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4 July 2025

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

ICNZ'S SUBMISSION ON THE FINANCIAL MARKETS (CONDUCT OF INSTITUTIONS) AMENDMENT (DUTY TO PROVIDE FINANCIAL SERVICES) AMENDMENT BILL

Thank you for the opportunity to provide a submission on the Financial Markets (Conduct of Institutions) Amendment (Duty to Provide Financial Services) Amendment Bill).

Te Kāhui Inihua o Aotearoa | The Insurance Council of New Zealand (**ICNZ**) represents general insurers. Our members accept the risks of over NZ$2 trillion of New Zealand's assets and liabilities. ICNZ's members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property insurance, and directors and officers insurance).

ICNZ is strongly opposed to the Bill progressing. The Bill as currently drafted would capture insurers. We do not believe there is a policy problem in relation to insurance that requires addressing. The Bill would create uncertainty, complexity and additional costs that would make it harder to offer insurance in New Zealand, with potentially unintended consequences for customers.

We consider that new legislation should only be introduced when there is evidence of a clear policy problem that requires government intervention and the costs of the intervention do not outweigh its benefits.

As set out in the Legislation Design and Advisory Committee's Legislation Guidelines (page 9):

> "Legislation should be fit for purpose—it should be used only when necessary, but when used it should be effective for that purpose (including by minimising unintended costs). In order to achieve this, that purpose needs to be clearly defined early and robustly tested..."

The policy objective of the Bill is to address the issue of the possible non-provision of banking services but as currently drafted would apply to all "financial institutions"[1] including licensed insurers.

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[1]The Bill would amend Subpart 6A of Part 6 of the Financial Markets Conduct Act 2013 (**FMCA**). Subpart 6A sets out what is known as the Conduct of Financial Institutions (**CoFI**) regime. In the

The Bill's General Policy Statement set out in the Explanatory Note states:

> "This amendment is intended to prevent registered banks "debanking" or withdrawing banking services from New Zealanders, body corporates or companies, whose political views or outlook may not align with the sensibilities of that institution.
>
> This includes the withdrawal or refusal to provide banking facilities and services from businesses on murky 'environmental, social or governance' moralising. ..."

No evidence or discussion about any issue relating to insurers or other financial institutions has been provided. If the policy concern is as described in the Explanatory Note, then the scope of the Bill should be narrowed to reflect this.

The effect of section 446JA(1)(a) of the Bill would be to prohibit a financial institution from withdrawing or refusing to provide financial services to a consumer for *any* reason unless a "valid and verifiable commercial reason" applies (i.e. the decision to withdraw or refuse to provide a financial service would not need to be linked to the reasons set out in s446JA(1)(b)((i)–(iv)).

Section 446JA(1)(b) prohibits a financial institution from treating any consumer less favourably in the provision of financial services than would otherwise be the case for any of the reasons set out in subparagraphs (i)–(iv) unless a valid and verifiable commercial reason applies.

Issues for insurance

The Bill presents challenges to insurers by placing potential restrictions on risk selection and underwriting practices. Insurers require autonomy of risk selection to effectively and sustainably manage their portfolios and aggregate exposure in accordance with risk appetite, underwriting strategy, and reinsurance treaties and contracts.

Obliging insurers to provide insurance cover to specific customers restricts this autonomy and carries the risk of unintended impacts for customers at large. Making it unlawful to decline insurance cover (potentially for any reason) could force insurers to take on risks which they may otherwise avoid.

As a matter of context, insurers all have different areas of expertise, risk appetites, and capacities, and so have varying product offerings.

Individual insurers have a range of reasons for insuring or not insuring a customer, which include whether the risk is outside an insurer's areas of business or expertise (i.e. the insurer specialises in certain types of insurance such as motor insurance or liability insurance), the specific risk is outside of an insurer's risk appetite (e.g. high natural hazard risk at a specific location), the customer's poor claims history, suspicion of fraudulent behaviour or misrepresentation, non-payment of premium, or exiting a customer for threatening behaviour towards staff.

Because risks transferred to an insurer through an insurance contract are shared across an insurer's customer base that make up the relevant premium pool, a specific customer's risk

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FMCA a "financial institution" is defined mean "a registered bank, a licensed insurer or a licensed [Non-bank deposit taker]" (s446E of the FMCA).

cannot practically be isolated. Therefore, other customers may suffer unintended consequences on pricing, insurance or reinsurance availability, or capital requirements to the insurer.

Some insurers do not currently offer cover to certain industries for a range of commercial reasons. These can include industries or customers and their specific risks that an insurer may consider represent excessive risk. The provisions of the Bill do not provide clarity on how these decisions would be assessed under 446JA(2). In the scenario that insurers were forced to provide cover to these customers, they would present an increase in risk to the pool.

Increased risk can also challenge the attractiveness of the insurance market. The local market is already challenging due to its small size, high natural hazard risk and high perils volatility. Care needs to be taken that any new interventions do not make it harder for insurers to secure the capital and reinsurance they need to provide full insurance to New Zealand households and businesses.

The concept of "must not treat any consumer less favourably in the provision of financial services than would otherwise be the case for any of the following reasons ..." explicitly cuts across insurance underwriting and pricing. Insurers charge a premium that reflects the risk being transferred and this specifically considers factors relevant to the risk, which can include matters related to the nature of the business. For example, for the purposes of liability insurance the risk profile of businesses operating a restaurant, a farm, a quarry or an engineering firm are completely different and this is reflected in the way this insurance product is underwritten and priced. Imposing barriers on insurers' ability to operate effectively undermines the efficient delivery of insurance services in New Zealand.

Provisions of the Bill

The Bill as drafted is generally unworkable and the application of many of the key concepts is highly uncertain.

Section 446JA(1)(b)(ii)

Section 446JA(1)(b)(ii), which refers to "environmental, social or governance consideration" is particularly problematic for insurers because considerations relevant to environmental, governance and social issues may be directly relevant to providing and pricing certain types of insurance. For example, insurers explicitly consider "governance" issues in underwriting where these are relevant to the insurance offered (e.g. liability policies where the governance of an entity is directly relevant to the risks being underwritten).

Insurers also explicitly consider "environmental" issues in underwriting where these are relevant to the insurance offered (e.g. environmental risks of oil spills in relation to marine insurance, or Resource Management Act compliance history or emissions from a plant in relation to liability insurance). The scope of what might be considered an "environmental consideration" under the Bill is uncertain. It is worth noting that insurers also explicitly consider the probability of a natural hazards impacting a location in underwriting property insurance. Insurers also need to be aware of for example accumulation risks associated with geographical concentration which can affect an insurer's ability to take on a new customer.

Limiting insurers' ability to consider relevant matters, as the Bill purports to do, or imposing additional costs or uncertainty for doing so, could therefore adversely impact the provision of

insurance in New Zealand. As has been shown overseas, regulatory interventions that seek to interfere with how insurers underwrite and price risks can at worst result in discouraging insurers from offering that type of insurance at all.

Section 446JA(1)(b)(iv)

Section 446JA(1)(b)(iv) is also problematic because insurers explicitly consider "the industry within which the consumer operates" because products can be relevant to specific sectors and because insurers specialise in certain sectors (e.g. when providing property insurance the nature of a facility and the activity undertaken within it is central to the risk being transferred and to whether an insurer offers insurance and on what terms).

Section 446JA(2)(a)

The Bill's uncertainty as to what is a "valid and verifiable commercial reason", undermines insurers ability to underwrite and price appropriately and therefore risks impacting the provision of insurance in New Zealand, by increasing the costs, complexity and risks to insurers.

It is unclear what the new test of "valid and verifiable commercial reason" means in practice. It is unknown what additional element is introduced by referring to a "valid" commercial reason. It is also unclear how "verifiable" should be interpreted. Does this mean verifiable in terms of a financial institution's internal practices and record keeping or does this mean verifiable in the sense that the financial institution can demonstrate that refusing to provide insurance "makes sense" commercially? The new test would therefore be likely to lead to litigation, creating further costs and uncertainty. If the Bill were to set a threshold that challenged the commercial basis of these exclusions, it would present a material risk to insurers and accessibility of cover as outlined above.

Additional comments

ICNZ's view is that insurers' decisions not to provide insurance or to provide insurance on certain terms are "commercial". The Bill would introduce an increased possibility that a regulator, or customer, may seek to challenge an insurer's commercial decisions after the event. This would add an additional compliance and record-keeping burden on insurers who would need to be prepared to justify their commercial decisions to regulators and other parties who may not be well-placed to assess the commercial rationale for an insurer's business decisions. This would in turn create a whole new layer of process, cost, complexity and risk. Creating a compliance framework for the Bill's provisions would create new costs, which may ultimately be passed on to customers and could discourage insurers from operating in some markets.

Therefore, the Bill is not required but would nonetheless create a new and unnecessary compliance burden to no benefit of New Zealand consumers and businesses. This is contrary to the Financial Markets Authority's priority of removing unnecessary compliance burden and regulatory inefficiencies as set out in their first Financial Conduct Report released in June 2025.

Finally, we note that the drafting of the Bill is confusing and introduces concepts that are not defined or used elsewhere in the FMCA (e.g. the term "wholesale consumer"). If the Bill were to progress (which we do not support), significant redrafting would be required to make it workable from a technical perspective.

Thank you for the opportunity to make this submission. ICNZ requests to appear before the Select Committee to speak to the points raised.

Ngā mihi,

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