

Financial Services Insights

Financial Services Royal Commission – The Interim Report - Emerging Regulatory Themes

The Interim Report of the Financial Services Royal Commission was tabled in Parliament on 28 September 2018.

There has been much speculation about the potential nature of the findings and recommendations arising from the public hearings as the evidence of misconduct in the banking, superannuation and financial services industry in some sectors in specific instances appears to be systemic.

Unfortunately the Interim Report does not contain recommendations and covers policy related issues arising from the first four rounds of hearings.

This Interim Report simply seeks to identify the questions that have come out of the Commission's work so far and deal with – **Why** did misconduct happen? and **What can be done to prevent** the conduct happening again?

There will be a further round of public hearings to consider these and other questions that will be dealt with in the Commission's Final Report.

The broader theme which emerges from the Interim Report is *"When misconduct was revealed, it either went unpunished or the consequences did not meet the seriousness of what had been done."*

The conduct identified as the focus of the interim findings of its investigation includes:

- the pursuit of short term profit at the expense of basic standards of honesty.
- the propensity of banks and financial services entities to focus their sole attention on selling services and products at the sacrifice of the consumer's interests, together with results which were measured and rewarded by reference to profit and sales.
- misconduct either went unpunished or the regulatory consequences did not equate with its seriousness or gravity and was exacerbated on occasions by the conduct of the regulator, which rarely proceeded to court to seek public denunciation of and punishment for misconduct. In the particular case of the large banks, infringement notices imposed penalties that were immaterial in their operational context.

Meridian will report more broadly on the content of the Interim Report and subsequent findings, however we have identified some emerging themes which indicate the potential direction of the ultimate recommendations and possible reform to the financial regulatory framework.

It is early days and therefore our assessment is a considered prediction only at this stage and it is ultimately contingent on the findings and recommendations of the Final Report.

Emerging Themes – Preliminary Observations

- **Principles Based Approach to Regulation** rather than black letter to foster policy outcomes rather than pure compliance.
- **Prosecutions where appropriate and as a deterrent** - Increased pressure on regulators to ‘take tangible action’ for misconduct and to secure prosecutions in relevant circumstances rather than negotiated settlements.
- **Expansion and Broader use of Regulatory Tools** - A broadening of ASIC and APRA’s regulatory tools for prosecution and deterrence and the promotion of their use.
- **Change in Regulatory Focus** - Change in regulatory policy to focus on enforcement, conduct based compliance and assessing and supervising the culture of governance in the financial services market and internally within participant entities.
- **Regulatory Status Quo** – More regulatory complexity or additional legal compliance is discouraged unless there is a clearly identified advantage, however current ‘mooted’ or contemplated reforms are supported.
- **Investigation of Remuneration and Incentives** - Supervision and potential regulatory intervention in relation to remuneration, incentives and sales process, particularly in the context of conflict of interest.
- **Redressing Consumer or Client Protection** - Reaffirmation of the priority and protection of the rights of consumers and clients in respect of the supply of financial services and financial product advice and review of regulatory policy to rebalance this emphasis.
- **Conflict of Interest** - Legal and regulatory clarification of conflict and duties of intermediaries and financial advisors and prosecution to extinguish conflicted behaviour.

For further advice or information in relation to the financial services market, the regulatory framework or guidance regarding potential implications of the Financial Services Royal Commission and its investigation into Misconduct in the Banking, Superannuation and Financial Services Industry or assistance in the preparation of submissions (deadline 26 October 2018) please contact **Michael Bracken – Principal – Financial Services, Corporate Governance and Corporate Advisory**.



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