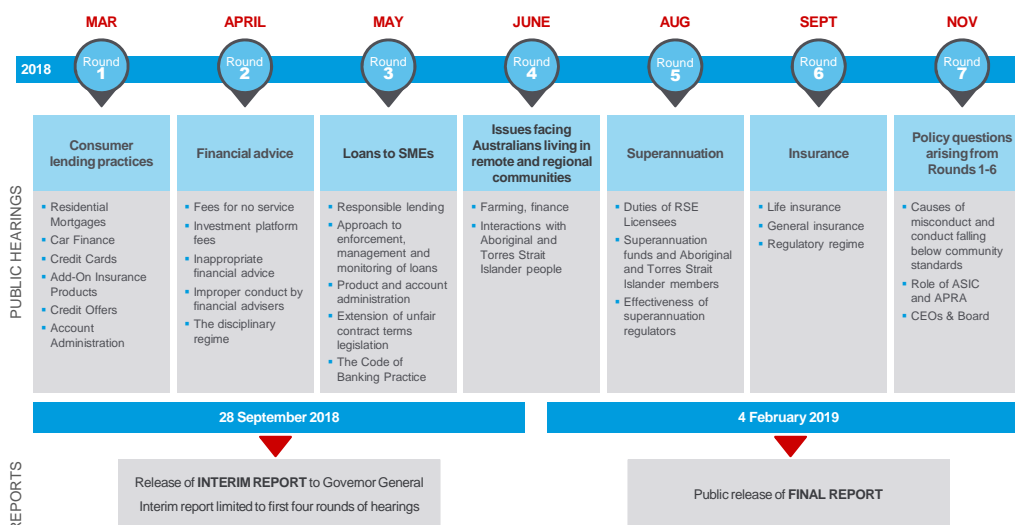




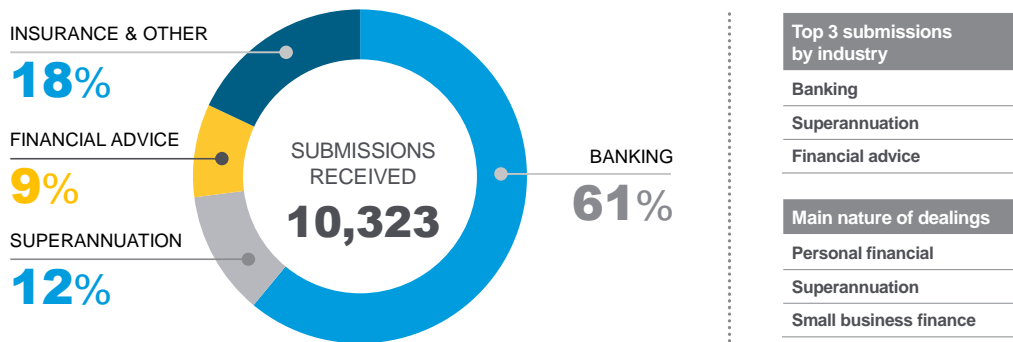
1. COMMISSIONER'S TERMS OF REFERENCE

- **misconduct including criminal misconduct:** whether conduct might amount to misconduct and if criminal charges should be referred
- **community expectations:** whether conduct falls below community expectations
- **retirement savings:** whether use of retirement savings by financial services entities fails to meet community expectations, or is not in best interests of members
- **culture and governance:** whether findings are attributable to culture, governance, risk management, recruitment, remuneration of a particular entity or practices of the industry / sector as a whole
- **redress:** whether mechanisms for redress are effective
- **adequacy of:**
 - internal systems and policies of financial services entities
 - existing laws
 - industry self-regulation and codes of conduct

2. TIMELINE / CHRONOLOGY



3. INTERESTING FACTS & FIGURES



- Top 3 submissions by industry**
- Banking
 - Superannuation
 - Financial advice

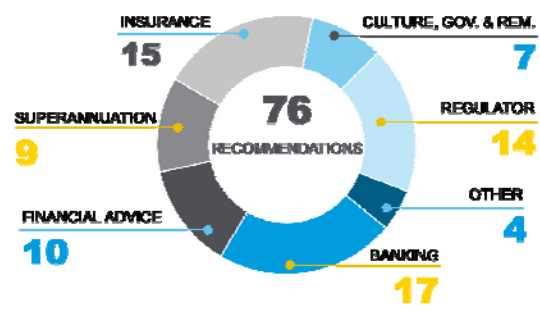
- Main nature of dealings**
- Personal financial
 - Superannuation
 - Small business finance



Source: <https://financialservices.royalcommission.gov.au/Pages/3kfa-ft.aspx>

- The Commissioner CAN**
 - Make findings where there 'might be misconduct' or 'might be departure from community standards or expectations'
 - Recommend the referral of matters to enforcement agencies (APRA, ASIC, ACCC, DPP etc.)
- The Commissioner CANNOT**
 - Prosecute
 - Order compensation
 - Order sanctions

4. THE FINAL REPORT



Overview

- Does not tackle some issues or provide implementation timeframes
- Harder hitting than first perceived
- Centred around how ethical business should be done
- Provides an opportunity to address root causes
- A set and forget approach will not be acceptable

Outside the report, the Commissioner has referred organisations and individuals to ASIC for investigation and possible civil / criminal prosecution

SECTION II

IMPACT

1.1 CROSS CUTTING THEMES OF THE HAYNE FINAL REPORT

Apply, obey and enforce the law

- responsibility for misconduct lies with boards and management
- ASIC and APRA have responsibility for enforcing the law, not relying on persuasion
- ASIC tasked with litigating enforcement and public denunciation

Clarify principles underlying financial services laws and simplify rules

- understanding purpose of regulation so there is clarity about the intent of rule
- clarity will improve application, obedience and enforcement
- not just “can we, should we”?

6 GUIDING PRINCIPLES

- | | |
|------------------------------|---|
| 1. obey the law | 4. provide services that are fit for purpose |
| 2. do not mislead or deceive | 5. deliver services with reasonable care and skill |
| 3. act fairly | 6. when acting for another, act in the best interest of the other |

6 GENERAL RULES

- | | |
|---|---|
| 1. apply and enforce the law | 4. intermediaries to act only on behalf of the party who pays them |
| 2. include industry codes under statute, and breach of promises to customers is breach of statute | 5. eliminate exceptions to ban on conflicted remuneration |
| 3. no hawking to retail customers | 6. culture and governance to focus on financial <u>and</u> non-financial risk |

1.1 CROSS CUTTING THEMES OF THE HAYNE FINAL REPORT (...continued)

The importance of non-financial risks

- over concentration on financial risk and results
- non-financial risk downplayed
- lost touch with customers
 - dishonest and misleading conduct
 - unfair customer treatment
 - denying and delaying customer dispute resolution
 - underdevelopment / absence of policies for disadvantaged customers

Governance, culture and remuneration

- governance, culture and remuneration “march together”
- influence of variable and conflicted remuneration central to failings
- starting point to get it right for customers and risk management
- periodic reassessment of organisational culture and governance
- use as levers to turn institutions around
- BEAR will be more widely applicable (insurance, superannuation)

1.1 CROSS CUTTING THEMES OF THE HAYNE FINAL REPORT (...continued)

Conflicts of interest

- self interest has prevailed over legal duties
- view that conflicts of interest lie at heart of misconduct and poor management of non-financial risks
- recommendations throughout to ban conflicted arrangements in intermediary remuneration (eg mortgage brokers, grandfathering)
- limitation on financial metrics for reliable pay
- extension of ‘best interest duties’
- silent on vertical integration for above reasons



1.1 CROSS CUTTING THEMES OF THE HAYNE FINAL REPORT (...continued)

Banking and financial services should professionalise

- Hayne argues for structures and practices similar to professions
- over and above the law
 - improve education
 - strengthen ethical and conduct codes
 - ban conflicted remuneration
 - institutionalise professional disciplinary arrangements



1.2 THE RECOMMENDATIONS HAVE WIDE APPLICATION

- new benchmark in risk governance
- ASIC is a newly energised and litigious regulator
- cross representation of directors across industries
- many issues consistent across customer segments



SECTION III

SPECIFIC AREAS OF CHALLENGE



2.1 RECOMMENDATION 5.6: ONGOING SELF-ASSESSMENT



- as often as reasonably possible:
 - assess entity's culture and governance
 - identify problems
 - deal with problems
 - determine whether changes are effective
- 'should we?' versus 'could we?' in relation to all dealings
- cultural change from reactive and complacent to empowered and challenging
- more rigorous board and executive committee governance of non-financial risks
- continually validating trust through strong metrics, healthy challenge and oversight
- clarity of accountabilities and incorporation of 'accountability principles'
- reflection, introspection and learning from mistakes



2.2 SERVING BEST INTERESTS OF CUSTOMER

Focus on genuine implementation of steps that are designed to serve the best interests of the customer

- a clear identification of the voice of the customer in the business
- is customer advocacy enough?
- where does customer sit within board committee structure?
- what are real focal points for behaviours of line 1 staff?
- penetrating the permafrost
- turning data analytics for customer benefit rather than for profit



2.3 RISK MANAGEMENT

The board is ultimately responsible for the institution's risk management framework and is responsible for the oversight of its operation by management

- identification and remediation of deficiencies in compliance systems
- adequacy of 3 lines of defence
- acceleration of risk maturity, particular focus on conduct and other non-financial risk
- prioritisation of investment in systems
- governance and controls when risk outsourced

2.4 BOARD AND MANAGEMENT

BEAR / Accountability

- should be practically workable, legally defensible and sensitive
- are existing frameworks, delegations and procedures appropriate?
- opportunity to bring positive change and ownership
- mapping existing breach identification processes to BEAR notification obligations
- APRA CBA report: 'principles of accountability'
- collective vs individual accountability

Delegation

- ensure leadership team understands nature of delegated authority and of the role and liabilities of the board
- clarity re structure of delegations within the organisation

2.4 BOARD AND MANAGEMENT (...continued)

Remuneration

- governance and culture march with remuneration
- remuneration marches with conflicts of interest

'Grey line'

- it is the role of the board to be aware of significant matters arising within the business...when management is acting in a way that is delaying the remediation of customers, and damaging the organisation's relationship with regulators, it is appropriate for the board to intervene and say, 'enough is enough. Fix this, and fix it now'

Data and reporting

- focus on improved quality of data analytics and risk reporting to the board. What does international best practice look like?
- allowing time for the board and senior management to address emerging risks in an unstructured and reflective manner

2.5 MINUTES AND RECORD-KEEPING

- quality and comprehensiveness of minutes (goes to legal compliance, evidence of reasonable steps to demonstrate accountability)
- practice of minute-taking has evolved
 - greater level of contemporary concern (especially among APRA regulated entities) to ensure minutes adequately record all key points and evidence points of challenge
- whether to permit annotations and / or require destruction of handwritten notes
 - possibility of competing interests (organisation vs individual directors)
 - overseas trends

2.6 'ACCOUNTABILITY PRINCIPLES'

Accountability for the CEO

- CEO has delegated authority from the board and is accountable for overall
- CEO in turn delegates authority to group executives for execution of operational activities
- CEO retains accountability for any delegation of board's authority, and is responsible for group executives

Collective accountability for group executives

- all group executives are collectively responsible for identifying and escalating concerns to the CEO / board

Individual accountability of group executives

- group executives ultimately accountable (with CEO) for the products and services
- group executives must consistently exhibit leadership behaviours that encourage staff to raise concerns



2.6 'ACCOUNTABILITY PRINCIPLES' (...continued)

- group executives accountable for risk management outcomes, compliance obligations and adverse customer outcomes
- accountability of group executives not diminished by location where particular functions are performed within the group (e.g. delegated activities) nor by extent of Line 2 or Line 3 involvement
- group executives must escalate issues of concern to the CEO / board and ensure follow up of material issues and effective resolution of root causes
- group executives responsible for cascading above principles to lower level staff



SECTION IV

MINTERELLISON'S PERSPECTIVES ON THE WAY FORWARD



MINTERELLISON'S PERSPECTIVES ON THE WAY FORWARD



1 FUNDAMENTALS

Focus on fundamentals of doing business ethically and morally

2 BALANCE

Sustainably balance customer, shareholder, community and regulator expectations

3 ADDRESS ROOT CAUSES

Act boldly and ambitiously to address root causes

4 ROBUST GOVERNANCE

Secure management accountability, enable cut through, follow through and learning from the past (BEAR)

5 NON-FINANCIAL RISK

Foster customer-centric culture with focus on non-financial risk of eliminating conflicts: strong tone from the top, driven from above

6 OBEY THE LAW

Apply and obey the law; be aware of increased focus on enforcement through litigation

7 SYSTEMS & DATA

Invest in systems, processes, data, controls and talent

8 RISK & COMPLIANCE FUNCTIONS

Increase stature of compliance and non-financial risk functions

9 REMEDIATION

Enhance customer complaints process and remediate quickly

10 STAY THE COURSE

Avoid a 'set and forget' approach: maintain the rage

Commercial-in-Confidence

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Presenters



Rahoul
Chowdry
Partner

T +61 2 9921 8781



Mark
Standen
Partner

T +61 2 9921 4902

EMAIL firstname.lastname@minterellison.com

MinterEllison