

The Royal Commission Fallout Action List **What to consider doing next:**



Financial Adviser & Brokers

Product manufacturers:

- consider the implications for distribution models and ensure they are not over-exposed to personal advice channels.
- review all grandfathered commission arrangements and consider whether they should be terminated (where possible) or whether commissions can and should be redirected to customers.

Dealer groups and advisers who receive payments from superannuation accounts and/or grandfathered commissions:

- consider the impact on your business of the removal of these revenue sources.
- consider how the cost of advice can be reduced through efficiencies and how you can deliver greater value to your clients on a fee for service model.

All participants:

- review and, where appropriate, enhance policies on conflicts of interest and develop protocols for disclosures where there is a lack of independence, impartiality or bias.



Governance, Conduct, Culture & Trust

Boards:

- Increase oversight of remuneration - the quality of risk, non-financial performance and remuneration information being provided to the board should be improved.
- Get ready to expand annual reviews to include culture and governance: management of conduct and compliance risk, identify and deal with problems proactively, and consider whether previous changes have been effective.
- Ensure that board minutes properly reflect deliberations and identify matters on which there are disagreement and how those are resolved.
- Review the information provided to boards to determine whether the right information is provided to enable the board to challenge management, including on issues related to standards of conduct.
- Prepare for the broad implementation of the BEAR – this will include identifying your “accountable persons”, reviewing their roles, and preparing an accountability map and accountability statements.
- Consider how the additional responsibility will be implemented for ADIs.

Directors of superannuation trustees:

- Review your delegation and outsourcing arrangements, and the supervision of and reporting by delegates and service providers, especially where related parties are involved.



Remuneration

All entities that hold an AFSL or ACL:

- In light of the Government's proposal to apply an equivalent regime to the BEAR to all entities that hold an AFSL or ACL, consider how you will implement the mandatory forfeiture of variable remuneration, and the extension of variable remuneration deferral periods.
- Develop an accountability framework that nominates accountable persons and specifies their accountabilities, and develop the principles by which remuneration will be adjusted.
- Develop consequence management frameworks which clearly articulate the relationship between conduct and other non-financial risks and remuneration outcomes.
- Increase governance of the remuneration framework/outcomes
- Increase communication of outcomes (with due regard for confidentiality concerns...) to reinforce the link between accountability and consequence.
- Start considering how remuneration systems (contractual, policy and otherwise) will allow for the clawback of vested remuneration.

Boards:

- develop non-financial metrics which will support sound risk-management and which are also aligned to shareholders' expectations.
- set clearer expectations through comprehensive guidance on how reductions to variable remuneration will be determined and the factors which will result in an adjustment.
- develop a database/library of consequence management options to assist with the implementation of consistent and fair decision making, and set clear expectations for both positive and negative risk outcomes.
- expect more comprehensive risk information to allow for sufficient review of issues that could impact remuneration outcomes – comprehensive assessment/report from risk and audit and explanation for adjustments.



Consumer & Small business lending

Lenders:

- start reviewing your products with regard to the DDOs, considering the appropriate target markets, whether changes are required to cover a range of target markets, what distribution channels continue to be appropriate and what restrictions may be required.

Signatories to the Banking Code of Practice:

- Subject to the ABA's response on the recommendation to amend the definition of small business, signatories to the Banking Code of Practice should consider revising their policies and procedures to ensure that they can accurately identify small businesses that satisfy the new definition.



Credit distribution & intermediaries

Lenders:

- Review your current distribution channels and consider investing in new models or divesting of existing channels.
- start reviewing their products with regard to the design and distribution obligations, considering the appropriate target markets, whether changes are required to cover a range of target markets, what distribution channels continue to be appropriate and what restrictions may be required.

Lenders (involved in point-of-sale, or in other areas which may be viewed as analogous to broking):

- engage in the legislative process to ensure there are no unintended outcomes.



Responsible lending

Lenders:

- Review your current systems and processes for responsible lending obligations and consider whether any enhancements would assist with verifying a borrower's financial situation. The measures discussed in the report should be considered.
- Once ASIC releases the revised ASIC Regulatory Guide 209, lenders will need to engage with it and enhance their systems and processes to align with ASIC's expectations.
- consider the impact of design and distribution obligations, and how they interact with responsible lending.



Superannuation

Dual regulated entities:

- start considering options for splitting their superannuation arrangements from other arrangements.

Trustees:

- While the BEAR for superannuation may be different, trustees should understand the requirements of the current regime and understand what lessons can be learnt from the banks' implementation of the BEAR.
- consider your current agreements with advice licensees and determine what would need to change to implement the recommendations and how the changes could be made.

RSE licensees:

- reassess your group life insurance arrangements with related parties and other life insurers to ensure that the arrangements and policies entered into are in the best interests of members and otherwise satisfy legal and regulatory requirements.
- assess the rules which govern whether premium rates are fair and reasonable. This would normally require consideration of whether the status attributed is statistically appropriate.

Life insurers:

- Review your policy and cancellation procedures to ensure that they only avoid a contract of life insurance where they would not have entered into a contract on any terms. Insurers will need to consider what process needs to be in place to be able to demonstrate this.
- engage with Treasury on the formulation of universal key terms.
- consider the effect of removing commissions for life insurance products on their pricing.



Insurance & D&O

Insurers:

- carefully reconsider the questions asked of consumers in any pre-contract proposal form. This may result in an increase to the number and specificity of questions, as well as premium implications.
- reassess telephone sales models. Appropriate policies and training programs will be required to assist employees assess the scope of a customer's request, including the scope of solicited products.
- assess the terms of their insurance policies for compliance with the unfair contract terms. engage with the Financial Services Council, the Insurance Council of Australia and ASIC to identify provisions of industry codes that govern the terms of the contract between the insurer and the policyholder, as they will be designated as "enforceable code provisions".

Insurers and other claims handling providers:

- re-evaluate your claims handling processes to ensure compliance as a "financial service".
- Sales and distribution models should be re-assessed, especially given the recommendation regarding deferred sales models and the removal of the anti-hawking exemption.

Claims handling providers:

- You may need to obtain an AFSL or become authorised representatives, and may also become subject to the various codes and regulations.



Regulatory Engagement

- The final report recommended a greater role for enforceable Codes of Conduct. Consider whether you need to review your current practices and processes for compliance with the Codes that apply to you.
- Proposed legislation amends the Corporations Act and the ASIC Act to introduce a stronger penalty framework for misconduct. Several provisions will have associated civil penalties for the first time (s 912A, misleading or deceptive conduct) and civil penalties are also increasing.
- Given the considerable pressure on regulators to be more proactive and effective, expect to be watched. We are already aware of many organisations facing new and substantial investigations from regulators.
- The Government has proposed a new proactive power for ASIC to issue a "product intervention order" if satisfied that a product is likely to result in "significant detriment" to retail clients or consumers.



Class Actions & Remediation

- review all identified prior misconduct for the last 10 years and determine whether that misconduct has been fully remediated, or whether further remediation is required;
- put in place appropriate structural and governance changes required to address the BEAR changes, including identifying an appropriate senior executive to be accountable for customer remediation;
- design and establish the appropriate channels to connect with AFCA in respect of the public reporting of remediation activities;
- establish institutional structures that are equipped to respond promptly to, and give full effect to, an ASIC direction ordering that remediation activities to be undertaken;
- prepare for a post-Commission world in which ASIC will be less likely to be satisfied simply with remediation, but will likely pursue more court enforceable remedies; and
- provision for the costs associated with the CSLR.
- Organisations should put in place appropriate reporting and quality assurance mechanisms for remediation. Maintaining appropriate records will assist institutions should they be required to provide information in respect of future scrutiny that may come from regulators or subsequent inquiries.

We are happy to assist you in considering the final report and how it impacts to your business further. Please contact your usual KWM contact or Evie Bruce evie.bruce@au.kwm.com or Jim Boynton james.boynton@au.kwm.com if you would like to discuss the report further.