

## **Royal Commission into Misconduct in the Banking, Superannuation and Financial Services – Final Report**

**5 February 2019**

Yesterday, Commissioner Kenneth Hayne handed down his Final Report on the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

The Commissioner made 76 recommendations in the Report, designed to address issues of consumer protection, culture, governance, remuneration and regulation across a range of sectors including banking, financial advice, superannuation and insurance.

The Government has stated that it will take action on all 76 recommendations but has expressed reservations regarding mortgage broker remuneration due to potential impacts on competition.

Labor has expressed their support for all 76 recommendations in principle.

### **Key recommendations**

A summary reading of the recommendations for each service sector revealed a strong emphasis on regulation and norms of conduct, as well as stronger obligations for financial entities to take responsibility for their management and conduct.

#### **Banking:**

##### **Recommendation 1.3 – Mortgage broker remuneration**

The borrower, not the lender, should pay the mortgage broker a fee for acting in connection with home lending. These changes should be made over a period of two or three years, by first prohibiting lenders from first paying trail commission to mortgage brokers in respect of new loans and then prohibiting lenders from paying other commissions to mortgage brokers.

#### **Financial Advice:**

##### **Recommendation 2.2 – Disclosure of a lack of independence**

Financial advisers who are not independent, impartial or unbiased must provide written explanation to the client of why this is the case before any financial advice is given.

##### **Recommendation 2.4 – Grandfathered commissions**

Repeal of grandfathering provisions for conflicted remuneration should be removed as soon as possible.

##### **Recommendation 2.5 – Life risk insurance commissions**

ASIC should consider reducing the cap on commissions for life risk insurance products to zero (unless there is a clear justification).



### **Recommendation 2.6 – General insurance and consumer credit insurance commissions**

Questions whether the exemptions for general insurance products and consumer credit insurance products are justified.

#### Superannuation:

### **Recommendation 3.4 – No hawking**

Prohibition on the unsolicited offer or sale of superannuation products.

### **Recommendation 3.5 – One default account**

A single, default superannuation account for each person.

### **Recommendation 3.9 – Accountability regime**

Extension of the Banking Executive Accountability Regime to all registrable superannuation entities.

#### Insurance:

### **Recommendation 4.1 – No hawking**

Prohibition of the unsolicited offer or sale of insurance products.

### **Recommendation 4.7 Application of unfair contract terms provisions to insurance contracts**

The unfair contracts terms provisions now set out in the ASIC Act should apply to all insurance contracts regulated by the Insurance Contracts Act.

### **Recommendation 4.9 – Enforceable code provisions**

Amendment of the law to make industry codes enforceable and the imposition of mandatory industry codes.

#### Regulators:

### **Recommendation 6.1 – Retain twin peaks**

The ‘twin peaks’ model of financial regulation, with APRA and ASIC as the regulatory bodies, should be retained.

### **Recommendation 6.14 – A new oversight authority**

An oversight authority for APRA and ASIC, independent of Government, should be established to assess the effectiveness of each regulator.

### **Recommendation 7.1 – Compensation scheme of last resort**

A compensation scheme should be established to review external disputes and complaints arrangements.



### **Government response**

The Coalition Government has stated that they will 'take action' on all 76 recommendations to come out of the Report.

The Government has, however, suggested that Recommendation 1.3 on mortgage broker remuneration could negatively affect competition in the banking sector.

The Government has also announced that it will establish a compensation scheme of last resort and expand the capacity of the Australian Financial Complaints Authority (AFCA) for the time frame examined by the Royal Commission, which will see around \$30 million paid to consumers for the prior misconduct of financial service providers.

The Coalition has also committed to expanding the jurisdiction of the Federal Court system to appropriately address corporate criminal misconduct in this area.

Finally, the Government has committed to a review of APRA which will recur every four years.

The Treasurer's media release on the Royal Commission can be accessed [here](#).

### **Labor response**

The Labor Party has indicated that they will accept in-principle all 76 of the recommendations made by Commissioner Hayne in the Final Report and have indicated a possibility of further regulatory measures for the financial services sector.

In contrast to the Government, Shadow Treasurer Chris Bowen MP said that Labor will accept the recommendation regarding mortgage brokers.

The media release from the Opposition Leader can be found [here](#).

A full text version of the Final Report can be accessed [here](#). The website of the Royal Commission, including Commissioner Hayne's reports, submissions to the Commission, transcripts of the public hearings and relevant media and publications can be accessed [here](#).

**For further information on the Royal Commission and its outcomes, contact [David Alexander](#) on +61 457 400 524, [Grahame Morris](#) on +61 411 222 680 or [Georga Nonnenmacher](#) on +61 457 662 422.**