

Managing Corporate Interests in Public Inquiries

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UNIVERSITY OF NEW SOUTH WALES CONTINUING LEGAL EDUCATION

8 NOVEMBER 2017

Examples of inquiries (past)

Royal Commission into the collapse of HIH Insurance

Special Commission of Inquiry into the Medical Research and Compensation Foundation ([James Hardie Inquiry](#))

Royal Commission into the Home Insulation Program

Royal Commission into Trade Union Governance and Corruption ([TURC](#))

Victorian Bushfires Royal Commission

Special Commission of Inquiry into the [Greyhound Racing Industry in NSW](#)

Independent Commission Against Corruption Operations [Vesta](#), [Tunic](#), [Spicer](#), [Credo](#), [Ricco](#)

Example of inquiries (present)

Royal Commission into Institutional Responses to
Child Sexual Abuse ([Child Abuse Inquiry](#))

Royal Commission into the Protection and
Detention of Children in the Northern Territory
([Don Dale Inquiry](#))

Public Inquiry under the Charitable Fundraising Act
1991 (NSW) ([RSL Inquiry](#))

Example of inquiries (future)

Banking/Financial Services Sector?

Murray Darling Water Rights?

Wellbeing of Veterans?

Intelligence and Security Agencies (Hope III)?

... yet another topic disclosed by an upcoming *Four Corners* program?

Strategic Question I: where's this going?

Terms of reference

Minister's statement

Parliamentary debates

Media coverage

Media inquiries

Whistleblowers

Anticipating terms of reference

“A Royal Commission into the financial services industry will examine issues such as:

- how widespread instances of illegal and unethical **behaviour** are within Australia’s financial services industry;
- how Australia’s financial services institutions treat their **duty of care** to their customers;
- how the **culture, ethical standards** and **business structures** of Australian financial services institutions affect the behaviour of these institutions;
- whether Australia’s **regulators** are really **equipped** to identify and prevent illegal and unethical behaviour;
- comparable **international** experience with similar financial services industry misconduct and **best practice** responses to those incidents; and
- **other events as may come to light** in the course of investigating the above.” - *Bill Shorten MP, 8 April 2016*

Strategic Question II: where will it end?

Criminal prosecution

Civil penalty proceedings

Cancellation of license

Appointment of external administrator

Referral for further investigation by regulators, professional bodies

Compensation proceedings (class actions)

Law reform

Strategic Question III: lifting the lid?

Produce documents and information only under notice

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Voluntarily produce documents and information

Notices to Produce Documents

Within power? (what is legislative source/TOR?)

Construction of terms of notice (external advice?)

Who will be responsible (who is proper officer?)

What (needs) to be protected?

- *Self incrimination privilege* – right available to individual but not corporate entity

- *Legal Professional Privilege* – available?
sustainable?

- *Confidentiality* – available? blanket? sustainable?

Notices to Provide Information

Within power? (what is legislative source/TOR?)

Construction of terms of notice

Who should be author of response?

Who should inform the author?

What (needs) to be protected?

- *Self incrimination privilege* – right available to individual but not corporate entity

- *Legal Professional Privilege* – available?
sustainable?

- *Confidentiality* – available? blanket? sustainable?

Strategic Question IV: telling the story?

Await compulsory questioning under oath

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Prepare and proffer up witness statements

Strategic Questions V: lawyer up?

Internal legal resourcing

External legal resourcing

Other resourcing (accountants, experts)

Strategic Question VI: pay up?

Self insure (budget, contingencies)

Constitutional and/or deed of indemnity (exposure, contestable?)

External insurance (entity, D&O, professional indemnity) (scope, representation, reservations)

Strategic Question VII: instructing?

Board/sub-committee/management

Managing conflicts of interest and duty

Maintaining confidentiality/Chinese walls

Records of decisions/instructions

Strategic Question VIII: fight or contrite?

Contest, resist, react, await

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Self assess, apologise, offer undertakings

Comments/Questions?

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