

Executive summary

The Commission's work, so far, has shown conduct by financial services entities that has brought public attention and condemnation. Some conduct was already known to regulators and the public generally; some was not.

Why did it happen? What can be done to avoid it happening again? These are now the key questions.

In this Interim Report these questions – 'why' and 'what now' – are asked with particular reference to banks, loan intermediaries and financial advice, with a view to provoking informed debate about both questions.

Why did it happen?

Too often, the answer seems to be greed – the pursuit of short term profit at the expense of basic standards of honesty. How else is charging continuing advice fees to the dead to be explained? But it is necessary then to go behind the particular events and ask how and why they came about.

Banks, and all financial services entities recognised that they sold services and products. Selling became their focus of attention. Too often it became the sole focus of attention. Products and services multiplied. Banks searched for their 'share of the customer's wallet'. From the executive suite to the front line, staff were measured and rewarded by reference to profit and sales.

When misconduct was revealed, it either went unpunished or the consequences did not meet the seriousness of what had been done. The conduct regulator, ASIC, rarely went to court to seek public denunciation of and punishment for misconduct. The prudential regulator, APRA, never went to court. Much more often than not, when misconduct was revealed, little happened beyond apology from the entity, a drawn out remediation program and protracted negotiation with ASIC of a media release, an infringement notice, or an enforceable undertaking that acknowledged no more than that ASIC had reasonable 'concerns' about the entity's conduct. Infringement notices imposed penalties that were immaterial for the large banks

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- (a) ASIC independence has eroded over time possibly bench marked through the Corporations Act 2001 and ASIC CLASS ORDER CO / 238 - Exemptions Revocation and Modification (the rules)
- (b) ASIC rules give effect to 'new regime concerning fees and remuneration also connected to ASIC securitisation program, embedded in the Banking, Superannuation and Financial Services Industry.
- (c) These schemes are governed without disclosure of fee structure payment (or repayment) of rewards and incentives taken by a deception, secretly applied over the life of the financial product.

(d) The mechanics for collection of 2.5% hidden fee (cost or expense) of financial product is kept secret by ASIC lawyers directly and indirectly in connection with GST GROSS UP PROVISION INSURANCE of any contract.

(e) On numerous times since 2001, some persons of the ASIC regulator disengaged serious wrongs reported to it. ASIC (insurances template) closure statement to some consumers gave effect to *'the ASIC will not investigate this matter further due to 'regulatory effect'*

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Enforceable undertakings might require a 'community benefit payment', but the amount was far less than the penalty that ASIC could properly have asked a court to impose.

What can be done to prevent the conduct happening again?

As the Commission's work has gone on, entities and regulators have increasingly sought to anticipate what will come out, or respond to what has been revealed, with a range of announcements. These include announcements about new programs for refunds to and remediation for consumers affected by the entity's conduct, about the abandonment of products or practices, about the sale of whole divisions of the business, about new and more intense regulatory focus on particular activities, and even about the institution of enforcement proceedings of a kind seldom previously brought. There have been changes in industry structure and industry remuneration.

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?

This Interim Report seeks to identify, and gather together in Chapter 10, the questions that have come out of the Commission's work so far. There will be a further round of public hearings to consider these and other questions that must be dealt with in the Commission's Final Report.