9. Boost Transparency in Wealth Management

"We have very significant concerns about the way the financial advice industry has operated" *Mr Peter Kell, Deputy Chairman of ASIC*[1]

"We did not report them at that time" *Mr Andrew Thorburn, CEO of National Australia Bank, on NAB's failure to report 43 dismissed financial planners to ASIC.*[2]

Recommendation 9

9.1 The committee recommends that the Australian Securities and Investments Commission (ASIC) establish an annual public reporting regime for the wealth management industry, by end-2017, to provide detail on:

- **the overall quality of the financial advice industry;**
- **misconduct in the provision of financial advice by Australian Financial Services Licence (AFSL) holders, their representatives, or employees (including their names and the names of their employer); and**

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1 Mr Peter Kell, Deputy Chairman of ASIC, *Committee Hansard*, 14 October 2016, p. 13.

2 Mr Andrew Thorburn, CEO of NAB, *Committee Hansard*, 6 October 2016, p. 10.

- **consequences for AFSL holders' representatives guilty of misconduct in the provision of financial advice and, where relevant, the consequences for the AFSL holder that they represent.**

9.2 The committee further recommends that ASIC report this information on an industry and individual service provider basis.

9.3 The provision of poor financial advice is a systemic problem.[3]Given that almost half of all Australian adults have unmet financial advice needs[4] this presents a serious risk to the long-term financial health of Australians.

9.4 In the best cases, poor financial advice leaves Australians' investments and retirement savings facing elevated levels of risk. In the worst, Australians have had their savings wiped out.

9.5 It is a practice that has resulted in CBA[5] and NAB[6] alone paying out approximately $85 million in compensation since 2009. These figures will likely continue to grow.

9.6 Further, the provision of poor advice is far from the sector's only failing. Over seven years banks systemically charged consumers ongoing advice fees, even where no advice was provided.

9.7 ASIC has estimated that between 1 July 2008 and 30 June 2015, the sector collected up to $178 million from consumers that it was not entitled to. [7]

9.8 Given the above, it is not surprising that only 20 per cent of Australians trust banks to provide them with unbiased advice.[8] This is a trust deficit that the industry must repair.

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3 Mr Peter Kell, Deputy Chair of ASIC, *Committee Hansard,* 14 October 2016, p. 13.

4 ASIC, *ASIC's Corporate Plan 2016-17 to 2019-20*, 31 August 2016, p. 11.

5 Mr Ian Narev, CEO of CBA, *Committee Hansard*, 4 October 2016, p. 4.

6 Mr Andrew Thorburn, CEO of NAB, *Committee Hansard*, 6 October 2016, p. 17.

7 ASIC, *Report 499: Financial advice: fees for no service,* October 2016, p. 21.

8 Ernst and Young, *The Relevance Challenge: What retail banks must do to remain in the game,* September 2016, p. 4.

9.9 The industry's failure to deliver for its customers has occurred for a number of reasons, including:

- financial advisors receiving commissions that incentivised the sale of certain products irrespective of the investor's interests;
- financial advisors taking advantage of retail investors with poor levels of financial literacy;[9]
- conflicts of interest between product designers and distributors in vertically integrated institutions (each of the major banks is vertically integrated in this way);[10]
- financial advisors acting fraudulently;[11]and
- a poor institutional culture that does not put consumers first.[12]

9.10 In response to the industry's repeated failings, government, regulators and industry have made a number of reforms to improve consumer outcomes.

9.11 These are critical reforms that are strongly endorsed by the committee.

9.12 The committee believes that further enhancing the transparency and public accountability of the financial advice industry would create the incentives necessary to better ensure that consumers' interests are prioritised.

9.13 For this reason, the committee recommends that by the end of 2017, ASIC establish an annual public reporting regime for the wealth management industry, providing detail on:

- the overall quality of the financial advice industry;

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9 Senate Economics References Committee, *Scrutiny of Financial Advice Part I – Land banking: a ticking time bomb*, February 2016, p. xii

10 ASIC, *ASIC's Corporate Plan 2016-17 to 2019-20*, 31 August 2016, p. 11.

11 For example: ASIC, '16-007MR Former Brisbane financial advisor jailed after pleading guilty to fraud charges', *Media Release*, 18 January 2016, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-007mr-former-brisbane-financial-advisor-jailed-after-pleading-guilty-to-fraud-charges/>, viewed 27 October 2016.

12 ASIC, *ASIC's Corporate Plan 2016-17 to 2019-20*, 31 August 2016, p. 11.

- misconduct in the provision of financial advice by AFSL holders, their representatives, or employees (including their names and the names of their employer); and
- consequences for financial advisors found guilty of misconduct and, where relevant, the consequences for the AFSL holder that they represent or are employed by.

9.14 This information should be provided at an industry and institutional level and should build on the information provided in ASIC's August 2016 report on enforcement outcomes.[13]

9.15 This regime could be modelled on the proposed reporting regime for the life insurance industry, which will report claims data and claims outcome on an industry and individual insurer basis from 2017 onwards.

9.16 The establishment of a reporting regime for the life insurance industry is an important outcome of ASIC's review into claims handling practices and will create incentives for life insurers to improve their practices. It should be replicated in other industry sectors of concern.

9.17 Regular reporting of this information in the life insurance and wealth management industries will effectively supplement the information provided in each institution's public regulatory breach reporting (Recommendation 2) and further empower consumers to take their business to firms with a history of delivering for their clients.

Measures to improve consumer outcomes (enacted and announced)

9.18 Since 2011, the financial advice industry has been subjected to increasing levels of regulation (Table 9.1). Given the potential harm that the industry poses to consumers, this is appropriate.

13 That is: *Report 485: ASIC enforcement outcomes: January to June 2016*, August 2016, pp. 8-9.

Table 9.1 Key measures to improve outcomes in the financial advice industry

Measure	Summary of Measure	Date enacted/expected to be enacted
Future of Financial Advice (FOFA)	The FOFA reforms aim to improve the quality of financial advice provided to consumers.	The FOFA reforms became mandatory from 1 July 2013, with ASIC's facilitative compliance ending on 1 July 2014. The Government's FOFA amendment Bill passed the Parliament on 2 March 2016.
Financial Advisors Register	A register of people who provide personal advice on investments, superannuation and life insurance. Includes details on qualifications and training.	31 March 2015.
New industry hiring standards for financial advisors	The industry has developed minimum standards for checking references and sharing information to ensure that rogue advisors cannot move between firms. *Note: according to the ABA only 38 per cent of the market has subscribed to these policies.*	Commitment announced on 20 September 2016.
Last resort compensation scheme for financial advisers	The ABA has announced the development of an industry model for a mandatory last resort compensation scheme covering financial advisers.	Model of last resort compensation scheme scheduled to be finalised in September 2017.

Measure	**Summary of Measure**	**Date enacted/expected to be enacted**
Life insurance advice remuneration	The Government is progressing reforms to improve the quality of life insurance advice. The reforms reduce the financial incentives for advisers to unnecessarily replace policies.	Legislation introduced on 12 October 2016. The reforms are scheduled to commence on 1 January 2018.
Raising professional standards	The Government is progressing legislation to raise education, training, and ethical standards for financial advisers.	Requirements commence 1 January 2019.
Enhanced ownership disclosure	The Government has committed to introducing legislation to ensure that financial advisers adequately disclose their relationships with associated entities.	Commitment announced on 20 October 2015.
ASIC's Wealth Management Project	ASIC's project aims to lift the standards of major financial advice providers – in particular, advice quality and the remediation of clients who have suffered loss as a result of their failure or action.	Ongoing.

Source: Government's response to the FSI, ABA

9.19 These reforms, coupled with the introduction of a product intervention power for ASIC (which will enable ASIC to modify, or if necessary, ban harmful financial products); product design and distribution obligations for financial service providers; and a broad review of ASIC's enforcement regime, should address the majority of the institutional drivers of poor financial advice.

9.20 However, they should be supplemented by the introduction of greater transparency. The committee believes that enhancing the public accountability of the sector will:

- empower consumers to make more informed choices in the financial advice market; and
- create additional incentives for institutions to improve consumer outcomes (including the ability for institutions to benchmark their performance against their peers).

Recommendation 10

9.21 The committee recommends that, whenever an Australian Financial Services Licence (AFSL) holder becomes aware that a financial advisor (either employed by, or acting as a representative for that licence holder) has breached their legal obligations, that AFSL holder be required to contact each of that financial advisor's clients to advise them of the breach.

9.22 In addition to the financial advice industry not being sufficiently accountable to the general public, the industry is not accountable enough to its own customers.

9.23 When a financial advisor is found guilty of misconduct, the committee believes that the clients of that advisor should be notified as soon as possible. The committee was disappointed to learn that this is not standard industry practice.[14]

9.24 AFSL holders should not expect consumers to be monitoring ASIC's website to learn of misconduct[15] – particularly misconduct that may have been systemic and may have resulted in their savings being placed at elevated levels of risk.

9.25 NAB has argued that in cases where the provision of poor advice was not systemic, and where some clients therefore did not suffer financial harm, that notifying all clients may create unnecessary stress.[16]

9.26 This argument is not compelling. Customers have the right to know if they have been advised by someone that has been found guilty of misconduct.

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14 Mr Shayne Elliott, CEO of ANZ, *Committee Hansard*, 5 October 2016, p. 8 and Mr Andrew Thorburn, CEO of NAB, *Committee Hansard*, 6 October 2016, p. 8.

15 Mr Shayne Elliott, CEO of ANZ, *Committee Hansard*, 5 October 2016, p. 8.

16 NAB, *Response to Questions on Notice: Question Five*, 20 October 2016, p. 5.

9.27 The financial advice industry needs to demonstrate that it has heard community concerns. In response to misconduct, the industry must demonstrate to each potentially affected client that the advice they received was good.

9.28 This is a necessary step to improve Australians' confidence in the financial advice industry.

Mr David Coleman MP

Chair
23 November 2016