



Australian Royal Commission: Final Report

**Areas of interest for New Zealand
financial services providers**

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Introduction

After 11 months of hearings and global media coverage, the final report of the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry's ('ARC') was published on 4 February 2019. The Commission's work has four clear observations: the connection between conduct and reward; the asymmetry of power and information between financial services entities and their customers; the effect of conflicts between duty and interest; and holding entities to account. The report itself contains 76 recommendations, spread across seven focus areas.

Australian Royal Commission by numbers

10,323 public submissions received

496 page final report

over 130 witnesses called

76 recommendations

68 days of hearings across 7 rounds

24 instances of misconduct referred for prosecution

Seven focus areas



Banking



Financial advice



Superannuation



Insurance



Culture, governance & remuneration



Regulators



Other important steps

New Zealand's reaction

Both the FMA bank and life insurer 'Conduct & Culture' reports stressed the need for New Zealand financial services providers to closely review their conduct against aspects of the ARC relevant to them. The New Zealand Government also confirmed it will "look closely at the recommendations of the Royal Commission to see whether they should be implemented here". This includes looking at commission payments as a part of this work.

Aspects of interest in the final report

Not every aspect of the final report had direct applicability to New Zealand, with a number of code and legislative recommendations being very specific to Australia e.g. Corporations Act changes. The style of the report differs from the interim, focusing more on the recommendations than the issues that occurred. However, across the five following sections, we have highlighted areas that may be of interest to New Zealand financial services providers.



Banking

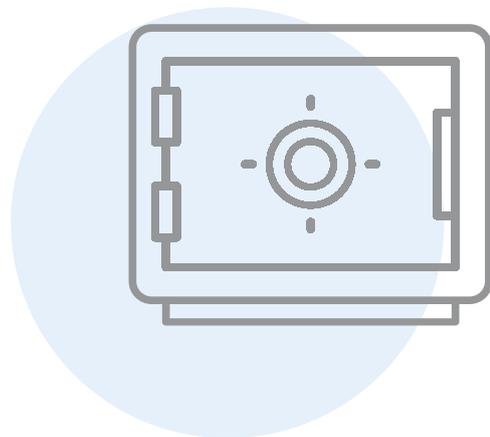
In addition to the banking conduct issues set out in the interim report, the final report makes a number of specific relevant recommendations.

Within consumer lending, the home lending segment, particularly brokers, have borne the brunt of the ARC recommendations. Some of the measures proposed include:

- A two to three year phase out of any new trail commissions, following Hayne’s commentary that recipients are getting “money for nothing”.
- Borrowers, not the lenders, being required to pay any fees to brokers for acting in connection with home lending.
- Mortgage brokers becoming subject to financial advice regulation for retail clients.
- Reporting and information sharing, including detecting misconduct, moving to being aligned more to a financial advice model.
- A phase out of aggregator commission – brokers or lenders should be required to pay aggregators they use directly.
- Introducers to act only within the confines of their role and that businesses should have systems to ensure they do so.

Outside of the broking sector, there were also recommendations of interest around:

- Changing the sale of add-on insurance to a deferred model.
- Continuing to develop innovative solutions to address barriers to access for remote, rural and potentially vulnerable communities.
- Ensuring valuation standards for SME lending are uplifted by ensuring independence of the valuer from loan origination, processing and management.
- Application of common and practical standards around farm debt mediation and financial difficulties particularly following a natural disaster.



Financial advice



The Commission made recommendations in relation to three core areas of financial advice including, 'fee for no service', inappropriate advice and an ineffective and fragmented disciplinary system.

Fees for no service

The Commission rejected the concept shared by witnesses that the ongoing collection of such fees can be explained away by system errors. The Commission has recommended that the law should be amended to require an annual renewal of any ongoing fee arrangements and for records to be kept of the services provided and fees charged which the client should receive.

Inappropriate advice

The Commission recommended a series of actions to reduce conflicts of interest and enhance disclosure where a lack of independence should be signalled to retail clients, including express disclosure of this. This signposting, along with improved education standards and training of advisors, should help improve the quality of advice provided.

Conflicted remuneration was another area of focus for the Commission, with further recommendations around repealing grandfathered commissions where these had been granted and a reduction in the cap on commissions to zero unless there is a clear justification for retaining these. In addition, it was recommended that exemptions on commissions paid for selling general insurance and consumer credit insurance products should be removed.

Ineffective and fragmented disciplinary system

Much of the discussion around the current disciplinary system hinged on the absence of coordination across the multiple professional membership bodies and with those ultimately over-sighting and sanctioning misconduct across the sector. Recommendations to bridge these gaps include:

- Each financial adviser should be individually registered and only those who are registered should be permitted to give financial advice.
- There should be a single, central disciplinary body with the power to impose disciplinary sanctions on financial advisers – the most serious sanction being cancellation of registration.
- There should be a system of mandatory notifications, requiring AFSL holders to report particular information about the conduct of financial advisers to the disciplinary body.
- There should be a system of voluntary notifications, enabling AFSL holders, industry associations and clients to report information about the conduct of financial advisers to the disciplinary body.

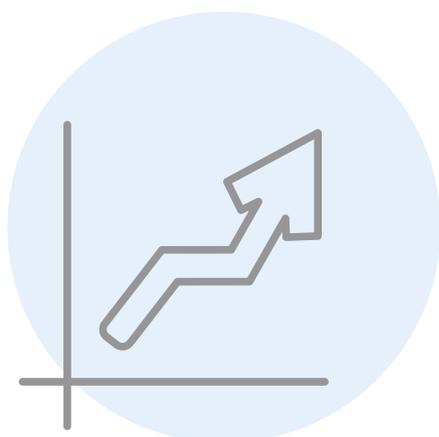
Superannuation

The Commission made nine recommendations in relation to four core areas of superannuation, including Trustees' obligations, 'selling' superannuation, nominating default funds and regulation.

Trustees' obligations to members

The report advised trustees must improve the performance of their duties and suggested restricting their role to avoid conflicts, including precluding them from acting as dual-regulated entities. The Commission recommended the trustee of a registrable superannuation entity 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 report recommended deduction of any advice fee (other than for intra fund advice) from a MySuper account should be prohibited. The report also outlined increasing instances of positive confirmation from clients if ongoing advice fees continued to be permitted. The Commission believed two years without confirmation that the member agrees the arrangement to continue is too long. It also recommended limitations on deducting advice fees from choice accounts.



'Selling' superannuation

The report identified all forms of unsolicited offering of superannuation arrangements should be prohibited. However, the prohibition should not prevent trustee or related entities advertising generally the availability of the fund.

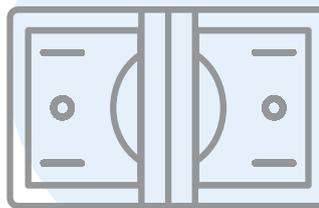
Default funds

The report recommended that a person should have only one default account and that to that end, machinery should be developed for 'stapling' a person to a single default account.

Regulatory framework

The Commission rejected the creation of a superannuation-only regulator and advised the twin peaks model of regulation should be maintained however the roles and powers of APRA and ASIC should be adjusted to enable better supervision of superannuation entities and more effective enforcement of the duties owed by trustees and by directors of trustees. The report recommended that over time, provisions modelled on the Banking Executive Accountability Regime (BEAR) should be extended to all superannuation licensees. The advantage of this course of action was that implementation of BEAR helps clarify what is expected of the relevant senior executives.

Insurance



Insurance coverage took a different form from the way consumer lending and financial advice were discussed during the interim report, with discussion around poor practices covered more in the case studies than the main body of the report. The Commission made recommendations in relation to five core areas of insurance, including selling practices, pre-contractual disclosure, the handling of claims, industry codes and group life insurance.

Selling practices

The Commission recommended that unsolicited offers or sales, or hawking, of insurance products be banned, with the report noting that a statutory definition should be implemented to define what is 'unsolicited'. The Commission noted that additional steps should be taken with respect to each of funeral insurance and add-on insurance, including use of a deferred sales model and caps paid to motor insurance dealers for selling add-on products.

Pre-contractual disclosure

The Commission noted that amendments made to Part IV of the Insurance Contracts Act 1984 (Cth) (the Insurance Contracts Act) in 2013 expanded the circumstances in which an insurer can avoid a contract of life insurance. Significantly, the Commission recommended that the previous provision that existed prior to the amendments be restored, to 'replace the duty of disclosure with a duty to take reasonable care not to make a misrepresentation to an insurer' (together with any consequential amendments). The Commission recommended that section 29(3) of the Insurance Contracts Act be amended 'so that an insurer may only avoid a contract of life insurance if it can show that it would not have entered into a contract on any terms'.

Claims handling

The Commission recommended that the Corporations Regulations be amended so that the handling and settlement of insurance claims, or potential insurance claims, is no longer excluded from the definition of 'financial service'.

Industry codes

The Commission recommended that the law be amended to provide for enforceable provisions of industry codes and the establishment and imposition of mandatory industry codes – including making certain provisions of existing codes (such as the Life Insurance Code of Practice, the Insurance in Superannuation Voluntary Code and the General Insurance Code of Practice) 'enforceable code provisions', a breach of which will constitute a breach of the law.

Group life insurance

The Commission noted that 'an important feature of the life insurance market' is that life cover, income protection cover, trauma cover and total and permanent disability cover are also available through group insurance structures, such as within superannuation funds. Notably, the Commission highlighted the findings of the Productivity Commission's Draft Report, which stated that 'about a quarter of superannuation fund members do not know whether they have a policy'. To address issues identified in the MySuper group life policies, the Commission recommended that Treasury, in consultation with industry, should 'determine the practicability, and likely pricing effects, of legislating key definitions, terms and exclusions for default MySuper group life policies'.

Culture, governance and remuneration

The Commission makes it clear that the primary responsibility of misconduct in the financial service industry lies with the entities concerned, their boards and their senior management, with issues sitting across the three core areas of remuneration, culture and governance.

Remuneration

The Commission recommended that the APRA revise its prudential standards and guidance regarding remuneration as expeditiously as possible. Further to this, APRA (and ASIC where appropriate), should do more to gather information about the way remuneration systems are being applied in practice, and whether those systems are encouraging sound management of non-financial risks, and reducing the risk of misconduct.

The Commission conceded that banks have recently made, and are continuing to make, significant changes to the way in which they remunerate their front line staff, and recommended that all financial services entities should review the design and implementation of their remuneration systems for front line staff to focus on not only what staff do, but also how they do it. The Commission recommended the full implementation 'both in letter and in spirit' of the 21 Sedgwick recommendations as an important first step towards improving front line remuneration practices.

Culture

The Commission noted that each entities culture is different and there is no single 'best practice' however there are basic behavioural norms that should be adhered to including:

- obey the law;
- do not mislead or deceive;
- act fairly;
- provide services that are fit for purpose;
- deliver services with reasonable care and skill; and
- when acting for another, act in the best interests of that other.

The Commission recommended that APRA should build the supervision of culture and governance into the review of its prudential standards and guidance (R5.7).

Governance

The Commission recognised that the failings in governance and the occurrence of misconduct falls into three categories: the role of the board, the entity's priorities and accountability. The Commission further noted that boards cannot operate without the right information and if they do not challenge management on issues such as breaches of the law and standards of conduct. Proper governance requires setting priorities which may mean the choice between conflicting goals or courses of action.

The Commission stressed the equal importance of non-financial risks including compliance risk, conduct risk, regulatory risk and operational risk as the types of risk associated with misconduct and more difficult to measure than financial risk. While not expressly recommended, the Commission stated APRA should give consideration to how the management of non-financial risk can be made more prominent in its prudential standards.



Full list of recommendations

Section	#	Title	Recommendation
Consumer Lending: Direct Lending	1.1	The NCCP Act	The NCCP Act should not be amended to alter the obligation to assess unsuitability.
Consumer Lending: Intermediated Home Lending	1.2	Best Interests Duty	The law should be amended to provide that, when acting in connection with home lending, mortgage brokers must act in the best interests of the intending borrower. The obligation should be a civil penalty provision.
	1.3	Mortgage Broker Remuneration	The borrower, not the lender, should pay the mortgage broker a fee for acting in connection with home lending. Changes in brokers' remuneration should be made over a period of two or three years, by first prohibiting lenders from paying trail commission to mortgage brokers in respect of new loans, then prohibiting lenders from paying other commissions to mortgage brokers.
	1.4	Establishment of Working Group	A Treasury-led working group should be established to monitor and if necessary, adjust the remuneration model referred to in Recommendation 1.3, and any fee that lenders should be required to charge to achieve a level playing field, in response to market changes.
	1.5	Mortgage Brokers as Financial Advisers	After a sufficient period of transition, mortgage brokers should be subject to and regulated by the law that applies to entities providing financial product advice to retail clients.
	1.6	Misconduct by Mortgage Brokers	ACL holders should: <ul style="list-style-type: none"> — be bound by information-sharing and reporting obligations in respect of mortgage brokers similar to those referred to in Recommendations 2.7 and 2.8 for financial advisers; and — take the same steps in response to detecting misconduct of a mortgage broker as those referred to in Recommendation 2.9 for financial advisers
Consumer Lending: Intermediated Lending for Vehicles and Other Consumer Goods	1.7	Removal of Point-of-sale Exemption	The exemption of retail dealers from the operation of the NCCP Act should be abolished.
Access to Banking Services	1.8	Amending the Banking Code	The ABA should amend the Banking Code to provide that: <ul style="list-style-type: none"> — banks will work with customers who live in remote areas or who are not adept to using English, to identify a suitable way for those customers to access and undertake their banking; — if a customer is having difficulty proving his or her identity, and tells the bank that he or she identifies as an Aboriginal or Torres Strait Islander person, the bank will follow AUSTRAC's guidance about the identification and verification of persons of Aboriginal or Torres Strait Islander heritage; — Without prior express agreement with the customer, banks will not allow informal overdrafts on basic accounts; and — banks will not charge dishonour fees on basic accounts.

Section	#	Title	Recommendation
Lending to Small and Medium Enterprises	1.9	No Extension of the NCCP Act	The NCCP Act should not be amended to extend its operation to lending to small businesses.
	1.10	Definition of 'Small Business'	The ABA should amend the definition of 'small business' in the Banking Code so that the Code applies to any business or group employing fewer than 100 full-time equivalent employees, where the loan applied for is less than \$5 million.
	1.11	Farm Debt Mediation	A national scheme of farm debt mediation should be enacted.
	1.12	Valuations of Land	APRA should amend Prudential Standard APS 220 to: <ul style="list-style-type: none"> — require that internal appraisals of the value of land taken or to be taken as security should be independent of loan origination, loan processing and loan decision processes; and — provide for valuation of agricultural land in a manner that will recognise, to the extent possible: the likelihood of external events affecting its realisable value; and the time that may be taken to realise the land at a reasonable price affecting its realisable value.
	1.13	Charging Default Interest	The ABA should amend the Banking Code to provide that, while a declaration remains in force, banks will not charge default interest on loans secured by agricultural land in an area declared to be affected by drought or other natural disaster.
	1.14	Distressed Agricultural Loans	When dealing with distressed agricultural loans, banks should: <ul style="list-style-type: none"> — ensure that those loans are managed by experienced agricultural bankers; — offer farm debt mediation as soon as a loan is classified as distressed; — manage every distressed loan on the footing that working out will be the best outcome for bank and borrower, and enforcement the worst; — recognise that appointment of receivers or any other form of external administrator is a remedy of last resort; and — cease charging default interest when there is no realistic prospect of recovering the amount charged.
Enforceability of Industry Codes	1.15	Enforceable Code Provisions	The law should be amended to provide: <ul style="list-style-type: none"> — that ASIC's power to approve codes of conduct extends to codes relating to all APRA-regulated institutions and ACL holders; — that industry codes of conduct approved by ASIC may include 'enforceable code provisions', which are provisions in respect of which a contravention will constitute a breach of the law; — that ASIC may take into consideration whether particular provisions of an industry code of conduct that 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.
	1.16	2019 Banking Code	In respect of the Banking Code that ASIC approved in 2018, the ABA and ASIC should take all necessary steps to have the provisions that govern the terms of the contract made or to be made between the bank and the customer or guarantor designated as 'enforceable code provisions'.
Processing and Administrative Errors	1.17	BEAR Product Responsibility	After appropriate consultation, APRA should determine for the purposes of section 37BA(2)(b) of the Banking Act, a responsibility, within each ADI subject to the BEAR, for all steps in the design, delivery and maintenance of all products offered to customers by the ADI and any necessary remediation of customers in respect of any of those products.
Ongoing Fee Arrangements	2.1	Annual Renewal and Payment	The law should be amended to provide that ongoing fee arrangements (whenever made): <ul style="list-style-type: none"> — must be renewed annually by the client; — must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and — may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts that account given at, or immediately after, the latest renewal or the ongoing fee arrangement.

Section	#	Title	Recommendation
Lack of Independence	2.2	Disclosure of Lack of Independence	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.
Quality of Advice	2.3	Review of Measures to Improve the Quality of Advice	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.
Conflicted Remuneration	2.4	Grandfathered Commissions	Grandfathering provisions for conflicted remuneration should be repealed as soon as is reasonably practicable.
	2.5	Life Risk Insurance Commissions	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.
	2.6	General Insurance and Consumer Credit Insurance Commissions	The review referred to in Recommendation 2.3 should also consider whether each remaining exemption to the ban on conflicted remuneration remains justified, including: <ul style="list-style-type: none"> — the exemptions for general insurance products and consumer credit insurance products; and — the exemptions for non-monetary benefits set out in section 963C of the Corporations Act.
Professional Discipline of Financial Advisers	2.7	Reference Checking and Information Sharing	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'.
	2.8	Reporting Compliance Concerns	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.
	2.9	Misconduct by Financial Advisers	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): <ul style="list-style-type: none"> — make whatever inquiries are reasonably necessary to determine the nature and full extent of the adviser's misconduct; and — where there is sufficient information to suggest that an adviser has engaged in misconduct, tell affected clients and remediate those clients promptly.
	2.10	A New Disciplinary System	The law should be amended to establish a new disciplinary system for financial advisers that: <ul style="list-style-type: none"> — requires all financial advisers who provide personal financial advice to retail clients to be registered; — provides for a single, central, disciplinary body; — requires AFSL holders to report 'serious compliance concerns' to the disciplinary body; and — allows clients and other stakeholders to report information about the conduct of financial advisers to the disciplinary body.

Section	#	Title	Recommendation
Trustees' Obligations	3.1	No Other Role or Office	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.
	3.2	No Deducting Advice Fees from MySuper Accounts	Deduction of any advice fee (other than for intra-fund advice) from a MySuper account should be prohibited.
	3.3	Limitations on Deducting Advice Fees from Choice Accounts	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.
Selling' Superannuation	3.4	No Hawking	<p>Hawking of superannuation products should be prohibited. That is, the unsolicited offer or sale of superannuation should be prohibited except to those who are not retail clients and except for offers made under an eligible employee share scheme.</p> <p>The law should be amended to make clear that contact with a person during which one kind of product is offered is unsolicited unless the person attended the meeting, made or received the telephone call, or initiated the contact for the express purpose of inquiring about, discussing or entering into negotiations in relation to the offer of that kind of product.</p>
Nominating Default Funds	3.5	One Default Account	A person should have only one default account. To that end, machinery should be developed for 'stapling' a person to a single default account.
	3.6	No Treating of Employers	<p>Section 68A of the SIS Act should be amended to prohibit trustees of a regulated superannuation fund, and associates of a trustee, doing any of the acts specified in section 68A(1)(a), (b) or (c) where the act may reasonably be understood by the recipient to have a substantial purpose of having the recipient nominate the fund as a default fund or having one or more employees of the recipient apply or agree to become members of the fund.</p> <p>The provision should be a civil penalty provision enforceable by ASIC.</p>
Regulation	3.7	Civil Penalties for Breach of Covenants and Like Obligations	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.
	3.8	Adjustment of APRA and ASIC's Roles	The roles of APRA and ASIC with respect to superannuation should be adjusted, as referred to in Recommendation 6.3.
	3.9	Accountability Regime	Over time, provisions modelled on the BEAR should be extended to all RSE licensees, as referred to in Recommendation 6.8.
Manner of Sale and Types of products Sold: Hawking	4.1	No Hawking of Insurance	Consistently with Recommendation 3.4, which prohibits the hawking of superannuation products, hawking of insurance products should be prohibited.
Specific Steps in Respect of Particular Products: Funeral Insurance	4.2	Removing the Exemptions for Funeral Expenses Policies	<p>The law should be amended to:</p> <ul style="list-style-type: none"> — remove the exclusion of funeral expenses policies from the definition of 'financial product'; and — put beyond doubt that the consumer protection provisions of the ASIC Act apply to funeral expenses policies.
Specific Steps in Respect of Particular Products: Add-on Insurance	4.3	Deferred Sales Model for Add-on Insurance	A Treasury-led working group should develop an industry-wide deferred sales model for the sale of any add-on insurance products (except policies of comprehensive motor insurance). The model should be implemented as soon as is reasonably practicable.
	4.4	Cap on Commissions	ASIC should impose a cap on the amount of commission that may be paid to vehicle dealers in relation to the sale of add-on insurance products.

Section	#	Title	Recommendation
Pre-contractual Disclosure and Representations	4.5	Duty to Take Reasonable Care Not to Make a Misrepresentation to an Insurer	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).
	4.6	Avoidance of Life Insurance Contracts	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.
Unfair Contract Terms	4.7	Application of Unfair Contract Terms Provisions to Insurance Contracts	<p>The unfair contract terms provisions now set out in the ASIC Act should apply to insurance contracts regulated by the Insurance Contracts Act. The provisions should be amended to provide a definition of the 'main subject matter' of an insurance contract as the terms of the contract that describe what is being insured.</p> <p>The duty of utmost good faith contained in section 13 of the Insurance Contracts Act should operate independently of the unfair contract terms provisions.</p>
Claims Handling	4.8	Removal of Claims Handling Exemption	The handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'.
Status of Industry Codes	4.9	Enforceable Code Provisions	<p>As referred to in Recommendation 1.15, the law should be amended to provide for enforceable provisions of industry codes and for the establishment and imposition of mandatory industry codes.</p> <p>In respect of the Life Insurance Code of Practice, the Insurance in Superannuation Voluntary Code and the General Insurance Code of Practice, the Financial Services Council, the Insurance Council of Australia and ASIC should take all necessary steps, by 30 June 2021, to have the provisions of those codes that govern the terms of the contract made or to be made between the insurer and the policyholder designated as 'enforceable code provisions'.</p>
	4.10	Extension of the Sanctions Power	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.
External Dispute Resolution	4.11	Co-operation with AFCA	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.
	4.12	Accountability Regime	Over time provisions modelled on the BEAR should be extended to all APRA regulated insurers, as referred to in Recommendation 6.8.
Group Life Policies	4.13	Universal Terms Review	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.
	4.14	Additional Scrutiny for Related Party Engagements	APRA should amend Prudential Standard SPS 250 to require RSE licensees that engage a related party to provide group life insurance, or who enter into a contract, arrangement or understanding with a life insurer by which the insurer is given a priority or privilege in connection with the provision of life insurance, to obtain and provide to APRA within a fixed time, independent certification that the arrangements and policies entered into are in the best interests of members and otherwise satisfy legal and regulatory requirements.
	4.15	Status Attribution to be Fair and Reasonable	APRA should amend Prudential Standard SPS 250 to require RSE licensees to be satisfied that the rules by which a particular status is attributed to a member in connection with insurance are fair and reasonable.

Section	#	Title	Recommendation
Remuneration	5.1	Supervision of Remuneration - Principles, Standards and Guidance	In conducting prudential supervision of remuneration systems and revising its prudential standards and guidance about remuneration, APRA should give effect to the principles, standards and guidance set out in the Financial Stability Board's publications concerning sound compensation principles and practices. Recommendations 5.2 and 5.3 explain and amplify aspects of this Recommendation.
	5.2	Supervision of Remuneration - Aims	In conducting prudential supervision of the design and implementation of remuneration systems, and revising its prudential standards and guidance about remuneration, APRA should have, as one of its aims, the sound management by APRA-regulated institutions of not only financial risk but also misconduct, compliance and other non-financial risks.
	5.3	Revised Prudential Standards and Guidance	In revising its prudential standards and guidance about the design and implementation of remuneration systems, APRA should: <ul style="list-style-type: none"> — require APRA-regulated institutions to design their remuneration systems to encourage sound management of non-financial risks, and to reduce the risk of misconduct; — require the board of an APRA-regulated institution (whether through its remuneration committee or otherwise) to make regular assessments of the effectiveness of the remuneration system in encouraging sound management of non-financial risks and reducing the risk of misconduct; — set limits on the use of financial metrics in connection with long-term variable remuneration; and — require APRA-regulated institutions to improve the quality of information being provided to boards and their committees about risk management performance and remuneration decisions.
	5.4	Remuneration of Front Line Staff	All financial service 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.
	5.5	The Sedgwick Review	Banks should implement fully the recommendations of the Sedgwick Review.
Culture and Governance	5.6	Changing Culture and Governance	All financial services entities should, as often as reasonably possible, take proper steps to: <ul style="list-style-type: none"> — assess the entity's culture and its governance; — identify any problems with that culture and governance; — deal with those problems; and — determine whether the changes it has made have been effective.
	5.7	Supervision of Culture and Governance	In conducting its prudential supervision of APRA-regulated institutions and in revising its prudential standards and guidance, APRA should: <ul style="list-style-type: none"> — build a supervisory program focused on building culture that will mitigate the risk of misconduct; — use a risk based approach to its reviews; assess the cultural drivers of misconduct in entities; and — encourage entities to give proper attention to sound management of conduct risk and improving entity governance.
Twin Peaks	6.1	Retain Twin Peaks	The 'twin peaks' model of financial regulation should be retained.

Section	#	Title	Recommendation
ASIC's Enforcement Practices	6.2	ASIC's Approach to Enforcement	<p>ASIC should adopt an approach to enforcement that:</p> <ul style="list-style-type: none"> — takes as its starting point, the question of whether a court should determine the consequences of a contravention; — recognises that infringement notices should principally be used in respect of administrative failings by entities, will rarely be appropriate for provisions that require an evaluative judgment and, beyond purely administrative failings, will rarely be an appropriate enforcement tool where the infringing party is a large corporation; — recognises the relevance and importance of general and specific deterrence in deciding whether to accept an enforceable undertaking, and the utility in obtaining admissions in enforceable undertakings; and — separates, as much as possible, enforcement staff from non-enforcement related contact with regulated entities.
Superannuation: Conduct Regulation	6.3	General Principles for Co-regulation	<p>The roles of APRA and ASIC in relation to superannuation should be adjusted to accord with the general principles that:</p> <ul style="list-style-type: none"> — APRA, as the prudential regulator for superannuation, is responsible for establishing and enforcing Prudential Standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by superannuation entities APRA supervises are met within a stable, efficient and competitive financial system; and — as the conduct and disclosure regulator, ASIC's role in superannuation primarily concerns the relationship between RSE licensees and individual consumers. <p>Effect should be given to these principles by taking the steps described in Recommendations 6.4 and 6.5.</p>
	6.4	ASIC as Conduct Regulator	<p>Without limiting any powers APRA currently has under the SIS Act that are, or will become, civil penalty provisions or otherwise give rise to a cause of action against an RSE licensee or director for conduct that may harm a consumer. There should be co-regulation by APRA and ASIC of these provisions.</p>
	6.5	APRA to Retain Functions	<p>APRA should retain its current functions, including responsibility for the licensing and supervision of RSE licensees and the powers and functions that come with it, including any power to issue directions that APRA presently has or is to be given.</p>
The BEAR: Co-regulation	6.6	Joint Administration of the BEAR	<p>ASIC and APRA should jointly administer the BEAR. ASIC should be charged with overseeing those parts of Divisions 1, 2 and 3 of Part IIAA of the Banking Act that concern consumer protection and market conduct matters. APRA should be charged with overseeing the prudential aspects of Part IIAA.</p>
	6.7	Statutory Amendments	<p>The obligations in sections 37C and 37CA of the Banking Act should be amended to make clear that an ADI and accountable person must deal with APRA and ASIC (as the case may be) in an open, constructive and co-operative way. Practical amendments should be made to provisions such as section 37K and section 37G(1) so as to facilitate joint administration.</p>
	6.8	Extending the BEAR	<p>Over time, provisions modelled on the BEAR should be extended to all APRA-regulated financial services institutions. APRA and ASIC should jointly administer those new provisions.</p>
Co-ordination and Information Sharing	6.9	Statutory Obligation to Co-operate	<p>The law should be amended to oblige each of APRA and ASIC to:</p> <ul style="list-style-type: none"> — co-operate with the other; — share information to the maximum extent practicable; and — notify the other whenever it forms the belief that a breach in respect of which the other has enforcement responsibility may have occurred.
	6.10	Co-operation Memorandum	<p>ASIC and APRA should prepare and maintain a joint memorandum setting out how they intend to comply with their statutory obligation to co-operate.</p> <p>The memorandum should be reviewed biennially and each of ASIC and APRA should report each year on the operation of and steps taken under it in its annual report.</p>

Section	#	Title	Recommendation
Governance	6.11	Formalising Meeting Procedure	The ASIC Act should be amended to include provisions substantially similar to those set out in sections 27-32 of the APRA Act - dealing with the times and places of Commissioner meetings, the quorum required, who is to preside, how voting is to occur and the passing of resolutions without meetings.
	6.12	Application of the BEAR to Regulators	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.
	6.13	Regular Capability Reviews	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.
Oversight	6.14	A New Oversight Authority	<p>A new oversight authority for APRA and ASIC, independent of Government, should be established by legislation to assess the effectiveness of each regulator in discharging its functions and meeting its statutory objects.</p> <p>The authority should be comprised of three part-time members and staffed by a permanent secretariat.</p> <p>It should be required to report to the minister in respect of each regulator at least biennially.</p>
External Dispute Resolution	7.1	Compensation Scheme of Last Resort	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.
ASIC Enforcement Review Taskforce Government Response	7.2	Implementation of Recommendations	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.
Simplification so that the Law's Intent is Met	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.
	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.

Contact us



Ceri Horwill

Partner, Advisory

+64 9 367 5348

cerihorwill@kpmg.co.nz



James Brownell

Director, FRM

+64 9 364 0956

jbrownell@kpmg.co.nz



Adele Wallace

Associate Director, Advisory

+64 9 367 5941

adelewallace1@kpmg.co.nz



Ross Molyneux

Associate Director, Advisory

+64 9 363 3272

rmolyneux@kpmg.co.nz



Kate Stewart

Senior Manager, FRM

+64 9 363 3298

katestewart@kpmg.co.nz

kpmg.com/nz

