# AMP Financial Services

Submission on:
***Issues Paper – Review of the Insurance (Prudential Supervision) Act 2010***

30 June 2017

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*About AMP Financial Services ("AMP")*
AMP comprises all of the AMP Limited New Zealand-based financial services businesses (excluding AMP Capital). AMP Limited is listed on the Australia and New Zealand stock exchanges. AMP Financial Services includes:

AMP Life Limited - a licensed insurer and provider of life, trauma, total and permanent disability, and income protection policies in New Zealand and Australia. AMP Life operates in New Zealand as a branch of an overseas insurer. It has around 20% of the contemporary life insurance market, the majority of the conventional life insurance market.

AMP Services (NZ) Limited – in addition to providing administrative services to the New Zealand business of AMP Life, AMP Services is a qualifying financial entity and operates a financial advice business with more than 150 Authorised Financial Advisers, the largest assemblage in the New Zealand market, and has a similar number of QFE Advisers. Through this adviser network, it distributes both AMP Life and third party life insurance products, 'AMP general insurance' underwritten by Vero, and Southern Cross health insurance.

## The review

AMP supports the objectives of IPSA to promote the maintenance of sound and efficient insurance sector, and to promote public confidence in the insurance sector. AMP agrees that IPSA has improved the soundness and efficiency of the sector, and that the current framework continues to deliver toward its purposes.

There are, however, several areas where AMP considers the regime should be refined to better achieve its purposes and to improve regulatory efficiency for both the Reserve Bank and insurers. For this reason, AMP welcomes the opportunity to participate in this review.

## High Level Observations and Key Issues

### Approach to regulation of overseas insurers

As a branch of an Australian insurer, AMP can attest to the high level of regulation branches face by the Australian Prudential Regulatory Authority (APRA), and the level of protection this provides New Zealand policyholders. APRA undertakes monitoring activities in New Zealand and AMP's New Zealand business is in scope for the monitoring exercises performed out of Australia, such as its recent claims "deep dive".

AMP is aware that concerns have been raised by some New Zealand incorporated industry participants that overseas insurers may be under-regulated to the detriment of New Zealand policyholders, or may have a competitive advantage because of exemptions recognising their overseas regulation. AMP agrees with the sentiments that policyholders should be appropriately protected where overseas insurers' business models introduce particular risks to the New Zealand market, and that there should be a 'level playing-field' in terms of the regulatory outcomes for the New Zealand market (noting that, in some instances, unnecessary regulation will operate to tilt that field in favour of New Zealand incorporated insurers). However, AMP does not agree that the current regime leaves overseas insurers under-regulated relative to New Zealand insurers in most cases, and believes these concerns may be based on inappropriate generalisations or a misunderstanding of both the overseas regimes some insurers operate under and the level of regulation overseas insurers are subject to in New Zealand.

AMP considers the current regime for overseas insurers works relatively well overall and, if anything, could best be improved by further alignment with key overseas jurisdictions or placing greater weight on overseas regulation in some areas. AMP believes such an approach would provide opportunities for further efficiency, while achieving the same regulatory outcomes.

AMP considers overseas insurers provide valuable contributions to the New Zealand market, and strongly opposes any move to require local incorporation. Further, while preferable to requiring local incorporation, AMP is not aware of any compelling argument to support imposing a statutory fund-type arrangement or 'assets in New Zealand' test on all overseas insurers. AMP believes any move toward these types of arrangements needs to be carefully considered to ensure the requirements don't have the unintended consequences of either inappropriately restricting access to the New Zealand market and decreasing competition, or increasing risks to insurers and New Zealand policyholders by reducing the diversification of assets and liabilities for the New Zealand business facilitated by the current model.

## Approach to the regulatory framework

In AMP's view there are a number of refinements that should be made to improve the efficiency and effectiveness of the IPSA regime without making fundamental changes.

AMP supports the regulatory framework providing the flexibility to address the diverse range of business models and circumstances of insurers operating in the New Zealand market. AMP considers the regime is currently relatively effective in providing this, though there are some areas where further flexibility could reasonably be introduced. For example, AMP would support the current specific exemption powers being replaced by a broad exemption power, which would allow Reserve Bank to exempt from any of the obligations under IPSA subject to conditions appropriate to the circumstances. However, for insurers to operate in an efficient and compliant manner, there needs to be a degree of certainty as to how the requirements apply to an insurer's business, the Reserve Bank's expectations of insurers, and how the Reserve Bank exercises its powers as the regulator of the sector.

AMP believes there is a significant opportunity to clarify the regulations that apply to insurers, and ensure that appropriate instruments are used to impose requirements. Currently, the sheer number of instruments imposing regulatory requirements makes it difficult for an insurer (and likely the Reserve Bank) to keep track of the insurer's obligations. Further, while many of the obligations are standard to a significant extent, many of the obligations imposed on insurers through conditions of licence, conditions of exemption, and section 121 notices are not currently made public and, therefore, there is a lack of transparency around such obligations. AMP believes the framework should be refined to ensure that there is clarity and transparency around the requirements placed on insurers, and to ensure that there are robust processes and accountability around changes or additions to these requirements in future.

AMP also believes there is a significant opportunity for the Reserve Bank to be more active in providing guidance and commentary to the market and to develop a more constructive and consultative approach to engaging with insurers, particularly around material transactions and other significant events arising in insurers' businesses. AMP considers better guidance and communication would assist with more consistent application of requirements. The current use of *Industry Updates* to provide the Reserve Bank's views on matters, and in particular any requirements the bank seeks to lay down, is not best practice. If the issue is not picked up by the insurer at the time of the update's publication it is likely to be overlooked by that insurer in the future and it is not clear to us that the content is kept current. Currently, insurers' own individual interpretations will form the basis for their compliance approach, and this may differ between insurers, with some seeking to achieve high standards or even exceeding the requirements, and others taking a more minimalist approach. Guidance and feedback from the Reserve Bank would help to develop a common understanding of the requirements and the Reserve Bank's expectations, without removing flexibility from the regime. This would lead to efficiencies, as insurers would be more likely to provide the Reserve Bank with initial submissions that meet its expectations, and therefore should usually need to undertake a less iterative approach.

## AMP's responses to the specific questions posed

### Question 1: Do you have any comments to make on the discussion in Part 1 of the Issues Paper?

AMP largely agrees with the sentiments expressed by the Reserve Bank in relation to the approach to the review and the Reserve Bank's regulatory philosophy. However, there are some areas where AMP believes that refinements to the scope of the review and the regulatory philosophy outlined in Part 1 of the Issues Paper could help maximise the effectiveness of the review.

AMP recognises that regulation of insurance in New Zealand is based on a 'twin peaks' model, with the Reserve Bank responsible for prudential regulation and the Financial Markets Authority (FMA) increasingly responsible for and active in regulating conduct in the retail insurance market, and AMP supports this regulatory structure. However, AMP considers that the overlap between prudential and conduct regulation shouldn't be overlooked in the scope of this review. Prudential regulation can have a significant impact on the conduct of an insurer, particularly where an insurer's profitability or solvency is poor or deteriorating. Additionally, there are areas that will be of regulatory interest to both the Reserve Bank and the FMA, particularly governance and compliance assurance arrangements, and there are some areas of an insurer's operations that impact on both prudential and conduct outcomes (for example, claims handling and mis-selling). It is important that the Reserve Bank and the FMA are aligned on how these aspects of an insurer's business should be regulated and the expectations they place on insurers, as inconsistencies in approach would add to the complexity of addressing the requirements. For this reason, AMP considers that the conduct implications of the current regime and any proposed changes to these requirements should be in scope for this review. Additionally, AMP recommends that the FMA is involved in the review to provide input on areas that overlap with its remit.

AMP agrees that the Reserve Bank's approach of using self-discipline and market discipline to achieve the purposes of IPSA is an appropriate and effective mechanism in some cases. However, AMP considers there remains a need for the Reserve Bank to actively supervise and engage with insurers. AMP appreciates that, like many regulators, the Reserve Bank has limited resources with which to carry out its function. AMP also acknowledges the Reserve Bank's view that insurers should have the expertise and resources to understand and comply with their regulatory obligations, and accepts that this position is reasonable in general terms. However, AMP considers that there is further opportunity for the Reserve Bank to engage in a constructive ongoing dialogue with insurers; both through increased engagement in direct discussions with individual insurers, and through providing guidance and commentary on its expectations and its view of best practice to the industry.

AMP considers that a greater willingness by the Reserve Bank to engage in ongoing and constructive dialogue with insurers would assist insurers to meet the expectations of the Reserve Bank both in relation to specific transactions requiring reserve Bank approval and in meeting their ongoing regulatory obligations in the most efficient and effective way practical. For example, providing guidance on common queries will, over time, free up the Reserve Bank's resources for other activities and assist insurers to meet their obligations efficiently for themselves. As such, this would improve efficiency of ensuring the Reserve Bank's expectations are met and insurers are not subject to unnecessary compliance cost.

Additionally, it would assist the Reserve Bank to develop a deeper understanding of insurers' businesses and governance and compliance arrangements, as well as the challenges they face in meeting their regulatory obligations. The Reserve Bank's current approach to engagement can be quite transactional and formal, and can give insurers the impression that the Reserve Bank is uncomfortable with clarifying its expectations or having informal discussions about issues. AMP believes a shift in approach can support improved outcomes in terms of achieving the purposes of IPSA, even without any change to the legal framework.

Similarly, an increase in the level of guidance and commentary on its expectations and its view of best practice would support the Reserve Bank maintaining a flexible, principles-based framework, while supporting improved standards of compliance by insurers. Such an approach would assist insurers to have a clear understanding of the Reserve Bank's expectations, interpretations of rules and how it intends to exercise its powers. This in turn supports constructive and informed dialogues between the Reserve Bank and insurers, and assists insurers to meet the Reserve Bank expectations. Both within New Zealand and internationally, many regulators are active in releasing guidance and commentary on their expectations of regulated participants, including in markets primarily comprised of large firms that can reasonably be expected to be more sophisticated at understanding and meeting their compliance obligations. While participants won't always fully agree with the guidance and commentary, AMP believes this is generally appreciated by participants.

AMP also considers that both any revisions to the IPSA framework and the Reserve Bank's approach to applying that framework should ensure regulatory obligations and responses are proportionate to the risks posed to either the interests of policyholders or achieving the purposes of IPSA. It appears to us that in some cases minor issues in relation to regulatory outputs, which cause no real risk of harm to policyholders, attract disproportionate responses from the Reserve Bank. AMP considers a risk-based approach that focuses on preventing harm to policyholders or damage to the wider insurance industry, more akin to the approach taken by the FMA, would support better regulatory outcomes.

Paragraph 21 of the Issues Paper notes that, where any legislative changes result in new requirements, appropriate transitional provisions would be applied before the new requirements come into full effect. AMP considers it is essential that, before transition arrangements are determined, licensed insurers are consulted about the nature and duration of those transitional periods. Regulatory changes can impose a substantial level of implementation work for licensees, and insurers will be best placed to understand their systems and the nature and extent of the changes necessary to comply with any new requirements.

### Question 2: Do you consider that the Review should assess the current scope of IPSA in terms of the nature of insurance contracts or entities that are subject to the legislation? Please provide commentary in support of your view.

The requirements with respect to entities that are required to be licensed are very black and white – either an entity needs a license or it doesn't. The legislative scope of the Act then only applies to licenced entities. However, the influence on NZ policyholders and indeed potentially the NZ economy from unlicensed entities could be significant. AMP considers this position should be addressed as part of the review.

A particular case is reinsurers, who support, to a large degree, both the general and life insurance markets. Noting some reinsurers are licensed today, full licensing of all reinsurers may not be the most efficient or effective answer. However, AMP supports the review considering some form of notification or data reporting framework, as suggested in paragraph 47 of the Issues Paper, should full licensing be considered disproportionate to the risks presented by the activity. Consideration could also be made as to whether there is a threshold above which a reinsurer should be licensed. For example, if a reinsurer reinsures more than a specified percentage of the liabilities (calculated on solvency basis) of a NZ licenced insurer, then that reinsurer should be licensed because it *is*, de facto, the insurer. Alternatively, AMP would support an arrangement based on more limited regulation of overseas reinsurers with a relatively small footprint in the New Zealand market but introducing a requirement for approval by the Reserve Bank of significant reinsurance arrangements.

Similarly, overseas incorporated insurers that are not required to register under the Companies Act can offer policies directly to New Zealand policyholders without being subject to any regulation under IPSA. AMP considers that these insurers should be subject to some regulatory oversight in New Zealand, even if that regulation is something less than full licensing for those that have a very small presence in New Zealand and are adequately regulated in their home country. The current regulatory position in relation to these entities does not provide the Reserve Bank with any mechanism to understand or manage the risk these entities pose to policyholders, and therefore appears inconsistent with delivering the purposes of IPSA.

AMP also considers that it is important that the Reserve Bank does consider, within its remit, the wider corporate group within which a NZ licensed insurer belongs, and any contagion risks that might impact upon the insurer. For example, while the Reserve Bank has rules as to what can be counted as capital for a licenced insurer, that capital could be solely funded by debt at the level of the insurer's parent entity. Should the debt be called in at the parent entity, what risk does that pose to the insurer itself, and how does the Reserve Bank monitor and assess that risk? What risks do other activities of a parent entity or broader group pose?

Another aspect of this issue AMP considers should be addressed as part of the review is whether IPSA allows for new technologies (such as peer-to-peer insurance), and how it ensures those are appropriately regulated. AMP considers the regulatory regime should be designed to allow new technologies to enter the market. However, the regulatory regime should provide a level playing field as between new technologies and conventional insurance models, and it should provide an equivalent level of protection to policyholders who access insurance through these new technologies. AMP agrees with the areas for consideration in paragraphs 46 and 47 of the Issues Paper.

### Question 3: Do you consider that there are entities where the current provisions of the legislation result in inappropriate compliance costs or inappropriate regulatory obligations relative to the risks being addressed by the legislative framework?

AMP considers the approach to regulating overseas insurers should be reviewed with a view to leveraging existing overseas regulation. Additional regulatory requirements should be minimised unless the particular regulatory requirement either improves the protection of

policyholders or is necessary to deliver the purposes of the Act. This may involve distinguishing between different jurisdictions depending on the nature and extent of their regulatory regimes. Notwithstanding some failures, AMP considers the highly regulated environment Australian insurers operate under provides sufficient comfort that insurers are appropriately capitalised and policyholders are sufficiently protected. The review provides an opportunity for the Reserve Bank to assess the regimes overseas insurers operate in and, where the overall financial soundness and stability of insurers is adequately regulated, focus its regulatory attention on any areas it believes New Zealand policyholders would benefit from additional protection. Where regulatory obligations and oversight by the Reserve Bank substantially duplicates that already undertaken by the home jurisdiction regulator, AMP believes the Reserve Bank should seek to further minimise regulatory burdens.

More broadly, AMP considers there may be benefit in pursuing a mutual recognition regime with Australia, and potentially other jurisdictions. AMP believes that this review provides a timely opportunity for the Reserve Bank to explore such an arrangement. Mutual recognition of securities offerings has been successful both in terms of expanding the range of products available to New Zealand investors, and allowing New Zealand firms to progressively expand into the Australian market. AMP believes a mutual recognition regime for insurance could help create a Trans-Tasman market for insurance that better serves New Zealand insurers and New Zealand policyholders. Without mutual recognition, insurers need to commit to the cost of obtaining and maintaining a licence in their secondary jurisdiction and operating systems and controls for complying with a second regulatory regime. This unnecessary cost means that insurers must either limit their activities to their primary jurisdiction or commit to full scale expansion into their secondary market to justify the cost of entry, which inherently increases the risk to the insurer's whole business. Mutual recognition would allow entry at a lower cost, and therefore allow New Zealand insurers to attempt to enter the Australian market in a more gradual way that better controls the risks associated with the expansion.

AMP is aware that some submitters support the use of tiered approach to make the regime more proportionate. AMP is not supportive of a tiered approach. Whether or not a tiered approach is appropriate depends on which aspects of the purposes of IPSA the Reserve Bank considers most important. If the Reserve Bank's primary focus is on the efficiency of the sector as a whole, facilitating smaller insurers entering the market would support greater competition and potentially greater innovation around both policy terms and the processes and technology used within the insurance industry. Smaller firms are also unlikely to have a systemic or 'domino' effect on the broader insurance sector, and therefore a failure may not have a significant effect of the soundness of the insurance sector as a whole. However, if the Reserve Bank's primary focus is on promoting the soundness of individual insurers and/or promoting public confidence in the insurance sector, any significant relaxing of the regulatory requirements for smaller insurers is inappropriate. As compared with large insurers, smaller insurers carry the same risk, or potentially higher risk due to the lower level of diversification within the insurer's portfolio and diseconomies of scale, of becoming distressed. Should a smaller insurer fail, the consequences of that failure would be the same for individual policyholders. Further, the failure of a smaller insurer can cause substantial damage to public confidence in the insurance sector and the Reserve Bank's regulation of insurers. In our view, lowering governance or risk management standards for smaller insurers or permitting smaller insurers to hold proportionately lower regulatory capital

or solvency margins would be inconsistent with promoting sound insurers or public confidence in the insurance sector. AMP recognises that smaller insurers with simple business models may be able to deliver effective governance and risk management for their business using simpler systems and controls than those required for large diverse businesses. AMP supports the regime providing flexibility in terms of firms' individual arrangements, provided that the minimum standard of effectiveness is applied consistently for all firms. Additionally, AMP would support the Reserve Bank having broader exemption powers to enable it to tailor specific aspects of the regime where the requirements impose a burden that is disproportionate to the regulatory outcomes that requirement achieves.

### Question 4: Are you aware of any currently non-licensed (under IPSA) insurance business activity in New Zealand that you consider should be within the scope of regulation in some form to enhance the effectiveness of the framework?

AMP is not aware of specific examples of unlicensed firms that it considers should be licensed.

As noted above in our response to question 2, AMP is aware that overseas incorporated insurers may, in some circumstances, operate as insurers or reinsurers in the New Zealand market without needing to be regulated under IPSA, and AMP believes this should be addressed as part of the review. Similarly, if the Reserve Bank is aware of any other examples of non-licensed insurers operating in New Zealand, AMP would support these being considered as part of the review.

In addition, to future proof the legislation, AMP considers there may be merit in providing for the ability to 'call in' any insurance business that falls outside the scope of IPSA but that should be regulated in order to achieve the purposes of the Act. This could be achieved by giving the Reserve Bank a broader power to designate insurance businesses, either individually or by class, into or out of the IPSA regime, similar to the powers granted to the FMA to designate securities as particular types of financial products. This could be accompanied by a broader exemption power, to give the Reserve Bank the flexibility to tailor the regime where it considers that an insurance business should be subject to regulation under IPSA but shouldn't be subject to the full extent of regulatory obligations that would entail.

### Question 5: Do you agree that overseas insurers provide valuable support to the New Zealand insurance market? Please provide commentary in support of your view.

AMP agrees that the NZ insurance industry and policyholders are provided valuable support by overseas insurers, as articulated in paragraph 48 of the Issues paper.

Overseas insurers: bring knowledge, expertise, and experience from overseas markets; can provide scale, and therefore operational efficiency; and improve innovation and competition in sub-sectors that would otherwise be dominated by a few insurers. In AMP's view, encouraging participation in the market by insurers that are regulated to a high standard overseas can, by leveraging that overseas regulatory oversight of insurers, also create an efficient and effective way of delivering the purposes of IPSA.

Additionally, substantially all of the reinsurance market is provided by overseas insurers, who may not be able to provide this effectively if required to operate through New Zealand incorporated subsidiaries or to ring-fence their New Zealand business or exposures. Many New Zealand insurers rely heavily on having access to reinsurance on reasonable terms.

### Question 6: Do you consider that the Review should reassess the application of the legislation to insurers operating as branches? Please provide commentary in support of your view.

There has been a lot of talk recently in the media and other circles indicating that all overseas insurers operating in New Zealand should be locally incorporated. AMP does not concur with the broad brush "incorporation is best" viewpoint. AMP urges the Reserve Bank to carefully consider this, because there are many issues to consider.

The use of branches provides a simpler entry barrier for overseas insurers and, therefore, supports competition and efficiency within the insurance sector. Unless allowing overseas insurers to operate as branches can be demonstrated to introduce material risks to policyholders or undermine the purposes of IPSA, AMP considers the Reserve Bank should maintain its current policy of being neutral as to whether overseas insurers operate through branches or establish locally incorporated subsidiaries. Even where material risks are identified, and noting that the paper does not lay out any explicit material risks, AMP considers the review should aim to address those specific risks while minimising the change to the structure of the industry.

AMP notes that, should changes to the current position be considered necessary, there may be other less extreme options available that should be considered, which would involve refinements to obligations rather than structural change.

Any level of ring-fencing could cause adverse consequences for affected insurers and the efficiency of the market. For example, for AMP, unbundling the "mature" Australian and New Zealand business from a statutory fund perspective would be exceedingly complex, as the "performance promises" were made across a single group of people irrespective of their location and these policies are managed as a whole.

Additionally, any ring-fencing would reduce the diversification within the pool of insurance liabilities. As discussed further in our response to questions 8 and 9 in relation to statutory funds, this can make it harder for the insurer to manage their solvency and increase the risks of default.

AMP also recommends the Reserve Bank seeks to maintain a detailed understanding of the regulatory regimes and insolvency regimes in the jurisdictions overseas insurers operate, and targets any reforms to the particular circumstances where the risks arise. Any additional requirements should apply only to those insurers for whom the risk or concern is present in a material respect – rather than applying blanket rules to all overseas insurers irrespective of their jurisdiction or circumstances. In this respect, AMP agrees with the suggestion at paragraph 62 that a 'one size fits all' approach is unlikely to be appropriate, and that the better approach may be for the Act to establish principles and a framework within which different rules can be established based on the nature and home jurisdiction of the overseas insurer.

The regulatory environment in an overseas insurer's home jurisdiction has a huge influence on the insurer's stability and the protections afforded to policyholders. Being APRA regulated, AMP attests to the fact that the supervision and regulatory environment overseen by APRA is extremely stringent. There are many "rules" that apply to the AMP Life Limited NZ Branch, being part of an APRA regulated entity, that are much stricter than would apply for a New Zealand subsidiary entity. For example:

- whenever product terms and conditions or reinsurance arrangements are introduced or amended, the Appointed Actuary must provide the Board with his or her advice on the implications. This provides for a strong control process around product and pricing for what are long term contracts with policyholders, and ensures that a long term view of the risks involved are taken, rather than just a short term headline sales focus.
- APRA requirements for registration of Non-Operating Holding Companies (NOHCs) and conglomerate rules.

AMP believes the suggestion that the current regime is generally less onerous for overseas insurers may be based on a generalisation or misunderstanding of the nature and extent of regulation in some of the jurisdictions overseas insurers are based, and the level of protection overseas regulation provides to New Zealand policyholders. AMP supports a level playing field between overseas insurers and New Zealand insurers. However, this should focus on delivering equivalent protection for New Zealand policyholders, taking into account any protections they receive as a result of overseas law or regulation.

### Question 7: In the context of overseas insurers, what do you consider are the most significant risks posed to the New Zealand economy or New Zealand policyholders that need to be taken into account?

In general, AMP does not consider overseas insurers from appropriately regulated overseas jurisdictions introduce a significant level of additional risk to the New Zealand economy, the New Zealand insurance sector or New Zealand policyholders. Overseas insurers from many overseas jurisdictions are subject to equivalent or higher requirements in relation to governance, risk management, and regulatory capital and solvency requirements. As such, in general terms, AMP does not believe that overseas insurers that operate through branches are more likely to become distressed, fail, or otherwise default on their obligations to their New Zealand policyholders.

Overseas insurers inherently have an exposure to contagion from events in other jurisdictions. Should a major insurance event occur in Australia, an Australian incorporated insurer with significant exposure to this may need to increase premiums or restrict the sale of new policies in New Zealand while it deals with the consequences of that event or, in the worst case, could fail because of that event. However, this contagion effect is not limited to overseas insurers. New Zealand incorporated insurers could lose access to additional capital or debt funding or to non-financial support from the group as a result of insurance or non-insurance events impacting an overseas parent or significant group subsidiary. Additionally, a number of New Zealand insurers are reliant on reinsurance from Australian reinsurers or Australian branches of global reinsurers. Major insurance events in the Australian or other international markets may (and have in the past) affect the availability and price of reinsurance to New Zealand insurers. Either of these contagion events could

affect the soundness of insurers in the New Zealand market more generally or the cost or availability of insurance to New Zealand policyholders or prospective policyholders.

In the event of an overseas insurer becoming distressed or insolvent, resolving the issues under multiple, and potentially inconsistent regulatory and insolvency regimes will add to the complexity. In responding to a distressed or insolvent overseas insurer, the Reserve Bank may have more limited options available to it.

In either of the scenarios above, it is unproven whether the ability to operate as a branch in New Zealand would lead to poorer outcomes for New Zealand policyholders.

Additionally, AMP is aware that the Reserve Bank is concerned about the potential for overseas regulatory or insolvency regimes to give preferential treatment to policyholders in their jurisdiction over New Zealand policyholders. In our view, this risk is overstated, at least in respect of Australian life insurers. Life insurers are required to maintain a separate statutory fund for New Zealand life insurance policies unless it is exempted from this requirement, which the Reserve Bank is currently only permitted to do if it is satisfied that there is no overseas policyholder preference. The Reserve Bank has granted such an exemption to all Australian life insurers. Further, the directors of an Australian life insurer have a duty to all policyholders under Australian law – this does not distinguish between Australian and non-Australian policyholders. While possible, AMP believes it is highly unlikely that an overseas jurisdiction would legislate to introduce an overseas policyholder preference in relation to a failing insurer, given the damage this would do to the credibility of their insurance sector internationally. As such, AMP considers that the risks of an overseas policyholder preference are, at least in the case of Australian insurers and their branches, overstated.

Another area of potential risk is that overseas insurers may not specifically consider their exposure to, and plan for, major New Zealand-specific insurance events. This lack of planning could result in insurers being unprepared for a major claims event, either in terms of their infrastructure or their financial capacity, and, in the worst case, could result in an insurer failing. While overseas insurers may seem most likely to be unprepared for major New Zealand insurance events, the Reserve Bank's report on the insurer catastrophe risk survey noted that many insurers, both overseas and New Zealand incorporated, don't adequately plan for the full range of catastrophe events they could be exposed to. Overseas insurers may, in fact, be better placed to manage insurance events they have not specifically planned for, as operating in multiple jurisdictions will help to diversify the insurer's risk and, for many overseas insurers, their New Zealand exposure will be modest relative to their overall business. AMP believes the most effective way to address this risk is by improving insurers' identification and management of these types of risks.

### Question 8: Do you consider that there is opportunity to clarify or enhance the effectiveness of the statutory fund framework? Please provide commentary in support of your view.

AMP considers the current statutory fund regime works relatively well.

The use of statutory funds to separate out particular product types of insurance (for example, unit linked, participating, pure risk) or to separate by jurisdiction may appear attractive as it "ring-fences" assets to support certain liabilities. However, this comes at a cost of

compliance, flexibility, asset mix and capital if the funds are below critical size. Smaller funds have less diversification of risks and, therefore, unless they have proportionately higher levels of capital, they provide less protection to policyholders. Provided appropriate capital is maintained at a fund level, all policyholders in that fund have appropriate security. On balance, AMP considers the administrative burden, compliance costs, and increased risk significantly outweigh the perceived benefits to policyholders from further separating different types of life insurance policies into separate statutory funds.

AMP considers that mooted changes should be carefully assessed to ensure that their impact on overseas reinsurers of life policies does not inappropriately restrict the participation of reinsurers in the New Zealand market. While AMP considers insurers that provide reinsurance to New Zealand licensed insurers should be appropriately regulated, we are not convinced that the best way to achieve this would be by making them subject to a statutory fund type framework in New Zealand. In relation to reinsurers, AMP believes the interests and stability of the New Zealand market is best served by finding a balance between adequately regulating reinsurers and ensuring New Zealand insurers have access to an active and competitive reinsurance market.

At this stage, AMP is not aware of any convincing argument in favour of extending the use of statutory funds to some classes of non-life insurance.

The Reserve Bank may wish to consider the provisions relating to statutory funds for pure-risk life insurers. Where there is no savings component a statutory fund is less critical to policyholder protection.

**Question 9: In the context of overseas insurers, do you consider a statutory fund framework may help protect the interests of New Zealand policyholders? Please provide commentary in support of your view.**

AMP considers that, for life insurers, the current regulatory requirements are sufficient to ensure protection of New Zealand policyholders. Specifically, where there is no overseas policyholder preference, AMP considers the exemption from holding separate New Zealand statutory funds currently available to some insurers remains appropriate. In these circumstances, for the reasons set out above in our responses to question 6, 7 and 8, AMP believes mandating a separate New Zealand statutory fund would not necessarily provide any significant additional protection for New Zealand policyholders, and separating policy obligations into smaller less diversified statutory funds may in fact reduce the protection for policyholders.

**Question 10: Do you consider that the expectations placed on the directors, chief executive officer, chief financial officer or appointed actuary of insurers, would benefit from being considered further within the Review? This may include clarifications of current expectations or expansion of responsibilities.**

In our view, there could be some benefit in providing flexibility around the establishment of key office bearers for overseas insurers. While the current roles of “NZ CEO” and “NZ CFO” have been workable, there may be some scope to further align the approach to identifying key office bearers with concepts underlying the definition of ‘senior managers’ from the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the

Financial Markets Conduct Act 2013 (FMCA) and 'senior officers' from the Non-bank Deposit Takers Act 2013. This would enable insurers to identify those people who have the most influence over their insurance business and, therefore, the people the Reserve Bank would most benefit from maintaining a relationship with. AMP notes that most insurers will already be familiar with the tests as they will be subject to at least some of these regimes. However, in the case of overseas insurers where senior executives are already subject to fitness and propriety requirements in the insurer's home jurisdiction, AMP does not believe expanding the number of roles beyond the relatively small number currently in scope would enhance the protection for policyholders or improve the soundness or efficiency of the sector.

AMP considers the functions and expectations of key office bearers should be reviewed to ensure they align with society's expectations and best practice. AMP does not believe that introducing granular or prescriptive requirements into the New Zealand regime is necessary or desirable. AMP notes that some concerns have been raised around how practical and effective the expansion of the role of Appointed Actuary has been in Australia. AMP does not consider it would be desirable to expand the specific duties or functions of key office bearers mandated by IPSA or the IPS Regulations, given the risk of changes resulting in impractical, unclear or unworkable obligations, failing to achieve the intended purpose, or otherwise having unintended consequences.

Rather, AMP's preference is for any expansion or clarification of the duties or functions of key officer bearers to be primarily delivered through guidance on the Reserve Bank's expectations and commentary on where the Reserve Bank sees good and bad practice in the industry.

In terms of the duties of directors, AMP considers further explanation would be useful from the Reserve Bank on what is meant in practice by "gives priority to the interests of policyholders of life policies referable to the fund over the interests of shareholders or members". However, AMP considers this clarification could be provided through guidance, commentary or examples of best practice, rather than necessarily requiring amendments to IPSA.

Similarly guidance about what is expected of appointed actuaries in terms of review of actuarial information in the financial statements is desirable. There are some aspects of the current role of actuaries that are not entirely logical and/or necessary. For example, it is unclear to us why it is the Appointed Actuary's responsibility to review the calculation of premiums in the financial statements. It could equally be part of the role of the CFO to ensure premiums calculations are correct and the role of the auditor to review.

### Question 11: Do you consider that the Review should encompass further consideration of an insurer's key control functions (paragraph 84) to promote effective risk management and consistent application of requirements across the sector?

AMP considers IPSA already provides an adequate and workable theoretical framework around risk management, compliance and actuarial functions. Maintaining the current flexible and principles-based approach is more suitable given the number of insurers and the diversity of sizes, business models and product types within the New Zealand insurance market. IPSA does not specifically provide requirements around internal audit, except to the extent that this is a necessary part of a firm's risk management framework. There may be

benefit in specifically addressing this, though AMP recommends maintaining an approach consistent with that currently taken for other key control functions.

While "self-discipline" is a noble goal for the industry, AMP considers the Reserve Bank should take a more active role in providing the industry with best practice guidance. While an insurer might have what it considers to be a good risk management framework and controls in place, there may be deficiencies or opportunities for improvement that the insurer is not aware of. AMP believes clarification of the Reserve Bank's expectations and what it sees as best practice through guidance and industry commentary would help to ensure governance and control functions are effective and being continually improved within the current legal framework, while maintaining flexibility and leaving overall accountability for those functions with insurers' boards.

In AMP's view, there may also be merit in the Reserve Bank introducing some degree of review of the implementation of governance and control functions, including an onsite monitoring component. In this regard, AMP notes that it is usually easier to write risk policies that appear robust and effective in theory, but it can be significantly harder to effectively implement and continually deliver to them, particularly when faced with the commercial pressures that directors and managers of insurers operate under. AMP appreciates that the Reserve Bank is conscious of the impact of active monitoring on its and insurers resourcing, and accordingly any reviews should be designed so they are effective and efficient for everyone involved. AMP also acknowledges the Reserve Bank's concern that insurers should rely on their own judgement and expertise, rather than monitoring and feedback from the Reserve Bank, to determine whether they are meeting their obligations. A basic level of active monitoring by the Reserve Bank is unlikely to undermine that position.

### Question 12: Do you consider that there may be opportunities to enhance the enforcement framework? Please provide comment in support of your view.

AMP supports an expansion of the regulatory toolkit available to the Reserve Bank to respond to breaches or misconduct in the industry. AMP considers that the considerations set out in paragraph 93 of the issues paper, providing a framework that incentivises compliance, providing for proportionate outcomes, and providing low cost mechanisms for responding to misconduct, provide an appropriate basis for determining the range of enforcement and regulatory tools available to the Reserve Bank.

However, AMP believes that the introduction of any enforcement or remedial powers that can be used unilaterally by the Reserve Bank (rather than requiring an application to a court or independent tribunal) or any substantial shift to a more active enforcement policy should be accompanied by further guidance and commentary from the Reserve Bank around its expectations of insurers and its enforcement approach or policy (akin to the Commerce Commission or the FMA). While there may be some limited instances where it is appropriate that criminal or civil proceedings are used to clarify the law, generally enforcement policy should not be used to set expectations that have not previously been clearly conveyed to the industry. While AMP supports the Reserve Bank having appropriate powers to maintain high standards within the insurance industry, it would be unfair and unreasonable for the Reserve Bank to take enforcement action based on its expectations and its interpretation of the law without first ensuring that insurers have the opportunity to fully understand and proactively meet the Reserve Bank's expectations.

Additionally, AMP agrees that procedural fairness and natural justice are essential to the use of any enforcement tools, and accordingly believes minimum process requirements should be set in the Act for all enforcement tools that do not involve a full hearing before a court.

AMP considers regulatory tools such as directions, action plans, stop orders, and enforceable undertakings (similar to the regulatory tools the FMA has) would provide a useful addition to the Reserve Bank's regulatory toolkit, alongside its existing information gathering powers. These tools provide mechanisms for the Reserve Bank to require an insurer to remedy a regulatory breach or to alter its conduct and, therefore, have the benefit of managing a risk or preventing further harm, rather than merely punishing misconduct after the fact.

Tools such as public censure and infringement notices/administrative fines could be introduced for some breaches. However, these should only be available where the misconduct creates a real harm or risk to either policyholders or the soundness of or public confidence in the sector. AMP would be concerned if public censure or administrative fines became common place for merely technical breaches. Additionally, public censure or administrative fines should only be available for breaches that can be objectively and definitively proven. AMP would not be comfortable with such powers being used in cases where the offence or a defence depends on knowledge or intent, or the requirement breached involves judgement or a materiality threshold, as there will not be an opportunity to adequately test the evidence and the Reserve Bank's assessment of the case. Specific breaches/offences for which these are available should be specified in the legislation. Careful consideration needs to be given to the maximum amounts of any administrative fines to ensure they are meaningful, yet not excessive, given the less serious nature of breaches they may be used for and the more limited natural justice process involved.

Civil regulatory penalties requiring an application to the court could also be included as an alternative to criminal proceedings, in order to distinguish the most severe or deliberate breaches from lesser or merely negligent, albeit still serious, breaches. Similar to the approach taken in the FMCA, these could provide for both pecuniary penalties and the ability for the Reserve Bank to seek compensation on behalf of policyholders that have been adversely affected by a breach.

AMP also considers that greater use of private censure or breach notices could be used. AMP would not, however, consider that this needs to be legislated for, as it can be equally effective when simply based on the Reserve Bank's inherent authority as the regulator of the sector. However, AMP would still expect there to be an appropriate level of procedural fairness and natural justice before a matter is concluded, particularly if the Reserve Bank expects that it may take past misconduct addressed through private censure or breach notices into account in responding to subsequent concerns.

AMP also considers the review should include consideration of which breaches directors may be personally liable for and the defences available to insurers and their directors. AMP does not believe directors should be personally liable for oversights in disclosing statutory fund names and financial strength ratings to individual policyholders, or website omissions. Additionally, the defence under IPSA for relying on another person currently excludes other directors, an employee or an agent of the insurer charged with the offence. AMP does not believe this blanket limitation is appropriate. There are situations where the Board should be able to rely on employees, particularly for wholly or largely administrative compliance matters.

### Question 13: Do you consider the distress management framework within IPSA could be considered within the Review to enhance the expected effectiveness of the framework, particularly for smaller licensed insurers?

Given this aspect of the regime has not yet been applied in practice, it is difficult to ascertain its effectiveness or to be specific about the additions or amendments to the framework that may be desirable.

In general terms, AMP supports the Reserve Bank having an appropriate range of tools that enable it to respond flexibly to the individual circumstances of a distressed insurer.

However, AMP believes that the Reserve Bank should provide guidance to the industry in terms of how it expects to respond to a distressed insurer. This guidance should not be a checklist prescribing the steps the Reserve Bank will take or constrain the Reserve Bank's discretion to act in a manner appropriate to the circumstances. However, it should aim to provide insurers with some certainty regarding how the Reserve Bank would engage with them and assess their situation should they become insolvent. It should also aim to provide the industry as a whole with confidence that the Reserve Bank has undertaken planning in relation to how it may use its powers in relation to a distressed insurer, and that it will act in an appropriate and timely manner to minimise harm to policyholders, the stability of the sector, and public confidence in the sector, should the need arise.

### Question 14: Are there any areas of the framework that may pose particular concerns when considering overseas insurers (branch operations)?

Responding to a distressed overseas insurers will involve added complexity as a result of it being subject to multiple regulatory and insolvency regimes. Additionally, some of the powers provided for under IPSA may not always be available in practice when dealing with an overseas insurer. Despite this, AMP does not consider there needs to be a different treatment for overseas insurers under the legislation.

AMP anticipates that the Reserve Bank's planning for, and public guidance on, how it expects to deal with a distressed insurer will likely need to separately consider New Zealand and overseas insurers, and may also need to separately consider the differences between the many home jurisdictions of overseas insurers. The insolvency regime applicable in the home jurisdiction should be considered by the Reserve Bank when determining the equivalency of that jurisdiction at the point of licensing.

### Question 15: Do you consider that the current approach to prudential capital requirements by reference to a solvency margin and conditions of licence should be within scope of the Review? Please provide commentary in support of your view.

AMP agrees it would be prudent for the Reserve Bank to have a power to allow a variation in the factors or methodologies used in Solvency Standards as suggested in paragraph 110 of the Issues Paper. This should be available to provide for any situations where the Reserve Bank needs to respond to a temporary situation or to respond on an urgent basis. An example of where this might be used: the Financial Services Authority in the UK, following a shock equity crash in the early 2000s, allowed an adjustment in the applicable solvency standards so that companies could deal with the crash and not be deemed to be insolvent,

given that all margins (designed to absorb such a crash – which they did) were suddenly eroded. AMP believes the Reserve Bank should have the ability to formally respond to such a scenario should it arise in New Zealand.

AMP considers the use of solvency standards to set the substantive requirements around how solvency and capital is assessed remains appropriate. However, AMP believes the application of solvency standards and minimum solvency margins to individual insurers through conditions of licence should be reviewed. Particularly since conditions of licence are not publicly available (and AMP maintains they should be), the current system results in a lack of transparency. AMP recommends standard requirements as to minimum solvency margins and compliance with solvency standards and standardised exemptions from compliance with New Zealand solvency standards should be imposed within the Act, Regulations, the solvency standards or class exemptions. Bespoke or individual variations or exemptions could remain as conditions of licence or individual exemptions. However, those should also be publicly available.

The Reserve Bank may wish to review and refine provisions of the Act, such as obligations to prepare reports or provisions relating to the role of the Appointed Actuary, where these cross-reference to more prescriptive requirements intended to be set by solvency standards. Such provisions will work as intended for insurers that are subject to New Zealand solvency standards. However, they can result in obligations being unclear or confusing for overseas insurers that are exempted from complying with New Zealand solvency standards, particularly where the Reserve Bank seeks to reapply some or all of the some or all of the more prescriptive requirements through conditions of exemption or other notices.

While not within the scope of this review, AMP also recommends that the current capital standards should be reviewed as a result of the changes to IFRS17.

**Question 16: Do you consider that consideration should be given to clarifying the Reserve Bank's prudential response to deteriorations in reported solvency levels? Please provide commentary in support of your views.**

AMP agrees with the sentiments in paragraph 111 of the Issues Paper, and believes that the Reserve Bank should consider options to enable it to take a more graduated approach to deteriorating financial condition (for example, should target surplus be breached).

However, as with dealing with a distressed insurer, it is important that the Reserve Bank provides more guidance around how it considers it might use its powers to respond to deterioration in an insurer's solvency, whilst maintaining the flexibility to respond to the unique circumstances of an insurer. Uncertainty around how the Reserve Bank will act could be just as damaging where an insurer's solvency is deteriorating as with a distressed insurer, as that uncertainty could hinder work by the insurer's board and management to stabilise the situation.

### Question 17: Do you consider the Review should reassess the current framework for approval of material transactions and policy changes? Please provide commentary in support of your view.

In AMP's experience, the Reserve Bank approval process can, at times, be opaque, with applicants left unsure of the criteria the Reserve Bank applies or how their application is progressing. At a minimum, from the outset of a proposed transaction, applicants need certainty around the criteria the Reserve Bank will use to assess their application and the process the Reserve Bank expects the applicant to follow to demonstrate they meet those criteria. Further guidance on the Reserve Bank's expectations around undertaking material transactions and the application process would be useful.

This difficulty is compounded when working with dual regulatory environments, because of the Reserve Bank's intentionally less intensive approach to supervision and engagement. This means that it is very difficult to liaise meaningfully with two regulators on issues that impact both of their assessment processes. It would also be helpful if the Reserve Bank was open to a more collaborative and iterative style of engagement, particularly where transactions raise novel challenges or involve co-ordinating with multiple regulators.

Similarly, AMP believes that further guidance around the Reserve Bank's expectations for fit and proper policies and risk management policies and the process for having changes approved. AMP thinks this would be more efficient for both the Reserve Bank and insurers, because it would improve the ability of insurers to deliver the Reserve Bank a high quality, compliant policy, together with the documentation it expects to receive for a streamlined approval.

### Question 18: Do you consider that approval by the Reserve Bank is more or less effective than alternative mechanisms e.g. court based systems?

In AMP's view, retaining the current system of approval by the Reserve Bank is preferable to requiring court approval for most transactions, in particular because of the ability of the Reserve Bank to apply flexibility in its approach to assessing transactions. Additionally, the Reserve Bank can bring a level of experience and expertise because of its ongoing regulatory relationship with industry participants that would not be assured in, for example, a court based system.

However, as noted above in our response to question 17, the Reserve Bank's approval processes leaves a significant level of uncertainty for insurers. This adds challenges to the process that would not exist to the same extent with a more prescribed process, such as a court based system. While AMP does not advocate a fundamental change to where decision making powers lie, the current process should be refined to provide more certainty to insurers applying for such approvals. This may take the form of further guidance on the process and/or the Reserve Bank taking a more collaborative approach in how it deals with insurers, rather than changes to the legal requirements.

**Question 19: Are there any aspects of the current disclosure requirements that you consider do not provide useful information or are unduly onerous or costly to prepare? Please provide commentary in support of your view.**

AMP believes that there may be some scope to review the extent of disclosure of financial strength ratings. It is not clear to what extent policyholders actually place reliance on this information. AMP notes that the solvency disclosures and financial strength rating of an insurer will be only one of a number of factors that influence a policyholder's decision, alongside the premiums, the policy terms, the reputation of the insurer, and the advice they receive from their financial adviser. Where policyholders do look at financial strength ratings, in our experience, there appears to be a level of misinformation and misunderstanding about what a financial strength rating is intended to convey. Additionally, it may be difficult for policyholders to meaningfully compare financial strength ratings across insurers, because of subtle differences in the rating scale and methodology across the three approved rating agencies. In this regard, AMP notes that a number of the insurers that have published ratings from more than one rating agency do not have the same rating from all agencies. Further, in some sectors, such as life insurance or health insurance, the risks of changing insurance providers could substantially outweigh the risks of remaining with an insurer following a rating downgrade for many clients. This is particularly the case if the insurer retains a relatively strong financial stability rating following a downgrade.

AMP also notes that insurers' financial strength ratings are not necessarily an accurate representation of an insurance business's ability to pay claims. Where part of a group, an insurer's financial stability rating is typically one notch below the group's credit rating. Further, ratings downgrades are frequently triggered by a downgrade to the group's credit rating, rather than specifically by a change in the insurer's ability to meet its obligations to policyholders.

Notwithstanding this, insurers are currently required to notify all policyholders and update customer-facing documentation within very tight timeframes and at substantial cost to the insurer. This also risks unnecessarily alarming policyholders. Thus, AMP is unconvinced of the public policy benefits of the current universal requirement to notify policyholders of any downgrade.

There are strong arguments for removing the requirement to immediately notify policyholders in at least some circumstances. A distinction could be drawn between insurers with stronger ratings, perhaps S&P 'BBB' rating or equivalent (an equivalent threshold to 'investment grade' for bonds), and those with weaker financial strength ratings to reflect the risk to policyholders reflected in the downgrade.

AMP also suggests that, given rating information is continually available on insurers' websites, there may be efficiencies in referring policyholders to that website disclosure rather than requiring it to be substantially reproduced in customer documents such as application forms and renewal notices.

Further, AMP suggests that any continued focus on financial stability ratings would be more effective if it is accompanied by a consumer education programme to ensure that policyholders can understand the information about financial stability ratings provided to them and appropriately factor this into their decisions about insurance cover.

Finally, AMP considers the level of details required in Quarterly Insurer Surveys should be reviewed. The current requirements contain aspects that are difficult to deliver due to

systems limitations and granularity of data sought, which is not readily available in some insurers' systems, and which information is of questionable value from a materiality perspective. AMP questions whether the desk-based review of this level of data is an efficient and effective approach to monitoring. A more flexible approach and a focus at a higher level could deliver to the overarching policy intention of ensuring insurers manage their risks prudently. This would also free up the Reserve Bank's supervisory resources, which would be better applied to other monitoring activities, as suggested above.

**Question 20: Do you consider that there is information that is not currently required to be disclosed that would be beneficial to market participants? Please provide commentary in support of your view.**

In the Issues Paper, the Reserve Bank outlines that it is considering aspects of the current disclosure regime, such as the consistency with other disclosure frameworks including the requirements for registered banks, mechanisms to facilitate cost effective industry wide data collection processes to support the publication of data by the Reserve Bank for market participants, and that requirements be appropriately scoped and set out in an appropriate regulatory form. In principle, AMP supports public disclosure but believes consideration must be had to the purpose of such collection and its publication.

AMP considers any proposal for further disclosure, either directly into the public domain or the Reserve Bank using data collection powers to produce consolidated industry data, should be accompanied by a clear understanding of who will use the disclosure and how it will support improved efficiency and stability in the market and better protection for policyholders. While fostering market discipline is desirable where it is practicable, market discipline is a relatively weak mechanism in the New Zealand insurance sector. The New Zealand insurance sector contains around 80 licensed insurers, with focuses varying across a number of subsectors and between direct insurance and reinsurance. Many subsectors of the insurance market only have small numbers of insurers actively competing for business. In our view, policyholders should only receive information and disclosure that they are capable of understanding. It is not clear what that level of capability is, and any changes should be supported by consumer testing and research. A significant proportion of advisers would not analyse detailed prudential information. Further, under current market dynamics many advisers are either tied to a particular provider or relatively narrow product range, or their recommendations are heavily influenced by their relationships with providers. Focusing on more disclosure without a more holistic approach to investor capability and adviser conduct in our view is flawed.

Insurers already devote considerable effort to complying with existing data collection requirements (which, as noted above in our response to question 19, AMP believes should be reviewed and, for the reasons explained further in our responses to questions 22 and 23 below, should be contained in more appropriate instruments). An expansion of the reporting or data submissions will increase resourcing pressures and costs for insurers. While AMP recognises that appropriately regulating the insurance sector will necessarily involve some compliance costs for insurers, AMP believes it is important in areas such as this that a thorough and careful cost-benefit analysis of the broader framework into which this disclosure sits is undertaken to ensure that the costs to insurers do not outweigh the outcomes of the reporting or data collection requirements in terms of the soundness and efficiency of the sector.

To achieve this, AMP believes any proposals to increase disclosure or data collections need to contain a very clear understanding of how, and by whom, this information will be analysed and used to assist prospective customers to make better decisions about which insurer they use. The design of the nature and form of the disclosure or content of data collections then needs to be tailored to what those users need. This needs to be considered in the broader market context in terms of both investor capability and adviser behaviour. In the absence of this, AMP considers that there remains a substantial risk that insurers are put to considerable and unnecessary cost with no clear benefit in terms of protecting policyholders or achieving the purposes of IPSA.

To the extent that the Reserve Bank disagrees with this view and considers further disclosure obligations are appropriate, AMP believes there is merit in considering whether aspects of the content of other disclosure regimes would be valuable for the insurance industry. In terms of the production of industry data, the Reserve Bank should consider the types of information currently distributed by Financial Services Council and APRA as a guide to the types of information insurers consider to be of value to the industry. AMP would also welcome the opportunity to discuss ideas for industry data publication with the Reserve Bank and other industry participants.

AMP believes there are arguments in favour of considering alignment of any further disclosure requirements with those for insurers in overseas jurisdictions, especially Australia. Given the relatively significant extent to which overseas insurers participate in the New Zealand market either directly or through ownership of New Zealand insurers, international alignment in this area may support efficiencies. It would also assist the Reserve Bank to take advantage of the considerable experience that exists internationally in relation to the regulation of insurers.

**Question 21: Do you consider that the Reserve Bank (or other authority) has a role in providing appropriate industry data to the market? Please provide commentary in support of your view.**

AMP believes there can be considerable benefit the dissemination of relevant, accurate and timely data being provided to the industry, and supports the Reserve Bank taking a key role in providing data to the market. However, as noted above, where this industry data is based on data collection from insurers, there needs to be a balance between the cost to insurers of compiling and submitting the data and the benefit provided by the ultimate outputs.

AMP believes that, within this remit, there is also an opportunity for the Reserve Bank to consider providing a broader range of commentary and analysis to the market, rather than focusing solely or primarily on structured financial or statistical data.

The Issues Paper notes that the Reserve Bank proposes to undertake a consultation on the publication of insurance data in due course. AMP looks forward to reviewing and submitting on that proposal when it is released. AMP does, however, recommend that the Reserve Bank prepares its proposals for publishing industry data and considers submissions on those proposals as part of, or in conjunction with, the current IPSA review. This will help to ensure that the data collection requirements and mechanisms underpinning the Reserve Bank's final approach to publishing industry data are proportionate and consistent with the broader regulatory framework.

**Question 22: Do you consider that the Review should reassess the manner in which requirements are currently specified and the mix between requirements set out in legislation, standards or guidance? Please provide commentary in support of your view.**

AMP considers there is a significant opportunity to improve the clarity and transparency of the requirements. The Issues Paper cites "fragmentation" as a potential issue, and AMP sees this as an apt description for the current framework. The disparate rules under the current regime make for a complicated compliance regime, and formulating controls frameworks becomes increasingly difficult as that fragmentation increases. An example of this is the fit and proper requests, where requirements are spread out across the legislation, the regulations, and fit and proper standards, with guidance in both stand-alone guidance notes and *Industry Updates* adding what are substantively treated by the Reserve Bank, notwithstanding where they are disclosed, as binding requirements in relation to the interpretation of the legislation and the process for gaining approval for new directors or key office bearers.

AMP also believes that the fragmented nature of the regime and the incremental build-up of regulatory obligations make the regime inefficient for the Reserve Bank to administer. Further, particularly when combined with the lack of transparency around the licence and exemptions conditions and reporting obligations applicable to individual insurers, this fragmentation contributes to the concerns in the industry around the fairness of the regime, and specifically the perception that overseas insurers are not regulated to the same standards as New Zealand insurers.

AMP recognises that there would have been considerable uncertainty in 2009 and 2010 when IPSA was originally designed about how some of the requirements would apply in certain circumstances, and accordingly at that time it was appropriate to provide for those through various notices under IPSA. However, the experience gained by the Reserve Bank since the regime came into force should enable it to incorporate its standard approaches to some of these issues directly into the Act or regulations. Some examples AMP considers could be approached in this way are:

- standard exemptions (and the associated conditions) routinely granted to overseas insurers
- reporting requirements (such as the Quarterly Insurer Surveys and Insurer Returns)

AMP would, however, support the Reserve Bank retaining, and potentially broadening its, powers to grant exemptions and declarations, and impose individual conditions on licences to deal with circumstances unique to an individual insurer or new situations that have not yet arisen.

Where requirements are to be set by conditions of licence or varied through exemptions or declarations, AMP believes that the use of standard conditions or class exemptions and declarations is preferable where it is practicable. Class notices would help to ensure consistency between insurers, as well as promoting the appearance of fairness and consistency by the Reserve Bank. Additionally, they encourage consultation on new requirements or changes to the requirements with the market as a whole, rather than consultation with insurers on an individual basis or unilateral action by the Reserve Bank. Further, class notices are typically more administratively efficient.

AMP considers the process for granting declarations and exemptions should be improved to ensure there is transparency and accountability. The powers to grant exemptions should require exemptions to be consistent with the purposes of IPSA and no broader than reasonably necessary. Declaration and exemption notices should be available on the Reserve Bank's website and www.legislation.govt.nz, rather than just an explanation of the reasons the Reserve Bank grants various declarations or exemptions. Additionally, exemptions should become disallowable instruments for the purpose of the Legislation Act 2012 or the equivalent status under successor legislation (and therefore be subject to review by Parliament/the Regulations Review Committee). AMP notes that this outcome would bring legal status of the Reserve Bank's exemptions into line with those granted by other agencies such as the FMA and the Takeovers Panel. Further, it would be consistent with the approach proposed by the Attorney General in introducing the Legislation Bill, whereby the legislation website should become a single point of access for all secondary legislation.

Similarly, AMP believes copies of the licenses, containing all conditions of the insurer's licence, should be publicly available on the Reserve Bank's website.

### Question 23: Are there any aspects of the current requirements that you consider would be better specified using different regulatory tools?

AMP considers standardised ongoing reporting requirements should, as much as possible, be included in the Act, regulations or solvency standards, rather than section 121 notices. For requirements contained in the Act or regulations, the Reserve Bank could retain the ability to specify content at a more granular level or to determine the form of submissions through a power similar to the frameworks and methodologies power used in the FMCA. Where this is not practical, AMP believes ongoing reporting requirements should be included as conditions of licences in preference to section 121 notices. Section 121 notices should be primarily used to address one off information requests (such as to support thematic reviews or to enquire into or monitor areas of concern in relation to an individual insurer).

As noted above, AMP believes the application of solvency standards and minimum solvency margins should, by default, be in the Act, regulations or solvency standards rather than individual conditions. AMP does, however, consider it is appropriate for the Reserve Bank to retain powers to vary requirements of the solvency standards or minimum solvency margins through conditions or exemptions where necessary to appropriately address the unique circumstances of an individual insurer.

AMP believes it would be preferable if the use of *Industry Updates* to publish standing guidance was minimised. The *Industry Updates* are a useful tool for the Reserve Bank to provide updates on its work programme, topical issues and reminders of points that are covered by existing guidance. However, there have been some instances where the Reserve Bank appears to have released new or expanded guidance through *Industry Updates*. New guidance or revisions to existing guidance should be published as stand-alone guidance notes that are subject to an appropriate level of consultation or socialisation before they are published. This would help to ensure that guidance is pitched appropriately, there is industry buy-in and greater awareness of expectations, and it would assist insurers to keep track of the guidance available to them on particular topics.

Additionally, AMP has seen some instances where the Reserve Bank appears to apply its guidance as rules or standards that must be met. In our view, guidance should be tool to

assist insurers to understand the Reserve Bank's expectations or interpretations of requirements or industry best practice. Where the Reserve Bank wishes to set binding expectations either as to how existing requirements are complied with or that go beyond the existing legal framework, the Reserve Bank should ensure it uses an instrument that provides the appropriate legal basis for that obligation, such as amending regulations, standards, or conditions of licences or exemptions. This would ensure that changes to the requirements are subject to proper consultation and that there is appropriate transparency around the requirements applying to insurers.

**Question 24: Are there any further issues you would like to raise that you consider should be within scope of the Review? Please provide commentary in support of your view.**

AMP has not identified any issues not already discussed in the answers above.

**Question 25: Are there any areas of the legislation that you consider are now redundant or you feel could have clearer drafting or require technical corrections?**

AMP has not identified any provisions that we consider are redundant or require clarification or amendment that are not already addressed in the responses above.

**Question 26: Are there any areas of the legislation that you consider, having regard to the purposes of the legislation, unduly restrict competition or innovation within the New Zealand insurance market? Please provide commentary in support of your view.**

In general, AMP supports the IPSA framework providing for flexibility to ensure it supports competition and innovation. AMP has not identified any specific requirements or areas of the regime that we consider unduly restrict competition or innovation that are not already discussed in our previous responses.