

Financial Services Royal Commission The Final Report & Implications for the Next 12 Months

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ACC Australia – In-house Counsel day

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“The financial services industry is too important to the economy of the nation to allow what has happened in the past to continue or to happen again”

Commissioner Hayne, Final Report, pg 4



Four overarching observations

- There's a close connection between conduct and reward
- There's an asymmetry of power and information between financial services entities and their customers
- The ability of consumers to rely on intermediaries is affected by conflicts of duty and interest
- Entities have often not been held to account

Primary responsibility for misconduct

‘There can be no doubt that the primary responsibility for misconduct ... lies with the entities concerned and those who managed and controlled those entities: their boards and senior management’

Therefore ‘close attention must be given to their culture, their governance and their remuneration practices’

Four key questions (1 & 2)

These are *'the pillars of the policy responses to be made'*.

- To what extent can the law be simplified so that its intention is met, rather than merely its terms being complied with, and how can this be done?
- Should the approach to addressing conflicts of interest change from managing conflicts to removing them, either by banning all or some forms of conflicted remuneration and sales or profit-based remuneration and/ or changing industry structures?

Four key questions (3 & 4)

- What can be done to improve compliance with the law (and industry codes), and the effectiveness of the regulators, to deter misconduct and ensure that grave misconduct meets with proportionate consequences?
- What more can be done to achieve effective leadership, good governance and appropriate culture within financial services firms so that firms satisfy the 6 'norms of conduct' that are expected?

The 6 norms of conduct expected

Financial services firms must:

- Obey the law
- Not mislead or deceive
- Act fairly
- Provide services that are fit for purpose
- Deliver services with reasonable care and skill
- When acting for another, act in the best interests of that other

Six general rules (1-3)

- The law must be applied and its application enforced
- Industry codes should be approved under statute and breach of key promises made to customers in the codes should be a breach of the statute
- No financial product should be 'hawked' to retail clients

Six general rules (4-6)

- Intermediaries should act only on behalf of, and in the interests of, the party who pays the intermediary
- Exceptions to the ban on conflicted remuneration should be eliminated
- Culture and governance practices (including remuneration arrangements) both in the industry generally and in individual entities, must focus on non-financial risk, as well as financial risk

Observations about making regulatory changes

- Adding a new layer of regulation will not assist, so changes should be made carefully
- One aim should be simplification
- The number and scope of special rules, exceptions and carve-outs should be reduced
- Legislation should draw explicit connections between the particular rules that are made and the fundamental norms to which those rules give effect

Implications of the Final Report



‘The Commission’s work has shown conduct by financial services entities that has brought public attention and condemnation.’



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