



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Conduct of Financial Institutions: Introduction of a New Conduct Regime	Date to be published	25 September 2019

List of documents that have been proactively released

Date	Title	Author
11 September 2019	<i>Conduct of Financial Institutions: Introduction of a New Conduct Regime</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
11 September 2019	<i>DEV-19-MIN-0237</i>	<i>Cabinet Economic Development Committee</i>
11 September 2019	<i>Regulatory Impact Statement: Regulatory regime to govern the conduct of financial institutions</i>	<i>Ministry of Business, Innovation and Employment</i>

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Reasons for withholding information:

- Confidential advice to Government



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Conduct of Financial Institutions: Introduction of a New Conduct Regime

Portfolio Commerce and Consumer Affairs

On 11 September 2019, the Cabinet Economic Development Committee (DEV):

- 1 **noted** that on 10 April 2019, DEV agreed to the release of the options paper, *Conduct of Financial Institutions* [DEV-19-MIN-0082];
- 2 **noted** that various reviews have found weaknesses in the conduct and culture of financial institutions, and in particular banks and life insurers in respect of their governance and management of conduct risks and focus on outcomes for customers;
- 3 **noted** that there is currently no explicit legislative mandate for the regulation of the general conduct of financial institutions;
- 4 **agreed** that banks, insurers and non-bank deposit takers will be required to be licensed under Part 6 of the Financial Markets Conduct Act 2013 (the Act) by the Financial Markets Authority in respect of their conduct in relation to retail customers;
- 5 **agreed** that regulations can determine the scope of financial products and services covered by the regime;
- 6 **agreed** to a licensing regime that – through obligations in the Act, regulations and licence conditions – will require that banks, insurers and non-bank deposit takers meet a high-level standard, for instance, to pay due regard to the needs and interests of customers and treat them fairly;
- 7 **noted** that consideration will be given to how to implement the new conduct obligations and licensing regime as efficiently as possible, including transition periods, how licences are granted and sequencing the application of the regime to different types of entities;
- 8 **agreed** that banks, insurers and non-bank deposit takers will be required to have and implement effective policies, processes, systems and controls to meet the high-level fair treatment standard;
- 9 **agreed** that the Financial Markets Authority as regulator would have the ability to review licensed entities' policies, processes, systems and controls at any point and to require amendments;

- 10 **agreed** that in respect of the obligations under the new regime, banks, insurers and non-bank deposit takers will be accountable for the activities of their intermediaries that are not financial advice providers;
- 11 **agreed** that the regime will allow for regulations or licence conditions to subsequently be made to create oversight and responsibility arrangements in relation to intermediaries that are financial advice providers;
- 12 **agreed** that banks, insurers and non-bank deposit takers will be subject to obligations regarding how they design their remuneration and sales incentives and how they manage the risks those incentives create;
- 13 **noted** that the Financial Markets Authority's powers under Parts 6 and 8 of the Financial Markets Conduct Act 2013 in relation to licensed market services would apply in relation to the above obligations (for example, action plans, and directions);
- 14 **agreed** that the regime will provide for any supplementary matters to make it effective (such as whistle-blowing protections and further requirements on licensed entities, e.g. specific reporting requirements (including reporting on specified material contraventions) and requirements to review their processes);
- 15 **agreed** that material contravention of the obligations relating to policies, processes, systems and controls may give rise to civil liability, including compensation for particular customers and pecuniary penalties of up to the greatest of:
- 15.1 the consideration for any relevant transaction;
 - 15.2 three times the amount of the gain made or the loss avoided;
 - 15.3 \$1,000,000 for an individual and \$5,000,000 for bodies corporate;
- 16 **agreed** to regulate sales incentives based on volume or value targets (this regulation would apply to banks, insurers, non-bank deposit takers and the intermediaries of these institutions creating these types of incentives);
- 17 **agreed** that contravention of requirements or prohibitions imposed by the decision in paragraph 16 above may give rise to civil liability, including pecuniary penalties of:
- 17.1 for banks, insurers and non-bank deposit takers licensed under the new conduct regime, up to \$1,000,000 for an individual and \$5,000,000 for bodies corporate;
 - 17.2 for all other entities, up to \$200,000 for an individual and \$600,000 for bodies corporate;

Legislative implications

- 18 **approved** the inclusion of a Bill giving effect to these proposals in the 2019 Legislation Programme, with a category 4 priority (to be referred to a Select Committee in the year);
- 19 **authorised** the Minister of Commerce and Consumer Affairs to take decisions consistent with the decisions in the minute under DEV-19-MIN-0237 on any minor or technical matters that may arise during the drafting process;
- 20 **invited** the Minister of Commerce and Consumer Affairs to issue instructions to the Parliamentary Counsel Office to give effect to the decisions above;

Financial implications

21 **noted** that implementation of the above decisions will have fiscal implications and will likely require additional funding for the Financial Markets Authority, and that the Minister of Commerce and Consumer Affairs will come back to the Cabinet Economic Development Committee to seek decisions on funding at a later stage, once the costs of the new regime are clearer;

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Confidential advice to Government

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Jack Petterson
Committee Secretary

Present:

Hon Kelvin Davis
Hon Phil Twyford (Chair)
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Shane Jones
Hon Kris Faafoi
Hon Willie Jackson
Hon James Shaw
Hon Eugene Sage

Officials present from:

Officials Committee for DEV

Hard-copy distribution:

Minister of Commerce and Consumer Affairs