

Monday, 4 February 2019

‘Sweeping changes’: Focus on simplified laws, consumer rights in Banking RC final report

Greater consumer protections, increased penalties for law breakers, expanded enforcement powers for regulators and industry-wide legislative simplification are among sweeping changes recommended by the Royal Commission into the Banking and Financial Services Industry.

The Law Council of Australia has welcomed the recommendations, which will have a far-reaching impact on the banking and financial services sector, ensuring consumers are treated fairly and honestly, in accordance with key principles of the law.

Law Council President, Arthur Moses SC, said the Royal Commission had shone a light on misconduct – some potentially criminal – in the banking and financial sectors, providing a unique and important opportunity for reform and renewal.

“Australians were rightly shocked by some of the stories heard during the extensive Royal Commission hearings – of profit being put before people and in some instances the rule of law,” Mr Moses said.

“The recommendations put forward by Commissioner Kenneth Hayne have placed consumers first and established a roadmap with the potential to set the path straight into the future, ensuring banks and those providing financial services are held to account.

“Central to the Law Council’s submission was the call for simplification of complex laws, making them easier to understand and administer and we are pleased by the recommendations supporting this shift.

“The ‘clear need’ for the disadvantaged to access financial and legal assistance to deal with disputes on equal footing with large financial entities was highlighted in the final report.

“Many of the cases before the Royal Commission involved matters where individuals were unable to pursue their rights because of an inability to access legal assistance. This resulted in injustices occurring and wrongdoers going undetected.

“We reiterate our calls for the Federal Government to ensure predictable and stable funding for the legal assistance sector, so all Australians can access justice,” Mr Moses said.

Changes designed to protect consumers, meaning:

- banks would be prohibited from paying commissions to mortgage brokers, which would be paid by home loan borrowers;
- brokers failing to “act in the best interests of the intending borrower” would be liable to civil legal action;
- prior to giving advice financial advisers will be required to disclose conflicts of interest in a written statement; and
- a compensation scheme of last resort for those with a “viable claim” would be established in congruence with a government-appointed panel reviewing external dispute resolution and complaints arrangements.

The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.

Increased penalties for those breaking the law, including:

- criminal penalties for financial services and credit licensees for failure to report a contravention as and when required;
- the introduction of additional civil penalties for financial services and credit licensees for failure to report a contravention as and when required;
- breaches of industry codes of conduct would constitute breaches of law; and
- civil penalties for breaches of superannuation trustees' and directors' covenants set out in the *Superannuation Industry (Supervision) Act 1993*.

Expanded enforcement powers, meaning:

- ASIC should first consider the viability of court action before other enforcement tools such as infringement notices or enforceable undertakings;
- the establishment of a new disciplinary body for financial advisers, requiring registration, reporting of "serious compliance concerns", and allowing reporting by clients and other stakeholders;
- ASIC would become the conduct regulator for the superannuation industry; and
- ASIC enforcement staff would be required, where possible, to avoid informal contact with members of the banking and financial services industry.

The Law Council notes that measures to simplify existing law require clearly definition of generally applicable norms of conduct to ensure the removal of exceptions and qualifications in law are appropriate.

We reiterate our recommendation for a referral to the Australian Law Reform Commission to develop propositions for simplification and related matters.

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