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FINSIA SUBMISSION TO PRODUCTIVITY COMMISSION ENQUIRY INTO PRODUCTIVITY ENHANCING REFORM

Introduction

FINSIA (the Financial Services Institute of Australasia), welcomes the opportunity to make a submission to the 5 yearly Productivity Commission Enquiry into productivity enhancing reform.

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.

As a connector between finance professionals and industry, FINSIA is keen to support the financial service industry's commitment to earn back trust and create an enduring customer focussed culture.

Scope of the Enquiry

FINSIA notes the Enquiry will:

1. Analyse Australia's productivity performance in both the market and non-market sectors, including an assessment of the settings for productive investment in human and physical capital and how they can be improved to lift productivity.
2. Identify forces shaping Australia's productivity challenge as a result of the COVID-19 pandemic and policy response.
3. Consider the opportunities created for improvements in productivity as a result of Australia's COVID-19 experience, especially through changes in Australia's labour markets, delivery of services (including retail, health and education) and digital adoption.
4. Identify priority sectors for reform (including but not limited to data and digital innovation and workforce skills) and benchmark Australian priority sectors against international comparators to quantify the required improvement.
5. Examine the factors that may have affected productivity growth, including domestic and global factors and an assessment of the impact of major policy changes, if relevant.
6. Prioritise and quantify the benefit of potential policy changes to improve Australian economic performance and the wellbeing of Australians by supporting greater productivity growth to set out a roadmap for reform.
7. Revisit key recommendations and themes from the previous five yearly review in light of the above, where relevant.

FINSIA's overall perspective on the productivity opportunities in financial services

FINSIA believes that the current regime of overly prescriptive financial services legislation is impeding productivity growth and economic performance and that a pivot away from prescriptive regulation to principles-based regulation underpinned by professionalisation will support increased productivity in most if not all of the areas under review in this Enquiry.

FINSIA considers that relying upon good professional judgement guided by professional standards in the application of principles, rather than driving rigid compliance with detailed prescriptive regulation, has three significant advantages

- consistently better customer outcomes across the industry and over-time being more flexible to changing circumstances;
- lower conduct risk through the implementation of professionalism structures that adds personal accountability to the expectations of their employer and regulators; and
- lower compliance costs and reduced penalties for non-compliance with a shift in emphasis to accountability for outcomes rather than inputs.

It is also important to note that a prescriptive approach can never anticipate every circumstance – it can never really be prescriptive enough . FINSIA suggests that frequently the cause of customer harm and dissatisfaction is the application of rigid policies when the application of professional judgement is needed. We accept of course that a principles-based approach would itself require a level of supervision and reporting, but this is of a different nature to prescriptive regulation.

FINSIA has recently raised this perspective in the context of the Independent Review of the Banking Code of Practice 2021 and suggested that the Code is currently driving an over-reliance upon rigidly prescribed rules which diminish self-accountability and resulting in higher levels of risk incidents and inferior community outcomes. We are delighted to see the positive solutions we advocated have been emphatically adopted in Recommendation 30 of the Final Report.

FINSIA has raised similar perspectives in submissions to the ASIC Review and to the ALRC Report A on Financial Services Legislation.

Nor is FINSIA the only financial services association expressing these views. The Financial Services Council has also done so in its White Paper on Financial Advice which advocates for principles-based regulation noting “for example, guidance should provide examples of what an ethical or professional advice provider looks like, how they approach their work and in what manner. This would be more suitable to a profession than specific directions on what to do topic-by-topic, which implies a prescribed advice process.” We will discuss the FSC’s work in more detail later in this submission.

Specific opportunities for productivity improvements

FINSIA suggests some specific opportunities for productivity improvements under the Items being considered by the Commission, and would be very pleased to expand on these later:

Item 1 - Australia’s productivity performance in both the market and non-market sectors, including an assessment of the settings for productive investment in human and physical capital and how they can be improved to lift productivity.

FINSIA considers that a shift to principles-based regulation supported by an investment in professional standards, ethics and education is likely to lift productivity. Prescriptive regulation is needed in some areas. However the current emphasis across the field on prescriptive regulation is not sustainable given not everything can be prescribed,

FINSIA suggests it is important for regulators, as well as industry, to think and act innovatively and efficiently to assist in the creation of value. This will of course require adequate resourcing of the regulators. We note that, for example, the Hong Kong Monitoring Authority is taking steps to mandate Fintech and Regtech. This is not to claim that adopting technology is an end in itself but increased innovation on the part of regulators to achieve their mandates will benefit all stakeholders. FINSIA very much appreciates the collaborative relationships it has with regulators and government and suggests that increasing mechanisms for such engagement would likely increase efficiency by finding more innovative ways to deliver regulatory goals that create more efficient market outcomes.

The [FSC Whitepaper on Financial Advice](#) and associated reports [The Costs Profile of Australia’s Financial Advice Industry: Final Research](#) and [Costs Profile of Australia’s Financial Advice Industry](#)

[Research Result Infographic Summary 31 August 2021](#) have directly quantified the savings likely from 4 proposed reforms to financial advice regulation. Successful adoption of these may result in between 37-39% cost saving and save advisers a third of time they currently spend in the advice process, freeing them up to provide more advice to Australians.

FINSIA suggests that in general terms it would be more productive and efficient for our societal and regulatory resources to be applied to advice rather than compliance or breach reporting.

We believe that real productivity and better outcomes would be gained by making financial advice tax in itself tax deductible. At present it is only deductible if obtained for the purpose of earning income. If such advice is in itself tax deductible, individuals will be encouraged and more likely to obtain advice. Financial advice has been shown to result in individuals better able to self-fund retirement and be less reliant on the aged pension and therefore tax deductibility is eventually tax positive for Government.

Item 2 - Identify forces shaping Australia's productivity challenge as a result of the COVID-19 pandemic and policy response.

COVID-19 saw the community and law adapt to use technology to manage COVID-19. Whereas working from home had carried stigma and was seen as unworkable especially in environments such as financial services requiring intense scrutiny. However, COVID-10 forced remote working and it led to increased productivity.

FINSIA is concerned, however, that this change will stall if infrastructure investment does not occur. Such infrastructure investment will need to be broadly based, supported by appropriate policies, across transport, health and education, regional adult and child education facilities. Regional areas in particular need to be a focus.

Item 3 Opportunities created for improvements in productivity as a result of Australia's COVID-19 experience

FINSIA suggests the law needs to keep pace with the adoption of technology by individuals and organisations. In financial services, allowing remote witnessing of binding death nominations is a striking example of a potential efficiency gain. FINSIA suggests that electronic witnessing of documents should be legally facilitated across all jurisdictions through federal legislation. The law should be broad enough to encompass a range of technologies and be technology neutral.

Item 4 - Priority sectors for reform (including but not limited to data and digital innovation and workforce skills) and benchmark Australian priority sectors against international comparators to quantify the required improvement.

FINSIA suggests financial services is a priority sector for productivity reform with emphasis on some particular areas, and we highlight some leading examples.

First, there is almost universal acceptance of the value of data. However, there is confusion about rights to ownership, control and use of data and much greater clarity is needed.

Second, there are real efficiencies to be achieved by standardisation of data. But unless all those using the data have the same data dictionary it is very difficult to share the data in the same way. We note the Consumer Data Right provides a recent and strong example of the difficulties in this respect.

Third, the law around wholesale clients is complex and advisers can be faced with a choice of not providing advice at all or obtaining the advice at significant cost which limits the accessibility of the advice only to those who have the money to afford it.



Fourth, we are also conscious of the benefits of wage growth as a priority in Australia's current situation. Accordingly, we suggest that wage growth could be expressly linked to improved productivity and efficiency.

Fifth, much of the resources required by financial services design and distribution obligations is largely wasted and inefficient in the context of personal financial advice. Whilst there is a nominal carve out for financial advisers, the reality is that significant dealings are still required to be reported to product issuers. The product issuer is not required to consider these reports as under the carve out personal advice is excluded conduct and is not required to be reported to the regulator.

Sixth, FINSIA is conscious of the Quality of Advice review which has been launched and the relationship of the work of that review with work of the Productivity Commission. FINSIA suggests that there would be benefits in mutual engagement of the two processes. One area for common consideration might be, for example, the advantages to the community and productivity improvements by allowing a broader scope of information provided within superannuation fund members without it reaching a threshold of being "personal financial advice", such as information in relation to pensions.

Seventh, in the recent review of the Banking Code of Practice, Recommendation 30 recommended that the Code be amended to require the banks to develop industry wide standards for competency and conduct for bank staff. As noted above, FINSIA considers that such a shift from prescriptive regulation would be a powerful opportunity for increased productivity in banking. Although FINSIA acknowledges this is initially a matter for ABA consideration, it also is a fair matter for consideration by the Commission.

Conclusion

FINSIA's Councils, leadership team and members are eager to engage with the Productivity Commission in its work to support professionalisation of the industry, professional education, and professional standards, all of which deliver the best productivity gains and community outcomes.

We would be delighted to discuss the important issues raised in further detail at your convenience.

Chris Whitehead
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