Australian Royal Commission themes

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The FMA and RBNZ have requested New Zealand banks to demonstrate that 'what is happening in Australia, in relation to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ('the Commission'), is not happening in New Zealand.'

KPMG have analysed the outcomes of the two phases of the Commission hearings to date, which focused on consumer lending and financial advice, and identified the key themes and findings that New Zealand banks may be expected to report on to the regulator.

Summary theme	Significant findings
Responsible lending	The Commission's inquiries saw evidence that indicated an absence of formal and comprehensive responsible lending policies within banks and a failure to develop frameworks within which responsible lending could be quality assured. Issues included failing to properly take income and expenditure into account, a failure to ask customers their preference for maximum credit limits and providing unsolicited increases in credit limits.
Falsification of, or failure to validate, customer documentation	Evidence presented to the Commission fell into the following areas: — Falsification and fabrication of customer documentation to obtain credit that would otherwise be unaffordable to the applicant under the principles of responsible lending. This included evidence of employment, identity and sources of income. This also extended into financial advice through the application of more aggressive investment strategies. — Failure by banks and/or brokers to corroborate and challenge applicant documentation provided as it was deemed too complex, costly or time-consuming. — Instances where customer signatures were forged or falsified, customer impersonation, fraudulent use of powers of attorney, falsely witnessed documents, and where customer funds had been transferred into a financial adviser's personal bank account.
Inappropriate activities arising from referral and introducer programmes	Evidence tabled at the Commission's hearings included: — Staff receiving payments from referrers for approving their proposed loan customers. — 'Off book' cash incentive payments by branch staff to non financial experts (e.g. gym instructors) to drive referral volumes.
Clarity and disclosure of fees and fair application	The Commission heard that 'fees for no service' impacted about 306,000 customers of Australian financial services organisations, resulting in $216.4m worth of refunds/payments to customers. These fees included: — Hidden or undisclosed fees applied to customer accounts and products. — Fee waivers and interest rate discounts customers were entitled to not being applied. — Charges for services that were not provided (i.e. account reviews).
Unsuitable sales of add-on products and pressure sales	The Commission heard numerous instances of failure to consider product appropriateness for customers, including: — Sale of add-on insurance policies to customers who did not meet the eligibility criteria. — Customers pressurised to purchase add on products (e.g. credit insurance, income protection, gap insurance). — Inconsistent use of eligibility questions in digital applications (e.g. dual cover).

Summary theme	Significant findings
Failure to adequately identify and protect vulnerable customers	Examples of banks failing to put in safeguards to protect vulnerable customers including: — Customers who appeared unable to consider the consequences of taking out credit. — Customers in financial difficulty where requests to limit proactive offers of additional credit were ignored.
Suitability of advice	In their recent industry report, ASIC identified that 75% of reviewed cases indicated quality of advice provided failed to demonstrate compliance with the 'best interests duty' and related obligations. The Commission also heard instances where: — Investment advice which did not suit the profile of investors. — Conflicts of interest in the provision of advice. — Operational lapses in handling customer investments. — Governance processes surrounding multiple master approved product list and allowed exceptions.
Poorly designed remuneration & incentivisation schemes	Commission hearings frequently referenced instances where reward and remuneration schemes were not satisfactorily designed to prevent and address conduct issues. These included: — Paying staff bonuses despite potential conduct issues being identified. — Prioritisation of sales volumes over customer outcomes in remuneration schemes. — Disclosure of commissions to customers. — Failure to ensure broker commissions considered customer outcomes and overall quality of recommendations (i.e. use of panel monitoring/commission clawback/churn indicators). — Use of known inappropriate commission structures, even when legislative instruments were about to come into force to prohibit these.
Oversight and governance of staff and third parties	The Commission heard evidence of ineffective risk management practices, oversight and culture including: — Organisation wide cultural failings where customer outcomes are disregarded despite advice to do otherwise. — Failures in the consistent operation of the 'three lines of defence'. — Extensive use of unqualified staff and insufficient supervision and oversight. — Aligned dealer group companies and their representatives were involved in misconduct.
Failure to rectify customer issues in a timely fashion	The hearings covered: — Multiple instances were discussed where banks discovered where customers had failed to be credited and compensated for benefits they were entitled to for significant periods of time, even after the issues had been identified. — Difficulties for organisations in determining whether remediation performed was sufficient or whether further remediation was required.
System errors and failures impacting customers	The hearings provided detail of errors across multiple banks that led to a range of customer issues including: — Overcharging of interest. — Granting of credit where it should have been declined. — Discount requests not being applied. Issues were compounded by a failure of the banks to identify these in a timely manner, meaning they occurred and remained undetected across periods as long as seven years. The Commission also heard that systems that underpinned the ability to collect revenue were better developed than the systems that ensured that the client received the advice.
Open and honest cooperation with regulators	The Commission heard evidence of: — Organisations making false and inaccurate representations to the regulator. — Organisations failing to inform the regulator in a timely manner of incidents of thematic misconduct, dishonesty and conflicts of interest. Instances where regulators were disappointed in levels of open and honest engagement with the banks.

Godfrey Boyce
Chief Executive Officer
+64 4 816 4514
gboyce@kpmg.co.nz

Matthew Prichard
Partner, Advisory
+64 9 367 5846
matthewprichard@kpmg.co.nz

Adele Wallace
Associate Director, Advisory
+64 9 367 5941
adelewallace1@kpmg.co.nz

Ross Molyneux
Associate Director, Advisory
+64 9 363 3272
rmolyneux@kpmg.co.nz