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Insurance (Prudential Supervision) Amendment Bill - Exposure Draft Consultation

The New Zealand Society of Actuaries (NZSA) welcomes the opportunity to provide a submission on the Exposure Draft of the Insurance (Prudential Supervision) Amendment Bill, issued by the Reserve Bank of New Zealand (Reserve Bank) on 15 April 2026.

The NZSA supports modernising IPSA and strengthening New Zealand's prudential framework for insurers. We acknowledge the substantial work undertaken by the Reserve Bank through the IPSA review and the improvements reflected in the Exposure Draft, including the addition of proportionality as an express principle and a more graduated supervisory framework.

The NZSA is the professional body for actuaries practising in New Zealand. Its members work across the insurance sector and in a wide range of other roles. The NZSA develops and maintains New Zealand's actuarial Professional Standards, establishes and maintains the Code of Conduct and Disciplinary Procedure, advances actuaries' skills and knowledge through continuing professional development, and runs the Appointed Actuaries Forum. Most Appointed Actuaries to New Zealand licensed insurers are NZSA members.

The Appointed Actuary regime was established under the Insurance (Prudential Supervision) Act 2010 (IPSA). Every licensed insurer must have an Appointed Actuary, and the Exposure Draft would materially affect the role, obligations and potential liability of Appointed Actuaries. The NZSA is therefore well placed to comment on actuarial matters and on the interaction between actuarial advice, capital, risk management, governance and policyholder protection and is focused on ensuring that changes are well-designed and fit for purpose.

The NZSA has established an IPSA working group dedicated to review the Exposure Draft and supporting material, seek feedback from members and liaise with the Reserve Bank to better understand the drivers for some of the changes. As part of this process, we have engaged with our members on three separate occasions with a dedicated email inbox established for other feedback and have met with the Reserve Bank team leading the IPSA review twice during the consultation phase (and on other occasions before the Exposure Draft was published). We have appreciated the engagement throughout this consultation process as the conversations have been helpful in making our responses in this letter more accurate and targeted.

As has been signalled for some time, the Exposure Draft significantly expands the Reserve Bank's standards-making, approval, supervisory, enforcement and resolution powers. It also expands Appointed Actuary responsibilities while many of the most important operational details will be determined later through standards and guidance. While there is some difficulty in commenting on any unintended consequences when the secondary legislation has not yet been drafted, our submission focuses on ensuring that the primary legislation is clear, proportionate, appropriately tailored to insurance and capable of being implemented safely.

This submission contains 14 recommendations across a range of areas. A summary of recommendations is included first, followed by detailed discussion of the key issues from a NZSA perspective and an appendix with responses to the specific questions in the consultation material. References in this submission to sections are to the sections of IPSA as they would be amended by the Exposure Draft, unless otherwise stated.

Summary of recommendations

1. That the Reserve Bank develop and publish a clear transition plan showing how and when parts of the existing Act will be switched off and replaced by parts of the new Act, along with the effective dates associated standards/proportionality framework releases. This is critical for a smooth transition for insurers to avoid unintended compliance breaches during the transition period.

2. That section 27 of the Exposure Draft is amended to remove section 59 of the current Act from those sections replaced. The removal of section 59 should then be dealt with separately within the Exposure Draft so that it can be turned off at an appropriate time when the proportionality framework (or other standards) allow exemptions for smaller insurers to prepare solvency calculations under Reserve Bank solvency standards.

3. That the Reserve Bank ensures that it has adequate insurance-specific and actuarial expertise to exercise the expanded powers proportionately and effectively. The first priority for resources needs to be in the technical policy area to progress the development of clear standards, a transition plan and preventing unintended consequences (including with preparing solvency calculations) as getting the rules right from day one is of utmost importance.

4. That IPSA clearly states which margin is the earlier and higher supervisory control level and which margin is the lower, more serious control level for solvency reporting. It is understood that this would be the prudential margin and solvency margin, respectively.

On the assumption that the prudential margin will be the higher supervisory control level, it is further recommended that the Interim Solvency Standard (ISS) be amended to change “solvency margin” to “prudential margin” and define “solvency margin” as the margin over the Minimum Capital Requirement. This will have the effect intended and align the ISS with the amended IPSA. It is understood that this can be done quickly without formal consultation as it would be a wording change without any impact on capital levels.

5. The Act should set out items that must (or may) be addressed across the standards framework, while allowing greater flexibility for the detailed allocation of those items between standards to be adjusted over time and through consultation. This matters because responsibility for risk-capital interaction, recovery planning, governance attestations and reporting may move over time between the CRO, Appointed Actuary, CFO, Board and management.

6. That every Appointed Actuary of a New Zealand licensed insurer is required to be a Fellow and member of the NZSA. This gives direct application of the NZSA Code of Conduct, Disciplinary Procedure, New Zealand professional standards, continuing professional development and local professional engagement.

7. Retain an insurer-led appointment and notification process for Appointed Actuaries, with a 20-working-day period in which the Reserve Bank may request information, raise concerns or object.

If the proposed mandatory pre-approval change is retained, it is recommended that this part of IPSA be switched on at least one year after the equivalent clause for the Deposit Takers Act along with considering the following minimum safeguards for Appointed Actuaries in particular (although many points may apply to other officers):

- a published and exhaustive application checklist, with prompt confirmation that an application is complete;
- a tightly controlled ability to stop or restart the 20-working-day clock, with reasons and an expected decision date;
- deemed approval if the Reserve Bank does not decide within the statutory period, or an equivalent automatic escalation mechanism;
- an expedited process for unexpected vacancies and permission for appropriately qualified interim and alternate Appointed Actuaries to act immediately for a defined period;
- clear written criteria, reasons for conditional approval or refusal, confidentiality protections and an effective appeal process;
- recognition that the insurer retains primary responsibility for its fit and proper assessment; and
- a protocol for referral to the NZSA disciplinary process where concerns relate to professional conduct or competence, subject to lawful confidentiality arrangements.

8. Allow for the potential for dual-hatting of the CRO and Appointed Actuary roles for smaller or less complex insurers through a combination of clauses in the governance standard and the proportionality framework.

9. Align the prudential-obligation limb of section 129 with the materiality threshold in section 129I. The test should address a contravention, possible contravention or likely contravention in a material respect.

The obligation should apply to an individual only if they believe that the company has not, and is not likely to, report the breach in a fair way to the Reserve Bank.

10. Clarify that "information obtained in the course of holding office" does not impose a general duty to search for matters outside the statutory and professional functions of the Appointed Actuary. Where an actuary becomes aware of a possible non-actuarial issue, the reasonable first response may be internal escalation and obtaining legal, accounting or compliance advice.

11. Limit the ordinary direction power to the non-renewal of contracts that the insurer is legally entitled to decline. Indicative wording could refer to ceasing to enter into contracts "whether new or by a renewal that the insurer is entitled under the contract and applicable law to decline".

There may be exceptional distress circumstances in which continuing a class of contracts would materially worsen policyholder outcomes. If a broader statutory override is considered necessary, it should be created expressly and be available only under a higher threshold, with safeguards addressing policyholder interests, transfer or continuation options, notice and independent actuarial advice. It should not arise incidentally from the general direction power.

12. That the Reserve Bank publish binding or formal protocols covering the scope and conduct of on-site inspections and information requests. The protocols should address legal privilege, confidentiality, notice except where urgency justifies otherwise, Board and senior management notification, overseas group information, secure handling of sensitive policyholder data, the status of draft actuarial analysis, and the distinction between supervision and investigation.

13. Develop published penalty and enforcement guidance for directors and relevant officers, including Appointed Actuaries and CROs. The guidance should explain the treatment of reasonable reliance, due diligence, professional judgment, escalation, Board decisions contrary to advice, and limitations on an individual's authority or access to information.

14. Include explicit provisions that deal with the unique situation of statutory funds. Require independent actuarial advice on any resolution action that materially changes policyholder benefits, transfers statutory-fund business, allocates costs between funds or affects participating-policyholder entitlements. The NZSA has presented two options and prefers option 1 as it is practically easier for both the Reserve Bank and insurers.

Key issues

1. Transition, sequencing and Reserve Bank capability/resourcing

The Bill is proposed to commence before the full suite of new prudential standards is developed. The consultation material anticipates that standards may be developed over a number of years. In addition, it is understood that parts of the current IPSA legislation will be switched off and replaced with parts of the new IPSA, but which parts get switched off and on at what date is currently unclear. This creates a level of uncertainty for the insurance industry with regard to the transition to a new regime over an extended period of time and a risk of unintended consequences during the transition period.

Without a clear transition plan for IPSA and its standards, it is currently not possible to fully understand the implications of the transition to the new regime and provide useful feedback on obvious unintended consequences. This is a reason why the NZSA working group has found it difficult to comment on changes proposed in the Exposure Draft and applies universally throughout this submission.

We note that a similar transition was envisaged for the regulations supporting the Contracts of Insurance Act 2024. The Act came into force in November 2024 with the ability to switch on parts of the Act over time and a fallback date of November 2027 when all parts of the Act must come into force. There was an expectation communicated to insurers that regulations would be drafted to support the implementation of this new insurance contract law. However, to date, no draft regulations have been published for consultation, and it has been clarified that all parts of the Act will come into force in November 2027 (that is, no parts will come into force earlier than that). This has created uncertainty within the insurance industry and requires interpreting the rules of the Act without any guiding regulations as support. This delay and lack of secondary legislation (in the form of regulations) may result in a failure to meet intended consumer expectations or potentially costly re-work of redesigning policy wordings and processes if insurers implement something that the regulator (FMA in this case) ultimately does not agree with was in the spirit of the Act.

While the NZSA appreciates that there are factors beyond the Reserve Bank's control that dictate the timing of when IPSA or its associated standards come into force, it would be far more disruptive to the insurance industry if a similar experience occurred with respect to the new IPSA prudential standards due to the serious consequences

of breaching IPSA. The NZSA would value working with the Reserve Bank further in this area to better understand the transition plan and roadmap or proposed content for the development of standards to ensure there is an opportunity for an independent body to sense-check for other unintended consequences.

Recommendation #1:

That the Reserve Bank develop and publish a clear transition plan showing how and when parts of the existing Act will be switched off and replaced by parts of the new Act, along with the effective dates associated standards/proportionality framework releases. This is critical for a smooth transition for insurers to avoid unintended compliance breaches during the transition period.

A specific transitional issue to note relates to the current section 59 exemption. This is an exemption for calculating solvency under Reserve Bank rules, primarily for branches of overseas insurers. It is understood that this exemption will be dealt with in the proportionality framework, allowing a category of insurers to be exempt from preparing solvency calculations under Reserve Bank rules. This exemption should remain available until the replacement proportionality and solvency arrangements are operational. However, under the current Exposure Draft, section 59 is revoked as part of section 27 of the Exposure Draft, which provides for the introduction of the standards to be developed.

It is important that the policy function of the existing section 59 exemption does not disappear inadvertently during the transition. If the replacement framework isn't available on day one, potentially smaller insurers would have to incur a significant extra cost in the short-term to prepare solvency calculations on a Reserve Bank basis, only to see the requirement removed again once the proportionality framework is in place.

Any replacement should continue to recognise equivalent home-jurisdiction requirements and supervision where that achieves the purposes of IPSA.

Recommendation #2:

That section 27 of the Exposure Draft is amended to remove section 59 of the current Act from those sections replaced. The removal of section 59 should then be dealt with separately within the Exposure Draft so that it can be turned off at an appropriate time when the proportionality framework (or other standards) allow exemptions for smaller insurers to prepare solvency calculations under Reserve Bank solvency standards.

Furthermore, getting the rules right from day one is paramount. Doing this requires the Reserve Bank to have resources with appropriate capacity and capability to work through the new standards in a timely manner and consider any potential unintended consequences, both long-term and through the transition period. The primary concern of the NZSA is that the Reserve Bank don't have the right depth in their current team to be able to deliver on this successfully and getting the rules wrong upfront will take many years to unwind.

The effectiveness of the expanded regime is highly dependent on the Reserve Bank creating and continuing to have adequate insurance-specific expertise and operational capacity. Not only do new frameworks and standards need to be developed over the next few years, but operationally there will be pre-approvals, more extensive standards (as these are issued), on-site inspections, breach reporting, enforcement and resolution planning which will increase the volume and complexity of supervisory decisions. Delays or inconsistent decisions would impose costs on insurers and would undermine the intended prudential benefits.

Recommendation #3:

That the Reserve Bank ensures that it has adequate insurance-specific and actuarial expertise to exercise the expanded powers proportionately and effectively. The first priority for resources needs to be in the technical policy area to progress the development of clear standards, a transition plan and preventing unintended consequences (including with preparing solvency calculations) as getting the rules right from day one is of utmost importance.

2. Prudential margin and solvency margin

The Exposure Draft introduces a prudential margin, in addition to the current solvency margin. These two margins appear throughout the Exposure Draft, however their relationship with each other is currently not clear.

It is important that the purpose of each margin is clear within IPSA. Both the three-year forward-looking reporting and whistleblowing duties apply to both margins; however, a forecast breach of an early supervisory level is not equivalent to a forecast breach of the solvency margin at which stronger intervention or resolution powers become available. The required analysis, materiality and timing should reflect that difference.

Setting a prudential margin above the current solvency margin would likely result in insurers increasing their capital levels to maintain a buffer above the prudential margin. An increase in the required capital for an insurer will generally result in increases to the premiums charged, as the insurer is expected to earn an adequate return on the additional capital to ensure access to global capital markets remains unimpeded.

However, in discussion with the NZSA working group, the Reserve Bank indicated that the prudential margin is expected to be the higher control level, at which the Reserve Bank would begin working with an insurer to restore compliance, while a breach of the solvency margin would unlock more serious supervisory powers. This is not apparent from the terms themselves, previous Reserve Bank consultations on the 'ladder of intervention' or from the Exposure Draft. Nor is the term "prudential margin" defined anywhere in the current version of the Interim Solvency Standard. Appointed Actuaries should not be required to report or opine using two sets of terminology whose definition and relationship is unresolved.

Further, it is understood that the Reserve Bank do not expect that the introduction of the term "prudential margin" will change the level of capital required across the industry. Given that a breach of prudential margin will result in some level of regulatory intervention, it is likely that insurers will view the prudential margin as the default solvency margin. Therefore, if the Reserve Bank does not want insurers to increase their capital levels at this stage, noting that a review of capital levels will occur at a later date, then the prudential margin will need to be set to the current solvency margin in the Interim Solvency Standard (ISS).

It is noted there is an existing "margin over the Minimum Capital Requirement" within the ISS. The Minimum Capital Requirement (MCR) is set at 80% of the Prudential Capital Requirement (PCR) underpinning the current solvency margin. Yet while the margin over MCR is required to be disclosed in the solvency returns for the Reserve Bank, it has no legal meaning under the current IPSA or the Exposure Draft. While it can be debated whether a blanket 80% of PCR is an appropriate level for all types of insurers, research and consultation on shifting that level will take time and would need to be carried out as part of a wider review of capital levels[1]. In

[1] Further to this point, supervisory activity using a 'ladder of intervention' should be broader than purely solvency measures and is being enabled by the expansion of supervisory powers in the Exposure Draft. Financial stress rarely occurs gradually for an insurer – it is often a sudden event or discovery of a previously unrecognised issue – and an

the short-term, it may be convenient and expeditious to relabel the margin over MCR to align with IPSA and give that measure a legal meaning to solve two problems with a single solution.

Recommendation #4:

That IPSA clearly states which margin is the earlier and higher supervisory control level and which margin is the lower, more serious control level for solvency reporting. It is understood that this would be the prudential margin and solvency margin, respectively.
On the assumption that the prudential margin will be the higher supervisory control level, it is further recommended that the Interim Solvency Standard (ISS) be amended to change "solvency margin" to "prudential margin" and define "solvency margin" as the margin over the Minimum Capital Requirement. This will have the effect intended and align the ISS with the amended IPSA. It is understood that this can be done quickly without formal consultation as it would be a wording change without any impact on capital levels.

3. Standards architecture and role clarity

The NZSA supports the use of standards for technical prudential requirements. Standards can be more adaptable than primary legislation and can improve transparency compared with insurer-specific licence conditions. However, the combination of broad standards-making powers, approvals embedded in standards and significant civil enforcement consequences means the primary legislation must establish clear boundaries and accountability.

There is substantial overlap between the proposed governance, risk management, contingency and recovery planning, and actuarial advice standards. For example, section 56K permits the actuarial advice standard to address the relationship between risk and capital, including risk assessment methods, recovery planning, reporting and governance. Those matters may also sit naturally within sections 56E, 56H and 56J, potentially with a Chief Risk Officer overseeing some of these responsibilities rather than the Appointed Actuary in the future.

It is noted that with the introduction of the Chief Risk Officer (CRO) as an officer under IPSA, the Exposure Draft gives the CRO no formal responsibilities or obligations. The standards should also clarify whether the CRO has direct prudential escalation or whistleblowing duties. The present drafting risks placing broader statutory disclosure obligations on the Appointed Actuary even where the CRO is the function with responsibility and expertise for the underlying compliance matter. It is therefore hoped that the clarity of roles become clearer with the development of the standards, noting that the exact role any individual may play will depend on the circumstances of the insurer (that is, having regard to proportionality principles).

Recommendation #5:

The Act should set out items that must (or may) be addressed across the standards framework, while allowing greater flexibility for the detailed allocation of those items between standards to be adjusted over time and through consultation. This matters because responsibility for risk-capital interaction, recovery planning, governance attestations and reporting may move over time between the CRO, Appointed Actuary, CFO, Board and management.

insurer that is under stress may take actions to maximise its reported solvency metric to avoid detection. Use of non-financial metrics when deciding on degrees of intervention is arguably more important than getting an accurate lower solvency control level calculation.

4. Appointed Actuary professional status

The policy outcome should be that every Appointed Actuary is demonstrably competent for the role, understands the New Zealand insurance and legislative environment, complies with relevant New Zealand professional standards, and is subject to an effective professional conduct and disciplinary regime.

The NZSA believes it is in the best interest of New Zealand policyholders that Appointed Actuaries are required to be Fellows of the New Zealand Society of Actuaries. This is because:

1. It ensures Appointed Actuaries are familiar with New Zealand insurance products and legislative environments, including access to sessional meetings, practice committees, and Appointed Actuary Forums run by the NZSA.
2. It ensures Appointed Actuaries are familiar with NZSA professional standards that have been specifically prepared with a New Zealand context.
3. It means Appointed Actuaries are bound by the NZSA Code of Professional Conduct and Disciplinary Procedure, which gives the Reserve Bank and insurers recourse if an Appointed Actuary fails to meet required standards of conduct or expertise. Pursuing a complaint under an overseas professional body for failing to perform to New Zealand requirements risks being fraught with difficulty.

We note that APRA's CPS320 Prudential Standard requires that Appointed Actuaries be a Fellow or Accredited Member of the Actuaries Institute, the equivalent actuarial professional body in Australia.

We do note that while this submission point was widely agreed to by members of the NZSA, there was at least one NZSA members who did not agree. However, from a practical perspective, we also note that most Appointed Actuaries of New Zealand insurers are already NZSA members. In a recent discussion with the Reserve Bank team, we were made aware that this requirement is not something that can be decided by the Reserve Bank alone as it would mean the NZSA becomes the sole body for actuaries in a statutory role, which would require approval from MBIE – we will look into this further and keep you informed on the progress.

Recommendation #6:

That every Appointed Actuary of a New Zealand licensed insurer is required to be a Fellow and member of the NZSA. This gives direct application of the NZSA Code of Conduct, Disciplinary Procedure, New Zealand professional standards, continuing professional development and local professional engagement.

5. Mandatory pre-approval of appointments

The proposed regime requires a locally incorporated insurer to obtain Reserve Bank approval before appointing a director or relevant officer, including an Appointed Actuary. The 20-working-day period begins only after the Reserve Bank has received all information it reasonably requires. With similar rules in place for the Deposit Takers Act (DTA), it is not at all rare for the regulator to keep asking for more or different information and quite a time passes before it has 'all the information it reasonably requires'. This can create an open-ended period before the statutory clock starts.

The Appointed Actuary replacement period under current section 76 is six weeks unless extended by the Reserve Bank. A mandatory 20-working-day decision period could consume most of that period, leaving inadequate time to identify a candidate, complete due diligence and assemble the application.

From an employment law perspective, we are unclear how such an approval process would interact with the ability to offer an Appointed Actuary role to a person.

The interaction with alternate actuaries and interim appointments is not sufficiently clear. Section 76(2) of IPSA (which is unaltered under the Exposure Draft) indicates that the insurer may appoint an alternate actuary to act as Appointed Actuary, if the Appointed Actuary is unable to act, noting still the Appointed Actuary 6 week replacement period. New section 34(3) allows for the appointment of a person as a relevant officer on an interim basis if the terms and conditions under section 56(G)(1)(f) are complied with. Section 56(G)(1)(f) relates to terms and conditions to be specified in a fit and proper standard with respect to relevant officers appointed on an interim basis (such as permitted period of appointment and requirements to be complied with before the person is appointed). We note this is an example of where careful planning of the transition to the new regime is required due to a degree of circularity.

The ability to appoint an interim responsible officer for a period, potentially up to 6 months, is important, given the time required for robust recruitment processes to take place, together with periods of up to 3 months (due to resignation notice periods) before a new appointee might be able to start.

The regime may also blur accountability. The insurer and its Board should remain primarily responsible for assessing fitness and propriety. Reserve Bank approval should be an additional prudential safeguard, not a transfer of that responsibility to the supervisor. We can certainly see a case arising where the Reserve Bank gets the blame because 'you approved that person'.

The NZSA is a self-regulating profession, which maintains a comprehensive Code of Professional Conduct and Disciplinary Procedure. We have considered reasons why the Reserve Bank might have reason to believe an actuary should not take up an Appointed Actuary role:

1. The Reserve Bank believes the Appointed Actuary has too many Appointed Actuary appointments and/or responsibilities. If that is the case then it should be addressed directly by imposing a limit, not through a blanket power.
2. The Reserve Bank believes the actuary is not sufficiently experienced. The actuary should not act without sufficient competence (or alternatively oversight) under NZSA's Code of Conduct, an obligation all actuaries are aware of.
3. The Reserve Bank believes the actuary is too junior within the organisation. A discussion on the position of the actuary within the organisation is likely best handled in discussion with the CEO/Board, not by vetoing the Appointed Actuary.
4. The Reserve Bank believes it has evidence of conduct or competence of inadequate standard – in this case the Reserve Bank is encouraged to use the NZSA Disciplinary Procedure so the Member is given a fair hearing adjudged by senior, respected members of the profession.

The NZSA believes it is not in the interests of the profession, insurers or policy holders for the Reserve Bank to be in situation 2 or 4, without making a formal complaint to NZSA to ensure any errant actuary is appropriately dealt with, including with their own recourse to natural justice, with sanctions up to being suspended or expelled from the profession if warranted. Suspension from practicing as an Appointed Actuary does not protect other potential clients such as those requiring actuarial advice for superannuation schemes, matrimonial property applicants, government departments, or insurers in overseas jurisdictions (particularly other members of the International Actuarial Association).

Additionally, the Reserve Banks's own actuaries making or contributing to such calls are placed in an invidious position with respect to their own obligations under the NZSA's Code of Conduct and could themselves be subject to complaint.

Recommendation #7:

Retain an insurer-led appointment and notification process, with a 20-working-day period in which the Reserve Bank may request information, raise concerns or object.

If the proposed mandatory pre-approval change is retained, it is recommended that this part of IPSA be switched on at least one year after the equivalent clause for the Deposit Takers Act along with considering the following minimum safeguards for Appointed Actuaries in particular (although many points may apply to other officers):

- a published and exhaustive application checklist, with prompt confirmation that an application is complete;
- a tightly controlled ability to stop or restart the 20-working-day clock, with reasons and an expected decision date;
- deemed approval if the Reserve Bank does not decide within the statutory period, or an equivalent automatic escalation mechanism;
- an expedited process for unexpected vacancies and permission for appropriately qualified interim and alternate Appointed Actuaries to act immediately for a defined period;
- clear written criteria, reasons for conditional approval or refusal, confidentiality protections and an effective appeal process;
- recognition that the insurer retains primary responsibility for its fit and proper assessment; and
- a protocol for referral to the NZSA disciplinary process where concerns relate to professional conduct or competence, subject to lawful confidentiality arrangements.

The NZSA is aware the Reserve Bank holds confidentiality of the information it receives as sacrosanct. All members involved in the NZSA disciplinary scheme are bound to confidentiality and would themselves be subject to complaints if they were to breach that confidentiality. We note also that Fellows of the NZSA working for the Reserve Bank are prima facie bound to report behaviour which does not meet the required standard. The NZSA's Professional Conduct Committee would be keen to work more closely with the Reserve Bank to ensure the highest standards of actuarial work are maintained and look at ways to do this to ensure confidentiality is maintained as much as possible without sacrificing the continued maintenance and policing of the highest levels of professionalism.

6. CRO and Appointed Actuary responsibilities

The NZSA supports the recognition of the Chief Risk Officer (CRO) as a relevant officer under the Act. The effectiveness of that change will depend on clear role design. As noted above, the Exposure Draft identifies the position but leaves the practical responsibilities and interaction with the Appointed Actuary largely to future standards.

Many larger insurers will already have a clearly defined CRO role within their organisation, with a number of CROs also being qualified actuaries and members of the Society.

In our view for larger or more complex insurers, it is appropriate that the CRO and Appointed Actuary roles should be independent of each other. This supports independent challenge where the Appointed Actuary's work feeds into decisions overseen by the CRO.

Proportionality would indicate, however, that for smaller insurers that might otherwise struggle to appoint a separate CRO role within their organisation (and may have less extensive needs from a risk perspective), we submit that dual-hatting of the CRO and Appointed Actuary roles should be permitted, where the insurer demonstrates that the person has the required competence and that conflicts are appropriately managed. We understand in our conversations with the Reserve Bank that this might be considered under the proportionality framework.

Recommendation #8:

Allow for the potential for dual-hatting of the CRO and Appointed Actuary roles for smaller or less complex insurers through a combination of clauses in the governance standard and the proportionality framework.

7. Appointed Actuary and auditor whistleblowing

The amended section 129 would broaden the current distress-focused whistleblowing duty for Appointed Actuaries and auditors to include contraventions of a prudential obligation (defined as any obligations under IPSA and its related regulations and standards, licence conditions, Reserve Bank directions and AML/CFT legislation), accounting-record requirements and financial-statement obligations. The whistleblowing duty also extends to associated persons of the insurer, such as parent entities, subsidiaries and sister companies.

The insurer's own reporting duty in section 129I applies where it believes it has contravened, may have contravened or is likely to contravene a prudential obligation "in a material respect". By contrast, the Appointed Actuary and auditor must decide whether any contravention "is likely to assist or be relevant to" the Reserve Bank. This difference in reporting threshold is likely to produce inconsistent conclusions, defensive reporting of immaterial matters and conflicts between Appointed Actuaries and the insurers due to different thresholds for whistleblowing.

Recommendation #9:

Align the prudential-obligation limb of section 129 with the materiality threshold in section 129I. The test should address a contravention, possible contravention or likely contravention in a material respect.

The obligation should apply to an individual only if they believe that the company has not, and is not likely to, report the breach in a fair way to the Reserve Bank.

The duty should also be connected to the role and competence of the office-holder. Appointed Actuaries should not be expected to have oversight of AML/CFT compliance, determine legal compliance with accounting-record provisions, or make enquiries across subsidiaries and holding companies where those matters are not within their actuarial or governance role or expertise. Extending the statutory duty in this way may cause actuaries to seek less information or be excluded from discussions, which would be contrary to effective governance.

An indicative policy formulation would require disclosure where, based on information obtained while performing the functions of office and within the person's professional competence or reasonable involvement, the person

has reasonable grounds to believe that a material contravention or specified distress event has occurred or is likely, and disclosure is likely to assist the Reserve Bank in its prudential functions.

The good-faith protections in sections 129B and 129C are important and should be retained. Consideration should also be given to a safe harbour where the actuary has exercised reasonable professional judgment, documented the basis for that judgment and taken reasonable escalation steps.

Recommendation #10:

Clarify that "information obtained in the course of holding office" does not impose a general duty to search for matters outside the statutory and professional functions of the Appointed Actuary. Where an actuary becomes aware of a possible non-actuarial issue, the reasonable first response may be internal escalation and obtaining legal, accounting or compliance advice.

8. Direction to cease renewing contracts

The amended section 144 would allow the Reserve Bank to direct an insurer to cease entering into any contracts of insurance, whether by way of renewal or otherwise. This is materially wider than the current direction to cease entering into new contracts.

Many life and health contracts are guaranteed renewable. The policyholder has paid for the right to continue cover without new underwriting, largely to protect against deterioration in health. Treating the periodic continuation of those contracts as a renewal that the insurer may be directed to refuse, could deprive policyholders of a valuable contractual protection and may require the insurer to breach the contract.

Recommendation #11:

Limit the ordinary direction power to the non-renewal of contracts that the insurer is legally entitled to decline. Indicative wording could refer to ceasing to enter into contracts "whether new or by a renewal that the insurer is entitled under the contract and applicable law to decline".

There may be exceptional distress circumstances in which continuing a class of contracts would materially worsen policyholder outcomes. If a broader statutory override is considered necessary, it should be created expressly and be available only under a higher threshold, with safeguards addressing policyholder interests, transfer or continuation options, notice and independent actuarial advice. It should not arise incidentally from the general direction power.

9. Information powers and on-site inspections

The NZSA supports the Reserve Bank having effective information gathering and supervisory tools. The proposed powers are, however, substantially broader and include on-site inspection without notice, compulsory questions and access to material that may include actuarial working papers, draft advice, peer-review material and group information.

Draft analysis and professional peer-review material should not be treated as final advice or evidence of a concluded position without its context. The Appointed Actuary should be able to explain the purpose, status, assumptions and limitations of material supplied.

Recommendation #12:

That the Reserve Bank publish binding or formal protocols covering the scope and conduct of on-site inspections and information requests. The protocols should address legal privilege, confidentiality, notice except where urgency justifies otherwise, Board and senior management notification, overseas group information, secure handling of sensitive policyholder data, the status of draft actuarial analysis, and the distinction between supervision and investigation.

10. Enforcement and individual liability

A graduated enforcement toolkit can improve prudential outcomes by providing alternatives between informal supervision and criminal prosecution. However, the combination of broad future standards, approvals and civil pecuniary penalties increases the importance of precise allocation of obligations.

An Appointed Actuary should not be liable merely because actuarial advice was relevant to an insurer's contravention. Individual liability should depend on actual involvement, knowledge, recklessness, or a failure to take reasonable steps within the person's role. Standards should not make the Appointed Actuary a default guarantor of general prudential compliance.

Recommendation #13:

Develop published penalty and enforcement guidance for directors and relevant officers, including Appointed Actuaries and CROs. The guidance should explain the treatment of reasonable reliance, due diligence, professional judgment, escalation, Board decisions contrary to advice, and limitations on an individual's authority or access to information.

11. Distress management and resolution

The NZSA supports modernising the distress-management framework. The DTA-style resolution regime is a useful starting point, but deposit-taking and insurance are not equivalent. Insurance liabilities may be long term, contingent and difficult to transfer. In addition, life insurers are required to operate at least one statutory fund with legal, contractual and actuarial features that do not exist for deposit takers.

11.1 Resolution purposes and triggers

The trigger in amended section 174 includes language referring to significant harm to a significant number or group of policyholders. Guidance is needed on what constitutes a significant group, how harm is assessed and how the threshold interacts with product availability, geographic concentration and vulnerable policyholders. The power should not become an undefined route to resolution where ordinary supervisory or transfer tools would protect policyholders adequately.

Amended section 199C removes any right for the insurer, directors or employees to be informed or consulted about the possible exercise of resolution powers. Confidential and rapid action may be necessary, but the regime should allow consultation with the Board, Appointed Actuary or other specialists where this would improve outcomes and not frustrate the resolution. Prompt notice and reasons should be provided when it is safe to do so.

11.2 Statutory and participating funds

Amended section 196(2) states only that a resolution manager's powers are subject to the statutory-fund requirements in subpart 3 of Part 2. That is not sufficient to explain how those requirements operate with the extensive transfer, restructuring, contract-value and payment-suspension powers in Schedule 2. NZSA presents two options for restoring the protections for statutory and participating funds:

Option 1 - Preserve current statutory-fund protections within resolution. Apply or replicate the effect of the current policyholder-priority duties in sections 87 and 105 to the resolution authority and resolution manager. Apply the fairness and solvency protections in sections 109 and 110 to resolution transfers or restructures involving statutory funds and preserve appropriate fund allocation rules for resolution and liquidation costs. This would be the simplest option for the Reserve Bank to implement from an insurer perspective to protect the current statutory fund principles. It is our preferred option.

Option 2 - Enable resolution at statutory-fund or defined life-fund level. Allow a fund to be resolved separately where distress is fund-specific or company-level resolution would unfairly contaminate other funds. This requires clear rules for shared services, shareholder funds, solvency reporting, composite policies, reinsurance and policies referable to more than one fund. While this would be easier for the Reserve Bank to change wording for, it would require further investigation into changes in rules for composite policies to ensure a product group does not span more than one life-fund and it may be costly for insurers to change their existing life-fund allocation for policies in force (and therefore is not our preferred option).

Either option should expressly address:

- whether statutory-fund policyholder claims, maturities, surrenders and annuity payments may be suspended under Schedule 2 clause 36, and under what threshold;
- how assets and liabilities may be transferred to a bridge institution without undermining fund segregation;
- the treatment of participating policyholder bonuses, terminal bonuses, estate interests and shareholder entitlements;
- the fairness and actuarial basis for reducing contract values or splitting portfolios;
- the allocation of resolution costs between statutory funds and shareholder or other funds; and
- the required role, independence, access and reporting of an Appointed Actuary or other independent actuary during resolution.

Recommendation #14:

Include explicit provisions that deal with the unique situation of statutory funds. Require independent actuarial advice on any resolution action that materially changes policyholder benefits, transfers statutory-fund business, allocates costs between funds or affects participating-policyholder entitlements. The NZSA has presented two options and prefers option 1 as it is practically easier for both the Reserve Bank and insurers.

12. Other matters

12.1 New Zealand holding entities and group responsibilities

The shift from NOHC licensing to a New Zealand holding-entity standards model may be more proportionate, but it can still create a broad group prudential regime. Standards should clearly identify which entity and officers are responsible for group capital, risk and actuarial advice. An insurer-level Appointed Actuary should not acquire undefined group responsibilities simply because information about a holding entity or subsidiary is available.

12.2 Ongoing consultation

The NZSA welcomes the Reserve Bank's engagement with the actuarial profession and would be pleased to contribute to the development of the new standards as these are progressed further.

We would be glad to discuss the issues raised in this submission in more detail and encourage the Reserve Bank to continue close consultation with industry, policyholder representatives and professional bodies as the Bill and standards are developed.

Kind regards

Lee-Ann du Toit
President of the New Zealand Society of Actuaries

Appendix - Responses to consultation questions

Q1 Do you have any feedback on the amendments to the Act's principles?

The NZSA supports adding proportionality as an express principle and supports a published proportionality framework. Proportionality should be applied not only when drafting standards, but also in supervision, approvals, information requests, enforcement and resolution planning.

The international-awareness principle should not result in importing banking or overseas requirements without tailoring them to New Zealand insurance business and policyholder needs. We note that the Interim Solvency Standard departed seriously from international approaches and this should be remedied as a matter of urgency (refer our other comments on timing regarding the Solvency Standard).

Q2 Do you have any feedback on the new definitions contained in the Bill?

The prudential margin and solvency margin definitions do not explain their ordering or supervisory purpose. These should be clear before the terms are used throughout reporting, whistleblowing, direction and resolution provisions.

The definition of prudential obligation is very broad, particularly when used in the Appointed Actuary whistleblowing duty. The definition and related duties should be qualified by materiality and role boundaries as described in section 6 of this submission. The CRO definition should also be accompanied by clear role and accountability expectations in the relevant standards. Proportionality is easy to say but difficult to implement throughout the prudential regime.

Q3 Do you have any feedback on the amendments to the licensing perimeter and licensing regime?

The NZSA has no objection in principle to bringing all New Zealand-incorporated insurers (including those with no NZ policyholders) within the licensing perimeter and excluding appropriate overseas captives and reinsurers.

Holding-entity standards should not be allowed to create an unclear de facto group regime: group responsibilities, actuarial advice, capital expectations, information access and transition must be explicit and proportionate.

Any regulation declaring new or additional products to be insurance should include consultation and adequate transition.

Q4 Are there any additional powers the Reserve Bank should have to support an insurer to transition to New Zealand incorporation?

The NZSA does not presently identify a need for additional powers. The priority should be careful use of the proposed powers, including timing, policyholder communication, fair valuation, treatment of reinsurance and tax or transaction friction, and independent actuarial advice where liabilities are assigned or business is transferred.

Q5 Are there any additional changes that would help operationalise the new pre-approval regime for directors and officers, and the regulatory approvals regime?

Yes. The NZSA prefers a notification and objection model, or a pre-approved Appointed Actuary framework, rather than full appointment-by-appointment pre-approval. The insurer must remain primarily responsible for its own fit and proper assessment. The RBNZ cannot be caught getting the blame because they approved someone. See section 4.

If pre-approval is to remain in the Bill, the regime needs a lot more work to be practical. We offer some suggestions in section 4 but are not in a position to suggest an entire regime.

Q6 Do you agree with the proposed procedures for issuing standards? If not, please explain why.

The NZSA broadly supports consultation with substantially affected persons, notification to the Minister and consultation with the Council of Financial Regulators. Given the breadth and enforceability of the proposed standards, the process should also include a published problem definition, regulatory and proportionality analysis, reasonable consultation periods, a response to material submissions and an implementation assessment. Minor or technical exceptions should be interpreted narrowly. A failure to follow material procedural requirements might well be relevant to validity of the standard in some cases.

Q7 Is the scope of matters that standards may cover sufficiently clear? If not, what should be added or removed?

The subject matter is broad but the allocation between standards risks implying incorrect role ownership. The Act should identify the prudential outcomes that standards may address and preserve flexibility in where overlapping matters are located. The governance, risk management, recovery and actuarial advice standards should be developed together with a responsibility map. The catch-all power for prescribed matters and the ability to create approvals through standards should be constrained so material new regimes receive full policy scrutiny. See section 3.

Q8 Do you have any feedback on the requirements on the Reserve Bank when preparing and publishing a proportionality framework?

The framework should ideally address size, nature, complexity, ownership, policyholder profile, systemic importance, substitutability, risk and the capacity of smaller insurers. It should explain when requirements may be simplified, modified or replaced by equivalent home-jurisdiction arrangements. The framework should be reviewed periodically and applied consistently across standards. It should also inform supervision and enforcement even though section 56D is directed specifically to standards.

We understand the DTA proportionality framework does little more than create three size categories of institutions.

Q9 Do you have any feedback on the provisions relating to infringement notices, supply and reporting of information and investigations powers?

The Reserve Bank should have effective tools, but the proposed on-site and information powers need clear procedural safeguards. These should cover privilege, confidentiality, notice, scope, Board notification, use of

overseas group information, secure policyholder data, actuarial working papers, drafts and peer-review material, and the boundary between supervision and investigation. See section 8. The Appointed Actuary disclosure duty should be amended as described in section 6.

Q10 Do you agree with the scope of offences that have mens rea requirements? If not, please explain why.

Serious offences applying to individuals should generally require knowledge, recklessness or another appropriate fault element. Technical or administrative failures should not create criminal exposure for an individual who acted reasonably and without knowledge of the contravention. The final offence mapping should be reviewed after the substantive standards are known, because the clarity and allocation of the underlying duty are central to whether individual criminal liability is appropriate.

Q11 Do you agree with how the penalties table has been applied to individual offences? If not, please explain why.

The NZSA supports graduated and proportionate enforcement, but individual exposure should reflect actual involvement, authority, knowledge, recklessness and reasonable steps. Appointed Actuaries and CROs should not be treated as guarantors of insurer compliance. Enforcement and penalty guidance should address professional judgment, reliance, escalation and decisions made by the Board or management contrary to advice. See section 9.

Q12 Are there any changes you would suggest to how the distress management purposes or changes to direction powers have been set out in the Bill?

Yes. The direction to cease entering into contracts by renewal should apply only where the insurer is legally entitled to decline the renewal, unless an exceptional override is expressly created with a higher threshold and policyholder protections. Direction triggers based on prudential and solvency margins should reflect the different purpose and severity of those levels. See sections 2, 7 and 10.1.

Q13 Do you have any comments on the new resolution provisions in the Bill?

The regime requires greater insurance-specific tailoring. It should address long-duration and contingent liabilities, reinsurance, hedging, guaranteed renewable contracts, continuity of essential claims and annuity payments, statutory and participating funds, independent actuarial advice and the Reserve Bank's resolution capability. The blanket removal of consultation rights should be tempered by a power and expectation to consult relevant insurer specialists where doing so would improve outcomes without frustrating urgent action. See section 10.

Q14 Are there any resolution provisions that you think might not be appropriate for insurers or require further tailoring to the insurance context, including for statutory funds?

Yes. The statutory-fund provision in section 196(2) is too general when read with the broad transfer, restructuring and payment-suspension powers. The Bill should preserve the policyholder-priority and fairness protections of the current statutory-fund regime and/or permit resolution at statutory-fund or defined life-fund level. It must address moratoria on claims, maturities, surrenders and annuities; transfers to bridge institutions; participating-policyholder entitlements; allocation of costs; contract-value reductions; and the role of independent actuarial advice. See section 10.2.

Q15 Do you have any feedback on how best to implement and manage the transition to standards and the change in regulatory perimeter?

Use staged commencement tied to the completion of each relevant standard and guidance document. Publish a detailed transition map, preserve current requirements and exemptions until their replacements are effective, allow adequate implementation periods, and avoid requiring Appointed Actuaries to opine or whistleblow using unresolved terminology. The proportionality framework should be available early and should inform the sequencing. See section 1.

Q16 Do you have any other comments or feedback on the Bill?

The NZSA emphasises the need for: adequate Reserve Bank insurance and actuarial expertise; role clarity between the CRO and Appointed Actuary; a transparent and workable professional eligibility and fit and proper regime; role-aligned whistleblowing; proportionate individual liability; clear group and holding-entity responsibilities; and continued collaboration with the actuarial profession in developing standards and guidance. The current section 59 policy outcome for equivalent overseas solvency regimes should be preserved through transition and in the final framework.