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Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment

Dear Sir/Madam,

ICNZ submission on FMA funding and levies

Thank you for the opportunity to submit on the Ministry of Business, Innovation and Employment (**MBIE**) and Financial Markets Authority's (**FMA**'s) discussion document entitled '2021 Review of the Financial Markets Authority Funding and Levy' dated 5 October 2021 (**discussion document**).

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. We are happy to meet and discuss any of the matters raised in this submission further with you.

This submission has two parts:

- overarching comments, and
- answers to questions in the discussion document.

1. Overarching comments

A. It is premature to consider the FMA's long-term funding and levy requirements at this time

In principle, ICNZ supports appropriate increases to FMA's funding to enable it to carry out its statutory functions in light of its expanded remit. We also acknowledge some funding is necessary to support and progress the Conduct of Financial Institution (**CoFI**), Insurance Contract Law Review (**ICL**) and Climate-related Financial Disclosure (**CRD**) regimes in the short-term (i.e. for the 2022/23 year). However, due to the significant amount of uncertainty about requirements under these regimes, we believe that it is premature to assess longer-term FMA funding and levies needs at this time.

These matters should be deferred until there is greater certainty around what additional regulatory activity the FMA needs to undertake. This uncertainty is acknowledged in the discussion document and in the Deloitte document entitled 'Review of FMA Funding Scenarios' dated 13 August 2021 (**Deloitte report**) provided in support of the proposals set out in the consultation.[1]

In our view, the most appropriate time to assess and consult on these long-term funding needs would be once the relevant legislative and regulatory requirements are sufficiently progressed, noting that at this stage, various obligations and responsibilities are still to be determined and/or refined. In the case of CoFI, this includes significant changes to the overarching Bill (via Supplementary Order Paper), in the case of the ICL, the development of the relevant Bill, and in all respects, the development of the underlying detailed regulations or standard in the case of the CRD regime.

If all FMA funding and levies are set at this early stage it is inevitable that they will need to be re-assessed later. This would be inefficient and result in unnecessary complexity, uncertainty and cost. This approach is more appropriate than the approach proposed in the discussion document and the Deloitte report to address this uncertainty, namely adopting the largest funding option (Option 1), on the basis that this provides 'more resilience', 'greater capacity' and 'flexibility' should requirements change.[2] Deloitte acknowledge the challenges of this approach, recording in their report that, with hindsight, the greater capacity may provide relatively little marginal value.[3] Such a general and flexible approach to assessing long-term funding needs and levies is particularly concerning given the serious consequences of getting these matters wrong, including from an availability and affordability of insurance perspective (as expanded under heading C. ii. Below).

We also note that no review appears to have been completed on the most recent round of FMA levy increases (including their efficacy, any gaps and impacts) or analysis of how the increase in funding for the Financial Advice regime has been applied and any issues that have arisen in that respect. Ideally this work should be completed before progressing long-term funding proposals any further, as these insights will assist shape and inform the best proposals to progress, reflecting upon the existing capability and resourcing that can be leveraged.

B. Deferral would enable levies to be considered alongside CoFI licensing fees

Another advantage of deferring the consideration of long-term funding requirements is that this would enable the FMA's funding and levy requirements to be considered alongside CoFI licensing fees and the development of the CoFI licensing regime. These fees are another element of cost recovery that regard should be had to in assessing how the FMA's funding needs are met. Additionally, to ensure efficiency and minimise complexity, this would afford the opportunity to look for areas where categorisations for levy purposes (e.g. by industry, class or size) can be aligned with categorisations for licensing purposes.

C. If there is no deferral, we would favour Option 2 rather than Option 1

If our recommendation to defer the consideration of long-term funding requirements is not accepted, without resiling from that position, our preference, across all three regimes, would be for Option 2 to be adopted rather than Option 1. This reflects that these regimes are new for both the regulated population and regulator, capability needs to be developed in these respects (which will take time), and that an incremental approach to implementation is most appropriate in these circumstances. The fact that these regimes are yet to be finalised exacerbates our concerns. Additionally, we do not

[1] See, for example, comments in paragraphs 137 (regarding ICL) and 162, 177 and 179 (regarding CRD) of the discussion document. Also see comments in the Deloitte Report on pages 17 and 18 (regarding CoFI), 24 (regarding ICLR) and 32 (regarding CFD).

[2] See comments on page 23 and in paragraphs 94, 149 and 176 of the discussion document and pages 6, 17, 24 and 32 of the Deloitte report.

[3] See comments on pages 24 and 32.

consider that the differences in what the FMA and MBIE expects to achieve between Option 1 and Option 2 would be of sufficient value to justify the additional funding required.

Further points in support of this position are set out directly below. In the next section of this part (under heading D.) we outline other matters we suggest be considered to further reduce the regulatory burden and cost associated with the proposals.

i. There is a need for alignment between the funding proposals and what is realistic

Most costs under the proposals are for additional specialist personnel and the operating costs associated with them, with a significantly higher headcount budgeted for under Option 1 than Option 2 (for example, under the CoFI regime, ultimately 102 rather than 67 additional staff), which is highly unrealistic in our view. In fact, even the additional headcount proposed under Option 2 seems problematic and would likely need to be reduced. Recruitment challenges are acknowledged in the Deloitte report in light of the tight and highly competitive labour market, with the skillsets required by the FMA also noted to be in demand within the financial services industry.[4] These constraints are exacerbated by immigration restrictions and public sector remuneration restraints, with the specific skillsets required for the CRD regime being particularly challenging to recruit for, these roles being new and scarce in the market globally.[5] These recruitment challenges are also acknowledged in the discussion document.[6]

The intended approach to address this issue in the proposals appears to be to aim for the high number at the outset but adjust and reduce it if it ends up not tracking to plan.[7] In our view, setting a realistic target at the outset would be much more efficient, certain and preferable.

As well as moderating the scale of financial impact on the regulated population from increased levies, and consequential impacts (expanded upon more below), a smaller additional headcount would put the FMA in a much better position to manage the organisational growth (e.g. induction, training, building team culture), avoiding the substantial disruption and inefficiency associated with much larger additional staff numbers.

ii. Consideration needs to be given to the significant regulatory burden and costs involved

While both Option 1 and Option 2 would have a significant cost and regulatory burden impact for the insurance sector, if Option 1 was selected instead of Option 2, these direct and indirect impacts would be considerably more substantial. For example, over the fourth year these increased levies are rolled out under Option 1, for a 'retail' insurer:

- with $100m to $250m Annual GWP, there would be a 154% increase in levies
- with $500m+ to $1b Annual GWP, there would be a 134% increase in levies, and
- with $1b+ Annual GWP, there would be a 150% increase in levies.

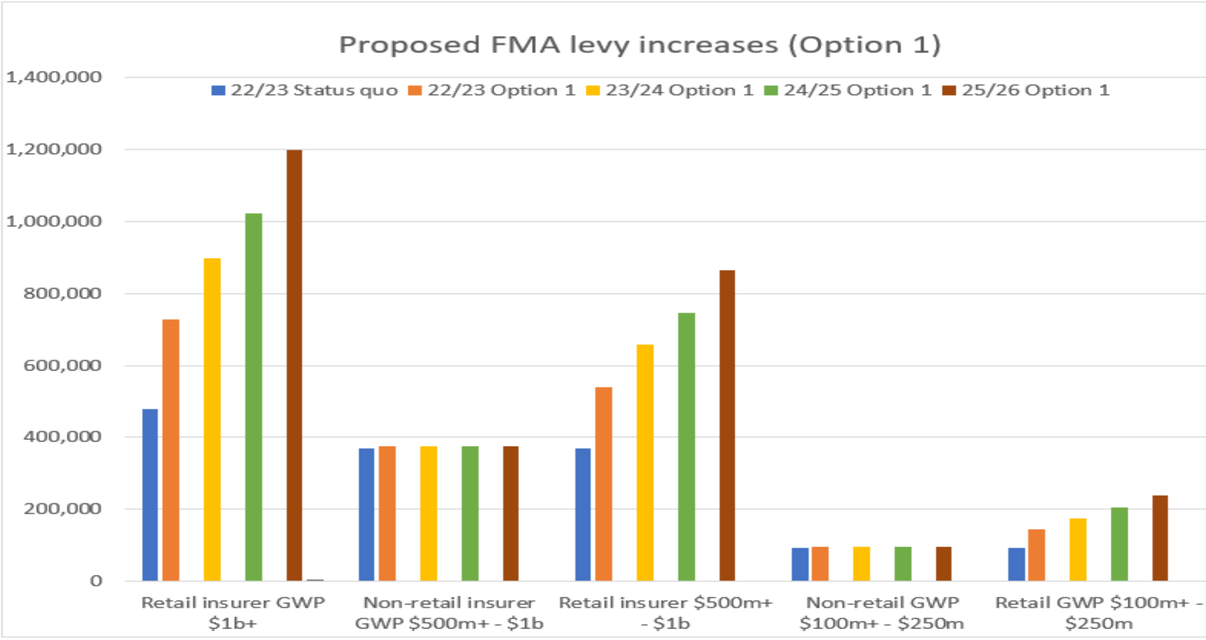
An outline of the how the proposals would impact insurers of different sizes and based upon whether they are 'retail' / 'non-retail' is set out in appendix 1 of this submission.

[4] See comments on pages 17, 18, 19, 32 and 33.

[5] Page 32 and 33.

[6] Paragraphs 90, 91, 98, 109, 148, 163, 175 and 190.

[7] See comments on page 19 of the Deloitte report.



A spreadsheet and additional graphs mapping previous and proposed increases to FMA levies under both options are set out in appendices to this submission. Previous increases to FMA levies have already resulted in significant increases over the three years they have been phased in.[8] New fees are also payable under the new Financial Advice regime.[9] As set out in appendix 1, some insurers would see an increase of at least 500% in levy between the 2019/20 and 2025/26 years if Option 1 was selected, with in one case, increases amounting to 698% over this period.

Stepping back, we strongly believe that there should be an emphasis on ensuring any increases in direct and indirect regulatory costs are reasonable, moderate and predictable. Further levy increases also need to be considered against the wider context of the extraordinary regulatory change programme that the general insurance industry is confronted with over the next few years. Focussing only on the most significant matters, this includes:

Matter	Timing
Consultation, implementation and ongoing costs associated with requirements under the CoFI, ICL and CRD regimes	Various dates, some of which are yet to be determined
Consultation, implementation and any ongoing costs associated with the proposed new EQC Act	Expected to be introduced into Parliament in early 2022
Applying and meeting full licensing requirements under the Financial Advice regime	As applicable, i.e. by 30 June 2022 for Class 3
Implementation costs associated with the increase of the EQC cap from $150,000 to $300,000 and changes to the EQC levy rate	From 1 October 2022
Implementation of the new IFRS 17 Account Standard	Applies to reporting periods beginning 1 January 2023
Consultation, then implementation and ongoing costs associated with proposals and outcomes regarding the review of insurer interim then final solvency standards	Interim standard expected to apply from 1 January 2023, with final standard coming later
Implementation and ongoing costs associated with changes to the Fire and Emergency New Zealand (**FENZ**) insurance levy collection regime[10]	Legislation expected to be enacted in March 2023

[8] See paragraphs 10 to 12 of the Cabinet paper https://www.mbie.govt.nz/dmsdocument/11383-policy-decisions-on-the-financial-markets-authoritys-levy-proposal-proactiverelease-pdf.

[9] https://www.fma.govt.nz/compliance/fees-and-levies/#fees.

[10] If one of the proposals progresses (shifting collecting levy from the peril of fire to a broad number of perils/material damage), this is expected to cost the general insurance industry at least $50m.

Matter	Timing
Consultation then implementation and ongoing costs associated with the review of insurance prudential supervision legislation (**IPSA**)	Legislative process expected to be completed over 2023 and 2024
Consultation on bringing general insurance within the Anti-Money Laundering and Counter-Terrorism regime to a certain extent, and likely significant costs should this progress	To be confirmed
Consultation and any implementation and ongoing costs associated with the development and rollout of a Consumer Data Right	

Each of these matters constitute significant, resource intensive and costly programmes of work that divert insurers' resources away from investing in improving their systems and processes, or undertaking additional product innovation, to improve customer outcomes and efficiencies.

We note that if Option 1 was chosen, the regulatory burden associated with the CoFI, ICL and CRD regimes would also increase, to reflect the additional resources required internally within financial institutions to manage more frequent and detailed engagement and information requests from a proactive regulator that is also intending to undertake onsite monitoring. To resource this work, financial institutions would be competing with the FMA in the labour market, exacerbating the challenges with recruitment referred to above.

<u>iii. Consideration of consequential impacts on insurance availability and affordability</u>

The increases to levies proposed, together with the impact of the other regulatory changes referred to above, will ultimately be reflected as increases in the premium customers pay for their insurance. The larger the levy increase, the more significant potential impact on premiums. This conflicts with the Government's recent signalling that insurance availability and affordability is an area of focus,[11] with higher prices potentially leading to a lower uptake in insurance, an increase in the protection gap and potentially exposing the New Zealand economy to greater risk.

Based upon the discussion document and the Deloitte report, there appears to be no consideration of the fact these increased levies would form part of the overall operating costs of general insurers and accordingly could ultimately be passed onto customers resulting in poorer outcomes for them. It seems to be assumed that insurers will simply bear these costs and not pass them on, which is unlikely. The detrimental impact significantly increased FMA engagement and information requests may have on resourcing for customer service purposes, and/or insurers' increased resourcing requirements to respond (which again may be passed onto customers in the form of increased premiums), also appears not to have been considered.

The additional regulatory burden of these changes also raise barriers of entry for potential market entrants and may discourage existing participants from continuing to participate in the market. Such issues may be particularly challenging for small insurers where the burden of the levy increases may be considered disproportionally large. This would be undesirable as competition in the market and customer choice options would be reduced. It is also important that the insurance industry remains attractive from an international risk capital perspective because this is critical to ensuring a dynamic insurance market exists in New Zealand.

[11] See the Minister of Finance's recent Letter of Expectations to the RBNZ in this respect, https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Letters%20of%20expectation/Letter-of-Expectations-2021.pdf?revision=4e0412b3-ed17-42f7-ac85-2b55d311c652, page 3.

D. We support other changes to further reduce the regulatory burden of the levy increases

Looking beyond the two options presented, we consider there is merit in revisiting and appropriately reducing the regulatory burden and cost imposed on insurers and customers associated with the proposed FMA levy increases. This includes consideration of the following:

i. Considering the proportionality of the proposed headcount and levy increases

We query whether the additional headcount and increases proposed for CoFI would be proportional and equivalent to its resourcing in other areas, noting that:

- this is a substantial 39% increase to the FMA's current 260~ headcount amounting to an effective a 1:1 ratio of supervision (i.e. 102 staff members for an estimated 110 regulated entities), and
- much smaller levies applied to intermediary entities including large brokerages under the companion Financial Advice conduct regime.

ii. Reflecting regimes have distinct phases each with different resourcing requirements

Specifically, rather than headcount needing to increase over time as proposed, in reality it should be expected that the period of high resourcing requirements during the initial setup and embedding stage for each regime (i.e. the 'Identify', 'Set Standards' and 'Permit' pillars), would significantly decline once it is embedded and shifts to a business as usual operational phase. This transition means staff involved in initial implementation and licensing can be reallocated to other matters/pillars. This is how commercial organisations operate and if the FMA is to be similarly effective we would also expect that work under the 'Assess' and 'Respond' pillars would decrease over time.[12]

iii. Incorporate supervision of the ICL regime with FMA teams that supervise financial products or consolidate resourcing for CoFI and ICL regimes into one workstream

The ICL regime should be able to be supervised by the existing FMA teams that supervise financial products under the Financial Markets Conduct Act 2013 (**FMCA**) where prescriptive disclosure and other requirements need to be complied with and monitored by the FMA.

Alternatively, as there are substantial overlaps between the CoFI and ICL regimes in so far as insurance is concerned, with the FMA's responsibilities having the same key focus (i.e. ensuring good or fair conduct outcomes from consumers), consideration should be given to consolidating CoFI and ICL resourcing. This would similarly allow for a more cost-effective allocation of resources and prevent silos developing and unhelpful and potentially costly duplication and inconsistency in approaches.

iv. Focussing more on guidance, deeper collaboration with regulators and risk-based assessments

Instead of characterising such guidance, collaboration and assessments as extra 'value added' costs justifying the highest cost option (Option 1) as suggested, these matters should be considered as necessary and appropriate investments which make sense whichever option progresses. Doing so will make enforcement action less necessary and more efficient because:

[12] Aligned with this, for example, in the context of CoFI, see comments in paragraph 93 of the discussion document referring to less enforcement in the long-term.

- it will ensure that the regulated population has a much better understanding about what is specifically expected of them (and accordingly be less likely to fall foul of requirements)
- duplication, inconsistencies and inefficiencies between regulators would be avoided or minimised, and
- enforcement action will only be undertaken where it is most appropriate. Such an approach will ultimately save costs for regulators and the regulated population.[13]

<u>v. Clarifying and adjusting what constitutes a 'retail' versus 'non-retail' insurer for levy purposes</u>

The discussion document refers to the terminology 'retail'/'consumer' interchangeably and 'retail' and 'non-retail' are used as labels for insurer levy classification purposes (i.e., Class 3 and 3A). For clarity and consistency, we consider that these labels should be renamed to 'consumer' and 'non-consumer' to match the terminology used in the CoFI regime.

The discussion document also suggests that an insurer that provides any products/services to 'consumers' or elects to otherwise be licensed under the CoFI,[14] will be treated as a 'retail' (consumer) insurer for levy purposes (Class 3A) and accordingly responsible for contributing to the significant costs of the FMA's funding for the CoFI regime.[15] In our view, it is inappropriate for an insurer to have to contribute to these significant costs when consumer business makes up none, or a very small portion, of their overall business. Inequity aside, such an approach may lead to such insurers withdrawing from the consumer market (reducing competition and accordingly customer choice in the market) or electing not to obtain a CoFI license to raise standards even though it is not technically required (e.g. because they only write commercial business) which should be encouraged.

We strongly recommend that the relevant threshold be adjusted so that the Class 3 rather than Class 3A designation applies when an insurer's consumer business makes up only a very small portion of their overall business. Alternatively, consideration should be given to adjusting the Class 3 and Class 3A classification criteria so that the relevant annual gross written premium (**GWP**) relates to the consumer or non-consumer business rather than business overall, with two levies applicable in the event an insurer has both consumer and non-consumer business, with each levy relating to the relevant annual GWP for that business.[16] Adopting either approach would also better align with the objectives of the FMA levy model referred to in the discussion document.[17]

<u>vi. Other areas where improvements could be made</u>

We note that in developing proposals, little consideration appears to have been given to the guidance the FMA has already provided or that the FMA has indicated that it will be issuing a revised guide to conduct for consultation in early 2022. This guidance is the foundation of the FMA's conduct expectations and, given the indicative timing, the FMA will use its current resourcing to complete this work.

Little consideration also appears to have been given to the existing capability and efforts that financial institutions which will be regulated under CoFI have made since 2019, to improve their conduct and culture, and reduce risk in these respects. This includes substantial amounts that, for example, general

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[13] This appears to be partially acknowledged in paragraph 93 of the discussion document.

[14] For example, where they only provide commercial, reinsurance or captive insurance services (class 3 – 'non-retail' insurers) but nonetheless decide to obtain a CoFI license to raise their own standards.

[15] See paragraphs 42, 45, 116, 229 and 231. See the allocation of costs as set out in the graph above and the appendices.

[16] For example, if an insurer has overall annual GWP of $500m, but this is made 50% consumer and non-consumer, they would fall under both Class 3 and Class 3A under the $100-$250m tier for each.

[17] See paragraph 215. In particular: (1) consistency (or proportionality) between the levy costs and benefits for market participants; (2) avoiding discouraging entry into, or continuing participation, in the market; and (3) undue burden on smaller market participants.

insurers have expended, and continue to spend, to this end. It should also be noted that those parts of the regulated population that have their own industry codes (e.g., the ICNZ's Fair Insurance Code, that set service standards and require self-reporting of complaints and process for remediating issues) and that are already regulated in other respects (e.g. under the Financial Advice regime and/or by the RBNZ from a prudential perspective) pose less risk.

E. Other comments

Below we summarise our other key feedback on these proposals.

i. CoFI implementation timeframes

Ideally the end of the proposed 18-month licensing window should be extended to match the length of the licensing window for full licences under the Financial Advice regime (i.e. two years, ending July 2025). Provided the relevant bill and regulations are finalised sufficiently in advance, and the FMA issues the relevant guidance, well in advance of this date, this period should be workable. We are concerned that a shorter licensing window (i.e. 18-months) would be insufficient for industry, and inefficient in terms of requiring more FMA resource over a shorter timeframe to consider applications. We would not support the phasing in of specific sectors separately (e.g. banks, non-bank deposit takers, insurers) if this would result in the full window for a financial institution to apply for a licence being cut short. We also suspect having a single licensing window may be simpler and fairer.

ii. Crown contribution

We consider that the Crown should contribute its share to any increase in the FMA's funding. This reflects that these regimes are intended to benefit New Zealand as a whole, the public good aspects of having a well-regulated market and supports the Government's focus on ensuring insurance remains available and affordable. This contribution should be at least sufficient to maintain the current proportion of Crown contribution (17%) or increased to what it was previously (e.g., 25%), noting that the proportion of contribution has repeatedly been eroded over recent years, with the Government now adding mandates (i.e., CRD) which are for wider society benefit and not specific to insurance or even the financial sector.

iii. Deloitte report

There is an absence of evidence or description of analysis provided to substantiate Deloitte's findings that, compared with Option 2, Option 1:

- provides a greater likelihood that the legislative intent can be achieved
- is warranted considering the potential value to the public and regulated population, and
- may reduce costs to comply for some in the regulated population.[18]

Based on the materials made available, their enquiries appear to have been limited to working with MBIE and the FMA and there has been no engagement with the regulated population to understand the direct impacts of the proposed levies and consequential impacts on their customers. We note that similar remarks are made in the discussion document without any evidence or analysis provided to support them.[19] In more general terms, given the industry was not involved in determining either the approach to implementing and overseeing the new regimes, it is difficult to comment on whether the proposed activities and headcount levels are appropriate or where the two proposed options sit on a continuum of possibilities.

[18] Pages 6 and 19 of the Deloitte report.

[19] See, for example, comments made in paragraph 113 of the discussion document.

We also note the Deloitte report does not appear to have been peer reviewed.[20]

iv. Approach to setting the FMA's funding

Over recent years a series of funding reviews have undertaken in recognition of the FMA's new functions and/or changing circumstances, the consequence being a significantly larger FMA and associated greater funding requirements. The formulation of options under these funding reviews have generally been pursued as discrete and siloed exercises, with estimated costings for particular capabilities presented based on analysis undertaken internally and/or with the support of external consultants, with no input from the regulated population. While we understand the need for the FMA to be appropriately resourced, and that this may require increases in funding, levies etc., the nature of this process, where funding options are simply presented to the regulated sector and other stakeholders in final form at the end of a process, with an associated bill and levy rates to meet it, is undesirable.

While there is an ability to submit on these consultations, there has been no real opportunity for the regulated population to fully understand the issues and trade-offs involved in developing the options and meaningfully inform and contribute to what they look like. In our view, this is a missed opportunity to both strengthen the options developed and increase buy-in with those who will be ultimately providing funding via levies.

To increase transparency and inform subsequent options and reviews, it would assist to report back on the use of recent funding increases. For example, as above, as inputs into the current consultation, it would have been useful to explain how the significantly increased funding provided from July 2020 has been used, and is expected to be subsequently used over the coming years, and to outline how lessons learned from this feed into the proposals put forward.

Similarly, with respect to the outcomes from this current funding review, we consider that it would be useful for the FMA to report on how it implements whichever option is progressed, including whether the intended activities are able to be undertaken, how any underspends (i.e. levy over collection) are managed, and lessons that could be applied to future funding reviews.

These insights should be fed into future funding reviews. The funding review process could also be enhanced in the future by:

- Outlining in more detail what proposed new FMA capability will do and how this relates to its existing work.
- Seeking input from the regulated population on the FMA capability required and options to meet it.
- Providing more detail in funding reviews on how current capability is being used, connections between workstreams and, as above, how recent increases in funding have been embedded.

Adequate time also needs to be provided for meaningful consultation to occur and we note that our ability to provide feedback on the current proposals has been significantly constrained by the very short consultation window, COVID-19 restrictions in Auckland and as this consultation overlaps with a number of other substantial consultations and school and public holidays.

[20] Page 10 of the Deloitte report and page 33 of the discussion document.

2. Answers to questions

Question	Answers
1. Do you have any feedback on the objectives of the review?	We consider that an additional objective should be added to have regard to ensuring: • The feasibility of options in practical terms, in particular as it relates to additional headcount, the outcomes of previous funding reviews and what is known and any uncertainty. • The regulatory burden and cost imposed on the regulated population, and the negative consequential impacts this may have on their customers, are appropriately managed (including as this relates to the availability and affordability of insurance), noting that additional funding collected but not used would be particularly undesirable. Alternatively, this matter could be built into the existing third objective.
2. Do you have any feedback on the criteria for assessing the funding options?	We support the proposed criteria, save that we consider that a 'regulatory burden and cost' criterion should be added with components to reflect the impacts of these matters on the regulated population and consequential impacts to customers consistent with remarks above. We note that the 'achievability' criterion and 'ability to build and recruit' component are consistent with our suggested additional objective above. As outlined elsewhere in this submission in more detail, we consider that this is one area where more attention needs to be given in assessing the proposals. Please see our comments in the previous section (under heading E. iv. above) outlining how we consider FMA funding reviews should be conducted.
CoFI	
3. Do you agree with the analysis of the FMA funding options for CoFI? Which option do you consider to be most appropriate and why?	*A. Consideration of long-term funding requirements should be deferred* As outlined in the previous section (under heading A.), while we acknowledge that some additional funding is necessary to progress the CoFI regime in the short-term (i.e. for the 2022/23 year), we believe that it is premature to determine long-term funding requirements at this time because so much about the CoFI regime is currently uncertain. We suggest this matter be deferred until more is known, increasing the likelihood that the funding sought will match the capability required. We note that this uncertainty is something specifically acknowledged by Deloitte in their report.[21] Based on the most recent consultations with MBIE and recent dialogue with them, policy decisions are yet to be made regarding the following substantial and/or structural matters under the CoFI regime:[22] • Additional and further detail on fair conduct programme requirements. • The scope of the incentive prohibition (including which specific incentive arrangements will be captured and whether this prohibition should be prescriptive or more principles-based). • Requirements to publish information about fair conduct programmes. • Whether to call in contracts of insurance as 'financial products' under Part 5 of the Financial Markets Conduct Act 2013.

[21] See pages 17 and 18 of the Deloitte report.

[22] See https://www.mbie.govt.nz/dmsdocument/14057-regulations-to-support-the-new-regime-for-the-conduct-of-financial-institutions and https://www.mbie.govt.nz/dmsdocument/14060-treatment-of-intermediaries-under-the-new-regime-for-the-conduct-of-financial-institutions.

Question	Answers
	• The appropriate treatment of the Lloyd's insurance market (and presumably other business models that do not fit well with the focus under the CoFI regime on financial institutions). • The treatment of intermediaries under this regime (including definitions and obligations in relation to intermediaries, employees and agents), with the approach taken having a material influence on the approach to regulatory oversight. Once agreed upon, these policy decisions will need to be reflected as substantial amendments to Financial Markets (Conduct of Institutions) Amendment Bill. Given this bill has already been reported back and had its second reading, these changes will need to be introduced as a complex Supplementary Order Paper (**SOP**) (or series of complex SOPs) at the Whole of Committee stage. In parallel with this, we understand regulations underlying these regimes are still to be developed. These regulations will need to reflect the policy decisions still to be made as well as changes to the overarching Bill.[23] As outlined above, deferral affords the FMA and MBIE the opportunity to consider funding and levy requirements alongside CoFI licensing fees and the development of the CoFI licensing regime. *B. If there is no deferral, we would favour Option 2* If our recommendation to defer consideration of long-term funding requirements at this time is not accepted, without resiling from that position, our preference would be for Option 2 to be adopted rather than Option 1. In summary, this reflects that: • We do not consider that the difference in what the FMA expects to achieve between Option 1 and Option 2 is of sufficient value to justify the additional funding requested. In this regard, we note that the analysis of the options does not really explain the practical capability differences in terms of FMA team structure etc, other than that Option 1 has more staff across areas than Option 2 does. • It is not considered realistic to target the large number of additional specialist headcount under Option 1 (ultimately 102 staff). These recruitment challenges are acknowledged both in the discussion document and the Deloitte Report.[24] • We query whether the additional headcount proposed under Option 1 would be proportional and equivalent to its resourcing in other areas, noting that this would amount to a substantial 39% increase to the FMA's overall current 260~ headcount and effectively a 1:1 ratio of supervision (i.e. 102 staff members for an estimated 110 regulated entities).[25] We also note that there has been a large increase in new employees over the past 12 months and query whether some of that resource could be utilised by the FMA to undertake the newly proposed functions. • If Option 1 was to progress, this would result in substantially larger regulatory burden and cost for the regulated population. In this regard it is specifically important to reflect upon the extraordinary regulatory change programme that the general insurance industry is confronted with over the next few years (which in addition to previously approved

[23] We also understand that it is possible that these SOP(s) and regulations will be consulted on prior to them going through the formal process to be incorporated into the Bill and/or come into force.

[24] See paragraphs 90, 91, 98 and 109 of the discussion document and pages 17 and 18 of the Deloitte report.

[25] See paragraph 45 of the discussion document.

Question	Answers
	increased to FMA levies and changes under the CoFI, ICL and CRD regimes, includes substantial changes to the EQC cap and EQC Act, FENZ levy regime, IFRS 17, IPSA and new solvency standards). • The increased burden and cost under Option 1 may ultimately lead to worse outcomes for customers (e.g. because resourcing would need to be diverted away from customer service and product/service enhancement work to meet the increasing demands of the FMA's more proactive approach, and in the form of customers paying higher premiums for insurance and potentially reduced competition in the market). Please see comments in the previous section (under heading C.) for more detail in these respects. Without resiling from our earlier remarks, we also note that Deloitte has indicated that Option 2 would equip the FMA to meet the policy intent of the regime.[26]
4. How would CoFI Option 1 impact you/your business compared to CoFI Option 2?	While both Option 1 and Option 2 would have a significant impact on cost and regulatory burden, if Option 1 was selected instead of Option 2, these impacts would be considerably more substantial. As indicated above, this regulatory burden and cost may ultimately lead to worse outcomes for customers. Please see comments immediately above (under heading B.) for more details in these respects.
5. If you were to make material changes to the CoFI options, how would you do so and on what basis?	Beyond the options presented, there are further opportunities to revisit and appropriately reduce the regulatory burden and cost imposed on insurers associated with the CoFI options. This includes: • Reflecting that the regime will have distinct phases each with different resourcing requirements, with the period of high resourcing requirements during the initial setup and embedding the regime phase significantly declining once the regime is embedded and shifts to a business-as-usual operational phase, enabling staff to be re-allocated. • Reframing the development of more comprehensive regulatory guidance, deeper collaboration and planning with other regulators and more risk-based assessments, so that instead of characterising these matters as extra 'value added' cost justifying Option 1 as suggested, these are considered necessary and appropriate investments that make enforcement action less necessary and more efficient. Such an approach will ultimately save costs for regulators and the regulated population. • Changing the Class 3A and Class 3 labels from 'retail' and 'non-retail' to 'consumer' and 'non-consumer' to match the terminology under the CoFI regime and adjusting the treatment so that where an insurer has no consumer business, or this makes up only a very small portion of their overall business, they fall under Class 3 rather than Class 3A. Alternatively, consideration should be given to adjusting the Class 3A and Class 3 classification criteria so that the relevant annual GWP relates to the consumer or non-consumer business respectively rather than business overall, with two levies applicable in the event an insurer has both consumer and non-consumer business, each relating to the annual GWP for that business. • Reflecting efforts financial institutions to be regulated under CoFI have made since 2019 to improve their conduct and culture and reduce risk and the guidance and capability the FMA has already developed in these respects.

[26] Page 13 of the Deloitte report.

Question	Answers
	Please see comments in the previous section (under heading D.) for more details in these respects. Additionally, from a proportionality perspective, we consider that it is important to reflect upon how proposed levy increases for financial institutions related to the CoFI regime compare with much smaller levies applied to intermediary entities such as large brokerages under the companion Financial Advice conduct regime (i.e. registered FSPs that are licensed financial advice providers under levy class 6H),[27] noting: • The broad regulatory role the FMA plays under the Financial Advice regime, which involves transitional and full licensing, a new code of conduct, disclosure, registration and licence condition requirements across a much larger and diverse regulated population. • The important role these independent intermediaries play in ensuring fair consumer outcomes, the limited ability general insurers may have to oversee or provide input into how such intermediaries conduct themselves,[28] and in absence of these intermediaries having fair conduct obligations under the CoFI regime themselves, the reliance that needs to be placed on intermediaries' obligations under the Financial Advice regime (and the FMA's supervision of those obligations) to ensure this occurs. For completeness, we note that it is unclear how the CoFI regime will sit alongside the existing Financial Advice regime from a FMA resourcing perspective i.e. whether resourcing from the FMA's existing Financial Advice teams can be deployed to support or undertake CoFI related work. This would appear a sensible approach given these teams significant involvement in the recent conduct and culture reviews.
6. Do you have any feedback on the objectives for the implementation of the CoFI regime?	We support the objectives save that: • We consider that the first objective should be amended to place greater emphasis on the need for the FMA and the regulated population to adequately prepare before the regime comes into to effect. • An additional objective should be added related to ensuring the start date of the regime is sensibly aligned with other regulatory changes. While it is possible to implicitly read this into the first objective, we consider that it is appropriate that this be made explicit given the amount of regulatory change currently underway.
7. Do you agree that the CoFI licensing window should begin after financial advice provider transitional licensing window has closed?	Yes. This staged approach is more workable and appropriate given it is not possible to sensibly integrate licensing for full licences under the Financial Advice licensing regime with CoFI licensing, the former being already well advanced. This approach enables the FMA to be appropriately prepared and resourced in the lead in period and then licensing phase. This also enables financial institutions to be well prepared for the licensing phase and full implementation. For both financial institutions and the FMA, this means that additional resourcing would not be required to engage with two licensing processes at the same time.

[27] Specifically levy class 6H has $340 base plus $300 per nominated representative, plus $1,180 if they give advice on their own account.

[28] Please see our submission in the CoFI consultation for more details in this respect, https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_Submission_on_COFI_-_Underlining_Regulations_and_treatment_of_intermediaries_180621.pdf, page 6.

Question	Answers
	Consistent with remarks above, to ensure the regulated population is adequately prepared before the CoFI regime comes into to effect, it will be important for the FMA to issue detailed guidance (including as it relates to the licensing process, conditions and any specific fair conduct expectations) well in advance of implementation.
8. Are there other areas of regulatory reform in the financial services sector, where implementation overlaps with the proposed timeframes above, and that you consider it would be preferable to align CoFI implementation with those timeframes from an efficiency perspective? If so, please provide examples.	Please see comments made in the previous section (under heading C.) for more details about the extraordinary regulatory change programme that the general insurance industry is confronted with over the next few years (including relevant timings in each respect). We note that the proposed timeline for implementing CoFI set out in the discussion document appears to align with the current planned timing for the enactment of ICL and accordingly there is a risk that both CoFI and ICL could come fully into force at the same time. If that occurred, this reinforces the value of consolidating the FMA's resourcing in respect of the CoFI and ICL regimes to avoid unnecessary regulatory cost and burden and ensure efficiency. If the resourcing for these regimes is not to be consolidated, consideration should be given to staggering the implementation of these regimes, which would otherwise be extremely challenging. This will mean, for example, that any resources that are involved in implementing CoFI could be repurposed to implementing ICL later.
9. Do you have any feedback on the proposed 18-month window between applications for a conduct licence opening and all the obligations of the CoFI Bill coming into force (including having a conduct licence)?	Ideally the end of the proposed 18-month licensing window should be extended to match the length of the licensing window for full licences under the Financial Advice regime (that is, two years, with the CoFI licensing window opening in July 2023 and ending in July 2025). Provided the relevant bill and regulations are finalised sufficiently in advance, and the FMA issues the relevant guidance well in advance of this date, a two-year window between applications for a conduct licence opening and all the obligations of the CoFI Bill coming into force would be workable and appropriate. We are concerned that a shorter licensing window (i.e. 18-months) would be insufficient. We reiterate our earlier comments about the extraordinary regulatory change programme that the general insurance industry is confronted with over the next few years, which justify the need for a two-year period for licensing and before obligations under the regime come into force. This longer period also better reflects the time it will take to analyse, renegotiate and implement any changes to incentives arrangements required to comply with incentive regulations and other aspects of distribution agreements necessary to comply with fair conduct requirements under the CoFI regime. We also expect that a longer licensing window would reduce the number of staff that the FMA would need to take on to resource the licensing process. Should licensing require fair conduct programmes to be in place when licences are applied for, we would have concerns about whether a six-month period between CoFI licensing guidance becoming available and the licensing window opening would be sufficient. For completeness, in developing licensing requirements, to minimise cost and regulatory burden, we consider that a risk-based approach should be taken with reference to, amongst other things, the extent to which entities have their own industry codes (e.g., the ICNZ's Fair Insurance Code) and/or are already regulated (e.g., under the Financial Advice regime and/or by the RBNZ from a prudential perspective).

Question	Answers
10. Do you think a phased approach to CoFI licensing would be preferable, compared to a single licensing window for all types of financial institutions? Please provide reasons.	We would not support the phasing in of specific sectors separately (e.g., banks, non-bank deposit takers, insurers) if this would result in the full window for a financial institution to apply for a license being cut short. We note that it may be fairer to give all sectors the same timeframe for applications but provide guidance on target dates, as the FMA has recently done with full licensing under the Financial Advice regime, to mitigate the risk of entities only applying at the end of the period. A phased approach would increase complexity and could pose issues for distributors operating across different parts of the sector (i.e., where a distributor in one class must implement CoFI before other classes of financial institutions that are part of their distribution channels do). For example, this could be an issue for: • Financial advisers offering multiple services who would have to address CoFI expectations of different classes of financial institutions at different times. • Banks involved in distributing insurance, if insurance was to come after banking. Without resiling from that position, if a phased approach was adopted, the following factors should be considered in determining the order/sequencing: • The identified level of conduct risk of different classes of financial institutions. • Other regulatory changes and other pressures facing various classes of financial institutions over periods (e.g., for general insurers the extraordinary regulatory change programme they are confronted with over the next few years).
11. If a phased approach to CoFI licensing would be preferable, what factors do you think should be considered in determining the order of phasing?	Please see our comments in response to question 10 above.
12. Do you have any other general comments regarding the implementation timing of the CoFI regime?	The proposed December 2024 date for licensing to close and obligations under the CoFI Bill are to come into force may introduce additional pressures due to this falling within the end of the year period. As above, we suggest that the end of the licensing window and start date for obligations under CoFI be extended to two years (i.e., to July 2025).
ICL	
13. Do you agree with the analysis of the FMA funding options for ICL? Which option do you consider to be most appropriate and why?	*A. Consideration of long-term funding requirements should be deferred* Consistent with remarks above, while we acknowledge that some additional funding is necessary to progress the ICL regime in the short-term (i.e. for the 2022/23 year), we believe that it is premature to determine long-term funding requirements at this time because so much about the ICL regime is currently uncertain. We suggest this matter be deferred until more is known. We note that this uncertainty is something acknowledged by Deloitte in their report, which also records that, for this reason, it is unlikely that either Option 1 or Option 2 would endure as an approach in the medium term.[29] The uncertainty regarding this matter is also noted in the discussion document.[30]

[29] See pages 19 and 24.

[30] Paragraph 137.

Question	Answers
	Currently we are waiting to be consulted on an exposure draft of an ICL Bill, which is expected to open at the end of 2021 or early 2022. Given this bill involves the consolidation and modernisation of elements of seven pieces of technical insurance contract law legislation (some of which are over 100 years old), completing this draft, providing feedback on it and making any necessary subsequent changes will be a complex and time-consuming exercise. Following this consultation, this bill will need to go through the formal Parliamentary process, which will include the opportunity for further consultation at the Select Committee stage, with further changes to this bill also being possible at the Whole of Committee stage via a SOP. In conjunction with the consultation on this bill, it is expected that we will be consulted on a number of structural or significant other matters in respect of which policy decisions are yet to be made. This includes consideration of:[31] • How the new material disclosure standards will apply in a consumer and non-consumer context (which new approaches to be introduced in each respect). • The appropriate interface between terms in insurance contracts and the standard 'main subject matter' exception under the unfair contract term regime of the Fair Trading Act 1986 (with two options being proposed in this respect). • The application of the recent extension of this unfair contract term to 'small trade contracts' in an insurance context (insurance contracts being currently exempted from these requirements, pending the completion of the ICL). • The appropriate regulations underlying the regime (including potentially form and information requirements regarding insurance policies and other customer documentation), which we understand are yet to be developed and will be the subject of consultation following consultation on the ICL Bill. • A number of highly technical or other insurance industry specific provisions. Considering the early stage of this matter, it is unsurprising that in the Deloitte report it is recorded that the FMA is yet to establish a formal project for implementation, noting that beyond high-level policy decisions this regime is yet to be developed.[32] The early stage of these matters is also acknowledged in the discussion document.[33] *B. If there is no deferral, we would favour Option 2* If our recommendation to defer consideration of long-term funding requirements is not accepted, without resiling from that position, our preference would be for Option 2 to be adopted rather than Option 1. In summary, this reflects that: • We do not consider that the difference in what the FMA expects to achieve between Option 1 and Option 2 is of sufficient value to justify the additional funding requested.

[31] See https://www.mbie.govt.nz/dmsdocument/7478-insurance-contract-law-reforms-proactiverelease-pdf?fbclid=IwAR3FOw45uzpvC7qjxBnomOgTy9sUsbtwe91444up2cM1GFqqBKdoa2AFvcs for further details about the policy decisions that are still to be made.

[32] See page 19 of the Deloitte report.

[33] Paragraph 137 of the discussion document.

Question	Answers
	• If Option 1 was to be selected, this would result in substantially larger regulatory burden and cost for the regulated population. In this regard it is important to reflect upon the extraordinary regulatory change programme that the general insurance industry is confronted with over the next few years (which in addition to previously approved increased to FMA levies and changes under the CoFI, ICL and CRD regimes, includes substantial changes to the EQC cap and EQC Act, FENZ levy regime, IFRS 17, IPSA and new solvency standards). • The increased burden and cost under Option 1 could risk worse outcomes for customers (e.g. because resourcing would need to be diverted away from customer service and product/service enhancements to meet the increasing demands of the FMA's more proactive approach. Please see comments in the previous section (under heading C.) for more detail . We also note that: • The nature of requirements under the ICL regime that the FMA will be supervising (i.e., plain English and other policy wording requirements, form/presentation requirements and information that must be made publicly available) naturally leads itself to a less proactive approach. • Both the insurance industry and the FMA will be able to draw upon practice and guidance that has already been developed in Australia and United Kingdom where similar requirements have been in force for some time. • From our perspective, the actions under Option 2 would still be sufficient to enable the ICL to be implemented, especially given the relevant consumer products will already be subject to the CoFI regime. • The ICL regime does not involve licensing. • It is unclear how the proposed information campaigns under Option 1 would be funded given the proposed additional funding outlined on page 38 does not appear to provide for this.
14. How would ICL Option 1 impact you/your business compared to ICL Option 2?	While both Option 1 and Option 2 would have cost and regulatory burden impacts, if Option 1 was selected instead of Option 2, these impacts would be more substantial. As indicated above, this regulatory burden and cost could ultimately lead to worse outcomes for customers. Please see comments immediately above (under heading B.) for more details in these respects.
15. If you were to make material changes to the ICL options, how would you do so and on what basis?	Beyond the options presented, there are further opportunities to revisit and appropriately reduce the regulatory burden and cost imposed on insurers associated with the ICL options. This includes: • The ICL regime should be able to be supervised by the existing FMA teams that supervise financial products under the FMCA. The FMCA prescribes specific disclosure and other requirements in relation to equity securities, debt securities and managed investment schemes which includes product disclosure statements being lodged and monitored by the FMA. It is not expected that the ICL would impose the same level of detailed regulation, meaning that the supervision required for the ICL is likely to be less and should be able to be absorbed by existing FMA teams. • Alternatively, consideration should be given to consolidating resourcing for CoFI and ICL regimes into one workstream, reflecting that the FMA's responsibilities under both regimes ultimately have the same focus (i.e. ensuring good or fair conduct outcomes from consumer). Consolidating

Question	Answers
	resourcing in either of these ways will prevent silos developing and unhelpful and potentially costly duplication and inconsistency in approaches developing between workstreams. In respect of the suggested consolidation of the FMA's resourcing for the CoFI and ICL regimes, we note that: • The alignment between the CoFI and ICL is acknowledged by Deloitte in their report.[34] • In effect the ICL regime simply provides the FMA with an additional subset of tools to ensure good or fair customer outcomes are being met (i.e. ensuring requirements regarding plain English and other policy wording requirements, form/presentation, and information that must be publicly available are complied with). • While we acknowledge that, at face value, the ICL regime relates to issues specific to insurance that are not more broadly applicable to other sectors within the CoFI regime, this should not be assumed and it is noted other types of financial institutions (e.g banks and non-deposit deposit takers) may also distribute insurance products and accordingly still be caught by the ICL regime to a certain extent. There are also areas of the ICL regime which will result in the treatment of insurance being closer aligned with the treatment of other financial products and services (e.g. the treatment of unfair contract terms). • It is also possible that there are some synergies between CoFI and ICL in relation to the treatment of intermediaries and related agreements. Consideration should also be given to developing more comprehensive regulatory guidance and deeper collaboration and planning with other regulators, so that rather than characterising these matters as extra 'value added' cost justifying Option 1 as suggested, they are considered as necessary and appropriate investments that make enforcement action less necessary and more efficient. Such an approach will ultimately save costs for regulators and the regulated population. Deeper collaboration and planning with other regulators is particularly important in this ICL context given the FMA is to share responsibility with the Commerce Commission in enforcing the unfair contract term regime under the Fair Trading Act 1986 for financial products and services.[35] It will also be important for a consistent and coordinated view to be adopted by them and that they efficiently work together leveraging each other's expertise and capability in these respects, with clear guidance being provided to industry about how their respective expectations and oversight roles practically fit together, interact and what terms are acceptable, which depending on the circumstances, could have material implications for the insurance sector. Given that requirements under the Fair Trading Act 1986 already apply to all businesses, and unfair contract terms prohibitions are only a subset of those requirements, care needs to be taken that any regulation of unfair contract terms requirements in the insurance sector specifically is proportionate.
CRD	
16. Do you agree with the analysis of the FMA funding	*A. Consideration of long-term funding requirements should be deferred*

[34] Page 20 of the Deloitte report.

[35] https://www.mbie.govt.nz/dmsdocument/7478-insurance-contract-law-reforms-proactiverelease-pdf?fbclid=IwAR3FOw45uzpvC7qjxBnomOgTy9sUsbtwe91444up2cM1GFqqBKdoa2AFvcs.

Question	Answers
options for CRD? Which option do you consider to be most appropriate and why?	As outlined in the previous section (under heading A.), while we acknowledge that some additional funding is necessary to progress the CDR regime in the short-term (i.e. for the 2022/23 year), we believe that it is premature to determine long-term funding requirements at this time because so much about the CRD regime is currently uncertain. We suggest this matter be deferred until more is known. We note that this uncertainty is something acknowledged by Deloitte in their report and in the discussion document, which also suggests that t is likely that the FMA would need to review its approach in the medium term.[36] While the overarching high-level Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill has now been enacted, the numerous specific, detail and technical matters underlying this regime, that will inform the nature of requirements and the FMA's specific role in these respects, are yet to be worked through. These include: • consultation on governance and risk management guidance from 20 October 2021 (for four weeks) • consultation on strategy and metrics & targets guidance, with a focus on implementation feasibility, from March 2022 (for four weeks), and • consultation on the exposure draft of the standard from July 2022 (for three months). Following these consultations policy decisions will need to be made and proposed guidance and standard adjusted as necessary. Generic and/or industry specific climate-related scenario guidance and supporting materials will also need to be developed and refined, this being one of the most resource intensive aspects of the regime. For completeness, clarity is also required to understand which regulators and/or policy agencies are taking the lead on scenarios for all business or certain sectors. The finalised standard is currently expected to be published in December 2022, the earlier deadline having been extended. The accreditation regime for greenhouse gas emissions will also need to be implemented, noting that reporting on these has now been pushed out a year. A further complication is that New Zealand will be the first country in the world to introduce a mandatory climate-related financial disclosures reporting regime. *B. If there is no deferral, we would favour Option 2* If our recommendation to defer consideration of long-term funding requirements is not accepted, without resiling from that position, our preference would be for Option 2 to be adopted rather than Option 1. In summary, this reflects that: • We do not consider that the difference in what the FMA expects to achieve between Option 1 and Option 2 is of sufficient value to justify the additional funding requested. • The inappropriateness of the FMA adopting the more proactive approach under Option 1 when so much about regime is new and still developing (as outlined under A. above). A more reactive approach with capacity slowly building over time is more appropriate in these circumstances. We also note that the External Reporting Board (**XRB**) has recently indicated that they are looking at a phased roll out, with the initial aspects of

[36] See page 32 of the Deloitte report and paragraphs 177 and 179 of the discussion document.

Question	Answers
	disclosure intended to focus on governance (rather than climate-related measures). • We do not consider that it would be as realistic to target the additional specialist headcount under Option 1. The particularly acute recruit challenges in this sector are acknowledged both in the discussion document and the Deloitte Report, noting that the specific skillsets required for the CRD regime are new and scarce in the market globally, with other agencies and financial services businesses also competing for them.[37] Please see comments in the previous section (under heading C.) for more detail in these respects. We note that the discussion document records that Option 2 would still ensure the FMA has capacity to begin developing capability to oversee this regime and begin to build up internal expertise in this completely new area, while minimising disruption to other ongoing FMA work.[38]
17. How would CRD Option 1 impact you/your business compared to CRD Option 2?	While both Option 1 and Option 2 would have cost and regulatory burden impacts, if Option 1 was selected instead of Option 2, these impacts would be more substantial. As indicated above, this regulatory burden and cost could ultimately lead to worse outcomes for customers. Please see comments immediately above (under heading B.) for more details in these respects.
18. If you were to make material changes to the CRD options, how would you do so and on what basis?	Beyond the options presented, there are further opportunities to revisit and appropriately reduce the regulatory burden and cost imposed in relation to the CRD options. This includes: • Considering how others subject to the CRD regime should most appropriately contribute to the FMA's costs including whether climate-related disclosure assessors, which are a new category of regulated entity, are going to contribute and, if so, how much and whether it is appropriate for separate tiers to be introduced for listed issuers, with potentially larger entities contributing at a higher level. • Instead of characterising more comprehensive regulatory guidance as an extra 'value added' cost justifying Option 1 as suggested, this matter should be considered as necessary and appropriate investments that make enforcement action less necessary and more efficient. Such an approach will ultimately save costs for regulators and the regulated population. • Ensuring there is a strong emphasis on robust collaboration and knowledge sharing between regulators and policy agencies (e.g. the XRB, RBNZ, the Department of Internal Affairs, the Ministry for the Environment and The Treasury) to share and develop understanding, ensure there is a consistent view on climate-related matters, with inconsistences and duplication in requirements and regulatory activities and inefficiency minimised. In addition to reducing regulatory burden, we expect this would again reduce costs for both the regulator and the regulated population.

[37] Paragraphs 163, 175 and 190 of the discussion document and pages 32 and 33 of the Deloitte report.

[38] Pararaph 184 of the discussion document.

Question	Answers
	Ensuring there is a strong emphasis on robust collaboration and knowledge sharing between regulators and policy agencies will be particularly important for entities in the banking and insurance sectors as, in addition to requirements under the CRD regime, The Treasury is leading work in this area, and the RBNZ has recently signalled it will look for them to specifically report on climate-related matters in due course from prudential perspective. It will also be important for the XRB and the FMA to have a clear understanding about where their respective roles in providing guidance under the CRD regime begin and end particularly as this regime develops and is refined. We note the comments made in the Deloitte report in this regard and query how clear the distinction between guidance on complying with the standard and interpreting its application is (the former sitting with the XRB and the latter with the FMA).[39] We also query the need for the headcount proposed under the options for 2022 and 2023, given: • the intention is for the FMA to only provide high-level guidance by December 2022, with more detailed guidance to be provided throughout 2023, and • the CRD regime only sees data reporting requirements start when each entity's next reporting date on or after 1 January 2023 begin and then fall due. For example, entities with a 31 January or 30 June reporting date would first report for the year ending 31 January 2024 and 30 June 2024 respectively.
Other	
19. Do you think that the proposed additional FMA funding should be wholly levy recovered or should the Crown contribute towards the increase? Why?	We consider that the Crown should contribute towards any increase in FMA funding needs given that these three regimes are intended to benefit New Zealand as a whole and the public good aspects of having a well-regulated market. Stepping back, compared to when the FMA was first formed, the scope of consumers that come within its remit is much broader. [40] If anything, this makes a case for increasing the proportion of the Crown's contribution rather than reducing it. Ensuring the Crown is proportionally contributing will ensure that, through the annual Budget process, and future reviews of the levy, the Crown maintains an appropriate level of oversight and interest in the levels of funding provided. It would be unreasonable to further compound the increases on the regulated population by, at the same time, also reducing the Crown's relative contribution in our view. Conversely, the Crown contributing to any increases would positively reduce cost for the regulated population and consequential impacts on customers.[41] This is particularly important given the Government's stated focus on insurance availability and affordability.[42] We also note that: • The current 17% (from 2022/23 onwards) level of Crown funding has repeatedly been reduced, most recently (in 2019/20) having been reduced to 25%, having previously (in 2015) being set at a 39% level.

[39] Page 30.

[40] The FMA originally mainly focused on investment products, this subsequently being extended to include financial advice.

[41] See headings C. ii and iii. of the previous section for more details.

[42] See footnote 11 above.

Question	Answers
	• No evidence or policy rationale is provided in the discussion paper as to why it is considered that the public good element of the FMA's work is continuing to reduce.
20. Do you think that the Crown should contribute relatively more to any of the regimes than others? If so, please explain why.	We query whether it would be appropriate to differentiate the level of contribution between different regimes due to the potential complexity involved, and if this was to be assessed against the relative public good, the highly subjective nature of this analysis.
21. What is the appropriate Crown/levy split of the FMA's appropriation and why?	As outlined above, we consider that the Crown should contribute to any increase in the FMA's funding needs. At a minimum, this should be sufficient to sustain the current level of Crown contribution (i.e. 17%). However, in light of the expanding scope of consumers that come within its remit, and expanded public benefit and good involved, we believe ideally this should be increased to the level it was previously (e.g., 25% as it was in 2019/20).
22. Do you have any feedback on the objectives underlying the levy model?	We support the objectives underlying the FMA levy model save that we consider the first objective should be amended to also reflect the 'consistency' (or proportionality) between cost and benefits in so far as consequential impacts on the regulated populations' customers are concerned. Alternatively, this could be set out as a separate objective. Please see earlier comments for more details in this respect. We note that the first three objectives align well with our suggestion that an insurer that has no consumer business, or consumer business that makes up only a very small portion of their overall business, fall under Class 3 rather than Class 3A or to adjust the Class 3A and Class 3 classification criteria so that the relevant annual GWP relates to the consumer or non-consumer business respectively rather than the business overall, as suggested under heading D. of the previous section.
23. Do you agree that larger entities should pay a relatively larger portion of any levy increase? If not, please explain why.	In principle, we support larger entities meeting somewhat of a higher proportion of costs than smaller ones (in nominal terms). However: • For the avoidance of doubt, we do not support the levy rates proposed based on Option 1 assuming no further Crown contribution, including as they relate, and are apportioned to each tier of insurer under Class 3 and Class 3A. The reasoning for this is set out above. • Given the scale of the proposed increases (134% or more) and the existing differential, if progressed we consider the current relativities should be retained.
24. Do you think the proposed levy changes meet the objectives?	No. Our reasoning for this is set out above.
25. Do you have any comments on the proposed new levy classes/tiers? Should further classes be considered?	The Class 3A and Class 3 labels should be changed from 'retail' and 'non-retail' to 'consumer' and 'non-consumer' to match the terminology under the CoFI regime and treatment adjusted so that where an insurer has no consumer business, or this makes up only a very small portion of their overall business, they fall under Class 3 rather than Class 3A. Alternatively, consideration should be given to adjusting the Class 3A and Class 3 classification criteria so that the relevant annual GWP relates to the consumer or non-consumer business respectively rather than the business overall, with two levies applying if an insurer has both consumer and non-consumer business, each

Question	Answers
	relating to the annual GWP for that business respectively. See comments under heading D. of the previous section for more details in this respect. Additionally, reflecting that the current levy tiers based upon annual GWP are very broad, with significant divergent increases imposed for similarly sized businesses (e.g., those sitting slightly under or over the $500m tier threshold), we consider the FMA should introduce additional annual GWP tiers or assess levies on a proportional/percentage basis once they reach a sufficiently large scale (e.g. $100m annual GWP). While again we appreciate the need not to overcomplicate levy classifications and make things overly granular, the current approach is inequitable, overly arbitrary in our view and could perversely disincentivise an insurer from growing.

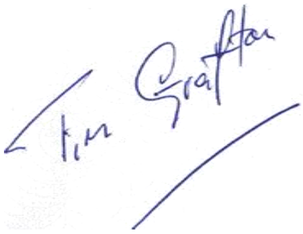
26. Do you have any feedback on the impacts of the proposed changes to the levies presented in Annex 1? How would the proposed changes impact your business? Please provide examples.	Please see our comments above, in particular:
	• Generally, the comments under heading C. ii. and iii. of the previous section.
	• In response to each of the three regimes specifically, responses to questions:
	    ○ 3 to 5 (regarding CoFI)
	    ○ 13 to 15 (regarding ICL), and
	    ○ 16 to 18 (regarding CRD).
	• Questions 19 and 21 above, regard the level of Crown contribution.

27. Do you think any of the levy classes in Annex 2 should pay an increased levy as a result of these new regimes? If so why?	As above, from a proportionality perspective, we consider that it is important to reflect upon how any proposed levy increases for financial institutions related to the CoFI regime compare with much smaller levies applied to intermediary entities such as large brokerages under the companion Financial Advice conduct regime.

3. 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

Appendix 1 – Impact of current and proposed FMA levy increases on 'retail' versus 'no-retail' insurers of various sizes

Levy Class	Levy Type	2019/2020	2020/2021	2021/2022	2022/2023	2022/2023	2023/2024	2024/2025	2025/2026	2022/2023	2023/2024	2024/2025	2025/2026
			As previously set			Option 1				Option 2			
Smaller sized insurer - retail (Annual GWP $100m+ - $250m)													
Class 3A (licenced Insurer - retail)	Annual GWP $100m+ - $250m	$38,000	$70,000	$79,000	$94,000	$143,000	$174,000	$204,000	$238,960	$126,800	$145,000	$161,000	$182,000
Total (% increase from current/ % increase from 2019/2020)		**$38,000**	**$70,000**	**$79,000**	**$94,000**	**$143,000 (52% / 276%)**	**$174,000 (85% / 358%)**	**$204,000 (117% / 437%)**	**$238,960 (154% / 529%)**	**$126,800 (35% / 234%)**	**$145,000 (54% / 282%)**	**$161,000 (71% / 324%)**	**$182,000 (94% / 379%)**
Smaller sized insure – non-retail (Annual GWP $100m+ - $250m)													
Class 3 (licenced Insurer – non-retail)	Annual GWP $100m+ - $250m	$38,000	$70,000	$79,000	$94,000	$94,700	$94,800	$95,760	$95,920	$94,400	$94,760	$94,900	$95,100
Total (% increase from current/ % increase from 2019/2020)		**$38,000**	**$70,000**	**$79,000**	**$94,000**	**$94,700 (1% / 149%)**	**$94,800 (1% / 149%)**	**$95,760 (2% / 152%)**	**$95,920 (2% / 152%)**	**$94,400 (1% / 148%)**	**$94,760 (1% / 149%)**	**$94,900 (1% / 150%)**	**$95,100 (1% / 150%)**
Medium sized insurer - retail (Annual GWP $500m+ - $1b)													
Class 3A (licenced Insurer - retail)	Annual GWP $500m+ - $1b	$150,000	$300,000	$310,000	$370,000	$537,000	$655,000	$744,200	$860,940	$485,000	$544,000	$614,000	$685,000
Climate Reporting Entity	Annual GWP $500m+ - $1b					$3,500	$3,900	$3,200	$3,200	$2,020	$3,200	$2,300	$2,300
Total (% increase from current/ % increase from 2019/2020)		**$150,000**	**$300,000**	**$310,000**	**$370,000**	**$540,500 (46% / 260%)**	**$658,900 (78% / 339%)**	**$747,400 (102% / 398%)**	**$864,140 (134% / 476%)**	**$487,020 (32% / 225%)**	**$547,200 (48% / 265%)**	**$616,300 (67% / 311%)**	**$687,300 (86% / 358%)**
Medium sized insurer - non-retail (Annual GWP $500m+ - $1b)													
Class 3 (licenced Insurer – non-retail)	Annual GWP $500m+ - $1b	$150,000	$300,000	$310,000	$370,000	$371,100	$371,800	$372,300	$372,500	$370,600	$371,100	$371,700	$372,000
Climate Reporting Entity	Annual GWP $500m+ - $1b					$3,500	$3,900	$3,200	$3,200	$2,020	$3,200	$2,300	$2,300
Total (% increase from current/ % increase from 2019/2020)		**$150,000**	**$300,000**	**$310,000**	**$370,000**	**$374,600 (1% / 150%)**	**$375,700 (2% / 150%)**	**$375,500 (1% / 150%)**	**$375,700 (2% / 150%)**	**$372,620 (1% / 148%)**	**$374,300 (1% / 150%)**	**$374,000 (1% / 149%)**	**$374,300 (1% / 150%)**
Larger insurer - retail (Annual GWP $1b+)													
Class 3A (licenced Insurer - retail)	Annual GWP $1b+	$150,000	$300,000	$400,000	$480,000	$721,000	$890,000	$1,016,000	$1,189,440	$656,400	$732,000	$832,000	$931,000
Climate Reporting Entity	Annual GWP $1b+					$7,000	$8,400	$8,200	$8,200	$4,500	$7,400	$5,900	$5,900
Total (% increase from current/ % increase from 2019/2020)		**$150,000**	**$300,000**	**$400,000**	**$480,000**	**$728,000 (52% / 385%)**	**$898,400 (87% / 499%)**	**$1,024,200 (113% / 583%)**	**$1,197,640 (150% / 698%)**	**$660,900 (38% / 341%)**	**$739,400 (54% / 393%)**	**$837,900 (75% / 459%)**	**$936,900 (95% / 525%)**

Appendix 2 – Graph of recent and proposed FMA levy increases