New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Financial Markets Authority

on the

Consultation: *Regulatory returns for financial institution licensees*

25 October 2024

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following eighteen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- MUFG Bank Ltd
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Contact details

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the Consultation: *Regulatory returns for financial institution licensees* (**Consultation**). NZBA commends the work that has gone into developing the Consultation.

5. Following high level engagement on this consultation with FSC and ICNZ, there are three key points we agree are critical for the proposed regulatory returns.

    5.1. Firstly, we suggest the FMA delays the regulatory return requirement until 2026 when the proposed amendments to the CoFI regime will presumably be in force.

    5.2. Secondly, due to the volume of duplication with the Financial Advice Provider (**FAP**) regulatory return, we encourage more alignment and for the FMA to consider options to reduce repetition.

    5.3. Lastly, we encourage reconsideration of several broad questions and their inclusion, such as methods for ensuring contact details for customers are kept up to date.

6. Further detail on these three points is contained in our individual submissions.

Regulatory returns for FIs should be developed under the single conduct licence

7. We submit that financial institution (**FI**) regulatory reporting should be incorporated into the development of a single conduct licence, in line with the Government's recently announced financial services reforms.

8. In its September 2024 policy decisions, the Government set clear expectations that the FMA must streamline its licensing processes to reduce compliance costs for the industry. The decision to make legislative changes to enable a single conduct licence provides the FMA with the framework for harmonising regulatory reporting.

9. The Consultation recognises the reforms (based on MBIE's discussion document from May 2024), but concludes that any single conduct licence regulatory return would not be completed before the first FI return is due on 30 September 2026. We strongly urge the FMA to reconsider its position in light of the Government's desire to reduce compliance costs and focus instead on preparing the single conduct licence and its associated reporting. FIs provided a significant amount of information to the FMA as part of the licence application process, so allowing a longer period before the first return is due would not leave the FMA uninformed about FIs.

Timing

10. If the FMA does proceed with the proposals as set out in the Consultation, we would support the FMA's proposal of an alternative period for the first return of 1 October to 30 June 2026. This would allow FIs the time to ensure they are ready to begin recording appropriate data at the beginning of the reporting period.

Scope of the draft question set

11. NZBA submits that, overall, the regulatory return requirements as currently framed are extensive and overly granular. Capturing this additional information will be a complex exercise involving significant time and resource to implement. It is unclear why some of the information is being requested or how it will be used for supervisory purposes in determining whether the FI is treating consumers fairly.

12. CoFI is a principles-based piece of legislation, intended to provide FIs with the flexibility to meet their obligations in a way that works well for their specific context, size, business, customers and products. The granularity and prescriptive nature of some of the proposed questions risks creating an expectation that obligations are met in a particular way. This would work counter to CoFI's intent.

13. We do not consider that collecting generic information on FCPs will generate insight on how each individual FI has operationalised its FCP.

14. Further, the scope of some of the questions is very broad, such that they do not easily lend themselves to a 'Yes' or 'No' response. There are also a number of aspects of the draft question set that require clarification and refinement as to what is required.

15. While yes / no can be an efficient way to gather information, we are concerned that some of the questions might be used as implicit attestations of compliance without this being clearly communicated. The questions are positioned as a way to gather regular information on the FI, however, the way certain guidance is structured suggests they could also be used as accountability mechanisms. We do not think this is appropriate for a regulatory return, but if this is the intention, it should be clearly stated as such.

Overlapping reporting requirements

16. In some cases, the questions in the FI regulatory return duplicate information already required to be provided by entities under other regimes.

17. We understand the FMA needs to collect information to supervise FIs, but they should not be required to provide the same information twice. The duplication of reporting creates additional compliance costs with no additional insight or value.

18. A significant example is proposed section 9, which requests complaints data. Registered banks already report quarterly complaints data to the Banking

Ombudsman. This data is required to be categorised in a number of different ways – for example, by product or service, by issue and by time to resolve. Banks also need to categorise complaints in a way that works for internal purposes and allows them to pursue good outcomes for customers. Accordingly, banks have committed considerable resource to build complaints reporting systems that both meet internal requirements and align with the Banking Ombudsman's requirements. Complaints reporting can already be complex for frontline staff, given complaints need to be categorised in a number of different ways.

19. The proposed questions in section 9 would require banks to categorise complaints in a different way, including separating those that are relevant to a financial institution service provided to a consumer. Given the size of a bank's customer base, this would create substantial additional work (including changes to complaints reporting systems). It would also add additional complexity to reporting that is already complex for frontline staff.

20. Accordingly, the FMA should utilise complaints data already provided to the Banking Ombudsman to collect information on complaints to banks. Requiring banks to report the same information to the FMA in a different way would demand significant additional resource and complexity for minimal additional benefit.

21. Other significant examples include:

    21.1. There is extensive overlap between questions in the FI regulatory return and existing FAP regulatory return requirements.

    21.2. Some FI regulatory return questions are already captured by the CoFI requirements that our members must report ongoing material changes to the nature of their financial institution services and events that materially impact the operational resilience of their critical technology systems, or are otherwise captured by the CoFI legislation.

22. We have set out our more detailed comments on the annual return questions in the Appendix.

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APPENDIX – Comments on draft questions

Question	NZBA Comments	NZBA Proposed Amendments
3(b)–(d) (Fair Conduct Programme)	As noted at paragraph 15 above, we are concerned that some of the questions in this section could be interpreted as attestations of compliance with the minimum requirements of the FCP. We do not think this is appropriate for a regulatory return.	We recommend that questions 3(c) and (d) are removed, and 3(b) amended as set out below.
3(b) (Fair Conduct Programme)	We recommend deleting option 2 from this question, because in practice, regular reviews of the effectiveness of the programme will also be used to pick up deficiencies. We recommend removing option 3 from this question, because "prompt remedy of any deficiencies identified" is not a method used to review and maintain the FCP. We also recommend refining option 4 for clarity	We recommend amending this question to the following: *Select all the methods [FI NAME] used to review and maintain its FCP during the return period.* *Select all that apply* *1. Regular review of the effectiveness of the programme* *2. Ad hoc review prompted by event.* *3. Other*
4(c) (Associated Products)	Some products may be offered periodically rather than continuously, which would make it difficult to select a timeframe. Additionally, it could be difficult to obtain this information for older products. We recommend this question is replaced with a question asking whether the FI has started offering any new associated products during the return	We recommend amending this question to the following: *Has the FI started offering any new associated products during the return period?*

Question	NZBA Comments	NZBA Proposed Amendments
	period. This would enable the FMA to achieve its purpose here, which is to get an update on the FI's business.	• *Yes* • *No*
6(b) (Distribution Methods)	A number of the annual return questions ask whether a review has been carried out during the return period. These questions: (a) Create an expectation that a review is carried out annually, which is in our view inappropriate. Entities should have flexibility to determine how frequently reviews are required. (b) Sometimes imply a method of review. For example, this Question 6(b) implies that reviews of distribution methods will be carried out method by method, rather than when a review of an associated product is carried out or similar. Again, entities should have the flexibility to determine how reviews are carried out. We recommend that these questions are replaced with higher level questions to determine whether the FI has processes in place to ensure reviews are carried out. Please also see Questions 7(a), 7(c), 14(a), 14(b) and 15(b) below.	We recommend amending this question to the following: *Does [FI NAME] have processes to ensure it regularly reviews its distribution methods to ensure they have been operating in a manner that is consistent with the fair conduct principle?*
6(c) (Distribution Methods)	We recommend that a materiality threshold is applied to this question to ensure that responses provided to the FMA are useful and to reduce the compliance burden on FIs. This should be achieved by clearly linking the question to the fair conduct principle.	We recommend amending this question to the following: *"Has [FI NAME] identified any material instances during the return period where a distribution method is not operating in a manner consistent with the fair conduct principle?"* • *Yes*

Question	NZBA Comments	NZBA Proposed Amendments
		• *No*
6(d) (Distribution Methods)	We recommend that this question is removed. If an entity indicates under question 6(c) that it has identified any instances of a distribution method operating in a manner that is not consistent with the fair conduct principle, the FMA can choose to engage with the FI if appropriate. An annual return is not an appropriate forum for this kind of engagement, as there is limited ability to provide detail and context.	We recommend removing this question.
7(a) (Conflicts of Interest)	We recommend this question be refined because not all conflicts policies, processes, systems and controls will be reviewed at the same time, or during a given return period. For example, a conflicts policy may be reviewed every two years, conflicts controls and processes may be reviewed annually or two-yearly, and conflicts systems may be reviewed only on an ad-hoc basis (e.g. during upgrades). Please also see our comments on Question 6(b) above.	We recommend amending this question to the following: *Does [FI NAME] have processes in place to ensure it regularly reviews its policies, processes, systems and controls for identifying and handling conflicts of interest?* • *Yes* • *No*
7(b) (Incentives)	We recommend removal or refinement because this question is entirely duplicative of an existing CoFI requirement for an FCP to include effective policies, processes, systems and controls for designing and managing incentives to avoid actual or potential adverse effects on the interests of consumers.	We recommend removing this question.

Question	NZBA Comments	NZBA Proposed Amendments
7(c) (Incentives)	We recommend this question is refined, because not all policies, processes, systems and controls related to incentives will be reviewed at the same time, or during a given return period. Please also see our comments on question 6(b) above.	We recommend amending this question to the following: *Does [FI NAME] have processes in place to ensure it regularly reviews its policies, processes, systems and controls related to incentives?* • *Yes* • *No*
7(d) (Consumer Care and Handling Conflicts)	This is the same information provided in the FAP return (Question 19) and should not be provided twice for FIs with a FAP licence.	We recommend removing this question for FIs with a FAP licence.
9 (Complaints)	The FMA should utilise complaints data already provided to the Banking Ombudsman to collect information on complaints to banks. Requiring banks to report the same information to the FMA in a different way would demand significant additional resource and complexity for minimal additional benefit. Please see our comments on this in paragraphs 18 to 20 above. This section also duplicates the information provided under the FAP return (Question 22). The definition of a complaint should align with the industry standard definition used by BOS (ISO Standard 10002) to support consistency and avoid confusion.	We recommend removing this question for registered banks.

Question	NZBA Comments	NZBA Proposed Amendments
10 (Remediation)	We recommend significant refinement to the guidance for Question 10. The definition of "remediation" is overly broad and would capture a wide range issues, including small single customer remediations as well as matters where there is no actual customer harm. The definition of "issue" is also overly broad and could encompass thousands of matters per month for large FIs (complaint volumes alone account for the bulk of this volume). It is unclear why the FMA would need information on non-material issues that may involve little or no customer detriment. As an "issue" includes a complaint, it is unclear how this question relates to (and may also overlap with) Question 9 (Complaints). The guidance for Question 10 should therefore be amended to reflect the industry meaning of the term "remediation" and to add a materiality threshold.	We recommend that the guidance for this question be updated to the following: *For the purposes of this question 10, an "issue requiring remediation" means a breach of law that has resulted in material consumer loss and/or impacted a material number of consumers.* *Remediation means any remediation carried out in relation to such issues.*
10(c) and 10(d) (Remediations)	We note that some customer remediations can be complex and take extended period of time to resolve, which should be factored in when interpreting the data on Questions 10(c) and 10(d).	No change.
10(e) (Remediations)	Further guidance is also required on Question 10(e) to understand the scope of an intermediary remediation. It is unclear if this refers to remediation the FI instructs the intermediary to undertake. Remediation related to an intermediary's compliance with its own regulatory requirements should be excluded.	We recommend that the guidance for this question be updated to the following: *The purpose of this question is to understand whether any remediations during*

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		the return period related to your intermediaries. *By 'related to intermediaries' we mean remediation(s) that are directly related to the conduct of an intermediary in that capacity – not:* • *those that related to an intermediary's compliance with regulatory requirements unrelated to its activities as an intermediary; or* • *those reported to you by an intermediary but related to the conduct of the FI.*
11 (Resourcing)	We recommend removal because the question was already covered in the FI licence application and any material change to the adequacy of resourcing would require notification to the FMA as a material change to the underlying information provided to the FMA when the FI licence application was submitted.	We recommend removing this question.
12 (Training)	We recommend refinement. The question has an unclear definition of 'initial and/or regular ongoing training'. A percentage figure would also be very difficult for a large FI to supply for a given return period. For example, a large FI with thousands of employees covered by this question may have dozens of training modules and requirements that may need to be completed at different times during a given return period. Training completion timeframes will also be	We recommend amending this question to the following: *Does [FI NAME] require employees to complete initial and regular ongoing training in relation to the following, where such training is relevant to their work:*

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	sequenced by each individual FI and most of these will not neatly follow the return period. Without a narrower definition of 'initial and/or regular ongoing training' it will be impossible for FIs to provide a 'percentage complete' figure. We recommend the question be confined to a confirmation that the FI requires employees to carry out training on relevant services and associated products, the FI's FCP, and the procedures or processes used to support compliance with the fair conduct principle, in each case where the training is relevant to the employee's work.	• *relevant services or associated products in respect of which the employee carries out work; and* • *[FI NAME's] FCP; and* • *the procedures or processes used to support [FI NAME's] compliance with the fair conduct principle.*
14(a) and (b)(BCP arrangements)	Questions 14(a) and (b) duplicate information provided under the FAP return (Question 26). Accordingly, they should be removed for FIs with a FAP licence. Additionally, an FI's business continuity arrangements may not all be reviewed at the same time, or during a given return period. Accordingly, if these questions are retained, they should be amended to better reflect that different FIs may carry out reviews and testing differently. Please also see our comments on question 6(b) above.	We recommend removing these questions for FIs with a FAP licence. If these questions are not removed, we recommend replacing them with the following: *Does [FI NAME] have processes to ensure it regularly reviews and tests its business continuity arrangements?* • *Yes* • *No*
14(c) and (d) (BCP arrangements)	An annual return is not an appropriate forum for notifying a regulator that a BCP plan has been activated, because it does not allow for timely notification or for appropriate context to be provided. Where an FI's BCP arrangements are activated in circumstances warranting notification to a regulator, this should be covered by existing	We recommend removing these questions.

Question	NZBA Comments	NZBA Proposed Amendments
	obligations, such as the obligation to report events materially impacting the operational resilience of critical technology systems.	
15(a) (Operational Resilience)	We recommend removal of Question 15(a) because the subject matter overlaps with an existing licensing requirement to report any incidents that materially affect the operational resilience of critical technology systems to the FMA within 72 hours. We also note that Question 15(a) duplicates information provided under the FAP return (Question 26).	We recommend removing this question.
15(b) (Operational Resilience)	Question 15(b) duplicates information provided under the FAP return (Question 26). Additionally, a FI's arrangements to ensure the operational resilience of critical technology systems may not all be reviewed at the same time, or during a given return period. Please also see our comments on Question 6(b) above.	We recommend removing this question for FIs with a FAP licence. If this question is not removed, we recommend replacing it with the following: *Does [FI NAME] have processes in place to ensure it regularly reviews its arrangements to ensure the operational resilience of critical technology systems?* • *Yes* • *No*
15(e) (Operational Resilience)	We recommend removal of Question 15(e) because the question is unclear and has limited relevance to the licence conditions or legislative requirements. Almost all large FIs have dozens of core systems and will be engaged in one or multiple 'system migrations' during a given return period as part of ordinary BAU technology operations. Not all system migrations result in increased risks of 'unfair treatment of consumers' and	We recommend removing this question.

Question	NZBA Comments	NZBA Proposed Amendments
	many take place without any consumer awareness. It is therefore unclear what this information would be used for. The options provided are also unhelpfully vague: almost all FIs will be engaged in some level of planning or continuation of work on system migrations and would select 'all of the above' if that were a permitted option for every return.	
17 (Contact Information)	Question 17 relates to how a FI ensures the contact information it has on file for consumers is up to date. Consumer contact information is not defined adequately but could include a significant number of contact information types (e.g. address, phone number, email address, unique identifier for active online banking applications, address for service, director contact addresses, etc). The options available for selection are very limited and do not allow for greater explanation of the means and methods of ensuring consumer contact details are kept up-to-date (particularly where consumer communications are delivered through online banking channels linked to unique consumer profiles or through omni-channel communication methods/campaigns). It is unclear what this information would be used for or what requirement it relates to. The information provided under Question 16 on record keeping should be sufficient.	We recommend removing this question.