Good afternoon Commissioner.

In response to your request for submissions on the questions posed in your interim report please accept the following.

Question:

- Is the law governing financial services entities and their conduct too complicated?
  - Does it impede effective conduct risk management?
  - Does it impede effective regulatory enforcement?
- Is the regulatory regime too complex? Should there be radical simplification of the regulatory regime?

Answer:

Virtually all of the misconduct examined by the royal commission stems from the banks being conglomerates of multiple financial services businesses and so the law, as it stands, is inadequate. The Banking Act needs to be reversed to a simpler time when commercial banks were separated from investment banking, and unable to trade in securities and derivatives. If commercial banks were allowed only to take deposits and make loans [up to a prescribed limit], and kept separated from other financial services and speculation, the financial system would be much simpler, and therefore the regulatory regime could be made less complex.

Question:

- Are APRA's enforcement practices satisfactory? If not, how should they be changed?
- Does the conduct identified and criticised in this report call for reconsideration of APRA's prudential standards on governance?

Answer:

Using the excuse of financial stability APRA has allowed the banks to engage in some illegal practices, that maximise their profits at the expense of their customers. Ultimately this has become a threat to financial stability, because in maintaining a near monopoly [by buying up the smaller and regional bank] on mortgage lending, the banks have contributed to a massive housing bubble and encouraged a massive increase in debt which is a threat to the financial system. APRA and ASIC must be more vigilant and take action rather than simply seeking undertakings from those corporations that have broken the law.

In evidence to the Royal Commission [redacted] said that to provide details of misconduct that had occurred over the preceding five years it would have to look at, among other things, the Annual Compliance Statements it had made under the Code of Banking Practice [which recorded 1,914 breaches of the Code in the last five full financial years], 300 events reported as significant breaches to ASIC or APRA occurring during that period, 370 Financial Ombudsman determinations, 375 determinations by the Credit and Investments Ombudsman, 246 significant litigation matters and five different databases recording customer complaints. Taken together, the course of events and the explanations proffered can lead only to the conclusion that neither [redacted] nor [redacted] could readily identify how, or to what extent, the entity as a whole was failing to comply with the law. And if that is right, neither the senior management nor the board of the entity could be given any single coherent picture of the nature or extent of failures of compliance; they could be given only a disjointed series of bits of information framed by reference to particular events.

Question:

- Do the events that have happened raise any issue about business structures?
- Do the events that have happened invite consideration of whether structural changes should now be made?
- Do the events that have happened suggest that manufacturers of financial products should not be permitted to provide, whether by employee or authorised representative, personal financial advice in relation to products of a kind it manufactures?

Answer:

The Banking Act must expressly forbid vertical integration, creating the conflicts of interest between providing efficient financial services and exploiting customers to maximise profits for shareholders. The banks cannot be trusted to "manage" these conflicts of interest, and relying on more rigorous law enforcement is unrealistic.

Question:

What responses should be made to the conduct identified and criticised in this report?

- Are changes in law necessary?
  - Should the financial services law be simplified?
- Should the regulatory architecture change?
- Is structural change in the industry necessary?

Answer:

The primary focus should be on separation of commercial and investment banks. The regulatory architecture should be altered so that rhetoric of the kind that *'a small number of individuals in our advice business made the decision not to follow policy, and inappropriately charged fees to customers where no service was provided'* is seen by management and the board as unacceptable.

Responses to revelations of wrongdoings are still being overlooked. And the [redacted] refuses to clean up it's act, witness a report by SMH reporters [redacted] on **11 May 2018.**

[redacted]

"The bank considers your actions to be a serious breach of the bank's lending policies and statement of professional practice ... You should comply with the law in all your activities." [Emphasis added.]

Following the [redacted] scandal, [redacted] said the bank *'must now focus on restoring trust with all our financial planning customers and the community generally.'* Similar commitments were made after the [redacted] scandal in early 2016 and again in 2017 in relation to the Australian Transaction Reports and Analysis Centre (AUSTRAC) investigation into money laundering through [redacted] ATMs. That generally similar conduct occurred in all of the major entities suggests that the conduct cannot be explained as 'a few bad apples'. That characterisation serves to contain allegations of misconduct and distance the entity from responsibility. It ignores the root causes of conduct, which often lie with the systems, processes and culture cultivated by an entity. It does not contribute to rebuilding public trust.

Structural change in the industry is necessary. ASIC estimated the total loss suffered by all investors who borrowed from various banks to invest through Storm Financial to be **approximately $832 million**. Way after the horse had bolted, ASIC commenced an investigation into Storm Financial and it was placed into voluntary administration and a liquidator appointed. ASIC commenced legal proceedings in relation to the scandal including alleging that the directors had breached their fiduciary duties and that advisors had provided inappropriate advice. In March 2018, the Federal Court imposed a penalty of $70,000 [from a maximum penalty of $200,000] on each of the directors of Storm Financial and ordered that each be disqualified from managing corporations for seven years.

[redacted] acknowledged that in the period since 2013:

- It had made 20 breach notifications to ASIC in relation to actual or likely breaches of the Corporations Act by an adviser licensed by [redacted]
- It had made a further five breach notifications in relation to advisers identified through file reviews applied to the financial services licenses held by [redacted] and [redacted]
- It had made notifications in respect of a further 20 advisers in relation to serious compliance concerns.
- It had made good governance notifications in respect of a further 13 advisers, which largely related to signature irregularities in documents on client files.
- Fifteen former [redacted] employees or representatives have been the subject of ASIC banning orders or enforceable undertakings.

In its third submission to the Commission, [redacted] acknowledged 76 specific events of misconduct over the last five years. These included instances of problems with customer documentation and signatures, failure to comply with disclosure requirements, and asset allocations that failed to align with customer risk profiles.

In view of the gross breaches of the law the [redacted] should have it's banking license revoked and every Board member fined severely and disqualified. The conduct of the bank in 'overlooking' 53,000 breaches [that in effect assisted drug dealers and terrorists] and not reported to AUSTRAC simply adds to the record of dereliction of fiduciary duty bordering on malfeasance. In light of the security implications, the fines [of a paltry $700 million] are manifestly inadequate and should be appealed. If APRA and ASIC do not punish the [redacted] then the whole system will know it's acceptable to simply cut a cheque from petty cash and continue their illegal activities.