

Progress against the August 2019 implementation roadmap

The government released a 'roadmap' or timeline for implementing its response to the Hayne Commission recommendations on [19 August 2019](#). You can find a summary [here](#).

The government's roadmap includes a summary of the government's actions to that point in responding to the Commission's recommendations ([at p2](#)).

According to the government's implementation timeline, six Hayne recommendations were due to be introduced into parliament by the end of 2019. The recommendations are:

- Recommendation 1.2 – Mortgage broker best interests duty
- Recommendation 1.3 – Mortgage broker remuneration (consistent with the Government's response)
- Recommendation 2.4 – Ending grandfathered commissions for financial advisers (legislation introduced on 1 August 2019)¹
- Recommendation 4.2 – Removing the exemptions for funeral expenses policies
- Recommendation 4.7 – Application of unfair contract terms provisions to insurance contracts
- Recommendation 4.8 – Removal of claims handling exemption for insurance

In practice, all recommendations except recommendation 4.8 (which was consulted on but has not yet been introduced) were legislated in 2019.

TABLE 1: Recap – Measures scheduled to be introduced and consulted on by the end of 2019

The table below provides an overview of the government's progress¹ toward legislating its response to the Hayne recommendations by reference to the implementation roadmap released in August 2019.

FSRC RECOMMENDATIONS	STATUS	LEGISLATION	COMMENCEMENT
FSRC recommendations	Status	Legislation	Commencement
<ul style="list-style-type: none"> ▪ Recommendation 1.2 – Mortgage broker best interests duty ▪ Recommendation 1.3 – Mortgage broker remuneration (consistent with the Government's response) ▪ Recommendation 4.2 – Removing the exemptions for funeral expenses policies 	Legislated	Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020	<ul style="list-style-type: none"> ▪ In force: Schedule 1 which gives effect to recommendation 4.7: 5 April 2021 ▪ In force: Schedule 2 which gives effect to recommendation 4.2: 18 February 2020 ▪ Deferred 6 months: Schedule 3 which implements the government's response to recommendations 1.2 and 1.3 was to commence 1 July 2020. ASIC has announced² that commencement has been deferred to 1 January 2021.

¹ This table is limited to the government's response to the recommendations and does not include the timeline for implementing recommendations by the financial regulators or by industry. Appendix B and C of the government's roadmap identifies these recommendations and the associated timelines. See: [here](#).

² ASIC media release -8/05/2020

FSRC RECOMMENDATIONS	STATUS	LEGISLATION	COMMENCEMENT
<ul style="list-style-type: none"> Recommendation 4.7 – Application of unfair contract terms provisions to insurance contracts 			<ul style="list-style-type: none"> ASIC to finalise guidance and release as soon as practicable: ASIC has said that it will continue to work towards releasing final guidance on mortgage broker obligations and on the design and distribution obligations which were set to commence on 5 April 2021 (and which have also been deferred for six months) in mid-2020 responding to industry requests for guidance to be finalised as soon as possible.
<ul style="list-style-type: none"> Recommendation 2.4 – Ending grandfathered commissions for financial advisers (legislation introduced on 1 August 2019) 	Legislated	Ending Grandfathered Commissions for Financial Advisers) has been legislated (Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019).	End grandfathering arrangement: 1 January 2021. [Note: ASIC has recently announced that it is deferring work on grandfathered conflicted remuneration until further notice because of COVID-19 and will not ask product issuers for data at this time, though the regulator still expects commissions to be turned off no later than 1 January 2021.]
<ul style="list-style-type: none"> Recommendation 4.8 – Removal of claims handling exemption for insurance 	In Progress Exposure draft legislation released 29 November 2019 Consultation closed 10 January The legislation has not yet been introduced.	Draft Bill: Financial Sector Reform (Hayne Royal 4 Commission Response—Protecting 5 Consumers (2020 Measures)) Bill 2020: claims handling Draft Regulations: Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Claims Handling and Settling Services) Regulations 2020: claims handling	In light of the Treasurer's 8 May announcement ³ , the timeline for introducing this legislation may also be extended by six months.
Additional Commitments: The government's August roadmap said that the government planned to implement a number of 'additional commitments' to strengthen the Australian Securities and Investments Commission (ASIC) (and implement the ASIC	Legislated	Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020	Now in force: 18 February 2020

³ Treasurer Josh Frydenberg media release 8/05/2020.

FSRC RECOMMENDATIONS	STATUS	LEGISLATION	COMMENCEMENT
Enforcement Taskforce review's recommendations) by the end of 2019.			

Revised timeframe: Measures to be legislated by December 2020

On 31 January Treasury released a package of draft legislation for consultation proposing to implement the government's response to 22 Financial Services Royal Commission recommendations as well as two 'additional commitments'. The draft legislation proposes to implement measures identified in the government's Financial Services Royal Commission (FSRC) implementation roadmap as being consulted on/introduced by 30 June 2020 (see: p8-9). The proposed original commencement date for the majority of the measures was 1 July 2020.

The table below provides a summary of the draft legislation and the revised planned commencement dates (based on the Treasurer's 8 May announcement).

[Note: You can find the draft legislation listed in the table below on the Treasury website [here](#). The Treasurer's announcement, announcing the deferral of proposed commencement dates is [here](#).]

TABLE 2: Revised commencement dates: measures to be introduced by December 2020

DRAFT LEGISLATION TITLE	FSRC RECOMMENDATIONS	KEY CHANGES	ORIGINAL PROPOSED COMMENCEMENT DATE	NEW PROPOSED COMMENCEMENT DATE ⁴
<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response — Protecting Consumers (2020 Measures)) Bill 2020: FSRC rec 1.6, 2.7, 2.8, 2.9 and 7.2, (Reference checking and information, sharing, breach reporting and remediation) 	<ul style="list-style-type: none"> 1.6 (misconduct by mortgage brokers) 2.7 (reference checking and information sharing) 2.8 (reporting compliance concerns) 2.9 (misconduct by financial advisers) 7.2 (implementation of the ASIC Enforcement Review recommendations) (partial response) 	<p>Broadly, the draft Bill proposes to:</p> <ul style="list-style-type: none"> a) introduce new reference checking and information sharing obligations for AFSL holders and ACL holders; b) strengthen the breach reporting regime for financial services and credit licensees; c) introduce new requirements for investigating and remediating misconduct; and introduce new penalty provisions for non-compliance. 	1 July 2020	1 January 2021

⁴ Assuming proposed commencement dates are deferred six months.

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<ul style="list-style-type: none"> [Exposure draft Bill] Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Avoidance of life insurance contracts (FSRC Rec 4.6) 	<ul style="list-style-type: none"> 4.6 (avoidance of life insurance contracts) 	The draft Bill proposes to amend the Insurance Contracts Act 1984 (ICA) to limit the circumstances in which an insurer can avoid a contract of life insurance because of a non-fraudulent misrepresentation or non-fraudulent failure to comply with the duty of disclosure by the insured to the insurer.	The day after the legislation receives Royal Assent	Six months after the day the legislation receives Royal Assent
<ul style="list-style-type: none"> [Exposure draft Bill] Financial Sector Reform (Hayne Royal Commission Response — Protecting Consumers (2020 Measures)) Bill 2020: Caps on Commissions 	<ul style="list-style-type: none"> 4.4 (cap on add-on insurance commissions) 	The draft Bill proposes to cap on the amount of add-on insurance commissions that may be paid to vehicle dealers in relation to add-on risk products such as tyre and rim insurance, mechanical breakdown insurance and consumer credit insurance (for the credit facility) supplied in connection with the sale or long-term lease of a motor vehicle.	The day after the legislation receives Royal Assent	Six months after the day the legislation receives Royal Assent
<ul style="list-style-type: none"> [Exposure draft] Financial Regulator Assessment Authority Bill 2020 (Assessment Authority Bill). [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2020 Measures)) Bill 2020: FSRC rec 6.14 (Financial Regulator Assessment Authority) (Stronger Regulations Bill) 	<ul style="list-style-type: none"> 6.14 (new independent oversight authority for APRA and ASIC) 	The draft legislation proposes to establish a new oversight body — the Financial Regulator Assessment Authority — to oversee the effectiveness of APRA and ASIC. The draft legislation specifies the funds and powers of the proposed new Authority.	1 July 2020	1 January 2021

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<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response — Protecting Consumers (2020 Measures)) Bill 2020 FSRC Rec 1.15 (Enforceable Code Provisions) 	<ul style="list-style-type: none"> 1.15 (enforceable industry code provisions) 	The draft Bill proposes to 'build on' the existing codes framework contained in the Corporations Act 2001 (Cth) (Corporations Act) and the National Consumer Credit Protection Act 2009 (Credit Act) to allow ASIC to designate enforceable code provisions in approving financial sector industry codes. The Bill also proposes to introduce a framework for establishing mandatory codes of conduct for the financial services industry through regulations.	1 July 2020	1 January 2021
<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response — Protecting Consumers (2020 Measures)) Bill 2020: FSRC rec 2.1 (ongoing free arrangements) [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response— Protecting Consumers) (Ongoing Fee Arrangements) Regulations 2020: FSRC rec 2.1 	<ul style="list-style-type: none"> 2.1 (ongoing fee arrangements: annual renewal and payment) 	<p>The draft Bill proposes to target the issue of fee for no service conduct by requiring financial services providers that receive fees to: a) seek annual renewal from clients for all ongoing fee arrangements (ie new and existing ongoing fee arrangements will need to be renewed annually); b) require fee recipients to disclose in writing the total fees that will be charged; c) set out the services that will be provided during the following 12 month period; and d) obtain written consent before fees under an ongoing fee arrangement can be deducted from a client's account.</p> <p>The draft regulations outline the record keeping compliance requirements for fee recipients to support the operation of the draft Bill.</p>	1 July 2020	1 January 2021

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<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission response — Protecting Consumers (2020 Measures)) Bill 2020: FSRC Rec 2.2 (disclosure of lack of independence) 	<ul style="list-style-type: none"> 2.2 (disclosure of lack of independence) 	The draft Bill proposes to introduce a new requirement for providing entities (ie a financial services licensee or authorised representative) to disclose in writing to their (retail) client it they are not independent and why that is the case.	1 July 2020.	1 January 2021
<ul style="list-style-type: none"> [Exposure Draft] Financial Sector Reform (Hayne Royal Commission Response — Protecting Consumers (2020 Measures)) Bill 2020: RSE licence condition — no other duty (FSRC rec 3.1) 	<ul style="list-style-type: none"> 3.1 (trustee of a superannuation fund should be prohibited from having any obligations other than those arising from or in the course of its performance of its duties as trustee of a superannuation fund) 	The draft Bill proposes to impose an additional condition on RSE licences held by a body corporate trustee. The condition would prohibit the RSE licensee from having a duty to act in the interests of another person, except in the course of: a) performing the RSE licensee's duties and exercising the RSE licensee's powers as a trustee of a registrable superannuation fund; or b) providing personal advice.	1 July 2020.	1 January 2021
<ul style="list-style-type: none"> [Exposure draft Bill] Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: fees (FSRC Rec 3.2 and 3.3) 	<ul style="list-style-type: none"> 3.2 (no deducting advice fees from MySuper Accounts) 3.3 (limitations on deducting advice fees from choice accounts) 	The draft Bill proposes to remove a superannuation trustee's capacity to charge advice fees from MySuper products and remove the capacity of a superannuation trustee to charge advice fees to a member (other than fees for intra-fund advice) unless certain conditions are satisfied.	1 July 2020.	1 January 2021
<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response — Protecting Consumers (2020 Measures)) Bill 2020: Hawking of Financial Products 	<ul style="list-style-type: none"> 3.4 (banning hawking of superannuation products); 4.1 (banning the hawking of insurance products). 	<p>The draft Bill proposes to 'strengthen the existing hawking prohibition' in the Corporations Act 2001 (Cth) by introducing one general prohibition for the hawking of all financial products.</p> <p>The draft regulations propose to amend the Corporations Regulations 2001 (Cth) to remove exceptions to</p>	1 July 2020.	1 January 2021

DRAFT LEGISLATION TITLE	FSRC RECOMMENDATIONS	KEY CHANGES	ORIGINAL PROPOSED COMMENCEMENT DATE	NEW PROPOSED COMMENCEMENT DATE ⁴
<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Regulations 2020: Hawking of financial products 		the hawking prohibition and to ensure that the Corporations Regulations 2001 continue to operate effectively.		
<ul style="list-style-type: none"> [Exposure draft Bill] Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2020 Measures)) Bill 2020: ASIC regulation of superannuation (FSRC Rec 3.8, 6.3, 6.4, 6.5) [Exposure draft Regulations] Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators) (Regulation of Superannuation) Regulations 2020 	<ul style="list-style-type: none"> 3.8 (adjustment of APRA and ASIC's roles) 6.3 (general principles of co-regulation) 6.4 (ASIC as conduct regulator) 6.5 (APRA to retain functions) 	<p>Broadly, the draft Bill proposes to:</p> <ul style="list-style-type: none"> a) expand ASIC's role in superannuation to include protecting consumers from harm and market misconduct; b) extend the AFSL regime to cover a broader range of activities undertaken by APRA-regulated superannuation trustees (through the creation of a new type of financial service: providing a superannuation trustee service); c) extend the existing indemnification provisions in the SIS Act to prevent trustees and directors from using trust assets to pay a criminal, civil or administrative penalty incurred through contravention of a provision of the Corporations Act or ASIC Act; d) require courts to consider the impact of penalties on beneficiaries. <p>The draft regulations propose to remove certain exemptions from the requirement to hold an AFSL to provide financial services, and to make other minor amendments in support of the broader reforms to the roles and responsibilities of the superannuation</p>	1 July 2020.	1 January 2021

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		industry regulators as set out in the draft Bill.		
<ul style="list-style-type: none"> [Exposure draft Bill] Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Use of terms 'insurance' and 'insurer' 	<ul style="list-style-type: none"> 'Additional commitment' in response to 4.2 (restrict the ability of firms to use terms such as 'insurer' and 'insurance') 	The draft Bill proposes to restrict the ability of firms to use the terms 'insurer' and 'insurance' to only those firms that have a 'legitimate interest' in using terminology and to introduce penalties to non-compliance.	The day after the legislation receives Royal Assent.	Six months after the day the legislation receives Royal Assent
<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Deferred sales model for add-on insurance (Add-on insurance Bill) [Exposure draft] Corporations (Fees) Amendment (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020 (Fees amendment Bill) [Exposure draft regulations]: Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Regulations 2020: Deferred sales model for add-on insurance 	<ul style="list-style-type: none"> 4.3 (deferred sales model for add-on insurance) 	<p>The draft Bill proposes to amend the ASIC Act to implement an industry wide deferred sales model for the sale of add-on insurance products (ie insurance products that are sold alongside, or in relation to, the offer or sale of a principal good or service). It's also proposed to make failure to comply with various aspects of the proposed new requirements an offence.</p> <p>The draft regulations propose to support the implementation of the industry wide deferred sales model for the sale of add on insurance products by: a) prescribing when the consumer is taken to have entered into a commitment to obtain certain principal products or services; b) amending the Corporations (Fees) Regulations 2001 to prescribe a fee that ASIC can charge to a person who applies to ASIC for an exemption from the deferred sales model.</p>	<p>Add-on insurance Bill: The day after the end of the period of 12 months beginning on the day the legislation receives the Royal Assent.</p> <p>Fees amendment Bill: Immediately after the commencement of the Add-on Insurance Bill (subject to the passage of the Bill).</p>	Add-on insurance Bill: The day after the end of the period of 18 months beginning on the day the legislation receives the Royal Assent.

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<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Bill 2020: FSRC Rec 4.5 (Duty of Disclosure to Insurer) [Exposure Draft] Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Regulations 2020: FSRC Rec 4.5 (Duty of Disclosure to Insurer) 	<ul style="list-style-type: none"> 4.5 (duty to take reasonable care not to make a misrepresentation to an insurer) 	The draft Bill proposes to introduce a duty for insureds to take reasonable care not to make a misrepresentation to the insurer on entering into, varying, extending or renewing a consumer insurance. This new duty will replace the existing duty of disclosure.	5 April 2021 [Note: The draft Bill gives 1 July 2020 as the commencement date, while the draft explanatory memorandum gives 5 April 2021. Treasury has been contacted for clarification and has confirmed that the proposed date on which the key changes will commence is 5 April 2021.]	5 October 2021
<ul style="list-style-type: none"> [Exposure draft] Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2020 Measures)) Bill 2020: FSRC Rec 7.2 (ASIC Directions) 	<ul style="list-style-type: none"> 7.2 (implementation of the ASIC Enforcement Review recommendations) (partial response) 	The draft Bill proposes to implement part of the government's response to recommendation 7.2 by providing ASIC with powers to give directions to financial services licensees and credit licensees in order to prevent or address suspected breaches of financial services law or credit legislation.	The day after the legislation receives Royal Assent	Six months after the day the legislation receives Royal Assent

Revised timeline: Legislation planned to be consulted on by the end of 2020 deferred for six months

The following commitments have been deferred until June 2021.

- Recommendation 2.10 – A new disciplinary system for financial advisers.
- Recommendation 7.1 – Compensation scheme of last resort.
- Recommendation 3.9 – Extending the Banking Executive Accountability Regime (BEAR) to RSE licensees.
- Recommendation 4.12 – Extending the BEAR to APRA-regulated insurers.
- Recommendation 6.6 – Joint administration of the BEAR.

- Recommendation 6.7 – Statutory amendments to facilitate co-regulation.
- Recommendation 6.8 – Extending the BEAR to all APRA-regulated financial services institutions.
- Additional commitment – extension of the executive accountability regime to non-prudentially regulated financial entities to be administered by ASIC.

Impact on reviews/other measures

The Treasurer's 8 May announcement makes no reference to the impact of the government's decision on planned reviews (which were scheduled to be conducted in 2022).

In addition, the Treasurer's 8 May announcement makes no reference to the impact of the government's decision on the progression of 'other measures' eg the establishment of a national farm debt mediation scheme (recommendation 1.11).