

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

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## Requirements for fair conduct programmes

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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?

The underlying issues identified in Australasia through the Royal Commission and the FMA/RBNZ review of conduct suggests that a change from the status quo is warranted. As such KPMG supports the introduction of additional guidance to support the industry in improving the conduct of services and products provided to consumers by financial institutions.

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

KPMG believes that further guidance is required to clarify the proposed bill. While the overarching objectives are good, they need to be supplemented to allow for the variety of different entities across the sector who operate in a range of different ways.

Within the current S446M(1)(a) we note a few aspects that warrant further consideration:

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- Effective policies – the consultation doesn't consider this but if we look for analogous regulation elsewhere in Australia, guidance like CPS220 Risk Management require these to be reviewed at least annually. Such reviews ensure an independent perspective is brought to the processes/activities and uplifts standards over time.
- 'legal obligations' – given the fair conduct programme is likely to be principles based – the reference to legal appears to miss a broader set of societal expectations about what is morally right.
- 'consumers' – clarification or definition of consumer and consideration of how this applies to SMEs.

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.

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As per previous question S446M(a)(ab) refers to 'including regular reviewing' – should this be extended to 'including regular independent reviewing' – to encourage entities onto a continuous improvement focus and seeking broader perspectives than just the team that wrote the fair conduct programme. This could be a reference to either line 3 / Internal Audit or to external independent third parties.

With regards to the specific question around the inclusion of guidance on distribution, we think this is sensible. While most entities understand when they manufacture a product, there can be a myriad of scenarios to distribution whether acting as agent, white labelling, or referrals. We believe that complexity warrants greater focus, guidance and regulation.

As has been seen through the FMA/RBNZ Conduct reviews, together with a number of settlements with the Commerce Commission, and remediation of products across the industry issues, are prevalent within the industry. While larger financial institutions are responding and improving processes, this isn't uniformly being applied by all entities. We therefore would encourage greater regulation to create a level playing field for all entities.

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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.

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?

KPMG would support additional guidance and regulation to provide additional clarity and focus. In particular a number of suggestions for areas were included in para 66 of the consultation. We would add to those:

- In addition to 'transparent', we would encourage further specific guidance on the use of plain English in communications to customers for a remediable issue, and clear and proactive engagement with impacted customers. Whilst a consumer does not need the specific details of the issue in many cases, in the interests of trust in the financial system, and to support accountability of financial institutions, consumers should be afforded the opportunity to understand what went wrong, so that they can therefore test that the correct outcome for them has been achieved.
- 'Efficient' could be expanded to include not allowing entities to put passive barriers to consumers accessing remediation – that is, the process should be as simple and easy as possible from the consumer's perspective. We see 'opt in' remediations as particularly problematic, as this requires the consumer to self-identify issues, which they may not have the expertise to understand.
- In relation to 'comprehensive', guidance around considering the impact of consequences to consumers should include both 'use of monies' compensation (which is currently industry standard practice), and consideration for consequential loss, and distress and inconvenience.
- With regard to 'all reasonable steps' (paragraph 66c), the guidance should also specify that the financial institution needs to evidence what steps they have taken in order to cease misconduct. Whilst recognising the expertise of individuals involved, we see industry weaknesses in fixes to systems/processes in that they re-occur where the fix was not adequately designed and implemented, and this is often surfaced through the evidencing of the fix. The regulations could therefore go further to evidence what regulators see as reasonable.

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Guidance may also consider how risks to remediation processes are managed, such as the need to ensure models are reviewed, or that remediation practices within a Financial Institution are consistent, including that there is a consistent threshold for what requires a remediation and what can be handled as a one-off error/complaint or similar.

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

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Based on KPMG's experience whilst larger financial institutions have proactively responded to the FMA's review and suggestions, we note that across the entire industry the use of incentives is quite varied. We believe that further specific guidance would support the entire industry to understand the intent and risks within these structures, and thereby provide a level playing field for all entities, and a safer environment for customers.

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

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In a spirit of seeking to see improvements across the sector, we believe that the capabilities across the industry to build, maintain and 'live' these conduct programmes is varied. While larger financial institutions are engaged and working already to build practices, we believe that many other entities still have substantial work required to lift their conduct and culture programmes. Accordingly, KPMG would advocate for annual/bi-annual independent reviews, in much the same as the AML S.59 reviews that bring a level of intensity and focus to the compliance with AML/CFT requirements and could bring a similar focus to Fair Conduct Programmes.

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

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KPMG's view is that the more clarity that can be provided to financial institutions with regard to expectations on them, the more likely it is that they are able to comply. With regards to complaints specifically, KPMG would support the proposal to specify further minimum requirements regarding consumer complaints handling. In addition, guidance to support the principles would be beneficial, for example, guidance of what 'timely' means would be useful – some financial institutions may view 5 days as being timely, whereas others may view 20 days as being timely. Clear guidance would allow both financial institutions and consumers to have a consistent view of what should be expected. Similarly, the principle that systems and procedures are in place to identify trends in complaints could be interpreted differently across different financial institutions, and as such, further guidance may be beneficial to the system as a whole.

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

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KPMG's view is that without specifying what 'timely' means, introduction of requirements around effective policies, processes, systems and controls would introduce additional administrative burden on insurers which may not positively impact claims handling performance and is likely to increase premiums for customers in the longer term. We also acknowledge however that it would be challenging to further specify minimum requirements around claims handling and settlement given the wide range of claims handling process, parties involved and complexity of claim events. In KPMG's view this would require extensive consultation to meaningfully achieve this.

In a relative sense, specific requirements around claims handling seem disproportionate to underlying conduct issues given that in KPMG's experience the majority of conduct related claim issues / customer complaints relate to how the product was designed, sold in the first instance and a misunderstanding of coverage rather than mis-conduct during the claims handling process. We also note that other potential claim related issues are also currently being covered under the insurance contract law review (e.g. Disclosure obligations, Failure to notify claims within time limits, exclusions that have no causal link to loss).

International regulation around claims handling typically only specifies compensation payment timelines under specific conditions for specific coverages (e.g. Motor), generally regulatory requirements are principles based and are focused around speed, fairness,

appropriate guidance around claim process and specifically outlining circumstances where non-payment might be appropriate.

Whilst we acknowledge the introduction by the ICNZ of claims handling guidelines as being positive and that the ICNZ's guidelines outline that a decision on claim acceptance will be made within 10 business days of the date all information is received; we also note that it outlines that for complex claims and where insurers rely on third parties this may take longer. The term 'complex' and the types of third parties which may be relied on are not clearly defined in the guidelines, and how individual insurers perform against these guidelines is also not readily available.

In KPMG's view regulation should focus on encouraging insurers to either produce their own claims handling KPI's or adhere to industry accepted guidelines and insurers should be mandated to make publicly available how they perform against these KPI's / guidelines. This would encourage the industry to drive clarity and consistency around definitions, improve claims handling performance / customer outcomes and shed greater public scrutiny.

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

10 In the context of the response to 11 above, in KPMG's view in the absence of specifying meaningful requirements around claims handling, amendment of the definition of 'handling and settling a claim under an insurance contract' would not be required.

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

11 This discussion is an appropriate one given the potential for significant harm if not addressed early with specific guidance and expectations. It should not be assumed that customer vulnerability will be addressed simply because a firm has an overarching conduct programme but rather the regulations should be used to create greater protection for vulnerable customers.

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

12 We believe including requirements to address the proactive identification, support and testing of good outcomes for potentially vulnerable customers (as well as actually vulnerable customers) is appropriate. Across the industry the focus on the risks around vulnerable customers has been growing but remains inconsistent.

Where regulators issue guidance notes on expectations these often suggest to financial institutions there will be specific obligations to follow, such as how-to guides and hence may leave a reliance on the regulators to provide such detail before financial institutions embed vulnerability processes. This could be enhanced by being more specific about the expectations and whether or not the regulator will be monitoring how these guides have been embedded into actions.

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

13 No additional items identified.

## Sales incentives

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

- 14 KPMG believes that increased regulation would ensure a level playing field between the entities that have been subject to regulatory guidance, and accordingly have responded and the entities that may not yet have made the changes.

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

- 15 KPMG disagree that this is an appropriate option to regulate sales incentives. For example, in KPMG's view there is little difference in incentivising the sale of 5 individual policies by entitling an advisor to a \$1 monetary bonus for each policy, than there is incentivising the sale of 5 policies and entitling an advisor to a \$5 monetary bonus. Provided the institution has appropriate policies, processes, systems and controls in place around the design, management and sales of products and have identified an appropriate target market; volume based sales incentives could potentially result in good customer outcomes.

## Requirement to publish information about fair conduct programmes

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?

- 16 The current proposals support the provision of high-level information, however if the regulation went further and supported a more comprehensive summary this would enable the media and analysts to undertake a more granular comparison. The entities will be required to have their programmes in place, and we wonder whether given the level of change required, may benefit from a greater or more detailed public disclosure.

## Calling in contracts of insurance as financial products under Part 2

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

- 17 We would support calling in contracts of insurance as financial products under Part 2 of the Financial Markets Conduct Act. This would provide clarity to both consumers and financial institutions on this point.

## Exclusions of certain occupations or activities from the definition of intermediary

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)?

- 18 Yes, we think it is appropriate to exclude people who are subject to professional regulation from the definition of intermediary.

## Other comments

No additional comments