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# FINSIA COMMENTS ON THE INTERIM REPORT OF THE INDEPENDENT BANKING CODE REVIEW

FINSIA is pleased that its submission in relation to the review has been considered and expresses its appreciation for the opportunity for the subsequent consultation with the Reviewer.

FINSIA is pleased to offer comments on the Interim Review of the Banking Code of Practice 2021 Interim Report (the Interim Report). It is noted that the themes in the Interim Report are only a subset of the issues to be considered in the final report but are over-arching and will influence the direction of the final report. With this in mind, FINSIA offers the following comments by reference to the headings in the Summary of Issues Raised.

## **Influence of Royal Commission**

- Ensuring the momentum coming from the Royal Commission in terms of improving awareness and compliance with the Code is maintained.

FINSIA notes the view of consumer organisations that more important than improving protections for consumers in the Code, is the need for banks to rectify problems with bank cultures, processes and systems that do not prioritise customer outcomes.

FINSIA agrees with the Interim Report that the key consideration should be to identify what will maintain momentum in the change in banks' attitude towards the Code initiated by the Royal Commission. The most effective perspective from which to see the Code is in driving an outcome for the customer. FINSIA suggests this necessarily involves the competency, conduct and culture of Bank staff at every level of the organisation

**Competency:** The Code should specify the competencies required for key roles and, whilst giving banks the freedom to choose how to develop these, should require independent validation of the programs.

**Conduct:** Standards need to be "owned" by the whole industry across the industry. FINSIA notes its own standards as a starting point is this discussion and they could for example be incorporated as a common core in individual bank codes of conduct.

**Culture:** The development of personal professional pride and good reputation in best-practice skills, experience and conduct towards a shared societal purpose has been key and proven effective over

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centuries in the provision of consumer and business services of the importance and complexity of banking - for instance in law, medicine, accounting, valuations and actuarial services.

### **Importance of the Code**

- Identifying measures that will encourage all banks to view the Code as important in identifying the customer focus that is central to the overall success of their organisation, rather than a regulatory burden.

FINSIA agrees that a focus should be on identifying measures that will contribute to banks viewing the Code as a mechanism to “do the right thing” for their customers, rather than seeing it as a regulatory obligation - to see the customer focus as central to the overall success of their organisation, rather than a regulatory burden.

While understanding the concerns of groups advocating prescriptive legally enforceable obligations, FINSIA suggests that such an approach is likely to be counterproductive.

On the other hand including clear and robust personal professional conduct and role competency requirements, in the code with external verification by audit, BCCC or a body such as FINSIA is a measure that can only be seen as likely to reduce breaches of the Code due to “human error”.

### **Overlap between the Code and the law**

- The implications of the growing overlap between consumer protections covered in the law and the commitments in the Code, including banks responding to multiple compliance regimes.

Given the focus on encouraging Banks to not see the Code as a regulatory obligation but to see the customer focus as central to the overall success of their organisation, FINSIA in principle agrees that:

- expanding on legal obligations to describe how the obligations will be met by banks; and
- allowing increased monitoring by the BCCC

are both likely to be constructive steps.

### **The Codes audience**

- Whether the one document is trying to meet the needs of too many audiences.

FINSIA considers that the Code necessarily has an audience including customers, banks, bank staff, regulators and other interested bodies.

### **Principle - based or prescriptive drafting**

- Whether a more principle-based approach to drafting, with the procedural detail on the implementation of consumer commitments included in Code-related industry guidelines, would facilitate a simpler and more flexible document, help future proof the Code, and focus it more on intended consumer outcomes.

FINSIA considers that better defined requirements as to competency and conduct via standards should be included in the Code. This will support a more principles-based approach to the drafting, with further procedural detail in Code-related industry guidelines, as this will focus it more on intended consumer outcomes.

### **Fair, reasonable and ethical**

- Clarifying that engaging with the customer in a fair, reasonable and ethical manner is a key principle that underpins all commitments in the Code, and this should be clearly reflected in the Code, along with advising customers that this commitment is enforceable under legislation.

FINSIA agrees that fairness, reasonableness and ethics can mean different things to different people but suggests that much of the answer to this concern lies in standards of competency and conduct standards applying across the industry.

FINSIA suggests that it would be desirable to clarify which commitments are enforceable as part of the contract between the bank and the customer or taken into account by AFCA, but enforceable provisions are unlikely to maintain the momentum of change in the banks' attitude to the Code.

### **Conclusion**

FINSIA would be pleased to have the opportunity to continue to contribute to the review and to discuss these suggestions further with the Reviewer.

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