

Royal Commission interim report in a nutshell

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The Royal Commission's brief is to examine misconduct in the banking, superannuation and financial services industry. It has brought about significant public attention and criticism of unsound practices which had not been fully disclosed to regulators until this year. The Interim Report discussed the issues surrounding the Commission's purpose and the reasoning behind its actions during the period under investigation.

Financial services entities are in the business of selling products and services for fees and/or commissions. The Commission exposed a willingness which had emerged in the last decade to over-ride client centricity with a pure profit-making structure. The motivation for monetary rewards drove these institutions to take part in a level of misconduct that was either not noticed or not addressed by regulators, including ASIC and APRA. Each instance of misconduct presented was waived by these regulatory bodies with an immaterial consequence to the financial services entity that would not be anywhere near as much as what the law may have justified.

The purpose of the Royal Commission has been to anticipate or actively respond to newly-revealed information with a series of public announcements and disclosures. These announcements are in relation to the remediation or refund programs for clients affected by an entity's poor conduct. The announcements are also bringing about a standard of transparency to the public regarding fundamental changes in the industry, including the sale of whole divisions of a business, or a concentrated regulatory focus on particular activities and changes in industry structure or remuneration.

Entities are required to perform their licensed activities and services "efficiently, honestly and fairly", which contradicts their conduct more frequently than expected. The Interim Report aims to address the ideas surrounding how each law and regulation should be enforced or administered in order to make a difference in how these institutions will continue to act over the long term.

The Commissioner has identified the following issues, among many more, that will be addressed in the final report:

- What duties does an intermediary owe to a borrower and how can entities' systems be improved to detect and prevent breaches of responsible lending obligations by intermediaries?
- How does a financial adviser's employer or advice licensees encourage the provision of sound advice (including, where appropriate, telling the client to do nothing)?
- What inquiries should a diligent and prudent banker make when deciding whether to lend to an SME and is it enough that the lender satisfy itself the borrower can repay the loan and that the business plan is not obviously flawed?
- If the guarantor is a volunteer and, if further, the guarantor is aware of the nature and extent of the obligations undertaken by executing the guarantee is there some additional requirement that must be shown to have been met before the guarantee was given if it is to be an enforceable undertaking?
- How are borrowers and lenders in the agricultural sector to deal with the consequences of uncontrollable and unforeseen external events and does the 2019 Banking Code of Practice provide adequate protection for agricultural businesses? If not, what changes should be made?
- Do financial services entities have in place appropriate policies and procedures to assist Aboriginal and Torres Strait Islander people:
 - To overcome obstacles associated with the geographical remoteness?
 - To address the cultural barriers to engagement that some face?
 - To address the linguistic barriers to engagement that some face?
 - To address the obstacles posed for some by their level of financial literacy?
- Is the law governing financial services entities and their conduct too complicated?
 - Does it impede effective conduct risk management?
 - Does it impede effective regulatory enforcement?
- Are ASIC and APRA's enforcement practices satisfactory? If not, how should they be changed?
- If some or all intermediaries should owe the customer a duty to act in that customer's interests, or best interests, is it enough to prescribe the duty and direct 'management' of conflicts between interest and duty?
- Do the events that have happened suggest that manufacturers of financial products should not be permitted to provide, whether by employee or authorised representative, personal financial advice in relation to products of a kind it manufactures?

The final report is due to be submitted to the Governor-General by 1 February 2019.