ROYAL COMMISSION

INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

WRAP-UP

25 February 2019

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Last updated: 25 February 2019

Overview

The Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was presented to the Governor-General on Friday 1 February 2019.

On Monday 4 February 2019 the Hon Josh Frydenberg MP released the Government's Response to the Royal Commission. The Opposition released its formal response to the Royal Commission on Friday 22 February 2019.

The FPA Royal Commission Wrap-up aims to filter all recommendations that may directly or indirectly affect the provision of financial advice. The recommendations are:

Financial advice

Broadly, the recommendations deal with three different issues that have emerged in connection with the provision of financial advice. The first is 'fees for no service': ongoing advice fees charged when no advice was given to the client. The second is that clients have often been given poor advice that has left them worse off than they would have been if proper advice had been given. The third is the fragmented and ineffective disciplinary system for financial advisers.

Superannuation

The recommendations aim to ensure that superannuation products are in line with the consumers' needs and that all mechanisms in place aim to, reduce lost accounts, reduce erosion of accounts by fees and place the interest of members above all others.

Insurance

The recommendations aim to bring the regulation of insurance into line with that of other financial products, and to better balance the rights and obligations of insurers and insureds. These objectives require a prohibition on hawking, reforms to the disclosure and misrepresentation regime, the removal of the 'claims handling' legislative carve outs, statutory consequences for breaching key provisions of industry codes, close scrutiny of group life insurance arrangements.

External Dispute Resolution and Consumer Compensation

It is the view of Commissioner Hayne that the law should also be amended to obligate AFSL holders to take reasonable steps to cooperate with AFCA in its resolution of particular disputes and the consideration of the potential design of a compensation scheme of last resort in providing access to redress for disputes

Codes of Practice, Regulators and Culture

The recommendations seek to improve the effectiveness of the regulators, ASIC and APRA, in deterring misconduct and ensuring that there are just and appropriate consequences for misconduct. Particularly, there should be some adjustments made in respect of regulator's enforcement powers. It is important to strengthen the accountability of both – internally, by each separately applying principles modelled on the BEAR; and externally, by both being accountable to a new oversight body. Furthermore, that the law should be amended to provide that breach of an enforceable code provision will constitute a breach of the law.

Additional Government measures

In addition to providing their response to the Royal Commission recommendations, the Government has also provided policy measures to address regulatory challenges identified in other recent inquiries including the Productivity Commission Inquiry into competition in the Australian Financial Services and Superannuation System.

We will work with the Government and regulators on the implementation of Commissioner Hayne's recommendations.

The FPA will endeavour to keep members up to date on any developments regarding the implementation of Commissioner Hayne's recommendations.

Financial Advice

Recommendation 2.1 — Annual renewal and payment		
Royal Commission	**Government response**	**Opposition response**
The law should be amended to provide that ongoing fee arrangements (whenever made): • 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.	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. 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. 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.	Labor will fully implement this recommendation. Labor notes the observations of the Commissioner that banks and other companies that systemically charged fees for no service could be charged with dishonest conduct under s 1041G(1) of the Corporations Act 2001. Labor moved amendments to the Treasury Laws Amendment (Strengthening Corporate and Financial Penalties) Bill 2018 to increase maximum penalties for dishonest conduct to 15 years, an increase of 5 years on the existing maximum sentence. Labor was pleased that the Parliament adopted Labor's amendments to strengthen penalties for this offence and other serious corporate offences.

FPA Comment

Commissioner Hayne has identified ongoing fee arrangements as the root cause of most instances of "fee for no service". This recommendation allows ongoing fee arrangements to continue and is aimed at addressing the substance of the arrangements rather than the form they take.

The FPA supports ongoing fee arrangements that are simple, transparent, fair and deliver on the services agreed to. Advisers should be required to periodically review and renew ongoing fee arrangements, document them and seek the consent of their clients for any fees to be charged.

This recommendation will require amendments to the Corporations Act and it is not clear when the Government will have an opportunity to progress them through the Parliament or what sort of transition time frame may be applied. The FPA will work with Government to ensure this is implemented over an appropriate transition period and limit application of fee authorisation to non-basic bank products (i.e. super and investment products rather than direct payments via bank account and simple credit products).

Once the amendments are made, financial planners will need to review their ongoing fee arrangements to check for compliance and make changes to their business practices to ensure ongoing fee arrangements are renewed annually. The FPA will seek advice from the Government and regulators on the application of the FPA Professional Ongoing Fees Code and will make necessary adjustments.

The FPA will also consider whether any existing legislation should be repealed e.g. opt-in, FDS.

Recommendation 2.2 — Disclosure of lack of independence		
Royal Commission	**Government response**	**Opposition response**
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.	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 Corporations Act 2001 (Corporations Act).	Labor will fully implement this recommendation and believes that this could be accomplished before the May 2019 election if the Parliament was permitted to sit in March 2019.

FPA Comment

A substantial theme to the Royal Commission's final report is removing or better managing conflicts of interest. This recommendation provides for specific written disclosure where an adviser receives conflicted remuneration, has restrictions relating to the financial products they consider, or has another conflict of interest that may influence the advice they provide. By requiring this disclosure, Commissioner Hayne considers that clients will be in a better position to choose an adviser that suits their needs.

This recommendation will require amendments to the Corporations Act and it is not clear when the Government will have an opportunity to progress them through the Parliament.

Once the amendments are made, advisers who do not meet the criteria in section 923A of the Corporation Act will need to adjust their business practices to make this disclosure, in any form that is prescribed in the Act, to their clients prior to providing advice services.

The FPA will work with the Government to ensure that any mandatory disclosure requirements are not onerous or costly but are clear, appropriate and practical.

Recommendation 2.3 — Review of measures to improve the quality of advice		
Royal Commission	**Government response**	**Opposition response**
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. 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.	The Government **agrees** to a review in three years' time on the effectiveness of measures to improve the quality of advice. 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. 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.	Labor will fully implement this recommendation. Unlike the Government, Labor will repeal the 'safe harbour' provision in section 961B(2) of the Corporations Act unless the review identifies a clear justification for retaining it.

FPA Comment

The FPA supports the Government conducting a review of the effectiveness of the multitude of reform measures that have been implemented in recent years to improve the standard of financial advice. However, the FPA notes that the current education and professional standards reforms being implemented by the Financial Adviser Standards and Ethics Authority (FASEA) will not have been fully implemented by 2022 and any review conducted before this date will not be able to judge their final effectiveness.

Commissioner Hayne also makes a number of comments about the current "safe harbour" provision and whether it remains appropriate. While he does not recommend changing it at this stage, he is concerned that it promotes a "tick a box" approach to compliance which is at odds with the broad best interests duty that advisers owe their clients. What is clear is that Commissioner Hayne considers that regulation of financial services should be principled and based on fundamental norms of behaviour (as per Recommendations 7.3 and 7.4 below) . Exceptions and qualifications, such as the "safe harbour" provision should be eliminated as far as possible.

For this reason, the FPA will look to recommend the Government consider a broader review of financial advice regulation to consider how to reduce red tape, reduce costs, consider what regulation is no longer required, and remove duplication. A system of financial advice regulation that is simple and robust will benefit both consumers and financial planners.

At this stage, there are no immediate impacts of this recommendation, other than broadly noting that as professionals we should be mindful of improving advice quality ourselves and among our peers as we move towards a 2022 review. The FPA will participate in any review and will call on members to share their expertise and evidence to ensure the review has an accurate view of the industry.

Recommendation 2.4 — Grandfathered commissions		
Royal Commission	**Government response**	**Opposition response**
Grandfathering provisions for conflicted remuneration should be repealed as soon as is reasonably practicable.	The Government agrees to end grandfathering of conflicted remuneration effective from 1 January 2021. 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. 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. 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). 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	Labor will fully implement this recommendation and believes that this could be accomplished before the May 2019 election if the Parliament was permitted to sit in March 2019. Labor will not delay like the Government. In accordance with the Commissioner's explicit recommendation that this reform be enacted "as soon as is reasonably practicable", Labor will end grandfathering of conflicted remuneration effective from 1 January 2020. Labor is also committed to ensuring that the benefits of removing grandfathering flow to clients. From 1 January 2020, 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. 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, Labor expects industry to provide fee relief or other benefits to the relevant cohort commensurate with the overall benefit obtained by the payer of the commission as a result of it ceasing. To ensure that the benefits of industry renegotiating current arrangements to remove grandfathered conflicted remuneration ahead of 1 January 2020 flow through to clients, Labor will commission ASIC to monitor and report on the extent to which

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Recommendation 2.4 — Grandfathered commissions (continued.)		
Royal Commission	**Government response**	**Opposition response**
	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. This also responds to the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness which also recommended ending grandfathered trailing commissions.	product issuers are acting to end the grandfathering of conflicted remuneration for the period 1 July 2019 to 1 January 2020 and are passing the benefits to clients, whether through direct rebates or otherwise. Labor has already tabled a Bill in the Parliament to give effect to this recommendation.

FPA Comment

The FPA supports phasing-out grandfathering provisions over a period of three years with all commissions on investment and superannuation products to be subject to the Future of Financial Advice reforms. Noting the potential adverse consumer outcomes which could occur through a phase-out of grandfathering provision, the FPA will work to ensure Government meet the following principles:

1. The change is in the client's best interest – no client will be worse off
2. Commission payments are actually refunded to clients and not retained by the product provider where the client has not authorised their payment to their adviser
3. Tax relief is provided for any adverse tax consequences (including CGT)
4. Centrelink benefits are protected from any adverse Centrelink consequences
5. Exit fees be banned in line with the Government's 2018/19 Budget proposal on both super and investment products.

It is important to note that this issue will not be legislated on until after the federal election – likely late August 2019 at the earliest. The Opposition has committed to banning grandfathered commissions from 1 January 2020, leaving only a five month transition period and potentially much shorter.

Recommendation 2.5 — Life risk insurance commissions		
Royal Commission	**Government response**	**Opposition response**
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.	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. The Government supports ASIC conducting this review and considering the factors identified by the Royal Commission when undertaking this review.	Labor will ensure that ASIC conducts a review of life insurance commissions. This review will also consider other exemptions to the ban on conflicted remuneration identified in recommendation 2.6. Unlike the Government, Labor will fully implement this recommendation by ensuring that ASIC considers whether there is any clear justification for retaining life insurance commissions. If there is no clear justification for retaining life insurance commissions, Labor will ban them.

FPA Comment

As with Recommendation 2.4, Commissioner Hayne broadly considers that exemptions to laws should be eliminated in general, but specifically in relation to conflicted remuneration. However, he recognises that the current Life Insurance Framework has only been in place since 1 January 2018 and that ASIC is due to review it after three years. The FPA agrees with Recommendation 2.5 that ASIC should be allowed to complete its review in 2021 and that no further changes to life insurance be made until this occurs.

Recommendation 2.7 — Reference checking and information sharing		
Royal Commission	**Government response**	**Opposition response**
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'.	The Government agrees to mandate the reference checking and information-sharing protocol for financial advisers for all Australian Financial Services Licence (AFSL) holders. 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.	Labor will fully implement this recommendation.

FPA Comment

This recommendation is the first of three that seek to deal with information sharing between AFSL holders and ASIC to ensure that problems with individual advisers are identified, investigated and action is taken. This recommendation mandates the ABA's reference checking protocol for AFSL holders.

The FPA supports the improvement of reference checking in the financial services industry as a measure to prevent advisers with poor records from moving between licensees.

This obligation will fall on AFSL holders. All licensees, including small and self-licensees, will need to review the 'Financial Advice - Recruitment and Termination Reference Checking and Information Sharing Protocol', available on the Australian Bankers Association website, and consider changes to their HR practices to comply with the protocol.

As this protocol is already in place, changes to AFSL conditions could require compliance in a relatively short time-frame.

In addition, the FPA recommends that AFSL holders ensure the adviser being recruited has not been subject to prior disciplinary action by the relevant Code Monitoring Body, and any other disciplinary bodies the adviser may be a member of (as per Recommendation 2.10), or are the subject of an ongoing investigation.

Recommendation 2.8 — Reporting compliance concerns		
Royal Commission	**Government response**	**Opposition response**
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.	The Government agrees to mandate reporting of 'serious compliance concerns' about individual financial advisers to ASIC on a quarterly basis. 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. 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.	Labor will fully implement this recommendation.

FPA Comment

This recommendation seeks to formalise and improve existing breach reporting by AFSL holders to ASIC where there are serious compliance concerns about an adviser.

Commissioner Hayne has suggested the following definition:

> *"Serious compliance concerns are where the licensee believes and has some credible information in support of the concerns identified that a financial adviser may have engaged in dishonest, illegal, deceptive and/or fraudulent misconduct or any misconduct that, if proven, would be likely to result in an instant dismissal or immediate termination; or deliberate non-compliance with financial services laws or gross incompetence or gross negligence."* [1] (page 204)

Commissioner Hayne also notes that there is value in this reporting beyond addressing issues with specific advisers as it may allow ASIC to identify industry trends that warrant a response.

Recommendation 2.9 — Misconduct by financial advisers		
Royal Commission	**Government response**	**Opposition response**
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: • 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.	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. 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.	Labor will fully implement this recommendation.

FPA Comment

Recommendation 2.9 seeks to formalise the requirement for AFSL holders to investigate misconduct and, where necessary, notify and remediate clients. Commissioner Hayne notes that while this does occur in many cases, it is not universal and mandating prompt investigation can ensure that misconduct is not allowed to continue. All licensees should review ASIC RG 256 and ensure that review and remediation is taken as efficiently as possible where misconduct is identified.

Recommendation 2.10 — A new disciplinary system		
Royal Commission	**Government response**	**Opposition response**
The law should be amended to establish a new disciplinary system for financial advisers that: • 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.	The Government agrees to introduce a new disciplinary system for financial advisers. 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. 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. 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.	Labor will fully implement this recommendation. Labor will begin a consultation process as soon as possible, including financial advisers, consumer groups, regulators and other stakeholders, to develop the recommended disciplinary regime. This disciplinary regime will have, at a minimum, the features recommended by Commissioner Hayne.

FPA Comment

The FPA does not have a position on individual licensing as a model, but supports a complaints and disciplinary system that is simpler and easier for clients to navigate.

It is important to note that there are significant details on this recommendation for a disciplinary body that would need to be developed before a proper assessment of the pros and cons could occur.

The FPA supports a disciplinary system that has a variety of possible sanctions to supplement ASIC's banning power and which match the severity of potential misconduct.

The Financial Adviser Standards and Ethics Authority (FASEA) has recently released a Code of Ethics which all financial advisers will need to comply with from 1 January 2020, and ASIC is in the process of approving code monitoring bodies which all financial planners will need to sign up to in late 2019. Any new disciplinary body would need to operate consistently with the arrangements for applying and monitoring the Code of Ethics. For this reason, and noting FASEA Code Standard 1 requires *"You must act in accordance with all applicable laws,..."*[2] It would be logical and reduce potential duplication and cost for ASIC approved code monitoring bodies to fill this function.

This recommendation is likely to require a significant amount of development before it can be considered and implemented. The FPA will continue to work with the Government and regulators to evaluate options and advocate for a model that provides the best outcome for members and their clients.

Recommendation 5.4 — Remuneration of front line staff		
Royal Commission	**Government response**	**Opposition response**
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.	The Government supports all financial services entities acting on this recommendation.	Labor expects all financial services entities to have established this annual process by 1 January 2020. The principles underpinning the review of "how they do it" should focus on ensuring ethical, lawful behaviour that genuinely prioritises customers. Financial services entities will be required to report to the Royal Commission Implementation Taskforce every 6 months on the progress of implementing this recommendation. The ABA and the CEOs of the four major banks will be required to report to the House Economics Committee every 6 months about implementation of this recommendation.

FPA Comment

Commission Hayne devotes a significant part of his final report to discussing the role of remuneration in driving behaviour in financial services entities. His discussion and Recommendation 5.4 is aimed at ensuring remuneration structures do not incentivise misconduct. He references examples of limiting the proportion of remuneration that is variable and linking it to genuine non-financial metrics.

While this is not a prescriptive recommendation, all financial services entities should consider the role of remuneration structures in driving behaviour from their staff.

Superannuation

Recommendation 3.1 — No other role or office		
Royal Commission	**Government response**	**Opposition response**
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.	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. 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.	Labor will fully implement this recommendation.

FPA Comment

The purpose of Recommendation 3.1 is to remove the conflict of interest of trustees where the entity acts as a trustee for both the superannuation fund and the managed investment scheme (MIS). This creates a direct conflict between what is in the best interest of the members of the fund, and the entity's financial and shareholder interests in relation to the MIS. Such a conflict cannot be avoided or effectively managed in the best interest of fund members.

Removing conflicts of interest of superannuation funds should deliver a positive outcome for fund members. This change is likely to have implications for the structure, cost and availability of managed investment schemes.

The FPA supports Recommendation 3.1 and the Government's response. We will work with the Government to ensure any potential unintended consequences for the provision of advice are clearly identified, considered and appropriately resolved.

Recommendation 3.2 — No deducting advice fees from MySuper accounts		
Royal Commission	**Government response**	**Opposition response**
Deduction of any advice fee (other than for intra-fund advice) from a MySuper account should be prohibited.	The Government agrees to prohibit the deduction of any advice fees from a MySuper account (other than for intra-fund advice).	Labor will fully implement this recommendation.

FPA Comment

The FPA is concerned about Recommendation 3.2 and the accuracy of Commission Hayne's interpretation of the definition of intra-fund advice:

> *"....'intra-fund advice': the provision of advice that is not personal advice, to members of a particular fund about their interest in that fund, where the cost of the advice is charged collectively to members of the fund in accordance with the SIS Act."* (pg 242)

This is partly accurate in that 'intra-fund advice' is advice to members about their interest in that fund, and the cost of such advice is charged collectively to all members. However, as per the provisions in s99F of the SIS Act, explained in the paragraph 1.3 of the Explanatory Memorandum to the 'Stronger Super' Bill which established 'intra-fund advice', and stated by ASIC, intra-fund advice is personal advice that takes into consideration the individual's circumstances as they relate to the member's interest in the fund only. For example, a member's risk profile, age, income or occupation may be considerations in the provision of intra-fund advice.

Section 99F sets out the circumstances under which personal advice is not 'intra-fund advice' and cannot be charged in this manner. These circumstances relate to matters outside of the member's interest in the fund. Ongoing advice is also excluded from intra-fund advice.

The FPA is concerned by this recommendation as it is currently worded as it is based on this interpretation of 'intra-fund advice' and would restrict payment choices for different sets of consumers depending on the type of personal financial advice they receive and who it is provided by. It may also lead to consumers making choices to switch products or investment options just to facilitate the ability to pay for advice rather than being in the best interest of their financial position.

The FPA supports a legal framework that permits or restricts remuneration practices consistently across the industry.

The FPA will work with the Government and Opposition regarding our concerns.

Recommendation 3.3 — Limitations on deducting advice fees from choice accounts		
Royal Commission	**Government response**	**Opposition response**
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.	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.	Labor will fully implement this recommendation.

FPA Comment

The FPA does not condone any situation where a client is charged fees for no service or given advice that is not in the best interest of the client.

The FPA supports the ability for consumers to choose how they pay for advice.

This recommendation permits consumers to choose how they would like to pay for the personal financial advice received, including from their choice superannuation account, by the client agreeing to renew the ongoing fee arrangement they have with their financial planner annually (as per Recommendation 2.1) and the client providing express written authority to the fund trustee that these arrangements have been met.

As discussed above in response to Recommendation 2.1, upon implementation of the recommendation, financial planners will be required to seek their client's agreement on an annual basis to continue the ongoing fee arrangement for the provision of advice services the client is seeking. This would require members to review their current renewal practices and processes as it changes the current biannual opt-in to yearly. This must include the prior written identification of the services the client will receive in the coming 12 months. This may lead to a positive and more manageable outcome for businesses as it would align the renewal process with the Fee Disclosure Statement requirements and the client annual review.

Recommendation 3.3 permits clients to pay for personal advice out of their superannuation (except MySuper accounts). Should your client choose to do so, the client must provide written authority to the superannuation fund agreeing to the ongoing fee arrangement and providing the fund with permission to make such payments from the client's account. This permission must be provided annually following the client's annual renewal.

Please refer to the FPA Comment on Recommendation 2.1.

Recommendation 3.4 — No hawking		
Royal Commission	**Government response**	**Opposition response**
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. 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.	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. 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.	Labor will fully implement this recommendation and believes that this could be accomplished before the May 2019 election if the Parliament was permitted to sit in March 2019. Unlike the Government, Labor will not allow sale of "related" products to consumers, which would create a new loophole to be exploited. Instead, consistent with Commissioner Hayne's recommendation, Labor will restrict sales of products during meetings or telephone calls to the "type of product" a consumer has enquired about. Only Labor will fully implement this recommendation.

FPA Comment

The FPA supports Recommendation 3.4 and the Government response as it is intended to prohibit the unsolicited spruiking and selling of superannuation products. It should not impact the provision of financial advice.

Recommendation 3.5 — One default account		
Royal Commission	**Government response**	**Opposition response**
A person should have only one default account. To that end, machinery should be developed for 'stapling' a person to a single default account.	The Government agrees that a person should have only one default account. This also responds to the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness 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.	Labor will fully implement this recommendation.

FPA Comment

Recommendation 3.5 is intended to address the issue of multiple accounts created by a person being placed in a new default fund every time he/she commences a new job. And that the individual's default super account from the previous employer should carry over to the new employer. The FPA supports this intent.

The FPA suggests the default system, and the recommendation to 'staple' a person to a single default account, should also be flexible and permit an individual to make an informed decision to choose to change MySuper accounts.

However, the FPA is concerned about the potential for unintended consequences of this recommendation (in conjunction with the Protecting Your Super Package currently before Parliament) on individuals who make an informed decision to hold multiple superannuation accounts (potentially both default accounts) for insurance purposes. As detailed in the FPA's submission to the Productivity Commission and the draft legislation for the Protecting Your Super Package, a significant barrier to consolidation of superannuation is the lack of portability of insurance. Individuals may hold cover inside their superannuation account however this insurance cover is not portable. The cover cannot be transferred to the new or consolidated superannuation account, even though the insured is the same person.

In the absence of implementing a solution to the above insurance issue, the FPA suggests the system should be flexible and permit an individual to choose to take out and hold a second superannuation account, including a default super account, for insurance purposes.

The FPA will continue to work with Government and the Opposition to address these concerns.

Recommendation 3.6 — No treating of employers		
Royal Commission	**Government response**	**Opposition response**
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. The provision should be a civil penalty provision enforceable by ASIC.	The Government agrees to amend the Superannuation Industry (Supervision) Act 1993 to facilitate enforcement of this provision.	Labor will fully implement this recommendation. Labor notes that this recommendation will be implemented if the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* passes the House of Representatives as amended in the Senate. Labor notes that this clearly demonstrates that despite the Government's continued delay and obfuscation, it is possible to legislate to implement Royal Commission recommendations prior to the election.

FPA Comment

The purpose of Recommendation 3.6 is to remove the ability of trustees to provide non-monetary benefits (such as entertainment, tickets, sporting events, etc) to entice employers to nominate the fund as their default fund.

The FPA supports a default system where funds are awarded based on the suitability and value offered to employees. Recommendation 3.6 and the Government response will assist in this regard.

Recommendation 3.7 — Civil penalties for breach of covenants and like obligations		
Royal Commission	**Government response**	**Opposition response**
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.	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. 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.	Labor will fully implement this recommendation. Labor notes that this recommendation will be implemented if the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* passes the House of Representatives as amended in the Senate. Labor notes that this clearly demonstrates that despite the Government's continued delay and obfuscation, it is possible to legislate to implement Royal Commission recommendations prior to the election.

FPA Comment

The purpose of Recommendation 3.7 is to enhance the accountability of trustees and directors of superannuation funds.The FPA supports Recommendation 3.7 and the Government response.

Recommendation 3.8 — Adjustment of APRA and ASIC's roles		
Royal Commission	**Government response**	**Opposition response**
The roles of APRA and ASIC with respect to superannuation should be adjusted, as referred to in Recommendation 6.3.	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. This also responds to the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness which recommended clarifying the regulators' roles and powers, including their respective areas of focus.	Labor will fully implement this recommendation.

FPA Comment

The FPA supports this recommendation and the Government response which are intended to improve the clarity and transparency of the regulatory oversight of the superannuation industry.

Recommendation 3.9 — Accountability and regime		
Royal Commission	**Government response**	**Opposition response**
Over time, provisions modelled on the BEAR should be extended to all RSE licensees, as referred to in Recommendation 6.8.	The Government agrees to this recommendation, consistent with the Government's response to Recommendation 6.6 about the extension of the BEAR regime.	Labor will fully implement this recommendation.

FPA Comment

The FPA supports Recommendation 3.9 and the Government response, the purpose of which is to enhance the accountability of trustees and directors of superannuation funds.

Insurance

Recommendation 4.1 — No hawking of insurance		
Royal Commission	**Government response**	**Opposition response**
Consistently with Recommendation 3.4, which prohibits the hawking of superannuation products, hawking of insurance products should be prohibited.	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. 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.	Labor will not allow sale of "related" products to consumers, which would create a new loophole to be exploited. Instead, consistent with Commissioner Hayne's recommendation, Labor will restrict sales of products during meetings or telephone calls to the "type of product" a consumer has enquired about. Only Labor will fully implement this recommendation.

FPA Comment

The FPA has continually expressed concerns about the potential for consumer detriment in less regulated channels used for selling insurance products to consumers by sales representatives.

The FPA would support changes to the regulations to ensure these consumers are appropriately protected and are being offered cover which is fit for purpose. In addition, the FPA would support regulations that clearly separate product sales and advice and mandate disclosures which make it clear when a consumer is being sold a product and if the sales representative will be remunerated via a commission or incentive payment for the sale of that product.

As this recommendation is intended to prohibit the unsolicited spruiking and selling of insurance products, it should not impact the provision of financial advice.

It is suggested that members ensure they include a clear scope of the advice to be provided in the client engagement letter.

Recommendation 4.5 — Duty to take reasonable care not to make a misrepresentation to an insurer		
Royal Commission	**Government response**	**Opposition response**
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).	The Government agrees to amend the duty of disclosure for consumers in the Insurance Contracts Act 1984 to ensure that obligations for disclosure applied to consumers do not enable insurers to unduly reject the payment of legitimate claims. 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.	Unlike the Government, Labor will fully implement this recommendation. Labor will not just amend the existing duty of disclosure as the Government has proposed to do. Labor will actually follow through on the Royal Commission's recommendation to replace this duty with a duty to take reasonable care not to make a misrepresentation to an insurer. The Government is choosing insurance companies over customers. Commissioner Hayne recommends a clear change in the nature of the duty, but the Government is using weasel words to back away from making this important reform. Only Labor will fully implement this recommendation.

FPA Comment

The purpose of Recommendation 4.5 is to flip the responsibility of pre-contract disclosures from the consumer onto the insurer for 'consumer insurance contracts'. Commissioner Hayne's recommendation of a duty to take reasonable care not to make a misrepresentation to an insurer places the burden on an insurer to elicit the information that it needs in order to assess whether it will insure a risk and at what price. The duty does not require an individual to surmise, or guess, what information might be important to an insurer.

This will deliver positive benefits for consumers and their financial planners during the application (new business) and claims process.

The FPA supports Recommendation 4.5. The FPA will work with Government and the Opposition to encourage the implementation of Recommendation 4.5 as Commissioner Hayne has intended.

Recommendation 4.6 — Avoidance of life insurance contracts		
Royal Commission	**Government response**	**Opposition response**
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.	The Government agrees to amend the Insurance Contracts Act 1984 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. 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.	Labor will fully implement this recommendation.

FPA Comment

Commissioner Hayne was concerned that amendments to s29 of the Insurance Contracts Act made in 2013 had resulted in an 'avoidance' regime that is unfairly weighted in favour of insurers. Specifically, that the removal of the words 'on any terms' meant that currently an insurer is not required to demonstrate that it would not have entered into a policy on alternative terms had the non-disclosure or misrepresentation not occurred.

The intent of this recommendation is to ensure 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.

The FPA supports Recommendation 4.6 as it is more balanced and fair and will deliver significant benefits for consumers.

Recommendation 4.8 — Removal of claims handling exemption		
Royal Commission	**Government response**	**Opposition response**
The handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'.	The Government agrees to remove the exemption for the handling and settlement of insurance claims from the definition of a financial service. Inappropriate claims handling practices can cause significant consumer detriment as highlighted through the Royal Commission's round six hearings into insurance.	Labor will fully implement this recommendation and believes that this could be accomplished before the May 2019 election if the Parliament was permitted to sit in March 2019. Labor has already tabled a Bill in the Parliament to give effect to this recommendation.

FPA Comment

The FPA supports applying section 912A of the Corporations Act to all aspects of the provision of life risk insurance, including the handling and settlement of insurance claims, as it would offer significant protection benefits and consistency for consumers.

Recommendation 4.9 — Enforceable code provisions		
Royal Commission	**Government response**	**Opposition response**
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. 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'.	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. This responds to the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness which recommended a binding and enforceable superannuation insurance code of conduct, which would thereafter become a condition of holding an RSE licence.	Unlike the Government, Labor will fully implement this recommendation. Labor will amend the law to provide for ASIC to consider whether there are sufficient enforceable provisions of industry codes and for the establishment and imposition of mandatory industry codes where industry does not, in the opinion of ASIC and the Government, establish a sufficiently robust code voluntarily. The Government has failed to commit to these essential components of the recommendation. Only Labor will fully implement this recommendation. Labor expects the FSC, ICA and ASIC to take the steps recommended by the Royal Commission no later than 6 months after the enforceable code regime is established.

FPA Comment

The FPA supports the application of Codes of Conduct which set higher and industry specific obligations than the requirements in the law, are enforceable and enforced, and require a binding commitment on the signatories to the Code to comply with the codified standards.

As codes are updated or approved by ASIC, members will need to ensure they comply with the 'enforceable code provisions' of codes which they are covered by and be aware of the accountability provisions of these codes. As detailed in Recommendation 1.15 (in the Codes section) below, 'enforceable code provisions' are provisions in respect of which a contravention will constitute a breach of the law.

Recommendation 4.10 — Extension of the sanctions power		
Royal Commission	**Government response**	**Opposition response**
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.	The Government supports the Financial Services Council and the Insurance Council of Australia acting on this recommendation.	bor expects the FSC and ICA to act on this recommendation immediately, with the new provisions to commence no later than 1 January 2020.

FPA Comment

The FPA supports where a Regulator has identified regulatory breaches of a life risk provider's operations, that these should be required to be reported to the Life Code Compliance Committee (LCCC) by the subscribing life company for consideration of additional sanctions including removal from the Code and the FSC.

As codes are updated or approved by ASIC, members will need to ensure they comply with the 'enforceable code provisions' of codes which they are covered by and be aware of the accountability provisions of these codes.

Recommendation 4.13 — Universal terms review		
Royal Commission	**Government response**	**Opposition response**
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.	The Government agrees to review the merits of legislating universal key definitions, terms and exclusions for default insurance cover within MySuper products.	Labor agrees to review the merits, including practicability and likely price impacts, of legislating universal key definitions, terms and exclusions for default insurance cover within MySuper superannuation products..

FPA Comment

This recommendation aims to standardise, or at least standardise in key respects, key definitions of life insurance terms within MySuper, as subtle differences in definitions, terms and exclusions from one policy to another can make the task of comparing policies particularly challenging.

Changes will almost certainly affect the cost of insurance premiums, and will affect how much superannuation the member will have at retirement. Hence, the adoption of standardised terms should be carefully considered, and the consequences of change identified, before they are implemented.

EDR and consumer compensation

Recommendation 4.11 — Co-operation with AFCA		
Royal Commission	**Government response**	**Opposition response**
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.	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. 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.	Labor will fully implement this recommendation and believes that this could be accomplished before the May 2019 election if the Parliament was permitted to sit in March 2019. Labor has already tabled a Bill in the Parliament to give effect to this recommendation.

FPA Comment

The FPA supports measures that improve the timeliness of reporting by financial services entities to cooperate with AFCA to resolve disputes, and the enforcement of reporting deadlines by the regulators.

Recommendation 7.1 — Compensation scheme of last resort		
Royal Commission	**Government response**	**Opposition response**
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.	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. 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. (continued.)	Labor will fully implement this recommendation. Labor will establish an industry-funded, prospective Compensation Scheme of Last Resort (CSLR) consistent with the recommendations of the Ramsay Review, but will extend this scheme to all financial service providers, not just financial advisers. Labor will also establish a more comprehensive retrospective compensation scheme than the Government. Labor's scheme will cover more victims and will be entirely independent of AFCA. Labor's scheme will be able to award compensation up to the new, higher AFCA compensation caps announced by Labor. (continued.)

Recommendation 7.1 — Compensation scheme of last resort (continued.)		
Royal Commission	**Government response**	**Opposition response**
	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. The CSLR will be established as part of AFCA. 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. 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. 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. 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.	Unlike the Government, Labor will require AFCA members, not taxpayers, to contribute to the payment of outstanding unpaid EDR determinations, saving taxpayers $30 million.

FPA Comment

Commissioner Hayne has backed the recommendations in the Ramsay Review's supplemental final report to establish a limited compensation scheme of last resort. The Ramsay Review recommended a scheme be prospective, funded by industry and available where an AFCA, court or tribunal decision has awarded compensation which has not been paid.

The Government has agreed to follow Recommendation 7.1 and has made a number of other commitments including to extend the jurisdiction of AFCA to 1 January 2008 for a 12 month period.

The major impact on financial advisers will be on the mechanism to fund the scheme. It is not clear how this would operate or the quantum of funding, however it would be another impost on all financial advisers who are already managing substantial increases in regulatory costs. The FPA has raised this issue consistently over the past 3 years as the Government has looked to transition to a user pays regulatory funding model.

The Opposition has announced a more generous compensation scheme that goes beyond that recommended by Commissioner Hayne. While details of the Opposition's scheme are yet to be released, it will have higher limits on compensation available, the ability to reconsider resolved matters where there has been an obvious error in fact or law, and an insolvency pool to be funded by AFCA members.

A compensation scheme funded by an industry contribution would require legislation to establish and it is likely to take some time for the Government to draft it and get it through the Parliament.

In order for the FPA to support the implementation of a compensation scheme of last resort, the FPA will continue to recommend that the Government act on the recommendations of the *Compensation arrangements for consumers of financial services, Report by Richard St. John, April 2012* in order to properly address the reasons consumers have failed to be compensated. Only after these issues are addressed should a compensation scheme of last resort be implemented where these measures fail to deliver consumer compensation.

Codes of practice, regulators, culture

Recommendation 1.15 — Enforceable code provisions		
Royal Commission	**Government response**	**Opposition response**
The law should be amended to provide: • 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.	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. The Government will establish an approved codes regime that includes 'enforceable code provisions' and implements the ASIC Enforcement Review recommendations. 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. 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.	Unlike the Government, Labor will fully implement this recommendation. Labor will amend the law to ensure that the enforceable code regime recommended by the Commissioner is established in full, including remedies as recommended, the power for ASIC to take into consideration whether codes presented to it are appropriately enforceable, and the power for Government to establish mandatory industry codes where industry does not present a sufficiently enforceable and comprehensive code. The Government has failed to commit to implementing the key aspects of this regime. Only Labor will fully implement this recommendation.

FPA Comment

The FPA supports this recommendation. As one of only two organisations with an ASIC approved code, the FPA understands the importance and rigour required around the code approval process and ensuring subscribers are able to be held accountable to the rules under a code.

Industry codes play an important role in prescribing norms of behaviour for a covered population and provide professions in particular an ability to establish a set of standards which generally exceed the minimum requirements of the law. To this point, the FPA has expressed significant concern in a number of consultations that in general, proposed financial services codes simply replicate existing legal obligations and fail to properly hold subscribers accountable to breaches, which therefore create unsatisfactory outcomes for consumers.

For this reason, the FPA welcomes and supports the ability to make 'enforceable code provisions' and that where identified, mandatory financial services industry codes will be required to better protect consumers, raise standards above minimum legal requirements and hold financial services providers accountable for misconduct and poor consumer outcomes as defined by their peer group.

There is no initial impact on FPA members, however as codes are updated or approved by ASIC, members will need to ensure they comply with the 'enforceable code provisions' of codes which they are covered by and be aware of the accountability provisions of these codes.

Recommendation 5.6 — Changing culture and governance		
Royal Commission	**Government response**	**Opposition response**
All financial services entities should, as often as reasonably possible, take proper steps to: • 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.	The Government supports financial entities acting on this recommendation.	Labor expects financial services entities to act on this recommendation. Banks will be required to report to the Royal Commission Implementation Taskforce every 6 months on the progress of implementing this recommendation. The ABA and the CEOs of the four major banks will be required to report to the House Economics Committee every 6 months about implementation of this recommendation.

FPA Comment

This recommendation is directed at financial service entities, rather than the Government or regulators. Commissioner Hayne notes that this recommendation is phrased in general, rather than prescriptive, terms because it is intended to apply to all financial services entities. He cautions any entities from assuming that this does not apply to them and notes that addressing issues with an entity's risk culture is a fundamental step in preventing future misconduct.

Consideration of risk culture in an organisation is a key responsibility of leadership at the board and executive level. This recommendation should be read as reflecting and building upon the other recommendations made in the final report.

Recommendation 6.2 — ASIC's approach to enforcement		
Royal Commission	**Government response**	**Opposition response**
ASIC should adopt an approach to enforcement that: • 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.	The Government supports ASIC acting on this recommendation. 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.	Labor expects ASIC to implement this recommendation. Labor notes that the Liberals have left ASIC with a funding shortfall of $113 million over the next four years, which will impact ASIC's capacity to implement this recommendation ASIC will be required to report to the Royal Commission Implementation Taskforce every 6 months on the progress of implementing this recommendation.

FPA Comment

For a long period of time there has been a large amount of concern raised from within the industry about the effectiveness of infringement notices and Enforceable Undertakings as a deterrent and as an appropriate consequence for systemic breaches.

The FPA supports Recommendation 6.2 and suggests the new regulatory oversight body should be required to assess ASIC's adoption of Commissioner Hayne's recommended approach to enforcement, as part of its assessment of the effectiveness of the Regulator's performance of its functions.

Recommendation 6.12 — Application of the BEAR to regulators		
Royal Commission	**Government response**	**Opposition response**
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.	The Government agrees that APRA and ASIC should be subject to accountability principles consistent with the BEAR. The Government notes that the Financial Conduct Authority in the UK has adopted a similar regime to enhance its own internal accountability.	Labor will fully implement this recommendation. The public expects high standards of probity, independence and ethical conduct from regulators. ASIC and APRA will be required to report to the Royal Commission Implementation Taskforce every 6 months on the progress of implementing this recommendation.

FPA Comment

The FPA supports the intent of Recommendation 6.12 and the Commissioner's view that APRA and ASIC apply the core tenets of the BEAR to their management structure.

It is however, vital that the new independent regulatory oversight body assess whether the time and cost of implementing and managing the BEAR tenets is outweighed by a positive impact on the regulators' performance.

Recommendation 6.13 — Regular capability reviews		
Royal Commission	**Government response**	**Opposition response**
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.	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. 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. This also responds to the recommendation of the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness to conduct a capability review of APRA.	Labor will fully implement this recommendation, with at least quadrennial capability reviews of both ASIC and APRA. Labor will support the capability review of APRA being commenced by Mr Graeme Samuel AC.

FPA Comment

The FPA agrees with Commissioner Hayne's view that capability reviews present an opportunity to consider the operational abilities and requirements of the regulators, and assist both the Regulator and the Government by identifying resourcing and capability gaps. This is vital to ensuring ASIC is, and continues to be, fit for purpose.

The FPA supports Recommendation 6.13 and Commissioner Hayne's statement that the *"Responsibility for the periodic review should rest with the oversight authority"* (page 471).

Recommendation 6.14 — A new oversight authority		
Royal Commission	**Government response**	**Opposition response**
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. The authority should be comprised of three part-time members and staffed by a permanent secretariat. It should be required to report to the Minister in respect of each regulator at least biennially.	The Government agrees to create an independently-chaired oversight body to report on the performance of ASIC and APRA. 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. 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. 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.	Labor will fully implement this recommendation. Labor will establish a new independently-chaired oversight body for APRA and ASIC, and will require reports to be given to the Minister about each regulator at least biennially. Labor will establish clear principles through which this oversight authority will assess the strategic performance of the regulators. In relation to ASIC, one of these principles will be to assess and evaluate the extent to which ASIC is successful in using litigation and other regulatory action to deter misconduct and seek to punish those responsible when misconduct does occur.

FPA Comment

Commissioner Hayne's view is that the essential role of the oversight body should be to assess:

- *"the effectiveness of each regulator in discharging its functions and meeting its statutory objects;*
- *the performance of the leaders and decision-makers within the regulator; and*
- *how the regulator exercises its statutory powers."* (page 477)

Importantly, Commissioner Hayne has stated that an important consideration will be how effective the agencies are in enforcing the laws within their remit, and the number of proceedings filed, or infringement notices issued, will say little about ASIC's enforcement culture unless the decisions behind those numbers are evaluated.

The FPA supports the establishment of a new independent regulatory oversight body for ASIC and APRA as it has been proposed. This is a measure the FPA has long called for to ensure the appropriate independent assessment of ASIC's performance, its ongoing ability to appropriately and effectively perform its role, and to improve the transparency of the Regulator's performance.

The FPA supports Commissioner Hayne's view that the Council of Financial Regulators should not be appointed as the new regulatory oversight body.

Recommendation 7.2 — Implementation of recommendations		
Royal Commission	**Government response**	**Opposition response**
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.	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. 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.	Labor will fully implement this recommendation by legislating the relevant recommendations of the ASIC Enforcement Review Taskforce.

FPA Comment

The recommendations made by the ASIC Enforcement Review in relation to self-reporting of breaches will provide greater clarity for industry, which will lead to a more consistent approach to self-reporting and help prevent further harm to consumers impacted by such breaches.

Breach reporting standards are able to be set by ASIC through regulatory guidance and may therefore be implemented reasonably quickly. Licensees will need to familiarise themselves with the new breach reporting standards once they have been finalised.

Recommendation 7.3 and 7.4		
Royal Commission	**Government response**	**Opposition response**
Recommendation 7.3 – Exceptions and qualifications As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated. **Recommendation 7.4 – Fundamental norms** 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.	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. 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.	Labor will fully implement this recommendation. After legislating to remove exceptions and qualifications specified in other recommendations of the Royal Commission, Labor will consider whether remaining exceptions and qualifications should remain, and remove them as far as possible.

FPA Comment

The FPA has a long held concerns about the over prescriptive and complex nature of the regulatory environment for the provision of financial advice, and the risk that this would and has led to a 'tick-a-box' approach to compliance by some licensees.

The FPA supports regulation that is simple, effective and with consistent application across the industry. Noting this, removing exemptions from the law will be a generally complex process with the potential for many unintended consequences, and is therefore likely to be a long term process for Government to implement in terms of existing laws, but would be more likely to be implemented as the standard as new laws are created.

Additional measures

Additional Measure	Government response	Opposition response
Federal Court jurisdiction in relation to criminal corporate crime	The Government will expand the Federal Court's jurisdiction in relation to criminal corporate crime. 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. 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. 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.	Labor supports the expansion of the Federal Court's jurisdiction in relation to corporate crime. Labor moved amendments to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018 which have successfully passed the Senate. These amendments would increase the maximum civil penalty to $525m, and increase the maximum sentence for the most serious corporate crimes from 10 to 15 years. Labor has committed $25m in additional funding to the Commonwealth DPP to fund additional corporate criminal prosecutions. Labor will ensure that ASIC has the resources necessary to undertake the volume of enforcement action required to deter misconduct and punish offenders.

FPA Comment

The FPA supports the expansion of the Federal Court's jurisdiction in relation to criminal corporate crime.

Additional Measure	Government response	Opposition response
Funding for financial counselling	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. 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. 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.	Labor will deliver stable, long-term funding for financial counselling and financial services specialist community legal centres. Labor notes Commissioner Hayne's comments about the importance of financial counselling and consumer community legal centre assistance in ensuring fairness in financial services: *"The legal assistance sector and financial counselling services perform very valuable work. Their services, like financial services, are a necessity to the community."*

FPA Comment

The FPA supports this additional measure and the role financial counsellors play particularly in assisting consumers experiencing financial hardship to understand their options and to get back on track. The FPA Pro-Bono programs are an extension and support for financial counselling services offered by charities where consumers have immediate financial advice needs.

Additional Measure	Government response	Opposition response
Extension of legislation for PIP/DDO	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. 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. 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.	Labor will fully implement this recommendation by extending the DDOs to NCCP Act products and ASIC Act products and the PIPs to ASIC Act Products. Labor has circulated amendments in the House of Representatives to the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 to extend the DDOs and PIPs to ASIC Act products and the DDOs to NCCP Act products. Labor calls on the Government to support these amendments and bring the legislation on for debate as a matter of urgency. These measures could easily be passed into law before the May 2019 election if the Parliament was permitted to sit in March 2019.

FPA Comment

The FPA supports this additional measure to extend the design and distribution (DDO) obligations and product intervention powers (PIP) to credit products. The FPA will work with the Government to ensure the enacting legislation does not impede the ability of financial planners to provide financial advice that meets their client's needs.

Additional Measure	Government response	Opposition response
Superannuation binding death benefit nominations for indigenous people	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.	Labor supports this measure.

FPA Comment

A question arose in the course of the Commission's proceedings about whether the law as it now stands permits Aboriginal and Torres Strait Islander peoples to make binding death nominations in respect of their superannuation that reflect the kinship structures of the peoples concerned, and urged consultation to address this issue.

The FPA supports this additional measure, noting the broader issues in relation to binding death nominations and current norms in relation to family structures.

Additional Measure	Government response	Opposition response
Review of the effects of vertical and horizontal integration in the financial system	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. This also responds to the Productivity Commission's report Competition in the Australian Financial System which recommended that the ACCC should undertake five yearly market studies on the effect of vertical and horizontal integration on the financial system.	Unlike the Liberals, Labor will implement Commissioner Hayne's recommended action regarding vertical integration. Labor will require the ACCC to undertake 5 yearly market studies on the effect of vertical and horizontal integration in the financial system. The first of these reviews will be undertaken during Labor's first term in office if a Shorten Labor Government is elected in May 2019. Only Labor will properly implement this recommendation.

FPA Comment

It is important to acknowledge Commissioner Hayne's discussion on vertical integration in his Final Report and his consideration of the inherent conflicts of interest of vertical integration. Noting that the changes to the industry, as many vertically integrated firms sell parts of their business, the Commissioner made the following conclusions:

> *"Ultimately, whether there should be a separation between the manufacture or sale of financial products and the provision of financial advice will depend on whether the benefits of such a separation would outweigh the costs."(page 192)*
>
> *"The industry is already undergoing significant change. Many of those changes – both those already in train, and those recommended in this Report – should improve the way that*

> *conflicts of interest are managed by financial advisers, and help to eliminate some of those conflicts. Further changes will follow as the industry adjusts to these and other changes – including, perhaps, a continued shift away from vertically integrated institutions, which would help to reduce or further eliminate conflicts of interest.*
>
> *"Enforced separation of product and advice would be a very large step to take. It would be both costly and disruptive. I cannot say that the benefits of requiring separation would outweigh the costs….I observe, however, that the Productivity Commission recommended, and I agree, that commencing in 2019, the Australian Competition and Consumer Commission (the ACCC) 'should undertake 5 yearly market studies on the effect of vertical and horizontal integration in the financial system'."* (page 195)

The FPA has long held the view that it is necessary to have a separation of advice and product to maintain the independence of the advice providers. The reason for our position is the strong tension between the professionally constrained interests of advice businesses and the commercial interests of product businesses. Unless advice businesses are protected from undue pressure from product businesses, the tension between product and advice may not serve the interests of consumers.

The FPA agrees with Commissioner Hayne's view that regulatory and market changes currently in train and to be implemented from the Royal Commission recommendations, will impact the existence and management of conflicts of interest and therefore the effect of vertical integration on consumers seeking financial advice.

The FPA supports the recommendation for the ACCC should undertake five yearly market studies on the effect of vertical and horizontal integration on the financial system.

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