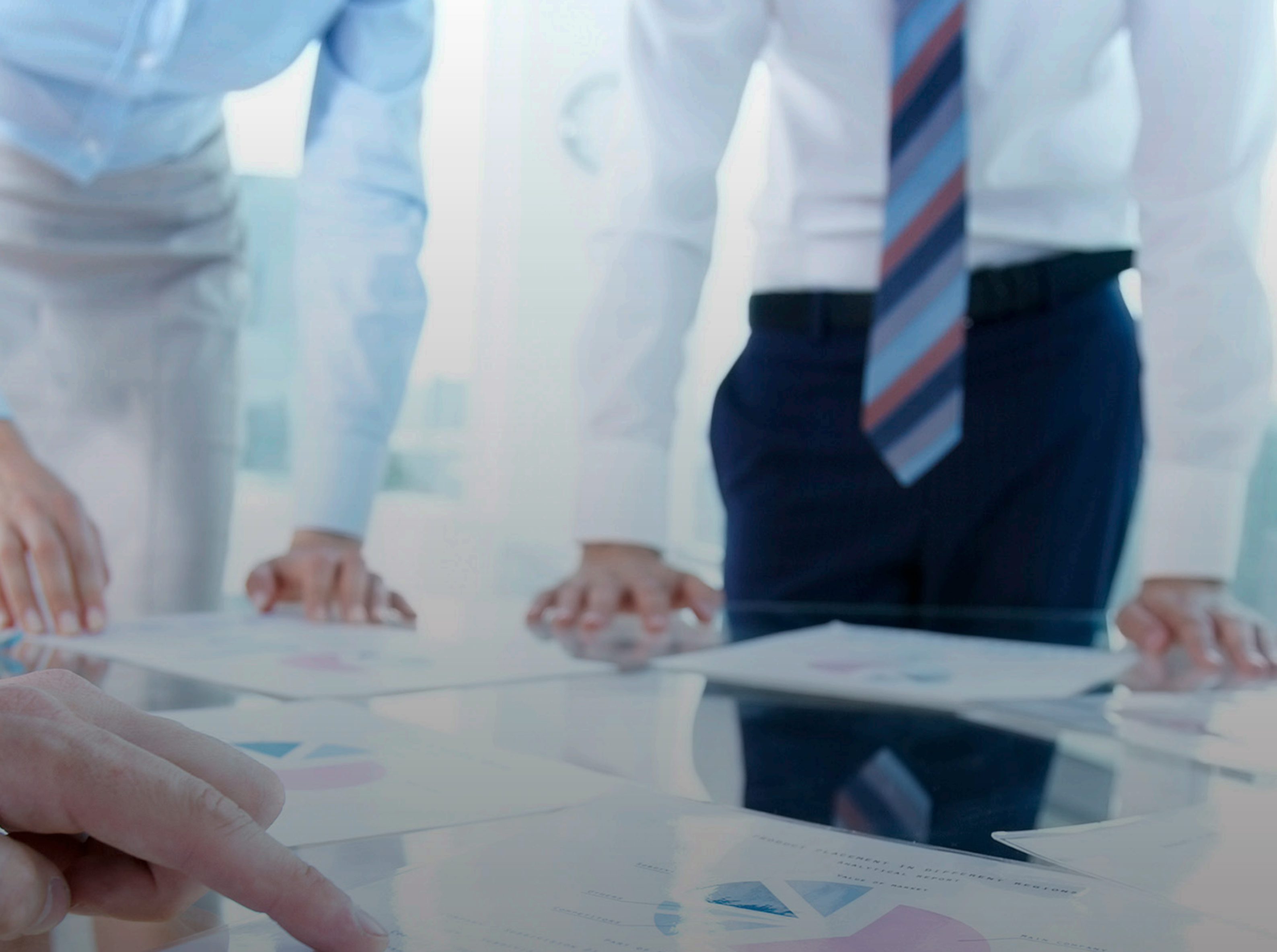

Royal Commission Interim Report

October 2018

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Initial observations

Commissioner Hayne has produced an Interim Report which conforms closely to his conduct of the Royal Commission to date – methodical, detailed and constructive. While the Report is long, it is to the point. A story of 'back to basics', of simplification, obeying and enforcing the law, and doing the right thing. That it has stopped short of specific recommendations and referrals for prosecution, and suggests few new laws are needed, should not leave anyone under any illusion as to the extent of change potentially required to current business and operating models. The paradigm has shifted, and there is a lot of work to be done.

Executive Summary

The analysis in the Report is laid out step by step, respectful of the impact that "prolonged injections of doubt and uncertainty [can have on the banking system and the Australian economy]". It seeks to identify the underlying causes of conduct, with consideration on how to avoid reoccurance.

The Report pulls no punches.

In aggregate, it depicts an industry that has failed to meet numerous legal obligations to customers and wider stakeholders, as well as community expectations more generally, where the pursuit of profit has unduly interfered with the fair treatment of customers.

However, it stops short of suggesting specific matters be referred to regulators for investigation, or of articulating specific recommendations. Rather, it proposes a series of questions which, while certainly suggestive of likely recommendations, invite comment and debate ahead of the final report due in February 2019.

Overview of initial findings and observations

The following quote gives a particularly good summary of the overall flavour of the Report:

"There is every chance that adding a new layer of law and regulation would serve only to distract attention from the very simple ideas that must inform the conduct of financial services entities:

- *Obey the law*
- *Do not mislead or deceive*
- *Be fair*
- *Provide services that are fit for purpose*
- *Deliver services with reasonable care and skill*
- *When acting for another, act in the best interests of that other".*

The ideas are very simple. Their simplicity points firmly towards a need to simplify the existing law rather than add some new layer of regulation. But the more complicated the law, the easier it is to lose sight of them."

Clear causes are set out for what has driven misconduct in the financial services industry. At its core, the report highlights a pervasive inattention to the full requirements of the law:

Amongst participants, insufficient rigour in meeting obligations, treating compliance as just a cost of doing business, with entities doing the minimum required to meet their legal obligations, and, too often, less than that

Amongst regulators, an indulgent approach to regulation, too much focus on negotiating penalties with the entities, maintaining a collaborative relationship with the industry and insufficient readiness to impose meaningful financial penalties and legal consequences

This core problem was enabled, reinforced and amplified by a number of industry practices fostering misconduct, including:

Excessive focus on incentives and financial gain (both in terms of individual remuneration and institutional profit) at the expense of the observance of the law, honesty, and duty to customers

Inadequate governance, culture and risk management practices limiting the extent to which senior management and Boards could be given a coherent picture in their compliance failings

Conflicts of interest in terms of both financial and non-financial incentives at both individual and institutional levels.

While the report stops short of recommending specific legal or policy remedies, it makes two important observations:

Employees will treat as important what they believe the entity values – this is a critical element in forming the culture of the entity.

The law itself is very complex, suggesting the need for simplification.

While it can be debated if the former is a complete assessment of cultural drivers, when coupled with the significant number of questions for consideration raised throughout the document, these observations do give us a sense of possible future recommendations and implications for legal and regulatory structure, industry structure, compliance costs, remuneration and customer experience.

1. Pervasive inattention to the full requirements of the law

The Report makes clear that there is a sizeable gap between the attitude of the Commissioner towards compliance with the law and that of both participants and regulators.

This gap pervades many of the observations made, and, will be a key driver when it comes to the time for recommendations in a few months.

Amongst participants, insufficient rigour in meeting obligations

Australia's current regulation of financial services already prohibits much of the misconduct that is subject of the Report. This leads Hayne to question why, if contrary to existing laws, were the breaches so widespread?

While the Commission has important things to say about the vigour of regulatory enforcement (as we describe below), this is not the starting point for the discussion about compliance. Rather, it is a fundamental failure to obey existing law, in both letter and spirit, to the fullest extent required.

The Report describes the industry's attitude to the law as being driven by the principle of minimum compliance. This approach is contrasted keenly against the broad and positive legislative obligations currently in place. Under s912A(1)(a) of the Corporations Act 2001 (Cth) (Corporations Act) a financial services licensee "must do all things necessary to ensure that the financial services [are] provided... efficiently, honestly and fairly". Credit legislation contains parallel obligations for licensees to protect consumer interests. Hayne comments that these broad obligations, as well as the duties owed to shareholders to pursue the long-term advantage of the enterprise, require that the "enterprise must do more than not break the law. It must seek to do 'the right thing'.

In Commissioner Hayne's view, relegating compliance to be merely a cost of doing business, has in turn generated various circumstances where profit has trumped compliance with the law - and, on many more occasions, trumped doing the right thing by customers. He makes a number of observations throughout the Report that deeply challenge the current approach by participants. Of particular note is the notion that providing product or services, that are not supported by systems (in their widest definition) which ensure robust delivery of those of products or services, is in and of itself, misconduct. This sets a high bar.

Hayne also observes that the overwhelming complexity of current regulation has contributed to the industry's tendency to lose sight of the law's intent. The resulting question for those regulated becomes "Can I do this?" rather than "Should I do this?" or "Is this the right thing to do?", echoing very similar sentiments in an independent panel's review of CBA earlier this year.

Amongst regulators, an indulgent approach to regulation

As the conduct regulator, ASIC comes in for sharp criticism regarding its approach to enforcement activity, particularly its aversion to commencing proceedings to seek civil and criminal penalties. The Report lays considerable blame for the widespread and systemic failure by entities to comply with the law, with the enforcement approach that ASIC has taken. Hayne notes that "when misconduct was revealed, it either went unpunished or the consequences did not meet the seriousness of what had been done". A detailed commentary on the absence of litigation, and the few fines imposed by comparison to profit made, reinforces this point.

The Commissioner rejects as entirely inappropriate ASIC's perceived starting point of "solving by agreement" rather than commencing proceedings. He notes that remediation is only one outcome for a regulator, and comments on the need for public condemnation of poor behaviour and clarity of interpretation of laws. Indeed, Hayne envisages that proceedings commenced against entities will act as a "sharp spur" to negotiations and that current difficulties with interpreting the law - such as the self reporting requirement for "significant" breaches - would benefit from a binding court interpretation.

The implications of these observations in aggregate suggest a paradigm shift for the industry relative to previous practice. The effort required to deal with this is potentially very significant.

2. Industry practices fostering misconduct

Ask an industry insider about the causes of misconduct and the answer will involve the complexity of products and services, the size and scope of organisations, the age and fragility of technology, the insufficiency of available data and culture.

The report offers limited attribution to any of these as causes of misconduct. Instead, it focuses heavily on the role of incentives and financial gains, their impact on governance, culture and risk management practices over time, and on the conflicts of interest that reframe long-standing debates.

Excessive focus on incentives and financial gain

The Commissioner observes that the majority of misconduct observed involved financial gains for either the institution or the individual involved, and in many cases both:

All the conduct identified in this report was conduct that provided a financial benefit to the entities and individuals concerned. If there were exceptions, they were immaterial. For individuals, the conduct resulted in being paid more. For entities, the conduct resulted in greater profit.

Remuneration practices have been identified as a key cause for the misconduct and strongly criticised throughout the Report.

"The culture and conduct of the banks was driven by, and was reflected in, their remuneration practices and policies."

The banks have generally acknowledged that there have been examples of incentives being associated with poor customer outcomes, but have continued to argue the extent of that association, asserting that existing controls and governance have alleviated such risks. The Report has no patience for such arguments.

The Commissioner makes several observations throughout the Report about the weaknesses in remuneration policies and structures.

Firstly, the central focus of remuneration arrangements has been to reward sales, revenue and profit. While policies are tailored to different parts of the industry, the focus on volume and sales is clearly set out in remuneration arrangements for third parties such as brokers, aggregators and introducers, and for customer facing employees. Some have sought to dilute this focus recently (in response to the Sedgwick Report), however, profitability remains a dominant feature of management and senior executive remuneration. Managers continue to reinforce, and employees continue to see, sales, revenue and profit as the most important performance outcome.

Secondly, the notion that performance metrics and scorecards have become more balanced is arguable. Scorecards seek to reward both financial outcomes and ways in which a particular employee has contributed to the institution's success, measured by customer, operational and strategic measures. But how success is achieved is still of lesser importance than achieving the outcome. Three examples are used to demonstrate this point:

- Customer measures typically focus on satisfaction at point of sale (e.g. NPS), rather than reflecting the quality of the customer outcomes being serviced
- Other "customer" measures assume that the customer "needs" what the institution sells (e.g. number of "needs met", number of conversations/ contacts) and are seen to further encourage identification of sales opportunities
- Penalties for failing to meet a standard (e.g. compliance gateways or modifiers) are common features of remuneration arrangements for employees. However, the bar is often low (e.g. attendance at mandatory training). Such penalties can lead to employees focusing as much attention on avoiding error discovery as on avoiding errors in the first place.

Thirdly, it is argued that remuneration regulation has not sufficiently mitigated the risk of misconduct either because it hasn't been specific enough, or because it hasn't been properly enforced. Regulation has not explicitly identified the types of risk it sought to address and has neglected specific risk such as conduct and reputation.

Finally, regulation has been applied, either by design or by application, to quite a narrow proportion of the industry – generally to senior management and those providing personal financial advice to retail consumers. Even then this has permitted conflicts to persist beyond a reasonable transition period e.g. grandfathered commissions in the context of the FOFA reforms.

Other features of bank pay practices to be considered

We expect the above conclusions will be significantly reflected as recommendations in the final report - the points are made so consistently and so regularly by the Commissioner. However, in our view, there are other features of bank pay practices that warrant attention, which could add to the Commission's consideration:

- The attention to or degree of remuneration that is performance-based. For some financial advisers and third parties such as brokers, their entire remuneration may be performance-based which clearly exacerbates the influence of remuneration (i.e. if your entire livelihood depends on it)
- Governance of remuneration policies, including the oversight processes and management

information to inform appropriate risk adjustment and application of remuneration consequence

- Performance management practices outside of remuneration that shape and inform which behaviour and outcomes are valued. Examples may include use of leader boards, recognition programs, development, promotion and progression opportunities.

Inadequate governance, culture and risk management practices

The governance, culture and risk management practices of the entities did not prevent the conduct occurring despite very extensive reliance on performance measurement, risk and control metrics. Again, to quote:

"Management by measurement assumes, wrongly, that measurement can capture all that matters in dealings between bank and customer. It cannot and does not. There are often circumstances where it is in the best interests of an adviser's client or a bank's customer to make no change to existing arrangements and take no new or different product. It is not easy to measure how often an employee is right to give advice to do nothing."

It follows that the discussion about how to change culture includes questioning deeply-held assumptions within the industry:

The unstated premise… that staff and intermediaries will not do their job properly and to the best of their ability without incentive payments, must be challenged.

Against this background, the discussion is very much on how to ensure staff and intermediaries act appropriately. On this the Commissioner repeats the point made throughout the Report that complexity in law and regulation may be counter-productive to achieving this outcome.

Consistent with the rest of the Report, the Commissioner raises a series of specific questions around the adequacy of existing industry and regulator driven efforts to enhance governance and culture, and whether further interventions are required.

While the Report leaves each of these questions open, they collectively signpost potential dramatic changes to be recommended for the operation of our financial services entities in relation to culture and governance.

An opportunity to broaden the debate

There are many drivers of enterprise culture the Report does not explore in any detail. In this sense, there may be opportunity for industry to broaden the debate in areas such as:

- The role of leaders within organisations, especially team leaders at an operational level – particularly with regards to day-to-day coaching and performance management
- The approach to detection and escalation of issues, the degree of tolerance for mistakes and the attitude to learning from them
- The efficacy of training and learning to drive an ethical environment, and
- The quality of systems and reporting for transparency to allow clarity of roles and effective supervision.

Most importantly, greater consideration can be given to other emotional drivers such as status, sense of achievement, fear, competitiveness or perceived injustice. Especially in an industry undergoing such significant change, including from automation, digitisation and simplification, this is an important influence on culture and behaviour that cannot be ignored.

Conflicts of interest

A common feature permeating the Commission was the inherent presence of conflicts of interest and duty, and the confusion of roles – between intermediaries and brokers and customers. This presence creates misaligned incentives, which are exacerbated by industry structures and culture.

Examples of issues raised throughout the hearings include:

- The premise of FoFA (which the Commissioner later questions) that conflicts of interest can, and should be 'managed' – by advisers and licensees giving priority to their client's interests over their own
- Some forms of conflicted remuneration were, and still are, allowed to continue.
- Consequences that emerge from the vertical integration of entities – in the sense that the entity manufactures and sells financial products, while at the same time, advising clients which products to use or buy
- Internal appraisals of land, particularly when the employee who makes the appraisal is also the employee who sells the loan. The Commissioner states that despite the "second employee" sign off, this conflict is not avoided.

The Commissioner observes that even though it is a conflict of 'interest' - it may be better seen as a conflict between the financial interests of the adviser or licensee and the duty that each owes the client. ASIC's January 2018 report Financial Advice: Vertically Integrated Institutions and Conflicts of Interest (ASIC Report 562), showed that advice that benefits the 'adviser' commonly does not advance the interests of the client – and in a significant number of cases – does actual harm to the client.

The question remains – how do you manage this conflict? Can this actually be managed? It cannot simply be enough to say 'do the right thing' – more often than not, people can persuade themselves as to what suits them as being the right thing.

3. Possible future recommendations and implications

The Commissioner stopped short of making recommendations, indeed the existence of nearly 600 question marks through the first volume of the Report alone is some illustration of the degree to which he is trying to provoke debate. However, we can make some educated guesses about what it might mean due to both likely recommendations or proactive industry and regulatory response, much of which is already underway.

At this stage we note five potential areas, including for those sectors not covered by the Interim Report (ie Superannuation and Insurance).

Legal and regulatory structure

The industry may well welcome Hayne's statements that "no new layer of law or regulation should be added unless there is clearly identified advantage to be gained by doing that". The Report also questions whether changing the law would make any difference, given much of the misconduct identified was already contrary to existing law. Despite this, the Report has questions in every chapter which, if answered in the affirmative, would clearly require further, and possibly extensive, legislative change.

A simplified approach

While the Report does not yet recommend specifics of what that simplification might look like, it does provide some signposts when it sets out the "*...very simple ideas that must inform the conduct of financial services entities:*

- *Obey the law*
- *Do not mislead or deceive*
- *Be fair*
- *Provide services that are fit for purpose*
- *Deliver services with reasonable care and skill*
- *When acting for another, act in the best interests of that other.*

At first blush, the simplified approach sounds more closely aligned to a "bright line" regulatory model, for which the UK's Financial Conduct Authority was so harshly criticised following the 2008 global financial crisis (GFC). Given the lack of community trust in the sector generally, a "light touch" recommendation appears unlikely. Regardless of the extent to which simplification is embraced, however, the untangling of current complexities will require legislative reform. Simplification of the regulatory regime by the use of broad standards of conduct, replacing the labyrinth of differing requirements for different types of products and their methods of sale, will require financial services entities to very closely examine their systems, processes and practices. They will need to form judgments about what conduct is appropriate to satisfy those standards rather than the box-ticking approach that many have adopted to compliance. More importantly, this will all need to be done through the lens of doing the right thing by the customer.

A new starting position for ASIC

While we can expect an increase in ASIC penalties and powers proposed through the ASIC Enforcement Review Taskforce recommendations, the Commissioner is also clearly advocating a move to ASIC commencing more proceedings through the courts. While he argues that this would provide market players with more certainty over the ramifications of breach of their legal obligations, ASIC's difficulty in successfully securing prosecutions in the past, and the time that this takes must be taken into account. In the short term this will also create significant uncertainty until judgements are delivered and the new normal is established.

The Report suggests a new starting point for ASIC to respond to misconduct, whereby the regulator must first consider whether a case can be made for breach, and if so, why it would not be in the public interest to commence proceedings to penalise the breach. If followed, this approach sets a much lower bar for the types of matters that would proceed to prosecution.

While mindful of the expense and resourcing required for litigation (not to mention the different skill sets required for a financial regulator versus a prosecutor), the Report sets out a list of possible actions for ASIC to pursue, not least being enforcement of licensee self-reporting obligations under s912D of the Corporations Act. The Commissioner's frustration is evident when recounting clear and material breaches of that provision that have never been pursued, and he suggests that current difficulties with interpreting the law - such as the self reporting requirement for "significant" breaches - would benefit from a binding court interpretation.

Other suggestions for enforcement include direct ASIC regulation of authorised representatives, as opposed to having that obligation rest with AFS licensees. The mechanics of this approach would require considerable changes in supervision, monitoring, and licence team resourcing, from ASIC's existing obligations. The Commissioner comments on the huge growth of ASIC's remit over the last 10 years particularly, and suggests consideration of whether a split in responsibilities is desirable or possible.

The possibility of additional regulators could create challenges of its own, particularly with information sharing and referral of matters for enforcement following surveillance. Hayne has already observed ASIC's enforcement inaction on issues it had itself identified regarding vertical integration of wealth advisers in ASIC Report 562.

Possible future recommendations and implications

Improved communication and information sharing

Improved communication is a default recommendation, and the Report notes the existing challenges for information sharing among AFS licensees, industry associations, regulators and dispute resolution entities. The Report poses a number of hanging questions as to the necessity and effectiveness of annual regulator reviews, simplification of the regulator regimes, and whether the remit and priorities of the three regulators – ASIC, ACCC and APRA – ought to be reviewed and revised.

Industry structure

The break-up of vertically integrated entities has been a possible outcome of the Royal Commission from the outset. Whilst the Commissioner's interim report gives few clues as to how this may be effected, it clearly questions the merits of vertical integration. Headline issues uncovered as part of the Commission's review (such as fee for no service and inappropriate advice) have been attributed to vertical integration (among other things) and the conflicts of interest and duty that it creates.

The Commissioner draws particular attention to platforms as an example of how the vertical integration of the industry may harm clients by protecting aligned platform entities from competitive pressures – the end result being clients paying more for platform services than other providers would charge for the same service.

The specific questions posed by the Commissioner go directly to whether vertical integration should continue to exist as a model. These are as follows:

1. How far can, and how far should, there be separation between providing financial advice and manufacture or sale of financial products?
2. Should financial product manufacturers be permitted to provide financial advice?

   At all?

   To retail clients?
3. Should financial product sellers be permitted to provide financial advice?

   At all?

   To retail clients?
4. Should an authorised representative be permitted to recommend a financial product manufactured or sold by the advice licensee (or a related entity of the licensee) with which the representative is associated?

   At all?

   Only on written demonstration that the product is better for the client than comparable third party products?

In short, given the writing seems almost on the wall, vertically-integrated entities should accelerate the strategic review of their portfolios and ask themselves, 'if we are prevented from owning multiple parts of the value chain, what part do we want to own, and do we have sufficient competitive advantage and scale to succeed?'.

Costs of compliance

One overriding implication for all participants in financial services is the cost of compliance going forward. Regardless of exactly how far current practice moves towards the Commissioner's expectations, compliance systems, in their very broadest sense, need to be tightened significantly.

This does not just mean a larger compliance function, or better monitoring and reporting systems. It means that every single business decision, from the launch of a new product to the maintenance requirements for creaking infrastructure, is going to have to be made through a very different lens. A lens of zero tolerance for non-compliance, of substantially lower tolerance for error, of a much higher bar of customer interests, and all the attendant costs that come with that.

In turn, this is likely to lead to a requirement for substantial uplift of existing capabilities and, in all likelihood, a series of tough decisions for existing players that will include closer scrutiny of more marginal businesses and activities. The implications for the industry as a whole will take some time to understand, but the competitive landscape could shift materially.

Remuneration

While little in the way of action is offered yet, the Commissioner has been clear that the conduct identified and criticised was driven by the pursuit of profit and financial incentives. It is clear from the Report that drastic changes to remuneration policy across the industry can be expected following the Commissioner's final recommendations due in February 2019.

We can expect the following changes to be effected:

1. The ceasing of grandfathered commissions under FoFA
2. More prescriptive remuneration regulation across the industry and consequences for misconduct.

Further areas for change

Other possible changes that may be considered include:

1. The further reduction, or even removal of volume-based remuneration across the industry, including third party channels
2. Redefining the role of variable pay (even considering its removal) at all levels of seniority, and beyond customer facing staff and their immediate supervisors
3. Identification of customer measures that are focused on the quality of service aligned with the customer's best interests

Possible future recommendations and implications

4. More ‘carrot’ and less ‘stick’ with regard to incenting good standards and compliance.

While some institutions have acknowledged that such changes are needed, they have been reluctant to move first. The Royal Commission has altered public attitudes such that early adopters may be prized by differentiating themselves and attracting talent most adept to effect change.

Customer experience

The final point for consideration is more far reaching, being the implications for trade-offs by customers and society as a whole in the context of the Commissioner’s new paradigm of significantly lower tolerance for error by providers of financial services, and zero tolerance for misconduct.

These trade-offs are not well understood by consumers. Both consumers and industry have become accustomed to a world where services are easier, faster, cheaper and available on demand. In the potential new paradigm, this speed, cost allocation, and wider definition of utility may, at least for a time, move in the other direction. Some illustrations of these trade offs are included below

Potential trade-offs from new paradigm

- Responsiveness of sales and marketing: we may not become aware of services or products in which we would find great value, because providers have to ensure that they are not inappropriately sold to vulnerable customers
- Freedom to innovate: the risks of creating new and different products and/or differentiating on price between different customers may become too high to be commercially viable
- Availability of credit: the risk of lending irresponsibly causes a significant contraction in the amount institutions are willing to lend
- Convenience and efficiency: the checks required to ensure fair treatment of customers mean that service is substantially slower and more onerous, and approvals take longer
- Competition and choice: risks and costs cause a reduction in competitors in certain segments and potentially fewer intermediaries to facilitate informed choice between competitors
- Cost of overhead and customer pricing: the costs of compliance and a reduction in competition cause products and services to become more expensive for customers

These trade-offs are not trivial, and neither are the practical options the Commission may need to consider as recommendations. The hearings in November are the opportunity for them to be well explored - to distinguish myth from fact and to anticipate at least some of the unintended consequences that could arise.

4. Conclusion

Commissioner Hayne is writing another chapter in the instruction manual for the proper operation of the modern Australian financial system, harking back to the blueprint proposed in the Campbell Inquiry Report of 1981. This is the chapter on conduct risk, complementing those on currency and foreign borrowing risk (written in the wake of the 1986 currency crisis, especially by farmers), on credit risk (following the 1991-92 recession), on prudential supervision (by the HIH royal commission in 2003), on market and liquidity risks (after the 2008 GFC), and on solvency risk (in the "unquestionably strong" dicta of the 2015 Financial Service Inquiry).

It was by no means inevitable that this chapter had to be written by a lawyer, as the signposts for the Australian industry on conduct risk were evident overseas, particularly in the UK, following the GFC. It is one of the ironies that Australia's relatively benign path through the GFC helped to generate an arguably false sense of confidence across the Australian industry, whereby strong financial outcomes were seen as a marker of positive stakeholder outcomes in general, rather than a warning flag of potential imbalance.

This is why the overall tone of this Report is so important, regardless of the absence of specific recommendations.

In particular, both industry participants and regulators are on notice that observance of the law is paramount and in the case of financial services licensees and credit licensees, compliance is a broad and positive legislative obligation. Under the Corporations Act (paralleled in consumer credit legislation) a licensee "must do all things necessary to ensure that the financial services [are] provided...efficiently, honestly and fairly". It is clear that this shift towards the positive obligation to ensure compliance goes beyond the minimum, will be considerable for many institutions. As such it is likely to represent a material realignment of stakeholder interests towards customers and away from dividends, salaries, and agent fees.

This is entirely consistent with the thrust of the APRA independent review of CBA published earlier this year. Indeed, the focus on the "should we" question in the APRA report was quoted with approval by Commissioner Hayne. The APRA report gives institutions a helpful road-map for change during the period before the Commission's final report.

Integral to this change is the revamping of risk management practices, which the Commission's work has exposed as deficient in so many institutions. Where this particularly needs to focus is in relation to the strengthening of systems, processes, and associated controls. In short, we believe the only realistic option for boards is to dive into the quality of their wider management systems and the related risk controls framework, to an extent that only a small minority of boards have done before. We see no other way for boards to respond effectively to the deficiencies exposed. This is a huge and time-consuming task, and needs to be the overall context for the implementation of specific recommendations flowing from the Commission.

This will be more than enough for institutions to attend to while we move to the next stage of the Commission, from interim policy questions to firm recommendations.

This is an enormous task to accomplish in four months, if the Commission is to report by 1 February 2019. Clearly there are many pragmatic reasons deliver the final report on time, and the Commission has delivered to date.

The concern is that the Commission is due to report in the lead-up to what will be a very hard-fought election. A political bidding war on regulation, where the main culprit is greed, has the potential for results that are anything but constructive. The traditional role of interim reports of testing specific recommendations is now behind us, notwithstanding that the direction of play on many issues is clear.

While the Australian public still has confidence that their bank deposits are safe, the community no longer has confidence that banks and other financial institutions have the customer's best interests at heart.

As with any recommendations for legislative reform, there can be unintended consequences following implementation. With significant regulatory change, there is always an element of playing with fire. Industry participants, regulators, and the community alike, will be watching closely when the Commission provides its final recommendations."

Commissioner Hayne has earned substantial moral authority through the operation of his Commission to date. In a world in which moral authority is in short supply, not least in financial services, this must not be squandered; the stakes are too high. The Commission no doubt is thinking carefully about time, expertise, resources and clear air required to see this through properly. In the meantime, the Commissioner has given clear guidance to industry on what it means to obey the law, as well as what should be expected from regulatory enforcement strategies.

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