ICNZ Insurance Council of New Zealand
Te Kāhui Inihua o Aotearoa

Insurance Council of New Zealand
Level 2 Asteron House, 139 The Terrace,
Wellington 6011
Tel 64 4 472 5230
Email icnz@icnz.org.nz
Fax 64 4 473 3011
www.icnz.org.nz

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By email: ipsareview@rbnz.govt.nz

Reserve Bank of New Zealand - Te Pūtea Matua
Financial System Policy and Analysis – Financial Policy

Dear Sir/Madam,

ICNZ submission on Review of the Insurance (Prudential Supervision) Act: Policyholder security

Thank you for the opportunity to submit on the Reserve Bank of New Zealand's (**RBNZ**'s) Review of the Insurance (Prudential Supervision) Act 2010 (**IPSA**) Options Paper 3: Enforcement and Distress Management (**Options paper**).

By way of background, the Insurance Council of New Zealand - Te Kāhui Inihua o Aotearoa (**ICNZ**'s) members are general insurers and reinsurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand assets and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

Please contact Nick Whalley (nickw@icnz.org.nz) if you have any questions on our submission or require further information.

This submission has two parts:

- overarching comments, and
- answers to questions in the Options paper (in the appendix).

1. Overarching comments

In principle we endorse the move to enhance clarity and shift to a more proportional and graduated enforcement regime under IPSA with an escalating approach to enforcement, penalties and distress management interventions reflective of the seriousness of the issue involved. This includes, in terms of enforcement, making provision for enforcement undertakings and reviewing penalty levels.

However, in some cases, the use of such powers will need to be more nuanced than a broad statutory trigger can sensibly provide for and there is a balance to be struck so as not to make the regime overly complex for industry to comply with and the RBNZ to use. We are also wary of the potential 'chilling effect' some powers and penalties may have on the collaborative relationships insurers have with the RBNZ. For these and other reasons, we oppose the introduction of infringement notices for breaches of minor issues like reporting requirements, a requirement for insurers to disclose written warnings themselves, a prescribed minimum frequency for on-site

inspections, a mandatory requirement for insurers to prepare recovery plans and a broad power to request information from any person. That said, we do support the RBNZ having a power to request information from entities carrying out insurance business who are not licensed or falsely holding themselves out as licensed insurers.

One also needs to be conscious of not providing the RBNZ with tools that it is not best suited to use, its' priorities as prudential regulator (and capacity and capability constraints) and of striking the right balance between supervision and enforcement activities. In these respects, we query the appropriateness of altering the statutory management framework so that the RBNZ is the 'resolution authority' empowered to directly exercise resolution powers - such matters being best addressed by the private sector in our view.

Similarly, while it makes sense in places to draw upon treatment from other regimes (e.g., the Financial Markets Infrastructure regime and proposed Deposit Takers Act) in some respects (e.g., in principle introducing a power for the Court to make pecuniary penalty orders), consistency should not be pursued as an end in and to itself (as implied in paragraph 1.2.41 of the Options paper) and we are opposed to aligning recovery and resolution planning requirements in these respects.

Stepping back, careful regard also needs to be had to ensuring changes are proportional, reasonable and necessary within a specific insurance context, reflecting upon the sector's unique attributes, the problem specifically sought to be solved and the need to avoid unintended consequences and unnecessary regulatory burden. For example, in terms of distress management, in comparison with other sectors, insurers do not present the same systemic and time critical risk as banks, failure is reasonably rare and the circumstances where this could have any material impact on critical functions of financial stability extremely limited.[1]

Similarly, given the collaborative way the RBNZ and insurers currently work together, we consider that providing the RBNZ with an enhanced on-site inspection power is unnecessary. We would also have serious concerns if this power could be used without advanced notice being given or a warrant first being obtained. We also consider that the introduction of a right to question employees or directors under oath is unnecessary.

Full answers to the questions in the Options paper are set out in the Appendix. As detailed there, any changes in powers cannot exist in a vacuum and need to be supported by a comprehensive and publicly available policy framework and/or guidelines covering, amongst other things, when and how powers are intended to be available, used and interact with each other. For the avoidance of doubt, we see such materials as being more detailed and specific than the recently published high-level and pan-industry RBNZ Enforcement Principles and Guidelines provides for.[2] It would also assist if materials were developed to clarify any overlaps or interactions between regulators regarding their respective enforcement functions. For transparency and to educate, we also see a role for the RBNZ to regularly report on its enforcement activities.

[1] See the Global Federation of Insurance Association's submission on Financial Stability Board practices papers on resolution funding for insurers and internal interconnectedness in resolution planning for insurers (22 March 2022), https://www.gfiainsurance.org/mediaitem/e8df845f-033e-471d-a96f-286ca8c414b3/GFIA%20comments%20on%20FSB%20practices%20papers%20on%20resolution%20funding%20for%20insurers%20and%20internal%20interconnectedness%20in%20resolution%20planning%20for%20insurers.pdf. In the Aotearoa New Zealand context, general insurers' particularly high levels of solvency given the 1 in 1000-year seismic risk catastrophe charge is also of relevance.

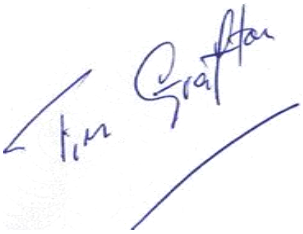
[2] https://www.rbnz.govt.nz/-/media/ReserveBank/Files/News/2022/enforcement-principles-and-criteria-full-guidelines.pdf.

Please note that in a small number of cases (e.g., queries regarding maximum penalties and proposals regarding breach reporting and ipso facto and stays provisions) it has been difficult for us to meaningfully comment because very little information has been provided in the Options paper.

2. Conclusion

Thank you again for the opportunity to submit on this matter. If you have any questions, please contact our Regulatory Affairs Manager by emailing nickw@icnz.org.nz.

Yours sincerely,



Tim Grafton
Chief Executive

Nick Whalley
Regulatory Affairs Manager

Answers to questions in the Options paper

Question	Feedback
Section 2: Enforcement and Penalties	
Section 2.2 Enforcement powers	
Q 2.2.1 Should IPSA be amended to the give the Reserve Bank a specific power to issue written warnings?	While we acknowledge that the Reserve Bank of New Zealand (**RBNZ**) already issues written warnings in the absence of any specific legislative authority to do so, for clarity and transparency, it would seem appropriate for explicit reference to this power being made in the Insurance (Prudential Supervision) Act 2010 (**IPSA**). For the same reasons, policy and guidelines should be developed and published to explain when and how this power will be used (i.e., private or public warnings) with ideally a graduated approach adopted depending upon, amongst other things, the seriousness of this matter, how co-operative the insurer has been, whether this is repeated behaviour, the effectiveness of the approach (relative to other tools or approaches or a combination of them) and any other impacts or potential unintended consequences. Aligned with our earlier feedback on the proposed RBNZ enforcement principles and criteria:[3] • We expect that a licensed insurer would always have some form of engagement and right to respond before any warnings were made public. This will allow the insurer to manage any relevant communications with its customers and stakeholders in an orderly way. • Great care should be taken to ensure that what is published is accurate, complete, honest and up to date. These matters reflect the significant potential publication may have on undermining public trust and confidence. For the same reasons, it will be important to present a balanced picture in what is published. While we acknowledge that the RBNZ publishes warnings in relation to the Anti-Money Laundering and Countering Financing of Terrorism (**AML**) regime, we caution against drawing upon this in the policy design extensively in this context because, as outlined below (response to Q 3.2.3), these regimes are very different and the usage of this AML power infrequent.
Q 2.2.2 Should the Reserve Bank have the power to require public disclosure of warnings under some circumstances?	Where appropriate (i.e., where there is a material/significant risk), the RBNZ should issue public warnings. We would not support a requirement for licensed insurers to disclose warnings issued to them themselves. Such warnings originate from the RBNZ and are logically more appropriately disseminated by them directly. This approach ensures there is an obvious avenue for the public to request further information about the warning, from the RBNZ as the relevant issuer, if necessary. If, despite our objections, insurers were to have such a disclosure requirement potentially imposed on them: • It will be important to clearly articulate why reliance upon a warning issued by the RBNZ itself would be insufficient. • We consider that it would only be appropriate to use this power in limited circumstances, and for a limited time. • There should be a clear and specific understanding of what outcome is sought to be achieved from the disclosure, with regard to the wider consequences (including any uncertainty created and/or detrimental impacts from a reputation, or public trust and confidence, perspective). • As referenced above, there should also be a requirement for the RBNZ to ensure what is published is accurate, complete, honest and up to date.

[3] https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_RBNZ_Enforcement_principles_and_criteria_241121.pdf, page 2.

	if progressed, these are matters that should be covered under publicly available guidelines. Additionally, if insurers were required to publicise a warning themselves, we would not support having to fulfil this requirement in insurers' published documentation, due to the costs, resourcing and time required to do so - particularly in circumstances when the warning included may quickly become out of date. Such a requirement would be particularly problematic when large amounts of collateral and/or numerous distribution channels (including intermediated ones) were involved, with the added costs likely ultimately borne by policyholders without any obvious or unique benefit (relative to the RBNZ just issuing the warning itself). Instead, if this option was progressed, it should be sufficient for this disclosure to be provided on the insurer's website for a specified period.
Q 2.2.3 Should the Reserve Bank have the power to issue enforcement notices? Are there any safeguards that should be attached to this power?	As there is no reference to 'enforcement notices' in the Options paper (other than in this question itself), it is difficult for us to comment on this matter. If this reference is intended to suggest that insurers should be given notice before any enforcement action is undertaken, aligned with our earlier feedback,[4] we would support this and reiterate that other than in rare and exceptional circumstance (e.g., when urgent action is required to prevent the soundness of the financial system becoming jeopardised and it is not possible to provide advanced notice), we would expect that an insurer would always have some form of notice, engagement and right to respond before enforcement action is taken.[5] Safeguards should also include the right for an insurer to challenge the content of a notice and appeal rights. To the extent that this question is directed at the proposal outlined in paragraph 2.2.15 of the Options paper (i.e., to combine the existing 'recovery plan' power with the 'remediation notice' power and present these in a single 'remediation notices and plans' provision), we support this. Doing so would make things clearer. We also agree that this would better reflect how this 'recovery plan' power is used (which is broader than just recovery). It would assist if guidelines were developed and published to transparently and clearly outline the intended usage of this provision, provide safeguards against misuse and clarify any differences or overlaps with directions powers. As previously indicated, in general terms, it would also provide greater transparency to regulated entities if materials were developed to clarify any overlaps or interactions between regulators regarding their respective enforcement functions with a view to reducing uncertainty and avoiding unhelpful duplication and inconsistencies.[6]
Q 2.2.4 Should the Reserve Bank have the power to accept enforceable undertakings? Should there	We agree that the RBNZ should have the power to accept enforceable undertakings where there has been a breach of prudential requirements. This will enable insurers to meaningfully and proactively participate in the formulation of the relevant remedy, which would be beneficial in our view. Enforceable undertaking are becoming an increasingly common tool across the regulatory system in Aotearoa New Zealand and both the

[4] https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_RBNZ_Enforcement_principles_and_criteria_241121.pdf, page 2.

[5] We also note equivalent remarks made by the RBNZ recently in these respects – see page 6 of Summary of Submissions: Enforcement Principles & Criteria dated May 2022, https://www.rbnz.govt.nz/-/media/ReserveBank/Files/News/2022/summary-of-submissions-enforcement-principles-and-criteria.pdf.

[6] https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_RBNZ_Enforcement_principles_and_criteria_241121.pdf, pages 2 and 3.

be any safeguards attached to this power?	Australian Prudential Regulation Authority (**APRA**) and the Australian Securities and Investment Commission (**ASIC**) in Australia are able to agree to enforceable undertakings from the financial services entities they regulate.[7] Again, it will be important for guidelines to be developed and published to support the intended use of this power. In the interests of certainty and transparency, it will be particularly important for there to be a clear indication of the situations when enforceable undertakings can be considered, either as an alternative to, or in conjunction with, any other enforcement action and the factors that will be weighed up in making this assessment. For completeness, it will be important that multiple regulators are not pursuing enforcement action for what is in substance the same breach. For example, if a breach potentially came within the remit of both the RBNZ and the Financial Markets Authority (**FMA**), in our view, both regulators should not be able to pursue remedies under different legislation or from different angles for what is essentially the same issue.
Q 2.2.5 Should the Reserve Bank have the power to issue infringement notices for breaches of some reporting requirements?	We do not consider that the RBNZ should have the power to issue infringement notices for breaches of certain record-keeping and reporting requirements. While we appreciate the conceptual rationale for introducing new penalties to capture low level breaches of requirements (i.e., in keeping with a more graduated approach), we are wary of the added complexity this would bring about (both for the RBNZ and insurers) and query whether implementing them would be proportionate (i.e., comparing the administrative cost involved to the fact they only relate to minor issues). It would also appear that a private written warning could be issued that could have the same effect, without the additional cost and complexity. Additionally, it is unclear from the Options paper whether there is any serious issue with such requirements not being met currently, and if there is, whether introducing penalties of this nature would be an appropriate deterrent. While we acknowledge the FMA have such powers under the Financial Markets Conduct Act 2013 (**FMCA**), we note that, while overlapped, the regulated population is quite difficult, query how often these powers are used and whether they have had any impact on increasing compliance with reporting requirements in any event. If, despite our objection, such a power was introduced, it would be important for guidelines to be developed and published to, amongst other things, clearly expand upon the intended trigger point for the issuing of such notices and differentiate the circumstances where the RBNZ would look to issue these rather than provide a private written warning (e.g., with reference to the nature and reason for the offence and whether it was remedied soon after being notified).
Q 2.2.6 Should IPSA include provision for the Courts to	In keeping with the shift to a more flexible and graduated approach, and greater alignment with approaches elsewhere,[8] in principle we support IPSA including provisions for the Court to make pecuniary penalty orders. However, it is difficult to meaningfully comment further because only general and brief commentary is provided in the Options paper in this respect, and we are wary of complexity being brought into this regime (for

[7] See for example, APRA's enforceable undertaking register https://www.apra.gov.au/enforceable-undertakings-register.

[8] In addition to the Financial Market Infrastructures Act 2021 and draft Deposit Takers Act as noted in the Options paper, we note that ASIC has this power under s 75B of the Insurance Contracts Act 1984.

make pecuniary penalty orders?	both the RBNZ and insurers) which is which is unnecessary and/or not proportionate to the intended benefits. To advance the consideration of this matter further, clear descriptions of what is intended to be covered under pecuniary penalty orders and the specific rationale for their inclusion should be provided. Additionally, noting remarks made in paragraph 2.2.33 of the Options paper about pecuniary penalties being used for 'less blameworthy breaches', we would be concerned if this suggests that criminal proceedings would be more widely used. Criminal proceedings should only be used for the most egregious of breaches in our view.
Q 2.2.7 Please review your answers to all the questions in this section. Taken together, do you think the proposals you have agreed with will deliver an enforcement regime that is able to ensure compliance with regulatory obligations in a flexible and proportionate fashion?	Yes, we consider that our position on these proposals would strike this appropriate balance. See comments above for specific explanations in these respects. To reiterate (as above), an appropriate balance needs to be struck between: • introducing changes that enable a more graduated, proportionate and flexible approach to be adopted to enforcement and penalties on one hand, and • ensuring the suite of tools and penalties are necessary (i.e., solve a problem), reasonable and proportionate, do not unnecessarily complicate matters, are likely to be used by the RBNZ in practical terms (i.e., reflecting upon other priorities and its capacity and capability), and take into account the potential 'chilling effect' changes may have on the existing collaborative relationships the RBNZ has with insurers. Additionally, as above, for clarity and transparency, it will be important for these changes to be clearly defined in policy and supported by published guidelines. It will also be important for the RBNZ to adopt an appropriate overarching enforcement strategy,[9] which balances outcomes that are better achieved through supervision rather than enforcement, and which ideally also involves regularly reporting on enforcement activities.[10]
Section 2.3 Level of Penalties	
Q 2.3.1 Given inflation and these comparisons, do you think there is a need to review the penalties for offences under IPSA? If so,	We support the level of penalties being reviewed. The focus should be on whether the penalty is proportionate to the offence, with maximum penalties being sufficiently high to deter offending but not so high as to be disproportionate, and any increases based on evidence that the current levels are insufficient. In any event, as IPSA is relatively modern legislation, we would expect that updating penalties to reflect inflationary increases would require only modest increases.

[9] See, for example, APRA's Enforcement Approach, https://www.apra.gov.au/sites/default/files/apras_enforcement_approach_-_final.pdf.

[10] Returning to the example of APRA, we understand they will generally publicly disclose enforcement actions such as formal directions, licence conditions, acceptance of enforceable undertakings, disqualifications, and court-based enforcement action. Further details about APRA's approach to enforcement are set out on its website and in its annual reports, https://www.apra.gov.au/enforcement and https://www.apra.gov.au/sites/default/files/2021-10/APRA%202020-21%20Annual%20Report.pdf.

what kinds of changes do you think should be made?	Flexibility should also exist to appropriately apply the right level of penalty to the particular circumstances. In assessing these matters, recognition also needs to be given to the other enforcement tools and other mechanisms the RBNZ has at its disposal that can have significant financial impacts on insurers (e.g., licence conditions to hold extra capital).
Q 2.3.2 If IPSA was to include provisions for civil pecuniary penalties, should the highest penalties be set on the basis of a fixed sum or in proportion to entity size?	We accept that civil pecuniary penalties have the potential to be overly punitive, particularly when a smaller insurer is involved. However, we do not consider that setting these penalties 'proportionality', with reference to the size of the entity, is the best way to address this concern. Also, as expanded upon below, we note that this approach excludes other relevant considerations that should properly inform the potential penalty amount. As noted in paragraph 2.3.10 of the Options paper, we agree that a purely proportional approach could generate excessively large financial penalties, especially when, as noted in paragraph 2.2.33, in the context of IPSA civil pecuniary penalties potentially being used for less blameworthy breaches of financial and solvency reporting requirements. While we acknowledge that penalty proportionality based on an entity size is a proposed feature of the draft Deposit Takers Act (**DTA**), its inclusion is yet to be confirmed. That approach also contrasts with the treatment of penalties under the Financial Market Infrastructure Act (**FMI Act**) and other regulatory regimes (e.g., those supervised by the FMA) and the treatment of penalties more generally in the criminal justice system (e.g., a wealthy individual does not pay higher speeding fines than someone who is less wealthy for the same offence). We also see significant challenges with determining the appropriate penalty based on the size of the insurer in practical terms – specifically, it is unclear how this 'size' could be fairly and consistently determined in an insurance context. Both the 'size' of an insurer and overall market (e.g., based on GWP, aggregate total exposures or customer numbers) are constantly changing, which make these problematic reference points. It is also unclear what the most appropriate time to make this assessment would be (e.g., at the time of the breach or judgment) and complications may arise depending upon which kind of licensed insurer was involved. For example, life insurers may have higher assets and premium bases for their size (relative to general insurers), given the investment components contained in their product offerings. It is also unclear how overseas branches would be appropriately treated (i.e., would reference be made to the 'size' of the local branch or the overseas insurer). Drawing upon the above, and for fairness, certainty and consistency, we recommend that: • The relevant breaches should each be subject to a fixed maximum penalty amount that is broadly appropriate across the insurance sector. • The RBNZ and the court should have clear discretion to consider a range of factors in seeking or setting the relevant penalty including, amongst other things, the significance of the breach, whether the penalty would be manifestly excessive or disproportionate (e.g., due to the insurer's small size) and whether this was a repeated breach. For transparency, it will also be important for clear guidelines to be developed and published on how penalties would be determined in particular circumstances.

Q 2.3.3 What level of maximum penalty is appropriate?	We do not consider that it is appropriate to comment on this matter at this stage given the commentary on potential civil penalties under the Options paper is very general, tentative and brief in nature. To advance this matter, it would be helpful to understand what specific civil penalties the RBNZ were looking to introduce for breaches of requirements and how these compare to those in equivalent regimes. For the avoidance of doubt, we agree that a lower level of maximum penalty would be appropriate for any breaches of less serious requirements.
Section 2.4 Additional compliance issues – terms of exemption	
Q 2.4.1 Do you agree that it would be helpful to clarify the consequence of failure to meet the conditions for an exemption in this way?	Yes, clarifying that the consequence of failing to comply with a condition of an exemption is that this exemption falls away would be useful. Additionally, in the interests of transparency and consistency, consideration should be given to the RBNZ publicly sharing more details when a particular exemption is granted.
Section 3: Supervisory Powers	
Section 3.2 Information gathering and investigation	
Q 3.2.1 Should the Reserve Bank have a broad power to request information from any person in order to pursue its purposes under IPSA?	While we are wary of this power being framed in such broad terms as proposed, we agree that the RBNZ should have a power to request information from certain additional parties in particular defined circumstances. For example, from entities that may be carrying out insurance business who are not licensed or falsely holding themselves out as licensed insurers. Such entities are likely to pose a higher risk than licenced insurers and it makes little sense to increase the oversight of already licensed insurers without correspondingly empowering the RBNZ to determine whether other entities should be licensed in the first place. It may be that such a power deters such entities from conducting 'insurance-like' business without being licensed, which is important for the integrity and reputation of the Aotearoa New Zealand insurance market and from a broader trust and confidence and policyholder protection perspective. We also reiterate comments from our earlier submission on IPSA Scope and Overseas Insurers in these respects.[11] In principle, we are not opposed to the RBNZ having a more explicit and targeted reference to their ability to request information from entities insurers have important relationships with (such as any intermediary distribution partners or external parties' key insurance business functions have been outsourced to e.g., underwriting), where doing so is necessary for the RBNZ to fulfil a purpose under IPSA and this information cannot be otherwise obtained. In most cases, we expect that insurers would willingly co-operate and may be able to retrieve such information from their partner and pass it onto the RBNZ themselves. When this is not the case, before requesting this information from such other parties, for transparency and efficacy, if appropriate it would be useful for the RBNZ to notify the insurer of this in advance. This would also afford the RBNZ the opportunity to test its request, by getting feedback from the relevant insurer on what is sought and potentially reframe it to better reflect the other party's role or information they are known by the insurer to have.

[11] https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_IPSA_Scope_and_Overseas_Insurers_190321.pdf, pages 4 to 6.

	From our perspective, in general terms, it is important for there to be a clear connection between the purpose this broader information gathering power is designed to serve and the parties that could have a bearing on this so that the net is not cast overly wide. Extending this power to 'any person' would be too broad, disproportionate and creates the potential for abuse in our view. It is also unclear whether there is any problem that would warrant such a broad framing of such a power and if there is, this has not been explained in the Options paper. It is also worth emphasising the extensive information gathering powers the RBNZ already has at its disposal under IPSA. This includes the power to request any information, data or forecasts about any matters relating to the business, operation or management of an insurer (ss 121 to 129 of IPSA). Requests can already be made to the insurer or any 'associated person' (s 10(2), which is defined very broadly). The RBNZ also already has the power to require information from 'other persons' if the RBNZ has reasonable grounds for believing they have information relevant to prudential supervision (s 124). Additionally, the RBNZ can require information to be audited and request reports be prepared on a broad range of topics (ss 125 and 126). Our view is that this power should be more narrowly prescribed, to target parties such as those noted above. If, despite our objections, such a broad power is provided for, for certainty and transparency, it will be important that detailed guidelines are developed and published about when this would be used, what information is anticipated to be sought from what parties, in what circumstances, and how all the relevant information gathering powers fit together and are intended to interact.
Q 3.2.2 Should IPSA introduce a breach reporting regime for insurers?	It is difficult to meaningfully comment on this matter given that only general and brief commentary has been provided in the Options paper in this respect. We would need further details on what the breach reporting regime is specifically trying to accomplish and specifically involve to provide feedback on whether it would be worthwhile and workable in practice (e.g., what would be the frequency and specific types of breaches triggering reporting, timing of reporting, technical details of the reporting format and mechanism involved). From a preliminary perspective: • We note that breach reporting is already required in relation to one important aspect, in that insurers need to self-report if they are unlikely to maintain the appropriate level of solvency over a forecast period. • One could query the need for a further breach reporting regime given the collaborative relationship that currently exists between the RBNZ and insurers and the absence of any identified issue in the Options paper warranting this change (particularly given the regularity and co-operative nature of the RBNZ's existing supervisory dialogue with insurers). • Care also needs to be taken in drawing analogies with the equivalent treatment of banking because the contexts are different. For example, as outlined in the previous overarching comments section and paragraphs 4.3.5 and 4.5.28 of the Options paper, there is not the same pressing need to act in the insurance context and the risks involved are very different. Introducing such a regime may involve considerable resourcing and cost (for both the RBNZ and insurers), which would also need to be considered and evaluated from a proportionality perspective (costs versus benefits). If a breach reporting regime was introduced, then it would need to be very clear what the threshold for reporting was. Otherwise, there would be unhelpful inconsistencies including insurers potentially over reporting which would be waste of resource for both the RBNZ and insurers. There

	would also need to be clarity around the boundaries of reporting to different regulators (e.g., the RBNZ and the FMA) so that unhelpful duplication and inconsistencies are avoided.
Q 3.2.3 Should the Reserve Bank have the power of on-site inspections in some form?	We see a role for on-site inspection in the RBNZ carrying out its prudential supervision (as distinct from its existing investigation powers under s 130 for enforcement activities) but note that, to date, while they have increased of late, the RBNZ's overall limited use of onsite inspections appears to have been more a choice than due to a lack of legal powers. Also, as acknowledged in the Options paper (paragraph 3.2.12), in the vast majority of cases, insurers have (and we expect will continue to) willingly co-operate with the RBNZ to enable these inspections to be conducted in a planned and orderly fashion. When this is not the case (i.e., because consent from the insurer cannot be reasonably obtained beforehand), we strongly believe this power should <u>not</u> operate on a without notice basis, unless subject of a search warrant. *Why providing prior notice is important* In the absence of a search warrant (more below), prior notice ensures that, in practical terms, an insurer can efficiently work with RBNZ to understand what information and interactions are sought through an on-site inspection and how this can most efficiently accessed in an orderly way. It will often be necessary for the insurer to navigate its information systems, processes and formats to assist the RBNZ to locate the information sought in substance. This approach also ensures the right location(s) are identified (particularly important when the insurer is large and operates from a number of locations) and personnel involved (namely those who understand the information sought and the RBNZ's remit). There may also be access and security issues with RBNZ 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. These logistical challenges, and the efficacy of this proposal itself, are compounded by the increasing trend for information to be stored off-site in electronic form (i.e., storage remotely at another site or in the cloud), the growth of flexible working arrangements and working from home remotely (with relevant personnel in the same team potentially working in different cities) and COVID-19 impacts (which have led to yet more staff working remotely, with utmost care also being taken to prevent the spread of this virus – including minimising interactions with third parties in some cases). Notwithstanding this, as expanded upon below, any on-site inspection power should also not extend to private dwellings. 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 RBNZ to obtain a court-ordered search warrant before proceeding. A requirement such as that under the existing s 130 inspection power, for there to be 'reasonable cause to suspect' the insurer of the relevant breach, would be an appropriate safeguard in these respects. 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.

	We would not support the introduction of a power enabling the RBNZ to pre-emptively carry out an inspection in circumstances when there was no cause identified beforehand (e.g., carrying out a 'fishing expedition' or 'spot check'). It would also be useful to know whether the Ministry of Justice's feedback has been sought in developing this proposal and, if not, we would suggest this occur. *These proposals need to be considered in the relevant specific context* We are also wary of too much weight being put on ensuring consistency with the draft DTA in this respect. As indicated in the previous section and paragraph 4.3.5 of the Options paper, issues with insurers in Aotearoa New Zealand are different and likely to be less time sensitive, such that the ability to inspect an insurer on a without notice basis are far less necessary. Insurers operate in quite different ways to banks, and so situations that may justify a without notice on-site inspection because they involve real time operations do not apply to insurers. While we acknowledge the international commentary, it would appear that the IMF's 2017 remarks were more of a reflection of the RBNZ's lack of use of its existing powers at that time rather than advocating for the extension to them.[12] Consistently, we note that since the IMF's 2017 report, the RBNZ has significantly changed its approach to supervision and there has been an increase in the RBNZ's on-site visits, which we understand insurers have fully co-operated with (e.g., in connection with the Appointed Actuary, Culture and Conduct and Governance reviews). In any event, it also needs to be recognised that, in contrast with the position in many much larger jurisdictions, the Aotearoa New Zealand insurance market is very small, and again generally insurers and the RBNZ benefit from a very co-operative engagement with each other. The risk of introducing such a draconian power in this context is that it is likely to have a substantial 'chilling effect' simply by being an option that the RBNZ could use. Additionally, our understanding, based on inquiries abroad, is that where without notice inspection powers have been introduced this has been in response to a clearly articulated problem in the form of non-compliant and un-cooperative regulated entities. As expanded upon below, as far as we are aware, this is not an issue in the insurance sector in Aotearoa New Zealand. Also, as indicated in an earlier deposit taker consultation document considering this matter, the closest equivalent jurisdiction to us, APRA in Australia, does not have any equivalent formal without notice on-site inspection power and generally conducts on-site inspections of regulated entities with their consent.[13] It is not appropriate to rely upon an equivalent on-site inspection power under the AML regime as a comparator in our view because: • First, in line with international convention, General Insurance is not included within the Aotearoa New Zealand AML regime due to the risks in this context being extremely low to non-existent.[14] Some life insurance business is also excluded from AM requirements, and where this is not the case the approach taken reflects the low risk involved.[15] • Secondly, the AML/CTF and IPSA regimes are fundamentally different. The AML regime has a discrete, narrow and serious crime-related focus, designed to detect and deter illegal criminal activities related to money laundering and terrorism financing. This contrasts with the RBNZ's broad prudential supervisory role across a range of regulated entities, with wide-ranging powers to, amongst other things, promote the

[12] See commentary in paragraph 3.2.14 of the Options paper.

[13] https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf, pp 91 (fn 41) and 93 (table). Also see s 55 of the Insurance Act 1973.

[14] https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_AML_031221.pdf, pages 6 to 8.

[15] https://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/anti-money-laundering/SRA-2017.pdf?la=en&revision=b5016a65-8dd5-465e-8b4c-71649fde5d15, page 22.

	maintenance of a sound and efficient financial system most of which will not involve criminal activity. A without notice power is much more appropriate in an AML context because this involves investigations into criminal activity where prior knowledge could drastically impede the investigation. Again, no such issue has been identified in the IPSA context. *Other comments –earlier analysis and decision-making is incomplete* Stepping back, it is unclear what specific evidence-based problem introducing an on-site inspection power of this nature would solve in the Aotearoa New Zealand insurance sector. We are not aware of any practical issues or concerns justifying this and if there is, this is not something explained in the Options paper. As above, this seems entirely unnecessary, disproportionate and potentially harmful in our view. Additionally, the use of such a power would involve considerable resourcing and cost for both the RBNZ and the relevant insurers concerned, which would also need to be considered and evaluated from a proportionality perspective. It also needs to be acknowledged that the prior Cabinet decision approving this inspection power was a made in the context of consultation and analysis of the prudential regime for deposit takers.[16] We originally raised our concerns about this approach in October 2020 in the context of that consultation.[17] There was no prior opportunity to engage with this proposal substantively in an insurance context and the decision made, as it relates to insurance, appears to have been very much as an 'addon' in the context of wider decisions on deposit takers. The deposit takers focussed consultation followed also means that other parties that may have an interest in providing feedback were unaware of it, such that they did not submit on it and their views were not considered before decisions were made.
Q 3.2.4 Are the safeguards proposed here appropriate or should additional safeguards be included?	While the safeguards proposed are appropriate, as described below, we consider these do not go far enough and additional safeguards are required. *Additional safeguards required: Prior notice needs to be provided for and controls placed on RBNZ representatives conducting visits* Absent a search warrant, we consider that any inspection power should only operate on a prior notice basis, with reference to either 'such period of notice as is reasonable in the circumstances' and/or 'another prescribed minimum notice period that is reasonable'. A requirement for inspections to only be carried out at 'reasonable times' as proposed under paragraph 3.2.15 of the Options paper would be insufficient in our view given our comments above. This notice should specify the RBNZ representatives conducting the inspection so the insurer can ensure that personnel of appropriate seniority and expertise are present.

[16] Safeguarding the future of our financial system: Further consultation on the prudential framework for deposit takers and depositor protection (Phase 2 of the Reserve Bank Act Review, March 2020), https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf, Chapter 6: Supervision and enforcement powers and Cabinet Minute (April 2021), https://www.treasury.govt.nz/system/files/2021-04/rbnz-dtb-DEV-21-MIN-0077-4443732.pdf.

[17] https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_RBNZ_Deposit_takers_and_depositor_protection_consultation.pdf.

	Other safeguards required: exclude private dwellings, protect privilege and prevent self-incrimination While the second and third proposed safeguards under paragraph 3.2.15 appear suitable, these should be supplemented by a requirement that no on-site inspection be conducted of a private dwelling. This is consistent with the treatment of similar powers under other legislation as acknowledged in the Options paper. Safeguards should also be included to protect against compelling legally privileged or self-incriminatory information, noting that these are technical matters, that may not be known immediately and take some time to work through. *Information sharing protections and controls also need to provide for* Robust protections and controls for information collection, storage and use need to be provided for to mitigate the risk of breach of privacy and/or confidentiality including in circumstances of a cyber breach or attack. There is a particular vulnerability here because the intention is for this information to be available to be shared with other government agencies for other purposes. If information is to be shared with other government agencies, the insurer should also be promptly notified of specifically what is being shared, to whom and for what purpose, putting them on notice and giving them an opportunity to engage with this. If there is a data breach involving the release of the insurer's or their policyholders' information, the insurer should be urgently notified and informed about what information has been released, what investigation is occurring, and the mitigation steps being taken. *Guidelines needs to be developed to support the appropriate use of this power* For consistency and transparency, it will also be important for the use of any proposed onsite inspection power to be supported by a detailed policy framework, guidelines and examples covering how it will be used in practice and fit alongside the RBNZ's other information gathering and related powers (e.g., powers under s 130 to 132 of IPSA and any power to question employees or directors under oath (commented on further below)), including details about how they may be used at the same time or in conjunction with each other. The outcomes from this work should be publicly available and also make it clear what information is likely to be shared to other agencies for what purposes, reflecting the potential wide-ranging nature of this sharing and its impacts.
Q 3.2.5 Should there be a prescribed minimum frequency for on-site inspections? If so, what should the requirement be?	There is no apparent rationale for requiring a certain or prescribed minimum frequency of on-site inspections that we can see. As mentioned in the Options paper, doing so would be resource intensive for both the RBNZ and insurers and, in absence of a clear purpose for the on-site inspection, wasteful. We do not consider that it would be appropriate to adopt a 'one-size-fits-all' approach in this respect, with the frequency of inspections ideally being informed by the particular circumstances, proportionality and the adoption of a risk-based approach.

	Together with a thoughtful consideration of the specific circumstances and purpose for inspection, the approach to, and potentially the frequency of, on-site inspections, would be better addressed in published supervisory policy and/or guidelines in our view - recognising that this is only one of many supervisory tools that the RBNZ has at its disposal and the other engagements with insurers that are already occurring. Where possible and appropriate, we support advanced scheduling of on-site inspections, as this ensures these matters can be conducted as orderly and efficiently as possible.
Q 3.2.6 Should IPSA's investigation powers apply to entities that the Reserve Bank has reasonable cause to believe may be carrying out insurance business without being licensed or may be falsely holding themselves out as licensed insurers?	Yes, see the response to Q 3.2.1 above for our reasoning. Investigating entities failing to comply with licensed insurer requirements, or falsely holding themselves out as a licensed insurer, should be a key area of focus for the RBNZ, given the potential adverse outcomes for customers from entities that are unregulated (whether deliberately avoiding that regulation or not). This is particularly important where the customer believes they have insurance placed with a licensed insurer, or more simply another entity subject to the same regulations as other insurance providers, but this is not the case.
Q 3.2.7 Should IPSA's investigation powers include the right to question employees or directors under oath?	We question whether this power is necessary given the co-operative relationship that currently exists between the RBNZ and insurers. We would also generally expect that questioning under oath occurred as part of court proceedings. If nonetheless such a power was introduced, then: • There should be a very high threshold for its use (e.g., cases of a severe or material breach) given the seriousness of the rights and freedoms infringed. • There should be clear rules in place (either in IPSA, or in published policy/guidelines) on who could be appointed as an investigator pursuant to s 130(2) of the Act, including any qualifications and disqualifying features. • Consistent with the approach under AML legislation, anyone being questioned should be able to invoke privilege against self-incrimination (i.e., the right to silence) and not be required to hand over privileged information. • Sufficient notice should be given so that relevant employees and directors have time to adequately prepare and, if appropriate, arrange legal representation. • Additional protections should also be put in place for employees as the use of this power has the potential to be unduly intimidating and upsetting, particularly where junior staff and those who have not experienced such questioning before are involved.
Q 3.2.8 Are there any other changes that might usefully be made to the Reserve	Aligned with the approach in Australia, we would see value in IPSA being amended to include stronger protections for the information the RBNZ collects pursuant to its information gathering powers. For example, s 56 of the Australian Prudential Regulation Authority Act 1998 provides protections for information provided to ARPA from inappropriate disclosure by setting out strict circumstances under which information may be disclosed, as well as potential penalties if these requirements are breached.

Bank's information gathering powers?	
Section 3.3 Directions	
Q 3.3.1 Should the Reserve Bank have the power to direct insurers not to renew existing business?	Conceptually removing the absolute limitation on directions related to renewals makes sense because this would provide the RBNZ with more flexibility and better align with the approach adopted elsewhere, including the equivalent approach in Australia.[18] Notwithstanding this, using such a power could leave large numbers of policyholders without insurance and/or a straightforward avenue to source it from another provider. Doing so may accordingly be contrary to the policyholder protection and public trust and confidence objectives under IPSA and good conduct and customer outcomes more generally (especially as this relates to vulnerable customers). Given these concerns, if this proposal was to progress, in evaluating the exercise of this power, in addition to assessing the need to reduce the insurer's exposure, the impacts on policyholders and public trust and confidence need to be key considerations. This includes, in this specific context, the ease with which relevant policyholders can obtain equivalently priced and scoped insurance cover elsewhere and/or whether any alternative equivalent arrangements can be put in place in these respects. These matters are relevant to all insurers' renewal business, not just those involving life and health insurance as are emphasised in paragraph 3.3.8 of the Options paper. In a general insurance context, we can see this being a particular issue in situations such as where: • the cover provided is novel • an accommodation has been made that other insurers may not be willing to offer • it is critical that continuous cover be maintained to be effective (e.g., claims made Directors and Officers' Liability, Statutory Liability or Professional Indemnity policies), and • an insurer's solvency issues may be linked to a natural disaster event, and not renewing policies could significantly impact an existing policyholders' ability to get cover. Given the broader nature of the current direction powers under s 143 of IPSA,[19] we expect that this power could only be used when the viability of the insurer was at real risk and this action was necessary to protect policyholders. We expect that it will often be more appropriate for the RBNZ to focus on other measures including, if necessary, the sale of an insurer's book of business to another insurer - as this will ensure continuity of cover for policyholders.
Q 3.3.2 Should this power be accompanied by any safeguards?	Yes, see the response to Q 3.3.1 directly above.
Q 3.3.3 Are there any other changes that should be	We are not aware of any other than as commented on later in this feedback (under Section 5: Ladders of Intervention).

[18] Specifically s 104 of the Insurance Act 1973 outlines the basis on which APRA may give directions, including not renewing business.

[19] For example, that the business is not been 'conducted in a prudent manner' under s 143(1)(b) which, when read alongside s 20 of IPSA, provides for a wide range of matters to be taken into account.

made to the Reserve Bank's powers of direction?	
Section 4: Distress Management	
Section 4.2 Purpose statement for distress management	
Q 4.2.1 Should IPSA include a specific purpose clause governing the use of distress management powers (over and above the 'have regard to' principle already included in IPSA)?	Yes, we consider that this could be an effective tool to guide the RBNZ's potentially fluid and at times fast moving specific decision-making about intervention when an insurer is in distress, noting that there is existing content in s 4(c) of IPSA that can be drawn upon in this respect. Again, we see a role for published guidelines to support this approach. In preparing these, careful consideration should be given to explaining trigger points and how trade-offs between competing considerations will be evaluated in determining the appropriate response.
Q 4.2.2 Which of the purposes discussed in this subsection do you think should be included in legislation? Should any other purposes be included?	We support the purposes set out in paragraphs 4.2.5 and 4.2.6 of the Options paper, save that 4.2.5(5) should be amended to elaborate upon the second goal of minimising the cost of resolution in accordance with paragraph 4.2.4 (i.e., through preserving value, resolving financial stress as quickly as possible and managing the need to resort to public funds). We do not consider that it would be necessary to refer to other purposes.
Section 4.3 Resolution planning	
Q 4.3.1 Should some or all insurers be required to maintain recovery plans?	While it may be appropriate for a particular insurer under distress, and/or because of a stress testing exercise, to develop and maintain a recovery plan, we do not consider it is necessary or appropriate for this to be a blanket requirement for all insurers at all times. Such a requirement would be unsuitable and inefficient with planning most logically arising only where actually necessary; being tailored to focus on the specific circumstances in question (e.g., the current position of the particular insurer and specific nature of the stresses arising). A requirement to develop generic recovery plans would be costly to setup and maintain and it is questionable whether the anticipated significant costs involved would outweigh the benefits, particularly given the low probability of distress in an insurance context (as outlined in the previous overarching comments section) and as all relevant situations will be difficult to comprehensively anticipate and plan for. For the avoidance of doubt, consistent with our overarching comments, we are wary of too much emphasis being placed on alignment with the approach under the draft DTA or FMI Act in this context given the risks posed in the insurance sector are very different. For example, as acknowledged in the previous section, and paragraphs 4.3.5 and 4.5.28 of the Options paper, the failure of an Aotearoa New Zealand insurer is likely to be less time-critical than that of financial markets infrastructure or a deposit-taker and the level of systemic risk posed by insurers is very different.

Q 4.3.2 If so, how would this requirement be best designed to ensure that it is proportionate to the risk presented by different insurers and the costs of preparing and maintaining such plans?	As above, rather than being a mandatory and generic requirement for all insurers, we consider that the best approach is for any requirement to prepare and maintain a recovery plan to be targeted at only those where it is established doing so is necessary and would be valuable. Adopting such a risk-based approach will also ensure that the scope of these requirements can be proportional and flexibly tailored to address the particular concern(s) in issue. Guidelines should again be developed and published to support this approach, including details about what factors the RBNZ would evaluate in determining whether such a requirement would be imposed and detailed information about what the specific planning should involve.
Q 4.3.3 Should IPSA also require the Bank to maintain some form of resolution planning for insurers, as the draft DTA does for deposit takers?	Consistent with the comments above, we again caution against too much emphasis being placed on alignment with the draft DTA given the risks posed in the insurance sector are very different. We are also concerned that such a requirement may be an unnecessary distraction and cost for both the RBNZ and insurers. Instead of requiring the RBNZ to maintain some form of resolution planning for insurers, we consider that resourcing would be best focussed on: • monitoring existing and emerging risks, and • adopting more of an educative and pre-emptive approach – providing insight to insurers to inform their decision-making well advance of any distress and resolution becoming necessary. For completeness, we note that APRA in Australia is currently consulting on proposals to strengthen crisis preparedness (including resolution planning across the banking, insurance and superannuation sectors).[20] This 'one-size fits all' approach has been criticised, not being the approach adopted globally nor, as we understand it, in accordance with international best practice.[21] Internationally, we understand that resolution planning requirements for the insurance sector are still in their very early stages of development, with most jurisdictions focussing on banking only at this stage. In the interests of consistency and efficiency, before considering this matter further, it makes most sense to monitor developments abroad and wait until these are much more advanced. It would be inappropriate for the approach adopted in Aotearoa New Zealand to be an outlier in this regard, particularly given a number of participants in this market also operate abroad. Adopting a cautious approach here is also appropriate given that such plans are understood to be extremely complex and resource intensive to develop and as a large degree of planning and engagement would be needed to implement and maintain them – which highlights the critical importance of getting these requirements right at the outset. Maintaining a watching brief would also mean that if resolution planning was to be required at a future point, one could draw on detailed analysis and practice that has already been developed overseas.
Section 4.4 Schemes of arrangement, compromises, voluntary administration and liquidation	
Q 4.4.1 Are there any improvements that could be made to sections 151-169 of	Not that we are aware of, noting that our members have limited experience dealing with the RBNZ's insolvency and restructuring powers.

[20] https://www.apra.gov.au/news-and-publications/apra-moves-to-strengthen-crisis-preparedness-banking-insurance-and.

[21] We note that the Insurance Council of Australia and Australian Banking Association have written to APRA also expressing concerns about the consultation process adopted in this respect, https://insurancecouncil.com.au/wp-content/uploads/2022/05/042922-ABA-ICA-joint-letter-on-CPS-900-final.pdf.

IPSA which set out the Reserve Bank's powers in relation to various insolvency and restructuring processes?	
Section 4.5 Statutory management	
Q 4.5.1 Should the requirement that the failure of an insurer might create significant harm to the financial system or New Zealand economy be removed from the first part of the test for recommending statutory management?	We can see the benefit of more flexible criterion being introduced for the RBNZ to assess whether to recommend statutory management. We support the second limb described under paragraph 4.5.9 of the Options paper being amended to remove the systematically significant requirement so regard can be had to a broader range of public or policyholder interests. Currently the significant harm test could only ever apply to large insurers which is an unduly restrictive approach in our view. However, given the potential wide-ranging list of matters that may fall under this broadened criterion, for transparency and certainty, it will be very important for the RBNZ to develop and publish detailed guidelines on the intended usage of statutory management. In addition to the post-event scenario where there are particular but significant regional impacts, we envisage there may be a role for this mechanism to be considered when access to a certain (e.g., specialised) line of insurance business is significantly impacted.
Q 4.5.2 Alternatively, are there other ways in which the test for initiating statutory management should be modified?	See response to Q.4.5.2 directly above.
Q 4.5.3 Which resolution powers and duties (if any) should be vested directly in the Reserve Bank? Why?	We do not consider that mechanisms should be altered so that the RBNZ is the 'resolution authority' empowered to directly exercise resolution powers. The status quo arrangements are appropriate in these respects. We do not consider that the RBNZ would be the right entity to perform this function, given its prudential supervisory role and public and policyholder interest focus, with decision-making here also needing to have regard to insurers' commercial interests which do not appropriately fall within this remit. Such matters are best addressed by the private sector in our view. It needs to be remembered that the RBNZ already has considerable power to input and guide the statutory management pursuant to its remit, including by appointing the statutory manager, so this is not a question of the RBNZ's ability to influence such matters. In broader and practical terms, we query whether extending the RBNZ's role in this way makes sense given its other priorities and capability and capacity constraints. In this regard, we agree that this function would be very different to the banking one and expect that the RBNZ would need to develop its own standing specialised insurance-based statutory management capability. This would also be problematic because this power is likely to only be used very infrequently.
Q 4.5.4 Should the Minister of Finance have controls,	We note that this is a complex area but do not consider that further controls and accountability for the use of public funds in resolution are necessary. As outlined in paragraph 4.5.32 of the Options paper, the Minister of Finance can already attach conditions to public funding and

within IPSA, over the use of public funds in resolution – over and above those that the Minister may attach to the provision of public funding? Are any additional forms of accountability necessary?	directly manage a failed insurer. There is also an important balance to be struck in terms of the RBNZ's independence in the context of giving the Minister more directive powers.
Q 4.5.5 Should IPSA contain ipso facto provisions and stays on the close out of derivatives contracts equivalent to those in the FMI Act and draft DTA?	Further detail is required to properly consider these proposals and meaningfully provide feedback on them (including specific details and examples about how such ipso facto and stay provisions could apply in an insurance industry context). In exploring these proposals in more detail, in general terms, the following needs to be considered in our view: • On one hand, the resulting potential additional costs and loss of supply options for insurers because they are seen as less attractive debtors, which may be ultimately passed onto policyholders (i.e., in terms of reduced availability or affordability of insurance). • On the other, the fact that general insurers are likely some of the most attractive debtors suppliers deal with, given their high levels of solvency, such that it is highly unlikely that such provisions would ever be used. As above, we note that our members' expertise in this area is limited.
Section 5: Ladders of Intervention	
Section 5.3 Directions	
Q 5.3.1 Should all directions be unlocked once an insurer breaches the SCR or should some be unlocked lower down the 'ladder of intervention'?	We agree that it is logical for all capital related direction powers to 'unlock' once an insurer breaches the Solvency Capital Requirement (**SCR**). We also agree that, as outlined in paragraph 5.3.5 of the Options paper, guidelines on how the powers would be used should be developed and made public. This position reflects that: • As acknowledged in the Options paper, directions are intended to be an 'early intervention' powers (i.e., ones focussing on attempts to resolve a distressed insurer's difficulties before matters get more serious and it is necessary for more formal and intrusive interventions). • The RBNZ's assessment of whether the relevant direction should be made in particular circumstances needs to be more nuanced and wide ranging than just an assessment of where the insurer sits on the 'ladder of intervention' (i.e., governance matters and other prudential requirements may also need to need to be considered). • While some of the direction powers are prima-facie more intrusive than others (e.g., replacing an insurer's directors or entire board), as outlined in paragraph 5.3.4 of the Options paper, we agree that it is hard to map these specifically to the level of solvency or the seriousness of the situation.

	For completeness, as indicated in our previous submission on IPSA – policyholder security,[22] the appropriate balance in our view, is for powers to 'unlock' with reference to the solvency control levels as an insurer's solvency deteriorates and not be mandatory for the RBNZ to use. We consider that this strikes the right balance between certainty for insurers in terms of the interventions they could expect, while also providing flexibility for the RBNZ to act appropriately in the circumstances, including taking broader considerations into account. Guidelines should be developed and published to flexibly support the appropriate usage (i.e., how the RBNZ will conduct its risk assessments and consider the use of specific powers in particular circumstances).
Q 5.3.2 If the latter, which powers should be unlocked later and at what point should they be unlocked?	Not applicable – see response to Q 5.3.1 directly above.
Section 5.4 Administration, statutory management and liquidation	
Q 5.4.1 Should the capital part of the trigger for the Reserve Bank's power to apply for the liquidation of an insurer be altered to refer to an insurer failing to meet its minimum capital requirement?	Yes, given that the Minimum Capital Requirement (**MCR**) is the control level that best equates to non-viability. However, consistent with comments above, this should just 'unlock' this power and it should not be mandatory for the RBNZ to use it. This reflects: • that an insurer falling below the MCR does not necessarily mean that they will imminently fail, recognising, amongst other things, that the regulated calibration of minimum solvency for general insurers (either 1 in 200 or 1 in 1,000 years for seismic catastrophe risk) means that minimum capital is still a lot higher than a strict definition of 'solvency' in other contexts • the need for flexibility given a broader set of factors may need to be considered in deciding whether this power should be used, and • the potential for other mechanisms to be used instead, which may be more appropriate in the particular circumstances at hand and enable better outcomes for policyholders and other parties (e.g., statutory management, with an eye to returning the insurer to trade as a going concern once the issues warranting intervention are resolved). Again, this approach should be supported by publicly available guidelines.
Q 5.4.2 Should there be a mandatory requirement to place an insurer into liquidation at some point after it breaches its minimum capital requirement? What should that test be?	No, consistent with our comments directly above, we do not consider it would be appropriate for the RBNZ to be required to mandatorily use this power based on an what would ultimately be an arbitrary solvency level or period etc. We consider that this power should only be used as a last resort when an analysis of the circumstances indicates it is the best available option. In addition to the reasons outlined directly above, the particular insurer's circumstances may be dynamic and its reduced solvency position temporary. For example, it may be that immediately following a very large claims event a general insurer's run-off and reinsurance capital charges are very large but that these issues are subsequently worked through. It would be inappropriate and premature for the RBNZ to apply to put an insurer in liquidation in such circumstances. Considerable care needs to be taken by the RBNZ in making these assessments, reflecting upon the wider circumstances and prevailing trend rather than any temporary dip.

[22] https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_IPSA_policyholder_security_121121.pdf, pages 15 and 16.

	As noted above, the calibration of minimum solvency for general insurers (either 1 in 200 or 1 in 1,000 years) means that minimum capital is still a lot higher than a strict definition of 'solvency' in other contexts.
Q 5.4.3 Do you agree that the capital-related grounds for enabling statutory management should be a breach or likely breach of the minimum capital requirement (bearing in mind that the necessity test would also have to be satisfied)?	Yes, the broader 'likely to breach MCR' trigger is appropriate as it ensures statutory management is available earlier than liquidation, giving time for such earlier intervention to be effective and reflecting that in such circumstances there is greater potential for an insurer to recover. This contrasts with the narrower 'breach of MCR' liquidation trigger, where the intention would be for the insurer to be wound up. In a situation when an insurer has breached the MCR and decisions have yet to be made, both liquidation and statutory management (and voluntary administration) options would be available, providing the RBNZ with flexibility. Consistent with our comments above, our view is that such circumstances should simply 'unlock' this option (rather it being mandatory). Similarly, we also see a role for guidelines to be developed and published to support the approach and compare how various insolvency options (e.g., liquidation, statutory management and voluntary administration) would be used in different circumstances.
Q 5.4.4 If not, what do you think the capital-related trigger for statutory management should be?	Not applicable – see response to Q 5.4.3 directly above.
Q 5.4.5 Should the solvency-related trigger for the appointment of an administrator be that the insurer has failed, is failing or is likely to fail to maintain its minimum capital requirement?	Yes, consistent with the response to Q.5.4.3 above regarding statutory management. This similarly reflects that with voluntary administration there is greater potential for the insurer to recover.
Section 5.5 Other IPSA powers and duties	
Q 5.5.1 Should the solvency capital requirement replace the 'solvency margin' as a trigger for insurer and auditor duties to report solvency problems to the Reserve Bank?	Yes, we consider a breach or expected breach of the SCR is the appropriate trigger for an insurer and auditor to self-report solvency problems to the RBNZ.
Q 5.5.2 What point on the ladder of intervention would be appropriate for a	In the interest of expediency and timeliness, we consider a breach of the SCR should 'unlock' the RBNZ's investigation powers, noting that this should not be the sole factor in determining whether these powers should be used and that we expect publicly available guidelines would again play an important role in this context.

capital-related trigger of investigation powers?	As above (response to Q.3.2.4), it would also be important for it to be explained how the RBNZ's various information gathering and related powers fit together, including any distinguishing and overlapping features between them.
Q 5.5.3 What point on the ladder of intervention would be appropriate for a capital-related trigger of the Reserve Bank's power to require an insurer to produce a legally enforceable recovery plan?	We also consider that the power to require an insurer to produce a recovery plan should 'unlock' when there is a breach of the SCR, noting again that this should not be the sole factor in determining whether this power would be used and that publicly available guidelines would again play an important role in this context. The reference to the SCR is preferable to the MCR in our view as this would be the lowest common denominator. However, in practical terms, it would be hard to target a single trigger point and we would generally expect this requirement to apply in circumstances where an insurer is somewhere between the SCR and MCR, dependent on their particular circumstances. Please also see our comments under Section 4.3 (Resolution planning) above about recovery planning more generally.