



FINANCIAL SERVICES ROYAL COMMISSION FINAL REPORT

Part 1: Overview

4 February 2019

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CONTENTS

1	INTRODUCTION	2
2	BANKING	4
3	FINANCIAL ADVICE	7
4	SUPERANNUATION	9
5	INSURANCE	11
6	CULTURE, GOVERNANCE AND REMUNERATION	13
7	REGULATORS	14
8	OTHER RECOMMENDATIONS	15
9	GET IN TOUCH	16

1 INTRODUCTION

The Final Report (**Report**) of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Commission**) provided to the Governor-General on 1 February 2019 by the Commissioner, the Honourable Kenneth Hayne AC QC, contains 76 recommendations impacting the banking, financial advice, superannuation and insurance industries in particular, but also the financial services industry more generally.

The Commissioner sets out in the Report some general rules derived from the six norms of conduct he identified in the *Interim Report*. They include that:

- ▶ the law must be applied and its application enforced;
- ▶ industry codes should be approved under statute and breach of key promises made to customers in the codes should be a breach of the statute;
- ▶ no financial product should be "hawked" to retail clients;
- ▶ intermediaries should act only on behalf of, and in the interests of, the party who pays the intermediary;
- ▶ exceptions to the ban on conflicted remuneration should be eliminated; and
- ▶ culture and governance practices (including remuneration arrangements) both in the industry generally and in individual entities, must focus on non-financial risk, as well as financial risk.

The majority of the recommendations in the Report appear to be built around those general rules.

On the issue identified in the *Interim Report* regarding the extent to which there should be a separation between providing financial advice and the manufacture and sale of financial products, Commissioner Hayne concludes that it is not necessary to mandate structural separation between product and advice. Among other things, he says that even though the most obvious conflicts of interest affecting the provision of financial advice are the conflicts between an adviser's duty and his or her financial interests, enforced separation would be costly and disruptive and that he cannot say that the benefits of requiring separation would outweigh the costs.

The Government's response to the Report adopts or supports nearly all of the recommendations, at least to some extent. However, Recommendation 1.3 which provided that fees paid to mortgage brokers should be paid by the borrower and not the lender has not been fully adopted. The Government has said that from 1 July 2020 it will:

- ▶ prohibit the payment of trail commissions for new loans from lenders to mortgage brokers and aggregators;
- ▶ require that the value of upfront commissions be linked to the amount drawn down by borrowers and not the loan amount;
- ▶ ban campaign and volume-based commissions and payments;
- ▶ limit to two years the period over which commissions can be clawed back and prohibit the costs of clawbacks being passed to consumers.

Rather than require mortgage brokers be paid by the borrower and not the lender, the Government will ask the Council of Financial Regulators and the 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 as recommended by the Commission, and any associated changes that should be made to non-broker facilitated loans. The Government says this is because it is also responding to recommendations of the Productivity Commission's report *Competition in the Australian Financial System*.

In addition to the recommendations in the Report the Government has also added measures to expand the Federal Court's jurisdiction in relation to criminal corporate crime and to review the co-ordination and funding of financial counselling services.

Below is a high-level overview of some of the key findings in the Report.

2 BANKING

Mortgage Brokers

Commissioner Hayne noted the importance of mortgage brokers. However a series of recommendations were made, signalling significant shifts in the regulation of mortgage broking. In particular:

- ▶ **Best Interests Duty:** Commissioner Hayne recommended that mortgage brokers should be required to act in the best interests of the intending borrower in connection with home lending, enforceable by civil penalties (Recommendation 1.2);
- ▶ **Subject to the Same Regulation as Financial Advisers:** Commissioner Hayne recommended that, after a sufficient period of transition mortgage brokers be subject to the same regulation as financial advisers (Recommendation 1.5).
- ▶ **Brokers to be Paid by Borrowers not Lenders:** Commissioner Hayne recommended "*steady but deliberate movement towards changing broker remuneration arrangements so that the borrower, and not the lender, should pay the mortgage broker*" (Recommendation 1.3). In discussing this recommendation, Commissioner Hayne:
 - suggested beginning with prohibiting trail commission on new loans followed, within 12-18 months, by a prohibition on lenders paying any other commission to mortgage brokers;
 - discussed the potential for lenders dealing directly with borrowers being required to charge a fee to recover costs incurred that would be avoided if the loan was originated through a broker, to ensure a level playing field. However no recommendation to that effect was made. Instead Commissioner Hayne noted the matter ought to be considered by a Treasury-led working group.

As noted above, in response to this recommendation the Government has committed to, from 1 July 2020:

- banning the payment of trail commissions from lenders to mortgage brokers and aggregators;
- requiring that the value of upfront commissions be linked to the amount drawn-down by borrowers; and
- banning campaign and volume-based commissions and payments. However, citing concerns raised by the Productivity Commission and Sedgwick Review, the Government will not presently be implementing a borrower pays remuneration structure, but will ask the Council of Financial Regulators and the ACCC to review in three years' time the changes and implications for consumer outcomes and competition of moving to a borrower pays remuneration structure and associated changes that should be made to non-broker facilitated loans.

NCCP Act

In relation to the NCCP Act Commissioner Hayne:

- ▶ did not recommend any change to the responsible lending test in the NCCP Act. In particular currently the responsible lending provisions require lenders to determine whether a credit contract or credit limit increase is "not unsuitable". Commissioner Hayne did not support a change to require that the contract or increase is "suitable"; and
- ▶ did however recommend that the exemption of retail dealers from the operation of the NCCP Act (known as the point of sale exemption) be removed, with the consequence that they will be subject to the requirements of that Act (Recommendation 1.7).

Small Businesses Lending

Commissioner Hayne generally did not favour altering the rules that govern lending to small and medium enterprises. He recommended that the NCCP Act should not be extended to lending to small business, noting that extending the NCCP Act responsible lending obligations would likely increase the cost of credit for small business and reduce the availability of credit. Commissioner Hayne was not persuaded the benefits of the extension in individual cases would outweigh the costs.

He was however of the view that the definition of small business was too complicated and confined. Consequently he has recommended that the ABA amend the definition of small business so that it encompasses any business or group employer with fewer than 100 full-time equivalent employees where the loan applied for is less than \$5 million (Recommendation 1.10). Currently, the definition includes the 100 full time equivalent requirement, but applies a \$3 million cap (including amounts undrawn under existing loans, any loan being applied for and the debt of all its related entities that are businesses).

Agricultural Loans

Commissioner Hayne noted that farm debt mediation was often treated as a step taken only because it is required for enforcement, rather than to allow the lender and borrower to agree upon measures to resolve financial difficulties and recognised its limited availability nationwide. To address this Commissioner Hayne recommended a national scheme of farm debt mediation be enacted (Recommendation 1.11).

Additionally Commissioner Hayne recommended that:

- ▶ Prudential Standard APS 220 be amended to:
 - require internal appraisals of the value of land taken or to be taken as security be independent of loan origination, processing and decision process; and
 - provide for valuations that recognise the likelihood of external events affecting resale value and the time taken to realise the land by sale (Recommendation 1.12);
- ▶ banks not charge default interest on loans secured by agricultural land in an area declared to be affected by drought or other natural disaster (Recommendation 1.13); and
- ▶ banks provide better management when dealing with distressed agricultural loans (Recommendation 1.14).

Banking Code of Practice and Other Industry Codes

Commissioner Hayne's inquiries showed that not all Australians can resort to a bank's standard policies and procedures. In particular, not all Australians have the same access to telephones or internet banking or can attend a branch or produce standard identification records. Accordingly, Commissioner Hayne recommended that steps be taken to improve access to banking services, and in particular, that the ABA amend its Banking Code of Practice to provide that banks will:

- ▶ work with customers living in remote areas or who are not adept in using English to identify suitable ways for them to access and understand their banking;
- ▶ follow AUSTRAC's guidance on identification and verification of persons of Aboriginal or Torres Strait Islander heritage where the customer tells the Bank he or she identifies as such a person and the customer is having difficulty proving his or her identity;
- ▶ not allow informal overdrafts on basic accounts without prior express agreement with the customer (on the basis that the fees, whilst small, can mount up and that the evidence indicated some customers did not know they had made use of such an overdraft); and
- ▶ not charge dishonour fees on basic accounts (noting that each of the major banks had adopted that position) (Recommendation 1.8).

Commissioner Hayne also recommended that:

- ▶ ASIC's power to approve codes of conduct be extended to codes relating to all APRA-regulated institutions and ACL holders (Recommendation 1.15);
- ▶ industry codes include "enforceable code provisions", contravention of which will constitute a breach of law; and
- ▶ ASIC and APRA take all necessary steps to have the provisions governing the terms of contracts between the bank and customer or guarantor in the Banking Code of Practice designated as enforceable code provisions (Recommendation 1.16).

Banking Executive Accountability Regime (BEAR)¹

Commissioner Hayne observed the case studies revealed numerous cases where fees greater than what were agreed were charged because of "processing" or "administrative" errors which went undetected for some time. Accepting that no system for processing the number and variety of transactions offered by banks will ever work perfectly, Commissioner Hayne has recommended that APRA should determine a responsibility, within each authorised deposit-taking institution subject to the BEAR, for all steps in the design, delivery and maintenance of all products offered to consumers and any necessary remediation (Recommendation 1.17). This would in effect make one person responsible for those tasks in respect of all the authorised deposit-taking institution's products.

¹ This establishes accountability obligations for authorised deposit-taking institutions and their senior executives and directors.

3 FINANCIAL ADVICE

Ongoing fees and arrangements

Commissioner Hayne noted that the 'fees for no service', in which ongoing fees were charged when no advice was given to the client, was one of the key issues to have emerged in connection with the provision of financial advice. To prevent this from occurring again, Commissioner Hayne recommended that the law be amended to require that ongoing fee arrangements:

- ▶ be renewed annually;
- ▶ record in writing each year that the client will be entitled to receive services and the total of the fees to be charged; and
- ▶ neither permit nor require the payment of fees from any account held for or on behalf of the client except with the client's express written authority given at, or immediately after, the last renewal of the ongoing fee arrangement (Recommendation 2.1).

Remuneration

Commissioner Hayne noted that:

- ▶ there are existing conflicted remuneration prohibitions that may appear to be comprehensive but there are exceptions;
- ▶ any attempt to reduce or eliminate conflicts of interest in the financial advice industry must begin, therefore, with examination of those exceptions, and whether they continue to be justified; and
- ▶ such examination must take place against the point of principle made by ASIC in its submissions where "*any exception to the ban on conflicted remuneration, by definition, has the ability to create misaligned incentives which can lead to inappropriate advice*".

Commissioner Hayne recommended the following in relation to the exemptions:

- ▶ the current exemption for grandfathered arrangements for conflicted remuneration should be repealed as soon as is reasonably practicable. Commissioner Hayne noted that arguments to justify the grandfathering exception have outlived their validity. The Government has agreed to end the grandfathering arrangements from 1 January 2021.
- ▶ when ASIC conducts its planned review in 2021 of conflicted remuneration relating to life risk insurance products, ASIC consider further reducing the cap on commissions in respect of life risk insurance products. Unless there is a clear justification for retaining the commission, the cap should ultimately be reduced to zero.
- ▶ in three years' time, the Government, in consultation with ASIC, review whether each remaining exemption on the conflicted remuneration prohibition remains justified, including exemptions for:
 - general insurance products;
 - consumer credit insurance products; and
 - non-monetary benefits set out in section 963C of the Corporations Act (Recommendations 2.4 to 2.6).

Professional Discipline

Commissioner Hayne observed that regulation of individual financial advisers, including the detection of improper conduct and poor advice, was an obligation of AFSL licence holders typically fulfilled through regular and random auditing. However he noted that where poor conduct is identified and consequences are applied, AFSL holders did too little to share that information with others. To address this, Commissioner Hayne has recommended conditions upon AFSL and ACL licenses to require holders to:

- ▶ give effect to reference checking and information-sharing protocols (Recommendations 1.6 and 2.7); and
- ▶ report serious compliance concerns to ASIC on a quarterly basis (Recommendations 1.6 and 2.8).

He also noted that where an entity observes that an advisor has engaged in misconduct it should consider steps it should take to determine whether the advisor acted poorly in other matters. To that end, he recommended for ACL and AFSL holders a licence condition to the effect that when the licensee detects a financial adviser or broker has engaged in misconduct, they must make reasonable inquiries to determine the nature and extent of the misconduct and, where there is sufficient information to suggest an adviser/broker has engaged in misconduct, to tell and remediate affected clients (Recommendations 1.6 and 2.9).

In addition Commissioner Hayne has recommended that a new disciplinary system for financial advisers be established. This system should require all financial advisers be registered and have a single disciplinary body to which AFSL holders must report "serious compliance concerns" and clients and other stakeholders can report information about the financial adviser's conduct (Recommendation 2.10).

Disclosure of lack of independence

Commissioner Hayne recommended that, if a financial adviser assumes or uses restricted words or expressions identified in section 923A(5) (including "independent", "impartial" and "unbiased"), the financial adviser must 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 or unbiased. This disclosure must be made before providing personal advice to a retail client (Recommendation 2.2).

Review

Commissioner Hayne has also recommended that, in three years' time, there be a review by the Government, in consultation with ASIC, into the effectiveness of the measures that have been implemented to improve the quality of financial advice. He has specifically recommended that the review consider whether it is necessary to retain the "safe harbour" provision in section 961B(2) of the Corporations Act (Recommendation 2.3). Under the safe harbour provision, various steps need to be taken, including the step to conduct a reasonable investigation into the products that might achieve the relevant objectives of the client and meet the client's needs. Commissioner Hayne stated that this requires the adviser to make little or no independent inquiry into, or assessment of, products. Instead, advisers and licensees chose a product from the licensee's "approved products list".

Structural separation

Commissioner Hayne considered the enforced separation of product and advice. However:

- ▶ he concluded that doing so would be both costly and disruptive;
- ▶ he cannot say that the benefits outweigh the costs; and
- ▶ he is not persuaded that it is necessary to mandate structural separation between product and advice.

4 SUPERANNUATION

Commissioner Hayne noted the importance of the superannuation sector, both to individuals and the nation. Set out below is a summary of the key recommendations in relation to superannuation made by Commissioner Hayne:

- ▶ **Prohibition on Deducting Fees:** Commissioner Hayne identified that one of the key elements contributing to the fees for no service was the invisibility of charges. Consequently Commissioner Hayne has recommended that:
 - any deducting of fees from a MySuper account (other than for intra-fund advice) be prohibited (Recommendation 3.2); and
 - the deduction of any advice fee (other than for intra-fund advice) from other superannuation accounts should only be permitted where the requirements for annual renewal, prior written identification of service and provision of express written authority (as set out above in Recommendation 2.1) are obtained (Recommendation 3.3);
- ▶ **Conflicts of Interest and Dual Regulated Entities:** Commissioner Hayne recognised that when a trustee is required to "*wear two hats*", conflicts will arise. As a result he recommended that the trustee of a Registrable Superannuation Entity be prohibited from assuming any other obligations other than those arising from or in the course of performing its duties as a trustee (Recommendation 3.1). This would not prevent an RSE licensee being trustee of more than one superannuation fund but would prevent it from taking on obligations of any other kind;
- ▶ **Prohibition on Hawking and No Treating of Employees:** Commissioner Hayne stated that:
 - superannuation is not a product to be sold but rather is a compulsory product;
 - persons with existing arrangements should not be induced to make changes, unless there is good reason to;
 - steps taken to induce persons to hold multiple accounts should be actively discouraged; and
 - people to whom unsolicited offers are made will very often not be in a position to judge the merit of the offer.

Accordingly Commissioner Hayne recommended that:

- the hawking of superannuation products be prohibited (Recommendation 3.4); and
 - people have just one default account which is "stapled" to that person and that the law be amended to prohibit, as civil penalty provision, trustees or associates from engaging in conduct that may reasonably be understood to have the purpose of having a person nominate or become members of the fund (Recommendation 3.6);
- ▶ **Civil penalties for breach of covenants:** Whilst there are covenants currently in the SIS Act, breach attracts no penal consequence. Citing the centrality of covenants to the proper administration of a superannuation fund Commissioner Hayne recommended civil penalties for breaches of specified covenants and obligations of trustees and directors (Recommendation 3.7).;
 - ▶ **Extension of BEAR:** Commissioner Hayne stated that failures of governance must be examined by a regulator and made subject to an appropriate regulatory response. To enable this, Commissioner Hayne has recommended that, over time, provisions modelled on the BEAR be extended to all RSE licensees (Recommendation 3.9);
 - ▶ **Adjustment of ASIC and APRA roles:** Commissioner Hayne recommended the roles of APRA and ASIC be adjusted such that APRA act as the prudential regulator responsible for establishing and enforcing Prudential Standards and ASIC act as the conduct and disclosure regulator concerned with the relationship between RSE licensees and individual consumers (Recommendation 6.3); and

- ▶ **Grandfathered Commissions:** As set out above, Commissioner Hayne recommended that grandfathered commissions be brought to an end.

Group Life Policies

Commissioner Hayne recognised that the key definitions, terms and exclusion clauses are fundamental to the rights on an insured person under a policy of insurance. To standardise these Commissioner Hayne has recommended that Treasury, in consultation with industry, determine the practicability and likely pricing effects of legislating universal key definitions, terms and exclusions for default MySuper group life policies (Recommendation 4.13).

Recommended changes to Prudential Standard SPS 250 relating to the provision of group life insurance are discussed in the insurance section below.

Structural Separation

Commissioner Hayne considered whether some form of structural separation between product manufacture and sale was a necessary response to the issues about conflicts. However he noted that:

- ▶ structural separation was a large step to take and it would affect every person who is currently a member of any one of a significant number of funds; and
- ▶ apart from members holding MySuper accounts, the members would have chosen the fund if they consider it would be in their interests to move funds, they could do so. As a result, Commissioner Hayne was not persuaded that a case had been made for imposing a form of structural separation on RSEs.

5 INSURANCE

Commissioner Hayne identified and made recommendations about issues relating to selling practices, the avoidance of insurance policies as a result of pre-contractual non-disclosure or misrepresentations, the use of and reliance on potentially unfair contract terms, claims handling, the lack of enforceability of code obligations and external dispute resolution.

Commissioner Hayne's recommendations in response to these issues include that:

- ▶ **Prohibit Hawking:** hawking of insurance products should be prohibited (Recommendation 4.1). The Final Report also states that to make a prohibition on unsolicited offers and sales effective, it would be desirable to introduce a statutory definition of what is "unsolicited" which makes clear that a solicited meeting, call or contact to discuss one type of product may not be used for the unsolicited offering of some other type of product (p284). The Government response indicates that the definition of hawking will be amended to clarify this;
- ▶ **Removal of Exclusions:** the law should be amended to remove:
 - the exclusion of funeral expenses insurance policies from the definition of "financial product" and to make it clear that the consumer protection provisions of the ASIC Act apply to those policies (Recommendation 4.2); and
 - the exclusion from the definition of "financial service" the handling and settlement of insurance claims (Recommendation 4.8).

The Government response additionally notes that the ability of firms to use terms such as "insurer" and "insurance" will be restricted to only those firms that have a legitimate interest in using terminology regarding insurance, to avoid confusion for consumers regarding the nature of products they are purchasing;

- ▶ **Commission Caps and Deferred Sales Model for Add-on Insurance:** 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 (Recommendation 4.4) and an industry-wide deferred sales model for the sale of any add-on insurance products other than comprehensive motor vehicle insurance should be developed (Recommendation 4.3). Commissioner Hayne notes that a likely consequence of this deferral is that premiums could not be funded by a loan made to purchase a vehicle without specific adjustment;
- ▶ **Replace Duty of Disclosure:** the Insurance Contracts Act should be amended to:
 - replace the duty of disclosure in consumer insurance contracts with a duty to take reasonable care not to make a misrepresentation to an insurer (Recommendation 4.5); and
 - to only allow an insurer to 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 (Recommendation 4.6);
- ▶ **Unfair Contract Terms:** the unfair contract terms provisions in the ASIC Act should apply to insurance contracts regulated under the Insurance Contracts Act with amendments to the provisions 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 (Recommendation 4.7). The duty of utmost good faith in section 13 of the Insurance Contracts Act should operate independently of the unfair contract terms provisions;
- ▶ **Industry Codes:** the law should be amended to provide for enforceable provisions of industry codes and the establishment and imposition of mandatory industry codes and steps should be taken to make the provisions of the Life Insurance Code of Practice, the Insurance in Superannuation Voluntary Code and the General Insurance Code of Practice "enforceable code provisions" by 30 June 2021 (Recommendation 4.9). The Life Code Compliance Committee and Code Governance

Committee should be empowered to impose sanctions on a subscriber that has breached the Life Insurance Code of Practice or General Insurance Code of Practice (Recommendation 4.10); and

- ▶ **Co-operation with AFCA:** AFSL holders should be required to take reasonable steps to co-operate with AFCA in its resolution of particular disputes, including by making available all relevant documents and records relating to issues in dispute (Recommendation 4.11).

Consistent with the recommendation that provisions modelled on the BEAR should be expanded to all APRA-regulated financial services institutions, Commissioner Hayne recommended that the provisions be extended to APRA-regulated insurers.

Group life insurance

The Report separately includes recommendations in relation to group life insurance on the basis that, despite the prevalence of such policies, consumers' awareness of the content and existence of their policy is relatively low.

Commissioner Hayne's recommendations in relation to group life insurance are that:

- ▶ Treasury should, in consultation with industry, determine the practicality and likely pricing effects of legislating universal key definitions, terms and exclusions for default MySuper group life policies (Recommendation 4.13); and
- ▶ APRA should amend Prudential Standard SPS 250 to require RSE licensees that:
 - engage a related party to provide group life insurance: or
 - 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; and
 - obtain and provide to APRA an independent certification that the arrangements and policies are in the best interests of members and otherwise satisfy legal and regulatory requirements (Recommendation 4.14)

SPS 250 should also be amended to require RSE licensees to be satisfied that rules by which a particular status is attributed to a member in connection with insurance are fair and reasonable (Recommendation 4.15).

6 CULTURE, GOVERNANCE AND REMUNERATION

The Report states that every financial services entity must look to its culture and, in doing so, must look again at the way in which it governs itself and manages its employees and intermediaries, and consider the connections between compensation, incentive and remuneration practices and regulatory, compliance and conduct risks.

A number of recommendations are made in relation to remuneration and the management of both financial and non-financial risks. These include recommendations that:

- ▶ APRA should, in conducting prudential supervision of the design and implementation of remuneration systems, and in revising its prudential standards and guidance about remuneration, have as one of its aims the sound management of APRA-regulated institutions of both financial and non-financial risks (Recommendation 5.2);
- ▶ APRA should impose a number of specific requirements relating to the design and regular assessment of remuneration systems, setting limits on the use of financial metrics in connection with long-term variable remuneration, requiring the claw back of remuneration in appropriate circumstances and improvements to the quality of information being provided to boards and their committees about risk management performance and remuneration decisions (Recommendation 5.3);
- ▶ the design and implementation of remuneration systems for front-line staff should be reviewed at least once each year to ensure they focus on not only what staff do, but also how they do it (Recommendation 5.4); and
- ▶ banks should implement fully the recommendations of the Sedgwick Review (Recommendation 5.5).

The Report also includes recommendations directed towards changing and supervising culture and governance (Recommendations 5.6 and 5.7).

7 REGULATORS

The Report considers the regulatory model that is currently in place, the remit given to APRA and ASIC under that model and the powers currently available to APRA and ASIC for the purpose of identifying the extent to which the model, the remits or the powers should be changed.

Commissioner Hayne makes recommendations about:

- ▶ retaining the "twin peaks" model of financial regulation; and
- ▶ ASIC's approach to enforcement (Recommendation 6.2), including that infringement notices should principally be used in respect of administrative failings and beyond that will rarely be an appropriate enforcement tool where the infringing party is a large corporation.

A number of recommendations are also made for the purpose of improving the governance and performance of APRA and ASIC, including recommendations about:

- ▶ establishing a new oversight authority of ASIC and APRA (Recommendation 6.14);
- ▶ APRA and ASIC formulating and applying their own management and accountability principles of the kind set out in the BEAR (Recommendation 6.12);
- ▶ formalising ASIC's meeting procedures (Recommendation 6.11); and
- ▶ regular capability reviews of APRA and ASIC (Recommendation 6.13).

Additionally, there are other recommendations which seek to re-adjust the roles of APRA and ASIC to better reflect the twin peaks model (Recommendation 6.1), including recommendations about:

- ▶ co-regulation by ASIC and APRA of superannuation (Recommendations 3.8, 6.3, 6.4 and 6.5);
- ▶ joint administration of the BEAR in both its present form and its extension to other APRA-regulated institutions with ASIC charged with overseeing the parts concerned with consumer protection and market conduct matters and APRA charged with handling prudential matters (Recommendations 4.9, 4.12, 6.6, 6.7 and 6.8); and
- ▶ co-operation and information sharing between APRA and ASIC (Recommendations 6.9 and 6.10).

8 OTHER RECOMMENDATIONS

Compensation scheme

The Final Report recommends that the recommendations to establish a compensation scheme of last resort made by the panel appointed by government to review external dispute and complaints arrangements (the Ramsay Review) in its supplementary final report should be carried into effect (Recommendation 7.1).

The Government has agreed to establish an industry-funded, forward looking compensation scheme of last resort (**CSLR**). It has also said that the CSLR will be established as part of AFCA, will extend beyond disputes in relation to personal advice failures and will 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.

The Government has also decided it will expand the remit of AFCA for 12 months for disputes dating back to 1 January 2008 that fall within AFCA thresholds.

ASIC Enforcement Review Taskforce Government Responses

Commissioner Hayne recommends that the recommendations of the ASIC Enforcement Taskforce made in December 2017 that relate to self-reporting of contraventions by financial services and credit licensees should be carried into effect (Recommendation 7.2).

Recommendations regarding simplification of the law

The Final Report also includes recommendations about simplifying the law, including that:

- ▶ 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 (Recommendation 7.4). Commissioner Hayne noted this would explain why the rule is there, reinforce the importance of the fundamental norm and put beyond doubt the purpose the rule is intended to achieve; and
- ▶ exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated (Recommendation 7.3). Commissioner Hayne noted that would be a large step towards simplification and leave less room for "gaming" the system.

9 GET IN TOUCH

We welcome conversations on Commissioner Hayne's report. If you wish to have your own conversation with us on the report and how it may affect you and your business, please contact us:

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You can also keep up with our rolling coverage at our dedicated Financial Services Royal Commission hub <https://www.claytonutz.com/financial-services-royal-commission/hub>.

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