

## AGENDA PAPER

**Item Number:** 2  
**Date of Meeting:** 3 December 2018  
**Subject:** Update on the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission)

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Action Required     For Discussion     For Noting     For Information

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### Purpose

To provide the Board with an update on the key matters raised by the Royal Commission in the context of the financial planning services.

### 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 whether the conduct amounts to misconduct. The Commission will consider the root cause of any misconduct, the adequacy of relevant laws, policies, and self-regulation.

The Board requested in the June 2018 Board Meeting that technical staff keep a watching brief over the developments of the Royal Commission, and this Agenda Paper outlines the developments since the September 2018 Board Meeting.

### The 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
n.b. Rounds 1-4 was covered by Agenda Item 10 of the June 2018 Board Meeting.		
n.b. Round 5 was covered by Agenda Item 2 of the September 2018 Board Meeting.		
<b>6</b>  (10 September - 21 September 2018)	<b>Insurance</b>  Issues associated with the sale and design of life insurance and general insurance products, the handling of claims under life insurance and general insurance policies, and the administration of life insurance by superannuation trustees.  The hearings also considered the appropriateness of the current regulatory regime for the insurance industry.	<ul style="list-style-type: none"> <li>• Life Insurance</li> <li>• General Insurance</li> <li>• Regulatory Regime</li> </ul>
<b>7</b>  (19 November - 23 November 2018, and 26 November - 30 November 2018)	<b>Policy questions</b>  The seventh round of public hearings will focus on policy questions arising from the first six rounds.	<ul style="list-style-type: none"> <li>• Causes of misconduct</li> <li>• Possible responses (including regulatory reform)</li> <li>• The role of ASIC and APRA</li> </ul>

## Matters for Consideration

### (a) Royal Commission Update

#### Issues in relation to Insurance

The sixth round of public hearings focussed on insurance (life insurance, general insurance and the industry's regulatory regime). The case studies discussed during the public hearing uncovered many issues and highlighted some serious misconduct by Insurance companies. The issues included:

- wrongly denying claims;
- overcharging customers; and
- misselling policies, and cold-calling tactics which potentially resulted in criminal breaches.

#### Potential impact from the Royal Commission on the insurance industry

A high-level overview of the key policy questions/considerations arising from the sixth public hearing include:

- Adequacy of the regulatory regime to minimise consumer detriment;

- The role and impact of incentives, and whether banning conflicted remuneration is sufficient to address the use of inappropriate sales tactics by sales representatives;
- Potential consequences for financial services entities that fail to design, maintain and resource their compliance systems;
- A potential ban on certain types of insurance products such as accidental death and accidental injury; and
- Extension of unfair contract terms protection contained within the Australian Consumer Laws to insurance contracts.

### Interim Report

The Commissioner released an interim report of findings on 28 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).

The interim report covers the first four rounds of hearings: customer lending, financial advice, small and medium-sized enterprise (SME) lending, agricultural lending, and remote communities.

APESB Technical Staff have reviewed the interim report and have developed a summary of key matters relating to financial planning services. Refer to Agenda Item 2(a).

### **(b) Other key developments in the financial services industry**

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

- The FPA has lodged an [expression of interest](#) with ASIC to enforce a new compliance scheme for members and non-members. The separate legal entity, Code Monitoring Australia, would be administered by the FPA and would be responsible for enforcement of a compliance scheme for the entire financial planning profession.
- ASIC has [proposed updates](#) to *Regulatory Guide 105 Licensing: Organisational competence* (RG 105) to support the professional standards reforms, which aim to lift the education, training and ethical standards in the financial advice industry. The proposals in *Consultation Paper 305 'Organisational competence requirements for advice licensees: Update to RG 105' (CP 305)* are based on the existing draft guidance published by the Financial Adviser Standards and Ethics Authority (FASEA). More information on the Consultation Paper can be found [here](#).
- The Australian Financial Complaints Authority (AFCA) commenced operations from 1 November 2018 and takes over dispute resolution from the Financial Ombudsman Service, the Credit & Investors Ombudsman, and the Superannuation Complaints Tribunal. AFCA will work with complainants and financial firms to reach fair outcomes and is expected to play an important role

in restoring trust in Australia's financial institutions in the wake of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

### **Way forward**

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

APESB technical staff will continue to monitor the progress of the Royal Commission, other developments in the financial services industry, and assess the implications of these on APESB's suite of pronouncements, and on APES 230 in particular.

### **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 2(a)      Summary of Royal Commission Interim Report sections relevant to Financial Planning Advice

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