



26 October 2018

The Commissioner, the Honourable Kenneth Hayne AC QC
 Royal Commission into Misconduct in the
 Banking, Superannuation and Financial Services Industry

Lodged online: <https://royalcommissioninterimreportwebform.lawinorder.com.au/#/>

Dear Commissioner

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Interim Report

Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) welcomes the opportunity to make a submission in response to the Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Interim Report).

Chartered Accountants ANZ is a professional body comprised of over 120,000 members, including more than 25,000 members in public practice in Australia. Our members work in a wide range of roles in the financial services industry, as individual advisers as well as in small businesses, small and medium-sized accounting practices, the corporate sector, major financial institutions and financial product manufacturers.

We have long advocated for industry reform to ensure that more consumers are able to access good quality, ethical and professional advice. We advocate in the interests of members and in the public interest.

In preparing our submission, we have consulted with members, as well as other professional associations and industry stakeholders.

We have mainly focused our comments on those policy issues and questions contained in Chapter 10 of the Interim Report which we believe are most relevant at this time to the accounting profession, our members and the clients and business communities they serve.

Appendix A contains our submission and Appendix B provides more information about Chartered Accountants ANZ. We authorise the Commission to publish our submission.

Should you wish to discuss any of the points raised in our submission, please contact Simon Grant on [REDACTED] or at [REDACTED] or Michael Croker on [REDACTED] or at [REDACTED]

Yours sincerely

[REDACTED]

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Appendix A

Executive Summary

The Interim Report of the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission), exposes unacceptable conduct by financial services entities and individuals that has clearly fallen below community standards and expectations.

The conduct identified and criticised in the Interim Report has eroded consumer trust and highlights the importance of improving professionalism, transparency and accountability in our financial institutions.

It is time for the industry to work together to address poor institutional cultures, regulatory and ethical failures and inappropriate remuneration and incentive structures.

Ethical behaviour is fundamental to rebuilding professionalism and restoring trust.

The Royal Commission provides an opportunity to reset the balance of trust between consumers and the banking, superannuation and financial services industry.

We believe that the recommendations in the Commission's Final Report should give consumers more ways to identify trusted advisers – many of whom are our members – who manage their client's affairs as part of a long-term professional relationship.

Chartered Accountants operate within a highly qualified and professional framework and in our view, provide a foundation on which to build an improved regulatory model which can help professionalise the industry and ensure that more Australians are able to access good quality, affordable and ethical advice.

We strongly believe it is in the public interest to attract and retain more accountants in the financial advice industry. While this may sound counterintuitive, consideration should be given to *reducing* or at least *streamlining* unnecessary regulatory and licensing restrictions, and recognising the hard work that is required to gain and maintain membership of Chartered Accountants, including degree and post graduate studies, three years of mentoring, strict adherence to our Code of Ethics and ongoing CPD.

There is widespread agreement amongst Chartered Accountants that the current regulatory and licensing regime is not working, and there is concern that more regulation will hinder their ongoing ability to be the community's foundation stone for sound advice. In this regard, we note that the Commissioner has also questioned what would be gained by "Passing some new law to say, again, 'Do not do that'".

We strongly support the Commissioner's comments about the need for better enforcement of existing laws. In our view, there is value in exploring collaborative models which see regulators working more effectively with those professional associations, like Chartered Accountants ANZ, which have already set a high bar for member skills and professional conduct.

Chartered Accountants ANZ will continue to work co-operatively with the Government, industry, regulators and standards bodies, such as the Financial Adviser Standards and Ethics Authority (FASEA), to help increase trust and professionalism in our financial institutions.

Policy issues

We invited our members to provide us with their views on the policy issues and questions in Chapter 10 of the Interim Report. A summary of the key feedback received is below:

Responsible lending

- Greater protections are required for consumers and small businesses from unconscionable conduct, misleading and deceptive conduct and unfair contract terms.
- Responsible lending requirements and consumer protections must be balanced with the need to reduce complexity and compliance costs.
- Consideration should be given to the impact of responsible lending requirements and other obligations on business borrowing and the cost of credit.
- As a practical matter, the Commissioner may wish to consider whether the recently updated *Banking Code of Practice* (Australian Banking Association, commencing 1 July 2019) provides a suitable foundation for further development by a suitably qualified working group once the Royal Commission's final recommendations are published.
- Any slow-down in lending, higher cost of credit or increased regulation will have a negative economic impact, particularly on the small business sector. In formulating recommendations on matters touching upon small business lending in particular, we urge the Commissioner to seek expert counsel from economists and experienced banking executives on likely primary and secondary effects.
- The role of Chartered Accountants in helping their clients with "Ready to start business" certification (e.g. a business plan, cashflow projections, awareness of relevant commercial risks and obligations) should be considered as part of improved processes for gaining finance and relevant statutory licences (such as an Australian Business Number).
- Consideration should be given to different rules for assessing suitability for home loans to ensure the right balance between consumer protection and affordability, particularly for vulnerable Australians and young people entering the housing market for the first time. There are however limits to what the Royal Commission can do to address a problem with many dimensions. Australia needs a national housing strategy which includes new ways for citizens to access housing finance. The strategy must encompass all levels of government, business, the finance sector and the superannuation industry.

Financial advice

- Accountants are trusted advisers to their clients and have an important role to play in helping to professionalise the financial advice industry.
- Chartered Accountants are well placed to provide good quality, ethical and professional advice. To gain and maintain membership of Chartered Accountants requires degree and post graduate studies, three years of mentoring, strict adherence to our Code of Ethics and ongoing CPD.
- Many members are frustrated and upset that professional accountants have been discouraged from providing financial advice to their clients due to regulatory and licensing restrictions.
- Some members feel that the revelations during the Royal Commission have cast a pall over *all* financial advisers. They suggest that the Commissioner recommend new ways in which consumers can identify and contact trustworthy advisers.

- Members support raising education, training and ethical standards to help professionalise advice. However, up to 60% of members in practice surveyed in May 2018 said they would likely stop providing advice if FASEA's proposed education reforms were passed in their current form.
- It is in the public interest to attract and retain more accountants in the financial advice industry, by reducing unnecessary regulatory barriers and appropriately recognising Chartered Accountant's significant existing qualifications, Codes of Ethics and professional standards.
- The financial services laws require better enforcement. A collaborative model should be explored with professional associations, such as Chartered Accountants, that have established complaint handling and disciplinary processes.
- Clearly, vertical integration in the provision of financial advice has had unwelcome consequences for many consumers.
- A robust, professional advisory community must be fostered by the Commission's final recommendations. The duty to act in the best interest of the client is best served by a professional who fully understands the client's circumstances, objectives and needs.
- It is time for the industry to work together to change conflicted remuneration and incentive structures, including grandfathered commissions and commissions on life insurance products.
- There must be a clear line between sales and advice to help minimise the risk that financial products are inappropriately sold to consumers.
- There is increased support for moving to fee-for-service models of remuneration, with appropriate transitional timeframes.
- There is an on-going need to safeguard consumers from over-charging e.g. by requiring advisers to estimate and advise clients of the time required to develop an initial financial plan.
- Strengthening financial literacy will help protect consumers from the pitfalls of poor advice.

Regulation and the regulators

- We agree with the Commissioner's remarks in the Executive Summary to the Interim Report (page xx):

The law already requires entities to 'do all things necessary to ensure' that the services they are licensed to provide are provided 'efficiently, honestly and fairly'. Much more often than not, the conduct now condemned was contrary to law. Passing some new law to say, again, 'Do not do that', would add an extra layer of legal complexity to an already complex regulatory regime. What would that gain?

Should the existing law be administered or enforced differently? Is different enforcement what is needed to have entities apply basic standards of fairness and honesty: by obeying the law; not misleading or deceiving; acting fairly; providing services that are fit for purpose; delivering services with reasonable care and skill; and, when acting for another, acting in the best interests of that other? The basic ideas are very simple. Should the law be simplified to reflect those ideas better?

- Smarter enforcement of existing laws and regulations is indeed required in the financial advice sector. The Commissioner may wish to consider the way other regulators, notably the Australian Taxation Office, are using data analytics to identify and categorise the behaviour of tax intermediaries resulting in timely interventions tailored for the circumstances encountered. We acknowledge that the ATO's regulatory model is underpinned by online reporting. Financial advisers – whose relationships with investment funds, stockbrokers etc are predominantly conducted online – would similarly need to embrace a technology-based relationship with regulators to keep compliance costs low.

- We also note there are measures relevant to the Royal Commission's work which have only recently been enacted and require time to be fully implemented in order to gauge the impact on behaviours. The two main examples are:
 - The *Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Act 2018*; and
 - The *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*.
- The role of the regulator needs to be more visible and effective. Stronger enforcement action and penalties are warranted to address the egregious examples of behaviour uncovered by the Royal Commission. That said, there are many financial advisers in our community whose work is generally sound and based on ethical principles. For this group, targeted, pragmatic interventions should occur for shortcomings of a less serious nature. In other words, a range of sanctions should be available to suit the circumstances encountered.
- Chartered Accountants ANZ supports the policy reflected in the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* currently languishing before the Senate. Given the valuable insights which whistleblowers have thus far provided regulators and the Royal Commission, the Commissioner may wish to consider recommending that any further drafting required to the Bill be expedited and its passage progressed.
- The need to increase consumer trust and protection must be balanced with the need to reduce regulatory complexity and compliance costs, particularly in the financial advice industry. Standardised, best practice models for adviser – client – regulator engagement underpinned by technology should be recommended and developed collaboratively by relevant professional associations and regulators.
- Complexity can be reduced, and better, more cost-effective enforcement achieved by streamlining and harmonising existing laws, regulations and standards. Here we see merit in greater collaboration between the relevant regulator(s) and professional associations. We also think there should be some rationalisation of the number of regulatory bodies impacting professional advisers or at the very least, clearer demarcation lines.
- On the important issue of financial literacy in the Australian community, there are no shortage of resources e.g. ASIC's MoneySmart website. The difficulty is finding agreement on how best to deliver the material, and when. The Commissioner may therefore wish to opine on the success of the National Financial Literacy Strategy and suggest improvements.
- Evidence before the Royal Commission has highlighted the important work performed by financial counsellors in Australia. Financial counsellors are usually trained to at least Diploma level, based in community agencies, and are funded largely by either the Federal Government or State Governments. In recent times however, we have seen the emergence of fee-based financial or "debt" counsellors. The Commissioner may wish to consider whether there are adequate safeguards to protect consumers who use such service providers.

Financial advice

Chartered Accountants ANZ's [submission](#) on FASEA's draft Code of Ethics in June this year recommended that FASEA improve professionalism in the advice industry by drawing on the lessons learned from the Royal Commission in developing its draft Code of Ethics.

Our submission supports the principles-based approach taken by FASEA, which we believe will encourage greater individual responsibility and accountability.

Following feedback received from hundreds of members, our submission also called on FASEA to streamline and harmonise its Code of Ethics with existing laws, regulatory obligations, professional Codes of Ethics and professional standards. There should be consistency between regulators covering similar territory e.g. FASEA and the Tax Practitioners Board.

Regulation and the regulators

As noted, the Commissioner is right to question whether the current regulatory regime is too complex and ask if there are simpler, more effective approaches. More regulation isn't necessarily the best way forward.

Accountants in public practice currently experience multiple, overlapping layers of regulatory oversight, as illustrated in Diagram 1.

Diagram 1: The regulatory environment faced by accountants in public practice



Source: Chartered Accountants Australia and New Zealand ©

In exploring new regulatory models governing financial advisers in particular, we encourage the Commissioner to acknowledge the important role of the accounting profession, which prides itself on a duty to act ethically and in the public interest.

Chartered Accountants enjoy the trust and confidence of many Australians, due to their technical expertise, ongoing training and learning requirements, and high ethical standards.

As a professional body, Chartered Accountants ANZ has the responsibility to investigate and discipline members who breach our By-Laws, Code of Ethics and other standards.

Chartered Accountants ANZ has long advocated for reducing complexity and regulatory burden, particularly in the financial advice industry. Complexity and regulatory costs are increasing in the advice industry in Australia, particularly for small businesses and those located in rural and regional areas.

Greater compliance costs reduce productivity, competition and the delivery of affordable, quality financial advice to the public.

A more simplified, streamlined and holistic regulatory approach is required to minimise duplication and costs being passed on to consumers, and ensure that quality accounting practitioners are not driven out of the advice market.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.