

24 November 2021

By email: Enforcement.Consultation@rbnz.govt.nz

Reserve Bank of New Zealand - Te Pūtea Matua
Enforcement Department

Dear Sir/Madam,

ICNZ submission on Reserve Bank of New Zealand enforcement principles and criteria

Thank you for the opportunity to submit on the Reserve Bank of New Zealand's (RBNZ's) Enforcement Principles and Criteria Consultation paper (**consultation 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 consultation paper.

A. Overarching comments

We support the proposed enforcement framework set out in the consultation paper, which appears reasonable and appropriate from our perspective, including in particular:

- The purpose of the enforcement framework to achieve the RBNZ's compliance goals, increase the effectiveness of enforcement action and promote confidence and consistency in enforcement decision-making.
- The principles of 'risk based', 'proportionate' and 'transparent', noting the references to seriousness of conduct, having regard to the need for responsiveness and ensuring public trust and confidence, and transparency as to process and outcome.
- The criteria of 'seriousness of conduct', 'responsiveness', 'public trust and confidence' and 'efficacy' and the factors that sit under them, which are to be worked through and evaluated against the available evidence, when deciding the appropriate enforcement response to take in each case.

We provide specific feedback on how these principles and criteria can be further clarified and refined in response to the questions below.

Once implemented, it will be important for compliance with this framework to be closely monitored, as this forms the fundamental parameters of RBNZ's enforcement approach. It should also be regularly reviewed and updated (if necessary), in consultation with the regulated population.

We acknowledge that the RBNZ intends to develop further guidance informed by these principles and criteria over the coming months, which we commend. In conjunction with this work, it would assist if the RBNZ could:

- indicate its areas of focus for enforcement with reference to these principles and criteria
- explain what practical differences can be expected for enforcement activities under the new framework, and
- provide further detail about how this framework will be worked through with other regulators, and with RBNZ's supervisory function, to ensure appropriate collaboration and planning is occurring, expectations of industry are clear and aligned and minimise regulatory burden and costs.

It would also assist if the RBNZ outlined (in documentation and/or industry presentations) the size, expertise and focus of its various supervision and enforcement teams and how they interact (including the circumstances in which a referral would be made by the supervision team to the enforcement team), noting these matters are somewhat opaque from our perspective currently. It would also be useful to understand how the RBNZ's resources are being assigned to the identified areas of focus.

B. Answers to questions

1. Do you have any comments on the high-level descriptions of the three principles?

Regarding the 'transparency' principle and transparency as to process, it would assist to explicitly record that the RBNZ will engage with entities transparently throughout the lifecycle of any enforcement activity. This will assist with deepening trust and constructive working relationships between the RBNZ and regulated entities and maximise efficiency. In our view, it would be disappointing if a regulated entity only found out about enforcement action due to the initiation of formal action or once it was published on the RBNZ's website. Other than in rare and exceptional circumstances (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 expect that an entity would always have some form of engagement and right to respond before any formal enforcement decisions were finalised and made public. This would be consistent with the Financial Markets Authority (**FMA's**) recent advice about their enforcement approach.¹

In terms of transparency of outcome, consistent with the proposed description of transparency as to process, reference should be made to ensuring what is published is accurate, complete, honest and up to date. This reflects the significant potential publication may have to undermine public trust and confidence. For the same reasons, it is important to refer to the need to present a balanced picture in what is published.

¹ <https://www.fma.govt.nz/news-and-resources/speeches-and-presentations/karen-chang-speech-to-minter-ellison-clients/>.

It would also assist if regular general communications were provided to industry on outcomes of, and insights from, supervision and enforcement activities (including areas of emerging concern or focus, themes, trends and examples of best practice). The FMA currently does this very well in our view.

2. Do the descriptions on page 6 provide clarity on how we apply the three principles? If not, what further information would better help you understand the application of the three principles?

While these descriptions are helpful, as above, it would assist if clear examples were provided to explain how situations would be dealt with differently under the new framework.

3. Are there any additional principles that you think should be included? Please explain how any additional suggested principles would improve our decision-making process

None that we are aware of.

4. Do you have any additional comments on the principles?

No.

5. Do you have any comments on the high-level descriptions of the criteria?

For the 'public trust and confidence' criterion:

- Consistent with comments in response to question 1 above, reference should be made to acting in an accurate, complete and honest way and forming a balanced view, so as not to inappropriately undermine public trust and confidence.
- It would assist to describe what would specifically be involved in weighing up the benefits of public action against any immediate risk to financial stability.

For the 'efficacy' criterion, we suggest specific reference be made to the need for robust coordination and planning between regulators (including what needs to be reported to whom and who is the lead regulator for any joint action). Reference should also be made to ensuring that there is effective coordination and planning between RBNZ's enforcement and supervision functions.

In terms of the speed of reporting any breaches/issues, it will be particularly important that the RBNZ and the FMA, who are both on journeys to enhance their supervision and monitoring activities:

- promptly make it clear what issues are to be reported to whom, and
- agree early who will take the lead on a particular supervision and enforcement activity.

In broader terms, engaging with multiple regulators/functions, particularly where it is unclear who is the lead, on the same topic, may ultimately be detrimental to the financial system and customers. Engaging with different regulators/functions with different expectations may also come at the expense of remediating the issues themselves. We reiterate our comments above about regulatory burden and cost in these respects.

6. Do the descriptions above provide clarity on how we apply the criteria and factors when making enforcement decisions? If not, what further information would better help you understand how the criteria and factors are applied?

See responses to question 5 above.

7. Are there any additional criteria and/or factors that you think should be included? Please explain how any additional suggested criteria and/or factors would improve our decision-making process

See responses to question 5 above, noting that these matters may be set out as additional criteria and/or factors rather than amendments to existing ones.

8. Do you have any additional comments on the criteria and factors?

Consideration should also be given to:

- Removing the factor referring to the entity's compliance history under the 'responsiveness' criterion as this appears to duplicate with the consideration of this issue under the 'seriousness of conduct' criterion.
- For the 'deterrence value' factor under the 'public trust and confidence' criterion, clarifying whether this matter will also be relevant from an efficacy perspective, which we consider it should be.

9. Do the examples on page 11 illustrate the link between the criteria and principles, and how they are applied? If not, what further information or examples would better help you understand this link and application?

Yes – we consider the examples on page 11 effectively illustrate the link between the criteria and principles.

10. Do you have any comments on how the principles and criteria link to our strategic priorities?

We acknowledge these links and have no further comments in this respect.

11. Is there any additional guidance that we could develop that would help you understand our enforcement function?

As above, when developing additional guidance, it would be useful if the RBNZ could:

- indicate its areas of focus for enforcement with reference to these principles and criteria
- explain what practical differences can be expected for enforcement activities under the new framework, and
- provide further detail about how this framework will be worked through with other regulators and between the RBNZ's supervisory and enforcement functions.

12. Are there any final comments you have on this consultation paper?

As part of adapting the application of these principles and criteria to different regulatory areas, in addition to reflecting upon the previous behaviour and relationship with the particular regulated entity concerned, it would also be useful to record that the RBNZ should have regard to:

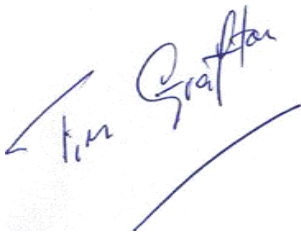
- the scope, purpose and principles of the relevant regulatory regime (e.g. ss 3 and 4 of the Insurance (Prudential Supervision) Act 2010), and
- the relationships with, and the general regulatory behaviour and maturity of, the particular regulated population that sits within it.

In developing this framework further, consideration should be given to the role SupTech may play in the RBNZ conducting its enforcement activities in the future. While using innovative technology has the potential to streamline processes, reduce costs and lead to better quality services, it should be approached with caution, as it may create new risks and result in unintended consequences. We suggest there be a structured dialogue between the RBNZ and the regulated population regarding the potential use of such technology.

C. 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