

2021 Review of the Financial Markets Authority Funding and Levy

This is the submission template for the discussion document, *2021 Review of the Financial Markets Authority Funding and Levy*.

The Ministry of Business, Innovation and Employment (MBIE) and the Financial Markets Authority (FMA) seeks written submissions on the issues raised in the discussion document by 5pm on **7 November 2021**.

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading your submission in full including your name by making a submission, unless you clearly specify otherwise. Please note that submissions are subject to the Official Information Act 1982.

Please make your submission as follows:

1. Fill out your name and organisation in the table, "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table, "Responses to discussion document questions". Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the "Other comments" section below the table.
4. When preparing to send your submission:
 - a. Delete these first two pages of these instructions.
 - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please clearly indicate this on the front of your submission or in the accompanying cover letter or e-mail. Any confidential information, together with reasons for withholding the information, should be clearly marked within the text of your submission. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Please provide a separate version of your submission excluding the relevant information for publication on MBIE's website.
 - d. If you do not wish for your submission to be published:
 - i. please clearly indicate this in the cover letter or e-mail accompanying your submission. However, please note that submissions remain subject to request under the Official Information Act 1982.
5. Send your submission:

- as a Microsoft Word document or searchable PDF to [../../../../Townsew/AppData/Roaming/OpenText/OTEdit/EC mako/c93190713/mailto FMALevyReview@mbie.govt.nz](mailto:FMALevyReview@mbie.govt.nz) (preferred), or
- by mailing your submission to:
 - Financial Markets Policy
 - Building, Resources and Markets
 - Ministry of Business, Innovation & Employment
 - PO Box 1473
 - Wellington 6140
 - New Zealand

Please direct any questions that you have in relation to the submissions process to [../../../../Townsew/AppData/Roaming/OpenText/OTEdit/EC mako/c93190713/mailto FMALevyReview@mbie.govt.nz](mailto:FMALevyReview@mbie.govt.nz).

Submission on 2021 Review of the Financial Markets Authority Funding and Levy

Your name and organisation

Name	
Organisation (if applicable)	

Responses to discussion document questions

Introduction

1 Do you have any feedback on the objectives of the review?

In this submission INFINZ limits its comments to making some observations on the objectives and methodology generally in respect of the Financial Markets Authority funding and levy regime. We set these out as responses to questions 1 and 2 in the paper, although they also have a bearing on other questions canvassed.

(a) In our submission on the 2019/2020 review while we recognised at that time there was an immediate funding need to address the required near-term activities of the FMA, and we supported the objectives of that review for that purpose, we also commented that :

“Given however the significant sums involved, which, as the discussion document notes, are likely to further increase on account of the proposed new conduct and insurance regimes, we also consider a more comprehensive review is required. This review should draw on overseas experience and the Productivity Commission’s 2014 Report on Regulatory Institutions and Practices to put in place a more robust, longer term, funding model for the FMA.

The discussion document does not contemplate a wide enough review of the FMA’s funding model and the mechanisms for (i) determining both the appropriate model and the optimal quantum of funding under that model for the relevant funding years (ii) assessing the effectiveness of the FMA on an ongoing basis as one of the elements of that funding model.

The approaches taken in other jurisdictions, including Australia, Canada and the United Kingdom, could usefully be considered as part of a more comprehensive review.”

We continue to be of this view. This is even more so given that the current review expressly notes that it has not included a review of the FMA’s efficiency and effectiveness . Particularly if ongoing funding and levy proposals do not also address how efficiently and effectively a regulator is operating with the funding it has , there is a significant risk that the current funding and levying model will not provide sufficient incentives for efficiency and effectiveness , while at the same time having removed the scrutiny on the regulator and the competition for public moneys which the previous model of central government funding and appropriation (albeit with its own set of difficulties) involved.

(b) INFINZ continues to support the FMA being funded to the level where it is able to discharge its duties in monitoring and regulating an increasingly complex market, whilst also meeting the needs and expectations of market participants and New Zealand

consumers. If the FMA is being required to perform new functions , as its currently is ,INFINZ also supports the regulator being funded so as to be able to perform those roles as well .

- (c) However , by way of example, the regulatory failures in Australia in respect of conduct in the banking and insurance sectors as found by the Haynes Royal Commission showed that significant funding of a regulator is no guarantee of its effectiveness. One of the recommendations of that Royal Commission was that a new oversight authority for APRA and ASIC, independent of Government, should be established by legislation to assess the effectiveness of each regulator in discharging its functions and meeting its statutory objects. INFINZ is not of the view that a new oversight authority is required (not has one been set up in Australia) . INFINZ is of the view that , particularly given the new functions being given to the FMA (including in respect of conduct regulation) then that regime should also include a robust mechanism for also addressing and assessing the FMA's efficiency and effectiveness and the extent to which it achieves meaningful and transparent performance indicators and its regulatory objectives. This is particularly if its funding is to be predominantly provided by market participants under a levy regime.
- (d) INFINZ therefore submits that any before any further funding and levy proposals by way of dollar amounts are put forward, a review be undertaken and proposals developed for consultation as to as to the optimum approach for determining the basis of funding , and appropriate efficiency, effectiveness and accountability mechanisms given the market participant levy model. That review should take into account the approaches taken and and issues experienced in other jurisdictions, as well as the New Zealand Productivity Commission's 2014 report noted above.

The funding options

2 *Do you have any feedback on the criteria for assessing the funding options?*

We have some issue with the way in which the funding options are expressed , for example, in respect of CoFI, where under Option 1 FMA would take a proactive monitoring approach before consumer harm occurs, have deep engagement with entities, the sector and consumers, guidance that sets clear expectations for entities, and identification of risks at an earlier stage. Under Option 2, the FMA would take a more reactive approach, and focus its resources on responding to misconduct and enforcement.

Market participants may well favour Option 1 as an approach over the approach in Option 2 , particularly for a new regime . Indeed the former CE of the FMA has spoken persuasively in respect of such a regulatory approach generally . However just because such a regulatory approach is favoured , participants are not in a position to themselves assess that the dollar amounts ascribed to Option 1 are necessarily the only amounts capable of achieving that option.

Funding options – Conduct of Financial Institutions

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?*

4 *How would CoFI Option 1 impact you/your business compared to CoFI Option 2?*

5 *If you were to make material changes to the CoFI options, how would you do so and on what basis?*

Implementation – Conduct of Financial Institutions

6 *Do you have any feedback on the objectives for the implementation of the CoFI regime?*

7 *Do you agree that the CoFI licensing window should begin after financial advice provider transitional licensing window has closed?*

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.*

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)?*

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.*

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?*

12

Do you have any other general comments regarding the implementation timing of the CoFI regime?

Funding options – Insurance Contract Law

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?

14

How would ICL Option 1 impact you/your business compared to ICL Option 2?

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If you were to make material changes to the ICL options, how would you do so and on what basis?

Funding options – Climate-related Disclosures

16

Do you agree with the analysis of the FMA funding options for CRD? Which option do you consider to be most appropriate and why?

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How would CRD Option 1 impact you/your business compared to CRD Option 2?

18

If you were to make material changes to the CRD options, how would you do so and on what basis?

Funding recovery options

19

Do you think that the proposed additional funding for the FMA should be wholly levy

recovered or should the Crown contribute towards the increase? Why?

20

Do you think that the Crown should contribute relatively more to any of the regimes than others? If so, please explain why.

21

What is the appropriate Crown/levy split of the FMA's appropriation and why?

The current FMA levy model

22

Do you have any feedback on the objectives underlying the levy model?

23

Do you agree that larger entities should pay a relatively larger portion of any levy increase? If not, please explain why.

Proposed changes to the FMA levy

24

Do you think the proposed levy changes meet the objectives?

25

Do you have any comments on the proposed new levy classes/tiers? Should further classes be considered?

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.

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?



Other comments

