

FINANCIAL SERVICES: IN THE WAKE OF THE ROYAL COMMISSION...

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Legal Briefings - By **Michael Vrisakis, Fiona Smedley and Tony Coburn**

While the Financial Services Royal Commission was a watershed inquiry for the industry, the industry is well accustomed to constant scrutiny and reform.

The industry has been the subject of a large volume of regulatory and independent reviews and investigations, as well as parliamentary inquiries and scrutiny. While review and reform can be effectively implemented to improve outcomes for customers and industry players, the sheer volume and frequency of reviews has led to a degree of fatigue, reduced confidence and uncertainty.

However, the industry is already using the opportunity presented by the Royal Commission and its predecessor reviews to instigate industry-led reform.

The Royal Commission Final Report produced 76 recommendations, which in most cases have endorsed existing reform proposals. Both the Morrison Government and the Opposition have endorsed the recommendations, and are likely to implement the majority of them in the coming months and years.

A bird's eye view of industry review over the past few years reveals that the Government, the regulators and the public are chiefly concerned with the following issues:

- culture and accountability;
- incentives;
- conflicts of interest; and

- fairness and ethical conduct.

None of these issues are new to the industry or financial services law. They have, of course, been anticipated by the industry and we have seen large and small financial services institutions begin the process of restructuring existing arrangements and models to align with new legal standards and community expectations. From our experience across all sectors of the financial services industry, the following observations can be made:

- the nature of sale and distribution in credit, superannuation, insurance and investment funds will fundamentally change;
- superannuation and responsible lending will benefit from understanding and effectively implementing the existing legal framework;
- the functions performed by financial advisers and mortgage brokers will evolve to further align with professional standards; and
- the “conscious uncoupling” and disaggregation of large financial services institutions will change the make-up of the industry and present new opportunities for product issuers, advisers and distributors.

We look forward to exploring opportunities with you to transform the industry in the coming years.

GOVERNANCE: THE NEW AGE OF LEADERSHIP

Recent shareholder action against executive remuneration, the expansion of APRA’s ambit to include a greater focus on culture and remuneration, the introduction of BEAR and the rise of the “community expectations” standard shows the new microscope penetrating boardrooms and the upper echelons of management.

Please click [here](#) to read the full article.

COMMUNITY EXPECTATIONS ARE HERE TO STAY

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.

Please click [here](#) to read the full article.

THE REGULATORS

The Final Report has been released and for those who followed the public hearings, the recommendations are not surprising. The regulators, ASIC and APRA, have been given increased regulatory scope and more tools to regulate. The key question is, following on from the Final Report, where next for the regulation of financial services in Australia?

Please click [here](#) to read the full article.

BANKING AND CREDIT (GENERAL)

The recommendations made in relation to banking and credit more generally were in some regards unsurprising and minor, relative to the responsible lending recommendations and credit distribution recommendations, both of which went to the crux of Commissioner Hayne's "four observations".

Please click [here](#) to read the full article.

RESPONSIBLE LENDING: "APPLY THE LAW AS IT STANDS!"

The law is correct, now you must learn to follow it. That is the message from Commissioner Hayne regarding the consumer lending laws, and responsible lending practices of Australia's banks. Despite being "urged" by consumer advocacy groups to alter the *National Consumer Credit Protection Act 2009*, Commissioner Hayne concluded that the tests and obligations in this legislation were appropriate, it was their enactment by the banks that was lacking.

Please click [here](#) to read the full article.

CREDIT DISTRIBUTION

In its Final Report, the Royal Commission has made a number of recommendations that aim to address issues that exist within intermediated lending, with a particular focus on mortgage brokers.

Please click [here](#) to read the full article.

FINANCIAL ADVICE AND DISTRIBUTION

The Final Report of the Royal Commission has been released and its recommendations will fundamentally change financial advice and the distribution of financial products.

Please click [here](#) to read the full article.

FUND AND ASSET MANAGEMENT: GETTING BACK TO BASICS

The Final Report contains a series of recommendations which, when implemented, will require fund and asset management firms to reassess their distribution channels and revisit their culture, governance and remuneration arrangements.

Please click [here](#) to read the full article.

SUPERANNUATION AND GROUP LIFE INSURANCE

The Royal Commission was widely expected to bring the superannuation industry to its knees, and certainly there are findings that make sobering reading. How some of those play out over the coming months and years remains to be seen. At the very least, we need to see the Commissioner's Report as an important reminder to keep customer and client needs, interests and objectives firmly in sight.

Please click [here](#) to read the full article.

INSURANCE

The Royal Commission's final report has endorsed much of the existing legislative and reform proposals for the insurance industry. There are, however, some recommendations that were not expected. A complete ban on the unsolicited sale of insurance and a new duty of disclosure for consumer insurance will pose structural challenges for retail insurers.

Please click [here](#) to read the full article.

Please access the link below for Herbert Smith Freehills' overview of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, and what it might mean for your business.

[Financial Services Industry Royal Commission - Final Report](#)

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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