



MEDIA RELEASE

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

ASA supports the overall findings in final report of Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The broad holistic review of conduct and misconduct in the industry has followed a myriad of enquiries which failed to get to a position where ethical behaviour is supported and facilitated by the businesses. We expect the industry to work toward a similar outcome to the HIH Royal Commission, where there is assurance that every industry participant has carried out their job or role in an ethical and effective manner.

Diana D'Ambra, ASA Chair, said "We welcome the overall findings which will lead to better protections for consumers and stronger enforcement of existing regulation. Retail shareholders expect ethical behaviour as a gateway to generate sustainable returns, profit achieved any other way is illusory."

We especially support the reaffirmation that new laws aren't required, but current laws need to be enforced and a better outcome would be achieved by having clearer laws, and the proposal to reduce the number and the area of operation of special rules, exceptions and carve outs. As Commissioner Hayne stated "Reducing [the exceptions] and their area of operation is itself a large step towards simplification. Not only that, it leaves less room for 'gaming' the system by forcing events or transactions into exceptional boxes not intended to contain them." Similarly, we support the expansion of the Banking Executive Accountability Regime (BEAR) to encompass superannuation and all insurers.

The Industry needs to learn from the revelations, finalise customer redress payments and build measures and practices into their businesses so this doesn't happen again.

Ms D'Ambra said "Only time will tell that the companies are consistently delivering constant ethical behaviour and outcomes and ASA will be assessing our support for directors as they come up for election or re-election in light of these lessons. We will be urging companies to provide better information on which to formulate these assessments."

Accountability

Ms D'Ambra said "While there appears to be minimal comment on board accountability and governance, we expect the referrals of entities to APRA or ASIC for investigations of civil and criminal charges will draw in the board's action or inaction. For example the investigation of continuing conduct that contravened section 1041G of the Corporations Act, which prohibits financial institutions from engaging in dishonest conduct in relation to providing a financial product, will surely involve reports to the board of this conduct and whether it seized upon with sufficient urgency and concern."

The expansion of the BEAR to encompass a determination by APRA of a responsibility for all steps in the design, delivery and maintenance of all products offered to customers by the ADI and any necessary remediation of customers in respect of any of those products, is another recommendation that will go some way to ensuring accountability.

Remuneration

ASA supports the recommendation of the implementation of the Sedgewick report, including a greater proportion of variable remuneration being linked to non-financial metrics.

Ms D’Ambra said “Historically non-financial measures have been weak and appeared to be created as an excuse to pay variable remuneration. We look forward to the establishment of verifiable metrics, and will be examining the final report and other research in considering whether the ASA voting guidelines needs to be amended. We welcome regulatory compliance and the treatment of customers being significantly expanded in determining pay.”

Regulation

We welcome the greater delineation of powers for ASIC and APRA and direct instructions to collaborate and share information. As with companies it is important that accountability does not fall through the cracks.

The recommendation ASIC should take as a starting point “the question of whether a court should determine the consequences of a contravention”. Commissioner Hayne points out that compliance with the law should not be a matter of choice – it is there to be obeyed and enforced. And it should only use infringement notices for administrative failings and not an enforcement tool particularly when it is a large corporation. We acknowledge ASIC’s budget needs to reflect and support this expectation.

We also support the recommendation APRA should increase the intensity of its supervision of the way APRA-regulated institutions implement their remuneration frameworks. We acknowledge APRA’s budget needs to reflect and support this expectation.

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For more information please

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The Australian Shareholders’ Association (ASA) is the only independent, member-funded, not-for-profit organisation that educates shareholders to become better investors and focuses on driving improvements in transparency and accountability of corporate behaviour in Australia.