

Banking Royal Commission Report: Key lessons for local government

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In February 2019, Commissioner Hayne delivered the Final Report of the Royal Commissioner into Misconduct in the Banking, Superannuation and Financial Services Industry (the Report). Whilst the report targets the financial services industry, its content applies to all sectors, including local government.

Commissioner Hayne places primary responsibility for misconduct on those who manage and control an entity. In the financial services industry this is the board and senior management. In the local government sector this means the councillors, CEO and senior officers.

This article will look at two of the principal themes in the report, namely culture and governance. And identify at how to apply the lessons learnt to the local government sector.



Culture

In the Report, Commissioner Hayne emphasises the importance of culture. Culture is identified as the 'shared values and norms that shape behaviours and mindsets' within the entity.

Whilst the Report recognises that culture cannot be legislated or prescribed, it does consider that it can be assessed.

The Report suggests that entities should '*form a view of its culture, identify problems, develop and implement a plan to deal with them, and determine whether the changes have been 'effective'.*

Key Points

Local governments should take steps to:

- assess culture and governance
- identify any problems
- deal with those problems
- determine whether the changes have been effective

How can local government assess and improve culture?

These lessons can be directly translated into good practices for local governments.

Let's look at some good practices for the administration:

For the administration

- to '*form a view of its culture*'

Build up a profile of the local government's systems and procedures to give an indication of the local government's attitude to risk, internal control and legislative compliance.

- to '*identify problems*'

Regularly review systems and procedures and consider issues relating to risk, internal controls and legislative compliance. Sources of information should be checked and verified.

- to '*develop and implement a plan to deal with problems*'

Commit to a process of continuous improvement through developing and implementing an action plan. Although a local government may not have the resources to improve all of its systems and procedures, it can at least adopt a methodical approach to dealing with priority issues.

- To '*determine which changes have been effective*'

A regular review that identifies issues is also the same tool by which changes can be monitored. One key element to having a good culture of governance is to have a methodical rather than a reactive approach to monitoring changes and improvements. This includes triggering the functions of the audit committee to monitor and advise the CEO during audit committee meetings.

'it is not just the administration that has the responsibility to ensure good governance'

The administration's approach to improving the culture of good governance focuses on the systems and procedures by which the organisation is run.

The councillors' approach is on a strategic level. It is their attitude that is the cornerstone of the culture of the organisation. Small but crucial adjustments to the ways they interact with the administration will have a major influence on whether the local government ends up with a culture that encourages good governance.

Let's now look at some good practices for councillors:

For the councillors

- Recognise that it is council that has the responsibility for setting the tone that will develop a culture of good governance, as well as the administration;
- Take an active role to ensure that the council has been provided with enough relevant information. Test that by taking seriously those parts of agenda papers that address statutory, financial and risk implications;
- Participate in council meetings by applying objectivity: make decisions based on available information, rather than making them based on emotions and personal experience only;
- Focus on the overall and long-term health of the organisation. Operational matters are better dealt with by the administration.

- Learn how to use the audit committee process to *monitor and advise*, or *guide and assist* the local government.

Governance

The report describes governance as '*the structures and processes by which an entity is run*'. The notion of accountability in governance is key: who is accountable for what is done and how can they be held to account?

Without clear lines of accountability, consequences cannot be applied and issues will be left unresolved.

Evidence presented to Commissioner Hayne revealed that too often, boards did not get the right information about non-financial risk, and did not do enough to seek further or better information where what they had was deficient.

Greater regard must be given to non-financial risks, particularly operational risk and legislative compliance. Non-financial risk should be regarded as equally important as financial risk.



How can local government improve governance?

The findings of the Report should resonate with both council and administration, and serve as a good reminder that they need to be vigilant on the matter of governance, which are essentially addressed in the *Local Government (Audit) Regulations 1996*, especially regulations 16 and 17.

So, what can a local government do to improve governance? This answer may be summarised as follows:

1. Adopt a culture of good governance in the sense of cultivating a belief in the value of good governance, as opposed to a belief that the

regulatory obligations are merely obstacles to effective operations; and

2. Use the processes suggested by regulations 16 and 17 as the opportunity to take a cold, hard look at whether its governance practices are objectively satisfactory.

It is not unusual for a local government to consider the regulation 17 review as a tick box exercise, done by an external party once every three financial years ... then put away in the filing cabinet.

'use the regulation 17 review and report process as a vehicle for better governance'

Of course, with limited resources and time constraints, it may be speedy and necessary step to engage an external consultant in to prepare the regulation 17 review in a short timeframe to ensure compliance. Civic legal undertakes regulation 17 reports in this way when required by local governments.

Yet the regulation 17 review and report process holds a wealth of opportunity for the local government to raise its game in the area of governance, for its own sake and indeed for the sake of all its stakeholders.

The local government that is able to harness the motivation and efforts of both elected members and staff in seeing the value of good governance will be well ahead of the one that does not – even if the range of problems is wide and the resources are scarce.

Conclusion

The Hayne Report puts responsibility for the conduct of an entity firmly with those who manage and control it. Culture and governance lie at the heart of the many failings in the financial services industry in their operational areas.

These themes of culture and governance are inextricably linked. This means an improvement in one will support an improvement in the other, whilst inaction in one will reinforce inaction in the other.

It is our experience from working with local governments that very real improvement in culture and governance can be achieved in remarkably

short periods of time and that the two are inextricably linked.

Local governments would be wise to heed the lessons from the financial services industry. In doing so, they should seek to strike the right balance between striving for operational achievement and practising high quality governance.

Only in this way will the sector be able to build the long-term credibility it deserves. And only in this way will the sector become so robust and self-sufficient that third party interference and criticism become less potent.

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