

**INDUSTRY NEWS**

# The Financial Services Reform Roadmap

In August 2019, the Federal Treasurer, Josh Frydenburg released the Federal Government's Implementation Roadmap which sets out a timeline for the enactment of the recommendations of the Banking, Superannuation and Financial Services Royal Commission.

In this edition of the Bulletin we will begin to give you a brief tour of some of the more significant points of interest on the roadmap and their implications for the life insurance industry.

Prior to the Federal election both the government and opposition promised a quick and comprehensive response to enacting the Royal Commission recommendations and the government undertook to act on all of Commissioner Hayne's 76 recommendations.

Treasury, which is entrusted with the implementation of the recommendations, has indicated that delivering on this commitment will amount to the biggest shake-up of corporate law since the 1990's when the current structures under which financial services are licensed were comprehensively reformed.

While the changes that will flow from the recent Royal Commission will not be so fundamental, they will be very wide-ranging and will stretch the capacity of government to formulate policy and for the industry to respond in a thoughtful and positive way.

It will also clearly be a major challenge for industry to have its voice heard through a consultation process that will see over 40 individual pieces of legislation enacted.

So far, the government credits itself with having acted on 15 of the commitments outlined in its response to the Royal Commission's Final Report, but the most meaningful of the changes affecting the life insurance industry are currently still largely in the wings or just around the corner.

The government has promised that by mid-2020 close to 90 per cent of its commitments will have been implemented or have legislation before the Parliament, so there is a period of intense change ahead which, for the reasons just outlined, will challenge the industry to respond and ultimately implement.

## LICOP

One of the headline changes already underway is the move to make the Life Insurance Code of Practice ("LICOP") legally enforceable.

Treasury has already begun an accelerated consultation process in relation to this change having issued a consultation paper and concluded an initial consultation period in April 2019.

Both the LICOP and the related Insurance in Superannuation Voluntary Code of Practice were created with the aim of benefitting consumers and driving better product and process outcomes. However, neither was intended at the time to be a legally binding promise and it is reasonable to anticipate they will need to be heavily adapted with this in mind before this occurs.

Treasury has however made it clear to stakeholders that the government will be seeking to ensure that any legislation to make any industry code enforceable will achieve the objectives in recommendation 1.15 of Commissioner Hayne's final report which were;

- that ASIC's power to approve codes of conduct should extend to all APRA-regulated institutions (and clearly therefore life insurance product issuers and superannuation trustees);
- that industry codes of conduct approved by ASIC may include 'enforceable code provisions', which, if they are not followed, will constitute a breach of the law;

- that ASIC may take into account what provisions are intended to be enforceable in a proposed code when determining whether to approve that code;
- that there will be remedies, modelled Part VI of the *Competition and Consumer Act 2010* (CC Act), for breach of an 'enforceable code provision'; and
- for the imposition of mandatory financial services industry codes, if needed.

Treasury sees the introduction of an enforceable code as an opportunity "to self-regulate and set standards on how to comply with and exceed what is required by the law" and would prefer industry to manage this process for itself, as "*Industry codes may develop and evolve over many years, coming to encapsulate industry norms in a way that a code prescribed from outside, even by a closely engaged regulator, would not*".<sup>1</sup>

However, obtaining the approval of ASIC will clearly play a critical role in exactly what parts of any code will ultimately become enforceable.

Clearly another major change that will take place when the LICOP becomes enforceable will be the consequences for breaches and the provision of appropriate remedies. The reference to the remedies in the current CC Act clearly also indicates the model Treasury will be working towards.

The CC Act provides for both civil penalties, the issuing of public warnings about parties in breach and orders for compensation. Breaches may also form a basis for a claim for relief by affected parties.

Though companies already treat their responsibilities under the LICOP seriously, the enforceability of the code will clearly be transformative for the industry.

The Roadmap is available on the [Treasury website](#).

We will look at other important "hotspots" for the life insurance industry in the next edition of the Bulletin.

<sup>1</sup>Enforceability of financial services industry codes - Taking action on recommendation 1.15 of the Banking, Superannuation and Financial Services Royal Commission Consultation Paper - The Australian Government the Treasury 2019.