chapman tripp

Changes to Insurance Law

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Tim Williams

Introduction

From 31 March 2025, insurers will need to have obtained a financial institution licence, having prepared a fair conduct programme before applying.

This presentation covers:

- the new CoFI requirements;
- prohibited incentives;
- the CoFI implications for brokers;
- what is fair;
- climate reporting for insurers;
- the Contracts of Insurance Bill;
- IPSA reforms; and
- changes to the Code of Professional Conduct for Financial Advice Services.

CoFI Licensing and Fair Conduct Programmes

Who needs to be licensed?

How does one get a licence?

What do Fair Conduct Programmes need to cover

What are, and are not, prohibited incentives

What is fair?

What are the implications for brokers

CoFI Requirements

- Overview
- Licensing by 31 March 2025.
- Requires licensed insurers who are acting as insurers, registered banks and licensed NBDTs to:
- be licensed by the FMA in respect of their conduct towards consumers;
- establish, maintain and implement, and take reasonable steps to comply with, a "fair conduct programme" (*FCP*); and
- comply with regulations that ban target-based sales incentives and regulate other types of incentives.
- Application process for CoFI licence
- Comprehensive eligibility criteria.
- FMA asks about all aspects of CoFI compliance, including business structure, governance, fair conduct programme, products / services offered (including channels), business continuity plan, outsourcing, complaints handling, record keeping, etc.
- Fair conduct programme
- Written programme of policies, processes, systems and controls designed to ensure compliance with the "fair conduct principle".
- Must be approved by the Board before application. Boards should consider their defences.

Prohibited incentives under CoFI

- From 31 March 2025, the new prohibited incentives regulations will apply to financial institutions and intermediaries.
- Prohibited incentives are incentives determined by direct reference to a target or other threshold that relates to the volume or value of the services or products will be prohibited.
- Exclusions:
- “Linear” based incentives.
- Wholesale clients only (confirmed by FMA guidance).
- Partial exclusion for Intermediaries which are Financial Advice Providers (and not Financial Institutions).
- Does not include targets or other thresholds that relate to market share, company profit, any other similar measure of financial performance or a cap.

What is fair?

- The fair conduct principle includes:
- paying due regard to consumers’ interests;
- acting ethically, transparently and in good faith;
- assisting consumers to make informed decisions;
- ensuring the products and services provided by the financial institution are likely to meet the requirements and objectives of likely consumers; and
- not subjecting consumers to unfair pressure or tactics or undue influence
- Is this formulation ‘accessible and so far as possible intelligible, clear and predictable’: Lord Birmingham’s first principle of good law.

What is fair?

fair, adj.

: marked by impartiality and honesty : free from self-interest, prejudice, or favouritism;
: conforming with the established rules;
: consonant with merit or importance;
: ~~open to legitimate pursuit, attack, or ridicule;~~
: ~~not very good or very bad, of average or acceptable quality;~~
: ~~sufficient but not ample, adequate;~~
: ~~moderately numerous, large, or significant;~~
: ~~not stormy or foul, fine;~~
: ~~having very little colour, colouring, or pigmentation, very light;~~
: ~~pleasing to the eye or mind especially because of fresh, charming, or flawless quality;~~
: ~~superficially pleasing, specious~~

Source: Merriam-Webster Dictionary

What is fair?

- FMA paper: Understanding Fairness in Financial Services provides useful insights into perceptions of fairness.
- Delayed remediation by a year - unfair according to 86%
- Insurer's employee selling an upgraded premium product for a bonus – unfair according to 62%
- Difficult to read dog insurance (long and small type)– unfair 71%
- Filling out paper forms before remediation - unfair 71%
- Consumer not being told they can negotiate terms – unfair 57%
- Difficulty in comparing insurance products due to documentation – unfair 49%
- FMA's conclusion: "Many New Zealanders generally agree on what is and isn't fair in most financial scenarios"

What is fair?

- FMA Consultation: Fair Outcomes for Consumers and Markets
- Seven fair outcomes:
  - Access to appropriate products and services that meet their needs
  - Useful information that aids good decisions
  - Fair value for money
  - Can trust providers to act in their interests
  - Receive quality ongoing care
  - Markets are trusted based on their integrity and transparency
  - Markets enable sustainable innovation and growth

CoFI implications for brokers

How will insurance brokers be impacted?

- Prohibited Incentives regime:
- The prohibited incentives regime will apply directly to “intermediaries”, so insurance brokers should be aware of the new requirements.
- Flow on requirements:
- Fair conduct programmes – Insurers will need to ensure distribution methods (including brokers) to operate consistently with the fair conduct principle.
- Regular review of distribution methods – Insurers will need to regularly review distribution methods.
- Outsourcing requirements – Insurers need to be satisfied that the provider is capable of performing the service to the standard required.
- Licensing – As part of licensing, insurers will be updating their policies and procedures. This will include reviewing existing arrangements with insurance brokers.

Climate Reporting

Who is a climate reporting entity?

What are the consequences of being a CRE?

Climate reporting for insurers – who is a climate reporting entity?

- Large licensed insurers: a licensed insurer is "large" if as at the balance date of each of the 2 preceding accounting periods:
  - the total assets of the licensed insurer and any subsidiaries exceed **$1 billion;** and
  - the annual gross premium revenue of the licensed insurer and any subsidiaries exceeds **$250 million**
- A licensed insurer can also be "large" if it is large after amalgamation in respect of the accounting period.
- For licensed insurers that are overseas companies, the above tests are applied in respect of the New Zealand business
- If an insurer is "large" for an accounting period they are a climate reporting entity (CRE).

Climate reporting for insurers – consequences of being a CRE

- Climate reporting entities (CREs) must:

- Keep proper climate-related disclosure (CRD) records for at least 7 years after the date the records are made
  - These records must be **made available** in the prescribed manner at all reasonable times for inspection without charge to certain people
- Prepare climate statements within 4 months after the balance date of the insurer (for an overseas CRE the climate statements are in respect of its New Zealand business)
  - Dated and signed on behalf of the insurer by **2 directors** (except for overseas insurers that have a signing exemption available to allow signing by the insurer's **New Zealand chief executive officer**)
- Lodge copies of the climate statements with the Registrar of Financial Service Providers within 4 months after the balance date of the insurer
- There is potential director liability for misleading statements in the climate statements (greenwashing) and for statements, including forward-looking statements, that cannot be substantiated

Contracts of Insurance Bill

When is this due

What are the key reforms

Contracts of Insurance Bill

- Follows MBIE's review of insurance contract law in 2019 & 2024.
- Status: Currently with the Select Committee (report due 3 September 2024), after passing its first reading in Parliament.
- The Bill introduces a series of reforms and changes, including:
- Amendments to disclosure duties applying to consumer and non-consumer policyholders, and setting proportional remedies.
- Requiring claims paid in a reasonable time, and changing the life insurance sum insured interest commencement date.
- Removing "insurance contract" specific exceptions from the "unfair contract terms" provisions under the Fair Trading Act 1986.
- Requiring that insurance contracts be worded and presented in a "clear, concise and effective" manner.
- Consolidation of various insurance laws under a single legislation.

IPSA Reforms

When are the IPSA reforms to take effect?

What are the proposed key changes?

IPSA reforms

- Reform of the Insurance (Prudential Supervision) Act
- Status: Expecting an exposure draft Bill towards the end of 2024, with the Bill to be introduced into Parliament in the second half of 2025.

- Proposed changes include:
- Broader regulatory scope
- Solvency and four stepped ladder of intervention
- Changes to statutory funds regime and enhanced policyholder protections
- Governance, risk management and relevant offers
- Other disclosure and reporting requirements
- Supervisory powers
- Approval processes for major transactions
- Enhanced enforcement tools & penalties
- Risk regulation of overseas insurers operating in NZ

Review of the Code of Professional Conduct for Financial Advice Services

When are these changes due?

What are the proposed key changes?

Changes to the Code of Professional Conduct for Financial Advice Services

- In June 2024, consultation on proposed changes to the Code of Professional Conduct for Financial Advice Services. Submissions closed 14 August 2024.
- Who? The consultation was conducted by Financial Advice Code Committee, a body appointed under the FMCA to set standards for finance advice provided to retail clients. The proposed amendments to the Code will apply to all FAPs.
- Why? "to reinforce the importance of continuing professional development for financial advisers"
- What? Proposed amendments to the Code include:
    1. Recognising version 3 of the Level 5 Certificate.
    2. Retaining the Level 5 Certificate qualification outcomes as the minimum standard of particular competence, knowledge, and skill for designing an investment plan, and removing interim status of CS7.
    3. Clarifying the requirements for continuing professional development in CS9 to include a more principle-based standard.