



FINANCIAL MARKETS LAW CONFERENCE 2023

The Conduct of Financial Institutions regime

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Topics for today



CoFI – refresh of key elements

Licensing

Fair conduct programmes

Regulations and guidance

Expectations of directors

Conduct and Culture update

- [Australian] Royal Commission into misconduct in the Banking, Superannuation & Financial Services Industry 2017
- Bank C&C report 2018
- Life Insurer C&C report 2019
- Fire and General report 2021
- Consumer Credit Insurance report 2021



CoFI – key concepts

CoFI application

WHO

Financial institutions

- Registered banks, licensed insurers and licensed NBDTs who provide services to consumers (retail customers)

WHAT

Statutory duties

- Obtain financial institution licence
- Establish, implement and maintain an effective fair conduct programme
- Comply with incentive regulations

Who is a consumer?

- Policyholder under a life or health insurance contract
- Policyholder under a consumer insurance contract (contract covering insurance for personal, domestic or household purposes)
- Person specified in the insurance who has the benefit of the insurance cover
- Person who is offered a life, health or consumer insurance contract
- Debtor under a consumer credit contract
- Person who is offered a consumer credit contract
- For all other relevant services offered by financial institutions, a consumer is a person who:
 - receives the service as a retail client
 - is offered the service and who would be a retail client if they received the service



Fair conduct principle

Financial institutions must treat consumers fairly

Designing

Offering

Providing

Dealing

Interacting

Licensing

Licensing

When and who

- Licensing opens 25 July 2023
- Existing FIs must be licensed by the regime commencement on 31 March 2025
 - ✓ Banks, insurers and NBDTs
 - × Intermediaries who are not a bank, insurer or NBDT
- Licence effective at regime commencement
- Early application is encouraged
- Authorised bodies

What and how

- Licence covers the market service of “acting as a financial institution”
- Must register for the service on the FSPR to access the online application form
- Online application similar to FAP
- Applicant must provide written explanations when expectations not met
- Written explanations will escalate for manual assessment
- May be required to attach FCP and/or FCP summary

Fair conduct programmes

FCPs – the basics

What and when

- All financial institutions must establish, implement and maintain an *effective* FCP
- Policies, processes, systems and controls designed to ensure the financial institution's compliance with the fair conduct principle
- Must be in writing
- A single document or multiple documents
- Establish before applying for licence
- Implement for regime commencement

Make it relevant and proportionate

- Nature, size and complexity
- Relevant services and associated products
- Distribution methods
- Types of consumers
- Types of intermediaries
- Types of agents

Making the FCP effective

Roles and responsibilities

- Clearly defined roles, responsibility and accountability arrangements for identifying, monitoring and managing conduct risks.
- FCP to include details of roles and responsibilities for conduct.



Approval of the FCP

- An effective FCP has the support of the financial institution's governing body.
- Governing body to consider adequacy and effectiveness of FCP and provide final approval.
- Document the approval in the FCP.



Regulations and guidance

Regulations

Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2023

- Sales incentives prohibition based on volume or value targets.
- Other provisions to ensure the regime works as intended, including provisions setting the requirements for participants in the Lloyd's insurance market.

Financial Markets Conduct (Fees) Amendment Regulations 2023

- These regulations set the licensing fee for financial institutions applying for a market services licence under the regime: \$1,024.93 for the licensee, \$614.95 for each Authorised Body.

Financial Markets (Conduct of Institutions) Amendment Act 2022 Commencement Order 2023

- A commencement order has also been made, which will bring the regime into effect from 31 March 2025.

Incentives

- The Government considers that target-based incentives lead to poor outcomes for consumers and cannot be adequately managed – therefore they should be prohibited. This is the key policy decision that the regulations need to give effect to.
- Incentives are prohibited if they are determined or calculated by reference (directly) to a target or other threshold that relates to the value or volume of services or products.
- Prohibition applies to financial institutions and intermediaries if they offer or give incentives to a ‘relevant person’ (i.e. customer-facing employees and their managers, agents, intermediaries).
- Includes some express exclusions from scope, e.g. linear incentives.

Guidance – intermediated distribution

Implementing CoFI distribution requirements for fair conduct programmes

Guidance note published June 2023

- Provide for distribution methods to operate in a manner that is consistent with the fair conduct principle to treat consumers fairly.
 - Customer at the centre > treating consumers fairly should be central to distribution
 - Fair conduct programmes > reflect distribution methods in the FCP
- Regularly review whether the distribution methods are operating in a manner that is consistent with the fair conduct principle.
 - Avoid ‘set and forget’ > must regularly review how distribution methods are operating.
 - Risk-based approach
- Ensure that any deficiencies identified in how distribution methods are operating are remedied within a reasonable time.
 - No ‘one size fits all’ approach & a collaborative process

Expectations of directors

CoFI and governance

We expect financial institutions' boards of directors to:

- set clear expectations for senior management and staff about the fair treatment of consumers
- take accountability for those expectations being met
- oversee the establishment, implementation and maintenance of the fair conduct programme including providing approval for the FCP
- receive regular reporting about potential conduct risks and actual instances where consumers have not been treated fairly
- ensure that fair treatment of consumers is factored into strategic and operational decision making.