

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

Submission on Dispute Resolution

This submission focuses on External Dispute Resolution and related activities and their role in reforming the financial services sector.

Introduction

For those individuals and business who have in the past been unreasonably dealt with by financial institutions the power imbalance is all too clear.

Financial institutions can and do destroy individuals and businesses. They undermine the ability of their clients to respond to their actions. As a consequence the damage they do is often not redressed.

For over 30 years the major banks in Australia have engaged in misleading, deceptive and fraudulent conduct. The overseas loan scams perpetrated on businesses over 30 years ago demonstrated a disregard for the law and the community. Destroying a wide variety of businesses; indirectly damaging others and going as far as collecting taxes that were not payable and then retaining those taxes.

Unfortunately the culture that facilitated such behaviour has been rewarded over the following years and as a consequence banks are now run by people who are the product of this culture.

It would be difficult to ascertain the true extent of the damage that financial institutions have done to families, businesses, communities and the nation. The costs financial and social have clearly been significant and in the main born by the victims and the community and not the financial institutions.

Experience demonstrates that financial institutions believe that their behaviours, even when illegal, are justified to protect the power, position and profitability they enjoy.

Eliminating these behaviours is the most important benefit that can come from this Royal Commission. Fully compensating all who have suffered from these behaviours is the second most important benefit that can come from this Royal Commission.

The act of fully compensating all who have suffered from these behaviours will play a major part in achieving the elimination of these behaviours.

The following proposal has been prepared with the achievement of these most important benefits as their objective.

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The Banking Royal Commission should be extended and expanded to provide the following:

1. A comprehensive review of the banking, insurance and financial services sector, including associated parties such as agents, assessors, receivers, etc., behind which these organisations often operate and even hide;
2. A vehicle for victims to gain redress without the costs and risks associated with litigation against organisations that have effectively limitless resources, financial, human, even time, that allow them to destroy their victims before justice can be delivered;
3. The provision of standard documentation for all regular financial and insurance activities;
4. Advice to Government on legislation required to deliver fair, client focused financial services;
5. Additional commissioners to focus on different sectors such as personal banking, business banking, investment and insurance. They should process complaints and claims to achieve redress for the complainants and to provide information to the original commissioner to assist in the development of new regulations and standardised documentation. Where appropriate they should also provide assistance to the original commissioner to enable prosecutions;
6. Initial funding of the expanded Royal Commission should be provided by the Commonwealth so that it can get underway immediately. Each of the 4 major banks and the AMP should be levied an amount sufficient to ensure adequate funding of the new Royal Commission for a further 3 years plus the amount needed to reimburse the Commonwealth for its expenditure on the Royal Commission;
7. Each case settled in favour of a claimant should not only provide full redress it should require the organisation to pay the costs of the Royal Commission for that case plus a percentage of the settlement. The percentage of settlement payment should increase steeply with any delays caused by the organisation. These percentage of settlement payments should be retained to pay the Royal Commission's running costs once the initial funding is exhausted;
8. Once the Royal Commission formally releases a standardised document, the relevant organisations must use it exclusively;
9. Banks must report all activities, including their nature and volume, for which they do not use Royal Commission provided standard documentation. The Royal Commission should then investigate which of these should be subject

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to standard documentation on the premise that wherever possible standardised documentation should be used;

10. Legislative reform should be a process of continual improvement. Thus much needed reforms can be undertaken as soon as possible with the intent, that as the work of the Royal Commission discovers more issues, the legislation can be further refined and re-legislated;
11. The fact that organisations like the big banks are effectively too big to fail, means that their banking licences are effectively issued in perpetuity. They therefore need to understand that the community rightly expects their behaviour to be exemplary at all times. Where it is not they need to report it to the Royal Commission immediately they become aware of it and provide full redress with no delays. Where they fail to do so the Royal Commission should expedite redress and in addition to the recovery of its costs and the percentage of settlement payment, the Royal Commission should ensure any possible prosecutions are investigated and where possible undertaken;
12. Where illegal behaviour is not isolated the Royal Commission should prosecute senior executives and not just the organisation.

Conclusion:

Australia needs a banking, insurance and financial services sector it can trust and which is aligned with the needs of the community, individuals and businesses. Australia has an opportunity to revitalise this sector in a way it is unlikely to do i. The benefits to the community, the economy and the sector itself will be significant.

The fact that these organisations have been deliberately misleading, deceiving and defrauding their clients with relative impunity for over 30 years means that the behaviours that lead to such deceptions are ingrained and are most unlikely to change without externally managed reform and redress.

The power, wealth and greed of these organisations is such that with few exceptions most companies and individuals are not realistically in a position to effectively challenge their illegal and unethical behaviours, particularly once they have been damaged by those behaviours. Consequentially all claimants should have access to the services of the Royal Commission. This will have the additional benefit of giving the Royal Commission insight into the complete range of illegal and unethical behaviours to help guide the Royal Commission's role in reforming these industries. It also avoids the possibility that individuals and companies beyond the purview of the Royal Commission will become the next targets for these illegal and unethical behaviours.