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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 centred around the banking industry due to unethical conduct within the industry (Hayne, 2019). The Commonwealth Bank of Australia (CBA), one of the largest banks in Australia, and a key suspect of the investigation, saw that many of the recommendations caused large impacts to their existing business processes.

# Scope / 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 and many more (CommBank, 2021). CBA provide “Home Lending Specialists”, or mortgage brokers, who provide a service of financial expertise. This service exists to help consumers navigate the mortgage market, understand the client’s 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). The ethical misconduct that this recommendation is seeking to address is the conflict of interest between the CBA mortgage broker and the borrower. 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 a consumer of products and services in these markets. 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 that do not need it in search of increased personal commissions (Frost, 2018). The issue lies in whether certain broker payment structures create a conflict of interest and leads to poorer 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. North 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 exclaims 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, we can arrive to the conclusion that it is unethical. 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). A model that Kane confirms CBA use to remunerate their brokers (Kane, 2019). This conflict of interest displays clear unethical conduct by principles of consequentialism as the outcomes does not best suit the consumer.

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

## Key stakeholders

Several different stakeholders of this ethical misconduct can be identified. One key stakeholder includes the customers who incur a strong impact from this ethical issue as they are potentially being misled into long-term financial hardships for the gain of any suspect mortgage brokers and their organisations. The organisations, financial institutions that provide mortgage brokerage services, will have the next largest impact, with increased regulation leading to potential changes to business processes, existing remuneration structures, and overall market competitiveness. The government is another crucial stakeholder, being the key decision maker around the regulations implemented, enforced, and creating the potential consequences for breaking these regulations. Another key stakeholder includes the employees of these financial institutions, in particular the mortgage brokers, who may incur remuneration reductions due to increased regulation. Another risk for employees to consider is a loss of employment if companies decide they do not require these people resources because of the changes to regulation.

## Why ethics is important

Given the knowledge from the lectures, we can see that 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 principles include integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour (APESB, 2018). Ethics are important as they provide behavioural guidance to professionals and assist in building positive workplace cultures (Schroeder, 2019). Failure to comply with these guidelines and participating 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 discovered unethical conduct of a company is rapidly and widely broadcasted to a vast number of stakeholders. This amplifies the consequences for companies that act unethically.

# Conclusion

This Final Report published by Hayne had many impacts on the banking industry and attracted the spotlight to existing unethical conduct and the conflicts of interest occurring between banks and their customers. The report highlighted the unethical conduct cause through the existing remuneration schemes of mortgage brokers ultimately led to poorer consumer outcomes. The public scrutiny that CBA observed from the investigations finding and the publicity of its unethical behaviours shows clearly that business’ must prioritise ethical conduct. We can see from the CBA case study that when companies fail to act ethically, serious brand disruption and many other financial consequences can occur.

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