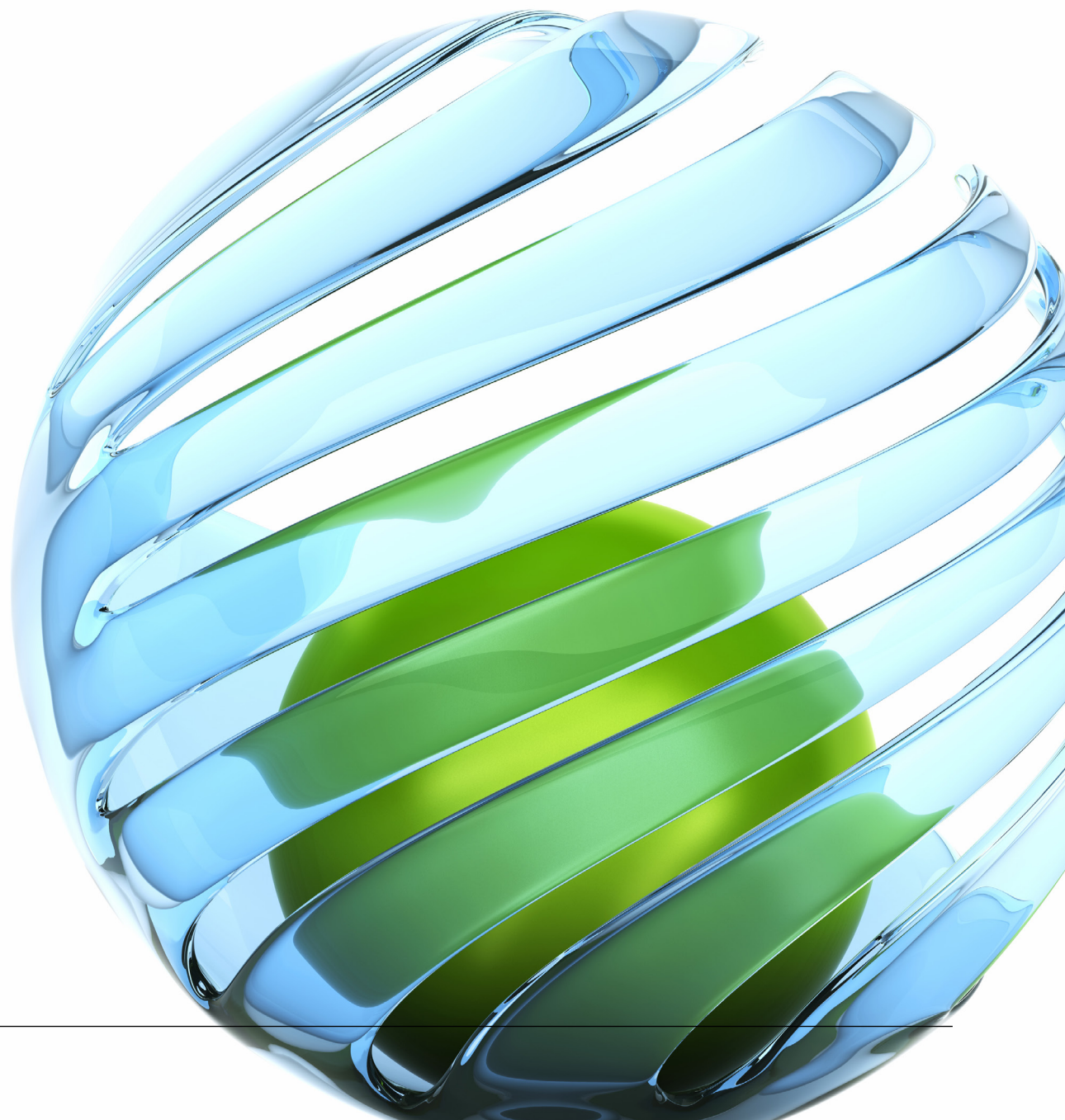


ALLEN & OVERY

Australian Royal Commission
into Misconduct in the Banking,
Superannuation and Financial
Services Industry: *Key Themes in
the Final Report*



Introduction

The final report (the **Report**) of the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the **Royal Commission**) was released on 4 February 2019. The Report provides 76 specific recommendations to the Government, the financial sector, and financial regulators to redress the misconduct revealed by the inquiry. These recommendations reflect the conclusions the Commissioner reached in respect of the questions he posed in the interim report published on 28 September 2018 and based on further work undertaken by the Royal Commission. [\[link\]](#)

The Report primarily focuses on financial services entities operating in retail markets. Strong criticism is made of the historical and on-going misconduct of mortgage brokers and financial advisors. Most of the recommendations target these actors but other financial services entities need to take note of the recommendations. No recommendation is made to end vertical integration of financial product manufacture and financial advisory/wealth management units, as some commentators had feared. In the Commissioner's words, *"I am not persuaded that it is necessary to mandate structural separation between product and advice"*. However, the Report notes that most Australian financial institutions have been (or are) divesting their wealth management arms.

Notwithstanding this lack of structural market reform, the Commissioner makes a series of recommendations with implications for financial services entities.

While there is significant material on which to comment arising from the Royal Commission's 76 recommendations, we focus our commentary on four areas of interest:

- I. Conduct, culture and governance (the focus and explanation for the poor conduct that led to the Royal Commission)
- II. Conflicts of interest and professionalism (particularly in the context of financial advice and advisers)
- III. Remuneration structures (following on from, and to help address, issues of conduct, culture and governance and conflicts of interest)
- IV. Regulation and the regulators (particularly the need to strengthen regulatory oversight)

In its response to the Report, the Australian Federal Government (the **Government**) stated that:

"misconduct must end and the interests of consumers must now come first. From today the [financial] sector must change, and change forever."

Whether the Government's and financial sector's response to the Report ultimately results in such a fundamental change remains to be seen.

Australian Prudential Regulation Authority (**APRA**), as well as the Government, have replied to the recommendations in the Report and already detailed some of their proposed actions.

Financial institutions with a presence in Australia, including banks and other intermediaries with branches or subsidiaries in Australia, will need to assess how this Report and the subsequent response will affect them. Globally, the impact of the Report is already being felt as regulators, including for example the Hong Kong Monetary Authority, cite the findings of the Royal Commission in their own bank culture reform initiatives.

(I) Conduct, Culture And Governance

“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: their boards and senior management.”

(pg 4 of the Report)

In the context of conduct, culture and governance, the Royal Commission makes two key recommendations.

First, all financial services entities should, as often as reasonably possible, take proper steps to assess the entity’s culture and governance, identify and deal with problems, and determine whether changes made are effective.

Second, the Royal Commission recommends that APRA, in its prudential supervision of APRA-regulated entities, builds a supervisory program that promotes a culture which mitigates the risk of misconduct amongst APRA-regulated institutions.

In response to this second recommendation, APRA has referred to its existing efforts around supervision of governance and culture. We expect that APRA’s revision of its prudential standards will increasingly incorporate standards of conduct built around “culture” and “governance”, increasing regulatory compliance requirements, burden and costs for APRA-regulated entities.

Elsewhere, we are seeing, for example in Hong Kong, that other regulators are already taking action to assess and foster a sound culture around governance, incentives and feedback mechanisms in banks.

“It is evident that culture can drive or discourage misconduct.”

(pg 334 of the Report)

(II) Conflicts of Interest and Professionalism

“Not all conflicts can be ‘managed’. As far as reasonably possible, conflicts should be eliminated.”

(pg 179 of the Report)

The Report identifies the inability of financial services entities to manage and minimise conflicts of interest as a major failing in both the interim and final reports, particularly in the context of advice and financial advisors. The bulk of the Report’s assessment of conflicts is directed at the retail banking sector, and its financial intermediaries in the form of insurance and mortgage brokers. The underlying theme is recognition that if a person selling a financial product is paid by the person making the financial product, there is an inherent conflict of interest. This conflict cannot be resolved by disclosure of the conflict alone. Indeed, the Commissioner suggested that such conflicts should be eliminated as far as reasonably possible – a departure from the current approach outlined by the Australian Securities and Investments Commission (ASIC) in “Regulatory Guide 181 – Licensing: Managing conflicts of interest”, where it is stated that conflicts should be avoided *“where they cannot be adequately managed through controls and disclosure”*.

The Report proposes a range of ways to eliminate conflicts and increase professionalism in the financial advisory industry.

1. Improvements on the quality of advice

Like many regulatory enquiries of financial institutions across the globe, the Royal Commission noted that clients have often been given poor advice that has left them worse off than they would have been if proper advice had been given. The cases of such ‘inappropriate’ advice drew attention to four recurring points:

- advisers proposing actions that benefited the adviser;
- advisers proposing actions that benefited the licensee either with whom the adviser was aligned or by whom the adviser was employed;
- advisers lacking skill and judgement; and
- licensees being unwilling to find out whether poor advice had been given and, if it had, to take timely steps to put it right.

The first two points directed attention to the conflict between the adviser’s duty to the client and the adviser’s personal interests.

The premise for the Future of Financial Advice (FoFA) reforms of 2012 was that conflicts of the kind described do exist, must be recognised and should be regulated. The FoFA reforms did not seek to eliminate the conflicts. Instead, the reforms sought to ameliorate the consequences of such conflicts. The Report notes that legislation sought to do this by imposing on advisers the best interests obligation with associated requirements that the adviser provide appropriate advice and give priority to a client’s interests. The Corporations Act provides that the best interests obligation will be met if an adviser follows the steps described in section 961B(2) including by identifying the client’s objectives, investigating the financial products that might meet those objectives and basing all judgments on the client’s objectives (a ‘safe harbor’ provision).

The Report considers whether, to better address conflicts of interest within the financial services industry, the safe harbour provision should be removed. *“The safe harbour provision currently has the effect that, in practice, an adviser is required to make little or no independent inquiry into, or assessment of, products. By prescribing particular steps that must be taken, and allowing advisers to adopt a ‘tick a*

box' approach to compliance, the safe harbour provision has the potential to undermine the broader obligation for advisers to act in the best interests of their clients."

However, the Royal Commission stopped short of going that far, recognising that there are already many changes affecting financial advisers that will come into effect over the next few years and that there will be more if the recommendations in the Report are adopted. The Report therefore recommends (under recommendation 2.3), that in three years' time the Government, in consultation with ASIC, review the effectiveness of measures that have been implemented to improve the quality of financial advice. In the view of the Royal Commission, that review should consider whether it is necessary to retain the safe harbour provision and "[u]nless there is a clear justification for retaining that provision at that time, it should be repealed".

2. No-Hawking Requirements

The Report criticises the "hawking" (ie unsolicited offers or aggressive sales tactics) of financial products, where historically retail customers were pushed by unscrupulous salespeople to purchase financial products they did not need. The Royal Commission heard extensive evidence of such customers being offered insurance and superannuation products through unsolicited phone calls, leading to the purchase of financial products "they neither want nor need". In particular, the Report recommends a prohibition on the hawking of superannuation products and insurance products. The Report's concern is, at its heart, that the ordinary retail customer is "unsuspecting": he or she lacks the information and expertise necessary to critically engage with the sales offer and is vulnerable to exploitation.

The Government agreed hawking of superannuation products should be prohibited, and the definition of hawking should be clarified to include selling of a financial product during a meeting, call or other contact initiated to discuss an unrelated financial product. Should these changes be implemented, financial entities will need to be mindful of their engagement with retail customers and have appropriate internal controls to address the risk of non-compliance.

3. Mortgage Broker Remuneration

Arguably, the most radical proposal made in the Report is that borrowers, not lenders, should pay mortgage brokers a fee for acting in connection with home lending. This would invert the traditional structure of the mortgage broker market in Australia, whereby brokers are paid commission from lenders on the basis of business sold. This is seen to give rise to a conflict of interest: a broker's remuneration depends on the volume of, and which, financial products it sells, which may not align with a retail customer's best interests. Attempting to balance these interests has necessarily resulted in a balancing of competing interests rather than the prioritisation of the customer. In the words of the Commissioner: "*duties do not always overcome human biases, particularly when those biases are subconscious*". This recommendation would change the structure of mortgage broker business and would involve, first, the abolition of so-called trail fees (where mortgage brokers are paid a commission over the lifetime of the loan by the lender), and the prohibition of all lender-paid commissions.

The Government has agreed to address the issue in part; from 1 July 2020, the Government will prohibit the payment of trail commissions to mortgage brokers and mortgage aggregators on new loans, along with a blanket ban on volume-based commissions. At the same time, the Government will require that up-front commissions be linked to the amount drawn down rather than the amount made available by a loan. However, the Government has not committed to prohibit all lender-paid commissions. Rather, it has indicated it will ask the Australian Competition and Consumer Commission to look into the consequences of such a reform on the mortgage market, with particular concerns being the impact on credit availability for retail borrowers and corresponding risk of falling house prices and loan defaults.

4. Professionalisation of the Financial Advisory Profession (including increased reporting requirements for Australian Financial Services Licensees)

“One hallmark of a profession is the existence of a credible and coherent system of professional discipline where the ultimate sanction is expulsion...”

(pg135 of the Report)

Financial advisors are currently regulated by a range of regulatory and disciplinary bodies. The Royal Commission considered *“whether this segmentation imposes a satisfactory standard of behaviour on what is, as numerous witnesses noted, an aspiring profession”*. Its conclusion is clear: *“It does not”*. The Report blames the fragmentary disciplinary arrangements for financial advisors for the lack of professional standards of conduct. Against this background, the Report recommends a new centralised disciplinary system coupled with additional reporting obligations by Australian Financial Services Licence (AFSL) holders. Many global financial institutions with a presence in Australia, as AFSL holders, will be impacted when these recommendations take effect.

In addition, the Report concludes that licensees are not doing enough to communicate between themselves about the backgrounds of prospective employees and that licensees frequently fail to respond adequately to requests for references regarding their previous employees. The result is that financial advisers facing disciplinary action from their employer can shop around for another licensee to employ them. Accordingly, the Report recommends (recommendation 2.7) that all AFSL holders must give effect to reference checking and information-sharing protocols for financial advisers similar to what is provided by the Australian Bankers’ Association. Similarly, the Securities and Futures Commission in Hong Kong has just amended its licensing and notification forms to expressly require, when a licensed individual ceases to act for a licensed corporation, disclosure to the Commission of any investigations on the individual commenced by the corporation (i) within six months preceding their cessation of employment or (ii) any time after their cessation of employment. The goal seems clear – identifying and following bad apples within the market.

The Report also recommends several additional obligations be placed on AFSL holders that engage financial advisors who provide advice to retail clients as conditions of their licence.

First, under recommendation 2.8, all AFSL holders must report to ASIC on a quarterly basis where the AFSL holder *“believes and has some credible information in support”* of concerns a financial advisor has engaged in illegal, deceptive, fraudulent misconduct, deliberate non-compliance with financial services law, or adverse audit findings that, if proven, would likely result in immediate dismissal (so-called “serious compliance concerns”).

Second, under recommendation 2.9, all AFSL holders must, after detecting that a financial adviser has engaged in misconduct in respect of financial advice given to a retail client, make whatever enquiries are reasonably necessary to determine the nature and extent of the misconduct, and inform and remediate affected clients.

In addition to quarterly reports to ASIC regarding “serious compliance concerns”, the Report proposes that AFSL holders make the same report to a new disciplinary body in addition to making reports of other compliance concerns on a voluntary basis. The Report is not prescriptive with regard to the powers of this new body (including sanctioning powers) or how it would interact with other bodies such as ASIC and/or the industry bodies and their code of ethics monitoring, but suggests

that it might monitor compliance with ethics codes. Separately, the Report also highlights the importance of industry codes and uncertainty around the enforceability of those codes. The Report recommends that the industry should put forward “*enforceable code provisions*”, which will be approved by ASIC, and a breach of which will constitute a breach of the law (recommendation 1.15). Customers would be able to elect whether to enforce the breach through existing internal or external dispute resolution mechanisms or through the courts. Industry bodies will therefore play a crucial and enhanced role in the proposed regulatory framework; how the industry will react and whether and the form in which these proposals will be adopted by the industry will be an important area to focus on.

According to the Report, these recommendations would form an important part of a unified disciplinary system linked to the enhancement of professionalism in the financial advice industry.

In response, the Government has agreed to mandate these additional obligations as part of its strengthening of ASIC’s role as Australia’s corporate conduct regulator to enforce and administer Australia’s corporate and financial services laws.

The Government has also committed to supporting the professionalisation of the industry through the creation of a centralised disciplinary system for financial advisors. However, apart from the links to the existing AFSL regime and to ASIC’s existing regulatory powers, no details have emerged as to the shape or function of this system.

(III) Remuneration Structures

“Remuneration and incentives, especially variable remuneration programs, tell staff what the entity rewards. Hence, remuneration and incentives tell staff what the entity values.”

(pg 335 of the Report)

The Royal Commission identifies the connection between remuneration structures and conduct, culture and governance, and conflicts of interest, and the Report contains various recommendations to address this. Proposed changes to mortgage broker remuneration have already been discussed in II above. In addition the Royal Commission has proposed the following additional changes.

1. Grandfathered Commissions

The Future of Financial Advice (FoFA) reforms prohibited certain remuneration arrangements for financial advice. FoFA contained “grandfathering” provisions which excluded certain pre-existing remuneration arrangements from this ban, including “conflicted remuneration” (remuneration which could reasonably be expected to influence the financial product advice given to retail clients). In recommendation 2.4, the Report recommends these grandfathering provisions be repealed “as soon as is reasonably practicable”.

In response, the Government has indicated that it will end grandfathering of conflicted remuneration from 1 January 2021, and will require any conflicted remuneration received after that date to be rebated to clients. The obligation to rebate will be owed by the entity who *receives* the remuneration (ie the financial advisor selling the product to the client), not the entity who issues the financial product. Accordingly, the financial consequences of failing to end conflicted remuneration practices will be borne by the financial advisors who receive the remuneration.

2. Remuneration and Review of Front-Line Employees

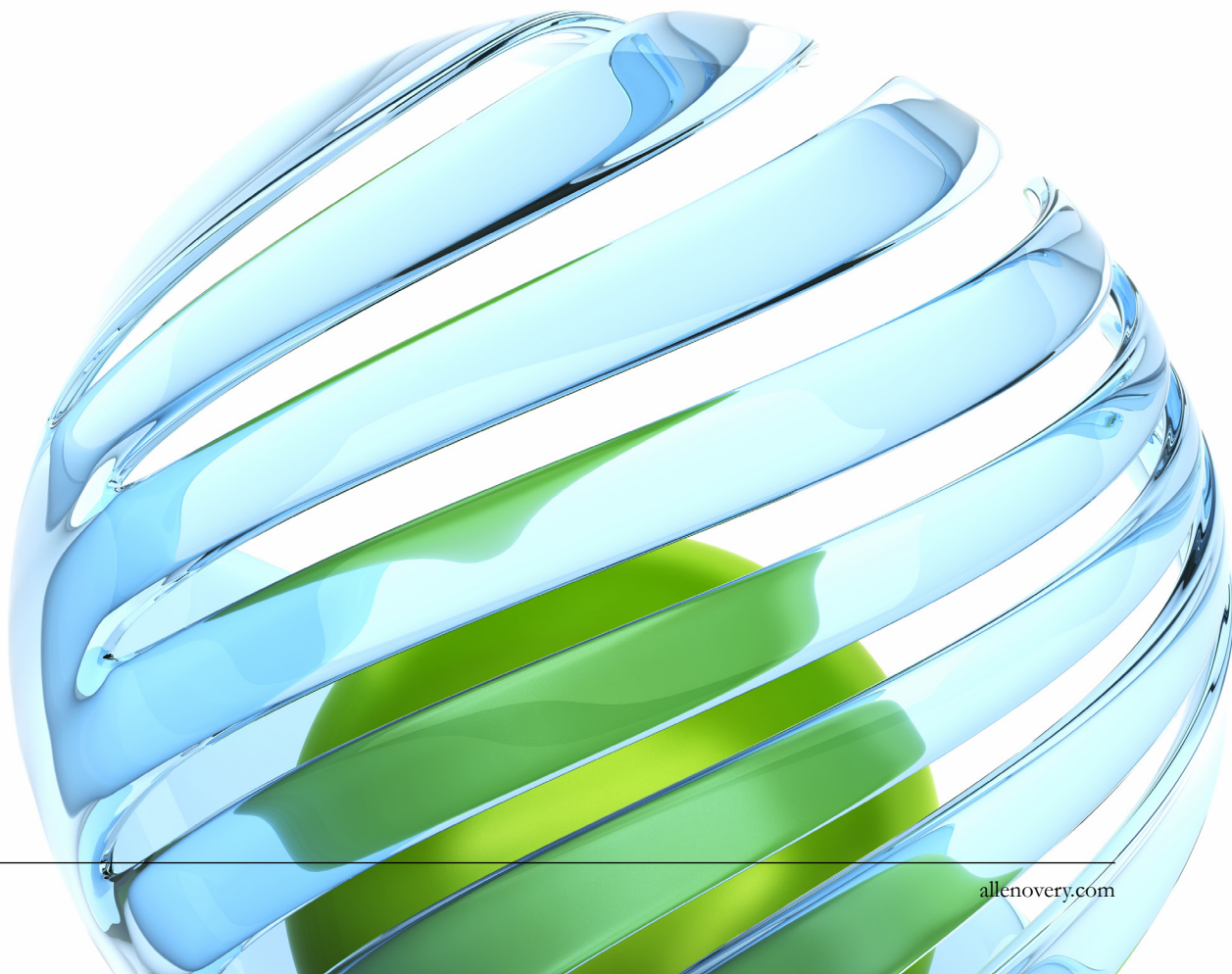
The Report recommends that all financial services entities engage in yearly reviews of the design and implementation of their remuneration for front line staff to ensure remuneration is tied not just to outcomes (eg volume of sales) but also customer service and regulatory compliance (recommendation 5.4). Front line staff is not defined. However, the Report indicates that the recommendation is targeted at client-facing staff. The Commissioner also recommends the adoption by retail banks of the recommendations of the 2017 Sedgwick Report, which reviewed product sales commissions and product-based payments in retail banking in Australia, specifically the imposition of caps on the percentage of remuneration which may be tied to financial metrics (recommendation 5.5).

The Government has stated its “support” for the proposed front-line remuneration review and adoption by banks of the recommendations in the Sedgwick Report, without indicating any intention to legislate to enforce such requirements.

3. Cap on financial metrics used in remuneration

The Report observes that poorly designed and executed remuneration policies can increase the risk of misconduct, and that the board and senior management of financial services entities have the greatest control over promoting a culture of consumer protection and risk management, and mitigating compliance, conduct and regulatory risks. Accordingly, the Report's recommendations attempt to curb the perceived pervasive *"profit-above-all"* attitudes possessed by financial entities by including proposals to limit the use of financial metrics in connection with long-term variable remuneration, encourage APRA-regulated institutions to reward management of non-financial risks, and undertake regular assessments of the effectiveness of remuneration systems. The Report notes that the Financial Stability Board (FSB), an international body established by the G20 that monitors and makes recommendations about the global financial system, published guidance on executive remuneration in 2018. In particular, the Report highlights FSB guidance that non-financial assessment criteria and malus or clawback arrangements be used to ensure variable remuneration of executives and incentivise good corporate behaviour. In making its recommendation on metrics for variable remuneration, the Report concludes that incorporation of non-financial metrics into APRA's revised prudential standards would be consistent with the Report's analysis *"and with international best practice"*.

The Government has indicated that it supports APRA acting on these recommendations. In this regard, APRA has announced that it will release proposed revisions to the Prudential Standard CPS 510, which sets out the minimum standards for good governance in APRA-regulated entities, by mid-2019. It remains to be seen how these proposed revisions will affect remuneration structures in foreign APRA-regulated entities.



(IV) Regulation and the Regulators

“...both ASIC and APRA recognise that their approach to enforcement must change. That change cannot be effected by the passing of legislation. It must come from within the agencies. But it is also important to strengthen the accountability of both – internally, by each separately applying principles modelled on the BEAR, and externally, by both being accountable to a new oversight body.”

(pg 480 of the Report)

1. Expansion of the Banking Executive Accountability Regime to all APRA- regulated entities

The Banking Executive Accountability Regime (**BEAR**), which came into force on 1 July 2018, has been seized upon by the Report to serve as a vehicle to expand regulatory oversight of the financial sector. The BEAR is designed to increase the accountability of financial institutions by providing a clear framework of responsibility for operational and management decision-making.

The Government had already agreed to extend the BEAR’s remit to all APRA-regulated entities starting with the largest Registrable Superannuation Entity (**RSE**) licensees (ie those entities which manage Australia’s compulsory superannuation savings regime) following the pre-Royal Commission plan to apply the rules to medium and small Authorised Deposit-Taking Institutions in 1 July 2019. The Government has also agreed to introduce a further regime for all other financial services entities, extending the BEAR to AFSL holders and Australian Credit Licence holders, market operators, and clearing and settlement facilities, reflecting APRA’s response to the interim report that contemplated following in the footsteps of the UK’s Senior Managers and Certification Regime.

In the Report, the Commissioner expressly states that other jurisdictions have already implemented “*systems of even greater reach*”, suggesting there is no reason not to go ahead with the proposed rollout. While the exact scope of expansion is unclear, further expansion of the BEAR is something that all AFSL holders (including, where relevant, asset managers and international banks) ought to be mindful of going forward.

2. APRA and ASIC joint administration of the BEAR

In an effort to foster greater coordination between ASIC and APRA, and given the existing overlap between conduct matters and prudential matters, the BEAR will become jointly administered by ASIC and APRA. From a practical standpoint, ASIC will deal with both the key accountability obligations in the BEAR as well as the related AFSL holder obligations under section 912A of the Corporations Act.

3. Co-regulation of Registrable Superannuation Entities

The Royal Commission seeks to clarify the regulatory roles of ASIC and APRA with respect to superannuation and the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*. First, the Report recommends that ASIC be given enforcement powers in respect of those aspects of the SIS Act that cover the conduct of an RSE licensee that may harm a consumer. Second, the Report suggests that ASIC's role in relation to the SIS Act should be to focus on conduct and disclosure, particularly in respect of the relationship between licensees and individual consumers, whereas APRA should be responsible for establishing and enforcing its prudential standards.

4. Statutory obligation for APRA and ASIC to cooperate

“Formalised co-ordination and co-operation between the regulators can no longer be an aspiration. It must become a reality... joint responsibility and co-operation necessitates substantial commonality of information.”

(pg 459 of the Report)

The Report recalls the 2003 HIH Royal Commission's findings of the failed joint relationship between ASIC and APRA and the recommendations for communications and exchanges to be undertaken in a systematic manner. The recommendations of the present Royal Commission echo the findings from 2003 by calling for greater cooperation between APRA and ASIC, the sharing of information to the *“maximum extent practicable”*, and the notification of the other whenever there is a suspicion of a breach in respect of which the other has enforcement responsibility. The Report is unwavering with regard to changing the regulators' relationship.

Rather than having a clear demarcation between what is ASIC and APRA information, the Report seeks to promote a position for information to be simply deemed *“financial regulatory information”*. The Report recommends that legislation should be amended to impose a statutory duty of cooperation on the regulators obliging them to share information to the maximum extent practicable and notify each other of suspected breaches (recommendation 6.9). The Government has agreed to remove barriers to information sharing between APRA and ASIC and require them to co-operate, share information and notify each other of relevant breaches or suspected breaches, as appropriate. However, the precise details of this information sharing mechanism have not been set out. The suggestion in the Report is that a shared database may be the most efficient way of storing and sharing such information.

In support of fostering cooperation, the Report further recommends that ASIC and APRA prepare a joint memorandum of understanding setting out how they will comply with (and operate) that statutory duty to co-operate (recommendation 6.10). The Government has indicated its support for ASIC and APRA to update their existing memorandum of understanding to reflect *“their statutory obligation to co-operate”*. APRA has indicated that the memorandum of understanding is being reviewed and will be completed by 2019.

5. Enhancement of Enforcement Culture

“Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished.”

(pg 3 of the Report)

The Royal Commission emphasises that litigation is an “*exercise of public power for public purposes*”, crucial to the deterrence of misconduct through “*visible public denunciation and punishment*”. The Report refers to the ‘fees for no service’ scandal to highlight the need for public denunciation and punishment and to evidence presented before the Royal Commission that demonstrated that entities continued to engage in such misconduct until matters were publicly examined.

In a bid to support ASIC’s newly adopted “*why not litigate*” stance, the Government has said that it will support the Royal Commission’s recommendations relating to the historic over-use by ASIC of infringement notices and enforceable undertakings in preference to litigation. In relation to each:

Infringement Notices

Infringement notices can be issued in respect of breaches of certain statutory provisions. They enable recipients of the notices to pay the stipulated amount in order to resolve the alleged breach without admission of wrongdoing and prevent the issuing authority from taking further legal action. The range of conduct that has resulted in the issue of such an order has expanded quickly including its use for contraventions involving matters of judgement, a practice that has been criticised by the Law Council of Australia as “*lazy regulation*”. Accordingly, the Royal Commission recommends limiting the use of infringement notices by ASIC to administrative failings and states: “[i]f the provision involves contestable matters of judgment – for example, an alleged breach of the prohibition on false and misleading conduct or the duty of utmost good faith – the issue of an infringement notice will rarely, if ever, be an appropriate regulatory response”.

Enforceable Undertaking

In Regulatory Guide 100, ASIC describes an enforceable undertaking as an “*alternative to civil court action or certain administrative actions*”. However, while an enforcement undertaking minimises costs, it may not according to the Report alter the mentality and culture of the involved entities if the undertaking is viewed as the “*cost of doing business*” or the “*cost of placating the regulator*”. Accordingly, the Royal Commission recommends that ASIC weigh up the effectiveness of enforceable undertakings by considering the value of deterrence and notes: “[a] regulatory response to a breach of law that does not deter, generally and specifically, will rarely be a more effective regulatory outcome”. If an enforceable undertaking can still be said to be a more effective regulatory outcome, ASIC should adopt a policy that it will generally not agree to an enforceable undertaking in respect of a civil penalty provision without the entity acknowledging that it has breached one or more specific legislative provisions.

The Government is in support of ASIC acting upon both the infringement notice and enforceable undertaking recommendations by building upon changes already underway within ASIC following its recent internal enforcement review.

ASIC is currently considering the Royal Commission’s recommendations. ASIC’s response is however likely to echo its attitude towards the interim report, when it agreed that it “*must alter its enforcement priorities and practices within the financial sector*” and “*be more agile in initiating and prosecuting court action, and in many instances even commencing it*”.

“...adequate deterrence of misconduct depends upon visible public denunciation and punishment.”

(pg 433 of the Report)

6. Enhancement of the self-reporting regime

“...it will always be necessary to recognise that making a proper breach report on time is what the law requires.”

(pg 489 of the Report)

The Report supports the recommendations made by the ASIC Enforcement Review Taskforce in December 2017 to enhance self-reporting of contraventions by AFSL holders. In particular, the Report supports the expansion of the regime to misconduct by employees or representatives, the enhancement of criminal penalties for failure to report as and when required, and also the introduction of civil penalties. The Report also notes that the trigger for self-reporting obligations should be retained but clarified to ensure that the significance of breaches is determined objectively. Additionally, the self-reporting regime should be introduced for Australian credit licensees.

7. New oversight body

The Report recommends that a new oversight authority for APRA and ASIC be established that will independently and biennially assess the strategic performance of each body in discharging its statutory obligations. The Royal Commission recommends a permanent secretariat and three part-time members to compose the oversight body. The end goal of such a venture is for the oversight body to develop a *“comprehensive list of items against which each agency’s performance is evaluated”*.

The Government has agreed to this recommendation.

It is worth noting that this is not a new recommendation; the 2014 Murray Inquiry proposed that a *“Financial Regulator Assessment Board”* be established to review the performance of financial sector regulators annually – however, it never came into effect.

To further support the performance and accountability of the regulators, the Report recommends that APRA and ASIC should apply the core aspects of the BEAR to its own management, and such application should be undertaken in consultation with oversight from an external oversight body. APRA has stated that it will develop and publish accountability statements before the end of 2019.

Conclusion

The Royal Commission has been heralded by some as a landmark moment in the history of Australian financial services. The Royal Commission has undoubtedly identified and highlighted misconduct in the financial sector. However, the recommendations fall short of the ground-up sweeping reform some may have expected.

Nevertheless, the Royal Commission's 76 recommendations will have a significant impact on the operation and provision of financial services in Australia. While the structure of financial services entities remains largely intact, changes to remuneration and reporting, and a more robust regulatory environment, will increase compliance requirements, burden and costs. Changes in corporate governance and policy are inevitable and follow an increasing global regulatory trend.

The efficacy of such reform remains to be seen. In particular, the shape of the regulatory landscape depends somewhat on the appetite and success of ASIC and APRA in pursuing financial institutions in open court (rather than through other means such as negotiated settlements), the efficacy of the proposed new oversight body for the regulators, and the success of the proposals for increased cooperation.

A further complicating factor is the proximity of the Report to the 2019 Australian Federal election to be held no later than 18 May 2019. While both the Government and the principal opposition party have committed to adopting all 76 of the Royal Commission's recommendations (to varying degrees), the form of adoption may vary radically depending on the election outcome. It is possible that clear policy positions may not develop until after the election and the end of the Australian financial year in June 2019. The Royal Commission will nevertheless be seen by many as the basis for current Australian political sentiment towards the financial sector and attendant legislative and regulatory reforms.

Outside of Australia, there are global conversations being instigated as a result of the Report. Other financial services regulators are reviewing the Report and considering the relevance to their own home jurisdictions. Financial intermediaries, both in and outside of Australia, may be well advised to consider whether the types of misconduct identified in the Report occur in their own institutions and should be addressed.

Key contacts



Jason Denisenko

Partner – Sydney

Tel +612 9373 7809

jason.denisenko@allenovery.com



Michael Shepherd

Partner – Sydney

Tel +61 2 9373 7643

michael.shepherd@allenovery.com



Charlotte Robins

Partner – Hong Kong

Tel +852 2974 6986

charlotte.robins@allenovery.com



Matt Bower

Partner – Hong Kong

Tel +852 2974 7131

matt.bower@allenovery.com



Sally Dewar

CEO of A&O Consulting – London

Tel +44 203 088 2145

sally.dewar@allenovery.com



Sarah Hitchins

Senior Associate – London

Tel +44 20 3088 3948

sarah.hitchins@allenovery.com

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