

Manager  
Financial Services Reform Taskforce  
The Treasury  
Langton Crescent  
**PARKES ACT 2600**  
By email: *enforceablecodes@treasury.gov.au*

Dear Sir/Madam

Suncorp Group (Suncorp) welcomes the opportunity to provide a submission in response to Treasury's enforceability of financial services industry codes – taking action on recommendation 1.15 of the Banking, Superannuation and Financial Services Royal Commission consultation paper (the Consultation Paper).

Suncorp is a top 20 ASX-listed company with \$99 billion in total assets. The Group employs approximately 13,400 people and serves close to nine million customers across general 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 delivering high quality products and services to customers. Suncorp is a strong supporter of industry codes developed and maintained by our industry bodies, including the General Insurance Code of Practice (the GI Code), and the Code of Banking Practice (the Banking Code). Currently the chair of the National Code Committee (GI Code) is an employee of the Suncorp team, and we are actively leading the industry to work together to put the customer first and lift standards beyond the law.

Suncorp has a strong culture of continuous improvement and is constantly upgrading our compliance frameworks and monitoring to ensure we meet our obligations. We also conduct regular audits to proactively identify improvements or gaps, so they can be rectified. Suncorp has invested significantly to ensure full implementation of the new Banking Code and GI Code, and where possible build on our code requirements to provide better outcomes for our customers.

Self-regulated codes play an important role in setting, articulating, and improving industry practice and consumer protection. They provide a benchmark for industry behaviours and practice and allow industry to respond quickly to changing community expectations without the need to wait for legislative amendments. This provides consumers with clarity on the service standards they can expect from industry, while ensuring the industry has a consistent approach to identifying consumer hardship and industry breaches. Suncorp is also supportive of the Australian Securities and Investments Commission (ASIC) remaining in its code approval role to ensure codes continue to meet appropriate minimum standards.

Suncorp notes the recommendations around codes in the Royal Commission's Final Report and recommends a considered implementation approach. Suncorp believes any regulatory changes should be carefully considered to avoid duplicating enforcement regimes or compromising the important benefit of self-regulated codes.

There should be a delineation in enforcement regimes with ASIC responsible for enforceable provisions and industry code governance committees continuing to have oversight of the remaining provisions. Not getting the balance right may risk complicating the regulatory environment, which would lead to consumer confusion. This is at odds with the need to simplify regulations identified by Commissioner Hayne in his final report.

This submission primarily focuses on the questions presented in the Consultation Paper and the effects they could have on the codes.

## Questions

### 1. What are the benefits of subscribing to an approved industry code?

Suncorp supports measures that ensure financial service providers are accountable for providing high quality products and services to our customers. 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 in a timely manner;
- providing an industry consistent approach to identifying breaches; and
- providing industry-developed guidance to help financial service providers improve their approach to customers experiencing vulnerability or hardship.

Approved codes drive industry to provide best practice community standards and expectations above minimum standards set out in law. They also allow customers, regulators, and code monitors to hold companies to account if organisations fall below these standards. Suncorp notes that any new code approval regime should not detract from industry codes performing this valuable consumer function.

### 2. What issues need to be considered for financial services industry codes to contain ‘enforceable code provisions’?

Under a two-tiered code containing both enforceable and non-enforceable provisions, careful consideration will need to be given to the appropriate enforcement regime to avoid duplication and unnecessary costs. In line with existing financial services law, Suncorp proposes enforceable code provisions are only enforceable by ASIC as the regulator. This provides a clear delineation of responsibilities and avoids overlaps in enforcement regimes, thereby providing certainty to consumers and industry.

Consideration also needs to be given to the complexity a two-tiered code presents when provisions need to be updated. Industry would be able to move faster to amend non-enforceable provisions, leaving enforceable provisions requiring regulatory approval which adds another layer and more time to the change process. An appropriate amendment and approval process will need to be developed to mitigate the risk of mis-alignment between different provisions.

Noting the Royal Commission’s Final Report acknowledged the value of industry codes and the important role they play, Suncorp supports maintaining the benefits of voluntary self-regulated industry standards, which go beyond the law, in driving high standards and enhancing consumer protection. Any measures to make code provisions enforceable should be adopted in a way that does not detract from this important objective.

Suncorp calls for extensive industry consultation to determine the set of code provisions which should be, and are capable of being, enforceable. For example, a suitable approach would be to identify those expectations that are expressed clearly and unambiguously as noted by the Commissioner, and those that already closely align or overlap with existing financial services laws.

Certain code provisions require flexibility in their application and would not be feasible to be imposed as strict prescriptive rules so should remain as guidelines. There may also be specific requirements in the code which evolve rapidly with community standards – such as provisions relating to vulnerable customers, financial hardships - and are more appropriately dealt with under voluntary self-regulation, as opposed to strictly enforceable laws.

Given this, Suncorp welcomes further guidance from ASIC on the areas of industry codes which should be enforceable, noting that any guidance should consider the principles of maintaining the value of self-regulation and encouraging the industry to drive towards higher standards beyond the law.

Further, noting Commissioner Hayne's comments on the need to simplify regulation, not complicate it, consideration needs to be given to circumstances where other possible mechanisms which could achieve the same outcomes. This could include more consumer awareness of their existing rights under the current legislative and code framework, increased focus by the Code Governance Committee (CGC) on particular code provisions, or more emphasis on code compliance in AFCA decisions.

### **3. What criteria should ASIC consider when approving voluntary codes?**

Suncorp believes ASIC should consider if a code improves customer outcomes when deciding to approve a voluntary code. Noting Commissioner Hayne's comments on the need to simplify regulation, not complicate it, ASIC should consider the degree to which compliance is easily ascertained and the scale to which the financial service provider can reasonably meet the requirements, therefore balancing the enforceable against the non-enforceable sections. ASIC should also consider if the codes complement the existing regulatory regime, or whether there is overlap in an already highly regulated industry.

To allow industry a degree of flexibility in code development, Suncorp believes ASIC should review a code based on its high-level principles, rather than restrictive scrutiny. If ASIC were to consider on the basis of restrictive scrutiny it would be akin to having a Government prescribed code and defeat the purpose and benefit of having industry drive higher standards.

When approving a code ASIC currently follows RG183. Suncorp believes the RG183 criteria are suitable, however updates to RG183 may be required to account for the enforceable code provisions regime. Updates to RG183 that may be required include:

- guidelines that consider the operation of both enforceable and non-enforceable provisions; and
- guidelines which consider existing legislation and enforceability mechanisms to ensure there is no overlap or duplication in enforceable regimes.

Any guidelines should be consistent with the overarching principles of preserving the benefits of self-regulation.

### **4. Should the Government be able to prescribe a voluntary financial services industry code?**

Suncorp does not believe the Government should prescribe a voluntary industry code, unless as a last resort due to the unwillingness of industry to agree to a code, or under agreement by the industry that prescription is necessary.

This is in line with the Final Report of the Royal Commission which stated on page 110: *"If industry did not put forward its proposed enforceable code provisions in a timely manner, consideration would have to be given to whether it is desirable to establish and impose a mandatory industry code. The process for implementing a mandatory code should be the same as the process used in respect of industry codes prescribed under the Competition and Consumer Act."*

If the government was to prescribe a voluntary financial services industry code it would complicate regulation, not simplify it.

The key notion of an industry code is that it is driven by industry participants driving positive change for consumers who they deal with directly. When drafting or reviewing a code, extensive consultation takes place with stakeholders who industry is ultimately accountable.

#### **5. Should subscribing to certain approved codes be a condition of certain licences?**

Suncorp is supportive of all industry participants being required to comply with relevant codes. It is important for consumers that there is consistency of enforceable provisions. The current voluntary nature of the codes means it may not be clear to consumers whether a financial service provider is a code subscriber, making it difficult to be assured of a standard level of service. Compulsory code subscription would provide assurance to both industry and consumers that all businesses in the financial service industry are committed to certain minimum standards.

Suncorp also notes ASIC currently has a broad power to impose conditions on financial services licenses.

#### **6. When should the Government prescribe a mandatory financial services industry code?**

Unless the industry has asked for it, or cannot agree to a code, Suncorp does not believe Government should prescribe a mandatory industry code.

This is in line with the Final Report of the Royal Commission as outlined in our response under Question 4 above.

The financial service industry is already subject to a considerable degree of prescriptive legislation, regulation and oversight under the *Corporations Act*, the *ASIC Act*, the *NCCP Act*, the *Insurance Contracts Act*, and the *Banking Act* to name a few. If the government was to prescribe all, or part, of an industry code it would complicate regulation, not simplify it.

#### **7. What are the appropriate factors to be considered in deciding whether a mandatory code ought to be imposed on a particular part of the financial sector by Government?**

Suncorp does not believe the Government should impose a code on industry unless as a last resort because industry cannot agree to a code, or industry agrees prescription is needed.

#### **8. What level of supervision and compliance monitoring for codes should there be?**

Suncorp believes to avoid a double jeopardy situation ASIC should investigate significant code breaches and any investigations being undertaken by a governance committee or AFCA on that breach should stop.

The primary responsibility for supervision and compliance monitoring of the Insurance Code is the Code Governance Committee (CGC), with Insurance Council of Australia (ICA) members reporting to the CGC on breaches. Consumers can also report code breaches directly to the CGC, while the CGC themselves can report Code breaches to ASIC. The CGC is currently increasing its resources and staffing to boost their ability to protect consumers.

Regarding the Banking Code, the Code Compliance Monitoring Committee (CCMC) independently monitors compliance on the 2013 Code of Banking Practice by subscribing banks. The CCMC will transition to the Banking Code Compliance Committee (BCCC) on 1 July 2019 to start monitoring compliance with the new Banking Code of Practice.

Breaches of the Banking Code are currently reported by banks each financial year via a Compliance Statement activity. This will change to 6-monthly under the new Banking Code. Inquiries into compliance with the Banking Code are also conducted at both industry and bank level on specific topics. The outcomes of these are published on the CCMC's website.

Suncorp works closely with the CCMC (and will continue to do so with the BCCC) to respond to inquiries, breaches and other matters relating to compliance with the Banking Code. Under the Baking Code, this investigative demarcation between the Banking Code specific governance committees and ASIC is clear.

With the move to enforceable provisions, it is very important that the role of the CGC, CCMC/BCCC and ASIC be clarified to avoid overlaps and duplication of enforcement regimes and sanctions. This will provide certainty and consistency in application of law and avoid costly enforcement processes where the same breach requires a dual-process of reporting and/or remediation. To ensure a consistent approach across the industry, a clear guideline of ongoing monitoring should be provided to code participants.

**9. Should code provisions be monitored to ensure they remain relevant, adequate and appropriate? Is so, how should this be done and what entity should be responsible?**

A key aspect of an industry-driven code is that it can be reviewed and changed quickly to ensure consumer's best interests are retained.

All codes to which Suncorp is a signatory to, are reviewed regularly to ensure they evolve over time to address changing customer needs, emerging issues, and technology. Since its inception in 1993, there have been five versions of the Banking Code with the most recent review was approved by ASIC in late 2018 and will come into effect on 1 July 2019. The first GI Code was introduced in 1994 and there have been five further versions since then. These codes are independently reviewed with the results published online.

In light of certain code provisions becoming enforceable and other proposed regulatory changes (eg unfair contract terms in insurance, product design and distribution obligations, claims handling exemptions), it is important to ensure code provisions are regularly reviewed for appropriateness to avoid overlaps between different legal regimes and to ensure consistency.

Under the current Insurance Code, the CGC provides quarterly reports to the ICA Board which include recommendations for improvements to the Code. Additionally, the new Insurance Code will be reviewed every three years to ensure it best protects consumers.

Industry is ultimately responsible for ensuring it engages with, and considers the feedback of, stakeholders to ensure codes are relevant and effective. Bodies such as Australian Banking Association (ABA), ICA and the CCMC are best placed to ensure proper consultation occurs to implement code changes to keep them relevant and in line with community and industry expectations.

Further, under RG183 ASIC will consider the extent of stakeholder engagement by an industry that is seeking its code be approved. This ensures that any code approved by ASIC is the result of broad consultation by the relevant industry, considering feedback from consumer advocates, regulators, special-interest groups and other industry participants.

**10. Should there be regular reviews of codes? How often should these reviews be conducted?**

Suncorp believes codes should be reviewed regularly to ensure they remain relevant and effective.

RG183 currently requires codes to be independently reviewed every three years. The requirement for regular reviews needs to be balanced with the need for industry to make the necessary changes to comply with any amendments. Given this, Suncorp believes codes should be comprehensively reviewed three years after the adoption date. To provide flexibility for industry to react to changing community and regulatory standards, less formal reviews could be undertaken between comprehensive reviews.

For example, this occurred in 2011 when the GI Code was reviewed and strengthened out of its normal review cycle due to consumer feedback.

**11. Aside from those proposed by the Commissioner, are there other remedies that should be available in relation to breaches of enforceable code provisions in financial service codes?**

While it is difficult to comment on appropriate remedies without reference to specific enforceable provisions, generally remedies should strike sufficient balance to drive behaviour and cultural change. Clarity is also required around remedies for individual consumers versus systemic code breaches.

ASIC currently has wide-ranging powers and enforcement tools available to it under existing financial services law. Suncorp suggests remedies for enforceable codes provisions should align to provide industry and consumer certainty in relation to how breaches are handled.

**12. Should ASIC have similar enforcement powers to the Australian Competition and Consumer Commission (ACCC) in Part IVB of the Competition and Consumer Act in relation to financial services industry codes?**

As per the previous question, Suncorp believes the enforcement regime should align with existing ASIC powers in respect of various breaches of financial services law. The ACCC's powers and sanctions available under the *Competition and Consumer Act* are of a different nature to those available under *Corporations Act* regulated by ASIC. There is a risk of duplication, inconsistency, and consumer and industry confusion if two different Acts and regimes are used.

To clarify the enforcement regimes, Suncorp believes current guidance from ASIC on its enforcement approach should be updated to include how enforceable codes can be enforced by ASIC in line with current principles and practice.

**13. How should the available statutory remedies for an enforceable code provision interact with consumers' contractual rights?**

Suncorp supports the Commissioner's recommendation that consumers continue to have the right to pursue remedies through internal and external dispute resolution or the courts.

However, a consumer's direct right of remedy should not exceed their legal contractual rights. They should be compensated for damages which generally ensures consumers are put back into the same position, had the issue or breach not occurred.

Statutory sanctions are separate enforcement tools to be enforced by regulators or courts for breaches of law. Where there is a breach of law (in addition to breach of a contract with a consumer), Suncorp accepts that additional regulatory sanctions and penalties may be appropriate to hold financial service providers accountable for wrongdoing and breaches. However, in considering whether compensation orders should be imposed as one of the statutory remedies, ASIC should consider if the consumers have already been compensated through exercising their contractual rights, to maintain fairness and avoid double recovery or unintended gain.

**14. Should only egregious, ongoing or systemic breaches of the enforceable provisions of an industry code attract a civil penalty?**

Suncorp believes only egregious, ongoing or systemic breaches of the enforceable provisions of an industry code should attract a civil penalty. It is noted that under the current regime, only breaches of certain provisions of the *Corporations Act* attract civil penalties. It would require good justification to elevate enforceable code provisions to civil penalty provisions, recognising the legislative policy of having only serious contraventions attracting civil penalties. Consideration of the scale, impact and intent/knowledge of the breach will be relevant.

**15. In what circumstances should the result of an external dispute resolution (EDR) process preclude further court proceedings?**

Suncorp supports the independent dispute resolution role played by EDRs such as AFCA, BCCC/CGC or Farm Debt Mediation (FDM). Suncorp believes the EDR process should largely preclude further court proceedings. A determination accepted by the consumer with agreement of all parties should be binding. If it isn't, the role of the EDR scheme becomes compromised.

However, AFCA should be able to hear new issues raised by a consumer. For example, matters where circumstances of the dispute have fundamentally changed, or new information has arisen since the AFCA hearing, should be considered. Courts should hear matters where a financial services provider has not completed their required actions, or there are gross concerns with AFCA's decision. As should cases where AFCA was negligent or breached its own terms of reference or exceeded its jurisdiction. Also, courts should hear matters where AFCA has made an individual decision on a customer dispute that has industry wide impact.

**16. To what matters should courts give consideration in determining whether they can hear a dispute following an Australian Financial Complaint Authority (AFCA) EDR process?**

As per question 15, Suncorp believes there are certain circumstances where it may be appropriate for courts to hear a dispute which has already been through AFCA.

In all cases there should be a high threshold, perhaps based on a monetary value, before consideration is given by the court.

**17. What issues may arise if consumers are not able to pursue matters through a court following a determination from AFCA?**

Suncorp considers AFCA to be a fair scheme for all parties with a wide jurisdiction which considers what is fair in all the circumstances. But without the ability to go to a higher jurisdiction some consumers may be dissatisfied with the dispute resolution process and reluctant to take their dispute to AFCA. This could result in increased litigation and pressure places on the courts.

Suncorp believes as a matter of principle, consumers should be encouraged to liaise with their financial services providers and utilise AFCA as their free and independent mechanism for external review. It is important AFCA communicates to consumers they have the choice between using them or the courts to settle disputes and a better outcome is never guaranteed either way.

## Conclusion

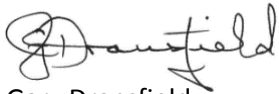
There are many consumer benefits to a self-regulated code regime as set out in this submission. Most important is that codes are principles-based, improve minimum standards and drive the industry to deliver better customer outcomes beyond what is prescribed by law. Suncorp notes the recommendations around codes by Commissioner Hayne and believes a balanced approach to retaining the benefits of the existing regime, and implementing the recommendations is required.

Any regulatory changes should be carefully considered to avoid duplication of enforcement regimes or compromising the important benefit of self-regulated codes. There should be a clear delineation in regimes with ASIC responsible for enforceable provisions and industry code governance committees continuing to have oversight of other provisions. Not getting the balance right may risk complicating the regulatory environment leading to consumer confusion.

Suncorp is ready to continue to work 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 contact Matthew Tapsall, Manager Government, Industry, and Public Policy on 07 3135 3917 or [matthew.tapsall@suncorp.com.au](mailto:matthew.tapsall@suncorp.com.au).

Yours sincerely



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