THE REQUIREMENT TO PROVIDE FINANCIAL SERVICES “EFFICIENTLY, HONESTLY AND FAIRLY” MEANS THE ENTERPRISE MUST DO MORE THAN NOT BREAK THE LAW; IT MUST ALSO SEEK TO DO “THE RIGHT THING”.

deliberations are difficult when the breach is proposed to be of the “efficiently, honestly and fairly” standard. We are asked what attitude ASIC will take to a particular breach. Our advice has consistently been it is best to lodge the report when there is uncertainty. This facilitates the proper functioning of the entire system.

The Commission emphasises the use of the word “all” in the section to draw our attention to the fact everything that could be done to provide the financial services efficiently, honestly and fairly must be done. This requirement is highlighted in Regulatory Guide 256 Client review and remediation conducted by advice licensees. There, ASIC states a financial services licensee’s general obligation to provide the services efficiently, honestly and fairly requires the licensee to “take responsibility” for the consequences of their actions if things go wrong and clients suffer loss or detriment.

THE FINAL MESSAGE

The clear message from the Report is that “efficiently, honestly and fairly” requires entities to behave in a way that seeks to do the right thing which means something more than mere compliance with the law.

COMING SOON

Financial Services Thinking

The Banking Royal Commission, along with a raft of proposed and upcoming legislative changes, such as the Design and Distribution Obligations and Product Intervention Powers Bill, signal major disruption to every facet of the financial services sector. To ensure you’re up to date with the impact of the latest developments and what it means for you, we’re launching Financial Services Thinking: a series of regular practical insights, industry commentary and comprehensive updates specifically for financial services stakeholders.

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