

Ready, Set, Go!

Tracking the Implementation of the Recommendations of the Banking Royal Commission



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The report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry made 76 recommendations to improve the sector.

With so many detailed recommendations, implementing change is taking time, however progress is being made. To provide a simplified update to this complex process, we have summarised these recommendations using a traffic light system to show what progress has been made to date.

The recommendations of the Royal Commission require not only action by financial institutions themselves, but more importantly legislative change by the government and action by the Australian Securities & Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA). Each of these three arms of government have already published their formal responses to the recommendations of the Royal Commission:

- [Government response dated 4 February 2019](#)
- [ASIC response dated 19 February 2019](#)
- [APRA response dated 11 February 2019](#)

Numerous media releases have also been issued. Links to these are provided in the tables below.

Our colour coding means:



Recommendation rejected or modified by the relevant organisation



Recommendation in process of being implemented



Recommendation Implemented. In some cases the Royal Commission recommended “no change” so by the Government accepting that recommendation it is by definition implemented – case in point – recommendation 1.1



No positive steps have been taken to date, other than an acceptance of the recommendation or a referral to a working party. Many of the reforms require legislative change and have not yet been introduced to Parliament.

Implementation of the recommendations of the Royal Commission is a moving feast and changes day to day and week to week. This analysis is current as at Friday, 28 June 2019, and takes into account the comments made in [ASIC Media Release 19-162 MR \(ASIC Approves an Updated Banking Code of Practice\)](#) and the [letter APRA issued to banks on the same day starting consultation on recommendation 1.17](#).

Please use the links embedded within sections of the table which link to pronouncements made on specific recommendations.

1. Banking

Recommendation 1.1 The NCCP Act should not be amended to alter the obligation to assess unsuitability <i>Government accepts recommendation</i>	Recommendation 1.2 Amend the law to impose a best interests duty on brokers <i>Legislative change required</i>	Recommendation 1.3 Mortgage broker remuneration – borrower should pay <i>Government not implement recommendation</i> <i>A review is underway</i>	Recommendation 1.4 Establishment of working group to monitor effects of implementing recommendation 1.3 <i>Review to be conducted in 2020</i>
Recommendation 1.5 Regulate mortgage brokers in a similar manner to financial advisers <i>Legislative change required</i>	Recommendation 1.6 ACL holders should be bound to report misconduct by mortgage brokers <i>Legislative change required to apply information sharing and reporting obligation to ACL holders</i>	Recommendation 1.7 Removal of point-of-sale exemption from NCCP for retailers <i>Legislative change required to remove point-of-sale exemption, with consultation paper being prepared</i>	Recommendation 1.8 Amend Banking Code to assist access rights of indigenous and remote customers <i>ASIC to decide on changes later in 2019 with implementation proposed from March 2020</i>
Recommendation 1.9 The NCCP Act should not be extended to cover lending to small businesses. <i>Government accepts recommendation</i>	Recommendation 1.10 Amend the definition of 'small business' in the Banking Code so that the Code applies businesses employing fewer than 100 employees, and loans of less than \$5 million <i>ASIC working with the Banking Industry on amendments to the Code</i>	Recommendation 1.11 A national scheme of farm debt mediation should be enacted <i>Agreed to by all Governments in February 2019 – work to begin</i>	Recommendation 1.12 APRA should amend Prudential Standard APS220 to require more rigorous assessments and independence in valuing land, in particular agricultural land <i>APRA to revise APS220 by end of 2019 and release proposed revisions earlier</i>
Recommendation 1.13 Amend Banking Code so default interest will not be charged on agricultural loans in areas declared affected by drought or other natural disaster <i>ASIC to decide on changes later in 2019 with implementation proposed from March 2020</i>	Recommendation 1.14 Manage distressed agricultural loans in a more empathic and professional manner <i>Government encouraging Banks to implement</i>	Recommendation 1.15 Amend law to enhance industry codes of conduct including making provisions enforceable. <i>Treasury released a consultation paper – consultation period now completed</i>	Recommendation 1.16 Make Banking Code provisions that govern the terms of contract "enforceable" <i>ASIC accepts recommendations, working with industry in anticipation of Parliament legislating reform</i>
Recommendation 1.17 APRA to require each ADI make someone responsible for product design and remediation of customers <i>APRA issued letter to Banks on 28 June 2019 starting consultation process</i>			

2. Financial Advice

Recommendation 2.1 That ongoing fee arrangements should be renewed annually by clients and other matters <i>Legislative change required</i>	Recommendation 2.2 Disclosure of lack of independence <i>Legislative change required</i>	Recommendation 2.3 Review of measures to improve quality of advice <i>By December 2022 the Government will review the effectiveness of measures previously introduced to improve the quality of financial advice</i>	Recommendation 2.4 That grandfathering provisions for conflicted remuneration be repealed <u><i>To be implemented by 1 January 2021 – legislative change required – draft bill released</i></u> <u><i>Press release</i></u>
Recommendation 2.5 When ASIC conducts its review of conflicted remuneration it should consider reducing the cap on life risk insurance commissions <u><i>ASIC will review in 2021</i></u>	Recommendation 2.6 Consider whether the remaining exemptions to the ban on conflicted remunerations remain justified <i>Government will review in 3 years' time (2022)</i>	Recommendation 2.7 Reference checking and information sharing to be mandated as an AFS licence condition <i>ASIC/Government still to implement</i>	Recommendation 2.8 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. <i>ASIC/Government still to implement</i>
Recommendation 2.9 Licence condition imposed on AFSL holders to notify clients of misconduct by financial advisers and remediate promptly <i>ASIC/Government still to implement</i>	Recommendation 2.10 Establish new disciplinary system for financial advisers <i>Legislative change required</i>		

3. Superannuation

Recommendation 3.1 Trustees of RSEs should be prohibited from taking on other roles <i>Government agrees to address this risk</i>	Recommendation 3.2 No deducting advice fees from MySuper accounts other than intra fund advice <i>Government still to implement to clarify general rule for My Super accounts</i> <i>Note: exit fees to be banned from 1 July 2019</i>	Recommendation 3.3 Limitations on deducting advice fees from "choice" accounts unless express authority etc. in place and renewed annually <i>Government still to implement</i>	Recommendation 3.4 Hawking superannuation products be prohibited. <i>Legislative change required</i>
Recommendation 3.5 A person should have only one default superannuation account. <i>Government still to implement</i>	Recommendation 3.6 No enticing employers to nominate a fund as a default fund <u><i>Treasury Laws Amendment, Act 2019</i></u> <u><i>And refer press release</i></u>	Recommendation 3.7 Impose civil penalties for breach of trustee duties. <u><i>Treasury Laws Amendment, Act 2019</i></u> <u><i>And refer press release</i></u>	Recommendation 3.8 Roles of APRA and ASIC relating to superannuation be adjusted, as referred to in Recommendation 6.3. <i>Government to implement. Some legislative change will be required</i>
Recommendation 3.9 Over time provisions modelled on the BEAR should be extended to all RSE licensees. <i>Government still to implement. Legislative change will be required</i>			

4. Insurance

Recommendation 4.1 No hawking of insurance <i>Legislative change required</i>	Recommendation 4.2 Removing exemptions for funeral expenses policies <u>Regulations need to be changed to ensure consumer protection provisions of the ASIC Act apply to funeral expenses policies.</u> <u>Consultation between Treasury and ASIC</u>	Recommendation 4.3 Develop deferred sales model for add-on insurance Government still to implement. Note however, that amendments have been made to the Banking Code to implement deferred sales model for loan protection insurance	Recommendation 4.4 Cap on commissions <u>ASIC awaits the Parliament legislating to provide ASIC with the ability to do so.</u>
Recommendation 4.5 Replace duty of disclosure with a duty to take reasonable care not to make a misrepresentation to an insurer <i>Legislative change required to amend duty of disclosure for consumers in the Insurance Contracts Act 1984</i>	Recommendation 4.6 Limit right of insurers to avoid life insurance contracts <i>Legislative change required to the Insurance Contracts Act 1984</i>	Recommendation 4.7 Apply unfair contract terms provisions to insurance contracts Government still to implement	Recommendation 4.8 Removal of claims handling exemption <u>Government has released a consultation power on removing the exemption of insurance claims handling from the definition of 'financial service' under the Corps Act</u>
Recommendation 4.9 Enforceable code provisions <u>ASIC accepts the recommendations and is working with industry in anticipation of the Parliament legislating reform</u>	Recommendation 4.10 Extension of the sanctions power against subscribers to Industry Codes Government encouraging the Financial Services Council and the Insurance Council of Australia to implement	Recommendation 4.11 Co-operation with AFCA <u>AFSL holders will now be required to co-operate with the AFCA in the resolution of disputes</u>	Recommendation 4.12 Over time provisions modelled on the BEAR should be extended to all APRA regulated Insurers. Government still to implement. Legislative change will be required
Recommendation 4.13 Review whether universal terms should be implemented for My Super product <u>Government has released a consultation paper</u>	Recommendation 4.14 Additional scrutiny for related party engagements <u>APRA is currently reviewing the superannuation prudential framework and the post-implementation review report will be published in the second quarter of 2019</u>	Recommendation 4.15 Amend Prudential Standard SPS 250 to require licensees to ensure the status attribution to be fair and reasonable <u>APRA is currently reviewing the superannuation prudential framework and the post-implementation review report will be published in the second quarter of 2019</u>	

5. Culture, Governance & Remuneration

Recommendation 5.1 In conducting prudential supervision APRA should have regard to sound compensation principles <u>APRA will release proposed revisions to Prudential Standard CPS 510 by mid-2019 and have a final standard in 2020</u>	Recommendation 5.2 APRA should revise its aims in relation to supervision of remuneration practices <u>APRA will release proposed revisions to Prudential Standard CPS 510 by mid-2019 and have a final standard in 2020</u>	Recommendation 5.3 APRA should revise prudential standards and guidance regarding remuneration systems <u>APRA will release proposed revisions to Prudential Standard CPS 510 by mid-2019 and have a final standard in 2020</u>	Recommendation 5.4 Conduct periodic reviews of remuneration of front line staff <i>Government encouraging financial firms to implement</i>
Recommendation 5.5 Banks should fully implement the recommendations of the Sedgwick Review <i>Government encouraging banks to implement</i>	Recommendation 5.6 Financial firms to periodically assess and change culture where required <u>Underway by way of self-assessments demanded by APRA during 2018 – Refer APRA Media Release on 22 May 2019</u>	Recommendation 5.7 APRA to revise its method of prudential supervision <u>APRA working with Government to ensure it has sufficient resources to implement</u>	

6. Regulators

Recommendation 6.1 Retain twin peaks <i>Government accepts recommendation</i>	Recommendation 6.2 ASIC's approach to enforcement <i>ASIC has adopted a 'Why not litigate?' enforcement stance and established an Office of Enforcement</i>	Recommendation 6.3 Outline general principles for co-regulation between APRA and ASIC <i>Some legislative change will be required</i>	Recommendation 6.4 ASIC should be given power to enforce all provisions of SIS Act etc <i>Legislative change will be required</i>
Recommendation 6.5 APRA should retain its current functions <i>Agreed by government</i>	Recommendation 6.6 ASIC and APRA should jointly administer BEAR <i>Legislative change required</i>	Recommendation 6.7 Amend the Banking Act to make it clear that ADIs and accountable persons must deal in an open constructive and cooperative way. <i>Legislative change required</i>	Recommendation 6.8 Over time extend BEAR to all APRA-regulated entities. Also, to introduce a similar regime for non-APRA-regulated entities <i>Government still to implement. Legislative change will be required</i>
Recommendation 6.9 Statutory obligation to co-operate <i>Agreed, legislative change appears to be required to remove information barriers between regulators</i>	Recommendation 6.10 Cooperation memorandum between ASIC and APRA <i>Government seeks that ASIC and APRA update their cooperation memorandum to clearly state statutory obligation to cooperate</i> <i>Unclear whether the MOU has yet been formally updated</i>	Recommendation 6.11 Formalising meeting procedures for ASIC <i>Government will amend ASIC Act to formalise ASIC meetings</i>	Recommendation 6.12 Application of BEAR to regulators <i>Government agrees APRA and ASIC should formulate and apply principles similar to the BEAR to their own management</i> <i>Does not appear to us to have been formally implemented yet</i>
Recommendation 6.13 ASIC and APRA to conduct 4 yearly capability reviews <i>Agreed, first capability review established for APRA in Feb 2019</i>	Recommendation 6.14 A new oversight authority <i>Government agrees to create new oversight authority. Still to be created</i>		

7. Other Important Steps

<p>Recommendation 7.1</p> <p>Compensation scheme of last resort and other reforms</p> <p><i>Government still to implement, but AFCA jurisdiction has been extended already.</i></p> <p><i>Government also agreed to fund legacy unpaid determinations.</i></p>	<p>Recommendation 7.2</p> <p>Mandate self-reporting of contraventions by AFSL and ACL holders</p> <p><i>Likely that some legislative change will be required</i></p>	<p>Recommendation 7.3</p> <p>Eliminate exceptions and qualifications in legislation to norms of behaviour</p> <p><i>Legislative change required to simplify the financial services law to eliminate exceptions and qualifications to the law.</i></p> <p><i>Note, as an initial example, that Product Design and Distribution legislation has been expanded to Basic Banking Products and Credit even though initially suggested these products be exempted.</i></p>	<p>Recommendation 7.4</p> <p>Legislation should set out what are the expected fundamental norms of behaviour to be observed by those regulated by the relevant legislation.</p> <p><i>Legislative change required</i></p>
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