

Presented to the House in accordance with Standing Order 272

Legislative statement: Financial Markets (Conduct of Institutions) Amendment Bill – Second Reading

The purpose of Financial Markets (Conduct of Institutions) Amendment Bill (the Bill) is to improve the conduct of certain financial institutions in respect of services and products provided to consumers, thereby reducing the risk of harm to those consumers. To achieve this, the Bill amends the Financial Markets Conduct Act 2013 (the FMC Act), by introducing a licensing regime for banks, insurers and non-bank deposit takers (collectively, financial institutions) in respect of their general conduct.

The Bill responds to several recent reviews of financial institutions which identified significant weaknesses in the conduct and culture of institutions in New Zealand's financial sector. These weaknesses can lead to poor outcomes for consumers, which can result in significant consequences for individuals and potential for harm at the broader societal and economic level.

To address these issues, the Bill makes the following changes:

- Requires financial institutions that provide relevant services and associated products to obtain a licence under Part 6 of the FMC Act.
- Requires financial institutions to establish, implement, maintain and comply with an effective fair conduct programme which is designed to ensure they are meeting an overarching principle to treat consumers fairly.
- Requires financial institutions and their intermediaries to comply with regulations that regulate incentives. These regulations could prohibit incentives based on volume or value sales targets.
- Provides that financial institutions and their intermediaries will be subject to the FMC Act's compliance and enforcement tools such as civil pecuniary penalties. Licensed financial institutions will be subject to licensing actions such as censure and the imposition of action plans.
- The Bill also makes a number of minor and technical changes to enable the effective functioning of the regime and ensure smooth interaction between other regulatory regimes and regulators that arise because of the new conduct regime.

The Finance and Expenditure Committee considered the Bill and reported to the House on 7 August 2020. The Committee recommended the following amendments to the Bill:

- Clarifying the fair conduct principle by inserting a non-exhaustive list of factors relevant to the requirement to treat consumers fairly. For example, the Bill now states that treating consumers fairly includes:
 - acting ethically, transparently, and in good faith
 - assisting consumers to make informed decisions

- not subjecting consumers to unfair pressure or tactics or undue influence
 - ensuring that the relevant services and associated products that the financial institution provides are likely to meet the requirements and objectives of likely consumers; and
 - Not subjecting consumers to unfair pressure or tactics or undue influence.
- Clarifying what fair conduct programmes must include by inserting further minimum requirements into the Bill.
 - Removing the requirement for financial institutions to publish their fair conduct programmes. Instead, financial institutions must provide their fair conduct programmes to the Financial Markets Authority, and must publish a summary of the programme covering key information.
 - Reducing the extent that the obligations in the Bill apply to intermediaries by removing the duty for intermediaries to comply with fair conduct programmes and removing the duty for financial institutions to ensure intermediaries comply with fair conduct programmes. Instead, specific requirements on financial institutions have been added in relation to the training and supervision of intermediaries.
 - Inserting a list of matters that the Minister must have regard to before recommending regulations regarding incentives.