

AGENDA PAPER

Item Number: 10
Date of Meeting: 14 June 2018
Subject: Update on the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission)

Action required For discussion For noting For information

Purpose

To provide the Board with an update on the key matters raised at the Royal Commission in the context of the financial planning industry which has been reported in the financial press to date.

Background

APESB issued APES 230 *Financial Planning Services* (APES 230) in April 2013, with an effective date of 1 July 2014 apart from the sections relating to remuneration which became effective on 1 July 2015.

In December 2017, the Australian Government appointed The Honourable Kenneth Hayne AC QC to conduct a Royal Commission into misconduct in the banking, superannuation and financial services industry in Australia.

The Royal Commission is tasked with inquiring whether conduct by financial services entities falls below community standards and expectations and amounts to misconduct. The Commission will consider the root cause of any misconduct, the adequacy of relevant laws, policies, and self-regulation.

The Royal Commissioner is scheduled to release an interim report of findings by 30 September 2018, with the final report to be released by 1 February 2019. The findings in the report are expected to lead to changes in the financial services industry, and may need to be considered by the APESB in terms of the impact on its pronouncements (such as APES 230).

Update on Royal Commission

Scope of the Royal Commission

The Royal Commission is considering a broad range of matters in relation to the financial services industry. As part of completing the inquiry the Commissioner has been conducting public hearings which focus on specific aspects of the financial services industry. The scheduled public hearings, including the focus of each hearing and the case studies discussed, are set out in Table 1 below.

Table 1: Summary of the Royal Commission Public Hearings

Public Hearing	Focus	Case Studies
<p>1</p> <p>(13 - 23 March 2018)</p>	<p>Individual Consumers and credit products</p> <p>The treatment of consumers by banking and financial services providers in connection with a number of credit products, including residential mortgages, car finance and credit cards.</p> <p>The arrangements and practices of banking and financial services providers and their intermediaries.</p>	<ul style="list-style-type: none"> • Residential Mortgages • Car Finance • Credit Cards • Add-On Insurance Products • Credit Offers • Account Administration
<p>2</p> <p>(16 April - 27 April 2018)</p>	<p>Financial Advice</p> <p>The conduct of financial services entities that provide financial advice to consumers, including:</p> <ul style="list-style-type: none"> • the treatment of consumers, • compliance with the law and community standards and expectations, and • the sufficiency of the current legal and regulatory structure. 	<ul style="list-style-type: none"> • Fees for no service • Investment platform fees • Inappropriate financial advice • Improper conduct by financial advisers • The disciplinary regime for the financial advice profession
<p>3</p> <p>(21 May - 1 June 2018)</p>	<p>Small & Medium Businesses and credit products</p> <p>The conduct of financial services entities in respect of their dealings with small and medium enterprises, in particular in providing credit to businesses.</p> <p>The hearings will also explore the current legal and regulatory regimes, as well as self-regulation under the Code of Banking Practice.</p>	<ul style="list-style-type: none"> • Responsible lending to small businesses • Approach of banks to enforcement, management and monitoring of loans to business • Product and account administration • Extension of unfair contract terms legislation to small business contracts • The Code of Banking Practice
<p>4</p> <p>(25 June - 29 June, and 2 July - 6 July 2018)</p>	<p>Remote & Regional Communities</p> <p>Issues affecting Australians who live in remote and regional communities, which relate to farming finance, natural disaster insurance, and Aboriginal and Torres Strait Islander Australians' interactions with financial services entities.</p>	<p><i>[Not released at the date of preparing report]</i></p>

APESB Technical Staff have focused on the developments during the second public hearing which are of most relevance to financial planning services.

Issues in relation to Financial Advice

The case studies discussed during the public hearing into financial advice have uncovered many issues and highlighted some serious misconduct by financial services entities. The issues include:

- charging fees for no service;
- paying and/or receiving commissions outlawed under FOFA;
- false or misleading statements to the regulators;
- poor governance and inadequate risk management systems at entities;
- automatic deduction of advisor fees without informed consent of client;
- providing inappropriate advice to clients; and
- propensity for financial services entities to use associated service providers rather than products and providers that were in the best interest of the client.

Refer to Agenda Paper 10(a) for further details on the issues reported in the financial press in respect of the Royal Commission and its public hearings.

Potential impact from the Royal Commission

The findings to date in the Royal Commission have caused wide spread community concern. There is a general expectation that the findings will include a number of recommendations that will have a significant impact on the financial planning industry. Some of the potential recommendations that have been suggested by stakeholders include:

- potential ban (or restriction) of vertically integrated financial services businesses;
- removal of commissions including grandfathered commissions and commission on life insurance products
- support for a fee-for service models of remuneration;
- increased regulation on financial product design/offerings
- restrictions on remuneration practices (e.g. bonuses not linked to commissions or product sales);
- products and the need to advise clients of the impact of their decisions
- licensing of individual advisers to provide financial advice rather than licensing of entities (consistent with the model applied by lawyers and accountants);
- criminal charges for a number of financial services entities based on findings to date.

Other developments in the financial services industry

Technical Staff note the following other key developments in the financial services industry:

- establishment of the [Australian Financial Complaints Authority \(AFCA\)](#) – a new authority that provides a one-stop shop for consumers with a financial complaint;
- Establishment of a [new body to boost financial capability](#) in Australia. The body will administer grants and improve capabilities amongst Australians of financial products and services;
- Increases in [criminal and civil penalties for corporate misconduct](#) and an increase in ASIC's powers to effectively deter, prosecute, and punish those who do the wrong thing; and
- The release by APRA of the [final report of the Prudential Inquiry](#) into the Commonwealth Bank of Australia (CBA) and the related enforceable undertaking by CBA.

Way forward

The Royal Commission is still in progress and the final recommendations are not expected until early 2019.

APESB will continue to monitor the progress of the Royal Commission and assess its implications to APESB's review of APES 230.

Staff Recommendation

The Board note and discuss the update on the key matters raised at the Royal Commission in the context of the financial planning industry.

Material Presented

Agenda Item 10(a) Summary of articles relating to the Royal Commission

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