

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

Submission on Policy Issues raised in Round 5

Overview

The most effective way to address the conflict of interest between a trustee and the provider of investment products is to require a structural separation of the retail commercial and wholesale investment arms of the banking sector.

Details

Open finding:

As a result of these matters, it is open to the Commissioner to find that the trustees may have breached their duties to ensure that, where there was a conflict between the duties of the trustee to the members, or the interests of the members, and the interests of an associate of the trustee, the interests of the members could and would be given priority in accordance with s 52(2)(d) of the SIS Act.

1. This submission relates only to the banking sector, to which the above open finding is considered applicable.
2. This submission categorises the banking sector as comprising two arms: a retail commercial arm and a wholesale investment arm.
3. This submission maintains that there is demonstrable evidence of different cultures in the commercial and investment arms of the banking sector, of which evidence has been presented to the Royal Commission by others.
4. This submission contends that the lack of structural separation between the commercial and investment arms results in the commercial arm acting as agents for the investment arm with regards to marketing of investment products including those relating to superannuation.
5. This submission contends that the public, in dealing with the commercial arm of the banking sector, and being somewhat familiar with the culture of that arm, are not advised of the very different culture existing in the investment arm, at the time of marketing of products.
6. This submission contends that standard product disclosure statements do not address this difference in culture or make prospective investors or users of the products adequately aware of the risks associated with the differences in culture.

7. This submission contends that the primary difference in culture, being a focus on profit rather than service, and in particular a focus unrestrained by the necessity of even an appearance to the contrary, is innately in conflict with the requirements of s 52(2)(d) wherever there is less than a total arm's length separation between the trustee and the provider of investment products.
8. This submission contends that the most effective way to address this conflict of interest is to require a structural separation of the retail commercial and wholesale investment arms of the banking sector.

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