FINSIA
The professional excellence pathway

26 October 2018

FINSIA Submission in response to the Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Sector

Introduction

FINSIA welcomes the opportunity to respond to the Royal Commission's Interim Report. The Interim Report has highlighted the need for both individuals and organisations in the financial services sector to take responsibility for their actions and the harm they cause members of the community. This is an issue FINSIA feels very strongly about. Since well before the Royal Commission we have been promoting the need for professionalism across the financial services sector.

FINSIA is a professional body for individuals. Our members come from across the financial services sector, bringing with them a broad range of knowledge, experience and views. Across this broad membership base, there is a high level of support for professionalisation and professionalism. FINSIA's core mission is to deepen trust in financial services by raising standards of professionalism, a requirement brought into sharp focus by the Royal Commission.

We, of course, support the need identified in the Interim Report of ensuring compliance with the norms embodied in the law and in the commitments individuals and firms make to members of the community. We also support the need to ensure incentive arrangements (such as remuneration arrangements and promotional prospects) and practical constraints (such as budgets and targets within organisations) minimise the risk of non-compliance with these norms. However, it is not practicable to remove all conflicts between self-interest; organisational pressure; and duty. There is also a need for a third pillar of the solution to misconduct – namely, a framework for professional standards of conduct and - especially in relation to decision-making about conduct – competence. These professional standards would leave room for professional judgement (including to manage conflicts between self-interest and duty) while ensuring that responsibility for wrongdoing is sheeted home to particular individuals who cause harm to members of the community.

Another important aspect of a professional standards framework is that it unites practitioners under a common ethical purpose of promoting community expectations. This social group of peers empowers individuals within the group to speak out about misconduct in their firms and to advocate better outcomes for the community. Another important aspect of this third pillar is inspiring pride in individual practitioners about their behaviour and service. We believe that pride not only deters misconduct but also motivates behaviour and service that exceeds legal obligations. Of course, we accept that self-interest is a powerful motivator. However, we believe that social influence and backing also exerts influence on individuals.

In our view, each type of licence in the financial services sector requires uniform standards of conduct and competence across that licence class. This will provide the community with an assurance that the quality of each financial service will meet a minimum standard – with capability and expected behaviour indicating likely quality of the financial service and confidence about that quality.

Key Recommendations

1. Develop uniform professional standards of conduct and competence for individuals for each type of financial services licence, that reflect the differences in seniority levels of different classes of roles:

   a) Establish a sector-led standards body
   b) Formalise the role of professional membership bodies

c) Underpin the standards with the opportunity to take the Banking and Finance Oath
d) Improve individual practitioner monitoring and disciplinary measures

2. Require completion of professional qualifications for defined roles and levels of seniority; and

3. Implement an annual certification process to provide a Statement of Professional Standing or similar

Professional Standards in Financial Services

We believe there is a need for an assurance of uniform minimum standards of conduct and - especially in relation to decision-making about conduct - competence for individuals for each type of financial services licence. These standards should be sufficiently certain to provide confidence in how they will be applied, and flexible enough to allow members of the community to be treated based on their particular situations and for financial services firms to have their own cultures. The rationale for these standards of conduct and competence is that they reduce the difficulty and cost to members of the community of assessing the quality of practitioners and firms. On the other hand, there are additional costs for practitioners and firms which would be felt by the broader community. There are also reduced choices for the community.

In our view, on balance uniform standards of conduct and competence are required because this would significantly reduce the difficulty, cost and uncertainty for the community of assessing the capabilities and expected behaviour of different practitioners and firms. We have assumed that given the high costs to the community of harm associated with poor conduct and competence of practitioners and firms, the benefits of reduced harm will outweigh the costs to the community associated with increased standards and reduced choice. These harms include, for consumers, the costs associated with acquiring unsuitable product or services – harms made more likely by the complexity of financial services and products and the disparity in knowledge and skills between consumers and practitioners and firms. In addition, the broader community is exposed to the peculiar risk that financial services pose to the health of the broader economy.

The case for sector-led standards is based on the ability for such initiatives to minimise unintended consequences and to develop and evolve quickly in response to changing community expectations. We have seen recently the tendency for statutory bodies charged with developing professional standards to create unnecessarily costly and complex regulation, which burdens the community.

Professional Standards Benefit the Community

Professional standards benefit members of the community by ensuring norms of conduct and competence are reasonably certain, but flexible enough to allow practitioners to apply professional judgement to meet the needs and wants of consumers as individuals. Many roles in financial services have become highly routine and inflexible, minimising room for discretion and professional judgement. The process of industrialisation and automation that has and continues to occur in financial services (especially through FinTech and RegTech initiatives) is making financial services significantly more complex but at the same time has significantly diminished the capability and opportunity for the application of sound judgement. We must ensure that practitioners have the opportunity and confidence to go beyond regulatory minimums (that is, what is compliant), to do what is right. Regulation can only go so far, and not far enough.

We believe that professional standards will nearly always be of greatest benefit to the community when they leave some room for practitioners and firms to allow discretion to meet the particular preferences of consumers in an individual case. That said, as room is made for professional judgement, there needs to be disciplinary consequences for the inappropriate exercise of that judgement. Our proposed professional standards model seeks to strike the right balance between certainty and discretion, through enforcement of uniform standards by practitioner peers (and in a broader legal and regulatory context that ensures community norms are met). To achieve this balance. these standards would supplement and complement the principles that inform the expectations of the regulator but would not amount to detailed rules.

We also support ensuring that laws and regulation are as simple as practicable given the socially and economically desirable ends they serve. We would highlight that a professional standards framework would complement the existing regulatory framework and need not involve excessively complex regulation. Indeed, we would advocate for an sector-led response to professional standards, that avoids overly prescriptive rules and instead provides a reasonable degree of certainty for consumers and practitioners. This holistic approach would minimise the risk of complexity and duplication, and ensure consistency across the organisations in the financial services sector.

The Royal Commission's Interim Report identifies conduct that fell short of existing norms of behaviour reflected in the law and codes, and was driven by the pursuit of personal benefit. The conduct occurred despite governance arrangements, was promoted by remuneration structures and a culture of non-compliance and was not deterred by enforcement action.

The financial services sector has the opportunity to take responsibility for providing a unified, rigorous and comprehensive solution that will result in a robust financial services sector that avoids repeating recent history and is worthy of community trust. A piecemeal and fractured approach will not meet the requirements or expectations of government, regulatory bodies or consumers, will be to the detriment of the sector and to the broader Australian economy in the long term.

In responding to past misconduct and the deterrence of future misconduct, the importance and value of individual accountability must be stressed. This has already been recognised as shown by the Banking Executive Accountability Regime, which applies to senior executives. But why stop with these roles? Conduct rules should apply to virtually all individuals in financial services and there should be a suitable accountability regime for key roles. These measures help empower people to challenge their colleagues and leaders if they feel that they are being asked to behave in a manner that is inconsistent with their professional code of conduct. Individuals in the sector need to be held accountable to an individual code of conduct by their peers (and not just their employer).

Financial Services are of a Profession

Financial services have many of the characteristics of a profession even though – at least in recent times – financial services entities have been seen as an industry and lacking the requirements typically associated with a profession. These characteristics include social purpose, asymmetry of knowledge, and impact on the lives and businesses of individuals, much the same as the professions of doctors and lawyers.

Specifically, financial services are practically compulsory for consumers given these services are intertwined with virtually all aspects of economic and social life; there is significant information asymmetry between consumers and providers; and non-adherence to norms of conduct and competence risk causing significant harm to consumers that spills over into their general capability to participate in economic and social life. In addition, financial services have the potential to harm the broader community through damage to the economy.

Professionalisation Should Apply to all Financial Services Roles

The need for professionalisation does not just apply to frontline roles, but also back office roles that can harm (including by damaging the economy) members of the community, for example, settlements operations, information technology roles and human resources roles. In this respect, financial services are similar to hospitals, where a broad range of roles – and not just treating doctors - have the potential to cause detriment to consumers.

Consequences for Misconduct must be Enforced

We agree that an aspect of the solution to dealing with the potential for misconduct is that laws and codes must be enforced in order to signal that inappropriate conduct such as wrongfully obtaining benefits will have consequences. However, there is also a need for assurance of a basic well-defined level of protection for consumers, while allowing consumers to be treated based on their particular situation. This assurance is needed because consumers have no practical alternative to participating in the financial services market; there is a high degree of information and knowledge asymmetry between providers and consumers; and there is significant potential for significant harm to consumers from their financial service providers. In these respects, financial services are analogous to medical and legal services. However, given harm to consumers can be caused by individuals in a broad range of functional or supervisory roles, there is a strong case for extending the scope of accountability well beyond frontline roles.

In addition, financial services have the potential to cause significant harm to the community by damaging the economy. This detriment is felt not only by consumers but by members of the community more broadly. For this reason, the case for extending individual accountability to a broad range of roles, such as wholesale markets operations and back office IT roles, is even stronger.

Expected loss of wrongly obtained benefits will not provide such an assurance. There will always be those individuals who – for example, because they have a high tolerance to risk - will take the risk of getting caught. Constraints on remuneration arrangements or budgets or targets within firms will also not provide such an assurance. Firms seek profit. Employees and intermediaries who generate more profit will be rewarded whether with promotion, enhanced opportunities or simply keeping their job. The desire just to keep one's job, even where there is no potential for a bonus based on sales, creates a conflict between self-interest and duty. Such conflicts cannot be entirely removed.

No single measure alone can provide the assurance required. However, as part of a broader solution involving proper enforcement of norms and sensible regulation, uniform professional standards of conduct and competence for individuals help provide the required assurance if these standards are enforced with very severe consequences such as withdrawal of eligibility to work in financial services; or widely and publicly namin wrongdoers. Just as a doctor or lawyer would ask themselves, 'would I get struck off for this?', we believe that individuals in financial services need to be asking themselves the same question. The prospect of losing one's professional status and, in turn, suffering a substantial reduction in one's long-term earning potential weigh heavily against nearer-term pressures conducive to misconduct, such as the desire to keep one's current job.

In addition to the effect of strong deterrence, professional standards help provide an assurance by making norms of conduct more certain but not so certain as to be prescriptive. This gives practitioners the scope to make professional judgements.

In our view, this sector-led approach is preferable to an entirely regulatory approach. Because the professional standards would leave room for judgement, determining whether these standards have been breached would itself involve the exercise of professional judgement. In order for practitioners to have reasonable certainty about what is required of them in particular cases, it is important that those who determine breaches are drawn from practitioner peers. Practitioner peers would be interpreting the standards in their everyday work and those accused of breach of standards would have been exposed to the interpretive practices of their peers. Especially given the severity of consequences and that professional standards would be imposed, it is important in our view that - to minimise the uncertainty cost to practitioners and firms - they are aware in advance of how standards are generally understood in practice. The risk of general understanding being unacceptable to the community would be mitigated by the real threat of the regulator stepping in if professional disciplinary processes are seen to fail.

To be clear, our proposed framework for professional standards would complement the function of regulators. Regulators play a crucial role in enforcing principles of conduct and in ensuring that the law is enforced. The role of regulators would be complemented by our professional standards framework promoting the object of achieving a uniform minimum standard in the application of these principles.

The uniform status of the standards could in theory be achieved by voluntary co-operation (for example, through representative bodies of the financial services sector requiring their members to adopt the proposed professional standards) or by legislative mandate. We would suggest that some degree of legislative backing may be required.

We acknowledge that uniform professional standards of conduct and competence create barriers to entry to the financial services market and create demand for certain services. In response, we would highlight that what we are proposing are baseline standards, leaving significant room for individuals and firms to offer even higher standards of quality and conduct. For example, firms may wish to ensure their practitioners have professional designations or may wish to provide warranties that go beyond the professional baseline; and professional associations may wish to set their own standards, which their members voluntarily commit to, at a higher level than the baseline. In addition, the threat of parliament or the regulator stepping in puts pressure on sector-led professional standards not to over-reach. Finally, uniform professional standards significantly reduce the difficulty and associated cost to the community of assessing financial services practitioners and firms.

Professional Standards Empower and Inspire Pride in Practitioners

Another important aspect of a professional standards framework is that it unites practitioners under a common ethical purpose of promoting community expectations. This social group of peers empowers individuals within the group to speak out about misconduct in their firms and to advocate better outcomes for the community. In addition, belonging to a professional group inspires pride in individual practitioners about their behaviour and service. We believe that pride not only deters misconduct but also motivates behaviour and service that exceeds legal obligations.

While we, of course, accept that self-interest is a powerful motivator, we believe that social backing and pressure (including pressure from one’s professional peers) also influences behaviour. Social pressure can deter misconduct or even motivate conduct that goes beyond the minimum legal requirements.

FINSIA’s proposal

In the remainder of our submission, we have largely reproduced our previous response to the Royal Commission. In that submission, we outlined the features of our proposed professional standards framework and provided supporting material. In the present submission, we have further developed our framework by addressing more clearly differences between senior executives; other roles that carry significant risk to consumers or the firm; and the remaining individuals working in financial services.

Summary of FINSIA’s Proposal

FINSIA has reviewed professional banking models overseas (Refer to Appendix A). FINSIA has conducted consumer research of over 2000 respondents by the RFi Group between 22nd February and 1st March 2018. Respondents that took part are either main or joint decision makers when it comes to their banking (Refer to Appendix B).

Our Purpose

Raising standards of professionalism in the financial services sector is crucial to reducing poor community outcomes and improving community trust.

Key Recommendations

1. Develop uniform professional standards of conduct and competence for individuals for each type of financial services licence, that reflect the differences in seniority levels of different classes of roles:

   a) Establish an independent standards body
   b) Formalise the role of professional membership bodies
   c) Underpin the standards with the opportunity to take the Banking and Finance Oath
   d) Improve individual practitioner monitoring and disciplinary measures

2. Require completion of professional qualifications for defined roles and levels of seniority; and

3. Implement an annual certification process to provide a Statement of Professional Standing or similar

Key Outcome

Adopting - as an integral part of the response to the Royal Commission's findings - FINSIA's existing objective (launched in 2017) of raising standards of professionalism in the financial services sector.

SPECIFIC RECOMMENDATIONS

1. Establish professional standards of conduct and competence for the sector

The first step is the development and introduction of standards of conduct and competence for defined roles in the sector. These standards must be clear; and sufficiently certain to give consumers and practitioners confidence as to what is expected; and set out the minimum competencies and standard of conduct required for key roles in the sector that can be characterised as involving a financial services function.

In our view, sector-led professional standards, supplemented by regulation where required, make for the best approach. As already discussed, this approach complements the role of regulators, courts and financial service firms in promoting adherence to norms of conduct and competence, to produce stable and beneficial outcomes for all participants.

Ultimately support for professional aspiration and a professional culture will be far more successful than prescriptive regulation and a compliance mindset. Any standards established by the sector must go meaningfully beyond regulatory minimums and be supported by organisational culture and strong disciplinary processes.

It is critical that the standards of professional conduct and competence ensure community interests are considered first and are written in simple language so that they are easy for consumers to understand. For standards to be effective, consumers need to be able to easily recognise when their practitioner has met the standards and to understand the disciplinary action that will be enforced should breaches occur. In addition, to be successful the standards framework must ensure the credible oversight of compliance with the standards.

One of the features of the financial services sector that sets it apart from other sectors that require uniform standards, is that in financial services there might not yet be a shared body of knowledge and process that extends to practitioners at all levels in all firms. These features create challenges for professionalising the sector as a whole. However, these challenges are not insurmountable.

In our view, the best approach is for the proposed professional standards framework to be structured along three tiers as follows:

- Senior executives with actual or effective control of a financial services firm or a substantial part of its operations

- Roles that carry a material risk of causing significant harm to members of the community; and
- All financial services roles that could be characterised as contributing to a financial service

This tripartite structure broadly mirrors that of the UK's prudential and conduct regulation for dual-regulated entities.[1] The top tier broadly mirrors Australia's Banking Executive Accountability Regime ('BEAR') legislation.[2]

Unlike other relevant sectors, financial services activities carry a significant risk of causing economy-wide problems. For this reason, it is important that all responsibilities that involve the actual or effective control of a financial services firm or a substantial part of its operations (and responsibilities that are prescribed by legislation) are allocated to suitable individuals.

The BEAR legislation is expressed in general language. For example, s 37CA(1) *Banking Act 1959* (Cth) states:

> The accountability obligations of an accountable person of an ADI, or of a subsidiary of an ADI, are to conduct the responsibilities of his or her position as an accountable person:
>
> (a) by acting with honesty and integrity, and with due skill, care and diligence; and
> (b) by dealing with APRA in an open, constructive and cooperative way; and
> (c) by taking reasonable steps in conducting those responsibilities to prevent matters from arising that would adversely affect the prudential standing or prudential reputation of the ADI.

And s 37CB states:

> Without limiting what constitutes the taking of reasonable steps in relation to a matter for the purposes of this Division, the taking of reasonable steps in relation to that matter includes having:
>
> (a) appropriate governance, control and risk management in relation to that matter; and
> (b) safeguards against inappropriate delegations of responsibility in relation to that matter; and
> (c) appropriate procedures for identifying and remediating problems that arise or may arise in relation to that matter.

A professional standards framework, including competence and conduct requirements, would play a useful role in supplementing and complementing requirements, taking obligations above the expected legal standard. Further, to complement the statutory requirement of registration and to provide an assurance in the sense mentioned above, a professional standards framework would require senior executives to be certified and to evidence their compliance. Failure to meet their professional obligations would mean risking severe consequences such as revocation of certificate (and in turn eligibility to work in a senior executive role in the financial services sector) or being widely and publicly named.

In addition to senior executives, other individuals in financial services have the potential to cause significant harm to particular consumers or to their firm. A professional standards framework, including a certification requirement similar to that which would apply for senior

[1] See https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss2815update.pdf?la=en&hash=39EC46AE5FD217724BB307C420B80A4E09F42A24
[2] See Pt IIAA, *Banking Act 1959* (Cth)

managers, that is tailored to the relevant role or class of roles would complement existing legal obligations by providing an assurance in the sense discussed above.

Finally, for other individuals carrying out financial services functions in the financial services sector, standards of conduct would support the need for the assurance in the sense discussed above. We envisage that the standards of conduct that apply to this tier of individuals would also apply to individuals in the other tiers as a minimum standard across the sector.

1.1 Establish a sector-led standards body

FINSIA supports the formation of a sector-led body to govern the uniform standards of conduct and competence. This body would be resourced by member firms and would oversee the setting, implementation and rigorous monitoring of agreed standards. In the case of banking, we have termed this body the Professional Banking Council ('PBC') and member firms would be institutions holding an ADI licence.

The body would need to be constituted in a form that will establish credibility, manage conflicts of interest and support the purpose of achieving the best outcomes for the community, from financial services.

Individual accountability and maintenance of consistent standards across the broader sector cannot be effectively achieved by individual firms monitoring compliance with legal obligations.

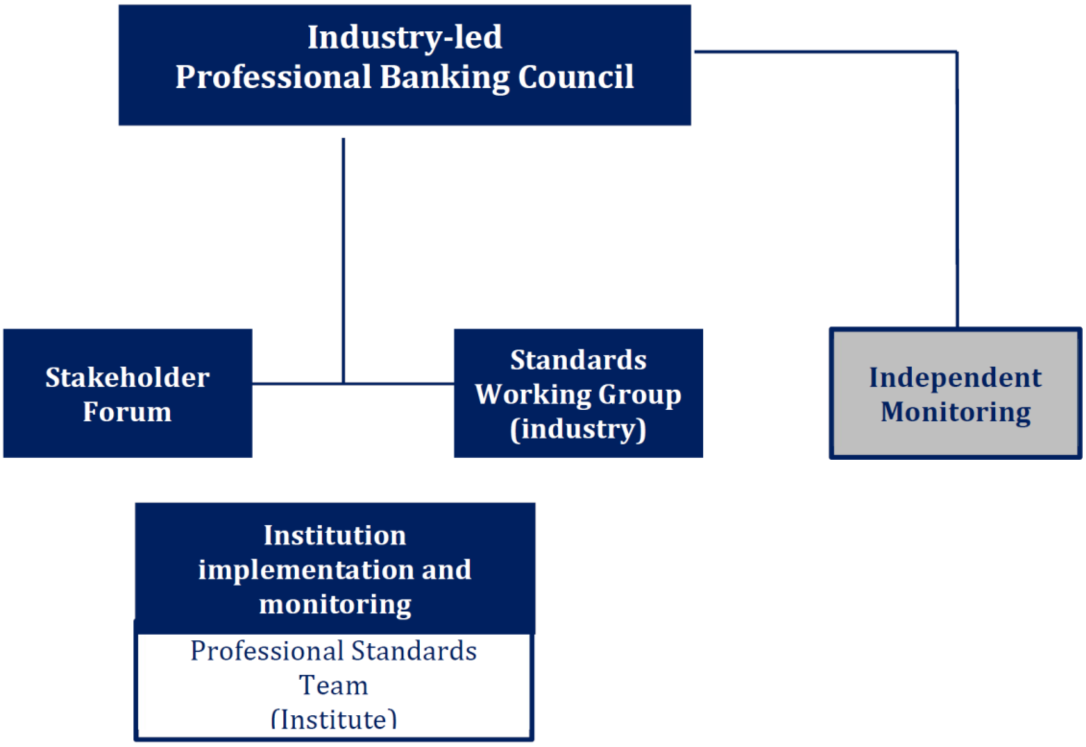
The PBC would monitor compliance with the standards including that of sector institutes and professional membership bodies. In the event of an individual practitioner breaching professional standards, the breach must be subject to a peer-sanctioned disciplinary process that is free of conflicts of interest. Further, practitioners should not be able to arbitrage disciplinary processes or penalties across professional bodies.

The PBC would work closely with relevant professional membership bodies and regulators to support the disciplinary processes of those bodies and to ensure disciplinary measures are consistent and upheld, and to ensure that there is appropriate, monitoring and oversight of adherence to the professional standards.

An Independent Monitoring Panel would form part of the PBC model and be independent of the PBC in order to credibly monitor the effectiveness of the standards and the extent to which the PBC aims are being delivered.

Establishment of such a council would require the support and commitment from the many diverse institutions across the sector. FINSIA strongly believes that genuine sector-led reform, backed up by regulation, is preferable to regulation alone. As discussed above, uniform standards provide a basic level of assurance that we believe is required for the special conditions that apply in markets such a health, legal and financial services.

A suggested framework for the roles for standards setting is below:



The Professional Banking Council

Council members will need to come from a broad cross-section of the banking sector. Member firms will be expected to have the level of seniority and requisite skills and experience needed to exert influence across their organisation and promote the work of the PBC. We note that a similar body exists in the UK, the Chartered Banker Professional Standards Board.[3]

Stakeholder Forum

The key role of this forum would be to provide feedback on the activities of the PBC, including the development of the standards. To avoid duplication, existing forums that have similar functions could provide this consultation.

Standards Working Group

The development of the standards will be guided by the Standards Working Group. This working group would consist of suitable representatives from a broad range of member firms of the PBC.

Independent Monitoring Panel

The Independent Monitoring Panel will be independent of the PBC and its constituent member firms. Its role is to monitor the effectiveness of the standards and the extent to which the PBC aims are being delivered. This may be via a published annual audit.

Institution Implementation and Monitoring

Institutions decide how they wish to meet the standards and are responsible for the implementation of appropriate monitoring systems, but should be encouraged to go beyond minimum expectations.

[3] See https://www.charteredbanker.com/employers/chartered-banker-professional-standards-board.html

Professional Standards Team

The professional institute (that is, FINSIA) will provide the resources for the Standards Team to support the work of the PBC. The Standards Team would be responsible for much of the standards research and development work. FINSIA has access to the the UK's Chartered Banker Professional Standards Board (CB PSB) and is a member of the Global Banking Education Standards Board (GBEStB) and the Asia Pacific Association of Banking Institutes (APABI). These relationships give FINSIA access to global best practice; support providing for international mobility of individual practitioners; and support multi-national banks and Australia's important education sector.

1.2 Formalise the role of professional membership bodies

Representative membership bodies that assist in the maintenance of professional standards are core to the concept of professions. Membership needs to be mandatory for defined critical roles for such a model to work. Professional membership needs to run in parallel with the setting of professional standards of conduct and competence. This needs to be supported by the Royal Commission's legislative recommendations.

1.3 Underpin the standards with the Banking and Finance Oath

FINSIA endorses the Banking and Finance Oath (BFO) and the opportunity to take the Oath would underpin the Code of Professional Conduct. The Banking and Finance Oath is positioned to complement regulation and compliance. It provides an individual ethical framework and reinforces the ethical underpinnings that are essential for a profession. Further, the BFO provides an effective method of providing a personal commitment to uniform standards.

The Banking and Finance Oath was developed in 2012 to restore trust and encourage ethical behaviour in the financial services sector.

It has two clear aims:

- To encourage a strong ethical framework for individuals in the financial services sector.
- To strengthen the values of integrity, honesty and trust that must underpin the sector's dealings with the Australian community.

The Oath provides individuals committed to high ethical standards with a way to 'stand up and be counted'. By taking the Oath publicly, signatories accept a set of professional obligations, and they choose to be accountable for upholding the tenets of the Oath and to call out behaviour that falls short.

Broadly speaking, researchers agree that oath-taking leads to more ethical behaviour. However, not all oaths are created equal and there are criteria identified that make an oath more effective in leading ethical behaviour.

- An oath needs to be public, ideally taken publicly but also visible beyond the act. This encourages peer-to-peer accountability and allows the signatory to be held to account by all stakeholders. The BFO website lists all signatories.
- There needs to be a professional independent body that ensures compliance with terms of the oath and penalises a lack of adherence. The BFO has a robust system in place with a review panel that is engaged if a signatory is called out for not adhering to the tenets.
- An oath needs to be retaken often, ideally annually, to ensure commitment.

The BFO encourages self-reflection, deliberation and individual accountability. There is the creation of a common language around ethics that is shared with signatories and a common ground when assessing a situation for ethical consideration.

Self-regulation is a vital part of being a professional. Oaths, in conjunction with codes of conduct and professional frameworks, are part of the creation of larger 'institutional frameworks' that are necessary to change the ethical character of a given occupation or profession.

1.4 Improve individual practitioner monitoring and disciplinary measures

To monitor and maintain professional standards, professional membership bodies, standards bodies and regulators must work together. FINSIA is seeking active engagement with regulators. It acknowledges this might include regulatory oversight of its governance, operations and performance.

It is noted that in many jurisdictions regulators have significant influence over their local banking institute, although the institute continues to ultimately work for the benefit of the sector and practitioners, with very strong sector engagement and influence also in place. This approach acts as a 'soft arm' of regulation to encourage the right values and standards. It is also a good means to support future sector strategy, for example, the development of standards and skills in digital banking that support international competitiveness and sector growth.

A crucial element of the PBC's functions would be ensuring the independent and impartial determination of alleged breaches of the professional standards. This would involve working closely with professional membership bodies to ensure a uniform process, and application of standards, across all the relevant bodies, for monitoring compliance with the standards and determining whether breaches have occurred (and applying and enforcing disciplinary consequences) in individual cases.

Further, any robust peer-sanctioned sector disciplinary process must have certain key elements embedded to be truly effective in ensuring standards of professionalism are maintained and community interest are protected:

- A range of available actions that appropriately correspond to the severity of the standards breach.
- A high degree of certainty upfront about the categories of breach that will attract the most severe sanctions, such as withdrawal of eligibility to work in financial services; or wide and public naming and shaming.
- Procedural safeguards to ensure those accused of potential wrongdoing are treated fairly.
- Close links with other professional membership bodies, independent standards bodies and relevant regulators to ensure pertinent information about members is shared. This needs to include oversight or access to information on investigations from other membership bodies and regulators.
- A proactive, adequately resourced investigative process.
- Any reprimand or sanction against a member needs to be complied with
- A national register that allows consumers to see whether or not a practitioner meets the professional standards.
- Whistle-blower protections for those who raise concerns with a standards board or professional association

FINSIA acknowledges that its, and other professional bodies', disciplinary processes need to be considerably strengthened and may require regulatory support to be most effective. For example, consistent with professional standing requirements for other professions, all relevant individuals could be required to obtain an annual Statement of Professional Standing confirming their membership standing, up-to-date CPD requirements and the status of any complaints or investigations against them. FINSIA is currently undertaking a review to determine what internal measures need to be put in place to meet future requirements.

The disciplinary process and professional codes upheld by the Australian Health Practitioner Regulation Agency could be examined as a good example of a robust disciplinary process across a diverse and complex profession. Fifteen National Boards, each covering a specialty area, work together to regulate the health professions by sharing information; publishing a national register of practitioners that incudes conditions or reprimands against the practitioner; and upholding any disciplinary measures that are taken against a practitioner.

This is a model that could be adopted to regulate the various financial services professions as a group, with national standards bodies similar to our proposed PBC for each different type of financial services licence (for example, banking, financial advice, insurance and superannuation).

In addition to ensuring uniform disciplinary processes, we propose that the PBC assess the culture of member firms to help firms ensure that the organisation develops or maintains attributes that are indicative of a general ethical culture and support an individuals in the organisation to behave ethically.

We note that the UK's Banking Standards Board ('BSB') assesses the culture of member firms, based on certain characteristics indicative of the ethical character of an organisation. Further, we consider that the BSB's approach to measuring and enhancing culture could be adapted for FINSIA's proposed professional standards model for Australia. Specifically,

- We support the BSB's approach to measuring and driving positive culture within the their financial services sector.
- We would suggest that, in Australia, the functions that the BSB performs in the UK should be performed by the PBC rather than a separate body. We wish to avoid having multiple uncoordinated and overlapping initiatives.
- We support the BSB practice of practitioners being involved in the assessment of firm culture
- We note there are concerns about the BSB's practice of using surveys to assess organisation culture. Surveys are prone to gaming and, as with employee engagement surveys, if targets are set and especially if incentives are provided there is a high risk that survey results will not reflect the reality on the ground. We support placing greater focus on empirical assessment of
    - community outcomes
    - individual behaviour; and
    - the relationships between organisational culture, individual behaviour and consumer outcomes
- We would support an approach that, in assessing firm culture, considers quantitative and qualitative indicators of professional certification and designation within the firm.

2. Completion of Professional Qualifications at defined roles and levels of seniority

Professional standards are often met through the completion of professional qualifications and continuing professional development that emphasise ethics and integrity. Unlike other comparable jurisdictions, Australia does not have professional qualification requirements in banking or financial services. This is a major weakness of the sector and must be addressed if material changes in outcomes are to occur.

In our view, a professional banking qualifications pathway should be developed that enables portability of skills nationally and internationally. Formal recognition of academic qualifications would form part of this professional qualifications pathway, but more is needed to support professional standing.

Crucially, these qualifications would be aligned with professional standards of competence. As practitioners progress to roles or functions with greater responsibilities, their minimum competence standard would increase as would the level of qualification needed to meet the standard. For efficiency, the qualifications pathway should be layered to combine additional study with previous studies to achieve a combined qualification at the required higher level.

As discussed above, the rationale for these standards of competence is that they make the process of assessing practitioners and firms easy and inexpensive for members of the community. On the other hand, there are additional costs for practitioners and firms which would be felt by the broader community. There are also reduced choice for the community.

In our view, on balance uniform competence standards are required because this would significantly reduce the difficulty, cost and uncertainty for the community of assessing the capabilities and expected behaviour of different practitioners and firms. We have assumed that given the high costs to the community of harm associated with the capabilities (especially ethical capabilities) of practitioners and firms, the benefits of reduced harm will outweigh the costs to the community associated with increased standards and reduced choice. These harms include, for consumers, the costs associated with acquiring unsuitable product or services – harms made more likely by the complexity of financial services and products and the disparity in knowledge and skills between consumers and practitioners and firms. In addition, the broader community is exposed to the peculiar risk that financial services pose to the economy.

Professional qualifications have the benefit of close engagement of practitioners in their development and maintenance to ensure relevance and practical application with the further benefit of professional networks. In addition, because professional qualifications typically do not sit within a statutory competency framework, they can be quickly updated to meet sector evolving needs.

FINSIA is developing professional pathways for the sector, leveraging partnerships with the UK's Chartered Banker Institute and the Chartered Institute of Securities and Investment. We are ensuring the content is suitably tailored to the Australian market. The first of these qualifications (Professional Banking Fundamentals) was launched in May 2018. We launched the Certified Professional Banker and Chartered Banker by Experience in September this year. And we will launch the remainder of these qualifications during 2018 and 2019.

These professional qualification pathways enable people in the banking, wealth management, securities and investment professions to develop robust knowledge of their practice areas, including the requirements of different consumer groups across the lifecycle, with a practical understanding of how to apply high ethical standards in practice.

To be clear, FINSIA's educational offering would not be the only means to achieve professional standards. In line with establishing sector standards of conduct and competence, there needs to be an agreed path of professional development for the whole financial services sector. As a non-profit professional membership body, FINSIA recommends a uniform approach to providing professional qualifications and CPD across the entire financial services sector. All professional education providers should be accredited and closely monitored. FINSIA believes that professional qualifications and associated CPD requirements from other professional membership bodies should be recognised as both relevant and equivalent if accredited.

3. Annual Certification Process to achieve a Statement of Professional Standing

To remain eligible to work in the financial services sector, the practitioner must renew their certificate annually. To renew, the practitioner must clearly demonstrate that they have met the relevant professional standards. A range of associations would be able to perform the certification function.

Again, the rationale is to reduce the difficulty and cost to the community of assessing the currency and capabilities of financial services practitioners.

Several elements are required in a robust Certification Process to receive an annual Statement of Professional Standing from your professional membership body. An individual must:

- Confirm they have completed the required annual Professional Development hours (CPD requirements).
- Confirm that they have the required competencies to perform the role they are performing.
- Confirm via independent audit that they, as a practitioner has no material investigations open or pending against them. Any current sanctions against a practitioner would also be recorded via the annual certification process.

Meeting these requirements results in the confirmation and issue of an individual's Statement of Professional Standing for the next 12 month periods. The details of all sector individuals who have met these requirements and have a current Statement of Professional Standing should be held in a publicly accessible Membership Register at the relevant professional membership body.

The Membership Register would also serve as a record of any practitioner that has sanctions or disciplinary actions against them by their professional membership body. This register would work in conjunction with the proposed uniform monitoring process overseen by the Professional Banking Council to ensure that any actions against individuals are consistently recorded and applied.

UK Example for Statement of Professional Standing execution

The Statement of Professional Standing model is successfully in place in the UK. The Financial Conduct Authority (FCA) is the conduct regulator for 58,000 financial services firms and financial markets in the UK and the prudential regulator for over 18,000 of those firms.

Their strategic objective is to ensure that the relevant markets function well and their operational objectives are to:

- protect consumers – they secure an appropriate degree of protection for consumers
- protect financial markets – they protect and enhance the integrity of the UK financial system
- promote competition – they promote effective competition in the interests of consumers

For example, the FCA requires that all retail investment advisers now hold a Statement of Professional Standing (SPS) that is awarded by one of seven professional membership bodies. The membership bodies themselves are audited every two years by the FCA. In practice this mean that individuals need to belong to professional membership bodies.

In the Securities and Investments market, one of the accredited professional membership bodies able to provide an SPS to practising individuals is the Chartered Institute for Securities and Investment.

A SPS can only be issued by an FCA-accredited membership body and confirms that an individual:

- Has adhered to a recognised code of ethical standards – i.e. the professional body's code of ethics
- Holds the required qualifications for the activities they undertake
- Has completed appropriate CPD, usually 35 hours, and complied with APER (Statements of Principle and Code of Practice for Approved Persons). In practice this means that they do not have any disciplinary breaches or charges outstanding either in their firm's environment, or through their professional body. This is a much wider condition than simple adherence to the rules.

Source: Chartered Institute for Securities & Investment (UK)

Next steps

FINSIA believes this submission sets out the fundamental requirements for the increased professionalism of the financial services sector and looks forward to assisting in the progression of these recommendations in partnership with its sector peers.

Next steps include:

- Socialisation of the FINSIA submission and recommendations with the broader financial services sector, including other professional membership bodies and regulators.
- Agree an approach to the establishment of a standards body (PBC) for banking with member banks, associations and other stakeholders.
- Convene a Standards Working Group with representatives from member firms to research and determine professional standards and professional qualifications pathways.
- Alignment with recommendations handed down from the Royal Commission.
- Agree timeline, governance and reporting structures.

Conclusion and FINSIA Credentials

FINSIA has a heritage of over 130 years of connecting our members with sector-leading insights and influential networks to assist them in building their capabilities and advancing their careers. While strengthening the professional standing of our members we are working to deepen consumer trust by raising standards of professionalism across the sector. Ultimately this will deliver better outcomes for consumers and for our community.

FINSIA’s professionalisation strategy is not a reactive response to the Royal Commission. The initial planning for FINSIA’s professionalisation strategy, including implementing uniform standards, significantly predates the establishment of the Royal Commission, having commenced in 2016. However, it must be acknowledged that FINSIA had not always taken the strong leadership position required by both members and the community, in the past decade. FINSIA is determined to rectify this and is strongly committed to its strategy of renewed professionalism to rebuild trust in the sector and re-establish pride for those who work within it.

FINSIA is uniquely positioned to assist in the establishment of uniform professional standards of conduct and competence and the development of a Professional Code of Conduct, due to its independence and heritage in the development, implementation and monitoring of sector standards and its international connectivity.

FINSIA is part of the Global Banking Education Standards Board (GBEStB) – a global initiative to define standards of ethics education for banking professionals. This global Standard may prove to be a useful starting point and excellent reference for the drafting of the Australian Sector Standards for Conduct and Competence and for agreeing a consistent, standardised pathway of professional qualifications for the sector.

Financial services make up an international sector, and Australia cannot operate in isolation. We need to consider aligning and adhering to relevant global banking professional initiatives and standards that are best practice.

About FINSIA

Founded in 1886, FINSIA is Australia’s leading individual membership body for financial services professionals. Our members are individuals who work across retail and business banking, funds management, superannuation, financial advice and capital markets for a range of organisations including the emerging fintech market.

FINSIA's mission is to deepen trust in financial services by raising standards of professionalism. In this FINSIA has identified three goals:

- Drive an aspiration for conduct at a higher level of integrity than regulatory compliance, to bolster the sector assets of trust and reputation.
- Raise skill levels to improve customer outcomes and support the tradition of prudent stewardship of customers' money.
- Attract and retain the right talent to work in banking through the provision of a professional pathway.

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Appendix A: Australian sector comparison with international banking jurisdictions

Banking institutes in the UK, Asia and other international jurisdictions, have documented the positive gains that have resulted from the introduction of recognised professional standards in these markets.

It is clear that an integrated approach to professionalism is essential for the betterment of the sector. Initiatives such as sector standards of conduct and competence, a clear professional qualification pathway and the role of professional membership bodies, as well as regulatory support, have all emerged as key factors.

In Australia, unlike many other countries, there is currently no requirement, or de-facto standard, for bank employees to hold professional banking qualifications or to belong to a professional membership body with uniform codes of conduct for individuals. This makes Australia an outlier amongst advanced economies.

The Global Banking Standards Board (GBEStB), of which FINSIA is a member, recently announced the launch of the first Global Standard for Banking Education-– the Ethics and Training for Professional Bankers Standard. The Standard is the first of its kind and brings together more than 25 banking institutes to provide the foundation for high-quality and consistent education of bankers.

The Standard enshrines ethical principles desirable amongst all banking professionals and has seven key recommendations:

1. General Recommendations regarding ethics education and training

2. Key ethical principles for professional bankers

3. Content of ethics education and training programs

4. Delivery of ethics education and training programs

5. Assessment of ethics education and training programs

6. Impact Measurement of the Standard

7. Public Declaration (i.e. GBEStB member bodies shall publicly endorse the Standard)

This Standard is a key step in setting out a uniform and consistent approach to the education of professional bankers worldwide and will, in FINSIA's view, assist in the development of a strong and consistent culture of customer and client focused ethical professionalism in banking. GBEStB is developing further standards to include best practice education in lending functions.

Appendix B: FINSIA Consumer Research Findings

FINSIA conducted nationally representative consumer research in February-March 2018 with over 2,000 respondents to determine current levels of trust consumers have in the banking sector, what consumers want from their banks, and the role of professionalism and professional bodies in the sector.

Key findings included:

- Only one in two consumers highly trust the Australian banking sector whilst only two in five highly trust the CEO and senior executive team of their banks.
- 57% of consumers believe the Australian banking sector as a whole does not have high ethical standards.
- Consumer belief in high ethical standards leads to greater trust in the banking sector.
- Two in five consumers say all staff should have professional qualifications, with 75% of consumers believing that all senior staff should hold professional qualifications.
- Two out of three consumers also believe there is a clear difference between academic and professional qualifications – mainly around the level of experience and ongoing training and support for ethical and sector standards.
- Three in five consumers would trust their bank more if more staff had professional standards.
- 19% of consumers aged between 25 and 44 would change banks to be served by staff who were more professionally qualified.
- Four out of five respondents believe that it is important to have a professional membership body overseeing sector standards to ensure they are being adhered to and maintained.
- Consumers believe the three leading activities carried out by professional membership bodies that most contribute to ethical behaviour in the financial sector are:

    1. Adhering to the membership body's code of professional conduct and disciplining those who breach the code's standards.

    2. Overseeing continuing professional development (CPD)

    3. Providing guidance and advice on ethical issues.

We have also surveyed our membership and over 70% of FINSIA's members agree that increased professionalism is a minimum requirement to restore consumer confidence and trust in financial services.