Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

SUBMISSIONS OF THE FINANCE SECTOR UNION IN RELATION TO THE SIXTH ROUND OF CASE STUDIES

Contents

Outline of submissions

1. These submissions which are prepared on behalf of the Finance Sector Union of Australia[the Union], deal with the sixth round of case studies concerning insurance.
2. The Union is the only union that represents employees throughout the finance sector including those employed by, and in connection with insurance. The union is the largest membership-based organisation in the sector with a combined membership larger than all the other professional organisations combined.
3. Consistent with the letters patent, the Union believes that the provision of insurance, like superannuation, financial advice and credit, are core elements of the finance sector. The Union believes that a deficiency in investigation and reform of the sector have been to compartmentalise parts of the industry in a manner that is unnecessary and has resulted in poor customer outcomes.
4. A clear example of this has been around changes to remuneration models included through the FOFA reforms and subsequently, following the recommendations of the Sedgewick Review. Neither of these changes had a significant impact on the sale of insurance products. As a result, the working environment of the sales sections of many insurers is like that which existed in banks five years ago – KPIs based on sales revenue, a pressured focus to sell (and up-sell) new insurance products and staff being subjected to performance management when the fail to seek enough products.
5. Like the experience with the banks, there is negligible focus at the point of sale as to whether the product is in the public interest.\
6. The Union believes that the exceptions in the FOFA reforms for general advice, and for general and life insurance were errors. Moving forward, the Union supports the development of a comprehensive framework to eliminate variable pay from the financial services sector – including but not limited to insurance. Such a process represents a necessary, but significant challenge to an industry addicted to incentivised pay models. The solution must be understood both in terms of the regulation of the financial services sector, but also regulation of the

industrial and employment entitlements of affected employees. It is no solution to simply cut off a significant portion of the income of employees, without ensuring that the employees are not asked to bear the cost of this necessary change. As the Union has previously identified, a failure to compensate employees for the lost variable pay will lead to windfall profits for employers (whose revenue streams is largely unaffected) and create a possibility of misconduct.

7. The Union agrees with the observations made during the Royal Commission that the current regulation is already complex, and it seems unlikely that adding an additional lawyer of regulation would solve problems. Such an observation does not mean that the current regulatory regime is not part of the problem. It is. The Union believes that the Commission should recommend a fundamental overhaul of regulation in the sector in the form of the development of a Financial Services Code. Such a code should have application for insurance.

General Question

[Q.1] Is the current regulatory regime adequate to minimise consumer detriment? If the current regulatory regime is not adequate to achieve that purpose, what should be changed?

8. The Union does not believe that the current regulatory regime is adequate to minimise consumer detriment.

9. The Union submits that there is a strong need to develop a comprehensive registration framework for insurance workers. The framework should bring together professional development obligations and a requirement for licencing of insurance workers who have a capacity to impact customer outcomes, such as those engaged in sales and claims handling roles.

10. As with other registration frameworks provision should be made for:

    (a) Promulgation of specific ethical obligations;

    (b) Ongoing professional development obligations that enhance minimum standards for employees outlined in the ***General Insurance Code of Practice;***

    (c) An independent complaints and discipline process that addresses both professional and ethical failures.

11. Such independent complaints and discipline process should:

    (a) Work as part of a disciplinary and complaints process that covers the entirely of the financial services industry

    (b) Cover all workers who:

        (i) Sell insurance products to consumers

        (ii) Handle claims and claims processing work for consumers

        (iii) Assess and make decisions about customer complaints

A Product design

[Q.2] Are there particular products – like accidental death and accidental injury products – which should not be sold?

12. The Union submits that products that can be properly characterised as junk insurance should be prohibited.

13. The evidence before the Commission in connection with the accidental injury products, along with some funeral insurance products is that the amount paid by consumers in premiums, when

compared to the amount paid out by insurers as benefits is so extraordinarily unequal as to lead to a conclusion that the products are essentially exploitative.

14. The Union supports the development of an ethical, high quality insurance industry which takes steps to properly regulate it, and to ensure that unethical products and practices are avoided.

15. The Union submits that an absence of prohibition of junk insurance products undermines the respect and esteem the insurance industry is held in.

[Q.3] Should the requirements of the Life Insurance Code of Practice in relation to updating medical definitions be extended to products other than on-sale products?

16. The Union has limited insight on this matter and doe not believe it can assist the Commission on this issue.

B Disclosure

[Q.4] Is the current disclosure regime for financial products set out in Chapter 7 of the *Corporations Act 2001* (Cth) and Division 4 of Part IV of the *Insurance Contracts Act 1984* (Cth) adequately serving the interests of consumers? If not, why not, and how should it be changed? In answering these questions, address the following matters:

[4.1] the purpose(s) that the product disclosure regime should serve;

[4.2] whether the current regime meets that purpose or those purposes; and

[4.3] how financial services entities could disclose information about financial products in a way that better serves the interests of consumers.

(Despite the reference to the *Insurance Contracts Act 1984* (Cth), this question is not limited in scope to contracts of insurance.)

17. The Union has limited insight on this matter and doe not believe it can assist the Commission on this issue.

[Q.5] Is the standard cover regime in Division 1 of Part V of the *Insurance Contracts Act 1984* (Cth) achieving its purpose? If not, why not, and how should it be changed?

18. The Union has limited insight on this matter and doe not believe it can assist the Commission on this issue.

[Q.6] Is there scope for insurers to make greater use of standardised definitions of key terms in insurance contracts?

19. The Union has limited insight on this matter and doe not believe it can assist the Commission on this issue.

C Sales

[Q.7] Should monetary and non-monetary benefits given in relation to general insurance products remain exempt from the ban on conflicted remuneration in Division 4 of Part 7.7A of the *Corporations Act 2001* (Cth)? If so, why?

20. The Union submits that the exemption for general insurance products contained in Division 4 of Part 7.7A of the *Corporations Act* 2001 should cease.

21. The Union generally submits that the exemptions from conflicted remuneration are too wide. The Union submits that a general ban on remuneration models that promote sales at the expense of customer focused outcomes should be identified and pursued by the Commission.

22. In making this submission the Union submits that it is not an appropriate response simply to eliminate conflicted remuneration, without maintaining worker remuneration levels. It would be manifestly unfair for staff to bear the burden of such necessary changes to remuneration practices, and, as occurred following the introduction of the FOFA reforms may lead to unexpected, and undesirable consequences. (The Union observed that the fee for no service issue was a direct consequence of the failure to address the impact of lost revenue on business profitability and worker remuneration). Insurers should not obtain a windfall profit by no longer being required to make such payments to employees.

23. The Union submits that the correct approach in connection with such matters is to recognize that they have impact both in terms of financial regulation, and industrial regulation of wages and conditions. Both elements need to be considered in making such necessary change.

[Q.8] Should monetary benefits given in relation to life risk insurance products remain exempt from the ban on conflicted remuneration in Division 4 of Part 7.7A of the *Corporations Act 2001* (Cth)? Why shouldn't the cap on such benefits continue to reduce to zero?

24. The Union submits that the exemption for monetary benefits in connection with life insurance products should cease.

25. There is no good reason for this exemption to exists

26. The Union repeats its submission in response to Question 7.

[Q.9] Is banning conflicted remuneration sufficient to ensure that sales representatives do not use inappropriate sales tactics when selling financial products? Are other changes, such as further restrictions on remuneration or incentive structures, necessary?

27. Banning and limiting conflicting remuneration is an important but limited step in addressing the mis-aligned incentives that drive inappropriate sales tactics.

28. Leaving aside the exceptions, the current definition of conflicted remuneration essentially applies only to frontline staff engaged in the provision of personal financial advice as opposed to general advice.

29. Managers, senior managers and executives, along with product designers and others maintain incentivised and variable pay arrangements that have been established to drive sales.

30. The definition of conflicted pay needs to be extended to include variable and product-based remuneration at all levels of the enterprise.

31. The Union further refers to the Sedgewick Review. Many of the issues identified by the Sedgewick Review in connection with retail banking remain widespread within the insurance sector.

32. Frontline insurance sales staff continue to be subject to sales targets, league tables and similar focused management tools. They continue to have their employment assessed by reference to

revenue and sales volume measures. As with retail banking such measures place substantial pressure on employees to achieve sales, unrelated to customer need,

[Q.10] Should the direct sale of insurance via outbound telephone calls be banned? If not, is the current regulatory regime governing the direct sale of insurance via outbound telephone calls adequate to avoid consumer detriment? If the current regulatory regime is inadequate, what should be changed?

33. The Union believes that out bound cold calling to sell insurance products is inappropriate and should be prohibited.

34. As described in the answer to question 2 above, the Union believes in the promotion of a highly ethical insurance sector. Direct sales by out bound telephone calls in this context is problematic.

35. However, the Union does not believe that direct sales of insurance via out bound telephone calls is always inappropriate. By way of example, the Union notes that all insurers have a practice of contacting policy holders to remind them that their insurance has, or about to lapse. Maintaining continuity of insurance and ensuring that consumers do not inadvertently become uninsured is in the consumer, insurer and community interest. Programs where customers are contacted and asked if they wish to renew insurance are desirable and reputable.

36. The Union believes that the current law should be amended to prohibit cold calling of individuals who are not current customers of insurance with a view to selling them insurance.

[Q.11] Is Recommendation 10.2 from the Productivity Commission's report on "Competition in the Australian Financial System", published in June 2018, sufficient to address the problems that can arise where financial products are sold under a general advice model (for example, the sale of financial products to consumers for whom those products are not appropriate)? If not, what additional changes are required? Are there some financial products that should only be sold with personal advice?

37. Recommendation 10.2 provides as follows:

> RENAME GENERAL ADVICE TO IMPROVE CONSUMER UNDERSTANDING
>
> General advice, as defined in the Corporations Act 2001 (Cth), is a misleading term and should be renamed. Any replacement must ensure that the term 'advice' can only be used in association with 'personal advice' — that is, advice that takes into consideration personal circumstances.
>
> Consumer testing of alternative terminology is required to ensure that misinterpretation and excessive reliance on this type of information is minimised. Including time for consumer testing and a transition period to enable industry training and adjustment, a new term should be in effect by mid-2020.

38. The Union does believe that the recommendation is appropriate.

39. The definition of "general advice" is provided for in s.766B(4) as "financial product advice that is not personal advice". Centrally, it is intended to be financial product advice of a general nature where the consumer does not believe that the advice is being provided with the consumers particular circumstances in mind. The effect of financial product advice being general advice is twofold:

40. Firstly, the significant obligations to properly consider the consumer's position, to act in the consumer's best interest, and to provide advice in complaint form is avoided.

41. Secondly, the conflicted remuneration prohibitions do not apply.

42. The Union does not support what is, effectively, a carve out of general advice from the FOFA regime. The rationale for permitting conflicted remuneration when there was an obligation to not consider the needs of the customer is perverse.

43. Merely renaming "general advice" as something that does not include the work "advice" is a change without substance. The recommendation would permit a continuation of sales-based remuneration.

44. The Union submits that the Commission should recommend the expansion of the definition of "conflicted remuneration" to include all variable pay. The carve out for "general advice" should be abolished.

45. The Union further believes that the distinction between general and personal advice should be disposed of. The law should not promote the provision of ignorant advice. Reliance on scaled advice models is to be preferred.

[Q.12] Should all financial services entities that maintain an approved product list be required to comply with the obligations contained in FSC Standard No 24: Life Insurance Approved Product List Policy?

46. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

D Add-on insurance

[Q.13] Should the sale of add-on insurance by motor dealers be prohibited?

47. The Union supports the development of an ethical, customer centric financial services sector. The Union therefore supports measures to develop such a culture in connection with the sale of insurance products.

48. The evidence before the Commission is indictive of customer risk around the sale of add-on insurance, and in connection with the sale of insurance through dealer channels.

49. The Union does not, however, believe that the evidence warrants a prohibition on such practices. Other measures including improved disclosure obligations and cooling off periods should be the first step in improving insurance products offered to customers.

[Q.14] Alternatively, should add-on insurance only be sold via a deferred sales model? If so, what should be the features of that model?

50. The Union repeats its submission in connection with Question 13 above.

[Q.15] Would a deferred sales model also be appropriate for any other forms of insurance? If so, which forms?

51. The Union has limited insight on this matter and does not believe it can assist the commission on this issue

[Q.16] If the ban on conflicted remuneration is not extended to apply to general insurance products, should the payment of commissions for the sale of add-on insurance by motor dealers be limited or prohibited?

52. The Union repeats its submission in response to Question 7. The ban on conflicted remuneration should be extended to all products and actions.

53. In terms of the specific question, the Union supports a professional and ethical insurance industry and would be concerned if conflicted remuneration was banned at some points of sale, but not others, as different regulatory frameworks may create unintended outcomes for consumers.

54. A prohibition on the payment of commissions to dealers on the sale of add-on insurance products would effectively eliminate the sales channel, as, like brokers and other intermediaries, no other compensation arrangement is viable.

E Claims handling

[Q.17] Should the obligations in section 912A of the *Corporations Act 2001* (Cth) apply to all aspects of the provision of insurance, including the handling and settlement of insurance claims?

55. The Union believes that a general obligation, such as the obligation in s,912A to provide financial services efficiently, honestly and fairly, should apply to all entities licenced to operate in the sector, including insurers.

56. Such obligation arises from the disparity in resources, commercial power, and knowledge attendant in relationships with consumers. The obligation should extend to claims handling and settlement of claims.

[Q.18] Should ASIC have jurisdiction in respect of the handling and settlement of insurance claims?

57. The Union believes that it is the best interests of the insurance industry to have a well resourced, independent regulator responsible for the professionalisation of insurance industry workers.

58. The Union notes the concern as to whether the breadth of ASIC's responsibilities is already too wide, along with concerns as to whether ASIC has operated as an effective regulator of conduct in the sector.

59. The Union believes that there is a need for significant cultural change in the conduct regulator within the sector. Whatever regulator is identified should have appropriate resources to fulfil its function.

Life insurance

[Q.19] Should life insurers be prevented from denying claims based on the existence of a pre-existing condition that is unrelated to the condition that is the basis for the claim?

60. As set out above, the Union supports the development of an ethical customer centric insurance sector.

61. The Union submits that denial of a life insurance benefit based on the existence of a pre-existing condition that is unrelated to the condition that is the basis for the claim is unethical and should be prohibited.

[Q.20] Should life insurers who seek out medical information for claims handling purposes be required to limit that information to information that is relevant to the claimed condition?

62. The Union repeats its observation that it supports the development of an ethical customer centric insurance sector.

63. The Union believes that life insurers should only be permitted to seek out such medical information for claims handling purposes as may be relevant to the claim.

64. The Union notes that its position would provide a slightly greater discretion to the insurer than the question posited.

[Q.21] Should life insurers be prevented from engaging in surveillance of an insured who has a diagnosed mental health condition or who is making a claim based on a mental health condition? If not, are the current regulatory requirements enough to ensure that surveillance is only used appropriately and in circumstances where the surveillance will not cause harm to the insured? If the current regulatory requirements are not sufficient, what should be changed?

65. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

General insurance

[Q.22] Should the General Insurance Code of Practice be amended to provide that, when making a decision to cash settle a claim, insurers must:

[22.1] act fairly; and

[22.2] ensure that the policyholder is indemnified against the loss insured (as, for example, by being able to complete all necessary repairs)?

66. The Union supports the development of an ethical customer centric insurance sector.

67. It follows that the Union believes that an obligation should be imposed on insurers to act fairly.

68. The Union does not support the imposition of an obligation to ensure that the policyholder is indemnified against the loss insured (as, for example, by being able to complete all necessary repairs). The Union understands that this issue may arise where a customer obtains a quote from a repairer of their choice, which is more than the cost of what the insurer is able to have the work done with a repairer retained by the insurer.

69. It remains important that insurers be able to compete on the terms of their insurance, and seek to obtain a competitive advantage, such as, for example, imposing an obligation that repairs be undertaken by repairers under contract with the insurer.

70. The Union supports obligations that would ensure that there is clear, concise and intelligible disclosure of key rights and limitations of all policies.

F Insurance in superannuation

[Q.23] Should universal:

[23.1] minimum coverage requirements; and/or

[23.2] key definitions; and/or

[23.3] key exclusions,

be prescribed for group life policies offered to MySuper members?

71. My super products were established to provide simple, default superannuation. Members join them by failing to make a contrary choice.

72. The Union supports measures that minimise differences between My Super funds including in connection with insurance.

[Q.24] Should group life insurance policies offered to MySuper members be permitted to use a definition of "total and permanent incapacity" that derogates from the definition of "permanent incapacity" contained in regulation 1.03C of the Superannuation Industry (Supervision) Regulations 1994 (Cth)?

73. The Union is of the view that the current definition of "permanent incapacity" contained in the regulation is sufficient and that there should be no opportunity to change the language in any way that would affect a member's ability to obtain a beneficial outcome.

74. We note the example provided by Maurice Blackburn Lawyers in their submission to the Insurance in Superannuation Working Group (ISWG):

> "In 2014, a major fund with over a million members changed its TPD definition to remove the word "unlikely". It now requires claimants to demonstrate that they are "incapable of ever engaging in any occupation for which[they are] or may become reasonably suited by education, training or experience". "

75. The industry generally considers that the threshold "incapable of ever engaging" is much higher than "unlikely" as found in the regulations, hence their policy change to limit their liability to pay claims. Further, the standard of work that is considered appropriate is lower than that provided for in the regulations. Ultimately this means that claimants can have claims rejected, even if it is unlikely that they will engage in employment similar to that which they were performing before the accident.

The Union again repeats its observation that it supports the development of an ethical customer centric insurance sector. Reliance on a more limited definition of "permanent incapacity" in default MySuper funds is, in the Union's submission, unethical.

[Q.25] Should RSE Licensees be obliged to ensure that their members are defaulted to statistically appropriate rates for insurance required to be offered through the fund under section 68AA(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth)?

76. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

[Q.26] Should RSE Licensees be prohibited from engaging an associated entity as the fund's group life insurer?

77. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

[Q.27] Alternatively, should RSE Licensees who engage an associated entity as the fund's group life insurer be subject to additional requirements to demonstrate that the engagement of the group life insurer is in the best interests of beneficiaries and otherwise satisfies legal and regulatory requirements, including the requirements set out in paragraphs 22 to 24 of Prudential Standard SPS 250, Insurance in Superannuation?

78. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

[Q.28] Are the terms set out in the Insurance in Superannuation Voluntary Code of Practice sufficient to protect the interests of fund members? If not, what additional protections are necessary?

79. The Union is, in general , broadly supportive, of enforceable measures that promote:

(a) better consumer outcomes,

(b) increased knowledge and understanding of complex issues, and

(c) member understanding of the details of their insurance policies.

80. The Productivity Commission states that insurance within superannuation totals half the market in Australia in terms of net premiums for life, total and permanent disability, and income protection.

81. The Commission also notes that there are approximately 12 million Australians with some type of insurance through superannuation. The Commission also notes that many members lack awareness of what policies they are paying for, what their responsibilities are, and whether they are getting value for money and having their insurance needs are being met.

82. As the Commission has already indicated the ***Insurance in Superannuation Voluntary Code of Practice*** is voluntary and non-enforceable and superannuation fund trustees who choose to adopt the code, are not required to comply with it until 1 July 2021. Some other issues with the code are that signatories to the code can opt out of any specific aspect of the code, there is no formal ASIC oversight, and the code relies on self -reporting.

83. The Union submits that unless industry codes such as the ***Insurance in Superannuation Voluntary Code of Practice*** are enforceable in law they are, in practical terms, aspirational public relations documents. The Productivity Commission came to a similar conclusion and suggests that with industry codes of practice their 'ultimate success comes from being effectively enforced'.

84. The Union is also concerned at the development of a code by insurers, with, at a high point, consultation from other stakeholders. The Union believes that such codes should be developed by the regulator in consultation with all relevant stakeholders.

85. The Union supports the expansion of ASIC's rule making power such that codes with content like that in the Insurance in Superannuation Voluntary Code of Practice are issues as legally binding and enforceable rules by ASIC.

G Scope of the Insurance Contracts Act 1984 (CTH)

[Q.29] Is there any reason why unfair contract terms protections should not be applied to insurance contracts in the manner proposed in "Extending Unfair Contract Terms Protections to Insurance Contracts", published by the Australian Government in June 2018?

86. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

[Q.30] Does the duty of utmost good faith in section 13 of the *Insurance Contracts Act 1984* (Cth) apply to the way that an insurer interacts with an external dispute resolution body in relation to a dispute arising under a contract of insurance? Should it?

87. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

[Q.31] Have the 2013 amendments to section 29 of the *Insurance Contracts Act 1984* (Cth) resulted in an "avoidance" regime that is unfairly weighted in favour of insurers? Ifso, what reform is needed?

88. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

[Q.32] Does the duty of disclosure in section 21 of the *Insurance Contracts Act 1984* (Cth) continue to serve an important purpose? If so, what is that purpose? Would the purpose be better served by a duty to take reasonable care not to make a misrepresentation to an insurer, as has been introduced in the United Kingdom by section 2 of the *Consumer Insurance (Disclosure and Representations) Act 2012* (UK)?

89. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

H Regulation

[Q.33] Should the Life Insurance Code of Practice and the General Insurance Code of Practice apply to all insurers in respect of the relevant categories of business?

90. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

[Q.34] Should a failure to comply with the General Insurance Code of Practice or the Life Insurance Code of Practice constitute:

[34.1] a failure to comply with financial services laws (for the purpose of section 912A of the *Corporations Act 2001* (Cth));

[34.2] a failure to comply with an Act (for example, the *Corporations Act 2001* (Cth) or the *Insurance Contracts Act 1984* (Cth))?

91. The Union does not believe that mechanisms under which the enforcement of obligations is done by circuitous, or indirect means is appropriate. Such an approach reinforces the

complexity of the sector, and the capacity of insurers to exploit greater expertise of the terms of the regulation.

92. The Union repeats its submissions in answer to question 28 above. Such codes should be directly enforceable on their terms, either within legislation or as rules issues by ASIC.

[Q.35] What is the purpose of infringement notices? Would that purpose be better achieved by increasing the applicable number of penalty units in section 12GXC of the *Australian Securities and Investments Commission Act 2001* (Cth)? Should there be infringement notices of tiered severity?

93. The Union has limited insight on this matter and does not believe it can assist the commission on this issue.

I. Compliance and Breach Reporting

[Q.36] Is there sufficient external oversight of the adequacy of the compliance systems of financial services entities? Should ASIC and APRA do more to ensure that financial services entities have adequate compliance systems? What should they do?

94. The Union submits that there is not enough external oversight in the adequacy of the compliance systems of financial services entities.

95. The Union's experience is that workers are not provided with sufficient time in their working day to ensure that they are meeting compliance standards.

96. Typically, in the Union's experience remuneration systems in Insurance companies are structured to rewards sales and service levels, not compliance and as such, compliance is not as much of a priority as revenue driven and claims handling tasks.

[Q.37] Should there be greater consequences for financial services entities that fail to design, maintain and resource their compliance systems in a way that ensures they are effective in:

[37.1] preventing breaches of financial services laws and other regulatory obligations; and

[37.2] ensuring that any breaches that do occur are remedied in a timely fashion?

97. The Union's experience is that in recent years Insurance companies have designed systems of work that include an increasing reliance on offshore workers in order to mitigate costs.

98. The Union submits that an Insurer ought not be able to employ third party contractors whose employees are not subject to the same regulation and/or registration that applies to directly employed workers.

99. The Union submits that any regulatory framework recommended by the Commission should address this disconnect to ensure that companies are unable to bypass addition regulation by simply engaging third parties who operate outside the Australian Regulatory Framework.

[Q.38] When a financial services entity identifies that it has a culture that does not adequately value compliance, what should it do? What role, if any, can financial services laws and regulators play in shaping the culture of financial services entities? What role should they play?

100. The Union does not believe that a culture of adequately valuing compliance can be divorced form a range of other cultural problems that exists within the sector. At its core, a culture which values compliance requires an organisation that acts with integrity and from an ethical grounding.

101. The Union submits that financial services entities can take steps to impose such culture by:

(a) Eliminating remuneration and other employment practices such as sales targets that incentivise sales and other conduct that is not directly in the best interests of the customer. Such changes are required throughout the organisation, not just at the level of front-line workers.

(b) Promoting employment practices that value compliance and customer centric behaviour;

(c) Promoting resilience and responsiveness within the organisation through culture reviews and similar processes that enable staff and consumers to identify deficiencies in culture and practice.

(d) Promoting genuine whistleblower processes, and other mechanisms that value (and do not punish) the identification of poor or erroneous systems.

(e) Ensuring that leadership of the organisation are held to a high standard on compliance, and where failures or errors occur, that appropriate remediation and disciplinary action occurs.

102. The Union submits that the regulatory framework can assist in shaping the culture of financial services entities including by:

103. Ensuring that regulations prohibits and penalises poor practices

104. Developing processes, including cultural interventions, that engage with entities, and identify issues of culture.

105. The Union submits that the culture in which financial services entities operate should be as crucial a focus as the regulatory environment. At its core, poor culture leads to a failure in the sector the creation of prudential risk, and instances of consumer damage, loss and distrust in important institutions.

[Q.39] Are there any recommendations in the "ASIC Enforcement Review Taskforce Report", published by the Australian Government in December 2017, that should be supplemented or modified?

106. The Union refers to its submission on the Interim Report.

107. The Union supports, generally, increases in the prosecutorial power to ASIC, and in the remedies and penalties available. In particular, the Union believes that penalties should act as a genuine disincentive against poor conduct (which in turn means that they would need to be of sufficient magnitude to substantially impact shareholder dividends). The Union further supports measures that would extend senior executive responsibility, and establish potential criminal liability for senior executives and entities that seriously or wilfully breach financial services conduct laws.

108. The Union notes the recommendations in connection with the banning of individuals. The Union supports the establishment of a system of licencing for all individuals capable of having a substantial impact on customer outcomes. The Union submits that such process, which should incorporate disciplinary procedures with suspension and banning orders is warranted. The Union does not believe that there should be an extension of the criminal law beyond senior executives. Rather, the criminal provisions in current law are adequate to deal with cases of severe misconduct or misfeasance.

25 October 2018