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# Introduction

In February 2019, Commissioner Kenneth Hayne published a Final Report of his investigation into the ‘Misconduct in the Banking, Superannuation and Financial Services Industry’. Hayne included a total of 76 suggested regulatory amendments within banking due to continued unethical conduct throughout the industry (Hayne, 2019). The Commonwealth Bank of Australia (CBA), one of the largest banks in the country and a focal point of the investigation, saw that many of these recommendations caused large impacts to their existing business processes.

# Scope and Analysis

## Introduction to Commonwealth Bank of Australia

CBA offers a large and diverse range of financial services including retail banking, mortgages, credit cards, stockbroking, loan brokerage, etc. (CommBank, 2021). CBA provide “Home Lending Specialists”, or mortgage brokers, who facilitate the service of financial expertise. This service exists to help consumers navigate the mortgage market, understand the customers’ requirements and “make your journey seamless” (CommBank, 2021).

## Royal Commission Recommendation 1.3 – Mortgage Broker Remuneration

One noteworthy recommendation included regulation changes around the remuneration of mortgage brokers. The recommendation states that “the *borrower*, not the lender, should pay the mortgage broker a fee for acting in connection with home lending” and included suggestions around how this could be implemented (Hayne, 2019). During this investigation, it was observed that the remuneration structure for mortgage brokers within some companies led to “poor customer outcomes” (Frost, 2018). This recommendation addresses the ethical misconduct and conflicts of interest between the CBA mortgage broker and the borrower. Since the publication of these findings, CBA have publicly admitted that their existing mortgage broker payment schemes cause a conflict of interest between themselves and their clients (Parliament of Australia, 2019).

The financial and credit market can be complicated, and any missteps made can lead to long-term financial turmoil for the consumer. Mortgage brokers exist to alleviate these challenges and assist consumers through their journey of acquiring a mortgage. Through their financial expertise within these markets, the broker’s desired outcome is to provide the best possible outcome to suit the client’s personal needs. The ethical challenge that this recommendation seeks to resolve is the conflict of interest between remuneration of ‘up-selling’ larger loans to consumers (Frost, 2018). The issue lies in whether certain broker payment structures create a conflict of interest which lead to poor consumer outcomes in search of profit.

## CBA’s Unethical Conduct

Consequential ethics is the process of determining the level of ethicality of a decision or action using the outcome as the sole determinant (Dellaportas, 2006). North (2015) suggests that mortgage broker remuneration provisions can “significantly influence, and adversely impact, consumer outcomes” (North, 2015). Moreover, North states that “broker disclosure requirements are stated in relatively ambiguous terms, allowing a licensee leeway in terms of the nature and level of remuneration that must be disclosed”. In contrast, Frost explains that banks and industry bodies have defended allegations around the ethical or lawful contradictions between remuneration and consumer outcome, suggesting that they enhance competition among lenders (Frost, 2018).

When using a consequential framework to analyse CBA’s mortgage broker remuneration structure, one can conclude that these practices are unethical. As such, Taylor states that the Australian Securities and Investments Commission’s (ASIC) analysis of the current “standard model of upfront and trail commissions creates a conflict of interest” (Taylor, 2017), confirmed by Kane to be the model used by CBA for broker remunerate (Kane, 2019). This conflict of interest displays clear unethical conduct through the principles of consequentialism as the outcomes typically favour the company over the consumer.

Matt Comyn, current CEO of CBA, has publicly agreed that the recommendations made by Commissioner Hayne would be the most ethical (Kane, 2019). However, upon consideration, Comyn has made the judgement that even if CBA moved to this model, competitors would not follow and this would impact CBA’s mortgage sales volume, leaving them uncompetitive (Kane, 2019). When using the Deontology ethical framework (reference), which analyses ethicality based on intention rather than outcome, we can use this statement as evidence that CBA is displaying unethical conduct, and their interest is of personal profit.

## Key stakeholders

There are several key stakeholders affected by this misconduct. One key stakeholder includes the customers who are misinformed and led to poor decisions resulting in long-term financial hardships for the gain of any suspect mortgage brokers and their organisations. The financial institutions that provide mortgage brokerage services incur the next largest impact, with increased regulation leading to potential change of business processes, existing remuneration structures, and overall market competition. The government is another crucial stakeholder, being the key regulatory decision maker and developer of consequences for the disregard of these regulations. The employees of these financial institutions, in particular the mortgage brokers, yet another key stakeholder, may incur remuneration reductions due to increased regulation and are thus impacted poorly. In addition, these employees may risk the loss of their employment due to changes in regulation.

## Why ethics is important

It is important for companies to act ethically for a multitude of reasons. According to the Code of Ethics from the Accounting Professional and Ethical Standard Board (APESB), the fundamental ethics principles include integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour (APESB, 2018). These principles are critical as they provide behavioural guidance to professionals and assist in building positive workplace cultures (Schroeder, 2019). Failure to comply with these guidelines and participation in unethical conduct can lead to large and unforeseeable repercussions for the organisation or broader society. Today, ethical conduct is becoming a greater focus for companies due to the ease and scalability of communication through technology (Schroeder, 2019). This means that any uncovered unethical conduct is rapidly and widely broadcasted to a vast number of stakeholders, amplifying the consequences brought upon these companies.

# Conclusion

The Final Report published by Hayne had many impacts on the banking industry and highlighted existing unethical conduct and conflicts of interest occurring between banks and their customers. The report outlines current remuneration schemes leading to unethical conduct and poorer consumer outcomes. The public scrutiny that CBA observed from the investigation findings and the publicity of its unethical behaviours shows clearly that businesses must prioritise ethical conduct to ensure business outcomes. From the CBA case study, it is observed that when companies fail to act ethically, serious brand disruption and many other financial consequences can occur.

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