

ACCC/AER Regulatory Conference 2019 - Presentation Outline

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Reflections on the Royal Commission into Financial Services

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (FSRC), handed down its final report in February this year. It highlighted a widespread range of misconduct and failures to meet community standards across the various parts of the financial services industry, as well as recommendations for improving the performance of regulators and changes to the legislative regime.

In the light of the FSRC there has been broader commentary about the implications of the Royal Commission for other industry sectors and regulators. For example, in March this year CHOICE Chief Executive Alan Kirkland wrote that ‘...if you think the implications of the Royal Commission are limited to the banking sector, think again.’ He identified several other sectors, with special mentions for telecommunications and energy, as having significant problems with trust and questions about appropriate business practices.

So what are the lessons from the Financial Services Royal Commission? There has been considerable discussion around enforcement and litigation, but there are broader themes about how markets work, how regulation should be approached, and the difficulties of industry reform that warrant discussion alongside the role of enforcement.

It is important to understand that the FSRC was not an isolated event, but rather the culmination of an unprecedented number of recent inquiries, reviews and reports on the financial services industry and its regulation. Without exception these other inquiries proposed changes to the way that the finance sector operated. Yet collectively this did not generate the desired level of change to the industry.

Reforms were not implemented or were only partial and insufficient. Poor outcomes persisted, and accountability for wrongdoing was not seen as being achieved. In too many cases, industry was “successful” in delaying or watering down changes. As a result, a very significant proportion of the Royal Commission’s recommendations state, in one way or another, that findings or proposals from other reviews should be implemented.

The presentation will cover issues including:

- The increasing shift, underlined in the FSRC, to a focus on consumer *outcomes* and considerations of *fairness*, rather than the long-standing emphasis on regulating *processes* through disclosure or marketing. One aspect of this is growing consumer expectations of compensation. It also raises the challenge of dealing with conduct that is both legal and associated with poor consumer outcomes.
- The failure of competition across financial services as a mechanism for delivering sustained benefits to consumers.
- The significant deficiencies in the regulatory regime for *conduct and consumer protection* in financial services, both powers and penalties, despite repeated calls for

reform. Why had it failed to keep up with the growth in the sector, developments in key financial industries and community expectations? Was consumer protection the “poor cousin” of prudential and financial market regulation?

- The greater emphasis in the FSRC on court-based enforcement, and what this implies for the approach of regulators, in particular ASIC. In this light what is the role for other regulatory tools, especially if the aim is to achieve sector-wide changes to business practices rather than punishing an individual entity?
- What role is there for industry to fix its own practices? What is the role of boards/senior executives not just in understanding and fixing issues within their own firms but also addressing sector-wide problems?
- What are the lessons for public messaging around industry practices, regulatory approaches and market outcomes.