
Corporation and Ethics: Banks and other Financial Institutions

Introduction

On 11th of February 2019 the Royal Banking commission presented its final report on the misconduct of banking and financial sector, revealing sickening behaviour of the financial industry. The investigation was on going since Dec 2017, highlighting unethical behaviour of banking, superannuation, mortgage and other financial industries and spotlighted some shocking facts about the big corporations. The need for the Royal commission surfaced after years of scandals and sharp decline in consumer's trust in country's financial services but on the other hand the profits of financial corporations soared. The things got worse after more cases surfaced about misleading financial planning advice, breaches of anti-money laundering laws and work cultures allegedly to reward aggressive sales tactics being just a few of them. Showing that these financial disrespected their clients trust acting in a dishonest nature and failing to show duty to care, complaints continued over a extensive period in few cases, charging people who have been dead for years.

'There can be no doubt that the primary responsibility for misconduct in the financial services industry lies with the entities concerned and those who managed and controlled those entities: their boards and senior management' (Hayne 2001). The findings in the report clearly stated that how banks have been unethical and carrying out their business in inappropriate way. According to the report, 'Commissioner Kenneth Hayne suggested the idea of six ethical principles to be followed by the financial institutions to inform the conduct of financial services entities: 1- Obey the law, 2- Do not mislead or deceive, 3- Be fair, 4- Provide services that are fit for purpose, 5- Deliver services with reasonable care and skill, 6- When acting for another, act in the best interests of that other.' (Motion). Now, if we look at these suggestions they are just the basic ethical principles for all businesses and corporations, so this was a remark that shows that the financial institutions have failed to follow the basic ethics and to show duty to care and compassion towards their customers.

Impact of the Royal Commission's report

It has been a year since the report and little action and implementation has been seen, people's sense that big banks get off scott-free is in away usually true, but there may be an exception this time. In the report Commissioner Hayne gave 76 recommendations out of which 54 were directed to the government, they proposed some fixing in laws to prevent misconduct by financial institutions. As right after the commission report was published, the Australian government got into action and few weeks later released a report called; 'Restoring trust in financial services', in which the government agreed with most of the recommendations and informed that they will be bring some legislation which will be implemented timely in the period of almost 2 years. Government's financial industry regulating bodies such as APRA and ASIC were also mentioned in the report for not fulfilling their duty and failing to detect the offences and frauds in financial industry, APRA's officials were not even present in the hearing. The government acted on some recommendation for regulating the banks and insurers by reviewing

the regulating bodies like APRA and passed legislation to strengthen the accountability of superannuation funds, the government will pass legislation for the rest of implementation by the end of 2020.

Banks, Super and Other Financial Institutions

Although, after the commission the banks started to take some responsibility and accepted a few of their unethical behaviour. In promulgating incipient provisions associated with the costs of cleaning-up years of deplorable misconduct, the big four are putting more finances aside for remediation including compensating wealth to customers who were charged fees for services they didn't receive. Banks are known for prioritizing profits over customer's interests, they tend to approve more loan applications to people when interest rates are high and less when interest rates are low, without assessing fulfilment of criteria or applicant's circumstances. Mortgage businesses have been mentioned for showing no compassion and leniency with their clients, in one case, threatening the wife of a dead man to auction the house due to non-payment of few instalments by the grieving family in financial hardships. Other industries have been accused of giving advices to customers and forcing them to invest in schemes which generates them profit and losses for customers in the long run.

Super industry on the other hand has been looked upon as scam by many people, as a lot of people who pay for super to have a better retirement, spend the rest of their life fighting for it and get little to nothing and getting charged for unprovided services. The employers have been accused of rewarding employers for using forceful tactics to lure consumer into different schemes, the report said. Many people had to, and still go through court and wait for years to get their superannuation in the last few years, although some law were passed a few years ago, due to increase in number of complaints, to facilitate genuine people to get their superannuation easily. 'Superannuation contributions made prior to bankruptcy with the intention of keeping money out of creditors' reach will now be recoverable by bankruptcy trustees. The Federal Government will amend the law so the courts will be able to take a bankrupt's history of contributions into account to determine whether the intent was to defeat creditors. The amendments will address the High Court's decision in Cook versus Benson, which cast doubt on a trustee's ability to recover super contributions.' (John Collet 2006). There is a need for future research to assess whether the recent regime inquiries and the cognate reformative measures have achieved the desired effect of amending the Australian superannuation system.

Role of government

In 2017, when the call for royal commission was heard everywhere, the opposition's Mr. Shorten favoured the call for royal commission, but the government's prime minister Turnbull opposed it and asked for a different approach. Government's suggestion was to bring the directors and executive officers of the big banks in front of parliament once or twice a year and ask them to explain their future plans and proposals to the members and they will decide whether the banks should move forward with the plans proposed. These comments created a sense that government was trying to protect the big financial institution, because they were going to ask them about future and not he past on the other hand the royal commission report started with words; 'who pays for the past?'. The banks and other financial institutions also have a reputation of lobbying politicians and financing political campaigns of their supporters in order to make sure no legislation is passed to limit their actions. Indeed, according to reports

and public hearings, the government and concerned bodies failed to make sure the laws are implemented and if the financial institutions provide their services to the consumers in an ethical way.

Inconsistent application and enforcement by the federal and state entities charged with interpreting and enforcing these laws has sent the message that companies need not make ethics compliance a priority (David). In the report, the regulating bodies were also reminded about their roles and duties and how they have been fulfilling their duties and how the government failed to implement the already existing laws. The ASIC Act prohibits misleading conduct in relation to financial services. It prohibits unconscionable conduct in connection with the supply or possible supply of financial services to a person other than a listed public company. It implies terms of due care and skill, and fitness for purpose into contracts 3 ASIC Act ss 12DA, 12DB, 12DC, 12DF.4 ASIC Act ss 12CA, 12CB. Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry for the supply of financial services where the services under the contract were acquired for use or consumption in connection with a small business ASIC Act s 12ED, read with the definition of 'small business' in s 12BC(2). (ASIC Act 2001). The report pointed out that how ASIC has failed to detect and distinguish between small and big culprits before otherwise there wouldn't have been any need for the commission.

Consumer Protection in Financial Market

In the end, handing the banks, insurance and super industry big fines won't solve the issues in the long run. The motive of these industries has only been profits, by which they have already made billions of dollars in the last decade through their misconduct and unethical behaviour. In a business context, ethics are rules that govern the behaviour of all members of a profession. Failure to adhere to these rules leads to serious consequences (e.g., long- or short-term license suspension, disapproval from colleagues, reputation damage). Business ethics may thus include being reliable, having initiative, or maintaining social skills (Sullivan and Shkolnikov 2007). Commissioner Haynes agreed that the laws are very complex and needs to be simplified, instead of passing a new law to tell the financial institutions 'what not to do' which will make the legal process more complex. The government have already passed few legislations last year in order to comply with the report's suggestions, white the rest will be legislated and implemented by the end of this year. In the mean time little change have been seen by people in the behaviour of banks and financial institutions they just have the finances ready in case they have to pay fines, and started compensating who they think have been wrongly charged fee for the services they never even received.

There is a need for government to set up training programs on a wider level to provide ethical training on all levels of hierarchy in all corporations, to make sure that the legislation passed to protect consumers rights are implemented upon. According to CFA; 'More than one quarter of respondents (27%) noted that their firms have never provided ethics training to employees. In smaller firms (less than US\$1 billion in assets under management (AUM)), the number was 37%, versus only 4% for firms with more than US\$100 billion in AUM' (Michaela, CFA). Some different sort of system can be implemented such as Islamic banking, their ethics and code of conduct are strictly regulated and well sought, and despite not working on interest Islamic banks were the only banks to stay stable during the 2008 financial crisis and they are very compassionate to their customers too. There is also a need of tracking on political lobbying and

the relevant departments such as APRA, ASIC and anti-corruption bodies should keep a close eye on the activities of the bank officials and politicians, especially during time of election. The commission also recommended to apply banking executive accountability regime (BEAR) to superannuation, which governs who is responsible for the issues in banking sector. The government's legislation if all passed and implemented are going to bring significant changes, as ASIC will be the only body to look after super funds and both ASIC and APRA will exercise more power in their jurisdiction and can create civil penalty for breaches of laws by directors and trustee.

Conclusion

In the end the laws are to be changed and made simple otherwise there will always be contradiction within laws which lead to big corporations and institutions escape law with the help of their fancy lawyers, and after generating billions of dollars in revenue, they get off by giving few hundred million in fines. The government in order to comply with the commissioner's report released a document called 'Restoring trust in Australia's financial system', which stated which of the recommendation they agree with and not, in which they agreed with most. The commission has also recommended to prohibit advice fee on many super accounts and deducted in some. Selling of superannuation product in an unsolicited manner will also be prohibited because that leads to people selecting products not in their interest. If the suggestions by Hayne are legislated and put into action in all financial industry through proper training and awareness, can result in a significant change over a period of time, although consumer's perception about big corporations might take a little longer to change, but it will change eventually after continuously receiving services and help in an ethical and compassionate manner.

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