

25 October 2024

Financial Markets Authority  
Emailed to: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

## **ICNZ SUBMISSION ON THE FMA CONSULTATION: REGULATORY RETURNS FOR FINANCIAL INSTITUTION LICENCEES**

1. Thank you for the opportunity to provide a submission on the Financial Market Authority's (FMA) consultation on regulatory returns for financial institution licensees.
2. Te Kāhui Inihua o Aotearoa / The Insurance Council of New Zealand (ICNZ) represents general insurers. ICNZ members provide a wide range of general insurance products including those usually purchased by consumers (such as home and contents insurance, travel insurance, and motor vehicle insurance). A number of our members will be licensed financial institutions under the new Conduct of Financial Institutions (CoFI) regime.

### **Overall comments**

3. Following high-level engagement on this consultation with the New Zealand Banking Association and the Financial Services Council, there are three key points we agree are critical for the proposed regulatory returns. First, we suggest the FMA delays the regulatory return requirement until 2026 when the proposed amendments to the CoFI regime will presumably be in force. Secondly, due to the volume of duplication with the Financial Advice Provider (FAP) regulatory return, we encourage more alignment and for the FMA to consider options to reduce repetition. Lastly, we encourage reconsideration of several broad questions and their inclusion, such as methods for ensuring contact details for customers are kept up to date. Further detail on these three points is contained in our individual submissions.
4. ICNZ strongly recommends that the FMA should delay introducing a requirement for an annual regulatory return.
5. Minister Bayly has outlined his expectation that the FMA should avoid unnecessary compliance costs, take a proportionate and risk-based approach to regulation, that its regulatory expectations should be properly founded in the law and that it should streamline conduct licensing requirements, including this regulatory return, to reduce complexity and duplication.<sup>1</sup> The proposed questions set out in the annual return raise a number of concerns and appear to be inconsistent with the Minister's expectations.
6. Spending the FMA's and financial institutions' time and resources on developing a specific reporting regime under a licence that will apply for at most one year would distract from more productive activities. Instead, the FMA should look to efficiently introduce CoFI-related reporting requirements as part of a single, integrated return following the merger of multiple FMA licences.

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<sup>1</sup> [Annual-letter-of-expectation-from-Hon.-Andrew-Bayly.pdf \(fma.govt.nz\)](#)

7. The Government has undertaken a targeted review of the CoFI legislation<sup>2</sup> and other conduct requirements under the Financial Markets Conduct Act 2013 and proposes to simplify and clarify the requirements for financial institutions' fair conduct programmes and require a single licence covering different classes of market services. The proposals aim to streamline regulation and remove unnecessary compliance burden. Legislation is expected to be introduced to Parliament at the end of the year.<sup>3</sup> Although it is not certain when these changes would come into effect, it appears likely that they would be in force by the time the first annual return is due.
8. Introducing a new annual return prior to these changes being made will impose an unnecessary and unreasonable regulatory burden on financial institutions and it is out of step with the expectation that Minister Bayly set for the FMA for FY24/25. Although ICNZ acknowledges that providing regulatory returns is a CoFI licence condition (if directed by the FMA to do so), expecting financial institutions to set up reporting processes to provide an initial return for the first year of the new CoFI regime when the proposed changes to the CoFI legislation and the planned merger of multiple licenses will result in changes to the returns in the second reporting period introduces unnecessary complexity and limits the comparative value of the returns for the FMA in the second year. This will create additional compliance costs that may be passed on to customers.
9. Delaying the introduction of an annual return would not impact the FMA's strong focus on the regulation and mitigation of conduct risks. This is because the annual return applies only to approximately 80 financial institutions and these entities are already closely supervised by the FMA. The FMA has general information-gathering powers and many of these entities already provide overlapping information through returns under existing licences, reducing the marginal value of requiring this additional annual return. Financial institutions would still be subject to the requirement under Standard Condition 2 of their licences to notify the FMA about any material change to the nature of their financial institution service and the General Reporting Condition under regulation 191 of the Financial Markets Conduct Regulations 2014. This means that the FMA should still have sufficient information to inform its supervision of financial institutions until a new single market services licence return is developed.
10. We also consider that the specific reporting requirements proposed for this annual return require detail in some areas that is not proportionate to the purpose of the return or potential risks. The regulatory return process should more closely align to the other annual returns, such as the annual return for FAPs and should more closely align to the standard licence conditions. Some questions may also duplicate questions asked in other annual regulatory returns, e.g. the FAP return, or through the FMA's regular engagement with financial institutions.
11. While regulatory returns are an appropriate place to request information that is founded in the scope of the legislation, there are questions proposed that are beyond the scope of the legislative and licence requirements. Annual returns should be simple and focus on *material* changes to information previously provided (with a threshold for materiality).
12. The proposed questions cover a broad range of aspects of a financial institution's business, and, in some instances, it is unclear what the purpose behind the question is and how the FMA will use the information. Some questions appear to request data where further information and context would be required for the data to be meaningful to the FMA. We query whether a regulatory return is the appropriate place to seek this type of information,

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<sup>2</sup>Financial Markets (Conduct of Institutions) Amendment Act 2022

<sup>3</sup> [Financial services reforms: policy decisions \(mbie.govt.nz\)](https://www.mbie.govt.nz/financial-services-reforms-policy-decisions), para 11

particularly as we expect that the majority of financial institutions will already have regular engagement with the FMA.

13. Finally, we note annual returns are not the appropriate method for engagement about all topics. For example, if there is a remediation issue at play, regulated entities should and do engage with the FMA on that separately.
14. We answer the consultation questions below.

**Question 1: Do you believe the requested information is appropriate and sufficiently well defined? Is there any information we shouldn't be asking for, or any clarifications we should make? Please give your reasons for this.**

15. Notwithstanding our comments above that the introduction of the annual return should be delayed beyond year one, we have the following comments on the questions in the draft annual return.
16. The annual return should be focused on material changes to the financial institutions business. Each section should ask at the outset whether any material changes have occurred during the year. If yes, then financial institutions should be required to provide further information for that particular section.
17. **Fair Conduct Programme:** Question 3b refers to “the systemic identification of deficiencies in the effectiveness of the programme”. We note that “deficiencies” is not defined in the legislation or the annual return and this could be interpreted inconsistently by different financial institutions in the absence of any materiality threshold. Further, the question refers to “systemic identification of deficiencies”, but the accompanying guidance refers both to that and to “you identified systematic deficiencies”, which are different things. The reference to “systematic deficiencies” implies that the FMA is interested only in deficiencies that meet a certain level of materiality. This should be clarified.
18. **Associated Products:** Obtaining the detailed breakdown of associated products (outlined on page 7 of the proposed return) on an annual basis is unnecessarily onerous. The FMA's interest in this is presumably to determine whether there has been a meaningful change in the financial institution's activities and so question 4a should be focused on whether there has been a material change to the “associated products” provided by the financial institution since the licence application or previous return.
19. Questions 4a and 4b are similar to questions asked in the FAP regulatory return. Going forward, these types of questions should be consolidated into one return.
20. **Distribution Methods:** Question 6a is also similar to a question in the FAP return. When a single market service licence annual return is developed, it would be good for these questions to be consolidated between product distribution methods and delivery of financial advice.
21. Questions 6c and 6d ask about “deficiencies” in the financial institution's distribution methods. As noted above in relation to question 3b, “deficiencies” is not further defined in the annual return, and this could be interpreted inconsistently by different financial institutions. Guidance should be provided on the materiality of a deficiency which the FMA would expect a financial institution to report.
22. **Complaints:** We again note the similarity and potential duplication between questions 9(a)-(f) and the questions about complaints in the FAP return.
23. Question 9d asks about timeframes for resolving complaints. We note that there are a range of factors which impact the time taken to resolve a complaint, such as the complexity of the

complaint or how quickly customers respond to contact. The questions asked may not elicit a clear picture of whether complaints are being managed well by the financial institution. In light of these concerns, it may be more sensible focus on complaints about a financial institution were referred to and accepted by the Disputes Resolution Scheme.

24. Question 9g asks which three associated products provided by the financial institution to consumers has had the most complaints related to them during the return period. It is unclear why the FMA asks this question. We do not consider that the responses will provide particularly valuable insights. For example, the most complaints generally come from the products with the most policyholders which is unlikely to provide any insights.
25. **Remediations:** We do not consider that an annual return is an appropriate method to engage with financial institutions on remediations and this section should be removed. If it is included, then we consider that it would be amended as per our comments below.
26. The questions set out in section 10 of the annual return relate to “issues requiring remediation”. The guidance that accompanies question 10 provides:

*“By ‘remediation’ we mean remedying something that has been found to be defective or not working as intended in relation to your financial institution licence. This may involve the stopping and/or reversal of harm. It may also include refunding affected consumers.*

*The answers provided should represent any remediations relevant to your FI service, including those you may have already notified us of during the return period.*

*By ‘issue’ we mean a complaint or concern, raised by a consumer, another party or you, that you investigate. This could include issues identified by, or within, your own systems, processes, policies and controls”.*
27. We consider the questions in relation to remediations should be focused on material remediations with material customer financial impact which are considered breaches of the Financial Markets Conduct Act 2013. The definitions of “issue” and “remediation” are too broad and should focus on areas where there is actual consumer harm. The broad definitions could capture a very wide range of issues depending on how the financial institution interprets “not working as intended” and therefore the data becomes meaningless. This could be interpreted to include a scenario where a single customer receives a more favourable outcome due to a one-off mistake by an employee. In this scenario, there is no customer harm, and our members have advised they would generally write this off, then look for opportunities for process improvements. Reporting the remedying of “something not working as intended” is excessive if it includes scenarios impacting a low number of customers or if there is no detriment.
28. Small scale customer remediation activity should not be reportable as the compliance cost of reporting (including the internal systems, processes and checks required to identify and verify what is a “remediation” under the existing definition) would be significant and is entirely disproportionate to any potential customer harm. Compiling this data may present challenges for firms, as aligning practices with this broad definition of “remediation” would require substantial time for planning and implementation, and ongoing cost which may ultimately be met by consumers.
29. The FMA should also clarify the materiality of the issues that should be reported. One option could be a requirement to report remediations which had a customer and/or financial impact over a certain defined threshold. It is important that terms are clearly defined to ensure that reporting is consistent across financial institutions.

30. Question 10d also asks about timeframes. Some remediations can be extremely complex and, because of this complexity, take extended periods of time to resolve. This question should be removed.
31. **Employees and agents:** Question 11 asks if the financial institution is adequately resourced. It is unclear why the FMA is asking this question or what information it expects to solicit from doing so. Financial institutions are unlikely to respond 'No' to this question.
32. Question 12 appears to seek confirmation about whether a financial institution is meeting the CoFI training requirements, however providing a response as a percentage of total employees may not be a good indicator of this given the legislative requirements in section 446(1)(e)-(f) are more nuanced than this. This question should be amended to ask financial institutions to confirm they are providing training in accordance with their CoFI requirements. We also note that Cabinet has decided to adjust the requirements relating to training, supervising and monitoring employees when the CoFI legislation is amended.<sup>4</sup>
33. **Outsourcing:** The annual return does not provide a clear definition of "outsourcing". Guidance should be provided to clarify what is material. Without a clear definition of outsourcing, including a materiality threshold, the annual return may inadvertently capture a very wide range of service providers which have limited if any impact on consumer outcomes. The FMA should also consider if this information could be provided on an exceptions basis i.e. financial institutions should only be required to provide information if this has changed since the licence application or the last return.
34. **Business continuity:** Question 14d uses the terms "Cyber incident", "Technology incident" and "Infrastructure". These terms should be defined to provide more clarity. We note the overlap of this reporting requirement with financial institutions' obligations to report "any event that materially impacts the operational resilience of [a financial institution's] critical technology systems" to the FMA under Standard Condition 6 and to provide cyber incident reporting to the Reserve Bank.
35. Again, we note the similarity and potential duplication between the business continuity questions and those contained in the FAP annual return.
36. **Operational resilience of technology systems (systems migration):** Question 15a and 15b are the same as those set out in the FAP annual return.
37. Question 15e asks about system migration. Without further context on the size, scale or impact of the system migration, we question the value of this information for the FMA. We would like to understand how the FMA intends to use this information. We note that system migrations are part of digitisation and automation which usually improves customer outcomes. The FMA should consider adding further guidance so that only material system migrations should be reported. Further clarity is required about the optional response "Started planning for a system migration". It is possible planning could begin for a system migration which then does not proceed. Reporting on this seems unnecessary.
38. **Record keeping (customer contact details):** Question 17 asks how a financial institution ensures the contact information it has on file for consumers is kept up to date. This requirement to report on methods for ensuring contact details for customers are kept up to date appears to create a positive obligation on financial institutions which does not currently exist and is a stretch to the concept of "Record Keeping" provided for in the licence conditions. It is unclear why this is being requested as it is not based on a legislative obligation, and it is unclear how the FMA will use this information. ICNZ members have

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<sup>4</sup> [Financial services reforms: policy decisions \(mbie.govt.nz\)](https://www.mbie.govt.nz/policy-decisions), para 56.2.

processes for following up with customers when contact or payment is not received as expected.

**Question 2: Is there any other information we should ask for? If so, please state what, and how it would improve the returns.**

39. No.

**Question 3: Does providing the suggested information involve any system changes or major costs for your organisation? If so, please outline these costs or changes.**

40. Yes. These are extensive reporting requirements, and our members will be required to implement additional processes or systems to capture the required data. The annual returns should focus on the standard licence condition requirements and what is required to identify any material changes to the nature, size and complexity of a financial institution's business.

**Question 4: We want the market to benefit from this information too. As such, are there any aggregate reports that could be generated from the data that would be useful for the industry (while maintaining the confidentiality of commercially sensitive data)?**

41. We have not identified topics for any aggregate reports.

**Question 5: Do you have any concerns about the proposed three-month timeframe for submitting regulatory returns at the end of the return period? If so, please specify.**

42. Yes. It would be beneficial to have additional time to prepare the first return. If a return is required in the first year (which we do not support), ICNZ recommends that members should have 6 months to prepare the return, i.e. if the first reporting period ends on 30 June 2026, financial institutions should have until 31 December 2026 to prepare the return.

**Question 6: Do you have any concerns about regarding capturing information for the first reporting period commencing 1 July 2025 if the final question set is published in March 2025. If so, please specify.**

43. Yes. It would be preferable to have 6 months to establish reporting processes to capture the required data, i.e. if a return is required in the first year (which we do not support), the first reporting period should commence on 1 October 2025.

**Question 7: Do you prefer the proposed alternative reporting period of 9 months (which would start 1 October 2025) for the first regulatory return and subsequent proposed annual frequency? If not, what is your preferred reporting period, and why?**

44. Yes. Should a return in the first year be progressed, ICNZ members would prefer the proposed 9-month period for the first return (i.e. 1 October 2025 to 30 June 2026) to allow time to establish reporting processes to capture the required data.

**Question 8: Do you have any concerns about regulatory burden in relation to preparing and completing the FI regulatory returns (e.g. completing multiple returns if you hold more than one licence issued by the FMA)?**

45. Yes. It is duplicative to expect financial institutions with more than one licence to complete multiple returns especially as it is proposed that returns may be consolidated in the future.

46. Regulatory returns are not an appropriate method for requesting information beyond the scope of the legislative and licensing requirements. The time and resources required to produce this level of detailed information on an annual basis is extensive and likely to be a manual and resource-intensive process.

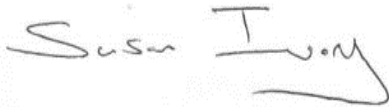
47. A requirement to report on remediations already reported to the FMA would require unnecessary duplication in reporting. This section should be removed. If it is progressed, the definitions of the terms “issue” and “remediation” are too broad. Depending on the FMA’s expectations, this could be particularly onerous, result in an unintended reporting burden and offer limited insights to the FMA. The FMA should provide clarification in relation to the materiality of the issues that should be reported. These terms should be amended to focus on areas where there is actual consumer harm to multiple customers, particularly as the return seeks information regarding timeframes.

**Question 9: Do you have any other comments on the proposed regulatory return?**

48. It is important that the FMA is able to work constructively with entities, particularly in the early years of the CoFI reporting regime. This should include making recommendations on improvement actions where weaknesses are identified through the annual return or other engagement, rather than relying on enforcement action to pursue issues where problems have arisen.

49. Please contact me if you require any further information or have any questions about this submission.

Your sincerely

A handwritten signature in black ink that reads "Susan Ivory". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Susan Ivory  
**Regulatory Affairs Manager**