

Logical Thoughts



Logical's take on the Royal Commission - Part 2



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The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services (the Commission) completed its 6th round of Public Hearings last month, which focused on life insurance and general insurance. This round was the final fact-finding aspect of the Commission's work, so we will not see further case studies where brave victims publicly told their horrendous stories of atrocious treatment at the hands of financial institutions.

The Public Hearings remain fascinating viewing for many of us as we attempt to digest the Commission's evidence. The Commission has once again shone a spotlight on the shocking conduct of financial services entities which has bought so much public attention and condemnation in the way in which they go about their respective businesses.

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The executives put before the Commission by these entities as witnesses to explain and defend their shameful behaviour must surely have realised they were to be sacrificial lambs as they wilted and became confounded under direct and sustained questioning by counsel assisting the commission and Commissioner Hayne.

Many of us have been surprised by the depth and breadth of the myriad of systematic issues unearthed.

A few of us had the impression that only the in-house financial advice and asset management divisions of the banks were problem areas and were shocked to learn how endemic the troubles were and how they appear to have been replicated in every part of their businesses. The list of alleged transgressions is long and grubby including, peddling products which have little or no value, services paid for without actually delivering any service, poor sales practices, awful record keeping, inferior insurance claims handling, and either ignoring information requests from regulators or arrogantly withholding information from regulators, to name just a few. Little wonder this is allowed to occur when executives are under considerable pressure (not without personal financial compensation we note!) to increase short-term profits, thus increasing share prices and dividends.

Irrespective, the institutions have been left reeling, with many heads rolling and we expect there will be more to come in the months ahead.

The broader insurance issue remains as to whether Australians will now have lost confidence and be even more sceptical of these institutions to look after them in their hour of need by fairly assessing and paying claims. The fact remains that Australia is one of the most underinsured⁽ⁱ⁾ nations in the developed world. We are concerned that the revelations emanating from the Commission will only serve to exacerbate the problem. In relation to life insurance, as a nation we have become too reliant on charities, whip arounds and government social security benefits should we suffer an injury, illness or disability which precludes us from working for any length of time.

(i) Rice Warner, Underinsurance in Australia 2017

Having insufficient insurance can have far reaching impacts for families, both financially and socially.

The Commission has recently released its interim report which is sobering reading. A copy can be downloaded [here](#), although at 3 volumes and over 1,000 pages it may be the perfect insomnia cure!

The basic thrust of the interim report is that Commissioner Hayne is highly critical of Australia's financial services industry for putting greed and the pursuit of short-term profits ahead of honesty and transparency.

Commissioner Hayne was scathing about the response by the regulators, allowing bad conduct to go virtually unpunished with little happening beyond apologies from transgressing entities, drawn out remediation programs and protracted negotiations regarding media releases. We spare a little sympathy for the regulators in that successive governments have been gradually chipping away at their budgets, making their enforcement task more challenging.

Commissioner Hayne has also made a number of observations, including whether product sellers who are also product manufacturers should ever be permitted to provide advice to retail clients, conflicted remuneration inherently contained within vertically integrated models (our view has always been that many of these arrangements are hopelessly conflicted), pressurised tele sales tactics and the current adviser licencing system.

On the day the interim report was released, the head of the lobby group for the banks, the Australian Banking Association, Anna Bligh said "Make no mistake, today is a day of shame for Australia's banks". It's hard to argue with that statement.

Ms Bligh went on to say that the banks accept full responsibility for their failures and they will work day & night to make things right for their customers. Please excuse our cynicism, but haven't we heard this from them on many previous occasions?

On the other hand, some financial institutions and insurance companies have hit back, lodging submissions indicating that although they may have engaged in misconduct that fell below community standards and breached statutory obligations such as anti-hawking, this only occurred in a minority of cases. They consider that most claimants were treated fairly and with respect. They adamantly deny that any of their conduct involved criminality.

Despite the financial institutions' "mea culpas" & promises to do better in the future, class action suits have already been launched. We anticipate there will be more of this activity ahead as victims and shareholders become increasingly agitated and determined to seek recourse.

Where to from here?

Based on Commissioner Hayne's recent remarks, it appears he will not seek an extension of the time limit for the final report to be delivered to the Government, which means the 1st February 2019 deadline will likely be met.

Interestingly, Commissioner Hayne has questioned whether a raft of new laws need to be drafted and enacted, overcomplicating an already complex regulatory environment governing financial service entities or whether the existing laws are adequate and simply require proper enforcement. He outlined the possibility of adhering to a series of simple principles and pointed to the need to simplify the existing laws. Commissioner Hayne went on to query whether the regulator's enforcement and regulatory practices are satisfactory and whether periodical performance reviews should be undertaken.

We are tipping there will be substantial change...in fact, as "non-aligned/Independent Financial Advisers", we are banking on it!

Politically, which ever government is in power, would find it an almost impossible task to put the tooth paste back into the tube, so to speak. They will have no choice but to act.

Generally, we are likely to see a huge tightening in corporate governance.

Specifically, there is a high probability that we will see a focus on law reform in relation to the regulation of superannuation trustees, with particular emphasis on those entities within the retail sector who are part of vertically integrated financial institutions and continue to have plenty of conflicts of interest.

Above all, there will need to be a serious culture shift across all sectors in financial services, reinforcing basic tenets such as: do not mislead, be fair, provide services that are fit for purpose, deliver services with reasonable care & skill, and when acting for another, always act in the best interests of that other.

We continue to maintain our view that where people seek and obtain good quality advice from professionally skilled and suitably experienced advisers who understand their circumstances and identify potential gaps in their current arrangements, most of the issues raised at the Royal Commission would not have materialised in terms of strategic outcomes, suitable product(s) selection and advocacy at claims time.

Looking for Financial Advice?

In an every increasing complex financial and legislative world, our mission is to provide you with clear, concise and tailored strategic advice.

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