ICNZ Submission on Discussion Document:
Fit for purpose financial services conduct regulation

Your name and organisation

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Contact details	Privacy of natural persons

Overarching Comments

Thank you for the opportunity to submit on the Ministry of Business, Innovation and Employment's Discussion Document 'Fit for purpose financial services conduct regulation' (**Discussion Document**).

Te Kāhui Inihua o Aotearoa / The Insurance Council of New Zealand (**ICNZ**) is the representative organisation for general insurance companies in New Zealand. Our members collectively write more than 95 percent of all general insurance in New Zealand and protect well over $1 trillion of New Zealanders' assets and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property insurance, and directors and officers insurance).

ICNZ supports the Government's objectives for reforming financial services regulation, i.e. to reduce duplication in the regulatory regime, remove undue compliance costs, and improve outcomes for consumers.

The Discussion Document sets out options to reform the Conduct of Financial Institution legislation (the amendments made to the Financial Markets Conduct Act 2013 (**the FMC Act**) by the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**the CoFI Act**)).

With respect to options for reforming the minimum requirements for Fair Conduct Programmes (**FCPs**), overall:

- We support Option 1A of removing or amending some of the minimum requirements.
- We recommend that section 446J(1)(a) should be repealed. This would remove the requirement for insurers' FCPs to ensure compliance with other consumer-focused legislation (e.g. Consumer Guarantees Act 1993, Credit Contracts and Consumer Finance Act 2003), thereby reducing regulatory duplication.
- We also consider there would be benefit in adjusting section 446J(e) to (h) (setting requirements relating to employees and agents) to reduce the level of prescription.

Ideally, the changes should be fast tracked to meet the current commencement date for the CoFI regime of 31 March 2025 to avoid the costs and complexity associated with implementing two sets of changes. However, irrespective of this we support the amendments to reduce prescription and provide flexibility for financial institutions.

We do not support the proposal to keep the fair conduct principle open-ended. Although we support the fair conduct principle and consider that it largely reflects good business practice, the definition

should be made exhaustive. Making the definition exhaustive will provide more certainty to financial institutions on what fair treatment of consumers covers.

We support amending the FMC Act to require the FMA to issue a single conduct licence covering one or more market services. This has the potential to reduce duplication within the regulatory regime. To ensure operational efficiencies and reduced compliance costs from this change, it is important that the FMA streamlines the standard conditions under the existing market services licences.

With respect to proposed extensions of the FMA's powers, we do not support the introduction of change in control approval requirements to the FMC Act. It is unclear to us what specific risks related to a change in control require an approval from the conduct regulator. For insurers, this would be an additional step on top of the existing change in control approval already required under the Insurance (Prudential Supervision) Act 2010 (**IPSA**). This would appear to run contrary to the objectives of reducing compliance costs and regulatory duplication.

We strongly believe any power to conduct on-site inspections should not operate on a without notice basis, unless subject of a search warrant.

In a hypothetical and rare case where it would be inappropriate to provide prior notice (e.g., because evidence shows there is serious impropriety justifying urgent on-site inspection on a without notice basis), it would be appropriate for the FMA to obtain a court-ordered search warrant before proceeding. This provides an appropriately robust level of protection for the use of this power which is important given the serious disruption, intrusion and contravention of rights and freedoms concerned.

With regards to general insurance, we are not aware of any issues that would justify giving the conduct regulator a power to conduct inspections without a notice or a warrant.

We question the need to introduce an expert report power for the FMA. The FMA already has extensive power under section 25 of the Financial Markets Authority Act 2011 to obtain information, documents and evidence.

ICNZ also has previously written to MBIE welcoming the Minister of Commerce and Consumer Affairs' announcements that the Government proposes to reform the CoFI regime to simplify financial institutions' obligations and reduce compliance costs. In that letter (dated 8 May 2024) we set out some suggestions for how the regime could be changed. A number of these are addressed in the Discussion Document. However, there are two suggestions that are not specifically referred to in the Discussion Document. We reiterate our points below.

FCP summaries – repealing s446H

Further to the proposals in the Discussion Document, we also recommend that s446H is repealed. This would remove the requirement for an insurer to publish a public summary of its FCP. The summary is unlikely to add value for customers. It is likely it will be rarely read.

Fundamentally, a FCP is not designed to be a consumer-facing document and we therefore consider publishing a summary of it to be inappropriate and unlikely to provide practical benefits to consumers. Providing this in addition to all other documentation that consumers are required to read about financial institution services and products is unlikely to add value and may detract from other important information such as insurance policy terms and conditions. The cost and time in preparing and updating a summary outweighs any consumer benefit.

Removing this requirement would be consistent with the objectives of the proposed reform – reducing duplication and removing undue compliance costs.

Clarifying the scope of 'consumer insurance contract' and expediting its commencement

The Contracts of Insurance Bill will make some changes to the definition of 'consumer insurance contract' in CoFI to introduce an objective test. See clause 182 of the Contracts of Insurance Bill. This is welcomed and will increase the alignment between the definitions in the Contracts of Insurance Bill and the CoFI legislation. The timing of this change also needs to be expedited.

Financial institutions are currently preparing their licence applications. Our members are required to provide consumer numbers and product sets to the FMA as part of their CoFI financial institution licence applications, so clarity around intentions regarding timing is essential to provide certainty on the scope of CoFI and avoid potential confusion and unnecessary compliance burden. We will be submitting on this to the Select Committee considering the Contracts of Insurance Bill but are mindful that it may require an Order in Council to be made to bring this change into effect at the earliest opportunity.

Further, while welcomed the proposed amendments do not of themselves go far enough to address concerns around the application of the definition of 'consumer insurance contract' outlined in section 446P(2) to some kinds of insurance. What is provided in section 446P(2) is an extension to the core definition of consumer insurance contract in section 446P(1).

That part of the definition, is intended to cover situations where the contract of insurance is between two commercial parties but the beneficiaries are consumers (as in the example provided in the legislation of travel insurance provided to credit card customers) As amended by clause 182 of the Contracts of Insurance Bill, section 446P(2) would read:

> (2) For the purposes of paragraph (b) of the definition of ***consumer insurance contract*** in subsection (1), a contract of the kind referred to in this subsection is a contract of insurance to the extent that—
>
> (a) it is entered into by the policyholder in order to provide insurance cover for 1 or more other persons, or it is varied or extended in order to provide cover for 1 or more other persons; and
>
> (b) those other persons are not parties to the contract; and
>
> (c) those other persons would ordinarily have the benefit of that insurance cover wholly or predominantly for personal, domestic, or household purposes.

First, in reviewing this again, we have identified that the reference to "contract of insurance" in the opening part of section 446P(2) (i.e. in the phrase "a contract of the kind referred to in this subsection is a contract of insurance") is an error in the drafting. The opening part of section 446P(2) should instead say "a contract of insurance of the kind referred to in this subsection is a consumer insurance contract".

Second, we consider that the drafting of the extended definition that is intended to capture one type of commercial contract (as noted above) creates an unnecessary risk of potentially capturing some commercial insurance policies that offer incidental personal benefits. For example, a commercial motor policy, which is concerned primarily with accidental loss or damage to company vehicles, might offer incidental cover where the driver dies as a result of an accident. Or a commercial MDBI (Material Damage and Business Interruption) policy, which is concerned primarily with damage to commercial premises, might offer incidental cover for employees' personal effects, or for the cost of providing alternative accommodation for employees who reside at the damaged premises.

These types of incidental covers are common on a number of commercial policies. However, we do not consider they should be captured by the Act as consumer insurance contracts and we do not believe this was ever the intent.

ICNZ is developing some proposed drafting aimed at resolving this second issue to provide to officials shortly. We would welcome the opportunity to engage with you further on any proposed amendments to section 446P(2).

Regulation-making power to declare certain contracts to be consumer or non-consumer insurance contracts

We note that the Contracts of Insurance Bill includes a regulation-making power for declaring contracts of insurance to be either 'consumer' or 'non-consumer' insurance contracts. See clause 165(1)(c) and clause 10(3) of the Bill. We consider CoFI should include a similar regulation-making power to ensure that the categorisation of insurance contracts is consistent across the two pieces of legislation.

Responses to discussion document questions

	Introduction
1	*Do you agree the proposed criteria are appropriate, given the objectives? Are there other criteria which should be considered?*
	The proposed criteria appear to be appropriate. We have no material comments to make.
	1: Options for CoFI Act reform **A. Options for amending minimum requirements for fair conduct programmes** *Option A1: Remove/amend some minimum requirements for fair conduct programmes*
2	*Do you support removing or amending some of the minimum requirements for fair conduct programmes? What are the advantages and disadvantages of this option?*
	Overall, we support refining the minimum requirements for FCPs in section 446J as appropriate. However, we note that shortening the requirements significantly and removing specificity would just create uncertainty as to what is envisaged by higher level obligations and so should be avoided. We also note that in the Discussion Document MBIE states that even if the requirements are removed, the expectation will remain. For example, in paragraph 30(b), MBIE states "… *although we expect that in most circumstances equivalent requirements will still be needed in fair conduct programmes*". This appears contrary to the purpose of the consultation to allow flexibility and instead creates uncertainty. If the outcome of the proposed amendments is to replace the requirements in the CoFI Act with FMA guidance (which does not go through the same rigorous consultation as proposed legislation) or unwritten expectations from policymakers, then we do not support these changes. In line with the objectives of the review to make obligations more proportionate to the risks of harm and improve flexibility, financial institutions need to be able to take a flexible risk-based approach to delivering fair customer outcomes.
3	*Which requirements should be removed or amended, if any? Please explain what changes you would like to be made.*
	We recommend that section 446J(1)(a) should be repealed. This would remove the requirement for institutions' FCPs to also outlines their policies, processes, systems and controls for compliance with other consumer-focused legislation (e.g. Consumer Guarantees Act 1993, Credit Contracts and Consumer Finance Act 2003) reducing regulatory duplication. The FCP should instead focus on implementing the principle that customers must be treated fairly in relation to key activities of financial institutions.

	This would allow financial institutions to focus on their new obligations arising out of the conduct regime. As stated in the Discussion Document, paragraph (a) causes confusion and creates unnecessary duplication. This has resulted in increased compliance costs. We do not see any risk to consumers from removing this paragraph given financial institutions are already required to comply with applicable consumer legislation. We also consider there would be benefit in adjusting paragraphs 446J(1)(e) to (h) (setting requirements relating to employees and agents) to reduce the level of prescription. In particular, paragraphs (f) and (g) contain prescriptive requirements for training employees which do not allow for a proportionate, risk-based approach taking into account the employee's role, experience and tenure. Training can take many forms and this prescriptive approach risks a 'tick box' compliance approach rather than a needs-based approach. We recommend paragraphs (f) and (g) are deleted and replaced with the requirement to "*provide appropriate training for each of those employees to support the financial institution's compliance with the fair conduct principle*". This would allow a flexible, risk-based approach to training and support the objectives of the review. It is important that financial institutions can focus their training on the procedures or processes that are necessary or desirable to support the financial institution's compliance with the fair conduct principle (i.e. as required by section 446J(e)) rather than on the FCP itself). Paragraph (h) contains prescriptive requirements for managing and supervising employees. Similarly, we consider a less prescriptive approach allowing a financial institution to tailor its response based on a range of risk-based factors with the overall objective of supporting compliance with the fair conduct principle is more appropriate. To achieve this, we recommend sub-paragraphs (i) to (iv) should be deleted and the requirement should be "*managing or supervising each of those employees to ensure that they are supporting the financial institution's compliance with the fair conduct principle, and monitoring whether those persons are giving that support*".
4	*What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?*
	MBIE has stated that financial institutions will need to comply with current legislation (without amendments) until the amendments proposed in this consultation commence in around 2026, which significantly reduces the benefit to existing financial institutions who will still need to spend significant time and resources complying with the current regime first. Ideally, the changes should be fast-tracked to meet the current commencement date of 31 March 2025 to avoid this inefficiency. However, irrespective of this we support the amendments to reduce prescription and provide flexibility for financial institutions over the longer term.
5	*Do you have any other comments on the minimum requirements for fair conduct programmes?*
	No further comments.
Option A2: Potential additions to minimum requirements for fair conduct programmes	
6	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to fees and charges?*

We do not support adding an express minimum requirement for FCPs relating to fees and charges. This is contrary to the objectives of this review to remove duplication and compliance costs. It would increase the compliance burden on financial institutions.

The Minister of Commerce and Consumer Affairs' expectations referred to on page 13 of the Discussion Document focus on intermediaries. Financial advice providers already have obligations for clear disclosure under the regime. Intermediaries are not however directly subject to CoFI (other than the CoFI prohibited incentives regulations), so this is not the appropriate place to address this. We also note for completeness that general insurers do not usually charge any fees.

If a minimum requirement regarding fees and charges were to proceed, which we do not support, it would be important to be clear that fees and charges are additional fees to the customer and that the requirement does not cover premiums. It would also be important that it is clear that such a requirement would be focused on communications and transparency rather than on regulating the price of financial products and services.

It would be appropriate to give CoFI time to embed to see if there is a problem to respond to before creating additional minimum requirements. We agree that adding specific references to these matters will reduce flexibility, require review and amendment to FCPs, and increase compliance costs without necessarily advancing the key objectives of the CoFI regime.

7 *What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*

We do not support adding an express minimum requirement for FCPs relating to complaints processes. As mentioned in our response to Question 6 above, this is contrary to the objectives to remove duplication and reduce compliance costs. The CoFI Act already addresses complaints as mentioned in paragraph 39.b. of the Discussion Document and financial institutions already have existing legal obligations in relation to complaints.

Whether further regulation was required for complaints was addressed in MBIE's previous Discussion Document 'Regulations to support the new regime for the conduct of financial institutions' (April 2021). We reiterate our feedback provided in our submission in response to that consultation regarding complaints, as summarised below.

Our members are already complying with existing legal requirements relating to complaints handling and accordingly we consider the proposed changes and associated compliance costs are unnecessary.

The existing requirements include:

- Requirements to be a member of an approved disputes resolution scheme pursuant to the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Each dispute resolution scheme requires participating members to have internal complaints handling services and to publicise the availability of that service.

- Standard conditions for full licensing under the financial advice regime require a Financial Advice Provider to have an internal process for resolving client complaints relating to their financial advice service that provides for:

    (a) complaints to be dealt with in a fair, timely and transparent manner, and

	(b) records to be kept of all complaints and any action taken in relation to them (including the date on which each complaint was received and any action taken). Detailed customer complaints handling requirements also already apply to ICNZ's general insurance members under the Fair Insurance Code. We do not consider that there is a problem to be addressed here that needs solving through additional regulation.
8	*Do you consider that financial institutions already need to cover fees and charging arrangements and/or complaints processes in their fair conduct programmes under the current requirements?*
	Fees and charging arrangements are not specifically mentioned in the FCP minimum requirements or the CoFI Act. Therefore, we do not consider they 'need' to be covered in FCPs. However, depending on the nature of the financial institution and their business, there may be aspects of fees and charges covered in an FCP. Irrespective of whether fees and charges are expressly mentioned in an FCP, issues arising from fees and charging that impact customers are likely to be identified through FCP polices, processes, systems and controls. Complaints are expressly addressed in section 446D (which gives responding to a complaint as an example of when the fair conduct principle applies) and the duty in section 446H to ensure that information is available to assist consumers to understand how to make complaints. We do not believe anything further is required to ensure complaints handling forms part of an FCP.
Option A3: Remove all minimum requirements for fair conduct programmes	
9	*Do you support removing all of the minimum requirements for fair conduct programmes from the legislation? What are the advantages and disadvantages of this option?*
	We do not support removing all of the minimum requirements for FCPs from the legislation. We agree that this is likely to result in difficulties for financial institutions when creating their FCPs without guidance in the legislation about what the FCP is expected to include. A level of detail provides certainty and so we are concerned Option A3 may therefore increase compliance costs rather than reduce them. We support Option A1 for the reasons stated above.
Option A4: Retain minimum requirements for fair conduct programmes without change	
10	*Do you support retaining the existing list of minimum requirements for fair conduct programmes without any changes? What are the advantages and disadvantages of this option?*
	No. We support Option A1 (some refinements) as discussed above. Our second preference would be retention of the status quo (Option A4).
Proposal: proceed with Option A1 (remove/amend some minimum requirements)	
11	*Do you support the proposal to remove and amend some of the minimum requirements for fair conduct programmes and not to proceed with the other options? Why/why not?*

	Yes, we support the proposal to proceed with Option A1 for the reasons described above. We do not support adding requirements. Please see above for details.
	B. Options for amending fair conduct principle *Option B1: Keep the fair conduct principle open-ended* *Option B2: Make the fair conduct principle definition exhaustive* *Proposal: retain status quo (Option B1)*
12	*Do you support the proposal to maintain the status quo in the definition of the fair conduct principle? What are the advantages and disadvantages of this option?*
	We do not support the proposal to keep the fair conduct principle open-ended. Although we support the principle and consider that it largely reflects good business practice, the definition should be made exhaustive. The word 'includes' in section 44C(2) should be deleted to limit what the fair treatment of consumers constitutes to what is explicitly stated in the list. Without this change, there is a concern that the concept will be significantly expanded through regulatory 'guidance' nonetheless with the expectation that this should be complied with. Making the definition exhaustive will provide some comfort to financial institutions on what fair treatment of consumers covers. This allows financial institutions to assess the risks without acting too conservatively which may stifle product innovation.
13	*Are there any additional clarifications that could be made to the definition of the fair conduct principle, or matters that you consider should be included or removed? Why or why not?*
	Please refer to our comments above. We are comfortable with the matters listed but the list should be exhaustive.
14	*Do you have any other suggestions or comments in relation to the fair conduct principle?*
	No further comments.
15	*Do you have any comments in relation to other areas of the CoFI Act that have not been covered in this section?*
	Please see our comments in the 'Overarching comments' section at the beginning of this document regarding FCP summaries (s446H) and clarifying the scope of 'consumer insurance contract' and expediting its commencement.
	2. Options for regulatory framework and powers **C. Consolidating financial market conduct licences** *Option C1: Amend the FMC Act to require the FMA to issue a single licence covering different classes of market service*
16	*Do you support the FMA being required by legislation to issue a single conduct licence covering one or more market services? What are the advantages and disadvantages of this approach?*

	Yes, we support making it mandatory for the FMA to issue a single conduct licence for one or more market services. We support measures to remove duplication within the regulatory regime. To ensure operational efficiencies and reduced compliance costs from this change, it is important that the FMA streamlines the standard conditions for each market service. See our response to Question 18 below for details.
17	*Could consolidating existing licences into a single conduct licence give rise to any unintended consequences or costs for existing licensed firms? If so, please explain with examples where relevant.*
	None that we can identify and so long as no new obligations or administrative processes are introduced through the consolidation process.
18	*Are there any other matters that should be considered around market services conduct licensing?*
	As mentioned in paragraph 74 of the Discussion Document, the key to reducing the compliance burden when issuing a single conduct licence for one or more market services is to ensure that the FMA: • streamlines licence 'standard conditions' imposed by the FMA for different market services • better harmonises how the FMA collects data from licensed firms across all of their licensed market services, particularly annual regulatory returns which represent some of the larger ongoing regulatory burden for licensed firms. We encourage MBIE to make these expectations clear to the FMA.
	D. Enabling reliance on another regulator's assessment
	Option D1: Amend legislation to enable the FMA and RBNZ to rely on an assessment by the other regulator where appropriate
19	*Should the FMC Act be amended to enable the FMA to rely on the RBNZ's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*
	Yes, we support amending the FMC Act to enable the FMA to rely on the Reserve Bank of New Zealand's RBNZ's assessment for appropriate matters such as fit and proper assessments and standard licence conditions including outsourcing, business continuity and technology systems. We believe it would be appropriate to consider whether it should be mandatory for the FMA to rely on the RBNZ's assessment (rather than at their discretion) to provide certainty to firms. It would only be effective if as part of this, a firm only has to deal with one regulator in relation to the same matter. For example, recently the FMA and the RBNZ each issued cyber incident notification templates with the intention that either template could be used with both regulators. While this is helpful to some degree, a firm still needs to notify both regulators separately and consequently engage with and answer potentially different and/or overlapping questions from both regulators meaning the efficiency gain is minimal. To reduce duplication and increase efficiency, we consider there should be one nominated

	lead regulator for the firm to deal with exclusively on a particular matter and that regulator should take responsibility for co-ordinating and engaging with the other regulator.
20	*Should there be equivalent provisions enabling the RBNZ to rely on the FMA's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*
	Yes, for the reasons set out in response to Question 19 above we support this proposal.
21	*Are there any other improvements that could be made to the way the FMA and the RBNZ work together to reduce compliance costs and regulatory burden?*
	Where both regulators require information from a firm, a single joint request should be made with one regulator being the lead contact for the firm, taking responsibility for co-ordinating and engaging with the other regulator. Extensive resources are required to respond to regulator requests which often request similar information but in different formats or scope. This causes unnecessary duplication of efforts and increases compliance costs.
	E. Ensuring the FMA has effective tools
	Option E1. Introduce change in control approval requirements
22	*Should change in control approval requirements be introduced into the FMC Act? Please explain your answer, including why the current approach does or does not work.*
	We do not support the introduction of change in control approval requirements into the FMC Act. It is unclear to us what specific risks related to a change in control warrant such a conduct approval requirement being introduced at this stage. For general insurers, this would be an additional step on top of the existing change in control approval already required under IPSA. The IPSA process requires a range of factors to be considered including financial strength, governance, risk management and involves a fit and proper assessment. A change in control may raise issues in relation to the implications for customers of some long-term products, for example mortgages, however these specific customer risks are not relevant to shorter term products like general insurance. In most cases, a change in control of a general insurer financial institution is unlikely to raise any material concerns from a conduct perspective in our view as the other party is likely to be another insurer, and/or another equivalent suitability qualified party, that is already licensed for conduct under the CoFI regime. Where this is the case, FMA can have confidence due to conduct arrangements already in place and the regulatory powers it will have once CoFI comes into effect. In broad terms, while we accept a change in control may lead to changes to a financial institution's operating model, strategy, governing body, institutional culture, management team, local support and/or outsourcing arrangements, and potentially have flow on impacts within the organisation as the transition is worked through, such impacts should not be assumed or overestimated. For example, a change in control may be a result of a transaction at a much higher-level of the ownership structure, with no or minimal impacts for the specific financial institution concerned, such as part of a restructure of a global group or sale at the group parent level. Even when a change in control does lead to such changes, it should not be assumed that this would result in a reduction in the effectiveness of a financial institution's compliance

with the FMA's conduct regulation regime. In fact, the very opposite may occur. For example, the change in control could result in a financial institution being able to leverage additional resourcing, capability or expertise to improve fair conduct outcomes. Furthermore, any additional capital introduced by a change in control could enhance a financial institution's solvency and/or sustainability, and may have positive impacts from both a prudential and conduct perspective.

As noted at paragraph 92 of the Discussion Document, FMA expects licensed entities to engage with it in advance of a change in control and licensees also have a reporting obligation under regulation 191(1)(g) of the Financial Markets Conduct Regulations 2014 regarding any change in control.

Under the FMC Act, the FMA has power to monitor entities' compliance with licences, vary or add licence conditions, or take other steps in the event a licensee contravenes its licensee obligations, including in an extreme situation cancelling their licence. These powers could be used by the FMA should it become concerned that a change in control would negatively impact upon the financial institution's compliance with the FMA's regime.

Introducing change in control approval requirements would introduce additional direct and indirect costs and complexity on top of complex transactions that potentially already involve multiple regulatory approvals (e.g. from the RBNZ, the FMA, the Commerce Commission and/or from the Overseas Investment Office).

Introducing an additional approval requirement is likely to create significant uncertainty, may cause delays and unduly restrict open financial markets and the flexibility to make appropriate changes where doing so makes sense commercially or for other reasons, noting that as indicated above such changes may have positive flow on impacts for customers.

In evaluating the added cost and complexity against the benefits and the proportionality of this proposal, regard should be had to the likelihood that the other party to the transaction is already licensed for conduct under the CoFI regime and the extent to which this new requirement would meaningfully add value above existing requirements. Consideration should also be given to how the FMA would effectively resource the approval process and develop the relevant capability.

If such a change in control provision was added, then it would be important that the threshold applies means that only changes in control that could impact the entities' compliance with the conduct regulation regime are subject to it (i.e. not a change in shareholding that does not impact the running of the entity). We would recommend that the change of control threshold is at least as high as the current threshold in section 26 of IPSA, noting that the IPSA threshold is itself subject to potential change in the future through the RBNZ's ongoing IPSA Review.

23	*Should change in control approval requirements apply only to firms licensed to act as financial institutions, or to all firms licensed under Part 6 of the FMC Act? Why?*

If this proposal is progressed (noting our comments above in response to Question 22), we consider that it should apply to all firms licensed under Part 6 of the FMC Act (e.g. including managed investment schemes and financial advice providers etc.). It would not make logical sense to apply the additional requirement to financial institutions (e.g. insurers and banks) that already subject to the RBNZ's change of control requirements yet to exclude those who are not subject to the RBNZ's oversight and the risks of the change will not be otherwise considered. In designing the conduct assessment requirement, consideration should also be given to including an exemption when the relevant other party is already licensed under the CoFI regime.

24	*Do you have any other feedback on the change in control requirements option?*

To minimise regulatory burden, duplication and associated costs and complexity, if such a requirement was progressed, care should be taken to ensure that, amongst other things, there was a consistent and integrated approach with the RBNZ's equivalent prudential assessment requirements regarding a change in control.

In practical terms, we envisage that the relevant applications and approvals would involve a streamlined process requiring the financial institution to make one application to the FMA and the RBNZ for their joint review and response/approval. To support this application and assessment process:

- Careful consideration would need to be given to mapping out the respective conduct/prudential assessment requirements and processes and respective RBNZ and FMA roles and responsibilities, particularly in so far as the evaluation of interconnecting or overlapping issues was involved (e.g. governance or general risk management). Separate consideration of the same issues from slightly different perspectives should be avoided as it creates costs and uncertainties for no value.
- Clear and detailed guidance should be developed on the specific steps that financial institutions would need to take and possible outcomes and next steps following the assessment, from a conduct perspective with a central focus on the relevant conduct license requirements and the extent to which required information is not already captured by the RBNZ from a prudential perspective.

From an insurance perspective, it would be most logical and efficient to wait until the outcome of the current IPSA review has been completed given this includes an examination of whether changes are required to the equivalent regulatory approvals. Focussing on the outcomes of the IPSA review in the first instance makes sense, as the requirements in that context have been operating for some time. Any conduct approval requirement would be able to leverage analysis undertaken and experience from that perspective. This approach would also avoid any conduct assessment requirement needing to be reworked to retain alignment with the equivalent prudential requirements should these subsequently change, noting that any such rework would result in a duplication in effort and further costs and complexity.

Adopting such an approach will minimize duplication and the potential for 'double jeopardy', promote certainty and ensure the process is conducted as efficiently and expeditiously as possible.

Option E2: Introduce on-site inspection powers for the FMA

25	*Should the FMA have the ability to conduct on-site inspections without notice? Please explain your answer, including why the current approach does or does not work.*

We strongly believe any power to conduct on-site inspections should not operate on a without notice basis, unless subject of a search warrant.

We support the FMA being appropriately empowered to carry out market conduct supervision of regulated entities, including to verify that the entities have adequate policies, procedures and controls, and are complying with regulatory requirements.

To that end, and viewing the proposed FMA powers in context, the FMA, can and already do, conduct on-site inspections currently, with consent. In the absence of a search warrant, prior consent or notice ensures that, in practical terms, an insurer can efficiently work with the FMA to understand what information and interactions are sought through an on-site inspection and how this can most efficiently be accessed in an orderly way. It will often be

necessary for the insurer to navigate its information systems, processes and formats to assist the FMA to locate the information sought in substance. There may also be access and security issues with FMA personnel turning up to an insurer's premises unannounced, with staff present having no prior knowledge, being potentially (and understandably) fearful and unsure about how to engage with them. If notice is not given before inspection, there is a serious risk that this will result in a sporadic, incomplete or at worst, an inaccurate picture of matters which would frustrate the purpose of the visit.

We understand that the FMA's current monitoring and supervision activities, including off-site information requests and on-site visits, work well, with most entities agreeing to an on-site visit and willingly co-operating with the FMA.

In a hypothetical and rare case where it would be inappropriate to provide prior notice (e.g., because evidence shows there is serious impropriety justifying urgent on-site inspection on a without notice basis), it would be appropriate for the FMA to obtain a court-ordered search warrant before proceeding. This provides an appropriately robust level of protection for the use of this power which is important given the serious disruption, intrusion and contravention of rights and freedoms concerned.

ICNZ has concerns about the following aspects of proposed FMA without notice or warrant on-site inspection power:

- **The specific problem it is intended to solve**. As earlier indicated, the significance of this matter and the seriousness of the rights and freedoms potentially infringed merit particularly careful consideration and thorough analysis. In considering this matter, the demonstrated and specific problem sought to be addressed should be identified, adopting a proportional and risk-based approach, with reference to the particular sector / sub-sector concerned and particular parameters proposed it would address. In the general insurance space, as far as we are aware, no issue is evident justifying such a power.

  It is also unclear from the Discussion Document what the issue is with the current power to obtain a warrant. This should be explored and, if any issue with it identified, a better focus may be on how issues with that warrant power can be resolved.

  What appears to have developed, through regulatory creep, is a proposal to extend a power that is appropriate for combatting terrorism and organised crime (under AML/CTF legislation) to routine regulatory supervision.

  We believe a cost benefit analysis should also be undertaken in this regard.

- **The absence of a notice requirement, noting the important role this plays in on-site inspections currently**. This includes ensuring the right people at the relevant entity are engaged in the process and that the relevant personnel and information are made available to ensure the exercise is conducted as efficiently and productively as possible. This is particularly important in an increasing online/remote work environment, as a substantial number of personnel will either be permanently or regularly working from home (possibly in different locations) and information/documents is generally stored and accessible online (rather than stored physically at a particular location 'on-site'). With these matters in mind, the proposed requirement that business premises only be accessed at a 'reasonable time' does not appear to be sufficient on its own. An additional requirement should be introduced requiring inspections to be conducted following 'such period of notice as is reasonable in the circumstances' or with reference to a prescribed reasonable minimum timeframe in which notice must be given.

- **The ability for the FMA to use this power in circumstances where there is no evidence of non-compliance or a lack of cooperation.** We strongly believe there should be evidence of impropriety or a lack of cooperation. Using this investigatory power otherwise, lacks sufficient merit, would be arbitrary, disproportionate, and would potentially be a waste of resources for both parties.

In considering this matter, we believe there also needs to be regard to:

- **The detrimental effect such a power and the inadequate consultation process could have on constructive engagement and positive working relationships that the FMA and insurers have worked hard to develop.** Looking forward, there are a range of significant and complex issues (e.g. related to climate change and cyber resilience), where it will be important for regulators and regulated entities to work closely together to efficiently navigate through matters and ensure the right outcomes as changes occur and regulatory requirements are developed and evolve. These arrangements could be seriously undermined by any misuse or perceived misuse of the proposed power, as well as the threat and uncertainty that of knowing that this power exists without any realistic expectation of how and in respect of whom it might be used.
- **International convention, noting that the international practice of market conduct regulators with inspection powers is that in most cases prior notice is given.** Consistent with this, we understand that the FCA in the United Kingdom would normally always provide reasonable notice before completing inspections. In Australia, in the normal course of supervision, we understand APRA conducts on-site inspections with the consent of regulated entities.
- **Appropriate protections and controls for information collected and shared with other government agencies**, noting the very real risk of cyber breach or attack and the potential for significant damage (e.g. breach of privacy or commercial sensitivity/IP, noting that general insurers hold a significant volume of such information). In developing these protections and controls, regard should be had to insights from previous government agency cyber breaches, and cyber risk management requirements imposed on regulated entities themselves, both in New Zealand and abroad, such as by APRA in Australia. There should also be processes in place to ensure that the regulated entity is promptly notified if there is information shared (both specifically what information is being shared and to whom) and if there is any incident where their information may have been inappropriately accessed or released.
- **What other tools/safeguards could be developed to address any specific problems established (as an alternative to the proposed FMA power).** For example, if it was established that there was an issue in some sectors with regulated entities failing to comply with lawful requests or destroying information, this could include the introduction of specific offences and penalties in these respects instead.

26	*Should an on-site inspection power apply only certain firms or in certain circumstances, e.g. to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*

In the general insurance space, as far as we are aware, no issue is evident justifying such a power. In respect of the general insurance sector,

- there is no evidence of a lack of transparency or cooperation (as far as we are aware);

- there have been no major failings leading to mistrust by the regulator, and
- applying such a power would be inconsistent with international supervisory practice for general insurance companies.

For completeness we acknowledge that it may be that there are specific sectors / sub-sectors which the FMA regulates where such a power would be appropriate that we are not aware of – potentially this could be entities that are not dual regulated by the RBNZ and the FMA given these may have less robust compliance practices in place.

As above, if such a power was introduced this should be in response to a problem that is clearly identified and proportional, with evidence to support it and a clear connection established between the problem and how this power would address it.

27	*What safeguards should be in place for on-site inspections without notice?*

On-site inspections without notice should be supported by a warrant.

28	*Do you have any other feedback on the on-site inspection option?*

Without resiling from the above position, if the proposed FMA power was to proceed, we consider that the power should be transparently framed in legislation with a graduated approach adopted with appropriate threshold requirements needing to be met before any more intrusive steps can be undertaken. We would expect that this process would involve, as a first step, recourse to the FMA's existing powers, i.e.:

- Section 25 of the Financial Markets Authority Act 2011 to, with written notice, require a person to supply information, produce documents or give evidence.
- Section 29 of that Act to, with a warrant or consent, enter and search a place, vehicle or other thing.

In the absence of notice or consent, the requirement to obtain a warrant ensures a clear evidential threshold is met (i.e. reasonable suspicion of non-compliance) and that there is appropriate independent judicial scrutiny.

The usage of the without notice or warrant power would be limited to those rare and extraordinary circumstances as a last resort where it is clearly established that the existing supervisory tools were insufficient (e.g. where there had been a failure of the entity to co-operate with reasonable requests and it is considered that it would be inappropriate to obtain a warrant due to the time it would take to do so and the associated risk that doing so would impede the investigation). Consistent with this, we remain of the view that this power should not be used speculatively (i.e. where there no evidential foundation for doing so). To proceed otherwise, would be disproportionate, arbitrary and open up the potential for abuse.

Such an approach would be proportional and mitigate the risk that the power would be misused. We also consider that the FMA should issue clear and detailed guidance setting out their supervisory approach in more detail including the specific circumstances and criteria it could look to use this power.

The graduated and transparent approach described above would also ensure that the FMA can be held accountable should the power be used inappropriately.

Option E3: Introduce an expert report power for the FMA

29	*Should the FMA have the ability to commission expert reports? Please explain your answer, including why the current approach does or does not work.*

	We question the need for this power noting that paragraph 123 of the Discussion Document states: "*The ability to require an independent expert report would allow the FMA to exercise its powers more effectively by giving the FMA access to more technical knowledge or expertise than its staff currently have (e.g. technical accounting expertise, cybersecurity assurance, IT audits).*" Firms themselves would have such technical knowledge or expertise and would conduct their own internal and external audits. In addition, the FMA already has extensive powers under section 25 of the Financial Markets Authority Act 2011 to obtain information, documents, and evidence. As such, it is not clear what would be gained by the FMA seeking another opinion and there is a risk that it would unduly add costs that are ultimately borne by customers.
30	*Should an expert report power apply only to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*
	As noted above, we question the need for an expert report power to apply to any firms.
31	*What safeguards should there be for an expert report power?*
	There needs to be a very specific, clear and justifiable reason for using this power. It cannot be to fill in information that can and should be obtained from the firm in the first instance, nor used as an assurance exercise by the FMA.
32	*Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?*
	We consider that the costs should be borne by the FMA as the commissioning of such a report is for their supervisory purposes. A firm would have already borne the cost of obtaining their own reports as needed, e.g. audit reports.
33	*Do you have any other comments on the expert report power option?*
	No further comment.
	3: Limitations and constraints on analysis
34	*Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?*
	Please see the Overarching Comments section at the beginning of this submission for our comments on: • FCP summaries – repealing s446H • clarifying the scope of 'consumer insurance contract' and expediating it coming into effect.
35	*Do you have any comments on implementation of these reforms?*
	Given MBIE has stated that financial institutions will need to comply with current legislation (without amendments) until the amendments commence in around 2026, this significantly reduces the benefit to existing financial institutions who will have already invested in compliance. Ideally, the changes should be fast-tracked to meet the current commencement date of 31 March 2025