

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

Royal Commission			Financial Services Royal Commission Implementation Roadmap, August 2019		APESB	
Rec No.	Recommendation Name	Recommendation	Government's Estimated Timeframe	Government's Notes from Roadmap	APES 230 Reference	APESB Action Required
Banking						
1.1	The NCCP Act	The NCCP Act should not be amended to alter the obligation to assess unsuitability.	No action required	The Government agreed not to amend the NCCP Act obligation to assess unsuitability of credit contracts.	N/A	Nil.
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.	31-12-19	Exposure draft issued 26 August 2019 for consultation	3.6	Nil. Paragraph 3.6 already requires Members to act in the Best Interests of the Client (being the obligations as defined in Division 2 of Part 7.7A of the Corporations Act) and applies to all Financial Planning Services, which includes mortgage broking.
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.	31-12-19	Exposure draft issued 26 August 2019 for consultation	TBD	If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact. Note that the Exposure Draft for Mortgage Broker remuneration proposes to allow certain commissions in certain circumstances. However, if APES 230 was amended to only allow fee for service, it will be above these requirements.
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.	Review in 2022	Council of Financial Regulators and the Australian Competition and Consumer Commission review of changes to mortgage broker remuneration and operation of upfront and trail commissions	N/A	Nil.
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.	Other Measures - Post 2022	Regulating mortgage brokers as financial advisers – This recommendation will be progressed following the review of financial advice reforms (recommendation 2.3), given that review may recommend changes to the regulation of financial advisers	Whole Standard	Mortgage brokers that are Members must comply with APES 230.
1.6	Misconduct by mortgage brokers	ACL holders should: • 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.	30-06-20	Legislation to be consulted on and introduced including reference checking and information sharing for mortgage brokers	Whole Standard	Mortgage brokers that are Members must comply with APES 230.
1.7	Removal of point-of-sale exemption	The exemption of retail dealers from the operation of the NCCP Act should be abolished.	30-06-20	Legislation to be consulted on and introduced for the removal of point-of-sale exemption	Definition of Financial Planning Advice	This recommendation is to remove the exemption which currently means retail dealers at point-of-sale that sell finance (eg car sales persons) are not subject to the NCCP Act. As the definition of Financial Planning Advice includes "advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence", if this exemption was removed, retail dealers who are members of the accounting bodies would be subject to APES 230.
1.8	Amending the Banking Code	The ABA should amend the Banking Code to provide that: • banks will work with customers: – who live in remote areas; or – who are not adept in 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.	31-03-20	The ABA has announced the amended Banking Code, incorporating recommendations 1.8 and 1.13, will be implemented by March 2020. The Government welcomes the Customer Owned Banking Association taking action to review its Code of Practice.	N/A	Nil.
1.9	No extension of the NCCP Act	The NCCP Act should not be amended to extend its operation to lending to small businesses.	No action required	The Government agreed not to extend the NCCP Act to small business lending.	N/A	Nil.

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

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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.	31-12-20	The Government notes the view of the Council of Financial Regulators that maintaining the current definition of small business, with an independent review to be undertaken 18 months after commencement of the new Banking Code on 1 July 2019, would be appropriate to understand and manage any risks to business access to finance.	N/A	Nil.
1.11	Farm debt mediation	A national scheme of farm debt mediation should be enacted.	No specific date given	On 9 February 2019, the Government and the states and territories agreed to continue moving towards a national farm debt mediation scheme, building on earlier work undertaken by senior officials from the Commonwealth (Department of Agriculture), states and territories. The Government is working with states and territories through the Agriculture Ministers' Forum (AGMIN) to progress work on the establishment of a national farm debt mediation scheme.	N/A	Nil.
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: <ul style="list-style-type: none"> the likelihood of external events affecting its realisable value; and the time that may be taken to realise the land at a reasonable price affecting its realisable value. 	30-06-20	On 25 March 2019, APRA released for public consultation proposed revisions of Prudential Standard APS 220 Credit Quality. Consultation closed on 28 June 2019. APRA intends to finalise the standard in the second half of 2019 with a view to it becoming effective from 1 July 2020.	N/A	Nil.
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.	31-03-20	The ABA has announced the amended Banking Code, incorporating recommendations 1.8 and 1.13, will be implemented by March 2020. The Government welcomes the Customer Owned Banking Association taking action to review its Code of Practice.	N/A	Nil.
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. 	As soon as possible	The Government expects that banks will implement recommendation 1.14 as soon as possible.	N/A	Nil.
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 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. 	30-06-20	On 18 March 2019, the Government released a consultation paper: Enforceability of financial services industry codes. The paper sets out a series of questions that will inform the development of legislation to enact the Government's commitment to implement Recommendation 1.15. Consultation closed on 12 April 2019.	N/A	Nil.
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'.	Post 30-06-2020	The Government expects the ABA to work co-operatively with ASIC to have the relevant provisions of the Banking Code approved as 'enforceable code provisions' as soon as practicable after legislation providing ASIC with these powers (recommendation 1.15) has been enacted.	N/A	Nil.

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

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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.	30-06-20	On 28 June 2019, APRA released for consultation a proposed heightened product accountability regime, which requires ADIs to identify and register accountable persons to hold end-to-end product responsibility for each product the ADI offers to its customers. APRA will aim to release a draft schedule with the proposed product responsibility requirements for further consultation in October 2019, and the final legislative instrument in December 2019. APRA expects to implement the new requirements by 1 July 2020.	N/A	Nil.
Financial Advice						
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 of the ongoing fee arrangement. 	30-06-20	Legislation to be consulted on and introduced on annual renewal and payment for financial advice	8.2 & 9.2 5.2(d)	ED 04/19 proposed an amendment to paragraph 8.2 of APES 230 by changing the requirement to obtain informed consent in Writing to charge and collect fees on a percentage of funds under management basis from biennial to annual. If the standard is to be changed to only allow fee for service, it may also need to be amended to require annual renewal for the fee arrangement (under ED 04/19 it is annual but only for commissions and FUM). Second dot point covered by paragraph 5.2(d) which requires disclosure of "the details of the professional fees, including the basis on which the fees are determined and the services covered by the fees". APES 310 <i>Client Monies</i> likely to cover the third dot point in relation to payment of fees.
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.	30-06-20	Legislation to be consulted on and introduced on disclosure of lack of independence of financial advisers	5.2	APES 230 already covers much of this recommendation as paragraph 5.2 requires members to disclose in writing to the client if there are any threats to independence, including: <i>(c) significant factors that affect or may affect the Member's ability to provide the Financial Planning Service to the Client on an objective and independent basis;</i> <i>(e) information about any actual, potential or perceived conflicts of interest that have the potential to affect the Member's ability to act in the Best Interests of the Client;</i> <i>(f) where the Member has adopted safeguards to eliminate or reduce to an Acceptable Level any identified conflicts of interest or other threats to the Member's ability to comply with the fundamental principles of the Code, information about the nature of those safeguards and an explanation of the reasons why the Member considers those safeguards to be effective;</i> <i>(h) information about the nature and extent of any interests, associations or relationships, including family, contractual or agency relationships, whether of a financial nature or otherwise, that have the potential to affect the Member's ability to act in the Best Interests of the Client.</i>

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2.3	Review of measures to improve the quality of advice	<p>In three years' time, there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. The review should preferably be completed by 30 June 2022, but no later than 31 December 2022.</p> <p>Among other things, that review should consider whether it is necessary to retain the 'safe harbour' provision in section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed.</p>	31-12-22	Review of measures to improve the quality of financial advice – Consistent with the Royal Commission recommendations, the review will examine all exemptions from the ban on conflicted remuneration, including for general insurance, consumer credit insurance, timeshare and stockbroking remuneration, and stamping fees	3.6	<p>If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact.</p> <p>Paragraph 3.6 requires "A Member providing a Financial Planning Service shall act in the Best Interests of the Client". Best Interests is defined in APES 230 as "the obligations as defined in Division 2 of Part 7.7A of the Corporations Act 2001, and for the purposes of this Standard apply to the provision of all Financial Planning Services". Should 961B(2) of the Corporations Act 2001 be repealed (which is in Division 2 of Part 7.7A) the definition in APES 230 would remain consistent with the Corporations Act 2001. However, if the standard is to be above the law, should the standard not allow the safe harbour? This is the approach in the FASEA Code standard 2 and is noted in the explanatory memorandum that it is broader than the Corporations Act 2001 definition. However, note subsection 961B(2)(g) of the Corporations Act 2001 is a catch all provision "taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances".</p>
2.4	Grandfathered commissions	Grandfathering provisions for conflicted remuneration should be repealed as soon as is reasonably practicable.	01-01-21	<p>The Government introduced legislation on 1 August 2019 to end grandfathered commissions by 1 January 2021 and require rebating of commissions to retail clients.</p> <p>The Government has also consulted on draft regulations, which outline the requirement for financial product manufacturers to pass through to their retail clients the benefits of any previously grandfathered conflicted remuneration still in contracts after 1 January 2021.</p> <p>Additional commitment: Direct ASIC to undertake grandfathering review On 22 February 2019, the Government directed ASIC to monitor and report on industry actions from 1 July 2019 to 1 January 2021 (the period leading up to the end of grandfathered conflicted remuneration for financial advisers).</p> <p>ASIC will monitor and report on the extent to which product issuers are acting to end the grandfathering of conflicted remuneration in the period 1 July 2019 to 1 January 2021, as directed by Government.</p> <p>Update: <i>Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019</i> passed both houses of parliament on 14 October 2019.</p>	9.4	Paragraph 9.4 of APES 230 highlights the exemption for grandfathered commissions. As legislation has now been passed by parliament, this paragraph will have limited applicability and will be reviewed during the consultation process.
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.	Review in 2021	ASIC will include the factors identified by the Royal Commission in undertaking its post implementation review of the 2017 life insurance reforms. ASIC's review will take place in 2021.	9.2	If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact.
2.6	General insurance and consumer credit insurance commissions	<p>The review referred to in Recommendation 2.3 should also consider whether each remaining exemption to the ban on conflicted remuneration remains justified, including:</p> <ul style="list-style-type: none"> the exemptions for general insurance products and consumer credit insurance products; and the exemptions for non-monetary benefits set out in section 963C of the Corporations Act. 	Review in 2022	Review of each remaining exemption from the ban on conflicted remuneration. This review will occur as part of the review of measures to improve the quality of financial advice (recommendation 2.3)	9.2 & Section 10	<p>If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact.</p> <p>In relation to non-monetary benefits, APES 230 Section 10 is narrower than section 963C of the Corporations Act 2001, only allowing benefits up to \$300.</p>

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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'.	30-06-20	Legislation to be consulted on and introduced on reference checking and information sharing for financial advisers	N/A	Nil.
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.	30-06-20	Legislation to be consulted on and introduced on licensee obligations to report compliance concerns	New 7.5	ED 04/19 for APES 230 includes a new paragraph 7.5 which refers to the requirement of members in relation to responding to non-compliance with laws and regulations. However, 'serious compliance concerns' may be different to the concept of 'substantial harm' in NOCLAR.
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. 	30-06-20	Legislation to be consulted on and introduced on licensee obligations where misconduct by financial advisers	New 7.5	ED 04/19 for APES 230 includes a new paragraph 7.5 which refers to the requirement of members in relation to responding to non-compliance with laws and regulations. Further, the principle of professional competence and due care requires members to perform sufficient reviews of those working for them, which should identify these issues. Supervision and review of staff is also covered by APES 320 <i>Quality Control for Firms</i> .
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. 	31-12-20	Legislation to be consulted on and introduced on a new disciplinary system for financial advisers	N/A	Nil.
Superannuation						
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.	30-06-20	Legislation to be consulted on and introduced on no other role or office for trustees of Registrable Superannuation Entities (RSE)	N/A	Nil.
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.	30-06-20	Legislation to be consulted on and introduced on no other role deducting advice fees from MySuper accounts	8.2 & 9.2	If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact.
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.	30-06-20	Legislation to be consulted on and introduced on limitations on deducting advice fees from choice superannuation accounts	8.2 & 9.2	If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact. Refer Recommendation 2.1 regarding other requirements.
3.4	No hawking	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.	30-06-20	Legislation to be consulted on and introduced on no hawking of superannuation products	3.18	Under paragraph 3.18 of APES 230 "A Member in Public Practice who provides Financial Planning Services shall comply with Section 115 Professional Behaviour of the Code ." Paragraph R115.2 relating to marketing or promotional activities requires members to not bring the profession in to disrepute, however, there is no specific prohibition on hawking. A guidance or requirement paragraph could be included after 3.18 in this regard. To be considered as part of the consultation process.
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.	Other Measures	One default superannuation account – Implementation of this recommendation will be considered in the context of the findings and recommendations of the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness	N/A	Nil.

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

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3.6	No treating of employers	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.	Implemented	These changes were implemented as part of the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019, which received Royal Assent on 5 April 2019.	N/A	Nil.
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.	Implemented	These changes were implemented as part of the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019, which received Royal Assent on 5 April 2019.	N/A	Nil.
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.	30-06-20	Legislation to be consulted on and introduced on adjustment of APRA's and ASIC's roles in superannuation	N/A	Nil.
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.	31-12-20	Legislation to be consulted on and introduced on extending the Banking Executive Accountability Regime (BEAR) to RSE licensees	N/A	Nil.
Insurance						
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.	30-06-20	Legislation to be consulted on and introduced on no hawking of insurance products	3.18	Under paragraph 3.18 of APES 230 "A Member in Public Practice who provides Financial Planning Services shall comply with Section 115 Professional Behaviour of the Code ." Paragraph R115.2 relating to marketing or promotional activities requires members to not bring the profession in to disrepute, however, there is no specific prohibition on hawking. A guidance or requirement paragraph could be included after 3.18 in this regard. To be considered as part of the consultation process.
4.2	Removing the exemptions for funeral expenses policies	The law should be amended to: <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. 	31/12/2019 or 30/6/2020 for additional commitment	Legislation to be consulted on and introduced on removing the exemptions for funeral expenses policies Additional commitment: Restricting use of the term 'insurer' and 'insurance' Update: On 1 October 2019, the Government released the following: "draft regulations to remove the exemption for funeral expenses policies from the definition of financial products for the purposes of the Corporations Act 2001; and draft legislation to ensure that it is clear that the consumer protection provisions of the Australian Securities and Investments Commission Act 2001 apply to funeral expenses policies."	Definition	The definition of Financial Planning Advice in APES 230 includes "advice and dealing in financial products as defined in section 766C of the Corporations Act 2001 ", so if the Corporations Act is changed to include funeral expenses policies, the definition of Financial Planning Advice in APES 230 will automatically incorporate this financial product under limb (b).
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.	30-06-20	Legislation to be consulted on and introduced on deferred sales model for add-on insurance. Update: Exposure Draft issued by Government on 9 September 2019 with comments due 30 September 2019.	N/A	Nil.
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.	30-06-20	Legislation to be consulted on and introduced on cap on commissions paid to vehicle dealers for sale of add-on insurance products	9.2	Refer recommendation 1.7. If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact.
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).	30-06-20	Legislation to be consulted on and introduced on duty to take reasonable care not to make a misrepresentation to an insurer	3.7	Under paragraph 3.7 "A Member providing a Financial Planning Service shall maintain professional competence, take due care and act in a timely manner in the performance of the Member's work in accordance with Subsection 113 Professional Competence and Due Care of the Code ."
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.	30-06-20	Legislation to be consulted on and introduced on limiting circumstances where insurers can avoid life insurance contracts	N/A	Nil.

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4.7	Application of unfair contract terms provisions to insurance contracts	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. The duty of utmost good faith contained in section 13 of the Insurance Contracts Act should operate independently of the unfair contract terms provisions.	31-12-19	On 30 July 2019, the Government released exposure draft legislation to extend the unfair contract terms regime to insurance contracts. Consultation closes on 28 August 2019.	N/A	Nil.
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'.	31-12-19	On 1 March 2019, the Government released a consultation paper: Insurance Claims Handling. This paper looks at the removal of the exemption for insurance claims handling from the definition of 'financial service' under the Corporations Act 2001. Consultation closed on 29 March 2019.	Definition	The definition of Financial Planning Advice in APES 230 includes "advice and dealing in financial products as defined in section 766C of the Corporations Act 2001", so if the Corporations Act is changed to include insurance claims handling, the definition of Financial Planning Advice in APES 230 will automatically incorporate this financial product under limb (b).
4.9	Enforceable code provisions	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'.	30-06-21	The Government expects the FSC and ICA to work co-operatively with ASIC to have the relevant provisions of their codes approved as 'enforceable code provisions' as soon as practicable after legislation providing ASIC with these powers (recommendation 1.15) has been enacted.	N/A	Nil.
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.	As soon as possible	The Government expects the FSC and ICA to strengthen sanctions powers in their codes as soon as possible.	N/A	Nil.
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.	Implemented	On 4 April 2019, regulations were made requiring all compulsory AFCA members to take reasonable steps to cooperate with AFCA in the resolution of disputes.	N/A	Nil.
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.	31-12-20	Legislation to be consulted on and introduced on extending the BEAR to APRA-regulated insurers	N/A	Nil.
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.	No specific date given	From 28 March to 26 April 2019, the Government consulted on a consultation paper: Universal terms for insurance within MySuper. The Government is considering its response to the outcomes of those consultations.	N/A	Nil.
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.	Consultations throughout 2020	APRA has completed and published a post-implementation review of the superannuation prudential framework, and will address these recommendations as part of the implementation of the findings of that review. Consultation on revised standards will take place throughout 2020.	N/A	Nil.
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.	Consultations throughout 2020	APRA has completed and published a post-implementation review of the superannuation prudential framework, and will address these recommendations as part of the implementation of the findings of that review. Consultation on revised standards will take place throughout 2020.	N/A	Nil.
Culture, governance and remuneration						

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

Royal Commission			Financial Services Royal Commission Implementation Roadmap, August 2019		APESB	
Rec No.	Recommendation Name	Recommendation	Government's Estimated Timeframe	Government's Notes from Roadmap	APES 230 Reference	APESB Action Required
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.	31-10-19	On 23 July 2019, APRA released a discussion paper and draft prudential standard to strengthen remuneration practices across all APRA-regulated entities. Consultation on the proposed reforms will take place until late October 2019.	N/A	Nil.
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.	31-10-19	On 23 July 2019, APRA released a discussion paper and draft prudential standard to strengthen remuneration practices across all APRA-regulated entities. Consultation on the proposed reforms will take place until late October 2019.	N/A	Nil.
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; • require APRA-regulated institutions to provide for the entity, in appropriate circumstances, to claw back remuneration that has vested; and • encourage APRA-regulated institutions to improve the quality of information being provided to boards and their committees about risk management performance and remuneration decisions. 	31-10-19	On 23 July 2019, APRA released a discussion paper and draft prudential standard to strengthen remuneration practices across all APRA-regulated entities. Consultation on the proposed reforms will take place until late October 2019.	N/A	Nil.
5.4	Remuneration of front line staff	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.	Ongoing	The Government expects all financial services entities to monitor remuneration arrangements on an ongoing basis, as recommended.	N/A	APES 230 does not cover how financial planning service firm's remunerate their staff.
5.5	The Sedgwick Review	Banks should implement fully the recommendations of the Sedgwick Review.	As soon as possible	The Government expects that banks will implement the recommendations of the Sedgwick Review relating to staff remuneration as soon as possible.	N/A	Nil.
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. 	Ongoing	The Government expects all financial services entities to monitor culture and governance on an ongoing basis, as recommended.	APES 320	APES 320 <i>Quality Control for Firms</i> , includes requirements in paragraphs 14 to 18, in respect of leadership responsibilities for quality within a firm.
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. 	31-12-19	Issues of culture and governance are priority areas for APRA. APRA is reviewing its program of work to enhance its regulatory and supervisory approach in these areas, following the Government's announcement of additional funding as part of the 2019-20 Budget. APRA intends to publish a statement of its approach by the end of 2019.	N/A	Nil.
Regulators						
6.1	Retain twin peaks	The 'twin peaks' model of financial regulation should be retained.	No action required	The Government committed to retain the twin peaks model of financial regulation.	N/A	Nil.

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

Royal Commission			Financial Services Royal Commission Implementation Roadmap, August 2019		APESB	
Rec No.	Recommendation Name	Recommendation	Government's Estimated Timeframe	Government's Notes from Roadmap	APES 230 Reference	APESB Action Required
6.2	ASIC's approach to enforcement	ASIC should adopt an approach to enforcement that: <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 nonenforcement related contact with regulated entities. 	Commenced	ASIC has established an Office of Enforcement within ASIC. The purpose is to strengthen ASIC's enforcement culture and effectiveness, and to implement a single enforcement strategy for ASIC. The Office will lead the application of ASIC's 'why not litigate' enforcement approach.	N/A	Nil.
6.3	General principles for co-regulation	The roles of APRA and ASIC in relation to superannuation should be adjusted to accord with the general principles that: <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. Effect should be given to these principles by taking the steps described in Recommendations 6.4 and 6.5.	30-06-20	Legislation to be consulted on and introduced on general principles for ASIC and APRA to co-regulate superannuation	N/A	Nil.
6.4	ASIC as conduct regulator	Without limiting any powers APRA currently has under the SIS Act, ASIC should be given the power to enforce all provisions in the SIS Act that are, or will become, civil penalty provisions or otherwise give rise to a cause of action against an RSE licensee or director for conduct that may harm a consumer. There should be co-regulation by APRA and ASIC of these provisions.	30-06-20	Legislation to be consulted on and introduced on ASIC as conduct regulator for superannuation	N/A	Nil.
6.5	APRA to retain functions	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.	30-06-20	Legislation to be consulted on and introduced on APRA to retain current functions for superannuation	N/A	Nil.
6.6	Joint administration of the BEAR	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.	31-12-20	Legislation to be consulted on and introduced on joint administration of the BEAR	N/A	Nil.
6.7	Statutory amendments	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.	31-12-20	Legislation to be consulted on and introduced on statutory amendments to facilitate co-regulation	N/A	Nil.
6.8	Extending the BEAR	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.	31-12-20	Legislation to be consulted on and introduced on extending the BEAR to all APRA-regulated financial services	N/A	Nil.
6.9	Statutory obligation to co-operate	The law should be amended to oblige each of APRA and ASIC to: <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. 	30-06-20	Legislation to be consulted on and introduced on statutory obligation for APRA and ASIC to co-operate and share information	N/A	Nil.

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

Royal Commission			Financial Services Royal Commission Implementation Roadmap, August 2019		APESB	
Rec No.	Recommendation Name	Recommendation	Government's Estimated Timeframe	Government's Notes from Roadmap	APES 230 Reference	APESB Action Required
6.10	Co-operation memorandum	ASIC and APRA should prepare and maintain a joint memorandum setting out how they intend to comply with their statutory obligation to co-operate. 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.	31-12-19	APRA and ASIC are reviewing the cooperation and coordination arrangements between the two agencies, including revising the existing Memorandum of Understanding. This review is expected to be completed before the end of 2019.	N/A	Nil.
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.	30-06-20	Legislation to be consulted on and introduced on Improving ASIC's Board meeting procedures	N/A	Nil.
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.	31-12-19	ASIC will implement this recommendation in anticipation of the Government's establishment of a financial regulator oversight authority. ASIC will develop and publish accountability statements before the end of 2019.	N/A	Nil.
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.	Ongoing	The Government committed to regular capability reviews, commencing with an APRA Capability Review led by Graeme Samuel AC (Chair), Diane Smith-Gander and Grant Spencer in March 2019. On 17 July 2019, the Government released its response to the Capability Review, agreeing to take action on all five of the recommendations directed to it. APRA also released its response, indicating support for all 19 of the recommendations directed to it.	N/A	Nil.
6.14	A new oversight authority	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.	30-06-20	Legislation to be consulted on and introduced on a new oversight authority for APRA and ASIC	N/A	Nil.
Other						
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.	31/12/2020; Review in 2022	Additional commitment in response to Recommendation 7.1 – Increasing AFCA's role in remediation programs – legislation to be introduced by mid-2021 Additional commitment: Payment of unpaid external dispute resolution (EDR) determinations On 4 April 2019, regulations were made to enable the payment of unpaid determinations made under the Financial Ombudsman Service (FOS) Terms of Reference and the Credit & Investments Ombudsman (CIO) Rules. The Department of Industry, Innovation and Science is administering the payments of unpaid EDR determinations through the Business Grants Hub. Additional commitment: Expanding AFCA's remit to consider past disputes On 20 February 2019, the Government extended AFCA's remit to consider financial complaints dating back to 1 January 2008, providing expanded access to redress for consumers and small businesses harmed by financial misconduct. AFCA commenced receiving legacy complaints from 1 July 2019.	N/A	Nil.

Agenda Item 12 (c) - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Impact on APES 230 Financial Planning Services

Royal Commission			Financial Services Royal Commission Implementation Roadmap, August 2019		APESB	
Rec No.	Recommendation Name	Recommendation	Government's Estimated Timeframe	Government's Notes from Roadmap	APES 230 Reference	APESB Action Required
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.	30-06-20	Legislation to be consulted on and introduced on implementing the ASIC Enforcement Review Taskforce's recommendations to improve the breach reporting regime Additional commitment: Implementing the ASIC Enforcement Review Taskforce's directions power recommendations	New 7.5	ED 04/19 for APES 230 includes a new paragraph 7.5 which refers to the requirement of members in relation to responding to non-compliance with laws and regulations. However, 'serious compliance concerns' may be different to the concept of 'substantial harm' in NOCLAR.
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.	Ongoing	The additional funding also includes resourcing for Treasury to begin the longer term task of considering how to simplify the law, consistent with recommendations 7.3 and 7.4 of the Royal Commission	8.2 & 9.2	If APES 230 was amended to only allow Fee for Service then any future legislative changes prohibiting these commissions will probably have minimal impact.
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.	Ongoing	The additional funding also includes resourcing for Treasury to begin the longer term task of considering how to simplify the law, consistent with recommendations 7.3 and 7.4 of the Royal Commission	Section 3	Section 3 of APES 230 covers the fundamental principles of the Code and members providing financial planning services are also required to follow the Code.