

Submission template

Regulations to support the new regime for the conduct of financial institutions

Your name and organisation

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Requirements for fair conduct programmes

1

Do you have any comments on the status quo i.e. no further regulations to support the minimum requirements for fair conduct programmes in the Bill?

No, we agree in principle to the approach, subject to comments on other questions.

2

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(a)?

We believe further clarity should be provided about what constitutes a "fair conduct programme", i.e. can it be a high-level framework document that relies on and cross-refers to a range of other policies and processes.

3

Do you have any comments on the proposals regarding distribution of relevant services and associated products? We are particularly interested in how these proposals may be implemented.

We consider the current wording in the Bill to be relatively clear. We expect that the proposed regulations would result in unnecessary complexity and compliance costs, whilst providing little benefit, especially where entities are also covered by other legislation such as the Financial Markets Conduct Act, Fair Trading Act and the Consumer Guarantees Act.

4

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(ac)?

We support MBIE's position.

5

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bb) to (bd)?

We support MBIE's position.

6

Do you have any comments on the proposal to specify further minimum requirements regarding remediation of issues? Are there any further specific remediation principles that should be specified in regulations?

We support the proposed Regulations. Perhaps there needs to be some commentary around materiality, for example it may not be appropriate and an efficient use of resource to communicate with customers about minor adjustments (e.g. <\$1) being made.

7

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(be)?

We support MBIE's position.

8

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bf)?

We support MBIE's position.

9

Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(d)?

We support MBIE's position.

10

Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?

We support the introduction of minimum requirements for complaint handling.

11

Do you have any comments on the proposals to specify further minimum requirements regarding claims handling and settlement?

No comment.

12

Do you have any comments on the proposed definition of 'handling and settling a claim under an insurance contract' means? If so, why?

No comment.

13

Do you have any comments on the discussion regarding customer vulnerability?

Given that the Bill does not refer to vulnerable customers, we believe it would be useful to communicate the expectations from the Discussion Paper to Industry, whether that be through Regulations or guidance.

14

Do you have comments regarding the option of including vulnerable consumers in section 446M(1A)?

We believe that it would be appropriate to include reference to vulnerable customers in this section (as per our response to Q.13).

15

Do you think any further factors should be added by regulations to the list under section 446M(1A)?

We propose adding "the scale and nature of any arrangements that may result in a conflict between the best interest of a customer and the institution". Some institutions naturally have structures that are more likely to result in conflicts, for example a non-mutual bank with shareholders will need to balance its obligations to shareholders alongside the obligations to their customers. However, a mutually owned bank would be owned by its customers and therefore not face the same level of conflict.

Do you think any other regulations that could be made under new section 546(1)(oa) are necessary or desirable? Please provide reasons for your comments.

16 *We believe it would be appropriate to include Regulations permitting exceptions from certain obligations, such as fair conduct programme requirements, e.g. where these are unduly onerous or burdensome.*

Sales incentives

Do you have any comments on the status quo (no regulations)?

17 *No comment*

Do you have any comments on the option to prohibit sales incentives based on volume or value targets?

18 *We prefer this recommendation over the principles-based approach. This provides greater clarity about what is / is not permitted. We believe that the recommendations should explicitly focus on areas where material conflicts exist or where poor conduct has been identified, and not unnecessarily constrain the ability of entities to reward their staff for good performance in their roles.*

What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value based targets?

19 *See above*

Do you have any feedback on a more principle-based approach to prohibiting some incentives?

20 *If a principle-based approach is taken, we believe further guidance would need to be created to provide consistency. Prohibiting sales incentives on volume or value basis is likely to result in a more consistent approach.*

How could a more principles-based approach to prohibiting some incentives be made workable?

21 *See above comments. Perhaps another approach would be to require any firm that operates an incentive framework to ensure that this is aligned to positive consumer outcomes (i.e. as opposed to framing it in the negative).*

If a more principles-based option was chosen, should there be some incentives specifically excluded?

22 *Yes, both approaches could be implemented, but it is arguable that the principle would then not be required given 446M(1)(be).*

Do you think there are any other viable options other than what has been put forward by this discussion document? Please explain in detail.

23 *Perhaps another approach would be to require any firm that operates an incentive framework to ensure that this is aligned to positive consumer outcomes (i.e. as opposed to framing it in the negative).*

24 Are there sales incentives based on volume or value targets that should be excluded from the regulations (i.e. allowed to be offered/given)?

See response to Q.18

25 Do you think there are any other types of incentives that should be excluded from the regulations? Please provide reasons for your comments.

See response to Q.18

26 Do you think that the scope of who can be covered by the regulations poses a risk of unintentionally capturing other intermediaries that are paid incentives but should not be covered?

See response to Q.18

27 Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should apply to all staff? Why/why not?

See response to Q.28

28 Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should only apply to frontline staff and their managers? Why/why not?

28 *Agree, the regulations are to protect the consumer from receiving advice/products that are unsuitable due to sales incentives. Some back-office roles will not have the same issues around incentives. However, in order to capture top-down pressure it could also cover all senior managers and any manager of customer facing teams.*

Do you think that external incentives should apply to any incentive paid to an agent, contractor or intermediary? Why/why not?

29 *It likely depends on the materiality of the incentives, e.g. where they are minor to a firm's income and they are not passed directly to front-line staff the degree of potential conflict will be very minimal, but for a smaller firm with a high proportion of customer facing staff that obtains a significant proportion of its income from external incentives the degree of potential conflict will potentially be very great.*

30 Do you agree that both individual and collective incentives should be covered? Why/why not?

Agree, collective incentives are likely to filter down into expectations on individuals.

Do you have any other comments on the discussion related to incentives?

31 *Firms should have the ability to reward good performance by their staff. Where their performance is predominantly related to product requests / recommendations, there should be clear guidance around how firms can achieve performance-related pay without falling foul of the incentive regulations (e.g. through a balanced scorecard approach, compliance gateways where a bonus is not paid unless compliance is achieved).*

Requirement to publish information about fair conduct programmes

32 Is more detail needed to outline what information should be published regarding financial institutions' fair conduct programmes to assist financial institutions to meet this requirement, or to assist consumers in their interactions with financial institutions?

The high-level requirements are likely adequate. We believe that it should be clear how / whether this can be combined with the multitude of other disclosure obligations.

Do you have any comments on the options outlined above? What do you think the costs and benefits would be to financial institutions and consumers of the two options?

33 *We believe the requirement to publish information about the financial institutions fair conduct programme will largely duplicate the requirements that have now been established by the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020. These regulations require financial advice providers to outline the duties they comply with (including avoiding any potential conflicts of interest), outlining the dispute resolution process and providing information about what services and products can be provided. As per our answer to Q. 32, a more joined up approach to regulation is necessary to avoid unnecessary compliance costs and poor consumer outcomes.*

This discussion document outlines two options regarding the requirement to publish information about the fair conduct programmes. Do you have any other viable options?

34 *Although we make the best efforts to engage our customers on the importance of disclosure information, it is a real case of "less is more" as far as most customers are concerned. This additional disclosure information will make it even more difficult to get our customers to engage in meaningful understanding of the various disclosure documents.*

Calling in contracts of insurance as financial products under Part 2

35 Do you have any comments on the proposal to declare contracts of insurance as financial products under Part 2?

No comment

Exclusions of certain occupations or activities from the definition of intermediary

36 Do you think it would be appropriate to exclude people who are subject to professional regulation from the definition of an intermediary (e.g. lawyers, accountants, engineers)?

No comment

37 Do you think that any other occupations or activities should be excluded from the new proposed definition of an “intermediary”? If so, why?

No comment

Other comments

[Insert response here]