

ASA position — banking Royal Commission

18 December 2017

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ASA supports the necessity of a Royal Commission into Australia's banking and financial services sector. ASA is of the view that it is in the national interest for the political uncertainty in relation to the financial services sector to cease.

The ASA supports an independent Royal Commission as a forum capable of performing a holistic review of the measures required to restore the confidence of shareholders, customers and the community, as well as investors in offshore markets, in our financial services system. The financial services sector makes up to 10 per cent of the Australian economy, and the banks and superannuation funds are important community institutions.

The ASA notes that there are a number of investigations into the financial services sector either currently underway or recently completed. These include:

- The 2017 Banking Executive Accountability Regime, which has seen draft legislation introduced to parliament
- the 2017 Australian Securities and Investments Commission's (ASIC's) investigation into whether the Commonwealth Bank's (CBA's) board complied with continuous disclosure laws when it decided not to alert investors to AUSTRAC's concerns over the banks' breaches of anti-money-laundering and terror-financing laws
- the 2017 Australian Prudential Regulatory Authority's (APRA's) independent prudential inquiry into CBA, focusing on governance, culture and accountability frameworks and practices within the group
- the 2016 Senate Economics Legislation Committee inquiry into consumer protection in the banking, insurance and financial sector
- the 2016 Senate Standing Committee on Economics review of the four major banks
- the 2015 Senate Economics References Committee inquiry into scrutiny of financial advice
- the 2014 independent review of CBA's financial planning scandal
- the Financial System Inquiry, which handed down its Final Report in December 2014.

These official inquiries are in addition to the CBA boards' 2017 internal investigation into deficiencies in its risk and compliance framework and the role of management in assessing the rigour of that framework.

However, the ASA is of the view that the current piecemeal approach can be improved by the holistic approach of a Royal Commission.

The ASA also notes that the last Royal Commission into a private corporation was the HIH inquiry and it's widely accepted that its positive impact has been substantial, leading to significant corporate governance reforms in legislation and the formation of the ASX Corporate Governance Council. The foundations of our contemporary corporate governance system arose from the recommendations of that inquiry.

A Royal Commission into the financial services sector creates an environment where:

- misconduct on the part of financial institutions can be examined
- all parties can express their views
- certainty as to proper conduct can be developed.

Background

Notwithstanding the many inquiries into the financial services sector as listed above, the Federal Government announced on 30 November 2017 that it will establish a Royal Commission into misconduct in Australia's banking and financial services sector.

The establishment of a Royal Commission into the financial services sector follows ongoing calls for a Royal Commission into the banking sector specifically, following a series of life insurance and financial planning scandals at the big four banks. Support for a commission of inquiry into the banking and financial services sector came from the National, Labor and Greens Parties and within the Liberal Party.

The government's announcement followed receipt by the Prime Minister of a joint letter from the chief executives and chairmen of Westpac, ANZ, NAB and CBA for the government to establish an inquiry in a bid to end the uncertainty plaguing the sector in light of these ongoing calls.

The Royal Commission will run for 12 months with a final report due by February 1, 2019, although the government has noted that Royal Commissions can take longer than originally anticipated.

The terms of reference of the Royal Commission provide powers to examine all cases of misconduct, including breaches of professional standards across the insurance, banking and superannuation



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industries. It will focus on "any conduct, practices, behaviour or business activity that falls below community standards" and "the use of superannuation that is otherwise not in the best interest of members".

The government's terms of reference do not specify an investigation into the remuneration of banking executives or protections for whistleblowers of financial misconduct, but they are sufficiently broad to include these if they wish. The terms of reference also limit the inquiry to a year and provide it with the power to exclude matters, including issues currently before the courts or that have been covered in another inquiry.

The share prices of Australia's big four banks dropped immediately between 1.5 per cent and 2.5 per cent in response to the government's announcement of a Royal Commission.