

Regulating Culture

THE CARROT OR THE STICK?

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➤ Today's focus

- Observations from a corporate perspective
- The Australian and international approach towards culture
- The impact of a focus on culture: developments and reform
 - breadth of investigations
 - 'efficiently, honestly and fairly'
 - product intervention powers
 - whistleblower reform
 - Banking Executive Accountability Regime



Since the GFC...





‘Values and assumptions that shape the way individuals within an organisation think and behave, including their behaviours towards compliance and risk’



➤ Risk management and corporate culture



Overseas focus on culture



**US\$260
BILLION**

in fines worldwide

➤ Foreign regulators

'The risks arising from misconduct is one of the largest contingent risks on a firm's balance sheet. It rarely matures, can't be sold or hedged using normal market instruments. Any other risk this large, with these characteristics, would be managed and mitigated to within an inch of its life. Yet stick the word 'conduct' in front of it and suddenly it is not.

We treat conduct risk like any other risk, and with a risk this big, you need to give us a very good reason why you are not taking proactive steps to manage it.'

Speech by Tracey McDermott, Director of Supervision, Investment, Wholesales and Specialists, FCA, July 2015



Carrots and sticks in the Australian context

➤ Breadth of investigations

POLICIES



COMPLIANCE



REMUNERATION

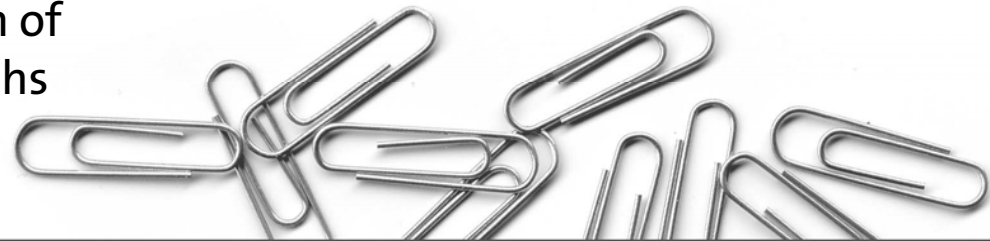


➤ Efficiently, honestly and fairly

- Obligation on Australian financial services licensees to do all things necessary to ensure that financial services covered by their licence are provided efficiently, honestly and fairly
- Connotes ‘an element not just of even handedness in dealing with clients but a less readily defined concept of sound ethical values and judgment in matters relevant to a client’s affairs’
- ‘The concept of honesty is looked at through the lens of commercial morality rather than through the lens of the criminal law’

➤ Product intervention powers

- **Proposed power for ASIC to intervene, including to:**
 - impose additional disclosure obligations
 - mandate warning statements
 - require amendments to advertising
 - restrict or ban the distribution of the product for up to 18 months
- **Proposal that ASIC be able to intervene when ASIC has:**
 - identified a risk of 'significant consumer detriment'; and
 - has taken undertaken consultation and considered use of alternative powers



➤ Whistleblowing reform

- Current whistleblower laws in Australia are infrequently used and spread across a number of pieces of legislation including:
 - *Superannuation Industry (Supervision) Act 1993* (Cth)
 - *Banking Act 1959* (Cth)
 - *Insurance Act 1973* (Cth)
 - *Life Insurance Act 1995* (Cth)



➤ Whistleblowing reform

- Terms of reference include a focus on:
 - development and implementation of a whistleblower law
 - types of wrongdoing to which whistleblower protection regime should apply
 - compensation arrangements (including rewards)
 - obligations on organisations to prepare, publish and apply procedures to support and protect persons who make disclosures
 - public interest disclosures to third parties or the media
- Senate Inquiry due to report 14 September 2017



➤ Banking Executive Accountability Regime

- Will apply to :
 - All ADIs – Banks, Credit Unions, Building Societies
 - foreign and domestic subsidiaries of ADIs
 - ‘Accountable persons’ of ADIs
- ‘Accountable persons’
 - Senior directors and executives
 - Other individuals who ‘have significant influence over conduct and behaviour’ and ‘whose actions could pose risks to the business and its customers’



➤ Banking Executive Accountability Regime

- ‘Accountable persons’ to be registered with APRA
- Accountability statements and accountability maps
- Expectations on ‘accountable person’ include:
 - act with integrity, due skill, care and diligence and be open and co-operative with APRA
 - take reasonable steps to:
 - effectively control the activities for which they are responsible
 - comply with relevant regulatory requirements and standards
 - delegate appropriately and ensure discharged effectively



➤ Banking Executive Accountability Regime

- Minimum of 40 per cent of executive's variable remuneration to be deferred for four years (60 per cent of CEO remuneration)
- Power to remove and disqualify 'accountable persons'
- Up to \$200m in civil penalties for larger ADIs, \$50m for smaller ADIs



An aerial photograph of a river with clear, turquoise water. The riverbanks are covered in dense green and brown vegetation. A large, white, semi-transparent arrow with a fine grid pattern points from the right side of the image towards the center, where the text is located.

Concluding remarks

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Questions?



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