

## Hayne's final report

### The fundamental importance of leadership, governance & culture

Following much speculation, Commissioner Hayne's final report in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in Australia was released to the public on 4 February 2019.

As predicted, Hayne has delivered a lengthy report and a comprehensive set of recommendations. These are now the subject of intense scrutiny by all stakeholders.

Hayne has re-emphasised the underlying "six norms of conduct" he identified in his interim report. These principles inform his responses to the issues that span the various sectors of the financial services industry:

- Obey the law
- Do not mislead or deceive
- Act fairly
- Provide services that are fit for purpose
- Deliver services with reasonable care and skill
- When acting for another, act in the best interests of that other

Hayne has also framed four key questions which he seeks to answer in his recommendations. These include: how the law can be simplified, how to approach conflicts of interest, and how to improve the effectiveness of regulators. Importantly, he also asks what more can be done to achieve effective leadership, good governance and appropriate culture so that entities comply with the six norms of conduct.

---

*"...every financial services entity, whether examined in a case study or not, must look at its own conduct and the way in which it governs itself..."*

---

Hayne acknowledges that because primary responsibility for misconduct lies with financial services entities and those that manage and control them, effective leadership, good governance and appropriate culture are fundamentally important.

Specifically, Recommendation 5.6 underscores the fundamentals of effective risk management. Hayne recommends that as often as possible financial services entities should take proper steps to assess culture and governance, identify and deal with problems and determine whether changes made have been effective.

He also emphasises that regulators have an important role in supervising these matters. He notes that regulatory supervision must extend beyond financial risks to non-financial risks, and attention must be paid to culture, governance and remuneration.

Commissioner Hayne's recommendations to strengthen the Australian regulatory model reflect this view. These include an approach to enforcement that asks ASIC to start with the question of whether a court should determine the consequences of a contravention; proposes that APRA builds a supervisory program focussed on building culture that mitigates the risk of misconduct; and recommends co-regulation and co-ordination between APRA and ASIC, and greater accountability of both agencies to a new oversight body.

Hayne comments that, until recently, too little attention has been given in Australia to regulatory compliance and conduct risk. Reputational consequences clearly demonstrate the pressing urgency for dealing with these issues.

Financial services firms will undoubtedly be continuing efforts already underway to address these risks, as well as preparing for legal and regulatory reform and an increased focus on enforcement. As organisations reflect on the further tasks ahead and focus on reducing the risk of misconduct in future, an additional observation of Hayne is instructive:

---

*"Culture, governance and remuneration march together. Improvements in one area will reinforce improvements in others; inaction in one area will undermine progress in others."*

---

## Key contacts



**Scott Atkins**

Partner | Deputy Chair | Head of Risk Advisory  
E: [scott.atkins@nortonrosefulbright.com](mailto:scott.atkins@nortonrosefulbright.com)  
T: +61 2 9330 8015



**Danielle Avery**

Senior Advisor - Risk Advisory  
E: [danielle.avery@nortonrosefulbright.com](mailto:danielle.avery@nortonrosefulbright.com)  
T: +61 2 9330 8077



**Philip Charlton**

Senior Advisor - Risk Advisory  
E: [philip.charlton@nortonrosefulbright.com](mailto:philip.charlton@nortonrosefulbright.com)  
T: +61 2 9330 8367



**John Davison**

Head of Regulatory Compliance Consulting  
E: [john.davison@nortonrosefulbright.com](mailto:john.davison@nortonrosefulbright.com)  
T: 44 20 7444 2875