



## COVERSHEET

<b>Minister</b>	Hon Dr Duncan Webb	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Regulations and commencement order to support the Financial Markets (Conduct of Institutions) Amendment Act 2022: Authorisation for submission to the Executive Council	<b>Date to be published</b>	18 July 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
June 2023	Regulations and commencement order to support the Financial Markets (Conduct of Institutions) Amendment Act 2022: Authorisation for submission to the Executive Council	Office of the Minister of Commerce and Consumer Affairs
1 June 2023	Regulations and Commencement Order to Support the Financial Markets (Conduct of Institutions) Amendment Act 2022  LEG-23-MIN-0082 Minute	Cabinet Office
24 May 2023	Regulatory Impact Statement: Financial Markets (Conduct of Institutions) Amendment Act: Regulations for market services licences	MBIE

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

# Regulatory Impact Statement: Financial Markets (Conduct of Institutions) Amendment Act: Regulations for market services licences

## Coversheet

Purpose of Document	
Decision sought:	Agree to introduce a licence fee to recover costs incurred by the Financial Markets Authority associated with processing of market services licence applications.
Advising agencies:	Ministry of Business, Innovation and Employment
Proposing Ministers:	Hon Dr Duncan Webb, Minister of Commerce and Consumer Affairs
Date finalised:	24 May 2023
Problem Definition	
<p>The Financial Markets (Conduct of Institutions) Amendment Act 2022 (<b>CoFI Act</b>) establishes a new market services licence for banks, insurers and non-bank deposit takers (collectively <b>financial institutions</b>). The Financial Markets Authority (<b>FMA</b>) will be responsible for issuing these licences, and will incur costs from staff time spent assessing applications.</p> <p>The FMA’s general operating funding is funded through a combination of Crown funding and a levy charged to financial markets participants. The FMA also charges fees for certain services that it performs for market participants.</p> <p>The FMA does not currently have funding to process and issue financial institution licences. Decisions are required on whether this cost should be covered by Crown funding, privately funded or a combination of both.</p> <p>If the cost of licensing is recovered from those applying to become licensed, an appropriate licensing fee will need to be designed.</p>	
Executive Summary	
<p>On 29 June 2022, the CoFI Act received Royal assent. The CoFI Act introduces a conduct licensing regime for financial institutions and aims to ensure that financial institutions treat consumers fairly.</p> <p>Financial institutions will need to operate under a licence issued by the FMA that covers the service of ‘acting as a financial institution’ (<b>financial institution licence</b>) in order to provide core banking and insurance products and services to consumers in New Zealand. The FMA estimates that there are 100 financial institutions that will require a financial institution licence.</p>	

On 16 September 2019, Cabinet agreed that financial institutions will be required to be licensed. However, no decisions were made on the source of funding for the licensing regime or the amount any licence fee will be set at [CAB-19-MIN-0470 and DEV-19-MIN-0237].

The FMA will be responsible for issuing these licences and incur costs and funding implications from staff time spent assessing applications. The FMA has not been provided any funding to undertake this function.

Officials consider it is appropriate to cost recover the FMA's licensing cost via a fee from those seeking to become licensed as they will be receiving the private benefits of being licensed by being able to operate in the regulatory environment established under the CoFI Act (which responds to conduct risks presented by the activities of those who will require a licence). Recovering the FMA's licensing cost by way of a fee is also consistent with best practice cost recovery principles.

Officials also considered different options on how to structure a fee for financial institution licences. The option that best met the objectives is to set a flat application fee rate of \$1,024.93 (incl. GST) for all applicants and additional hourly fees of \$178.25 (incl. GST) if extra staff time is required to process the application. This fee is based on an estimated average of 5.75 assessment hours at \$178.25 per hour for a standard application. Obtaining a licence will be a one-off process and the licences will not have any expiry date.

Legal authority exists under the Financial Markets Authority Act 2011 (**FMA Act 2011**) and the Financial Markets Conduct Act 2013 (**FMC Act**) to charge a fee for a financial institution licence. An amendment to the Financial Markets Conduct (Fees) Regulations 2014 (**Fees Regulations**) will be required to set a licence fee for financial institutions.

The Government currently plans that the CoFI regime will come into full force in early 2025. The FMA is working with financial institutions to ensure they are prepared for the new regime and plans to start accepting licence applications from 25 July 2023.

### Limitations and Constraints on Analysis

Officials consulted publicly on the policy proposals for the structure and proposed amount of the licence fee over a 4-week period in October 2022. The preferred option outlined in the discussion document was to set a flat licensing fee for standard applications and an additional hourly rate for more complex applications. Other alternative options proposed were a flat application fee with no additional hourly rate, setting different licence classes and fees for different types of financial institution, or Crown funding. The discussion document did not propose the options of levy funding or fully variable (hourly rate) fees as these options were not considered appropriate (explained further below at paragraphs 28 and 41-42).

We estimate that there will be about 100 financial institutions seeking to become licensed. Officials received 5 submissions in total from industry organisations representing insurers, credit unions and building societies, fund managers, KiwiSaver providers, professional service providers, and workplace savings schemes. We did not receive feedback from some sections of the market (e.g. large banks). Our analysis has been constrained by the small amount of feedback received that does not cover the broad range of stakeholders that will likely apply for a licence. We note that larger financial institutions may have seen the cost of drafting a submission as outweighing the proposed licence fee costs.

This regulatory impact assessment covers the analysis of whether the FMA's financial institution licence costs should be recovered and what the subsequent fee structure should

be. This analysis builds on previous impact analyses that were prepared during the primary policy development process for the regime.

#### Responsible Manager(s) (completed by relevant manager)

Tom Simcock  
Manager, Financial Markets  
Ministry of Business, Innovation and Employment

24 May 2023

#### Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement <b>meets</b> the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. In late 2018 and early 2019 the FMA and Reserve Bank of New Zealand published two joint reviews into the conduct and culture of banks and life insurers in New Zealand. The reviews identified weaknesses in the governance and management of conduct risks leading to poor consumer outcomes and consumer harm. For example, there was limited evidence of products being designed and sold with good customer outcomes in mind, leading to the sale of poor-value products or products that were not fit for purpose.
2. As a result, the Government introduced legislation to address these issues. On 29 June 2022, the CoFI Act received Royal assent. The CoFI Act introduces a conduct licensing regime for financial institutions and aims to ensure that they treat consumers fairly.
3. The CoFI Act amends the FMC Act by inserting a new section 388(ca) into Part 6 of the FMC Act, which requires providers of financial services to be licensed if they are acting as a financial institution. The Government plans that the regime will come into force in early 2025.
4. When the provisions of the CoFI Act come into force, financial institutions will need to operate under a licence issued by the FMA that covers the service of 'acting as a financial institution' (financial institution licence) in order to provide core banking and insurance products and services to consumers in New Zealand. The FMA is currently able to issue 8 different licences for various market services activities under the FMC Act, and operating as a financial institution is a new licensed market service under the FMC Act.

5. The FMA is working with financial institutions to ensure they are prepared for the new regime and plans to start accepting licence applications from 25 July 2023. It is intended that the relevant provisions of the CoFI Act enabling the FMA to accept licence applications will be brought into force by Order in Council in advance of 25 July 2023. This approach will ensure that financial institutions have sufficient time to obtain their licences before the regime fully comes into force in early 2025.
6. The licensing application process will enable the FMA to assess whether the applicant is capable of effectively performing the service of acting as a financial institution. It will also provide valuable information to the FMA about individual institutions and assist the FMA to assess conduct risks and maturity at a sector level. The FMA's monitoring and supervisory approach will be directly informed by knowledge gained through the licensing process. The licensing process has been designed by the FMA and is outside of the scope of this impact assessment.
7. While the licensing provisions in the CoFI Act have received Cabinet approval, Cabinet has not yet agreed on whether the FMA's costs of the licensing process will be cost recovered and any licence fee that financial institutions will have to pay.

#### *Context for this regulatory impact analysis and previous decisions*

8. In September 2019, Cabinet decided that financial institutions will be required to be licensed under Part 6 of the FMC Act by the FMA in respect of their conduct in relation to consumers [CAB-19-MIN-0470 and DEV-19-MIN-0237].<sup>1</sup>
9. This regulatory impact analysis specifically focusses on whether to cost recover for licensing and the fee structure and amount that will be set for financial institution licences. It follows previous regulatory impact statements on this matter. The first covered the CoFI regime as a whole, including whether a licensing regime should be introduced,<sup>2</sup> and the second assessed additional policy decisions about the regime's approach to third party intermediaries and the Lloyd's insurance market.<sup>3</sup> Following discussion with RIA team at Treasury, this regulatory impact analysis also contains elements of the Stage 1 and 2 Cost Recovery Impact Statement.

#### *Legal authority to charge a financial institution licence fee*

10. There is an empowering provision in section 67 of the FMA Act 2011 to make regulations to recover costs incurred by the FMA in carrying out its functions.
11. In addition, the FMC Act includes existing regulation making powers under sections 548(1)(o) and 552 for fees and charges to be prescribed in respect of any matter under the FMC Act.
12. The existing Fees Regulations set out fees for other market services licences under the FMC Act.

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<sup>1</sup> [Minute of Decision - Conduct of financial institutions: Introduction of a new conduct regime - 11 September 2019 \(mbie.govt.nz\)](https://mbie.govt.nz)

<sup>2</sup> [Regulatory Impact Statement - Regulatory regime to govern the conduct of financial institutions - 5 December 2019 \(treasury.govt.nz\)](https://treasury.govt.nz)

<sup>3</sup> [Regulatory Impact Statement - Financial Markets \(Conduct of Institutions\) Amendment Bill – Further policy decisions - 9 February 2022 \(mbie.govt.nz\)](https://mbie.govt.nz)

## What is the policy problem or opportunity?

13. In September 2019, Cabinet decided that the FMA will be responsible for issuing licences under the CoFI regime and will be responsible for monitoring and enforcing the new regime. The FMA will incur costs and funding implications from staff time spent assessing applications, and the policy problem is whether and how these costs should be recovered.
14. Obtaining a licence will be a one-off process and the licences will not have any expiry date. Licences will have standard conditions to ensure that licence holders continue to meet licensing requirements. The FMA has consulted separately on these conditions. The FMA can also vary, revoke, add to, or substitute any conditions including those specific to a particular financial institution at any time after the licence is issued.
15. Both the FMC Act (section 548(1)(o)) and the FMA Act 2011 (section 67) contain empowering provisions that enable fees and charges to be set for the FMA. An amendment to the Fees Regulations is required to set a fee for the financial institution licence.
16. The new licence will become part of the suite of market services licences the FMA already issues (see paragraph 4 above).
17. The FMA's monitoring and enforcement activities are funded through a mix of both Crown funding and FMA levies paid by financial markets participants, including financial institutions. For clarity, costs to the FMA resulting from the development and implementation of the new CoFI regime (not including the costs the FMA will incur in assessing licence applications) will be funded by an increase to the FMA's baseline funding. Large parts of this funding will be recovered through increased FMA levies payable by financial institutions, along with a contribution from the Crown. Information about the recent FMA funding and levy review is available on MBIE's website.<sup>4</sup>
18. While the FMA has received Crown funding to develop the Information and Communications Technology (ICT) system to process applications, it has not received any funding to pay for the costs it will incur from its staff assessing licence applications. The licence fee will not seek to recover the Crown funding for the development of the ICT system so is not in scope of this cost recovery consideration.
19. This impact assessment analyses whether the licensing cost should be Crown funded or privately funded, or a mixture of both and how to design and set any licence fee.

## Section 2: Policy Rationale: Why a user charge? And what type is most appropriate?

### Who may be required to pay the cost recovery charges?

20. The proposed charges will potentially impact prudentially registered banks, licensed insurers, and non-bank deposit takers (**NBDTs**). There are 136 of these financial institutions in New Zealand but not all of them will be providing the relevant services to consumers that are covered by the CoFI Act. The FMA expects between about 92 and 109 financial institutions will require a licence. Based on current information, it is

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<sup>4</sup> [FMA Funding - 2021 funding and levy review \(mbie.govt.nz\)](https://www.mbie.govt.nz/funding-review)

assumed that a mid-range value of 100 financial institutions will require a financial institution licence.

21. Some financial institutions may apply for licences that cover other related bodies corporate as “authorised bodies”. It is likely that there will only be a small group of financial institutions that are in this situation. The FMA have estimated potentially 14 entities with one or more related financial institutions that may seek to include those entities on their licence as an authorised body. If some or all of those 14 financial institutions applied to have one or more authorised bodies on their licence, this would reduce the overall number of licences required, as those authorised bodies would not need a separate licence.

### Why is cost recovery appropriate for the activity, i.e. why should the FMA’s licensing costs be recovered from financial institutions rather than funded by the Crown?

22. We note that the CoFI regime as a whole provides public benefits of increased consumer trust in financial institutions and reduced consumer harm by introducing conduct licensing requirements for banks, insurers and NBDTs. These public benefits were taken into account in setting the FMA levy in the recent FMA funding and levy review (described above at paragraph 17). The Office of the Auditor-General’s *Good Practice Guide: Charging fees for public sector good and services (OAG Good Practice Guide)* notes that a levy can factor in benefits shared between groups or benefits that cannot be specifically assigned to individual groups.<sup>5</sup>
23. While the CoFI regime provides these public benefits, financial institutions will receive direct private benefits if they hold a licence by being able to operate in the regulatory environment established under the CoFI Act. These benefits are not shared with a wider group. The regime also responds to conduct risks presented by the activities of financial institutions.
24. We therefore propose that the cost of assessing licence applications is recovered from those that directly benefit from holding a licence, i.e. the financial institutions seeking a licence. This is consistent with the *OAG Good Practice Guide*, which notes that public organisations will generally charge fees where the service provides an individual or group of individuals with a direct benefit or where the service is necessary to mitigate risks presented by the activities of an individual or group of individuals.

### Is full or partial cost recovery being proposed?

25. We consider that it is appropriate that the FMA recovers the full cost of processing each application from licensees. This will cover the cost of staff time, but it would not include the cost of developing the systems and processes to establish the licensing system. Recovering the cost of processing licence applications is consistent with the FMA’s approach to cost recovery for other market services licences that it issues, for example the market services licence to act as a provider of a financial advice service.
26. If the full cost of processing applications is not recovered the FMA would need to subsidise the processing of licences from other revenue streams. We do not consider this appropriate as it would entail cross-subsidisation from its baseline funding

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<sup>5</sup> [Office of the Auditor-General - Setting and administering fees and levies for cost recovery: Good practice guide \(oag.parliament.nz\)](https://oag.parliament.nz)

ultimately sourced from other financial markets participants (via the FMA levy) or taxpayers (Crown funding).

### What type of charge is being proposed?

27. As set out in the OAG *Good Practice Guide*, types of charges can include fixed charges to individuals (fees), charges to groups of individuals (levies) and variable/differentiated charges to individuals (such as hourly rates or the level of service that an individual user generates).
28. We do not consider a levy to be appropriate in this case because the processing of a financial institution's licensing application is a cost that can be linked directly to the financial institution. Levies are usually appropriate where a charge does not have a "direct line of sight" to an individual's consumption of a good or unit of service, and where it is not efficient to identify the amount of the services that any one individual uses.
29. We therefore propose a charge to individuals. Options for the licence fee structure (e.g. whether it should be a fixed fee or a combination of a fixed and hourly fee) are considered in more detail in the next section.

### What objectives are sought in relation to the policy problem?

30. The following are the objectives are sought in recovering the FMA's costs to process financial institution licence applications:
  - a. Ensuring that fees are set at a level that fully recovers, but does not over-recover, the costs to the FMA of assessing applications.
  - b. Fees are fair, minimising the extent to which the fees create a cross-subsidy between different types of applications (particularly between complex and less complex applications).
  - c. Limiting uncertainty to prospective applicants as to the likely total amount of fees they will be required to pay.
  - d. Creating incentives for the FMA to deliver services to fee payers in an efficient and effective manner.
  - e. Ensuring the charging of fees can be undertaken in an administratively efficient manner.
31. In developing these objectives, we have taken into account the OAG *Good Practice Guide* and the Treasury's *Guidelines for Setting Charges in the Public Sector*<sup>6</sup>.

### What are the FMA's costs of assessing a licence application?

#### *Factors that may impact on the FMA's costs of assessing a licence application*

32. The time required for the FMA to consider an application will vary depending on a number of factors including the quality of the information and documentation submitted and the complexity of the application. The FMA is required to consider a wide range of factors when considering a licence application, including whether the applicant has the

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<sup>6</sup> [Treasury - Guidelines for Setting Charges in the Public Sector - April 2017 \(treasury.govt.nz\)](https://www.treasury.govt.nz/publications/guidelines-for-setting-charges-in-the-public-sector)



systems and processes in place to ensure it is capable of effectively performing the service (and likewise for any other financial institutions authorised under its licence).

33. The FMA has processes in place to assess the complexity of applications, which ensures efficient use of resources, thus minimising the cost of the licensing process. In practice this means that when applications are made (through an online portal), a risk assessment will be undertaken by the system. The system will then flag any issues that need further manual consideration by staff (i.e. the need to review the information provided in the application and to potentially request and review further documentary evidence).
34. The FMA expects that less complex applications would likely require little manual assessment by staff. The licensing system is being designed with binary questions for applicants to indicate whether they consider they meet the requirements.
35. Circumstances that may (but will not always) increase the complexity of an application include:
  - a. The applicant does not have an existing relationship with FMA as a regulated or licensed entity (note that this is likely to be the case for approximately half of the entities that are expected to be required to hold a licence under the CoFI regime).
  - b. The applicant submits an incomplete application that is missing required information or documents.
  - c. The required information is not in the standard form (e.g. because information is from an overseas entity and has been prepared for an overseas jurisdiction).
  - d. The applicant's responses to questions in the application form raise further questions or issues that require the FMA to seek additional information from the applicant (e.g. making further enquiries about whether a director satisfies the "fit and proper person" requirements, or confirm one or more key aspects of an applicant's fair conduct programme) or require additional FMA staff review time (e.g. of additional documentation or previous compliance information).
  - e. More complex third-party consultation is required (e.g. a need to consult with the Reserve Bank or the Commerce Commission on regulatory matters relating to the applicant).

#### *Estimated time to consider licence application*

36. The licensing process will be carried out through an online portal and the costs to the FMA for processing licence applications will be directly related to the staff time required to consider a licence application.
37. The FMA has estimated it will take on average 5.75 hours of staff time to assess a standard application (i.e. an application that is complete, has been filled out correctly and does not give rise to the FMA needing to seek additional information or consult extensively with third parties, per the above). This time estimate anticipates escalation of some issues by the licensing system that require manual follow up by staff. Manual follow up could include a request for further documentary evidence from the applicant, potentially a small amount of document review (e.g. parts of the fair conduct programme or the summary of the fair conduct programme that is to be published on the financial institution's website for consumers) and some additional liaison with the applicant. The FMA anticipates that the majority of applications will come within the standard assessment time of 5.75 hours.



## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

38. The following criteria will be used to assess the options for setting a licence fee:
- a. **Appropriate FMA funding:** The licence fees need to be set at a level where FMA recovers the costs of reviewing and processing applications, but not so high as to over-recover the costs.
  - b. **Beneficiaries pay:** Those that directly benefit from the services, pay for the service.
  - c. **Minimise administrative burden:** The fee structure is easy for FMA to implement and aligns with other market services licence fee structures.
  - d. **Fees are fair and minimises cross-subsidisation:** Each financial institution pays a fee that reflects as closely as possible the actual cost of processing their application, with uncertainty as to the amount of the fee minimised. Those that provide complete and comprehensive applications are not penalised by being a charged a higher fee to cover costs of other incomplete applications.

### What scope will options be considered within?

39. As noted above, Cabinet has decided that there will be a licensing regime under which financial institutions will be required to obtain a licence from the FMA in order to continue to provide core banking and insurance products and services to consumers in New Zealand. There are no other previous Ministerial or policy decisions that limited the scope of feasible options that were considered as part of this analysis.
40. As set out above at paragraphs 22 to 26, officials consider it is appropriate for the FMA to fully recover the costs it will incur to process licence applications from those seeking to hold a licence. The option of Crown funding is therefore not considered appropriate and is not included in the analysis below.

#### *Option considered but not included - charging an hourly rate only*

41. Officials have considered the option of charging only an hourly rate for the FMA's consideration of applications. However, the OAG *Good Practice Guide* states that an hourly rate is appropriate where it is expected that there will be a high degree of variability in the time a process takes. Based on its experiences with other market services licences, the FMA does not expect there to be a high degree of variability in the time for its assessment process for standard applications, and expects that the majority of applications will take around 5.75 hours to assess. This option would also not meet the objectives of limiting uncertainty to prospective applicants or minimising administrative burden.
42. An option of charging an hourly rate only was therefore not included in the options assessed through public consultation or this analysis.

#### *Option considered but not included - discount apply to multiple applications*

43. Officials considered the option of applying a discount to multiple applications but ruled this out. This was set out in the consultation material, and we did not receive any feedback on this option.

44. The Fees Regulations make provision for a discounted licence fee to apply where a person applies for a licence under the FMC Act at the same time, or within six months of, another different market services licence application. MBIE do not propose that this existing discount (that applies to some other market services licences) would apply to financial institution licences.
45. The purpose of the discount is to recognise lower costs for the FMA because information provided in the application forms part of another licence application. The FMA's licensing system is now designed to assess applications in the first instance through an automated licensing system, leading to relatively low estimated processing times (compared to detailed staff assessment in the case of some other existing FMC Act licences to which this discount regulation applies). It is unlikely there will be lower costs for the FMA resulting from multiple applications for a financial institution licence under the CoFI regime.
46. As with the fees for financial advice providers set in 2019, the proposed flat licensing application fee has been calculated taking the benefits of the automated licensing system into account.

### What options are being considered?

47. As discussed in the section above, the following options explore different ways the licensing costs can be recovered from those seeking to become licensed and works on the assumption that cost recovery is appropriate.
48. We have also ruled out the option of charging an hourly rate only or setting a discounted rate for multiple applications.

#### ***Option 1 – Flat application fee for all financial institutions with additional hourly rate for more complex applications***

49. The FMA has estimated 5.75 hours for standard applications (i.e. applications that are not complex or incomplete). The fees that the FMA can charge on an hourly basis are prescribed in the Fees Regulations and are \$178.25 (incl. GST) per hour for work carried out by FMA employees. Therefore, we are proposing a licence application fee at a flat rate of \$1,024.93 (incl. GST) (calculated as \$178.25 x 5.75 hours) for all applicants, and that additional hourly fees of \$178.25 (incl. GST) may apply if extra staff time (over 6.75 hours) is required to process the application.
50. This fee structure and additional hourly rate structure ensures the FMA can fully recover its costs of staff time and that complex applications pay for the additional assessment they require. It is expected that most applications will only be required to pay the flat application fee. As with the existing financial advice provider licensing fee, which also uses an automated application system to process applications and consists of only a few hours of staff time for assessing an application, a small margin of 1 hour over the estimated rate is proposed before the hourly rate may be charged. It is rare for FMA to charge for additional hours for financial advice provider licences.
51. We note that the proposed fee will represent an additional cost to financial institutions. It is however unlikely to have a significant impact on most financial institutions, given the relatively low amount and that it will only be charged on one occasion (subject to any fees for subsequent applications to vary licence conditions, as set out below).
52. The FMA's primary statutory objective is to promote, and facilitate the development of, fair, efficient, and transparent financial markets. In processing licence applications and

charging fees it will need to act in an effective and efficient manner and act reasonably. The FMA is required under the Fees Regulations to notify applicants in writing if they are likely to be charged an hourly rate and the reasons why the number of hours spent on the application is likely to exceed the specified number.

*Separate fees will be payable for authorised bodies and for applications to vary conditions*

53. As part of Option 1, we also propose that a separate licence fee be payable for each additional financial institution covered in the financial institution licence application as an ‘authorised body’.<sup>7</sup> It is likely that the FMA staff time required to consider, assess and process each additional financial institution covered as an authorised body will depend on the degree of interdependence of the relevant bodies corporate of the financial institution applicant (e.g. factors such as whether they have the same directors for the purposes of “fit and proper person” requirements, and whether they operate under the same fair conduct programme). Section 400 of the FMC Act sets out the range of factors the FMA must consider in issuing a licence for an authorised body.
54. On average, the FMA estimates that each authorised body assessment will take approximately 60 per cent of the time taken for a standard financial institution licence application (or approximately 3.45 hours). This is because some of the information relevant to assessing the authorised body’s suitability will already have been considered by the FMA in relation to the financial institution applicant, but additional information will need to be considered in relation to the authorised body itself. The fee for an authorised body to be considered as part of an application has therefore been set at 60 per cent of the standard fee (\$614.95 (incl. GST) or around 3.45 hours at the hourly rate).
55. Subsequent applications to vary licence conditions, including to add, remove or vary authorised bodies, will be charged at the existing market services licence variation fee of \$115.00 (incl. GST) as set out in Schedule 1, Part 1 of the Fees Regulations, plus \$178.25 (incl. GST) for every hour, or part-hour pro rata, of work carried out.<sup>8</sup>

*Summary of proposed fees under Option 1*

56. The following table summarises the proposed licence fees under Option 1:

<b>Financial institution licence fee (all costs inclusive of GST)</b>		
	Licence application fee for all applicants (based on estimated time to assess standard application of <b>5.75</b> hours)	<b>\$1,024.93</b>
+	Hourly rate charges that may apply for applications where the time to assess exceeds <b>6.75</b> hours	<b>\$178.25/hour</b> , or part-hour pro rata, of work carried out
+	Fee for each authorised body included in the licence application (based on estimated time to assess standard application of <b>3.45</b> hours)	<b>\$614.95</b>
+	Other applications to vary licence conditions	<b>\$115 plus \$178.25/hour</b> , or part-hour pro rata, of work carried out

<sup>7</sup> A licence may, in its conditions, authorise 1 or more related bodies corporate of the licensee to provide a market service covered by the licence - section 400 FMC Act.

<sup>8</sup> The FMA’s hourly rate is set in the Fees Regulations at \$178.25 per hour inclusive of GST. Fees for applications to vary licence conditions are also set in these regulations.

### **Option Two - Flat application fee for all financial institutions with no additional hourly rate**

57. All financial institutions would be charged the same flat application fee, regardless of the complexity and time taken to assess their application. This fee has not been calculated but would likely be higher than the fee proposed in Option 1 to take into account the range of complex and incomplete applications the FMA will have to process (which would increase the estimated average time to process an application above 5.75 hours, as that estimate only applies to standard applications). There would be no additional hourly rate charged, irrespective of the amount of time it takes for the FMA to assess the application.

### **Option Three – Setting different licence classes**

58. Different licence classes would be developed with different fees set for each type of financial institution (i.e. three separate licence classes for banks, insurers, and NBDTs), or based on the products or services they offer, or the size of the business. This approach would distribute the cost among financial institutions. However, it will be difficult to set the fee at an appropriate level as the cost of assessing an application directly corresponds to the complexity of the application. The size or type of financial institution is not expected to be a determinant as to whether an application will be complex (see paragraph 35 above).

### **Stakeholder consultation and feedback on options**

59. In October 2022 MBIE released a discussion document to seek public feedback on the question of licensing costs and the options set out above. We received five submissions in total from the following organisations:
  - a. Insurance Council of New Zealand (**ICNZ**)
  - b. Financial Services Federation (**FSF**)
  - c. Financial Services Council (**FSC**)
  - d. Financial Advice New Zealand
  - e. CUBS NZ.
60. Submitters represent insurers, credit unions and building societies, fund managers, KiwiSaver providers, professional service providers, and workplace savings schemes. The feedback official received did not reflect the full range of stakeholders that would be required to be licensed, e.g. no submissions were received by or on behalf of large banks.
61. Submitters were generally supportive of the objectives for licensing fees and the proposed approach.
62. At a high level, submitters raised the following concerns:
  - a. proportionality of the fees for different sized entities
  - b. having sufficient guidance around what constitutes a 'complex' application to minimise the need for additional hourly charges
  - c. transparency around the hourly charges that the FMA applies to complex applications.

63. Submitters commented on the hourly fee that will be applied to complex or incomplete applications. Feedback suggested clear parameters should be set as to when the additional fees will apply and suggested this should be in any circumstances where additional time is required.
64. Submitters also suggested there should be transparency around the additional hourly charges. Where it is due to internal issues at the FMA, institutions should not be charged extra. There was also a suggestion that there be a review of fees charged and a mechanism for applicants to raise issues if they have concerns about the fees that were charged.

#### *Recommendations following consultation*

65. Officials considered the feedback provided from submitters and discussed it with the FMA. Our response is set out below.
66. The most significant issue to submitters is the proportionality of fees to smaller financial institutions. In response, we note that fee levels are set at a level that reflect as closely as possible the cost of reviewing the financial institution's own application. Deviating from this option would require other financial institutions to cross-subsidise consideration of other financial institutions' applications. As a result, officials do not recommend making changes to the proposed licence fee structure.
67. Officials note submitter feedback on having guidance on what constitutes a complex application. The discussion document contained an extensive list of circumstances that would impact on whether an application is complex (see also paragraph 35 above). The FMA will release guidance on the application process and will be working with the industry prior to the application process opening to minimise the number of incomplete applications that are made.
68. As noted above, the FMA will need to process licence applications in an efficient and effective way. Regarding feedback on the hourly charge, the FMA has a similar process for other licences that it issues and has systems in place to review the hourly charges that apply to financial institutions. For example, at the start of each month the FMA assesses the number of hours assigned to each application and whether it exceeds the hours included in the flat application fee. If the number of hours is likely to result in extra hours being charged, the FMA will review these applications and determine whether any time should be written off (e.g. because extra time was spent due to staff training). The FMA tries to be reasonable and fair in its approach and will need to treat queries about invoices appropriately.

## How do the options compare to the status quo/counterfactual?

	<i>Status quo (\$0 licence fee)</i>	<i>Option 1 – Flat application fee plus additional hourly fee for more complex applications</i>	<i>Option 2 – Flat application without additional hourly fee</i>	<i>Option 3 – Setting different licence classes</i>
<b>Appropriate FMA funding</b>	0	<p style="text-align: center;">++</p> <p>Apportioning the cost of licensing among applicants means the FMA should be able to recover its costs, and allowing the FMA to charge an hourly rate for more complex applications means that the FMA can recover additional costs.</p>	<p style="text-align: center;">+</p> <p>The FMA will receive the flat fee, but this may not be sufficient to cover all of the FMA’s staff time costs, particularly where more complex applications are being considered.</p>	<p style="text-align: center;">+</p> <p>Setting different licence classes will distribute the cost among financial institutions. However, it will be very difficult to design this in a manner that sets the fee at an appropriate level as the cost of assessing an application directly corresponds to the complexity of the application. The size or type of financial institution may not be a determinant as to whether an application will be complex.</p>
<b>Beneficiaries pay</b>	0	<p style="text-align: center;">++</p> <p>Those that benefit from being part of the regulatory system will fund the system.</p>	<p style="text-align: center;">+</p> <p>While those that benefit from the licensing system will incur some costs, they may not be paying the full cost of the system.</p>	<p style="text-align: center;">+</p> <p>Those that benefit from the licensing system will incur some costs, but it will be difficult to design this option in a way that apportions the appropriate cost to the beneficiary as the factors that increase licence costs are not always related to the institution’s size or structure.</p>



<b>Minimise administrative burden</b>	0	<p style="text-align: center;">+</p> <p>This option will be relatively easy to administer as it duplicates a model that already applies to FMA for other licensing systems.</p>	<p style="text-align: center;">++</p> <p>Charging the same flat fee to all applicants will be very easy to administer.</p>	<p style="text-align: center;">-</p> <p>This option will be difficult to design, implement and administer. There are different classes financial institutions can be split into but none of the obvious choices will meet the policy objectives.</p>
<b>Fees are fair and minimised cross-subsidisation</b>	0	<p style="text-align: center;">++</p> <p>Minimises cross-subsidisation by requiring applicants to pay a fee that reflects the costs associated with considering their application. Allowing the FMA to charge the hourly rate reduces the fees for most applicants and applies those costs to complex applicants. Having an ability to charge an hourly rate creates a strong incentive for applicants to submit complete applications.</p>	<p style="text-align: center;">-</p> <p>A flat fee for all applicants will not be fair as some applicants may submit incomplete applications or have very complex applications and other applicants will cross-subsidise the fee they pay.</p>	<p style="text-align: center;">-</p> <p>This option will be difficult to implement and administer in a way that is fair and minimises cross-subsidisation.</p>
<b>Overall assessment</b>	0	<p style="text-align: center;">++</p> <p>Overall this option best meets the criteria and objectives.</p>	<p style="text-align: center;">+</p> <p>This option is easier to administer than Option 1 but does not fully meet the other criteria.</p>	<p style="text-align: center;">0</p> <p>This option will be very difficult to design in a way that meets the objectives since the cost of assessing an application is related to the complexity of the application, and complexity is unlikely to be related to an institution's size or structure.</p>

**Example key for qualitative judgements:**

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

69. Officials consider that Option 1 (where a flat licence application fee is set for standard applications and an additional hourly rate may be applied for more complex applications) best addresses the problem and policy objectives with the highest net benefit.
70. We consider that this proposal meets the stated objectives for setting licensing fees because:
- a. It should allow the FMA to fully recover the anticipated staff cost of assessing financial institution licence applications.
  - b. The additional hourly rate above the flat application fee specified time threshold limits cross-subsidy between different applicants, i.e. complex and less complex licence applications.
  - c. Using a flat fee combined with an hourly rate above the specified time threshold will provide certainty to most applicants, while allowing the FMA to recover additional costs incurred in assessing more complex applications.
  - d. It will encourage the FMA to deliver licensing services to fee payers in an efficient and effective manner, by setting the base fee at a level that appropriately recovers costs in most cases and by requiring the FMA to notify applicants and explain the reason for charging an additional hourly rate in more complex cases.
  - e. It is simple to administer and aligns with the approach taken to other licence fees under the FMC Act.

## What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups ( <i>financial institutions such as banks, insurers and NBDTs</i> )	The additional cost to regulated groups will be the one-off licence fee. In some instances, a further fee will be applied if there are applications to vary any licence conditions after the initial approval.	<p>Low</p> <p>The minimum cost to regulated groups is estimated to be \$99,623.14<sup>9</sup> in total assuming no complex applications. The actual cost would be higher with a higher number of standard and/or complex applications.</p> <p>It is anticipated that most financial institutions will experience a very low or negligible impact from the proposed fees. Smaller financial institutions such as credit unions and building societies may experience a higher impact relative to their revenues (but still low overall).</p>	<p>High</p> <p>It is certain that financial institutions will be impacted by the proposed fee, as they need to apply for a licence in order to continue operating. We also have a high degree of certainty that the impact is likely to be relatively low.</p> <p>The licence fee structure is based on other similar licensing regimes the FMA already administer and information available to the FMA as the regulator. Assumptions were drawn from previous experience.</p>
Regulators (FMA)	The FMA will incur a cost to undertake the licensing function, but should recover this cost through the licence fee.	<p>Nil / Low</p> <p>The licence fee has been structured in a way to allow the FMA to recover the</p>	<p>Medium</p> <p>While it is not possible to be completely certain of the FMA's costs, the licence fee structure is based on</p>

<sup>9</sup> This figure shows the minimum cost as it assumes no complex applications are received where additional hourly fees will be charged. Very little information is available to make a reasonable assumption about how many complex applications will be received and the number of extra hours required to assess those applications. Other assumptions are: Out of a total of 100 likely applicants, 93 applicants paying a financial institution licence fee of \$1,024.93 and 7 applicants paying an authorised body licence fee of \$614.95 (assuming half of the eligible entities apply for an authorised body licence instead of a financial institution licence).

		full cost of assessing applications.	other similar licensing regimes the FMA already administer and information available to the FMA as the regulator. Assumptions were drawn from previous experience.
Others (e.g. wider govt, consumers, etc.)	The wider government and consumers will not be directly impacted by the proposed fee, but the costs of the fee may be passed to consumers indirectly in some form by financial institutions charging for products and services.	Nil / Low  It is possible that the licence fee costs could be passed onto consumers but given the very large number of consumers who use financial products and services and the very low estimated costs, any cost to consumers would be negligible.	High  We can say with a high level of certainty that other parties (e.g. consumers and wider government) will not be materially impacted by the proposed licensing fee.
<b>Total monetised costs</b>	This reflects the total cost that regulated groups will incur, compared to taking no action.  The licence fee itself is relatively low but financial institutions are likely to incur other costs in order to obtain the licence (e.g. the cost to put in place a fair conduct programme). These costs will be incurred regardless of whether they pay a licence fee or not and are out of scope of this impact assessment.	Low  Estimated to be \$99,623.14 at a minimum based on the stated assumptions. It is unlikely to vary significantly from this figure.	High  For the reasons outlined above, we have a high level of evidence certainty.
<b>Non-monetised costs</b>	We have not identified any specific non-monetised costs that will apply due to the introduction of the licensing fee.	Not applicable	Not applicable

Additional benefits of the preferred option compared to taking no action			
Regulated groups ( <i>financial institutions such as banks, insurers and non-bank deposit takers</i> )	Financial institutions receive private benefits from obtaining a licence and being able to operate under the regulatory regime established under the CoFI Act.	Unknown	Unknown
Regulators (FMA)	The FMA benefit from a licence fee being charged otherwise the FMA will have to find alternative funding to cover the cost of this function.	Unknown	Unknown
Others (eg, wider govt, consumers, etc.)	Without a licence fee, the cost of licensing is likely to be paid through FMA's baseline funding made up of a portion of general taxation and levy funding (i.e. cross-subsidised by other regulated financial participants).	Unknown	Unknown
<b>Total monetised benefits</b>	The wider benefits of establishing this regime were assessed in previous impact assessment. Charging a licence fee by itself has little benefit, other than ensuring those that receive the direct benefits of holding a licence, pay for the cost associated with it.	Unknown	Unknown
<b>Non-monetised benefits</b>	Unknown	Unknown	Unknown

## Section 3: Delivering an option

### How will the new arrangements be implemented?

71. This section sets out how the financial institution licence fee under the CoFI Act will be implemented. The previous regulatory impact statements for the CoFi regime include information about the implementation of the regime itself.
72. Cabinet agreement is intended to be sought in March 2023 to:
  - a. recovery of the FMA's costs in assessing licence applications from those that are seeking a licence

- b. the proposed licence fee structure and amount
  - c. amendments to the Fees Regulations to reflect the agreed licence fee structure and amount.
73. It is intended that the amendments to the Fees Regulations will be made before 25 July 2023, which is when the FMA is expecting to start accepting licence applications. Cabinet's 28-day rule means the amendments will need to be notified in the Gazette by 27 June 2023 at the latest.
74. An Order in Council will also be needed to bring the necessary technical provisions of the CoFI Act (e.g. those provisions enabling the FMA to consider licensing applications) into effect before 25 July 2023 and to bring the remaining provisions (e.g. those provisions requiring financial institutions to hold a licence) into effect around early 2025. It is intended that Cabinet's agreement to this Order in Council will be sought at the same time as the amendments to the Fee Regulations.

### **How will the new arrangements be monitored, evaluated, and reviewed?**

75. MBIE has ongoing regulatory stewardship obligations and will work with the FMA to monitor the effectiveness of the new CoFI regime.
76. The licence fees discussed in this paper will be reviewed periodically and in light of MBIE's broader monitoring activities to ensure they remain fit for purpose.
77. There is an additional requirement under section 446W of the FMC Act for the Minister to review the operation and effectiveness of the financial institution licensing requirements and prepare a report of the review. This requirement does not include a review of the licence fee amount but may include reference to or consideration of the fee amount.
78. The review must commence before the subpart has been in force for five years.
79. The Minister must present a copy of the report to the House of Representatives as soon as practicable after the report has been completed.
80. As a Crown entity, the FMA is required to report to the Minister of Commerce and Consumer Affairs and to the general public about its performance. The FMA currently collects and reports annually on a range of non-financial performance measures, including measures relating to the completion of licence applications within agreed timeframes. The FMA is also required to separately record and report on the revenue that it generates from licence fees in its Annual Report.