

Summary of inquiry and next steps

Referral, terms of reference and scope of inquiry

1.1 On 4 September 2014, the Senate referred an inquiry into the scrutiny of financial advice ('the SOFA inquiry') to the Senate Economics References Committee for inquiry and report.

1.2 The committee was asked to inquire into and report on the implications of financial advice reforms, with particular reference to:

- (a) the current level of consumer protections;
- (b) the role of, and oversight by, regulatory agencies in preventing the provision of unethical and misleading financial advice;
- (c) whether existing mechanisms are appropriate in any compensation process relating to unethical or misleading financial advice and instances where these mechanisms may have failed;
- (d) mechanisms, including a centralised register, that would ensure financial planners found to have breached any law or professional standards in their employment are transparent, for both the sector and consumers;
- (e) how financial services providers and companies have responded to misconduct in the industry;
- (f) other regulatory or legislative reforms that would prevent misconduct; and
- (g) any related matters.¹

1.3 In May 2015, the committee resolved that activities associated with the promotion and sale of land banking and similar property investment schemes could come under the definition of a financial product and therefore be covered by the SOFA inquiry's terms of reference. As such, the committee resolved that it would investigate land banking as part of the inquiry. The committee invited written submissions and held a public hearing on the matter, and released a report, *Land banking: a ticking time bomb*, on 24 February 2016.

1.4 On 2 March 2016, the Senate referred the following additional matters to the committee as part of the inquiry:

- (a) the need for further reform and improved oversight of the life insurance industry;
- (b) whether entities are engaging in unethical practices to avoid meeting claims;
- (c) whether a life insurance industry code of conduct is required;

¹ *Journals of the Senate*, No. 52, 4 September 2014, p. 1424.

- (d) the role of the Australian Securities and Investments Commission [ASIC] in reform and oversight of the industry; and
- (e) any related matters.²

1.5 The inquiry lapsed with the dissolution of the 44th Parliament on 9 May 2016. On 11 October 2016, the Senate agreed to the committee's recommendation that the inquiry be re-adopted in the 45th Parliament.

1.6 Upon re-adoption, the inquiry terms of reference were amended to remove the additional reference to the life insurance industry (as made on 2 March 2016). This change reflected the 14 September 2016 Senate decision to refer an inquiry into the life insurance industry to the Parliamentary Joint Committee on Corporations and Financial Services (PJC). The committee indicated on the SOFA inquiry website that it would no longer be inquiring into this area of financial advice and directed those interested in the matter to the PJC inquiry.

1.7 Upon re-adoption of the SOFA inquiry, its terms of reference were also amended to include a specific reference to the issue of Australia's corporate whistleblowing framework. This change was made to better reflect the committee's interest in and work on this matter as part of the inquiry, including the release of an issues paper on the matter in April 2016, shortly before the dissolution of the 44th Parliament. Subsequent to the addition of the whistleblowing matter to the terms of reference, on 30 November 2016, the Senate referred an inquiry into whistleblowing protections in the corporate, public and not-for-profit sectors to the PJC.³ Following the referral of the whistleblowing inquiry to the PJC, the committee announced that it would no longer be inquiring into corporate whistleblowing as part of the SOFA inquiry.

Transition of SOFA inquiry work to the consumer protection inquiry

1.8 On 29 November 2016, the Senate referred an inquiry into the regulatory framework for the protection of consumers, including small businesses, in the banking, insurance and financial services sector (including Managed Investment Schemes) to the committee for inquiry and report by the last sitting day of the autumn sittings of 2018 ('the consumer protection inquiry'). The terms of reference for the consumer protection inquiry overlap with and expand upon the original SOFA inquiry terms of reference. As such, the committee determined that it would finalise its work on the SOFA inquiry with the release of this report. However, it is the committee's expectation that it will further inquire into many of the matters raised in the SOFA inquiry as part of the consumer protection inquiry.

1.9 The committee has also resolved that it may use and refer to the evidence received in the SOFA inquiry, both in written submissions and public hearings, to inform its work on the consumer protection inquiry. As such, the committee would like to assure participants in the SOFA inquiry that the evidence they provided will be

2 *Journals of the Senate*, No. 144, 2 March 2016, p. 3884.

3 *Journals of the Senate*, No. 22, 30 November 2016, p. 714.

of ongoing value to the committee as it continues its consideration of the important matters raised throughout the inquiry.

1.10 The committee anticipates that many of the issues raised by the SOFA inquiry will be further considered as part of the consumer protection inquiry.

1.11 A brief summary of some of the issues raised during the inquiry, along with an overview of the inquiry process, is provided below.

Inquiry process

1.12 The committee advertised the inquiry on its website calling for written submissions. The committee also wrote directly to a range of organisations and individuals drawing their attention to the inquiry and inviting them to make written submissions.

1.13 The committee received 256 written submissions addressing a range of issues across the terms of reference. Approximately 100 of these submissions relate to life insurance industry and were received in response to the abovementioned expansion of the terms of reference on 2 March 2016 (the committee having re-opened the submissions process at that point).

1.14 The committee held nine public hearings: two in Canberra, three in Sydney and four in Melbourne.

1.15 Witnesses appearing at these hearings included:

- victims of misconduct in the financial advice sector;
- representatives of financial advice providers, including the 'Big Four' banks, Macquarie Group, AMP and IOOF—many of these corporations were represented by their Chief Executive Officers and other senior officials—and the Australian Bankers' Association;
- consumer advocacy groups, and groups providing legal support and financial counselling to consumers;
- representatives of ASIC and the Financial Ombudsman Service (FOS); and
- a range of other experts and industry representatives.

1.16 As noted above, the committee tabled a report on the land banking industry in February 2016, and published an issues paper on corporate whistleblowing in April 2016.

Issues considered in the inquiry

1.17 A broad range of matters were addressed over the course of the inquiry, including, but by no means limited to:

- the question of compensation for consumer loss, including the integrity of the Commonwealth Bank of Australia's (CBA) Open Advice Review Program,⁴ and the possible introduction of a compensation scheme of last resort;
- specific instances of possible compliance failures or misconduct in the financial services industry, including at NAB Wealth and IOOF Holdings Limited, and the broader question of culture and compliance in the industry;
- the life insurance industry, and in particular apparent poor conduct at CBA's insurance arm, CommInsure; and
- the current framework for encouraging and protecting corporate whistleblowers.

1.18 The issue of compensation is explicitly covered in the consumer protection inquiry terms of reference. The committee notes that the matter has been discussed in a number of submissions to the consumer protection inquiry, and was discussed with various witnesses at the committee's first consumer protection inquiry hearing on 26 April 2017.

1.19 Similarly, the committee anticipates that the instances of misconduct in the financial services industry raised in evidence received during the SOFA inquiry may be further considered as part of the consumer protection inquiry.

1.20 As noted earlier, the PJC is now undertaking inquiries into the life insurance industry and whistleblowing protections in the corporate, public and not-for-profit sectors. The committee notes that it remains open to the committee to consider these matters further as part of the consumer protection inquiry.

Outcomes achieved by inquiry

1.21 The SOFA inquiry demonstrated that the practices and culture within the Australian financial services industry fall well short of the public's expectations.

1.22 With nine public hearings and more than 250 submissions, the inquiry forced both the Turnbull Government and the Australian financial services industry to change. Amongst the responses:

- (a) The Australian Treasury began consultations into changes to the External Dispute Resolution (EDR) systems⁵ and restricting Limited Recourse Borrowing;⁶

4 The Open Advice Review Program assessed the advice customers received from Commonwealth Financial Planning and Financial Wisdom (subsidiaries of CBA) between September 2003 and July 2012.

5 The Treasury, Review of the financial system external dispute resolution framework, <https://consult.treasury.gov.au/financial-system-division/dispute-resolution/> The final report of the review ('the Ramsay Review') was provided to government in April 2017, see <http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/Review-into-Dispute-Resolution-and-Complaints-Framework/Final-Report>

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- (b) The House of Representatives Standing Economics Committee began its own inquiry into the Review of the four major banks on 15 September 2016;
 - (c) The Parliament passed the Corporations Amendment (Financial Advice Measures) Bill 2016 which aimed to 'provide certainty and reduce compliance costs for small business, and financial advisers, whilst maintaining the quality of advice for consumers who access financial advice';⁷
 - (d) The Australian Bankers' Association (ABA) responded with the engagement of Auditor-General Ian McPhee to oversee the implementation of a Banking Reform Program announced on 21 April 2016. The industry committed itself to:
 - (i) reviewing product sales commissions;
 - (ii) making it easier for customers when things go wrong;
 - (iii) reaffirming support for employees who 'blow the whistle' on inappropriate conduct;
 - (iv) removing individuals from the industry for poor conduct;
 - (v) strengthening the commitment to customers in the Code of Banking Practice; and
 - (vi) supporting ASIC as a strong regulator.

1.23 Evidence tendered to the SOFA inquiry also led directly to the Australian Labor Party calling for a Royal Commission into Banks and Financial Services. As noted above, evidence received by the committee also led to several other parliamentary inquiries into related matters, including the aforementioned PJC inquiries into the life insurance industry and whistleblower protections in the corporate, public and not-for-profit sectors.

1.24 The committee thanks all of the individuals and organisations who contributed to the inquiry. Once again, the committee would like to emphasise that it intends to further consider matters raised in this inquiry as it undertakes its work on the consumer protection inquiry.

Senator Chris Ketter
Chair

6 The Treasury, Superannuation—Integrity of limited recourse borrowing arrangements, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/Integrity-of-limited-recourse-borrowing-arrangements>

7 Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014, Revised Explanatory Memorandum, p. 7.