

28 January 2022

Mr Nicholas Moore
Chairman
Financial Regulator Assessment Authority
The Treasury

By email to FRAA@treasury.gov.au

Dear Mr Moore

FINSIA Submission to ASIC Capability Review

FINSIA (the Financial Services Institute of Australasia), welcomes the opportunity to make a submission to the Financial Regulator Assessment Authority's assessment of the effectiveness and capability of ASIC.

About FINSIA

FINSIA is the not-for-profit professional membership body in Australia and New Zealand for the financial services industry. With a heritage of over 135 years, FINSIA's purpose is to deepen trust in financial services by raising standards of professionalism. It is a not-for-profit professional membership body for individuals working across the full spectrum of financial services industry in Australia.

It has approximately 8000 members primarily across banking, institutional markets, funds management and securities including financial advice. Its members have access to gold standard professional qualifications, thought leading insights and influential networks to build their capabilities and advance their careers, while strengthening their professional standing in the community.

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FINSIA is pursuing its focus on industry wide professional standards and education to agreed levels of competency as an appropriate complement to principles-based regulation, rather than overly prescriptive regulation which can have negative outcomes for the customer.

Over the past few years FINSIA has led work in this area by for example being a founding member of the Global Banking Education Standards Board (GBESTB) and its work in developing draft Retail and Business Banking Professional Standards.

Submission to the Review

It is noted that the review is a targeted assessment of ASIC's effectiveness and capability in strategic prioritisation, planning and decision making, ASIC's surveillance function and ASIC's licencing function. It will be guided by ASIC's statutory objectives, the Government's Statement of Expectations and ASIC's Statement of Intent.

At the outset FINSIA emphatically acknowledges the most valuable work consistently done by ASIC across the full range of its activities, and its engagement with the financial services industry. FINSIA's contribution to the Review is accordingly limited to one very narrow aspect of ASIC's strategic prioritisation and decision-making.

FINSIA notes that the Government's Statement of Expectations includes pursuing opportunities to contribute to the Government's economic goals, including supporting recovery from the pandemic; and administer the law in a way that promotes innovation in the interests of consumers. In doing this it is to minimise the costs and burdens of regulatory requirements. (Para 2). It also expected to reduce misconduct risk through well targeted and proportionate supervision, surveillance and enforcement (Para 3).

We also note ASIC's Statement of Intent to pursue such economic goals and pandemic recovery by pursuing continuous improvement and changing the way it administers the law to minimise the costs and burdens of regulatory requirements; and to facilitate novel business models and transactions (Para 2).

FINSIA believes that legislation or rules which drive an over-reliance upon compliance to rigidly prescribed rules are undesirable because they have been shown to diminish self-accountability. A prescriptive approach can never anticipate every circumstance. Very frequently the cause of customer harm and dissatisfaction is the application of rigid policies when the application of personal judgement is needed.

We believe that better outcomes are likely to be achieved by defined requirements as to competency and conduct via standards and this would also support a more principles-based approach to regulatory drafting.

In FINSIA's view continuing the momentum of the Royal Commission in driving outcomes for the Customer would involve:

Competency – specifying competencies required for key roles, and while giving financial services organisations freedom to choose how these are developed, but requiring independent validation;

Conduct – standards need to be owned by the whole industry – for example FINSIA has developed its own standards which could be incorporated as a common core in individual bank codes of conduct; and

Culture – industry leading the development of pride and good reputation in best-practice skills, experience and conduct towards a shared societal purpose - which has proven effective over centuries in the provision of consumer and business services.

We note that in the UK for example the FCA are engaging and leading the industry with regards to culture: <https://www.foxwilliams.com/2021/08/11/a-focus-on-the-fcas-culture-requirements-and-changing-work-patterns-the-background/>

The point that FINSIA now respectfully raises for the consideration of FRAA that it is now time that these fundamental drivers of good outcomes for the community should also assume a more explicit part in strategic prioritisation and decision-making by ASIC.

FINSIA is pleased to note that these kinds of considerations have recently found favour in the Independent Review of the Banking Code of Practice which emphatically recommended that the Code be amended to require the banks to develop industry wide standards for competency and conduct for bank staff (Recommendation 30). (We note the ultimate form of the Revised Code will ultimately require ASIC's approval and at this point the strategic prioritisation and decision-making by ASIC will be critical.)

Conclusion

FINSIA thanks the FRAA for the opportunity to make this submission and would be pleased to meet with the Reviewers to discuss this submission further.

Please do not hesitate to contact us if we can be of any further assistance.



Chris Whitehead
CEO & Managing Director