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Corporate governance in overdrive

Essential Director Update:18

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Governance in the headlines and the headlights

ANZ bank to face criminal cartel charges

The Guardian, 1 June 2018

Banking royal commission is damaging reputations, but is it enough?

ABC News, 25 April 2018

APRA report takes toll on Commonwealth Bank executives past and present

Financial Review, 8 August 2018

Solomon Lew takes aim at Myer, calls for board spill

Financial Review, 18 May 2018

Commonwealth Bank reveals breakdown in AUSTRAC relationship

Financial Review, 23 February 2018

Banking royal commission: AMP's misconduct 'criminal' as chair faces ouster

The Australian Business Review, 28 April 2018

Weinstein Co. Board fires Harvey Weinstein, citing sexual misconduct allegations

Wall Street Journal, 8 October 2017

Banking royal commission: NAB, CBA, ANZ, AMP count the cost

The Australian, 11 August 2018

'We worked like slaves and no one cared': 7 Eleven

SMH, 23 December 2017

My topics today

1. Implications of APRA/CBA
2. Royal Commission repercussions
3. Revisions to ASX's Principles and Recommendations
4. Shareholder activism
5. 2019 priorities for ASIC, APRA and ACCC
6. Other important developments
7. NFP developments
8. Seven questions directors should ask in 2019

CBA's markers of poor governance

- Inadequate oversight and challenges by Board/Committees
- Unclear management ownership and accountability
- Poor issue identification, escalation and resolution
- Complex and bureaucratic decision-making
- Overly collegial culture leading to over-confidence
- Rem policies with little 'sting' for executives
- Widespread sense of complacency



Culture at the heart of the problem



Complacency

Breeding over-confidence

Cultural factors underlay CBA's failings



Overly collegial

Overly collegial culture lessening self-criticism and accountability



Reactive, not proactive

At times dismissive in dealing with regulators



Insular

Not learning from experience



Insularity

A 'tin ear' towards community expectations – 'Should we?' not just 'Can we?'

Increased **expectations** for boards

- Clearer board focus on corporate culture
- More rigorous challenge by boards and committees
- More effective issue escalation protocols
- More vigorous, visible urgency to remediate, resolve issue
- Increased engagement around customer feedback

Implications – for all directors

- More time reviewing culture and related metrics
- Boards and committees engaging in greater detail on risk issues
- More work for Remuneration Committees to justify board recommendations
- Fuller minutes to evidence engagement around culture and risk
- More directors with industry and operational expertise



Royal Commission reverberations

- Community expectations – who defines?
- Truthful and frank engagement with regulators
- Shareholders will be unforgiving
- Class actions also in overdrive
- Greater scrutiny on board composition and skills

... but how will clash of regulatory objectives be reconciled?



We need to talk about the Royal Commission...



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Royal Commission: interim report findings

- Widespread misconduct across named major institutions
- Criticism of ASIC for not using extensive powers as an effective deterrent
- Advocates simplification, not new complex regulation
- Wisely observes: “Good culture and proper governance cannot be implemented by passing a law...
...in the end they depend on people applying the right standards and doing their job properly”

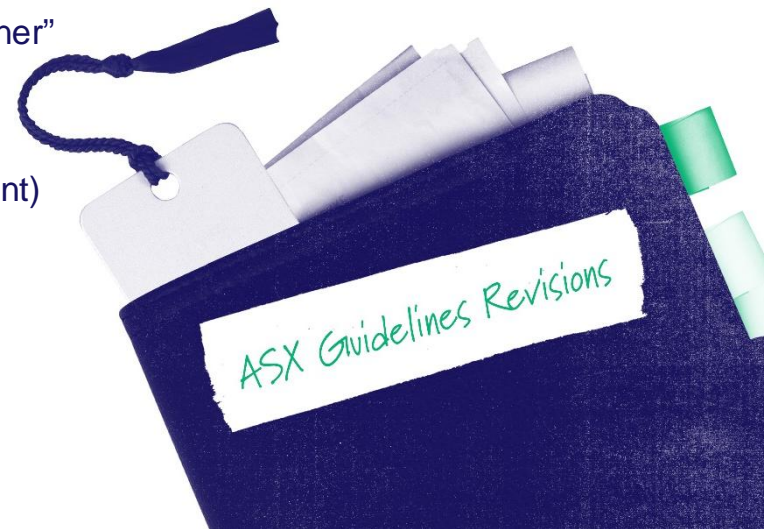
Royal Commission: six simple principles

Commissioner Hayne's six principles will resonate with all directors:

- Obey the law
- Do not mislead or deceive
- Be fair
- Provide services that are fit for purpose
- Deliver services with reasonable care and skill
- When acting for another, always act in their best interest

ASX Guidelines revisions – key debates

- 29 recommendations to 38 – will clarity be lost?
- Purpose: investors or “other stakeholders”?
- “Core values”, not just code of conduct
- Act lawfully and ethically, but also in a “socially responsible manner”
- “Social license to operate” – metaphor or something more?
- Over prescriptive commentary – from 38 to 55 pages (+50 percent)
- Processes to validate all corporate reports



ASIC priorities in 2019



Focus on corporate culture: do what you say you'll do!



"Embedded" ASIC monitors – an over reaction?



Consumer protection lens



Lost bank bill swap rate (BBSW) case against Westpac (other banks settled)

- Failed to establish market manipulation
- Won on unconscionable conduct

APRA priorities in 2019



Banking Executive
Accountability
Regime



Loan serviceability



Remuneration
incentives



Right balance between
risk taking and
consumer protection

ACCC priorities in 2019



ANZ share issue
cartel case



Effects test (section 46)



Reviews include:
telecom roaming, electricity retailing, gas
distribution, commercial construction, petrol
retailing, the dairy industry, wheat ports, digital
platforms and financial services

Shareholder activism in 2018

- Director accountability
- Should chairs be more liable?
- Class actions – is regulation needed?
- Rem resolutions – expect more challenge
- Larry Fink's annual letter – social purpose



Other key developments



Insolvency
safe harbour



Whistleblower
reforms



Competition reform
– effects test



Data privacy



Modern slavery
legislation

NFP sector developments

- Decline in trust in NFP sectors
 - McClure Review of ACNC
- Dr Gary Johns – new ACNC Commissioner
 - Vocal critic of NFP sector, especially political advocacy by charities
- 2017 Compliance Report
 - 200 investigations, 26 revocations, 115 penalty notices
 - ACNC now an AML/ATF agency
 - Priorities are fraud, terrorist financing, political activity



NFP sector developments continued

- Proposed reforms of Deductible Gift Recipient (DGR) administration
 - All non-government DGRs become charities from 1 July 2019
 - Abolition of “public fund” requirement
 - More funds to review DGR eligibility more consistently
 - Reduced red tape and duplication
 - Draft conduct standards, now released
- Child Sexual Abuse Royal Commission
 - Final report’s 189 recommendations
- AICD’s NFP Governance Principles, under development

Conclusion: **Seven** questions directors should ask

1. Do we set the right tone from the top?
2. Do we have good measures of culture?
3. Does our 'cultural dial' need to move from reactive to challenging?
4. Does the voice of customers ring loudly at the board table?
5. Do our remuneration policies have real sting?
6. Do we rely too much on our committees?
7. Do we have enough industry expertise and operational experience at the table?



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