

Insights from the Australian Banking Royal Commission

IESBA NSS Meeting – Paris, France, 13 May 2019

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Agenda

- Australian Banking Royal Commission
 - Background
 - Scope
 - Revelations
 - Reports
- Impact on governance and culture
- Misconduct and specific findings
- Impact on Professional & Ethical Standards in Australia
 - Code of Ethics
 - Financial Planning Services

Australian Banking Royal Commission

Background

Call for commission to address issues:

- Handling of insurance claims
- Inappropriate financial planning advice
- Mortgage broking services not in best interest of consumers
- Banks not complying with legislative requirements



Background and Scope

- Established December 2017
- The Honourable Kenneth Hayne AC QC appointed Royal Commissioner
- Scope:
 - Was there misconduct?
 - Was conduct below community expectations?
 - What was the root cause of any misconduct?
 - Are laws, policies and self-regulation adequate?



Scope

10,140

submissions from the public

97

initial submissions

75

case studies reviewed

Over

6,500

documents reviewed

Scope

68 days of public hearings

134 witnesses

400 witnesses statements

7 key focus areas:

- Consumer lending
- Financial advice
- SME lending
- Regional and remote communities
- Superannuation
- Insurance and
- Causes of misconduct

Revelations

Westpac advice cost couple dream retirement, banking royal commission hears

19 April 2018

Commonwealth Bank charged fees to dead clients, royal commission hears

19 April 2018

Banking royal commission: AMP executive says company put profits before the law

17 April 2018

Reports

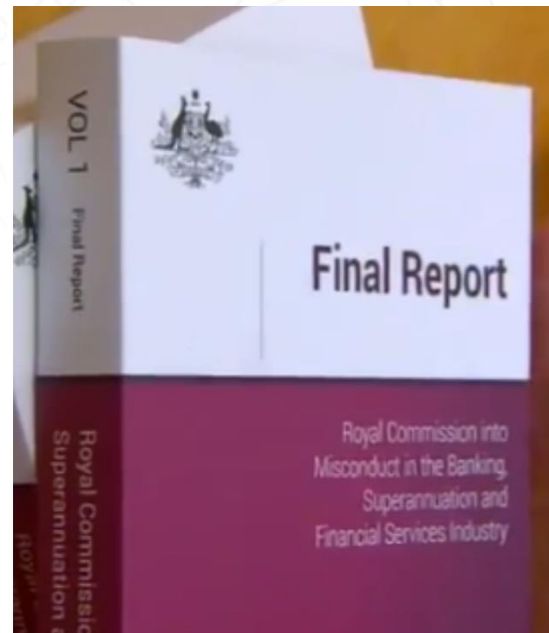
Interim report

- Issued 28 September 2018
- Summary of findings from Public Hearings 1-5

Final report

- Issued 4 February 2019
- Observations about conduct & causes
- 76 Recommendations by the Commission

Reports accessible at **Royal Commission website**



Impact on governance and culture

Accountability

*“There can be no doubt that the **primary responsibility** for misconduct in the financial services industry **lies with** the entities concerned and those who managed and controlled those entities: the **boards and senior management.**”*

*“Nothing that is said in this report should be understood as **diminishing** that responsibility. Everything that is said in this report is to be understood in the light of that one undeniable fact: **it is those who engaged in misconduct who are responsible for what they did and for the consequences that followed.**”*

– The Honourable Kenneth Hayne AC QC

Impact on Governance and Culture

- Heightened focus on the roles & expectations of Boards & directors
- Fundamentals sound – but community expectations shifting
- Accountability deficit
- Focus on fairness, values and purpose
- Lessons can be applied to all sectors – not just financial services



Governance implications

Culture	<ul style="list-style-type: none">• Increase intensity of oversight• Identify and deal with issues in a timely manner
Remuneration	<ul style="list-style-type: none">• Affects and reflects culture• Non-financial risk consequences
Role of the Board	<ul style="list-style-type: none">• Superintendence, not day-to-day management• Robust challenge to management• Quality information is vital
Directors' duties	<ul style="list-style-type: none">• Not binary choice• Duty to corporation = all stakeholders' interest in long term
Regulators	<ul style="list-style-type: none">• Harsh critiques• Accountability demands consequences

Regulatory implications

- ASIC adopting a proactive, '**why not litigate**' stance
 - Close & Continuous Monitoring
 - Corporate Governance Taskforce
 - Office of Enforcement – **20+** criminal investigations
 - Additional proposed funding of **\$500 million**
- Increased maximum penalties for breaches of corporations law
 - Civil penalties from \$200K to **\$1.05M** (or 3 x benefit gained)
 - Criminal penalties up to **15 years imprisonment** (from 5 years)
- 40+ pieces of primary legislation to implement Hayne recommendations

Looking ahead

- Culture, remuneration and governance march together
- Sharpen your sense of ‘chronic unease’ on non-financial risk
- *Complacency & ‘Can we?’ vs Proactivity & ‘Should we?’*
- Some very practical impacts – minutes, composition, insurance
- Litigious, ambitious regulators eager to test the law
- Broader trust & confidence issues won’t be ‘communicated’ away
- Authenticity and accountability

Misconduct & specific findings of the Royal Commission

Misconduct

- Misleading financial advice
- Irregular mortgage lending activities
- Breaches of responsible lending obligations
- Not acting in best interests of clients
- Fees for no service (\$3 billion & growing)
- Breached the law
- Deceived regulators



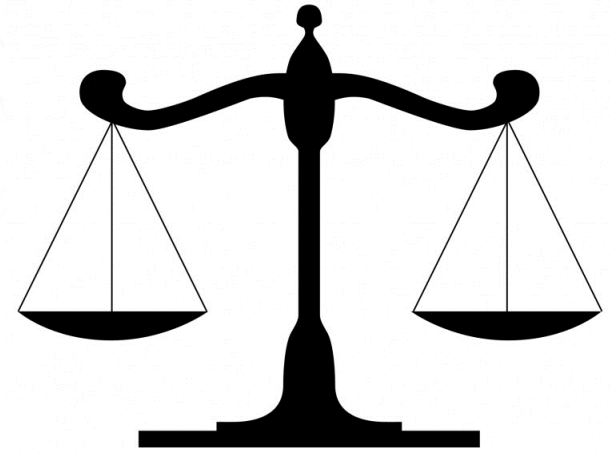
Reasons for misconduct

- Pursuit of **Profit** and **personal gain**
- **Because they could**
(power imbalance for consumers)
- **Conflicts unable** to be **managed**
(duty to client eclipsed by self)
- **Breaking the law** had **limited consequences** – not enforced

MISCONDUCT

Six Fundamental Principles

1. Obey the law
2. Do not mislead or deceive
3. Act fairly
4. Provide services that are fit for purpose
5. Deliver services with reasonable care and skill
6. When acting for another, act in the best interests of that other



Impacts

- Large remediation costs:
 - AMP \$1.2b
 - CBA \$1.5b
 - NAB \$1.2b
 - ANZ \$1.5b
 - Westpac \$1.8b

~\$7 billion
- Grandfathered commissions to be banned
- 43% increase in number of consumer complaints



Market reactions



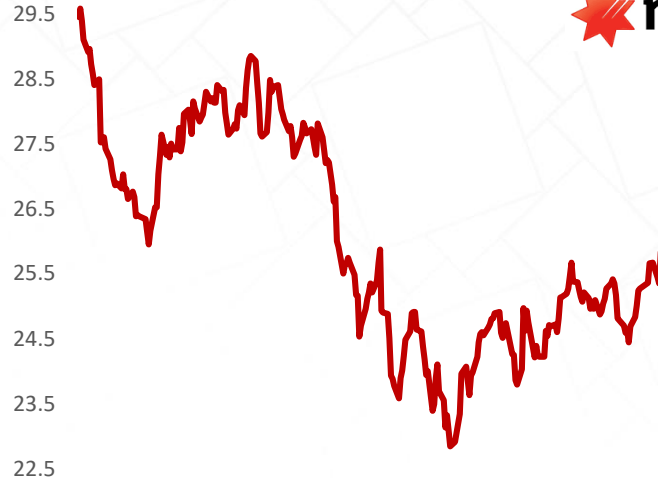
1 May 2018 to 1 May 2019

High \$4.15, 2 May 2018

Low \$2.09, 27 March 2019

Current \$2.27, 1 May 2019

6 resignations – CEO, Chair, 3 Directors,
Chief Risk Officer



1 May 2018 to 1 May 2019

High \$29.58, 2 May 2018

Low \$20.84, 20 December 2018

Current \$25.83, 1 May 2019

Resignations of CEO and Chair

Impact on Professional and Ethical Standards in Australia

APESB 110 Code of Professional Ethics for Accountants (including International Standards)

- Issued November 2018
(effective 1 January 2020)
- Based on the International Code
- Overarching pronouncements
- Fundamental principles & conceptual framework



Royal Commission impact on APES 110

- Limited change expected
- Fundamental principles consistent with Commission fundamental principles
- Conflicts of interest – specific laws in Australia?

APES 230 *Financial Planning Services*

- Issued April 2013
- Covers all financial planning and advice provided by accountants
- Sets out specific remuneration requirements for Financial Planning Services
- Strongly recommends accountants adopt a fee-for-service basis
- Broader provisions than legislation
 - best interest duties to **all clients** and **all financial planning services**

APES 230 *Financial Planning Services*

Financial Advice

- Fee for service preferred; if not:
- Informed consent for fees based on funds under management
- Informed consent required on a biennial basis



APES 230 *Financial Planning Services*

Risk and credit products

- Fee for service preferred; if not:
- Commissions allowed subject to conditions
- Informed consent before commissions commence including:
 - annual disclosure of commissions received or receivable
 - obtaining 3 comparative quotes for new products/loans
 - disclose impact on timing of commissions when products/loans change
- Grandfathered commissions allowed in line with legislation

Royal Commission impact on APES 230

- Grandfathered commissions to be banned from 1 January 2021
- Informed consent changes to annual basis
- Reconfirmed Fee for Service approach



Further Information

For more information visit **www.apesb.org.au**

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