



Australian Government

Restoring trust in Australia's financial system

The Government response
to the Royal Commission
into Misconduct in the Banking,
Superannuation and
Financial Services Industry

February 2019

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Foreword

Today, the Government releases its response to the landmark Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

The Government is taking action on all 76 recommendations contained within the Royal Commission's Final Report and in a number of important areas is going further. In his report, Commissioner Hayne has recognised the many significant actions the Government has already taken.



In outlining the Government's response to the Royal Commission, the Government's principal focus is on restoring trust in our financial system and delivering better consumer outcomes, while maintaining the flow of credit and continuing to promote competition. These objectives are vitally important to the health of the economy and therefore to the health of our community.

The Royal Commission conducted seven rounds of public hearings over 68 days, called more than 130 witnesses and reviewed over 10,000 public submissions. The Final Report of the Royal Commission, together with the Interim Report released on 28 September 2018, has provided a comprehensive and forensic inquiry of our financial system.

As we have heard, too often the conduct within our financial institutions has been in breach of existing laws and fallen well below community expectations. The price paid by our community has been immense and goes beyond just the financial. Businesses have been broken, and the emotional stress and personal pain have broken lives. As Commissioner Hayne has made clear: "there can be no doubt that the primary responsibility for misconduct in the financial services industry lies with the entities concerned and those who managed and controlled those entities".

My message to the financial sector is that misconduct must end and the interests of consumers must now come first. From today the sector must change, and change forever.

Commissioner Hayne's recommendations and the Government's response advance the interests of consumers in four key ways. First, they strengthen and expand the protections for consumers, small business and rural and remote communities. Second, they raise accountability and governance standards. Third, they enhance the effectiveness of regulators. Fourth, they provide for remediation for those harmed by misconduct.

For the first time the Government will establish a compensation scheme of last resort to ensure that consumers can have their case heard and be confident that where compensation is owed it will be paid. This will be a scheme paid for by industry reflecting their obligation to right their wrongs.

I would like to thank Commissioner Hayne for the outstanding manner in which he has conducted the Royal Commission and express my gratitude for the tireless work of those involved. I also wish to acknowledge all of those individuals who provided submissions and came forward to give evidence. Their stories and experiences drive home the necessity for change.

The Government is confident that the actions announced today will put in place the legislative framework necessary, providing the regulators with the powers and the resources to hold those who abuse our trust to account. In doing so the community's trust in our financial sector can and will be restored.

A handwritten signature in black ink that reads "Joshua Frydenberg". The signature is written in a cursive, flowing style.

The Hon Josh Frydenberg MP
Treasurer

Restoring trust in Australia's financial system

On coming into office in 2013, the Government inherited a financial system in need of reform. While the system had withstood the challenges of the global financial crisis, high profile financial collapses had highlighted gaps in how the regulatory framework protected consumers and investors and there was a clear need to further improve its resilience.

As part of the Government's comprehensive economic reform agenda, in 2013 we established the Financial System Inquiry (FSI), a root and branch examination of Australia's financial system. Since the release of the Government response to the FSI in 2015, the Government has diligently been implementing its recommendations.

Those reforms, and other measures announced subsequently, have made significant progress in ensuring the financial system is resilient, treats consumers fairly and is overseen by effective regulators. The Government has also promoted innovation and competition, the benefits of which are already evident.

This response, coupled with the reforms already made or in the process of being implemented, represent the most significant changes to the financial system in a generation.

The Government will build on its existing reforms

The Royal Commission has endorsed many of the themes and individual reforms the Government is currently pursuing. However, the Royal Commission has also found that there is further work to be done. The Government agrees.

The Royal Commission has shone a spotlight on the extent of wrongdoing and misconduct across the financial system. It has identified entities putting profits ahead of people and rewarding misconduct, a lack of accountability for those who broke the law, and regulators who need to be more effective in denouncing and punishing misconduct.

This response will address the issues identified by the Royal Commission and substantially build on the Government's existing agenda by:

- strengthening protections for consumers, small businesses and rural and regional communities;
- enhancing accountability;
- ensuring strong and effective financial system regulators; and
- further improving consumer and small business access to redress.

In undertaking these reforms, the Government will ensure that the financial system continues to provide consumers and small businesses with access to credit and other affordable financial services that they need, and that the financial system remains competitive, efficient and resilient.

Strengthening protections for consumers, small businesses and rural and regional communities

All Australians have the right to be treated fairly and honestly in their dealings with financial services entities. It is fundamental to ensure consumers have trust in the financial system.

We have already reformed remuneration practices in the life insurance advice sector and introduced new educational and ethical requirements for financial advisers. We have protected consumers from being granted excessive credit limits and building up unsustainable debt across credit cards, and simplified how interest is calculated.

Legislation is before the Parliament to ensure financial products are appropriately targeted and to give the Australian Securities and Investments Commission (ASIC) the power to intervene to prevent consumer harm. Legislation is also before the Parliament which contains a comprehensive package of reforms designed to protect Australians' superannuation savings from undue erosion by fees and insurance premiums, and to improve outcomes for members of superannuation funds.

We will further strengthen these protections, including by:

- requiring mortgage brokers to act in the best interests of borrowers;
- removing conflicts of interest between brokers and consumers by banning trail commissions and other inappropriate forms of lender-paid commissions on new loans from 1 July 2020 with a further review in three years on the implications of removing upfront commissions and moving to a borrower pays remuneration structure;
- ending the grandfathering of the conflicted remuneration provisions effective from 1 January 2021 and, in addition to the Royal Commission's recommendation, requiring that any grandfathered conflicted remuneration at this date be rebated to clients;
- ensuring superannuation fund members only have one default account (for new members entering the system);
- protecting vulnerable consumers through clarifying and strengthening the unsolicited selling (anti-hawking) provisions, including for superannuation and insurance products;
- prohibiting the deduction of any advice fees (other than intra-fund advice) from MySuper accounts;
- supporting the expansion of the definition of small business in the Banking Code;
- establishing a comprehensive national scheme for farm debt mediation;
- supporting the elimination of default interest on loans in areas impacted by natural disasters;
- supporting the appointment of receivers or any other form of external administrator only as a remedy of last resort; and
- supporting more inclusive practices for Aboriginal and Torres Strait Islander persons.

The Royal Commission has also put industry on notice that it must step up and improve how it deals with distressed agricultural loans.

Enhancing accountability

It is the responsibility, first and foremost, of entities, their boards and senior executives to comply with the law, meet community standards and expectations, and treat their customers fairly. Nevertheless the regulatory framework must make it clear that where entities and individuals within them fail to meet their obligations they will be held to account.

We have established the Banking Executive Accountability Regime (BEAR) which ensures banks and their executives are held accountable when they fail to comply with their obligations.

Legislation is before the Parliament to significantly increase penalties, both civil and criminal, so that they are an effective deterrent to, and remedy for, corporate and financial misconduct. We have also introduced legislation for a single whistleblower protection regime to cover the corporate, financial and credit sectors.

We will make entities and individuals more accountable, including by:

- extending the BEAR to all Australian Prudential Regulation Authority (APRA)-regulated entities such as insurers and registrable superannuation entities;

- in addition to the Royal Commission’s recommendations, introducing a new conduct-focused accountability regime, regulated by ASIC and extending its coverage to non-prudentially regulated entities;
- increasing the requirements for entities to investigate the full extent of financial adviser or mortgage broker misconduct and inform and remediate customers that are affected; and
- establishing a new holistic approach for disciplining financial advisers for misconduct through a central body.

The Royal Commission has also made a number of recommendations to APRA to bolster its focus and supervision of culture and governance and the Government supports APRA acting on these recommendations.

Ensuring strong and effective financial system regulators

For Australians to have trust in the financial system, the regulatory framework must be enforced by effective regulators.

The Government has taken significant action to increase the capabilities, powers and funding of the financial regulators, and to refresh their leadership. We have also introduced or consulted on a number of pieces of legislation, including in respect of many of the recommendations of the 2017 ASIC Enforcement Review, to ensure our financial regulators have the powers they need to take strong action to protect consumers from corporate and financial sector misconduct.

Additional funding of \$170 million has also been provided to ASIC, APRA, the Commonwealth Director of Public Prosecutions and the Federal Court to ensure our regulators are appropriately resourced to hold those who engage in misconduct to account.

We will ensure our regulators are strong and effective, including by:

- clarifying ASIC and APRA’s regulatory roles and powers in superannuation, with ASIC becoming the primary conduct regulator;
- ensuring regulators have access to appropriate powers by creating civil penalties for specific breaches of the law for superannuation trustees and directors;
- creating an independently-chaired regulator oversight body, and applying accountability principles consistent with the BEAR to the regulators themselves;
- conducting regular capability reviews of both financial regulators, with a capability review of APRA commencing in 2019; and
- expanding the jurisdiction of the Federal Court to cover corporate criminal misconduct to expedite the consideration of cases brought by regulators.

While these reforms are critical, much of the needed change must come from the regulators themselves. The Government welcomes the actions the regulators are taking to begin changing their practices, including a tougher approach to enforcement and more intensive supervision approaches.

While the Government has also provided significant funding to the regulators, the findings and recommendations from the Royal Commission, along with more than 20 referrals, will require the regulators to take on new responsibilities and, in many cases, simply do more. The Government will work with the regulators to ensure that they remain appropriately resourced and will consider what additional funding is required in the 2019-20 Budget context.

Further improving consumer and small business access to redress

Consumers have a right to be protected from misconduct or conduct that falls below community standards and expectations. They also have a right to redress when there are breaches of the law. The Government has implemented important reforms to ensure this redress occurs.

We have established the Australian Financial Complaints Authority (AFCA) — a one-stop shop for external dispute resolution to enable more consumers and small businesses to access fast and free dispute resolution including for banking, insurance, superannuation and financial advice. AFCA operates with higher compensation limits than its predecessors — for consumers (\$500,000), for small businesses (\$1 million) and primary producers (\$2 million).

ASIC has also been provided with additional powers to allow it to set standards in relation to financial entities' internal dispute resolution practices and to collect data from entities on these activities.

We will further improve consumer and small business access to redress by going beyond the Royal Commission's recommendations by:

- paying around \$30 million in compensation owed to almost 300 consumers and small businesses for the unpaid determinations of the Financial Ombudsman Service and the Credit and Investments Ombudsman;
- establishing for the first time an industry-funded and forward looking compensation scheme of last resort to be administered by AFCA as recommended by the Royal Commission;
- expanding the remit of AFCA for a period of 12 months to accept applications for disputes dating back to 1 January 2008 (the period covered by the Royal Commission) for disputes that fall within AFCA's thresholds. This will ensure that consumers and small businesses that have suffered from misconduct but have not yet been heard will be able to take their cases to AFCA and have them considered; and
- strengthening oversight and transparency of financial entities' remediation activities by enhancing AFCA's role in the establishment and public reporting of firm remediation activities.

In recognition of the need for greater stability and coordination of funding for financial counselling across Australia, the Government will also commence an immediate review of the coordination and funding of financial counselling services.

Implementing the reforms to achieve lasting change

The Government will ensure these reforms are implemented efficiently and effectively. To achieve these goals, the Treasury Royal Commission Taskforce, which made several submissions to the Royal Commission, will continue as a Financial Services Reform Implementation Taskforce. To ensure ongoing coordinated delivery of reforms, a Financial Services Reform Implementation Committee will also be established consisting of the Treasury, ASIC, APRA, the Office of the Parliamentary Counsel and other agencies as required.

Starting in three years, the Government will establish an independent inquiry to review and assess whether industry practices have changed following the Royal Commission and have led to better consumer outcomes. The Government will also require a similar assessment of the regulators in three years by the new regulator oversight body that the Government has agreed to establish.

Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| BANKING | |
| <p>Recommendation 1.1 — The NCCP Act</p> <p>The NCCP Act should not be amended to alter the obligation to assess unsuitability.</p> | <p>The Government agrees to this recommendation and the Commissioner’s findings that ‘not unsuitable’ remains the appropriate standard for responsible lending obligations within the <i>National Consumer Credit Protection Act 2009</i> (NCCP Act).</p> |
| <p>Recommendation 1.2 — Best interests duty</p> <p>The law should be amended to provide that, when acting in connection with home lending, mortgage brokers must act in the best interests of the intending borrower. The obligation should be a civil penalty provision.</p> | <p>The Government agrees to introduce a best interests duty for mortgage brokers to act in the best interests of borrowers.</p> <p>The best interests duty will not change the responsible lending obligations for broker originated loans, consistent with the Government’s response to Recommendation 1.1 above.</p> |
| <p>Recommendation 1.5 — Mortgage brokers as financial advisers</p> <p>After a sufficient period of transition, mortgage brokers should be subject to and regulated by the law that applies to entities providing financial product advice to retail clients.</p> | <p>The Government also agrees that a breach of the best interests duty should be subject to a civil penalty.</p> <p>The Government agrees, following the implementation of the best interests duty, to further align the regulatory frameworks for mortgage brokers and financial advisers.</p> <p>This also responds to the Productivity Commission’s report <i>Competition in the Australian Financial System</i>, which also recommended imposing a best interests duty on mortgage brokers and a review of the feasibility of enabling financial advisers to also act as mortgage brokers.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 1.3 — Mortgage broker remuneration</p> <p>The borrower, not the lender, should pay the mortgage broker a fee for acting in connection with home lending.</p> <p>Changes in brokers’ remuneration should be made over a period of two or three years, by first prohibiting lenders from paying trail commission to mortgage brokers in respect of new loans, then prohibiting lenders from paying other commissions to mortgage brokers.</p> | <p>The Government agrees to address conflicted remuneration for mortgage brokers. The Government recognises the importance of competition in the home lending sector and will proceed carefully and in stages, consistent with the recommendation, with reforms to ensure that the changes do not adversely impact consumers’ access to lenders and competition in the home lending market.</p> <p>From 1 July 2020, the Government will prohibit for new loans the payment of trail commissions from lenders to mortgage brokers and aggregators.</p> |
| <p>Recommendation 1.4 — Establishment of working group</p> <p>A Treasury-led working group should be established to monitor and, if necessary, adjust the remuneration model referred to in Recommendation 1.3, and any fee that lenders should be required to charge to achieve a level playing field, in response to market changes.</p> | <p>From that date, the Government will also require that the value of upfront commissions be linked to the amount drawn-down by borrowers and not the loan amount, and ban campaign and volume-based commissions and payments. The Government will additionally limit to two years the period over which commissions can be clawed back from aggregators and brokers and prohibit the cost of clawbacks being passed on to consumers.</p> <p>The Government will also ask the Council of Financial Regulators, along with the Australian Competition and Consumer Commission (ACCC), to review in three years’ time the impact of the above changes and implications for consumer outcomes and competition of moving to a borrower pays remuneration structure for mortgage broking, as recommended by the Royal Commission, and any associated changes that should be made to non-broker facilitated loans.</p> <p>This also responds to recommendations of the Productivity Commission’s report <i>Competition in the Australian Financial System</i> dealing with the remuneration of mortgage brokers.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 1.6 — Misconduct by mortgage brokers</p> <p>ACL holders should:</p> <ul style="list-style-type: none"> • be bound by information-sharing and reporting obligations in respect of mortgage brokers similar to those referred to in Recommendations 2.7 and 2.8 for financial advisers; and • take the same steps in response to detecting misconduct of a mortgage broker as those referred to in Recommendation 2.9 for financial advisers. | <p>The Government agrees to apply information sharing and reporting obligations to Australian Credit Licence (ACL) holders in respect of misconduct by mortgage brokers, including requiring licensees to make whatever inquiries are reasonably necessary to determine the nature and full extent of misconduct, and, where there is sufficient information to suggest that a broker has engaged in misconduct, to inform affected borrowers and remediate those borrowers promptly.</p> <p>It is essential that where misconduct is identified, the perpetrators of such misconduct are disciplined and prevented from simply avoiding consequences by moving from one licensee to another.</p> |
| <p>Recommendation 1.7 — Removal of point-of-sale exemption</p> <p>The exemption of retail dealers from the operation of the NCCP Act should be abolished.</p> | <p>The Government agrees to remove the point-of-sale exemption. The Government recognises that this change may impact on many businesses and will carefully consider how these reforms are implemented to ensure balance is achieved between consumer protection and access to products and services.</p> <p>The Royal Commission identified that the provision of inappropriate loans and other financial products has led to consumers experiencing financial hardship. Removing the point-of-sale exemption will require third party vendors, as well as lenders, to only recommend loans that are not unsuitable for the borrower.</p> <p>This also responds to the recommendation of the Productivity Commission’s report <i>Competition in the Australian Financial System</i> to review the current exemption of retailers from the NCCP Act.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 1.8 — Amending the Banking Code</p> <p>The ABA should amend the Banking Code to provide that:</p> <ul style="list-style-type: none"> • banks will work with customers: <ul style="list-style-type: none"> – who live in remote areas; or – who are not adept in using English <p>to identify a suitable way for those customers to access and undertake their banking;</p> <ul style="list-style-type: none"> • if a customer is having difficulty proving his or her identity, and tells the bank that he or she identifies as an Aboriginal or Torres Strait Islander person, the bank will follow AUSTRAC’s guidance about the identification and verification of persons of Aboriginal or Torres Strait Islander heritage; • without prior express agreement with the customer, banks will not allow informal overdrafts on basic accounts; and • banks will not charge dishonour fees on basic accounts. | <p>The Government supports the Australian Banking Association (ABA) acting on this recommendation.</p> |
| <p>Recommendation 1.9 — No extension of the NCCP Act</p> <p>The NCCP Act should not be amended to extend its operation to lending to small businesses.</p> | <p>The Government agrees to this recommendation and the Commissioner’s findings that extending the responsible lending obligations in the NCCP Act would likely increase the cost of credit for small business and reduce the availability of credit. The Government is committed to ensuring access to affordable credit for small businesses.</p> |
| <p>Recommendation 1.10 — Definition of ‘small business’</p> <p>The ABA should amend the definition of ‘small business’ in the Banking Code so that the Code applies to any business or group employing fewer than 100 full-time equivalent employees, where the loan applied for is less than \$5 million.</p> | <p>The Government supports the ABA acting on this recommendation.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 1.11 — Farm debt mediation</p> <p>A national scheme of farm debt mediation should be enacted.</p> | <p>The Government agrees to establish a national farm debt mediation scheme.</p> <p>A national scheme would assist lenders and borrowers to agree on practical measures that may lead to the borrower being able to address financial difficulties that have caused the loan to become distressed. The Government further supports mediation occurring soon after the loan becomes distressed and not as a last measure prior to the lender taking enforcement action.</p> |
| <p>Recommendation 1.12 — Valuations of land</p> <p>APRA should amend Prudential Standard APS 220 to:</p> <ul style="list-style-type: none"> • require that internal appraisals of the value of land taken or to be taken as security should be independent of loan origination, loan processing and loan decision processes; and • provide for valuation of agricultural land in a manner that will recognise, to the extent possible: <ul style="list-style-type: none"> – the likelihood of external events affecting its realisable value; and – the time that may be taken to realise the land at a reasonable price affecting its realisable value. | <p>The Government supports the Australian Prudential Regulation Authority (APRA) acting on this recommendation.</p> |
| <p>Recommendation 1.13 — Charging default interest</p> <p>The ABA should amend the Banking Code to provide that, while a declaration remains in force, banks will not charge default interest on loans secured by agricultural land in an area declared to be affected by drought or other natural disaster.</p> | <p>The Government supports the ABA acting on this recommendation.</p> |

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| <p>Recommendation 1.14 — Distressed agricultural loans</p> <p>When dealing with distressed agricultural loans, banks should:</p> <ul style="list-style-type: none"> • ensure that those loans are managed by experienced agricultural bankers; • offer farm debt mediation as soon as a loan is classified as distressed; • manage every distressed loan on the footing that working out will be the best outcome for bank and borrower, and enforcement the worst; • recognise that appointment of receivers or any other form of external administrator is a remedy of last resort; and • cease charging default interest when there is no realistic prospect of recovering the amount charged. | <p>The Government supports banks acting on this recommendation.</p> |
| <p>Recommendation 1.15 — Enforceable code provisions</p> <p>The law should be amended to provide:</p> <ul style="list-style-type: none"> • that ASIC’s power to approve codes of conduct extends to codes relating to all APRA-regulated institutions and ACL holders; • that industry codes of conduct approved by ASIC may include ‘enforceable code provisions’, which are provisions in respect of which a contravention will constitute a breach of the law; • that ASIC may take into consideration whether particular provisions of an industry code of conduct have been designated as ‘enforceable code provisions’ in determining whether to approve a code; • for remedies, modelled on those now set out in Part VI of the Competition and Consumer Act, for breach of an ‘enforceable code provision’; and • for the establishment and imposition of mandatory financial services industry codes. | <p>The Government agrees to amend the law to provide the Australian Securities and Investments Commission (ASIC) with additional powers to approve and enforce industry code provisions.</p> <p>The Government will establish an approved codes regime that includes ‘enforceable code provisions’ and implements the ASIC Enforcement Review recommendations.</p> <p>The regime will provide that a breach of an enforceable code provision will constitute a breach of the law. The law will also be amended to provide for remedies that may follow from such a breach.</p> <p>The Government continues to support and encourage industry to develop voluntary codes that go beyond the requirements in the law. The Commissioner notes the benefits of voluntary codes in harnessing the views and collective will of industry.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 1.16 — 2019 Banking Code</p> <p>In respect of the Banking Code that ASIC approved in 2018, the ABA and ASIC should take all necessary steps to have the provisions that govern the terms of the contract made or to be made between the bank and the customer or guarantor designated as ‘enforceable code provisions’.</p> | <p>The Government supports ASIC and the ABA acting on this recommendation following the implementation of Recommendation 1.15.</p> |
| <p>Recommendation 1.17 — BEAR product responsibility</p> <p>After appropriate consultation, APRA should determine for the purposes of section 37BA(2)(b) of the Banking Act, a responsibility, within each ADI subject to the BEAR, for all steps in the design, delivery and maintenance of all products offered to customers by the ADI and any necessary remediation of customers in respect of any of those products.</p> | <p>The Government supports APRA acting on this recommendation.</p> <p>The Government has also agreed to extend the Banking Executive Accountability Regime (BEAR) to other APRA-regulated entities in its response to Recommendation 6.6.</p> |
| FINANCIAL ADVICE | |
| <p>Recommendation 2.1 — Annual renewal and payment</p> <p>The law should be amended to provide that ongoing fee arrangements (whenever made):</p> <ul style="list-style-type: none"> • must be renewed annually by the client; • must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and • may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client’s express written authority to the entity that conducts that account given at, or immediately after, the latest renewal of the ongoing fee arrangement. | <p>The Government agrees to require advisers to seek annual renewal, in writing, of ongoing fee arrangements; to require advisers to record, in writing, the services that will be provided and the associated fees; and mandate the client’s express written authority for the payment of fees from any account held for or on behalf of a client given at, or immediately after, the latest renewal of the ongoing fee arrangement.</p> <p>These requirements will apply for all clients. Currently, financial advisers are only required to seek clients’ agreement for ongoing fee arrangements for new clients after 1 July 2013.</p> <p>The Royal Commission has highlighted problems with clients being charged fees for services that have not been provided. This is mostly associated with clients in ongoing fee arrangements. These changes will help ensure clients actively consider whether they are deriving benefits from ongoing fee arrangements.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 2.2 — Disclosure of lack of independence</p> <p>The law should be amended to require that a financial adviser who would contravene section 923A of the Corporations Act by assuming or using any of the restricted words or expressions identified in section 923A(5) (including ‘independent’, ‘impartial’ and ‘unbiased’) must, before providing personal advice to a retail client, give to the client a written statement (in or to the effect of a form to be prescribed) explaining simply and concisely why the adviser is not independent, impartial and unbiased.</p> | <p>The Government agrees to require advisers to provide a written statement to a retail client explaining why the adviser is not independent, impartial and unbiased before providing personal advice, unless the adviser is allowed to use those terms under section 923A of the <i>Corporations Act 2001</i> (Corporations Act).</p> |
| <p>Recommendation 2.3 — Review of measures to improve the quality of advice</p> <p>In three years’ time, there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. The review should preferably be completed by 30 June 2022, but no later than 31 December 2022.</p> <p>Among other things, that review should consider whether it is necessary to retain the ‘safe harbour’ provision in section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed.</p> | <p>The Government agrees to a review in three years’ time on the effectiveness of measures to improve the quality of advice.</p> <p>The Government has introduced reforms to enhance the quality of financial advice, in particular, the reforms to increase the educational, training and ethical standards of financial advisers. It also has legislation before the Parliament to ensure that financial products are appropriately targeted and to give ASIC the power to intervene before a consumer suffers harm.</p> <p>It is appropriate to undertake a review of these reforms, and earlier reforms such as the Future of Financial Advice, to ensure that they are working effectively and improving the quality of advice.</p> |

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| <p>Recommendation 2.4 — Grandfathered commissions</p> <p>Grandfathering provisions for conflicted remuneration should be repealed as soon as is reasonably practicable.</p> | <p>The Government agrees to end grandfathering of conflicted remuneration effective from 1 January 2021.</p> <p>Grandfathered conflicted remuneration can entrench clients in older products even when newer, better and more affordable products are available on the market. Grandfathering has now been in place for over five years, providing industry with sufficient time to transition to the new arrangements. It is therefore now appropriate for grandfathering to end.</p> <p>The Government is also committed to ensuring that the benefits of removing grandfathering flow to clients. From 1 January 2021, payments of any previously grandfathered conflicted remuneration still in contracts will instead be required to be rebated to applicable clients where the applicable client can reasonably be identified.</p> <p>Where it is not practicable to rebate the benefit to an individual client because, for example, the grandfathered conflicted remuneration is volume-based so it is not able to be attributed to any individual client, the Government expects industry to pass these benefits through to clients indirectly (for example, by lowering product fees).</p> <p>To ensure that the benefits of industry renegotiating current arrangements to remove grandfathered conflicted remuneration ahead of 1 January 2021 flow through to clients, the Government will commission ASIC to monitor and report on the extent to which product issuers are acting to end the grandfathering of conflicted remuneration for the period 1 July 2019 to 1 January 2021 and are passing the benefits to clients, whether through direct rebates or otherwise.</p> <p>This also responds to the Productivity Commission’s report <i>Superannuation: Assessing Efficiency and Competitiveness</i> which also recommended ending grandfathered trailing commissions.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 2.5 — Life risk insurance commissions</p> <p>When ASIC conducts its review of conflicted remuneration relating to life risk insurance products and the operation of the ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, ASIC should consider further reducing the cap on commissions in respect of life risk insurance products. Unless there is a clear justification for retaining those commissions, the cap should ultimately be reduced to zero.</p> | <p>In 2017, the Government enacted reforms to life insurance remuneration that capped the commissions a financial adviser would receive for providing advice in relation to the purchase of a life insurance product. As part of these reforms, the Government announced that ASIC would conduct a review in 2021 to consider whether the reforms have better aligned the interests of advisers and consumers. If the review does not identify significant improvement in the quality of advice, the Government stated it would move to mandate level commissions, as was recommended by the Financial System Inquiry.</p> <p>The Government supports ASIC conducting this review and considering the factors identified by the Royal Commission when undertaking this review.</p> |
| <p>Recommendation 2.6 — General insurance and consumer credit insurance commissions</p> <p>The review referred to in Recommendation 2.3 should also consider whether each remaining exemption to the ban on conflicted remuneration remains justified, including:</p> <ul style="list-style-type: none"> • the exemptions for general insurance products and consumer credit insurance products; and • the exemptions for non-monetary benefits set out in section 963C of the Corporations Act. | <p>The Government agrees to review the remaining exemptions to the ban on conflicted remuneration in the course of its review in three years' time on the effectiveness of measures to improve the quality of advice.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 2.7 — Reference checking and information sharing</p> <p>All AFSL holders should be required, as a condition of their licence, to give effect to reference checking and information-sharing protocols for financial advisers, to the same effect as now provided by the ABA in its ‘Financial Advice — Recruitment and Termination Reference Checking and Information Sharing Protocol’.</p> | <p>The Government agrees to mandate the reference checking and information-sharing protocol for financial advisers for all Australian Financial Services Licence (AFSL) holders.</p> <p>This recommendation will build on the Government’s work to date to remove advisers who have engaged in misconduct from the industry, particularly, through the establishment of the Financial Advisers Register and the reforms to increase the educational, training and ethical standards of financial advisers. Facilitating licensees to undertake reference checks will make it even more difficult for advisers who engage in misconduct to find alternative employment in the industry.</p> |
| <p>Recommendation 2.8 — Reporting compliance concerns</p> <p>All AFSL holders should be required, as a condition of their licence, to report ‘serious compliance concerns’ about individual financial advisers to ASIC on a quarterly basis.</p> | <p>The Government agrees to mandate reporting of ‘serious compliance concerns’ about individual financial advisers to ASIC on a quarterly basis.</p> <p>The Royal Commission has highlighted concerns around the current reporting of breach information to ASIC with firms failing to report significant breaches to ASIC in a timely manner.</p> <p>The Government has also agreed, in its response to Recommendation 7.2, to strengthen the obligations to report breaches to ASIC. The Government will implement this recommendation as part of strengthening the breach reporting requirements.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 2.9 — Misconduct by financial advisers</p> <p>All AFSL holders should be required, as a condition of their licence, to take the following steps when they detect that a financial adviser has engaged in misconduct in respect of financial advice given to a retail client (whether by giving inappropriate advice or otherwise):</p> <ul style="list-style-type: none"> • make whatever inquiries are reasonably necessary to determine the nature and full extent of the adviser’s misconduct; and • where there is sufficient information to suggest that an adviser has engaged in misconduct, tell affected clients and remediate those clients promptly. | <p>The Government agrees to require all AFSL holders to make whatever inquiries reasonably necessary to determine the nature and full extent of an adviser’s misconduct (when the licensee detects misconduct) and inform and remediate affected clients promptly.</p> <p>This recommendation will be reinforced by the Government announcement to provide ASIC with a new directions power as part of its response to the ASIC Enforcement Review.</p> |
| <p>Recommendation 2.10 — A new disciplinary system</p> <p>The law should be amended to establish a new disciplinary system for financial advisers that:</p> <ul style="list-style-type: none"> • requires all financial advisers who provide personal financial advice to retail clients to be registered; • provides for a single, central, disciplinary body; • requires AFSL holders to report ‘serious compliance concerns’ to the disciplinary body; and • allows clients and other stakeholders to report information about the conduct of financial advisers to the disciplinary body. | <p>The Government agrees to introduce a new disciplinary system for financial advisers.</p> <p>The Government is committed to the professionalisation of the financial advice industry. A new disciplinary regime as recommended by the Royal Commission further builds on the Government’s earlier reforms in this area that introduced mandatory educational requirements and required advisers to pass an entrance exam, comply with a code of ethics, and meet ongoing professional development requirements.</p> <p>The new disciplinary system will bring financial advisers into line with other professions — such as lawyers, doctors and accountants — where individual registration is standard practice.</p> <p>This disciplinary system for financial advisers will operate concurrently with the existing AFSL regime and ASIC will retain the powers it has under the current regulatory framework, including the power to commence investigations and undertake enforcement action.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| SUPERANNUATION | |
| <p>Recommendation 3.1 — No other role or office</p> <p>The trustee of an RSE should be prohibited from assuming any obligations other than those arising from or in the course of its performance of the duties of a trustee of a superannuation fund.</p> | <p>The Government agrees to address the risks associated with dual regulated entities by prohibiting trustees of a Registrable Superannuation Entity (RSE) assuming obligations other than those arising from, or in the course of, its performance of the duties of a trustee of a superannuation fund.</p> <p>The work of the Royal Commission has indicated that the conflicts of interests that arise between the interests of superannuation members and members of managed investment schemes are difficult to manage where an entity acts as a trustee for both the superannuation fund and the managed investment scheme.</p> |
| <p>Recommendation 3.2 — No deducting advice fees from MySuper accounts</p> <p>Deduction of any advice fee (other than for intra-fund advice) from a MySuper account should be prohibited.</p> | <p>The Government agrees to prohibit the deduction of any advice fees from a MySuper account (other than for intra-fund advice).</p> |
| <p>Recommendation 3.3 — Limitations on deducting advice fees from choice accounts</p> <p>Deduction of any advice fee (other than for intra-fund advice) from superannuation accounts other than MySuper accounts should be prohibited unless the requirements about annual renewal, prior written identification of service and provision of the client’s express written authority set out in Recommendation 2.1 in connection with ongoing fee arrangements are met.</p> | <p>The Government agrees to limit deductions of advice fees levied on non-MySuper superannuation accounts consistent with the Government’s response to Recommendation 2.1, which will require ongoing fee arrangements to be renewed annually in writing by the client, and prevent fees being deducted from the client’s account without the client’s express written authority.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 3.4 — No hawking</p> <p>Hawking of superannuation products should be prohibited. That is, the unsolicited offer or sale of superannuation should be prohibited except to those who are not retail clients and except for offers made under an eligible employee share scheme.</p> <p>The law should be amended to make clear that contact with a person during which one kind of product is offered is unsolicited unless the person attended the meeting, made or received the telephone call, or initiated the contact for the express purpose of inquiring about, discussing or entering into negotiations in relation to the offer of that kind of product.</p> | <p>The Government agrees that hawking of superannuation products should be prohibited, and the definition of hawking should be clarified to include selling of a financial product during a meeting, call or other contact initiated to discuss an unrelated financial product.</p> <p>The Royal Commission heard evidence of consumers being sold superannuation products in an unsolicited manner which may have led superannuation members to choose products that were not in their best interest.</p> |
| <p>Recommendation 3.5 — One default account</p> <p>A person should have only one default account. To that end, machinery should be developed for ‘stapling’ a person to a single default account.</p> | <p>The Government agrees that a person should have only one default account.</p> <p>This also responds to the Productivity Commission’s report <i>Superannuation: Assessing Efficiency and Competitiveness</i> which recommended members without an account only be defaulted once. This builds on the action the Government has taken to address the stock of unintended multiple accounts through the Protecting Your Super Package, which includes the automatic consolidation of low-balance inactive accounts, capping fees for low-balance accounts and preventing inappropriate account erosion by ensuring members receive insurance policies that are suitable for them and represent value for money.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 3.6 — No treating of employers</p> <p>Section 68A of the SIS Act should be amended to prohibit trustees of a regulated superannuation fund, and associates of a trustee, doing any of the acts specified in section 68A(1)(a), (b) or (c) where the act may reasonably be understood by the recipient to have a substantial purpose of having the recipient nominate the fund as a default fund or having one or more employees of the recipient apply or agree to become members of the fund.</p> <p>The provision should be a civil penalty provision enforceable by ASIC.</p> | <p>The Government agrees to amend the <i>Superannuation Industry (Supervision) Act 1993</i> to facilitate enforcement of this provision.</p> |
| <p>Recommendation 3.7 — Civil penalties for breach of covenants and like obligations</p> <p>Breach of the trustee’s covenants set out in section 52 or obligations set out in section 29VN, or the director’s covenants set out in section 52A or obligations set out in section 29VO of the SIS Act should be enforceable by action for civil penalty.</p> | <p>The Government agrees that trustees and directors should be subject to civil penalties for breaches of their best interests obligations. Both ASIC and APRA should have powers to enforce the civil penalty provisions.</p> <p>The Government has already introduced the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 into Parliament to establish civil penalties for directors for breaches of the best interests duty and will amend this Bill to extend civil penalties to trustees.</p> |
| <p>Recommendation 3.8 — Adjustment of APRA and ASIC’s roles</p> <p>The roles of APRA and ASIC with respect to superannuation should be adjusted, as referred to in Recommendation 6.3.</p> | <p>The Government agrees to this recommendation, consistent with the Government’s response to Recommendation 6.3 which sets out the general principles for adjusting the roles of APRA and ASIC.</p> <p>This also responds to the Productivity Commission’s report <i>Superannuation: Assessing Efficiency and Competitiveness</i> which recommended clarifying the regulators’ roles and powers, including their respective areas of focus.</p> |
| <p>Recommendation 3.9 — Accountability regime</p> <p>Over time, provisions modelled on the BEAR should be extended to all RSE licensees, as referred to in Recommendation 6.8.</p> | <p>The Government agrees to this recommendation, consistent with the Government’s response to Recommendation 6.6 about the extension of the BEAR regime.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| INSURANCE | |
| <p>Recommendation 4.1 — No hawking of insurance</p> <p>Consistently with Recommendation 3.4, which prohibits the hawking of superannuation products, hawking of insurance products should be prohibited.</p> | <p>The Government agrees, consistent with the Government response to Recommendation 3.4 (about the hawking of superannuation products), that hawking of insurance products should be prohibited, noting, for example, that the Royal Commission did not propose restricting the ability of insurers to contact policy holders in relation to existing policies. The definition of hawking will be clarified to include selling of a financial product during a meeting, call or other contact initiated to discuss an unrelated financial product.</p> <p>The Royal Commission heard evidence of vulnerable consumers being sold insurance products through unsolicited phone calls where pressure selling tactics were used, resulting in consumers purchasing a product that they did not want or need.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 4.2 — Removing the exemptions for funeral expenses policies</p> <p>The law should be amended to:</p> <ul style="list-style-type: none"> • remove the exclusion of funeral expenses policies from the definition of ‘financial product’; and • put beyond doubt that the consumer protection provisions of the ASIC Act apply to funeral expenses policies. | <p>The Government agrees to remove the exemption for funeral expenses policies from the definition of financial products for the purposes of the Corporations Act and ensure that it is clear that the consumer protection provisions of the <i>Australian Securities and Investments Commission Act 2001</i> (ASIC Act) apply to funeral expenses policies.</p> <p>The Royal Commission has uncovered evidence of the significant harm that can be caused to vulnerable consumers through the poor sales practices adopted by some funeral expense policy issuers.</p> <p>The Government has introduced the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 into Parliament and consulted on related Regulations. The proposed Product Intervention Powers (PIP) will enable ASIC to intervene in the sale of funeral expenses policies where there is a risk of significant consumer harm.</p> <p>The Government will also restrict the ability of firms to use terms such as ‘insurer’ and ‘insurance’ to only those firms that have a legitimate interest in using terminology regarding insurance (for example APRA-regulated insurers, brokers and other distributors) to avoid any confusion for consumers as to the nature of the products they are purchasing.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 4.3 — Deferred sales model for add-on insurance</p> <p>A Treasury-led working group should develop an industry-wide deferred sales model for the sale of any add-on insurance products (except policies of comprehensive motor insurance). The model should be implemented as soon as is reasonably practicable.</p> | <p>The Government agrees to mandate deferred sales for add-on insurance products and has tasked Treasury to develop an appropriate deferred sales model.</p> <p>A deferred sales model would require consumers to separately engage with the insurance product that is being purchased rather than considering it at the same time as purchasing a typically much more expensive product.</p> <p>The Government has also introduced the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 into Parliament. The Design and Distribution Obligations (DDOs) and the PIP seek to promote the provision of suitable financial products to consumers and to enable ASIC to proactively reduce the risk of consumer detriment from unsuitable products. These regimes will assist in preventing consumer detriment resulting from poor design or inappropriate distribution practices such as those in the design and sale of add-on insurance products.</p> <p>ASIC has agreed to consider the Royal Commission’s findings and recommendation in relation to the sale of add-on insurance in its administration of the DDOs and potential use of the PIP.</p> <p>This also responds to the recommendation of the Productivity Commission’s report <i>Competition in the Australian Financial System</i> to mandate a deferred sales model for all sales of add-on insurance by car dealerships.</p> |

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| <p>Recommendation 4.4 — Cap on commissions</p> <p>ASIC should impose a cap on the amount of commission that may be paid to vehicle dealers in relation to the sale of add-on insurance products.</p> | <p>The Government agrees to provide ASIC with the ability to cap commissions that may be paid to vehicle dealers in relation to the sale of add-on insurance products.</p> <p>The value of the commissions paid in relation to add-on insurance products sold through vehicle dealers has significantly exceeded the amounts paid out to consumers through claims. High levels of commissions have contributed to poor consumer outcomes.</p> <p>Providing ASIC with the ability to cap commissions will ensure an appropriate cap is set and varied if required in response to any future concerns.</p> |
| <p>Recommendation 4.5 — Duty to take reasonable care not to make a misrepresentation to an insurer</p> <p>Part IV of the Insurance Contracts Act should be amended, for consumer insurance contracts, to replace the duty of disclosure with a duty to take reasonable care not to make a misrepresentation to an insurer (and to make any necessary consequential amendments to the remedial provisions contained in Division 3).</p> | <p>The Government agrees to amend the duty of disclosure for consumers in the <i>Insurance Contracts Act 1984</i> to ensure that obligations for disclosure applied to consumers do not enable insurers to unduly reject the payment of legitimate claims.</p> <p>The duty of disclosure is important to ensure that insurers are able to appropriately price the risks being underwritten through limiting the risk of fraud and misleading disclosures. However, the current requirements fall short of adequately safeguarding consumers against having their claims declined where they may have inadvertently failed to disclose their past circumstances or because insurers have failed to ask the right questions.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 4.6 — Avoidance of life insurance contracts</p> <p>Section 29(3) of the Insurance Contracts Act should be amended so that an insurer may only avoid a contract of life insurance on the basis of non-disclosure or misrepresentation if it can show that it would not have entered into a contract on any terms.</p> | <p>The Government agrees to amend the <i>Insurance Contracts Act 1984</i> to ensure that insurers only avoid a contract of life insurance on the basis of non-disclosure or misrepresentation if it can show that it would not have entered into a contract on any terms.</p> <p>Consistent with the Government’s response to Recommendation 4.5 above, while appropriate disclosure is important to ensure that insurers are able to appropriately price the risks being underwritten, it is essential that appropriate safeguards are in place to avoid consumers having their claims declined where they may have failed to disclose a matter that would not have had any real bearing on the likelihood of them being offered insurance or the price of the insurance.</p> |
| <p>Recommendation 4.7 — Application of unfair contract terms provisions to insurance contracts</p> <p>The unfair contract terms provisions now set out in the ASIC Act should apply to insurance contracts regulated by the Insurance Contracts Act. The provisions should be amended to provide a definition of the ‘main subject matter’ of an insurance contract as the terms of the contract that describe what is being insured.</p> <p>The duty of utmost good faith contained in section 13 of the Insurance Contracts Act should operate independently of the unfair contract terms provisions.</p> | <p>The Government agrees to extend the unfair contract terms provisions to insurance contracts, consistent with its response to the 2017 Senate Economics References Committee Inquiry into the General Insurance Industry.</p> <p>Insurance contracts are excluded from the industry-wide unfair contract provisions in the ASIC Act. Removing this exemption will ensure that standard form insurance contracts offered to consumers and small businesses on a ‘take it or leave it’ basis cannot include terms that are considered unfair.</p> <p>Consultation with industry on this policy occurred between June and August 2018.</p> |
| <p>Recommendation 4.8 — Removal of claims handling exemption</p> <p>The handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of ‘financial service’.</p> | <p>The Government agrees to remove the exemption for the handling and settlement of insurance claims from the definition of a financial service.</p> <p>Inappropriate claims handling practices can cause significant consumer detriment as highlighted through the Royal Commission’s round six hearings into insurance.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 4.9 — Enforceable code provisions</p> <p>As referred to in Recommendation 1.15, the law should be amended to provide for enforceable provisions of industry codes and for the establishment and imposition of mandatory industry codes.</p> <p>In respect of the Life Insurance Code of Practice, the Insurance in Superannuation Voluntary Code and the General Insurance Code of Practice, the Financial Services Council, the Insurance Council of Australia and ASIC should take all necessary steps, by 30 June 2021, to have the provisions of those codes that govern the terms of the contract made or to be made between the insurer and the policyholder designated as ‘enforceable code provisions’.</p> | <p>The Government supports the Financial Services Council, the Insurance Council of Australia and ASIC acting on this recommendation, following the implementation of the Government response to Recommendation 1.15 about ASIC’s powers to approve codes with enforceable provisions.</p> <p>This responds to the Productivity Commission’s report <i>Superannuation: Assessing Efficiency and Competitiveness</i> which recommended a binding and enforceable superannuation insurance code of conduct, which would thereafter become a condition of holding an RSE licence.</p> |
| <p>Recommendation 4.10 — Extension of the sanctions power</p> <p>The Financial Services Council and the Insurance Council of Australia should amend section 13.10 of the Life Insurance Code of Practice and section 13.11 of the General Insurance Code of Practice to empower (as the case requires) the Life Code Compliance Committee or the Code Governance Committee to impose sanctions on a subscriber that has breached the applicable Code.</p> | <p>The Government supports the Financial Services Council and the Insurance Council of Australia acting on this recommendation.</p> |
| <p>Recommendation 4.11 — Co-operation with AFCA</p> <p>Section 912A of the Corporations Act should be amended to require that AFSL holders take reasonable steps to co-operate with AFCA in its resolution of particular disputes, including, in particular, by making available to AFCA all relevant documents and records relating to issues in dispute.</p> | <p>The Government agrees to place an obligation on AFSL holders to take reasonable steps to co-operate with the Australian Financial Complaints Authority (AFCA) in the resolution of disputes.</p> <p>It is important that AFSL holders fully co-operate with AFCA in the resolution of a dispute, including making available to AFCA all relevant documents and records relating to the issues in dispute.</p> |
| <p>Recommendation 4.12 — Accountability regime</p> <p>Over time, provisions modelled on the BEAR should be extended to all APRA-regulated insurers, as referred to in Recommendation 6.8.</p> | <p>The Government agrees to this recommendation, consistent with the Government’s response to Recommendation 6.6 about the extension of the BEAR regime to all APRA-regulated entities.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 4.13 — Universal terms review</p> <p>Treasury, in consultation with industry, should determine the practicability, and likely pricing effects, of legislating universal key definitions, terms and exclusions for default MySuper group life policies.</p> | <p>The Government agrees to review the merits of legislating universal key definitions, terms and exclusions for default insurance cover within MySuper products.</p> |
| <p>Recommendation 4.14 — Additional scrutiny for related party engagements</p> <p>APRA should amend Prudential Standard SPS 250 to require RSE licensees that engage a related party to provide group life insurance, or who enter into a contract, arrangement or understanding with a life insurer by which the insurer is given a priority or privilege in connection with the provision of life insurance, to obtain and provide to APRA within a fixed time, independent certification that the arrangements and policies entered into are in the best interests of members and otherwise satisfy legal and regulatory requirements.</p> | <p>The Government supports APRA acting on this recommendation.</p> |
| <p>Recommendation 4.15 — Status attribution to be fair and reasonable</p> <p>APRA should amend Prudential Standard SPS 250 to require RSE licensees to be satisfied that the rules by which a particular status is attributed to a member in connection with insurance are fair and reasonable.</p> | <p>The Government supports APRA acting on this recommendation.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| CULTURE, GOVERNANCE AND REMUNERATION | |
| <p>Recommendation 5.1 — Supervision of remuneration — principles, standards and guidance</p> <p>In conducting prudential supervision of remuneration systems, and revising its prudential standards and guidance about remuneration, APRA should give effect to the principles, standards and guidance set out in the Financial Stability Board’s publications concerning sound compensation principles and practices.</p> <p>Recommendations 5.2 and 5.3 explain and amplify aspects of this Recommendation.</p> | <p>The Government supports APRA acting on this recommendation.</p> |
| <p>Recommendation 5.2 — Supervision of remuneration — aims</p> <p>In conducting prudential supervision of the design and implementation of remuneration systems, and revising its prudential standards and guidance about remuneration, APRA should have, as one of its aims, the sound management by APRA-regulated institutions of not only financial risk but also misconduct, compliance and other non-financial risks.</p> | <p>The Government supports APRA acting on this recommendation.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 5.3 — Revised prudential standards and guidance</p> <p>In revising its prudential standards and guidance about the design and implementation of remuneration systems, APRA should:</p> <ul style="list-style-type: none"> • require APRA-regulated institutions to design their remuneration systems to encourage sound management of non-financial risks, and to reduce the risk of misconduct; • require the board of an APRA-regulated institution (whether through its remuneration committee or otherwise) to make regular assessments of the effectiveness of the remuneration system in encouraging sound management of non-financial risks, and reducing the risk of misconduct; • set limits on the use of financial metrics in connection with long-term variable remuneration; • require APRA-regulated institutions to provide for the entity, in appropriate circumstances, to claw back remuneration that has vested; and • encourage APRA-regulated institutions to improve the quality of information being provided to boards and their committees about risk management performance and remuneration decisions. | <p>The Government supports APRA acting on this recommendation.</p> |
| <p>Recommendation 5.4 — Remuneration of front line staff</p> <p>All financial services entities should review at least once each year the design and implementation of their remuneration systems for front line staff to ensure that the design and implementation of those systems focus on not only what staff do, but also how they do it.</p> | <p>The Government supports all financial services entities acting on this recommendation.</p> |
| <p>Recommendation 5.5 — The Sedgwick Review</p> <p>Banks should implement fully the recommendations of the Sedgwick Review.</p> | <p>The Government supports banks fully implementing the recommendations of the Sedgwick Review.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 5.6 — Changing culture and governance</p> <p>All financial services entities should, as often as reasonably possible, take proper steps to:</p> <ul style="list-style-type: none"> • assess the entity’s culture and its governance; • identify any problems with that culture and governance; • deal with those problems; and • determine whether the changes it has made have been effective. | <p>The Government supports financial entities acting on this recommendation.</p> |
| <p>Recommendation 5.7 — Supervision of culture and governance</p> <p>In conducting its prudential supervision of APRA-regulated institutions and in revising its prudential standards and guidance, APRA should:</p> <ul style="list-style-type: none"> • build a supervisory program focused on building culture that will mitigate the risk of misconduct; • use a risk-based approach to its reviews; • assess the cultural drivers of misconduct in entities; and • encourage entities to give proper attention to sound management of conduct risk and improving entity governance. | <p>The Government supports APRA acting on this recommendation.</p> |

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| REGULATORS | |
| <p>Recommendation 6.1 — Retain twin peaks</p> <p>The ‘twin peaks’ model of financial regulation should be retained.</p> | <p>The Government agrees to retain the ‘twin peaks’ model of financial regulation where responsibility for conduct and disclosure regulation lies primarily with ASIC and responsibility for prudential regulation with APRA.</p> <p>There is a strong rationale for retaining the twin peaks structure: conduct and prudential regulation involve necessarily different functions that are most efficiently met when they are the responsibility of separate but mutually supporting regulators.</p> |
| <p>Recommendation 6.2 — ASIC’s approach to enforcement</p> <p>ASIC should adopt an approach to enforcement that:</p> <ul style="list-style-type: none"> • takes, as its starting point, the question of whether a court should determine the consequences of a contravention; • recognises that infringement notices should principally be used in respect of administrative failings by entities, will rarely be appropriate for provisions that require an evaluative judgment and, beyond purely administrative failings, will rarely be an appropriate enforcement tool where the infringing party is a large corporation; • recognises the relevance and importance of general and specific deterrence in deciding whether to accept an enforceable undertaking and the utility in obtaining admissions in enforceable undertakings; and • separates, as much as possible, enforcement staff from non-enforcement related contact with regulated entities. | <p>The Government supports ASIC acting on this recommendation.</p> <p>The adoption of the Royal Commission’s recommendation will build on changes already underway within ASIC, both with its recent shift to a ‘why not litigate’ stance, and recommended changes to its policies, processes and procedures put forward by its recent internal review of enforcement.</p> |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 6.3 — General principles for co-regulation</p> <p>The roles of APRA and ASIC in relation to superannuation should be adjusted to accord with the general principles that:</p> <ul style="list-style-type: none"> • APRA, as the prudential regulator for superannuation, is responsible for establishing and enforcing Prudential Standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by superannuation entities APRA supervises are met within a stable, efficient and competitive financial system; and • as the conduct and disclosure regulator, ASIC’s role in superannuation primarily concerns the relationship between RSE licensees and individual consumers. <p>Effect should be given to these principles by taking the steps described in Recommendations 6.4 and 6.5.</p> | <p>The Government agrees that the roles of APRA and ASIC in superannuation should be adjusted to align with the general principles of the twin peaks model, whereby APRA is the prudential regulator and responsible for system and fund performance, including for licencing and supervision, and ASIC is the conduct and disclosure regulator.</p> <p>The Government agrees that both ASIC and APRA should have stronger powers to enforce provisions that are civil penalty provisions and other provisions relating to conduct that may harm a consumer.</p> <p>Regulators’ responsibilities under the <i>Superannuation Industry (Supervision) Act 1993</i> will be shared in a way that aligns with ASIC and APRA’s mandates.</p> <p>This also responds to the Productivity Commission’s report <i>Superannuation: Assessing Efficiency and Competitiveness</i> which recommended clarifying the regulators’ roles and powers, including their respective areas of focus.</p> |
| <p>Recommendation 6.4 — ASIC as conduct regulator</p> <p>Without limiting any powers APRA currently has under the SIS Act, ASIC should be given the power to enforce all provisions in the SIS Act that are, or will become, civil penalty provisions or otherwise give rise to a cause of action against an RSE licensee or director for conduct that may harm a consumer. There should be co-regulation by APRA and ASIC of these provisions.</p> | |
| <p>Recommendation 6.5 — APRA to retain functions</p> <p>APRA should retain its current functions, including responsibility for the licensing and supervision of RSE licensees and the powers and functions that come with it, including any power to issue directions that APRA presently has or is to be given.</p> | |

| RECOMMENDATION | GOVERNMENT RESPONSE |
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| <p>Recommendation 6.6 — Joint administration of the BEAR</p> <p>ASIC and APRA should jointly administer the BEAR. ASIC should be charged with overseeing those parts of Divisions 1, 2 and 3 of Part IIAA of the Banking Act that concern consumer protection and market conduct matters. APRA should be charged with overseeing the prudential aspects of Part IIAA.</p> | <p>The Government agrees to extend the BEAR to all APRA regulated entities, including insurers and superannuation RSEs. Further, the Government will introduce a similar regime for non-prudentially regulated financial firms focused on conduct.</p> |
| <p>Recommendation 6.7 — Statutory amendments</p> <p>The obligations in sections 37C and 37CA of the Banking Act should be amended to make clear that an ADI and accountable person must deal with APRA and ASIC (as the case may be) in an open, constructive and co-operative way. Practical amendments should be made to provisions such as sections 37K and 37G(1) so as to facilitate joint administration.</p> | <p>The Royal Commission has demonstrated that serious governance and accountability failings extend beyond Authorised Deposit-taking Institutions and beyond prudential matters. The Government is committed to ensuring that senior individuals who operate in the financial sector conduct themselves in an appropriate manner and face consequences where they fail to meet these standards.</p> |
| <p>Recommendation 6.8 — Extending the BEAR</p> <p>Over time, provisions modelled on the BEAR should be extended to all APRA-regulated financial services institutions. APRA and ASIC should jointly administer those new provisions.</p> | <p>The new ASIC-administered accountability regime will apply to AFSL and ACL holders, market operators, and clearing and settlement facilities. Like the BEAR, individuals with specified functions (including senior executives) will be registered and have explicit obligations related to the conduct of the entity. Financial entities will also have an obligation to deal with APRA and ASIC (as the case may be) in an open, constructive and co-operative way.</p> <p>Treasury will consult on how this new ASIC-administered accountability regime will be implemented, including any practical changes to support proper administration of the respective regimes between APRA and ASIC, such as a clear ability to share and use information.</p> |
| <p>Recommendation 6.9 — Statutory obligation to co-operate</p> <p>The law should be amended to oblige each of APRA and ASIC to:</p> <ul style="list-style-type: none"> • co-operate with the other; • share information to the maximum extent practicable; and • notify the other whenever it forms the belief that a breach in respect of which the other has enforcement responsibility may have occurred. | <p>The Government agrees to remove barriers to information sharing between the regulators and require APRA and ASIC to co-operate, share information and notify each other of relevant breaches or suspected breaches, as appropriate.</p> <p>Improvements to informal and formal communication, co-operation and collaboration between the two regulators are critical. This should include efficiently sharing information and intelligence and working together on enforcement and investigation activities.</p> |

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| <p>Recommendation 6.10 — Co-operation memorandum</p> <p>ASIC and APRA should prepare and maintain a joint memorandum setting out how they intend to comply with their statutory obligation to co-operate.</p> <p>The memorandum should be reviewed biennially and each of ASIC and APRA should report each year on the operation of and steps taken under it in its annual report.</p> | <p>The Government supports ASIC and APRA continuing to work together to update their existing memorandum of understanding to ensure that it clearly sets out how they will comply with their statutory obligation to co-operate.</p> |
| <p>Recommendation 6.11 — Formalising meeting procedure</p> <p>The ASIC Act should be amended to include provisions substantially similar to those set out in sections 27–32 of the APRA Act — dealing with the times and places of Commissioner meetings, the quorum required, who is to preside, how voting is to occur and the passing of resolutions without meetings.</p> | <p>The Government agrees to amend the ASIC Act to include provisions dealing with the places of Commissioner meetings, the quorum required, who is to preside, how voting is to occur and the passing of resolutions without meetings.</p> |
| <p>Recommendation 6.12 — Application of the BEAR to regulators</p> <p>In a manner agreed with the external oversight body (the establishment of which is the subject of Recommendation 6.14 below) each of APRA and ASIC should internally formulate and apply to its own management accountability principles of the kind established by the BEAR.</p> | <p>The Government agrees that APRA and ASIC should be subject to accountability principles consistent with the BEAR.</p> <p>The Government notes that the Financial Conduct Authority in the UK has adopted a similar regime to enhance its own internal accountability.</p> |

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| <p>Recommendation 6.13 — Regular capability reviews</p> <p>APRA and ASIC should each be subject to at least quadrennial capability reviews. A capability review should be undertaken for APRA as soon as is reasonably practicable.</p> | <p>The Government agrees to conduct regular capability reviews going forward and to a capability review of APRA commencing in 2019, chaired by Mr Graeme Samuel AC.</p> <p>The capability review will build on the recently completed International Monetary Fund’s Financial Sector Assessment Program, which included an assessment of APRA’s policy and supervisory framework for banks and insurers.</p> <p>This also responds to the recommendation of the Productivity Commission’s report <i>Superannuation: Assessing Efficiency and Competitiveness</i> to conduct a capability review of APRA.</p> |
| <p>Recommendation 6.14 — A new oversight authority</p> <p>A new oversight authority for APRA and ASIC, independent of Government, should be established by legislation to assess the effectiveness of each regulator in discharging its functions and meeting its statutory objects.</p> <p>The authority should be comprised of three part-time members and staffed by a permanent secretariat.</p> <p>It should be required to report to the Minister in respect of each regulator at least biennially.</p> | <p>The Government agrees to create an independently-chaired oversight body to report on the performance of ASIC and APRA.</p> <p>The Royal Commission noted that while regulators are subject to a number of accountability mechanisms, an independent assessment of their strategic performance against their overall mandate was lacking. Having a dedicated oversight body will allow for better assessment of the regulators’ sustained performance and improve the effectiveness of other accountability mechanisms.</p> <p>The Government is committed to maintaining the independence of the financial system regulators. Accordingly, this body will not have the ability to direct, make, assess or comment on specific enforcement actions, regulatory decisions, complaints and like matters.</p> <p>The Financial Sector Advisory Council will be disbanded given the establishment of this new body and consideration will be given to streamlining other accountability mechanisms.</p> |

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| OTHER IMPORTANT STEPS | |
| <p>Recommendation 7.1 — Compensation scheme of last resort</p> <p>The three principal recommendations to establish a compensation scheme of last resort made by the panel appointed by government to review external dispute and complaints arrangements made in its supplementary final report should be carried into effect.</p> | <p>The Government agrees to establish an industry-funded, forward-looking compensation scheme of last resort (CSLR). The scheme will be designed consistently with the recommendations of the Supplementary Final Report of the Review of the financial system external dispute resolution framework (Ramsay Review) and will extend beyond disputes in relation to personal financial advice failures.</p> <p>For there to be confidence in the financial system’s dispute resolution framework, it is important that where consumers and small businesses have suffered detriment due to failures by financial firms to meet their obligations, compensation that is awarded is actually paid. The CSLR will operate as a last resort mechanism to pay out compensation owed to consumers and small businesses that receive a court or tribunal decision in their favour or a determination from AFCA, but are unable to get the compensation owed by the financial firm — for example, because the firm has become insolvent.</p> <p>The CSLR will be established as part of AFCA.</p> <p>The Government also agrees to fund the payment of legacy unpaid determinations from the Financial Ombudsman Service and Credit and Investments Ombudsman. The Ramsay Review found that there was a strong case for these determinations to be paid.</p> |

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| | <p>The Government will also require AFCA to consider disputes dating back to 1 January 2008 — the period looked at by the Royal Commission, if the dispute falls within AFCA’s thresholds as they stand today. This will ensure that consumers and small businesses that have suffered from misconduct but have not yet been heard will be able to take their cases to AFCA. Consumers and small businesses will have twelve months from the date that AFCA commences accepting legacy disputes to lodge their complaint with AFCA.</p> <p>The Government will further strengthen regulatory oversight and transparency of remediation activities through increasing the role of AFCA in the establishment and public reporting of firm remediation activities.</p> <p>The Government will also provide a new directions power to ASIC, consistent with the recommendations of the ASIC Enforcement Review in the response to Recommendation 7.2. The new directions power provides ASIC with the ability to direct firms to undertake remediation activities.</p> |
| <p>Recommendation 7.2 — Implementation of recommendations</p> <p>The recommendations of the ASIC Enforcement Review Taskforce made in December 2017 that relate to self-reporting of contraventions by financial services and credit licensees should be carried into effect.</p> | <p>The Government agrees to implement the outstanding ASIC Enforcement Review recommendations to improve the breach reporting regime. The Government also agrees to provide ASIC with powers to give directions to AFSL and ACL holders consistent with the recommendations of the ASIC Enforcement Review.</p> <p>The ASIC Enforcement Review Taskforce also made recommendations relating to the enforceability of industry codes, which is covered by the Government’s response to Recommendation 1.15.</p> |

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| <p>Recommendation 7.3 — Exceptions and qualifications</p> <p>As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated.</p> | <p>The Government agrees to simplify the financial services law to eliminate exceptions and qualifications to the law, where possible. The Government also agrees to identify the norms of behaviour and principles that underpin legislation as part of the legislative simplification process.</p> <p>The Royal Commission has noted that over-prescription and excessive detail can shift responsibility for behaviour away from regulated entities and encourage them to undertake a ‘box-ticking’ approach to compliance, rather than ensuring they comply with the fundamental norms of behaviour that should guide their conduct. A clearer focus on those fundamental norms in the primary legislation and subordinate instruments will improve the regulatory architecture and ensure that the law’s intent is met.</p> |
| <p>Recommendation 7.4 — Fundamental norms</p> <p>As far as possible, legislation governing financial services entities should identify expressly what fundamental norms of behaviour are being pursued when particular and detailed rules are made about a particular subject matter.</p> | |

| ADDITIONAL GOVERNMENT ACTIONS | |
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| <p>Additional measure — Federal Court jurisdiction in relation to criminal corporate crime</p> | <p>The Government will expand the Federal Court’s jurisdiction in relation to criminal corporate crime.</p> <p>The Royal Commission has emphasised that effective deterrence through judicial decisions relies on the timely institution of proceedings and punishment of misconduct. The Government agrees, and has already provided an additional \$70.1 million to boost ASIC’s enforcement capabilities and supervisory approach and \$41.6 million to the Commonwealth Director of Public Prosecutions (CDPP) to prosecute briefs from ASIC.</p> <p>Extending the Federal Court’s jurisdiction will boost the overall capacity within the Australian court system to ensure the prosecution of financial crimes does not face delays as a result of heavy caseloads in the Courts.</p> <p>The Federal Court has considerable expertise in civil commercial matters and is well-positioned to accommodate the conferral of a greater corporate criminal jurisdiction, which will help to increase the speed with which such matters are dealt with.</p> |
| <p>Additional measure — Funding for financial counselling</p> | <p>The Government agrees with the suggestion by Commissioner Hayne that there is a need for predictable and stable funding for the legal assistance sector and for counselling services.</p> <p>Financial counselling services play an important role in supporting consumers and the challenges faced by parties delivering these services include increasing demand, inconsistent and short term grant-based funding streams and fragmented delivery across jurisdictions.</p> <p>The Government will review the co-ordination and funding of financial counselling services. This immediate review will be led by the Department of Social Services, in consultation with Treasury and the Department of the Prime Minister and Cabinet. The review will consider gaps and overlaps in current services and the adequacy of, and appropriate delivery models for, funding.</p> |

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| <p>Additional measure — Extension of legislation for PIP/DDO</p> | <p>The Government agrees with the suggestion by the Commissioner to extend the proposed DDOs to apply to NCCP Act products and ASIC Act products and the ASIC PIP to apply to ASIC Act products. The extension of the DDOs will benefit consumers by ensuring issuers of credit products and ASIC Act financial products identify in advance which consumers their products are suitable for, and direct sales to that target market, rather than promoting products to all consumers. These obligations will complement responsible lending obligations that apply to those offering credit.</p> <p>The extension of the PIP to all ASIC Act products will empower ASIC to intervene in relation to a wider range of products, where ASIC identifies detriment or potential detriment to consumers.</p> <p>The Government recognises that the extension of the DDOs may have a significant impact on many businesses and will carefully consider how these reforms are implemented.</p> |
| <p>Additional measure — Superannuation binding death benefit nominations for indigenous people</p> | <p>The Government will consult with Aboriginal and Torres Strait Islander peoples and relevant representative bodies as well as the superannuation industry about difficulties in using binding death benefit nominations.</p> |
| <p>Additional measure — Review of the effects of vertical and horizontal integration in the financial system</p> | <p>The Government agrees that understanding the longer term market implications of integration is an important component of promoting competition in the financial system, and supports the ACCC considering integration issues where they are identified as part of its market studies work.</p> <p>This also responds to the Productivity Commission’s report <i>Competition in the Australian Financial System</i> which recommended that the ACCC should undertake five yearly market studies on the effect of vertical and horizontal integration on the financial system.</p> |