

## Chapter 2

### Previous inquiries

2.1 This inquiry arose in the midst of a range of other inquiries investigating misconduct in the banking, superannuation and financial services industry, most of which have now been completed. It preceded the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), and has some cross-over with the Royal Commission in terms of issues identified during the course of the inquiry.

2.2 This chapter outlines a number of the key inquiries that have been held since 2009, or are ongoing at the time of this report tabling. The chapter is divided into inquiries that have investigated or reviewed the system as a whole, inquiries that have looked at issues in particular sectors, and a brief overview of the work of the Financial Services Royal Commission. The chapter concludes with the committee view.

#### System-wide inquiries and reviews

2.3 Several previous inquiries examined aspects of the financial system as a whole, including consumer protections. These system-wide inquiries and reviews are outlined in Table 2.1.

**Table 2.1: System-wide inquiries and reviews**

Year	Author	Title
2017–present	The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry	The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
2017	Senate Economics References Committee	Criminal, Civil and Administrative Penalties for White Collar Crime
2017	Parliamentary Joint Committee on Corporations and Financial Services	Whistleblower Protections in the Corporate, Public and Not-for-Profit Sectors
2017	Consumer Affairs Australia and New Zealand	Australian Consumer Law Review
2017	Professor Ian Ramsay et al.	Review of the Financial System External Dispute Resolution and Complaints Framework
2014	David Murray et al.	Financial System Inquiry

## Inquiries into specific areas of the banking, insurance and financial services sector

2.4 Recent inquiries into specific aspects of the banking, insurance and financial services sector have covered the following areas:

- The regulatory framework underpinning the Australian Securities and Investments Commission (ASIC);
- Retail banking;
- Financial advice;
- General and life insurance;
- Managed investment schemes; and
- Loans and credit contracts.

### **Australian Securities and Investments Commission (ASIC) performance**

2.5 As outlined in Chapter 3, the Australian Securities and Investments Commission (ASIC) is Australia's regulator of the corporate, financial services and consumer credit sectors. Several recent inquiries have directly and indirectly examined ASIC's performance. In 2016–17, a government appointed taskforce examined ASIC's enforcement regime. The Government agreed or agreed-in-principle with all of the inquiry's recommendations in April 2018, stating its intent to introduce some recommendations through legislation and to defer implementation of other recommendations until the Financial Services Royal Commission releases its findings.<sup>1</sup>

**Table 2.2: Inquiries into the Australian Securities and Investments Commission (ASIC)**

Year	Author	Title
2017	Department of the Treasury	ASIC Enforcement Review
2016-present	Parliamentary Joint Committee on Corporations and Financial Services	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 45 <sup>th</sup> Parliament
2014	Senate Economics References Committee	The Performance of the Australian Securities and Investments Commission

1 See Australian Government, *Australian Government Response to the ASIC Enforcement Review Taskforce Report*, April 2018, <https://static.treasury.gov.au/uploads/sites/1/2018/04/Aus-Gov-response-ASIC-Enforcement-Review-Taskforce-Report.pdf> (accessed 25 June 2018).

### **Retail banking**

2.6 A number of recent inquiries into retail banking outlined considerable concerns held among customers about consumer protections available to them when engaging with the sector. Areas of concerns raised in these inquiries included lack of competition in Australia's banking sector, remuneration for bank employees selling products to customers, and credit card interest, as outlined in the Senate Economics References Committee's inquiry in the 44<sup>th</sup> Parliament into credit card interest rates. The Australian Bankers' Association has recently commissioned two major reviews into the banking industry: the Retail Banking Remuneration Review (Sedgwick Review), and an independent review of the Code of Banking Practice.

**Table 2.3: Inquiries into areas related to retail banking**

<b>Year</b>	<b>Author</b>	<b>Title</b>
2017	Stephen Sedgwick	Retail Banking Remuneration Review
2017	Phil Khoury	Independent Review of the Code of Banking Practice
2016–present	House of Representatives Economics Committee	Review of the Four Major Banks
2015	Senate Economics References Committee	Matters Relating to Credit Card Interest Rates
2011	Senate Economics References Committee	Competition within the Australian Banking Sector

### **Financial advice**

2.7 Other inquiries have examined consumer protections or lack thereof in the provision of financial advice, particularly in relation to conflicts of interest between the advice offered by financial service providers and their own remuneration structures.

2.8 Major inquiries into this area since 2009 are outlined in Table 2.4, including the Senate Economics References Committee's 2016 inquiry into agribusiness managed investment schemes, which examined the role of some financial advisers in promoting and selling forestry managed investment schemes.<sup>2</sup>

---

2 See Senate Economics References Committee, *Agribusiness Managed Investment Schemes: Bitter Harvest*, March 2016.

**Table 2.4: Inquiries into financial advice**

<b>Year</b>	<b>Author</b>	<b>Title</b>
2017	Senate Economics References Committee	Scrutiny of Financial Advice
2016	Senate Economics References Committee	Agribusiness Managed Investment Schemes
2014	Parliamentary Joint Committee on Corporations and Financial Services	Inquiry into Proposals to Lift the Professional, Ethical and Education Standards in the Financial Services Industry
2012	Richard St John	Compensation Arrangements for Consumers of Financial Services
2009	Parliamentary Joint Committee on Corporations and Financial Services	Financial Products and Services in Australia (Ripoll Inquiry)

### ***Life and general insurance***

2.9 General insurance covers motor vehicle, home and contents, consumer credit and travel insurance. Life insurance contracts provide for payments in the event of death, personal accident, disability or serious illness.<sup>3</sup> Some forms of superannuation include provisions for life insurance cover.

2.10 This committee previously examined the issue of general insurance and expressed concerns about the lack of transparency in the industry with regard to product disclosure.<sup>4</sup> The Insurance Council of Australia released a final report from its review of its General Insurance Code of Practice in June 2018. Recommendations included revising the Code to 'include enhanced protections for consumers experiencing Financial Hardship' and to require that insurers provide claimants with clarity about claims processes and reasons for decisions.<sup>5</sup> Best Practice Principles included in the report noted that product disclosure statements were 'seen by consumers as too detailed and inaccessible' and proposed that insurers 'explore and

3 *Life Insurance Act 1995*, s. 9(1).

4 Senate Economics References Committee, *Australia's General Insurance Industry: Sapping Consumers of the Will to Compare*, August 2017, p. 41

5 Insurance Council of Australia, *Final Report: Review of the General Insurance Code of Practice*, June 2018, pp. 6, 10.

---

adopt new forms of electronic disclosure' to ensure that consumers understand the products they are purchasing.<sup>6</sup>

2.11 Several previous inquiries have identified upfront commissions for individuals selling policies as a major issue because of the link between high upfront commissions and poor consumer outcomes, particularly in the context of life insurance.<sup>7</sup>

2.12 The Chair's foreword to the Parliamentary Joint Committee on Corporations and Financial Services' report on the life insurance industry, tabled in March 2018, concluded that the 'consumer protections that currently apply to life insurance are substantially weaker than the consumer protections that apply to other financial and non-financial services'.<sup>8</sup> The report particularly drew attention to 'grossly inadequate' consumer protections in the life insurance sector because of a 'very large number of exemptions' related to consumer protections in the legal framework regulating the sector.<sup>9</sup> Table 2.5 outlines major recent inquiries into life insurance.

**Table 2.5: Inquiries into life insurance**

<b>Year</b>	<b>Author</b>	<b>Title</b>
2018	Parliamentary Joint Committee on Corporations and Financial Services	Inquiry into the Life Insurance Industry
2015	John Trowbridge	Report on Retail Life Insurance Advice
2014	Australian Securities and Investments Commission	Review of Retail Life Insurance Advice

### ***Superannuation***

2.13 Superannuation includes the following:

- retail super funds, run by banks or investment companies;
- industry super funds, run by entities catering to a specific industry; and

---

6 Insurance Council of Australia, *Final Report: Review of the General Insurance Code of Practice*, June 2018, p. 100.

7 Australian Securities and Investments Commission, *Report 413: Review of Retail Life Insurance Advice*, October 2014, p. 5; David Murray, *Financial System Inquiry: Final Report*, November 2014, p. 217; John Trowbridge, *Review of Retail Life Insurance Advice: Final Report*, March 2015, p. 6.

8 Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry*, March 2018, p. ix.

9 Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry*, March 2018, p. 47.

- self-managed super funds, which are subject to different regulations than other forms of superannuation.<sup>10</sup>

2.14 Recent reforms introduced by the Government in response to recommendations arising from past inquiries into superannuation include the introduction of MySuper, a default superannuation system intended to be 'simple' and 'cost-effective'.<sup>11</sup> From July 2017, all member accounts in default investment options were required to be invested in MySuper products.

2.15 In 2017, this committee examined the failure of some employers to pay compulsory superannuation into superannuation accounts for employees. The committee made 32 recommendations with a focus on enhancing transparency and compliance.<sup>12</sup> As of November 2018, the Government is yet to respond to the report's recommendations.

**Table 2.6: Inquiries into superannuation**

Year	Author	Title
2017	Senate Economics References Committee	Wage Theft and Non-Compliance of the Superannuation Guarantee
2016	Productivity Commission	Competitiveness and Efficiency of Superannuation
2015	Department of the Treasury	Super System Review

### ***Loans and credit contracts***

2.16 A number of inquiries have examined loans and credit contracts, including farm finance, small business loans and small amount credit contracts (see Table 2.7). A common theme running through these inquiries is the asymmetrical power relationship between lenders and borrowers considered to be in financial difficulty. For example, the Parliamentary Joint Committee on Corporations and Financial Services found in its inquiry into the impairment of customer loans that in some of the cases it examined, there was 'a persistent pattern of abuse of the almost complete asymmetry of power in the relationship between lender and borrower'.<sup>13</sup> In particular, the inquiry's report dedicated a chapter to the role of property valuers in relation to

10 ASIC's Money Smart, *Types of super funds*, 18 October 2017, <https://www.moneysmart.gov.au/superannuation-and-retirement/how-super-works/choosing-a-super-fund/types-of-super-funds> (accessed 22 June 2018).

11 Treasury, *MySuper*, <https://treasury.gov.au/programs-and-initiatives-superannuation/mysuper/> (accessed 25 June 2018).

12 Senate Economics References Committee, *Superbad – Wage Theft and Non-Compliance of the Superannuation Guarantee*, May 2017.

13 Parliamentary Joint Committee on Corporations and Financial Services, *Impairment of Customer Loans*, May 2016, p. ix. See also Australian Small Business and Family Enterprise Ombudsman, *Inquiry into Small Business Loans*, December 2016, p. 6; Select Committee on Lending to Primary Production Customers, *Final Report*, December 2017, p. 43.

bank loan re-valuations, and a chapter to issues raised about receivers and investigative accountants. The Government is yet to provide a response to the committee's recommendations.

**Table 2.7: Inquiries into loans and credit contracts**

Year	Author	Title
2017	Senate Select Committee on Lending to Primary Production Customers	Lending to Primary Production Customers
2016	Australian Small Business and Family Enterprise Ombudsman	Inquiry into Small Business Loans (Carnell Report)
2016	Department of the Treasury	Review of the Small Amount Credit Contract Laws
2016	Parliamentary Joint Committee on Corporations and Financial Services	The Impairment of Customer Loans

### *Other relevant inquiries*

2.17 Other recent relevant inquiries include:

- The Senate Economics References Committee's inquiry into agribusiness managed investment schemes, tabled March 2016;
- ASIC's review of mortgage broker remuneration (2017);
- This committee's inquiry into Australia's general insurance industry (2017); and
- This committee's inquiry into credit and financial services targeted at Australians at risk of financial hardship (ongoing).

### **Financial Services Royal Commission**

2.18 The Financial Services Royal Commission was established on 14 December 2017. Commissioner the Hon. Kenneth Hayne AC QC tabled an interim report on the Financial Services Royal Commission's work on 28 September 2018.

2.19 The Financial Services Royal Commission's interim report summarised seven key issues, each of which is briefly outlined below:

- Concerns about consumer lending, such as the role of intermediaries (mortgage brokers, mortgage aggregators, financial advisers and financial services licensees), communication with customers and responsible lending practices.<sup>14</sup>

---

14 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), *Interim Report*, Volume 1, September 2018, p. 327.

- Issue relating to financial advice, specifically the culture and incentives, conflicts of interest and duty (including confusion of roles) and the effectiveness of regulators.<sup>15</sup>
- General issues concerning lending practices to small and medium enterprises – specifically, questions concerning the legal framework that governs lending to these enterprises – as well as the content of Code of Banking Practice obligations, third party guarantors and dispute resolution approaches by the Financial Ombudsman Service and the Australian Financial Complaints Authority.<sup>16</sup>
- Matters relating to the lending practices to the agriculture sector. The interim report identified four issues, which relate to the revaluation of securities, access to banking services and support, changes to conditions of lending and 'enforcement by appointment of external administrators'.<sup>17</sup>
- The response of financial services to the needs and vulnerabilities experienced by Indigenous Australians, in particular those living in remote communities. The interim report noted issues relating to access to services, account fees and the application of standard identification requirements, along with concerns about funeral insurance and predatory behaviour by insurers and salespersons.<sup>18</sup>
- Consideration of the laws that govern financial services entities and their conduct, and ways in which the regulators (ASIC and the Australian Prudential Regulation Authority) had responded to matters raised during the Financial Services Royal Commission.<sup>19</sup>
- Concerns that the misconduct identified and criticised during the Financial Services Royal Commission 'was conduct that provided a financial benefit to the individuals and entities concerned' and that the 'governance and risk management practices of the entities did not prevent the conduct'. Further, the 'culture and conduct of the banks was driven by, and was reflected in, their remuneration practices and policies'.<sup>20</sup>

2.20 The interim report considered each of these issues and listed a series of questions to be addressed in the final phase of the Royal Commission's investigation.

2.21 At the release of the interim report, the Financial Services Royal Commission had received 10,140 submissions, with 61 per cent related to the banking sector, 12 per cent related to superannuation and nine per cent related to financial advice. The

---

15 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 329.

16 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 333.

17 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 335.

18 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 337.

19 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 339.

20 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 340.

Financial Services Royal Commission has also published 29 background papers on its website, covering, for example, mortgage broking, everyday consumer lending, the legal framework governing financial advice, small business loans, general insurance, and Aboriginal and Torres Strait Islander consumers of financial products.

2.22 Areas that the Financial Services Royal Commission has covered in its public hearings up to October 2018 included consumer lending, financial advice, loans to small and medium enterprises, and farm finance (see Table 2.8). On 19 November 2018, the Financial Services Royal Commission will commence its final round of hearings, which will consider the policy questions arising from the interim report and the first six rounds of hearings. The final report is scheduled to be issued by 1 February 2019. Chapter 5 of this report provides further details on the events leading to the establishment of the Royal Commission.

**Table 2.8: Issues addressed in the Financial Services Royal Commission hearings as of 29 October 2018<sup>21</sup>**

Round	Date	Issues
Round 1	13–23 March 2018	Consumer lending practices, including residential mortgages, car finance, credit cards, add-on insurance, credit offers and account administration
Round 2	16–27 April 2018	Financial advice, including fees for no service, investment platform fees, inappropriate financial advice, improper conduct by financial advisers and the disciplinary regime for the financial advice profession
Round 3	21 May–1 June 2018	Loans to small and medium enterprises, including responsible lending to small businesses, bank enforcement, management and monitoring of business loans, unfair contract terms and the Code of Banking Practice
Round 4	25 June–6 July 2018	Issues affecting Australians in remote and regional communities, including farming finance and interactions between Aboriginal and Torres Strait Islander people and financial service entities

21 See Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Public Hearings* (as at 29 October 2018), <https://financialservices.royalcommission.gov.au/public-hearings/Pages/default.aspx> (accessed 29 October 2018).

Round 5	6–17 August 2018	How registrable superannuation entities licensees fulfil their duties of regulated superannuation funds, and how structural or governance arrangements affect the fulfilment of those duties
Round 6	10–21 September 2018	Issues related to the sale and design of life insurance and other general insurance products, including the handling of claims under life insurance and general insurance policies, and life insurance administration by superannuation trustees

### **Committee view**

2.23 The number of recent inquiries into the banking, insurance and financial services sector indicates that there are significant problems in the current system, particularly in the context of consumer protections that are in place to prevent or mitigate harm caused by misconduct and unethical actions of financial entities. The breadth and extent of issues that the Financial Services Royal Commission has brought to light demonstrate that despite the reforms arising from the inquiries outlined above, major systemic and structural issues remain in the system as a whole, and these continue to negatively impact consumers.

2.24 While the committee remains optimistic about the work of the Royal Commission, there are areas that the Royal Commission is unable to investigate, given time constraints and its terms of reference. Further, it is not yet clear to what extent the Financial Services Royal Commission will recommend structural changes to the system as a whole and whether these recommendations will address deficiencies in current consumer protections systems. The committee anticipates the Financial Services Royal Commission's final report, and commends Royal Commissioner Kenneth Hayne AC QC and his team for their work.

2.25 In addition to the Financial Services Royal Commission, the committee has commenced an inquiry into credit and financial services targeted at Australians at risk of financial hardship to further address and support those who have suffered from the actions of the financial services sector.