Submission on the FMA Discussion Paper: Review of Law and Practices Relating to Custody of Assets (June 2026)

Submitted by Angel Association New Zealand

1. Introduction

Angel Association New Zealand (AANZ) welcomes the opportunity to submit on the Financial Markets Authority's discussion paper reviewing the law and practice relating to custodial services in New Zealand.

AANZ represents New Zealand's angel investment community and member networks. Our members play an important role in the early-stage capital ecosystem by mobilising private risk capital, supporting founders, and helping high-growth New Zealand companies access the funding, governance, and commercial support they need to scale.

This submission focuses on the implications of the review for angel nominee structures used by AANZ members. These nominee arrangements are a longstanding and important feature of New Zealand's angel market. They allow multiple wholesale investors to invest efficiently into early-stage companies through a single nominee entity, simplifying cap tables and enabling orderly administration while preserving the beneficial interests of underlying investors.

AANZ supports regulatory settings that are clear, proportionate, and effective in protecting investors and supporting confidence in financial markets. We agree that the custody regime should be understandable and fit for purpose. However, any reform should be carefully designed so that it does not unintentionally impose mainstream custodian-style regulation on low-risk wholesale angel nominee arrangements that operate very differently from retail or institutional custody models.

2. Executive summary

AANZ's key submission points are as follows:

- The current custody regime is complex, fragmented, and uneven, particularly in its treatment of wholesale market arrangements and structures that have some custody-like features but do not resemble mainstream custodial businesses.
- Angel nominee structures sit in a genuine statutory grey area: the same bare-trustee activity can reasonably be characterised as a client money or property service (including a custodial service) under s5(1)(ab) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or as keeping and administering securities on behalf of others under s5(1)(d), or both. Market practice among angel nominees has settled on s5(1)(d); the FMA's 2024 guidance points to s5(1)(ab). That ambiguity should be resolved deliberately,

informed by how these structures operate in practice, rather than by enforcement.

- A broad licensing or authorisation model applied without sufficient tailoring could create disproportionate costs for angel groups undertaking low-risk activity. If angel nominees were treated as full custodians, the direct annual cost per group would be in the order of $20,000–$30,000 or more: a custodian FSPR levy of approximately $13,685, an annual assurance engagement of $3,000–$10,000+, and AML/CFT programme and audit costs of $4,000–$6,000, before governance and staff time. That burden will be compounded by the AML/CFT levy taking effect from 1 July 2027, and would be significant in the context of early-stage investing.
- The angel nominee model has features that should be explicitly recognised in any risk-based regulatory design, including that it involves wholesale investors only, does not involve direct handling of client money by the nominee, is not publicly offered as a commercial custody service, and has not been associated with the kinds of consumer harm that appear to drive many of the concerns in the discussion paper.
- AANZ is not aware of any instance of investor loss, complaint, or enforcement action arising from an angel nominee arrangement. The features that have driven the custody failures described in the discussion paper – client money handling, discretionary control combined with custody, opaque records, and retail clients – are structurally absent from the model, not merely managed.
- AANZ supports a risk-based, activity-based framework that distinguishes between retail and wholesale settings, between holding client money and holding legal title to shares, and between public commercial custodial businesses and closed-network nominee arrangements used to facilitate private early-stage investment.
- Any new requirements for wholesale custody should focus on clear legal documentation, beneficial ownership records, governance, conflicts management, continuity, and investor transparency, rather than automatically importing the full assurance, licensing, capital, or insurance settings applicable to fundamentally different sectors.
- Poorly calibrated reform could have unintended consequences for capital formation, startup funding, regional investment activity, and the efficient operation of angel networks.
- The FMA has acknowledged limited visibility of the wholesale custody sector. AANZ therefore encourages direct engagement with the angel investment sector

before conclusions are reached on classification or reform. AANZ offers to coordinate aggregated, anonymised data across the angel network to help close that information gap, and requests the opportunity to participate in the FMA's industry workshop on 19 August 2026.

3. Context: the angel nominee model

Angel nominee structures are used by many angel groups to aggregate investors into a single holding vehicle on a startup's cap table. These structures are designed to serve legitimate market needs, including administrative efficiency, clarity in shareholder management, and the practical realities of syndicated early-stage investment.

In general terms, the nominee holds legal title to shares, while underlying investors hold the beneficial interest. The nominee model provides a workable mechanism for managing documentation, communications, shareholder rights, and transactional administration over the life of the investment.

From AANZ's perspective, the relevant characteristics of these structures include the following:

- they are used for wholesale investors;
- they are used in connection with private company shareholdings;
- the nominee typically does not provide a public-facing custody service to the wider market;
- investor funds are handled through independent trust account arrangements rather than by the nominee itself; in the typical model the nominee maintains no bank account and never receives, holds, or handles client money;
- they charge investors no fee, exercise no discretion or investment management function, and provide no financial advice, acting solely on instruction from beneficial owners under a written deed;
- they are part of a broader early-stage capital formation process, rather than a standalone custody business model.

This context matters. Regulatory settings designed for retail custody, platform custody, pooled funds, or high-volume custodial operations should not be assumed to fit the angel nominee model without careful analysis.

It also matters that the model has a clean record. AANZ is not aware of any instance of investor loss, complaint, or enforcement action arising from an angel group nominee arrangement. By contrast, each of the custody failures described in the discussion paper – Ross Asset Management, the Kloogh matter, Halifax, and the virtual asset collapses – centrally involved client money, discretionary control over client assets, or retail clients. Those features are structurally absent from the angel nominee model.

4. Response to consultation questions

AANZ confines this submission to the questions on which the angel investment sector has direct experience and standing. We do not respond to Questions 2, 5, and 10 to 16, which concern sectors, structures, and risks outside our members' activities, save for one general point: reforms designed for client money environments, retail platforms, payment services, or digital assets should not be applied to angel nominee structures by analogy, or used as a template, without careful adjustment for context and risk.

Question 1: Complexity, fragmentation, and unevenness of the custody regime

AANZ agrees that the custody regime is complex, fragmented, and uneven.

From the perspective of the angel investment sector, the current framework creates uncertainty because it appears to apply different expectations depending on sector, investor type, legal form, and the technical classification of the arrangement. This can be particularly difficult where a structure performs some functions associated with holding assets for others but does not resemble a full-service commercial custodian.

Angel nominee structures are an example. They share some custody-like features in that a nominee holds legal title on behalf of underlying investors, but they are materially different from retail custodial businesses, platform operators, or entities holding client money as part of a public financial service. In practice, they sit in a genuine statutory grey area between administration arrangements and custodial arrangements.

That grey area is concrete, not abstract. The same bare-trustee activity can reasonably be characterised as a regulated client money or property service (including a custodial service) under s5(1)(ab) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or as keeping, investing, administering, or managing securities on behalf of other persons under s5(1)(d), or both. The FMA's 2024 Guide for providers of client money or property services indicates the former; longstanding market practice among angel group nominees reflects the latter, and at least one prominent platform nominee cancelled its custodial registration in 2021 in favour of s5(1)(d). The category chosen then drives materially different levy classes and compliance obligations – a significant consequence to rest on an ambiguous boundary, and one that angel networks have had to commission formal legal advice, at material cost relative to their budgets, to navigate.

That ambiguity is not simply technical. It has real consequences for governance expectations, compliance planning, cost, and business viability. AANZ therefore supports greater clarity. However, the answer is not to collapse all such structures into a single regulatory category. The regime should instead be clarified in a way that better differentiates between materially different activities and risk profiles. For our sector, the single most valuable near-term output of this review would be clear, published guidance on the correct registration category and obligations for wholesale bare-trustee nominees that hold no client money.

Question 3: Appropriate regulatory model

AANZ supports a combined model consisting of baseline obligations plus additional requirements that apply only where justified by the nature, scale, and risk of the activity.

We do not support a one-size-fits-all licensing or authorisation approach across all forms of custody and custody-like activity. Nor do we consider that an obligations-only model will necessarily be sufficient in higher-risk parts of the market.

The most appropriate model, in our submission, is a risk-based and activity-based framework that distinguishes between:

- retail and wholesale activities;
- holding client money and holding legal title to shares only;
- public-facing commercial custodial businesses and closed-network nominee structures;
- large-scale or systemically important operators and small, specialist, low-volume arrangements.

This matters acutely for angel nominee structures. Those arrangements are used only for wholesale investors, relate to private company shares, do not constitute a public offering of custody services, and often do not involve the nominee directly holding subscription money. The policy rationale for imposing a full custodian-style licensing and assurance regime on such structures is therefore not self-evident.

AANZ is concerned that if current ambiguity is resolved by categorising angel nominees into a full custodial regime without proper tailoring, the result may be disproportionate. The costs are quantifiable: a custodian FSPR levy of approximately $13,685 per year, an annual assurance engagement of $3,000–$10,000 or more, and AML/CFT programme and audit costs of $4,000–$6,000 — a direct annual burden in the order of $20,000–$30,000 or more per group, before governance and staff time, and before the AML/CFT levy taking effect from 1 July 2027. For many angel networks, that would represent a material burden on a low-margin activity that exists to support early-stage capital formation.

Question 4: Differentiation across market segments and custodial activities

AANZ strongly supports differentiated regulatory settings across market segments and custodial activity types.

The risks are not uniform across the market, and the regulatory response should not assume they are. At a minimum, the framework should distinguish between:

- retail and wholesale contexts;
- holding client money and not holding client money;
- public commercial custodial services and private or closed-network investment structures;
- large-scale liquid-asset custody and private company equity holdings;
- systemically significant operators and smaller specialist participants.

For angel nominee structures, the most relevant risks are typically not retail-style safeguarding risks. They are more likely to relate to:

- clarity of beneficial ownership;
- accuracy of investor records;
- authority to act in relation to shareholder decisions;
- governance of voting, follow-on decisions, and exits;
- conflicts of interest;
- continuity if the operator ceases to act.

These are important issues and should be addressed. But they are not a sufficient basis for importing all of the regulatory settings designed for very different custody models.

Question 6: Regulatory requirements for wholesale custody

AANZ supports targeted baseline requirements for wholesale custody, but not an automatic extension of full retail-style custodial regulation to all wholesale arrangements.

Where an entity holds or controls assets for wholesale investors, proportionate requirements may include:

- clear legal documentation establishing the nature of the arrangement;
- accurate and current beneficial ownership records;
- governance standards appropriate to the activity;
- conflicts management processes;
- continuity planning and transfer arrangements;
- appropriate information rights for investors and the regulator.

However, those requirements should be tailored where the structure is a low-risk angel nominee arrangement with the following characteristics:

- wholesale investors only;
- no direct handling of client money by the nominee;
- use of independent trust account processes for funds flow;
- no public offering of custodial services;
- holdings limited to private company shares.
- no fees charged, no discretion exercised, and no financial advice provided.

For those structures, the focus should remain on practical investor protection measures that correspond to the actual risks involved.

To give effect to this, AANZ proposes that the review contemplate an express light tier or class exemption for nominees meeting defined criteria – for example: wholesale clients only; no client money received or held; only unlisted securities held as bare trustee under a written deed; and no discretion, advice, or fees. Entities within the tier would remain registered and subject to fair dealing obligations and the core duties to hold property on trust, keep accurate records, and account to clients – obligations the sector supports – without the fixed-cost apparatus designed for commercial custodians.

Question 7: Unintended consequences of additional wholesale custody requirements

AANZ considers that there could be significant unintended consequences if additional wholesale custody requirements are imposed without proper differentiation for low-risk structures such as angel nominees.

Potential consequences include:

- increased operating and compliance costs for angel groups;
- reduced viability of smaller or regional networks;
- reduced use of efficient nominee structures;
- greater legal and administrative complexity for startup investment;
- fewer syndicated investments and reduced participation by angel investors;
- decreased access to capital for early-stage companies.
- forced consolidation of nominee holdings into one or two commercial providers for compliance rather than market reasons, concentrating the holdings of the

national angel ecosystem in a single point of failure – precisely the concentration risk the discussion paper elsewhere identifies.

These effects could be substantial because the angel investment ecosystem is cost-sensitive and relies on efficient administrative models to support relatively small, high-risk, early-stage investments. Reform should therefore be carefully tested against the practical realities of this market. AANZ also notes that if networks wound up their nominees in response to fixed compliance costs, members would revert to direct shareholding, recreating the unwieldy capitalisation tables the model exists to solve, with real cost to capital formation and no offsetting investor protection benefit.

Question 8: Capability of custodians under current settings

AANZ considers that the answer to this question varies by sector.

In higher-risk and more complex parts of the market, current settings may not always provide sufficient assurance around governance, capability, resilience, or supervisory visibility.

In the angel nominee context, however, the central issue is not necessarily that the existing model is failing. Rather, it is that the current regime does not provide sufficiently clear guidance on classification and expectations. AANZ is not aware of any instance of investor loss, complaint, or enforcement action arising from an angel nominee arrangement, let alone harm of the kind that would justify immediate adoption of full institutional-style custody regulation.

In our view, current settings for this segment would be improved by:

- clearer guidance on when a nominee arrangement is treated as custody and when it is not;
- minimum proportionate expectations regarding governance, records, conflicts, and continuity;
- direct engagement with industry bodies where wholesale market practices are not yet well understood.

Question 9: Minimum entry standards

AANZ supports minimum entry standards in principle, provided they are proportionate and tailored to the nature of the activity.

Entities that hold or control assets for others should be expected to meet baseline standards in areas such as:

- governance;
- competence and capability;

- record-keeping;
- internal controls;
- legal documentation;
- continuity planning.

However, these standards should vary according to factors such as:

- the size and complexity of the operator;
- whether the investor base is retail or wholesale;
- whether the entity handles client money;
- the type of assets involved;
- whether the service is provided publicly as a commercial offering or within a closed investment network.

For angel nominee structures, fit-for-purpose minimum standards would be more appropriate than full custodian-style entry thresholds. Relevant standards might include:

- clear nominee and beneficial ownership documentation;
- appropriate governance for the nominee vehicle;
- accurate and accessible investor records;
- basic conflicts management processes;
- documented authority for shareholding decisions and corporate actions;
- continuity arrangements for record transfer and administration.

The key point is that entry standards should respond to actual risk, not merely to the fact that legal title is held by one entity for the benefit of others.

Question 17: Other consequences and relevant matters

AANZ encourages the FMA to take the following matters into account in considering reform.

Early-stage capital formation is highly sensitive to fixed compliance costs

Angel networks and nominee structures support investment into companies that are often too early for institutional capital. Fixed compliance burdens can have a disproportionate effect because investments are relatively small, administration needs to remain efficient, and networks often operate with limited margins. These burdens are also cumulative: the AML/CFT levy taking effect from 1 July 2027 will fall on the same population of small entities, and AANZ encourages the FMA and MBIE to assess cost across regimes rather than levy by levy.

Clarification is valuable, but proportionality is essential

AANZ supports greater clarity around the treatment of nominee structures. However, if current ambiguity is resolved by moving angel nominees into a full custodial regime without adequate tailoring, the effect may be disproportionate to the risk profile of the activity.

Wholesale structures should not be assessed through a retail lens

The investor base, asset type, and operating model of angel nominees differ materially from the sectors that appear to drive many of the concerns in the discussion paper. This context should be central to any reform design.

Evidence of harm should matter

Broad reform should not be driven solely by issues arising in other parts of the custody market if there is limited evidence of comparable harm in the angel nominee segment. Regulatory design should be evidence-based and sensitive to sector differences. In the angel nominee segment, AANZ is aware of no such harm.

Reform may affect market structure

There is active industry consideration of centralising some nominee functions. The direction of the review may significantly affect the attractiveness and feasibility of that path. Reform could therefore shape market structure, competition, and access in addition to investor protection outcomes.

Sector engagement will improve policy design

The FMA has acknowledged limited visibility of the wholesale custody sector. AANZ strongly encourages direct engagement with the angel investment community before final policy decisions are made. That will improve understanding of how nominee arrangements actually operate and help avoid unintended consequences. To that end, AANZ offers to coordinate the provision of aggregated, anonymised data across the angel network – nominee numbers, investor counts, holdings, and funds-flow models – and requests the opportunity to participate in the workshop scheduled for 19 August 2026.

Question 18: Other feedback

AANZ would welcome continued engagement with the FMA on the practical operation of angel nominee structures and the development of a fit-for-purpose regulatory framework for this part of the market.

If the FMA considers that additional safeguards are warranted, AANZ encourages a staged and consultative approach that prioritises:

- clear legal and regulatory guidance;
- proportionate baseline standards;
- risk-based differentiation;
- avoidance of unnecessary duplication with other wholesale market settings;
- careful assessment of cost impacts on early-stage investment activity.

AANZ supports regulation that strengthens confidence and protects investors. We also submit that effective regulation in this area should preserve the ability of angel networks to continue supporting innovation, entrepreneurship, and early-stage company growth in New Zealand.

5. Conclusion

AANZ appreciates the opportunity to comment on the discussion paper.

We support efforts to improve clarity and effectiveness in New Zealand's custody regime. However, we urge the FMA to ensure that any reform is carefully calibrated to the actual risks presented by different market segments and does not inadvertently impose disproportionate obligations on low-risk wholesale angel nominee structures.

Angel nominee arrangements are an important part of New Zealand's early-stage investment ecosystem. They should be understood and assessed on their own terms. In AANZ's submission, the most appropriate approach is one that combines clear baseline protections with differentiated obligations based on investor type, asset type, services provided, and the actual custody risks involved.

AANZ would welcome the opportunity to engage further with the FMA on the operation of angel nominee structures, including governance practices, beneficial ownership records, funds-flow arrangements, and the likely implications of alternative regulatory models for angel investment activity in New Zealand.