Melbourne Climate Futures

THE UNIVERSITY OF MELBOURNE

Monday, 15 January 2024

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Submission to ASIC's consultation on proposed changes to the Banking Code of Practice

ASIC is seeking views on proposed changes to the Australian Banking Association's Banking Code of Practice in response to an independent review in 2021. Feedback will assist ASIC in determining whether to approve the proposed Code under the Corporations Act or National Credit Act.

The author of this submission is a Research Fellow with Melbourne Climate Futures (MCF)'s Sustainable Finance Hub at the University of Melbourne. She has a particular interest in law and regulation relating to sustainable finance. The author is also a PhD candidate at the Melbourne Law School. Her PhD research looks at the intersections between climate change and mortgage lending.

Reflecting the author's expertise, rather than responding to specific questions raised in the Consultation Paper, this submission concentrates on the broader purpose of the Code and the relevance of climate change in this context.

The Purpose of the Banking Code of Practice

A focus on consumer protection

The proposed revised Code includes a direct statement of its objective. This is solely focused on consumer protection. It states that the Code aims "to provide customers with safeguards and protections not set out in the law. The Code is intended to complement the law and, in some areas, set higher standards than the law".

While the 2021 version of the Code did not specifically refer to this objective, it too was underpinned by a focus on consumer protection. This is evident in the 10 different parts of the Code that address, inter-alia, the customer-bank relationship, lending to consumers and small businesses, and resolving individual disputes.

This focus on consumer protection is understandable especially in the context of the Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Many of Commissioner Hayne's final recommendations focused on preventing harm to consumers.

Banks' (broader) roles in society

However, ASIC may wish to consider whether the Code should only be a tool for consumer protection or whether it should also encourage banks' to fulfil their broader roles in society. This goes beyond consumer protection to include ensuring that banks do not undermine social and economic stability and contribute to economic growth.

For example, as put by Cranston, banks contribute to economic development and ensure social and economic security. Their economic functions include savings mobilisation, maturity transformation, liquidity risk management and other benefits such as economic and social mobility for individuals and businesses. Put slightly differently, the IFRS Foundation says that commercial banks "play an essential role in the functioning of global economies and in facilitating the transfer of financial resources to their most productive capacity".

Giving the Code a broader purpose is also consistent with ASIC's regulatory mandate. For example, it is true that ASIC has a consumer and investor protection function set out in s 1(b) of the ASIC Act to "promote the confident and informed participation of investors and consumers in the financial system". However, s 1(a) also requires ASIC to

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“maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy”.

Possible additions to the Code

As such, ASIC may wish to consider encouraging the ABA to introduce another section to the Code that sets out the broader social functions of banks. In addition to preventing consumer harm, topics could include:

- Banks’ role in protecting the functioning of the market system by supporting competition but also collaboration to achieve social goals.
- Ensuring that they have systems and structures in place to manage their own risks and opportunities including the risks of climate change.
- Encouraging banks to contribute to broader social goals like climate change mitigation and adaptation through their investment and lending portfolios.