

7/06/2018

Submission on the MBIE Options Paper “Conduct of Financial Institutions”

FinCap is an NGO and registered charity which works to support the work of New Zealand’s 200 free local financial capability and budgeting services. They form a 60 year-old network providing financial mentoring and associated services to (in 2018) over 70,000 people. Most of those people are facing financial hardship, most (69%) are women and a high proportion (41%) are Māori. They have an average \$10,000 debt when they arrive at those services, just under half of which is to banks. The next highest category is funds owed to finance companies.

Complementary to providing training, information, networking, advocacy and data management services for those local services, and run the MoneyTalks helpline, FinCap also works in the interests of consumers facing hardship and consumers facing vulnerability. This activity both helps to build bridges between local budget services and financial services/utilities, enabling effective advocacy for the rights of clients, and also potentially raises standards for all consumers. The banks and the power sector are particular foci of this work. We gave evidence to the FMA/RBNZ on bank conduct and culture, and in the past eighteen months have had extensive contact with the NZ Bankers Association (especially on production of a privacy authorisation for use by Financial Mentors when engaging with banks on behalf of their clients) and six individual banks (the Big Five and the Southland Building Society) on these matters.

We are making this submission in our capacity as an organisation.

Our details

Name of submitter

Tim Barnett

Our organisation

FinCap

Our email address: Privacy of natural persons

In what capacity are you making this submission?

- Individual
- Consumer group/advocate
- Business
- Industry group
- Researcher/academic
- Other

Use and release of information

The *Privacy Act 1993* applies to submissions. You may choose how your personal information is used.

Unless otherwise requested, we may also share submissions received with relevant government agencies such as the Financial Markets Authority.

- Yes, you can include my name or other personal information
- No, don't include my name or other personal information

We intend to upload submissions to our website. Can we include your submission on the website?

- Yes, you can publish my submission on the website
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You may ask us to keep your submission, or parts of your submission, confidential. If so, you'll need to attach reasons and grounds under the Official Information Act 1982 for consideration.

- Yes, I would like my submission (or parts of it) to be kept confidential.
- No, I do not wish for my submission to be kept confidential

Questions

Options for overarching duties

Section 3.2 of the Options Paper discusses a number of options for overarching duties.

Question 1

Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?

In particular:

- Do you agree with the pros and cons of each duty?
- Do you have any estimates of the size of the costs and benefits of these options?
- Are there other impacts that are not identified?

The topics covered in the FMA good conduct profile are appropriate, and the wording of them is clearer than that in the Options presented. One example is the consumer-focussed element, where the FMA language – “*the financial institution acts in the customer’s interest, treats them fairly and fulfils its obligations*” - is clearer and more meaningful than Option 1 “*A duty to consider and prioritise the customer’s interest, to the extent reasonably practicable*”. Considering and prioritising is significantly lower level than acting.

The FMA factor “Accountability” has not been addressed in the proposed duties. It is important that bank etc governance structures, control mechanisms and culture all serve good organisational conduct.

Question 2

Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) or focus on conflicts of interest that arise through remuneration?

In particular:

- What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives?

Conflicts should not be restricted to remuneration. Examples of other conflicts include family and personal relationships, previous engagement in which one or other party ended up disadvantaged, and conflicting responsibilities held by one person.

Question 3

Is a code of practice required to provide greater certainty about what each overarching duty means in practice?

Yes, it is needed. The proposed language in a number of the overarching duties is open to interpretation.

Options to improve product design

Section 3.3 of the Options Paper presents some options to improve product design.

Question 4

Which options for improving product design do you prefer and why?

In particular:

- Do you agree with the pros and cons of the options?
- Are there other impacts that are not identified?
- Are there other options that should be considered?
- Do you have any estimates of the size of the costs and benefits of the options?

On the basis of the experiences of consumers who use our services, we support an ability to ban certain products. There should also be an expectation of consumer involvement in product development; a challenge in this industry has been assumptions that one size fits all and that vulnerable consumers cannot readily be engaged with.

Question 5

If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why.

Yes, products intended for people on low incomes (who may not be especially vulnerable, or be facing intense hardship). Banks and – especially – insurance companies have not been outstanding in this area. That has created market space for loan companies, including payday loan companies, and has also led to non-insurance.

Options to improve product distribution

Section 3.4 of the options paper discusses options to improve product distribution.

Question 6

Which options to improve product distribution do you prefer and why?

In particular:

- **Do you agree with the pros and cons of the options?**
- **Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

The general direction of the options is appropriate. Selling methods have, on occasions, and systemically, been unreasonable and have caused real harm, and the incentives need to be remoulded to encourage good outcomes for all customers. There is a risk in the wording of all options that most customers may benefit, but those facing real challenges will be marginalised. We don't necessarily seek special treatment or products for those who face hardship and/or vulnerability, but we do seek recognition of their reality.

Question 7

To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use.

In particular:

- **What are common structures, average amounts of remuneration/commissions, qualifying criteria etc.?**

Options relating specifically to insurance claims

Not our area of expertise.

Section 3.5 of the options paper discusses options relating specifically to insurance claims.

Question 8

What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of this option?**

Absolutely. This is an area of significant friction, and people being insured seek certainty and a trusting relationship at a time of crisis. We would advocate for a set time – banks have operated under such strictures in relation to hardship claims for many years.

Question 9

If a duty to ensure claims handling is fair, timely and transparent were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean?

In particular:

- **Why? Why not?**
- **What are the benefits and costs of doing so?**

We prefer the other option, to provide certainty to customers.

Question 10

What is your feedback on requiring the settlement of claims within a set time?

In particular:

- **Are there other impacts that are not identified?**
- **How do you think that exceptions should be designed?**
- **Should there be different time requirements for different types of insurance?**
- **Do you have any estimates of the size of the costs and benefits of this option?**

Although we support this option, a potential con would be that the limit became a norm. So there would need to be other incentives to bring down the actual time. We note that the National Australia Bank succeeded in bringing down the average time they took to handle hardship requests from 20 days (just below the then statutory limit in Australia of 21 days) to 13 minutes through fundamental system changes based on an assumption of trust with the customer.

Options for tools to ensure compliance

Section 3.6 of the options paper contains options to contribute to the effectiveness of new conduct obligations.

Question 11

Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

There needs to be one body which is the pivot for monitoring and enforcing compliance, and under current regulatory arrangements the FMA would seem the most appropriate. There needs to be a transparency to how these powers are being exercised by the FMA, given the level of public interest,

Question 12

What is your feedback on the option to require banks and insurers to obtain a conduct licence?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

The application of a license process to a market which has large and established players might be considered a rather abstract concept, and many would say that with further technological advances banking will become as comparatively open as the power market and the current barriers to entry

will need reform in any case, but if it serves a practical and useful purpose to consumers this proposal has virtue,

Question 13

What is your feedback on the option which discusses a broad range of regulatory tools?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

These tools are appropriate given the potential risks and behaviours within financial institutions.

Question 14

Do you think that the maximum pecuniary penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties?

In particular:

- **Is there a case for making the penalties higher?**

Banks and many insurance companies are comparatively high-profit institutions and so penalties need to be set at a level which recognises that and act (in reputational and financial terms) as an adequate deterrent.

Question 15

What is your feedback on the option of executive accountability?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

The events in the banking industry in Australia show the advantage of having clear lines of accountability, and some tangible and outward-facing expectations on senior executives.

Question 16

What is your feedback on the whistleblowing option?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

Effective whistle-blower policies are appropriate, and media coverage of banking product promotion in recent times indicates the value of people being protected to tell the truth to power.

Question 17

What is your feedback on the option of regular reporting on the industry?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

These are powerful and influential organisations which have a significant impact on the lives of many people, and reporting requirements are appropriate. It forms an essential element of a transformation of the current situation, and provides a tangible basis for comparison.

Our equivalent organisation in Australia – Financial Counsellors Australia – runs a “Rank the Banks” survey of all 800 of their Financial Counsellors every 2 years, with the results being published and separately presented to each bank. There is much data and insight contained in New Zealand’s 1200 Financial Mentors, especially around debt and the handling of hardship and vulnerability matters, and we urge that this be accessed in some way as part of a reporting system.

Question 18

What is your feedback on the role of industry bodies?

In particular:

- **Do you agree with the pros and cons?**
- **Are there other impacts that are not identified?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of the options?**

Who should the conduct regulation apply to?

As an industry body ourselves, we see disadvantage in the proposal to formalise these roles, and support the status quo.

Part 4 of the options paper discusses who the proposed options might apply to.

Question 19

What is your feedback on the options regarding who the conduct regime should apply to?

In-particular:

- **Do you agree with the pros and cons of the options?**
- **Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions?**
- **Are there other options that should be considered?**
- **Do you have any estimates of the size of the costs and benefits of these options?**
- **Which options do you prefer and why?**

Given the speed and depth of change likely to face the financial services sector in years to come, the scope should be as wide as practicable.