

# COMMUNITY EXPECTATIONS ARE HERE TO STAY

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Legal Briefings - By **Michael Vrisakis and Tamanna Islam**

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To deny the role that community expectations will play post-Royal Commission is, with respect, a flat-Earther perspective.

One of the most significant developments emerging from the Royal Commission, industry reviews, recent enforcement action by regulators and Parliamentary Joint Committee hearings is the emergence of the new standard of community-expected conduct, which was used as a yardstick to assess conduct. This yardstick is separate from, but exists in parallel with, the legal standard.

The status and role accorded to the standard of community expectations will be lamented by some but at the end of the day, it cannot be ignored. From an industry perspective, this has often manifested in decision-makers not only applying the legal test, but also applying the “front page test”.

There is already evidence that this standard is gathering momentum in the legal ecosystem. In other words, it is being integrated with the parallel set of legal standards.

There is a clear tendency to expand existing legal standards of fairness to absorb certain community expectations.

The most obvious example of this is the existing AFS licensing standard in the *Corporations Act 2001* (Cth) requiring institutions to act “efficiently, honestly and fairly”. Traditionally, these 3 requirements have been interpreted as a collective requirement to be assessed as a trio that together, require ethical behaviour. Recent trends indicate that the regulators and the courts may now focus on each element with particular attention to the concept of fairness and by having regard to community expectations. The concept of ethical behaviour is clearly wide enough to capture community expectations.

While the terminology of “community expectations” is in its infancy, the principles underlying it are not new. Community expectations can be analogised to the “reasonable person” standard that pervades all areas of the law. The essential aspect that is common to both “community expectations” and the “reasonable person” is that neither concept can be defined in the abstract; they are necessarily to be considered with regard to the relevant circumstances and with the overarching parameters of fairness and ethical conduct that would be expected by the average person in the community. While this may cause uncertainty in expectations, it also permits flexibility. Community expectations may well become the new principles-based framework that governs conduct in the financial services industry.

Clearly this issue, which might at one stage have only been in the in-tray of corporate legal counsel, is now very much at the forefront of CEOs’ and senior executives’ agendas for 2019.

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## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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