments on the discussion related to incentives?*

The union's has tried to highlight the role of bank sales targets and negative inducement factors for a decade now, particularly through the Service Before Sales campaign. While this campaign was successfully at achieving its core objective – the voluntary abolition of sales targets by the banks – we have seen banks become increasingly sophisticated, in terms of adopting productivity measures that deploy new language that sustains pressure on workers.

Regulating incentives requires a balanced approach that adopts language both on the basis of volume and value, as well as retaining the freedom to broadly interpret the fair conduct principle based on the evolving approaches taken by banks.

Requirement to publish information about fair conduct programmes (446HA)

31. 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?

32. This discussion document outlines two options regarding the requirement to publish information about the fair conduct programmes. Do you have any other viable options?

As with complaints handling procedures mentioned in questions 10 and 11, we think there should be a standard format for publishing information about fair conduct programmes that is developed by way of a tripartite working group.

Annex 1: Language used to express targets in 2021

In our June 2021 member survey we asked workers to tell us what language their employer now used to express targets. Below is a list of some of the terminology mentioned was now being used.

- Behaviour-based conversations
- Needs-based conversations (this is a tool where workers are prompted to have specific conversations with customers)
- Product conversations
- Expectations
- Weekly service meetings about how many products have been sold
- Key performance indicators
- Goals and expectations
- Self-service conversations
- Productivity and activity
- Solutions
- Assisting consumers on their home-buying journey
- Number of weekly referrals
- Competencies
- A-Z review on consumers and their families
- Financial Health Check
- Your Story
- Performance reviews where sales numbers still determine outcomes
- Scorecards
- Adding value to customer conversations
- Connected conversations
- Constant comparison of performance between branches
- Conversation opportunities
- Generating outcomes from financial health checks
- Lending volume
- Best customer outcomes
- Unexpressed or unspoken financial needs (often in relation to life insurance)
- Minimum expectations
- Igniting consumers' financial possibilities
- Undertaking a full accounts review
- Goal conversations
- Deliverables