

26 July 2017

ASIC Enforcement Review  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [ASICenforcementreview@treasury.gov.au](mailto:ASICenforcementreview@treasury.gov.au)

Dear Sir/Madam

## **Industry Codes in the Financial Sector**

Suncorp Group (Suncorp) welcomes the opportunity to provide a submission in response to the ASIC Enforcement Review Position and Consultation Paper 4 – Industry Codes in the Financial Sector (the Consultation Paper).

Suncorp Group Limited is a top 20 ASX-listed company with \$96 billion in assets. The Group employs approximately 13,500 people and serves close to nine million customers across general insurance, life insurance, banking and wealth through its trusted brands including Suncorp, AAMI, GIO, Shannons, Vero and Apia.

### **Executive Summary**

Suncorp supports measures that ensure financial service providers are accountable for providing high quality products and services to our customers. We are supportive of ASIC taking a role to ensure codes continue to meet appropriate minimum standards and are enforceable.

However, Suncorp has serious concerns that the proposals in the Consultation Paper, which significantly increase ASIC involvement in the development and oversight of industry codes, will undermine the role and relevance of industry-driven codes in the financial services sector without significantly improving consumer outcomes.

Suncorp is a signatory to several industry codes developed and maintained by our industry bodies, including the General Insurance Code of Practice (the GI Code), the Life Insurance Code of Practice (the Life Code), and the Code of Banking Practice (the Banking Code). We are also a signatory to the ePayments Code, administered by ASIC.

This submission primarily focuses on the impact the proposals in the Consultation Paper will have on the codes currently administered by industry associations.

### **Recommendations**

Noting that the financial services sector is already heavily regulated, Suncorp believes industry codes play an important role in:

- clearly articulating service standards and providing a consistent benchmark for industry practices, behaviour and responsibilities;
- responding to changing community expectations regarding the relationship between financial service providers and our customers; and,
- providing industry-developed guidance to help financial service providers improve their approach to common customer situations, such as hardship.

To ensure these outcomes continue to be achieved, Suncorp recommends that:

- industry bodies retain ownership of the code development and review process;
- ASIC approval of codes is undertaken in accordance with objective minimum standards (eg ASIC's Regulatory Guide 183) that are appropriate for the sector;
- ASIC's assessment and approval of codes is timely, maintaining the ability for codes to be agile and respond to market changes without being compromised by cumbersome re-approval processes;
- while codes are enforceable through contractual arrangements, no requirement is introduced to include the code as part of the consumer contract;
- any new enforcement powers do not duplicate current enforcement and redress mechanisms; and
- transitional arrangements are in place so that any new codes are not delayed by approval and compliance concerns.

Suncorp has contributed to the submissions provided by the Insurance Council of Australia, Australian Bankers' Association and the Financial Services Council, and we are generally supportive of these submissions.

### **The role of industry codes**

Given the already heavily regulated nature of the financial services sector, industry codes should not be used to further regulate industry conduct.

Rather, industry-led codes allow financial service providers to develop agreed service standards for our customers and benchmark our performance and behaviours.

These standards take into consideration both community expectations and industry best practice, effectively acting as frameworks for managing our interaction with customers.

These codes also evolve over time to address changing customer needs and emerging issues. An example of this is the industry-lead initiative to include guidance in the upcoming version of the GI Code to help insurers better manage interaction with customers who may be experiencing domestic violence.

Importantly, our codes are not developed in isolation. We collaborate with, and incorporate significant feedback from stakeholders across government, industry, consumer groups, and our customers, to ensure our codes are keeping pace with community expectations.

It is also worth noting that the ABA and FSC have both publicly committed to seeking ASIC approval for the next version of their respective codes, and the ICA is considering this approach as part of its current code review.

In RG 183, ASIC notes that codes should improve consumer confidence in the industry. Suncorp believes the best way to continue achieving this is to ensure any co-regulatory model allows industry to maintain clear ownership over codes as industry-driven documents.

### **ASIC approval and enforceability of codes**

The Consultation paper proposes significant changes to the current code development and review process underpinning the operation of the codes we subscribe to, without identifying specific improvements to customer outcomes that would flow from these changes.

#### **Code development and review**

Suncorp actively participates in ABA, FSC and ICA code development and review processes. We believe it is important for industry bodies, and their members, to retain ownership of the development and review of relevant codes to ensure the best possible outcomes for both industry and consumers.

For this reason, we are not supportive of the proposal outlined in the Consultation Paper for code development to be outsourced to an incorporated code body.

This is a significant departure from current industry practice and the standards set out in RG 183. While there is a clear need for external consultation to continue to be central to code development, we believe it is vital that the substantive decision-making about code content remains with industry. This also has a practical basis, as it is

difficult for anyone but industry participants to be familiar enough with how their businesses work to make judgements on issues like claims handling timeframes.

**Ultimately, the role of industry codes in driving continual improvement and industry-led innovation is undermined if they become de facto regulatory tools, effectively designed and enforced by ASIC (or another regulatory body).**

We also note the Consultation Paper specifically states that, under the proposed model, codes would set out “base level” service standards.

While it is important for codes to detail service standards, mature codes such as the GI and Banking Codes often go further than this to drive industry towards best practice approaches. Suncorp would be disappointed if any co-regulatory model resulted in the weakening of the provisions in our existing industry-led codes.

### **Code subscription**

Suncorp is supportive of all industry participants being required to comply with relevant codes, although it is not clear that AFSL conditions are the most effective method of implementing this.

We agree that the current voluntary nature of the codes means that it may not be clear to consumers whether a financial service provider is a code subscriber, and this makes it difficult to be assured of a standard level of service.

This may present some practical difficulties, considering non-subscribers are not members of the associations currently developing the codes. We still envision that these organisations would have the opportunity to contribute to the design and development process through consultation, along with other stakeholders.

### **ASIC approval process**

If ASIC approval is to be mandatory, decisions around approval should not be made subjectively. ASIC should be required to make decisions based on a set of clear, objective criteria.

These criteria should ensure that a code meets minimum standards, but not allow ASIC to make judgements regarding the content or direction of codes. ASIC should still be consulted and involved throughout the code development and review process, but final approval should not be open to subjective interpretation.

In principle, we support ASIC continuing to use RG 183 as the basis for these decisions. However, if ASIC approval is to become mandatory, the minimum standards in RG 183 should be reviewed to ensure they are appropriate for each industry sector.

ASIC approval should also occur in a timely and efficient manner, to ensure code updates are not delayed by bureaucratic process. This process should be developed in conjunction with industry and subject to public consultation.

Similarly, Suncorp does not disagree with the principle of ongoing review, but it is not clear how this would fit with the code approval process.

Any co-regulatory model must maintain a mechanism for codes to remain agile and respond to new and evolving issues, without these changes being subject to a cumbersome process for ASIC re-approval. Without such a mechanism, codes may stagnate and lose their relevance. This could result in poor customer outcomes, as codes are unable to keep pace with changes to community expectations.

Appropriate transition arrangements should also be put in place for new or substantially changed codes. This will allow financial service providers the time to ensure code requirements are practical and fit for purpose, without creating delays or compliance uncertainty.

### **Compliance and enforceability**

Suncorp does not object to being held accountable for our compliance with relevant codes. We support the model put forward in the Consultation Paper, which would require industry participants to subscribe to a code that would be enforceable through contractual arrangements with a code monitoring body. This closely mirrors current enforcement arrangements which we believe work well for consumers and industry.

We are also supportive of the proposal for organisations to report periodically on code compliance, and support code bodies having the power to report significant, systemic issues to ASIC. Clear definitions of what constitutes a reportable issue should continue to be defined within each code, rather than being open to interpretation.

However, we would not support any move to require mandatory enforceability of codes through inclusion in consumer contracts. While RG 183 currently recommends this approach be considered, and it is already a feature of the Bank Code, Suncorp does not believe this is an appropriate requirement for insurance contracts.

The unique nature of insurance, where the contract itself is the product being purchased, means there could be significant implications if a code breach is considered to also be a breach of the insurance contract. This would create the potential for complex, expensive and lengthy litigation processes, allowing individuals to bypass the existing dispute resolution framework and increasing cost and uncertainty for insurers.

There are rigorous internal and external dispute resolution mechanisms already in place for financial services, and code provisions may already be used by FOS, the courts and ASIC in forming views on issues including whether an insurer has complied with their duty of utmost good faith. In this environment, it is unclear how new enforcement powers could be implemented without duplicating those that already exist.

### Conclusion

Suncorp is keen to continue working with ASIC and the Government to ensure industry codes continue to increase industry accountability and deliver positive outcomes for our customers. Should you have any questions or require more information please do not hesitate to contact Jane Macnamara, Senior Advisor Government and Public Policy on 02 8121 0118 or [jane.macnamara@suncorp.com.au](mailto:jane.macnamara@suncorp.com.au).

Yours sincerely



Fiona Thompson  
**Chief Risk Officer**