

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Westpac Group implementation progress update – September 2020

Overview

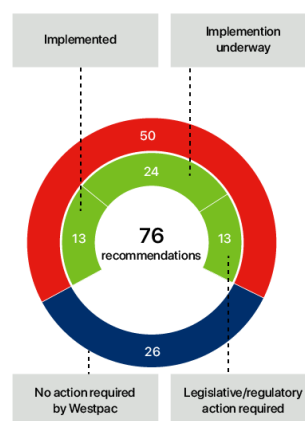
Since our last update to the Committee, the COVID-19 pandemic has continued to affect the implementation of the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. In particular, to allow the industry to focus on its response to COVID-19 and support for customers on 8 May 2020 the Government announced a six-month deferral in the Implementation Roadmap. Commencement dates were similarly extended by an additional six months.

On 8 May 2020, ASIC also announced a six-month deferral in the commencement of the legislated mortgage broker best interests duty and remuneration reforms to 1 January 2021.

The Government has not yet introduced legislation for those measures which are due to be introduced by December 2020. We will review any amendments to the draft legislation once reissued to determine what actions are required from Westpac to comply and in many cases we have commenced implementation work. However, some of these measures are due to commence on 1 January 2021 and, without a complete picture of our legislative obligations, implementation timeframes are expected to be challenging.

Of the Royal Commission's 76 recommendations, 50 recommendations presently apply to Westpac. Westpac has sought to proactively give effect to recommendations ahead of legislative and regulatory timelines. So far:

- 13 have been implemented. This includes proactive implementation ahead of the legislative and regulatory agenda where appropriate.
- 24 are being implemented. In many cases implementation activities have moved ahead of final legislation or regulation being issued. Some recommendations will require legislative or regulatory action before implementation can be completed.
- 13 require legislative or regulatory action before implementation work can commence. We are undertaking preparatory work where possible, including through participation in Government consultation.



Since the last update we have identified one additional recommendation (2.2) that applies to Westpac.

Updates on status against the full set of recommendations that presently apply to Westpac are included in the accompanying table.



ROYAL COMMISSION RECOMMENDATIONS APPLICABLE TO WESTPAC

The table below includes a status update against the 50 recommendations that presently apply to Westpac.

RECOMMENDATION	WESTPAC STATUS
BANKING	
<p>Recommendation 1.2: Mortgage broker best interests duty</p> <p>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.</p>	<p>Legislation has been passed to introduce the Best Interests Duty, with intended application from 1 July 2020. In May 2020, ASIC announced it would defer the commencement date of the Best Interests Duty for six months from its original commencement date. The requirement to comply with the Best Interests Duty will be effective from 1 January 2021.</p> <p>Westpac supports the introduction of the Best Interests Duty.</p>
<p>Recommendation 1.3: Mortgage broker remuneration</p> <p>The borrower, not the lender, should pay the mortgage broker a fee for acting in connection with home lending.</p> <p>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.</p>	<p>Westpac supports the removal of conflicted remuneration arrangements such as campaign based and bonus commissions and has already removed these.</p> <p>Legislation has been passed to remove conflicted remuneration, with application from 1 July 2020. In May 2020, ASIC announced it would defer the commencement date of the mortgage broker remuneration reforms for six months from their original commencement date. The requirement to comply with the prohibition against conflicted remuneration arrangements will be effective from 1 January 2021. The Government has also consulted on draft regulations, which set out circumstances in which the ban on conflicted remuneration applies.</p>
<p>Recommendation 1.5: Mortgage brokers as financial advisers</p> <p>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.</p>	<p>The Government stated in its Implementation Roadmap that 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.</p> <p>Once the outcome of that review is known, Westpac will review and determine what action is required to comply.</p>
<p>Recommendation 1.6: Misconduct by mortgage brokers</p> <p>ACL holders should:</p> <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. 	<p>Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021, with transitional application to continue until 1 October 2021. ASIC has stated that it intends to consult on a draft legislative instrument and information sheet on a reference checking protocol.</p> <p>Once the final legislation and ASIC legislative instrument and information sheet are issued, Westpac will make any changes necessary to comply.</p>
<p>Recommendation 1.7: Removal of point-of-sale exemption</p> <p>The exemption of retail dealers from the operation of the NCCP Act should be abolished.</p>	<p>Draft legislation has not been released yet.</p> <p>Westpac will review the draft legislation once it is released and determine what action is required to comply.</p>

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 1.8: Amending the Banking Code</p> <p>The ABA should amend the Banking Code to provide that:</p> <ul style="list-style-type: none"> • banks will work with customers: <ul style="list-style-type: none"> ○ 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. 	<p>Westpac worked with the ABA to propose changes to the Banking Code of Practice to implement this recommendation.</p> <p>The revised Code took effect on 1 March 2020. Westpac has implemented changes to comply with the recommendation, as reflected in the revised Code.</p>
<p>Recommendation 1.11: Farm debt mediation</p> <p>A national scheme of farm debt mediation should be enacted.</p>	<p>Westpac has long advocated for a nationally harmonised farm debt mediation scheme modelled on the Farm Debt Mediation Act 1994 (NSW), which it believes is the most robust scheme. This will ensure consistency and certainty for customers and the bank.</p> <p>Westpac will review the scheme once established and determine if any action is required by Westpac to comply with the scheme and this recommendation.</p>
<p>Recommendation 1.12: Valuations of land</p> <p>APRA should amend Prudential Standard APS 220 to:</p> <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. 	<p>APRA issued a final draft of revised Prudential Standard APS 220 in December 2019. The revised Standard has a proposed effective date of 1 January 2022.</p> <p>A program of work is underway to implement changes required by APS 220 and in respect of the first limb of this recommendation Westpac has appointed external valuers to carry out all agricultural land valuations.</p>
<p>Recommendation 1.13: Charging default interest</p> <p>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.</p>	<p>Westpac has already addressed this recommendation through implementing a solution to not charge default interest on business loans secured by agricultural land in the event of a drought or other natural disaster.</p>

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 1.14: Distressed agricultural loans</p> <p>When dealing with distressed agricultural loans, banks should:</p> <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. 	<p>Westpac has updated its policies and procedures to address each aspect of this recommendation and is completing the final refinements.</p> <p>Westpac has experienced agricultural bankers in place to manage distressed loans and additional processes, such as the use of ethical checklists to ensure that the appointment of receivers or other enforcement steps are only ever used as a last resort.</p>
<p>Recommendation 1.15: Enforceable code provisions</p> <p>The law should be amended to provide:</p> <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. 	<p>Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021.</p> <p>Westpac is a subscriber to major industry codes and supports industry bodies and ASIC making the provisions of the codes enforceable. Westpac will work with the relevant industry bodies to consider any action it needs to take to implement this recommendation.</p>
<p>Recommendation 1.16: 2019 Banking Code</p> <p>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’.</p>	<p>Westpac supports the ABA and ASIC making the codes enforceable. Westpac will work with the ABA to assist this process.</p> <p>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.</p>

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 1.17: BEAR product responsibility</p> <p>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.</p>	<p>On 28 June 2019, APRA provided a consultation letter to all authorised deposit-taking institutions, including Westpac. Westpac provided a formal submission on 23 August 2019 in response to the consultation paper. The submission was supportive of end-to-end product responsibility and sought clarification on our interpretation.</p> <p>The Government has announced that the work and outcomes of this consultation on end-to-end product responsibility will be subsumed into the Government’s Financial Accountability Regime. APRA intends to release further information on product responsibility when the Government consults on the exposure draft legislation and the implementation timeframe for the new regime.</p>



RECOMMENDATION
WESTPAC STATUS
FINANCIAL ADVICE
Recommendation 2.1: Annual renewal and payment

The law should be amended to provide that ongoing fee arrangements (whenever made):

- must be renewed annually by the client;
- must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and
- may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts that account given at, or immediately after, the latest renewal of the ongoing fee arrangement.

Although Westpac exited the provision of personal financial advice by salaried financial planners and authorised representatives on 30 September 2019, this recommendation applies to Westpac as it provides platform services and products to customers.

Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021. ASIC also released Consultation Paper 329 *Implementing the Royal Commission recommendations: Advice fee consents and independence disclosure* on 10 March 2020.

Westpac has a program of work underway to implement the relevant changes applicable to product providers to accept and process client consents in conjunction with the changes under recommendation 3.3 (see below). Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.

Recommendation 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.

Draft legislation was released for consultation on 31 January 2020. This legislation is anticipated to have an effective date of 1 January 2021.

Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.

Recommendation 2.4: Grandfathered commissions

Grandfathering provisions for conflicted remuneration should be repealed as soon as is reasonably practicable.

Legislation has been passed to end grandfathered remuneration by 1 January 2021 and require 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.

Westpac ceased all grandfathered remuneration to employed financial advisors, aligned product providers and aligned dealer groups from 1 October 2018. While Westpac also exited the provision of personal financial advice by salaried financial planners and authorised representatives on 30 September 2019, this recommendation applies to Westpac as it provides platform services and products to customers.

Westpac is also working with third party licensees to secure an early end to their contracted arrangements. However, if licensees do not commit to early termination, Westpac is contractually bound which prevents removal of those grandfathered remuneration arrangements earlier than required by law.

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 2.7: Reference checking and information sharing</p> <p>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'.</p>	<p>Westpac provides references consistent with the ABA reference checking protocol to any requesting licensee provided we have received adviser consent.</p> <p>On 30 September 2019, the exit of the provision of personal financial advice by Westpac Group salaried financial planners and authorised representatives was completed, however, we have retained a team with the capabilities to continue managing the reference checking process.</p> <p>Draft legislation was released for consultation on 31 January 2020, that provided for ASIC to create a reference checking and information sharing protocol to replace the existing ABA protocol. This legislation is now anticipated to have an effective date of 1 January 2021, applying to information shared on or after 1 October 2021.</p> <p>Westpac will review the ASIC protocol (once drafted) to determine what actions, if any, are required to ensure that it complies with the new protocol.</p>
<p>Recommendation 2.8: Reporting compliance concerns</p> <p>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.</p>	<p>Westpac currently has a well-developed process of reporting 'serious compliance concerns' about financial advisers to ASIC, as soon as possible (as opposed to on a quarterly basis).</p> <p>Westpac exited the provision of personal financial advice by salaried financial planners and authorised representatives on 30 September 2019. Accordingly, this recommendation can only apply to financial adviser conduct arising prior to that date.</p> <p>Draft legislation implementing this recommendation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021, with a transitional period to 1 October 2021. Westpac will review any amendments to the draft legislation once it is finalised and will make any changes necessary to comply.</p>
<p>Recommendation 2.9: Misconduct by financial advisers</p> <p>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):</p> <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. 	<p>Westpac has well-developed processes to determine the nature and full extent of an adviser's misconduct, tell affected clients and remediate those clients promptly.</p> <p>Westpac exited the provision of personal financial advice by salaried financial planners and authorised representatives on 30 September 2019. Accordingly, this recommendation can only apply to financial adviser conduct arising prior to that date.</p> <p>Draft legislation implementing this recommendation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021, with a transitional period to 1 October 2021. Westpac will review any amendments to the draft legislation once it is finalised and will make any changes necessary to comply.</p>

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 2.10: A new disciplinary system</p> <p>The law should be amended to establish a new disciplinary system for financial advisers that:</p> <ul style="list-style-type: none"> a) requires all financial advisers who provide personal financial advice to retail clients to be registered; b) provides for a single, central, disciplinary body; c) requires AFSL holders to report 'serious compliance concerns' to the disciplinary body; and d) allows clients and other stakeholders to report information about the conduct of financial advisers to the disciplinary body. 	<p>On 30 September 2019, the exit of the provision of personal financial advice by Westpac Group salaried financial planners and authorised representatives was completed and accordingly this recommendation, once implemented through amending legislation, is not expected to have any application to Westpac.</p> <p>As and when the new disciplinary system is established Westpac will consider further whether it applies to Westpac (in any way) – including whether any changes to our processes are required in order to comply with sub-recommendation (c).</p>



RECOMMENDATION
WESTPAC STATUS
SUPERANNUATION
Recommendation 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.

Draft legislation was released for consultation on 31 January 2020 and the final form of legislation is not yet known. This legislation is now anticipated to have an effective date of 1 January 2021.

Westpac has a program of work underway to implement these changes. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.

Recommendation 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.

Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021.

Westpac has a program of work underway to implement these changes which apply to a relatively small number of customers. These changes will involve rewriting of processes and implementation of software changes. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.

Recommendation 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.

Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021. ASIC also released Consultation Paper 329 *Implementing the Royal Commission recommendations: Advice fee consents and independence disclosure* on 10 March 2020, and the consultation closed on 7 April 2020.

Westpac has a program of work underway to implement these changes which involves rewriting of processes and implementation of software changes. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.

Recommendation 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.

Westpac no longer sells superannuation products in branches.

Draft legislation was released for consultation on 31 January 2020 and the final form legislation is not yet known. This legislation is now anticipated to have an effective date of 1 January 2021.

Westpac is preparing for implementation and once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 3.5: One default account</p> <p>A person should have only one default account. To that end, machinery should be developed for ‘stapling’ a person to a single default account.</p>	<p>In its Implementation Roadmap, the Government noted that 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, with no timeframe identified.</p> <p>Westpac supports a competitive superannuation selection process, consistent with the Productivity Commission’s recommendation, and one that enables consumers to choose a default account once and take that account with them until they choose a different option.</p> <p>Westpac will review the draft legislation once released and determine what action is required to comply.</p>
<p>Recommendation 3.6: No treating of employers</p> <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>	<p>Legislation has been passed to implement this recommendation by amending section 68A of the Superannuation Industry (Supervision) Act 1993.</p> <p>Westpac has implemented this recommendation and has processes and controls to monitor compliance with the expanded “no treating” obligations under s68A.</p>
<p>Recommendation 3.9: Accountability regime</p> <p>Over time, provisions modelled on the BEAR should be extended to all RSE licensees, as referred to in Recommendation 6.8.</p>	<p>Westpac’s current BEAR mapping processes extend to its RSE subsidiaries.</p> <p>The Government published for consultation a proposal paper to extend the executive accountability regime on 22 January 2020. The consultation closed on 14 February 2020 and Westpac made a submission.</p> <p>The Government has not yet determined an implementation timeframe and intends to consult on timeframes as part of the consultation on the exposure draft legislation.</p> <p>Westpac will review exposure draft legislation once released and make any changes necessary to comply.</p>



RECOMMENDATION

WESTPAC STATUS

INSURANCE

Recommendation 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.

Westpac supports regulation that prevents inappropriate unsolicited insurance sales practices. Westpac does not offer insurance through outbound telephone sales.

Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021.

Westpac is preparing for implementation of this recommendation. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.

Recommendation 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.

Westpac no longer distributes add-on insurance products for motor vehicles or consumer credit. However, the definition of add-on insurance may extend to home and contents insurance and landlord insurance offered at the same time as a home loan.

Draft legislation was released for consultation on 31 January 2020. This legislation is proposed to take effect 12 months from Royal Assent.

Westpac is preparing for implementation of this recommendation. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply. Westpac is working with the Insurance Council of Australia to assist ASIC with the implementation of this recommendation.

Recommendation 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).

Westpac's practices are already broadly consistent with this recommendation. That is, Westpac asks specific questions of a prospective insured when applying for insurance, rather than relying on the broader duty of disclosure, being in summary "to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that the insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms".

Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 5 October 2021.

Westpac is preparing for implementation of this recommendation. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.



RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 4.6: Avoidance of life insurance contacts</p> <p>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.</p>	<p>Westpac's practices are already consistent with this recommendation. That is, unless the innocent non-disclosure or misrepresentation is such that we would not have provided cover on any terms, Westpac will not avoid a contract for innocent non-disclosure or misrepresentation of a health issue. In these circumstances, Westpac would provide the cover that we would have offered should that non-disclosure have not occurred.</p> <p>Draft legislation was released for consultation on 31 January 2020. This legislation is proposed to take effect the day after Royal Assent.</p> <p>Westpac is preparing for implementation of this recommendation. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.</p>
<p>Recommendation 4.7: Application of unfair contract terms provisions to insurance contracts</p> <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>	<p>Legislation has been passed to extend the unfair contract terms regime to insurance contracts, with application from 5 April 2021.</p> <p>Westpac is reviewing and updating product disclosure documentation and related collateral against the requirements of the legislation to make any changes required to comply with the new regime.</p>
<p>Recommendation 4.8: Removal of claims handling exemption</p> <p>The handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'.</p>	<p>Draft legislation was released for consultation on 29 November 2019. This legislation is now anticipated to have an effective date of 1 January 2021, with full application from 1 January 2022.</p> <p>Westpac is preparing for implementation of this recommendation. Once the final legislation is issued, Westpac will finalise its implementation plans and implement any changes necessary to comply.</p>
<p>Recommendation 4.9: Enforceable code provisions</p> <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>	<p>Westpac is a subscriber to major industry codes and supports industry bodies identifying and ASIC making the relevant provisions of the codes enforceable.</p> <p>Draft legislation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021, after which enforceable provisions will need to be identified and finalised.</p> <p>Westpac is working with the FSC and ICA to review and update existing Code wording which is anticipated to be finalised by 30 June 2021, with a transitional period of up to 12 months.</p>

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 4.10: Extension of the sanctions power</p> <p>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.</p>	<p>Westpac is working with the Financial Services Council and Insurance Council of Australia to implement this recommendation.</p>
<p>Recommendation 4.11: Co-operation with AFCA</p> <p>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.</p>	<p>Westpac has principles and processes in place to engage with AFCA co-operatively, including being open and co-operative in providing relevant documents related to issues in dispute.</p>
<p>Recommendation 4.12: Accountability regime</p> <p>Over time, provisions modelled on the BEAR should be extended to all APRA-regulated insurers, as referred to in Recommendation 6.8.</p>	<p>Westpac's current BEAR mapping processes extend to its insurance business subsidiaries.</p> <p>The Government published for consultation a proposal paper to extend the executive accountability regime on 22 January 2020. The consultation closed on 14 February 2020 and Westpac made a submission.</p> <p>The Government has not yet determined an implementation timeframe and intends to consult on timeframes as part of the consultation on the exposure draft legislation.</p> <p>Westpac will review exposure draft legislation once released and determine any further actions required to comply.</p>
<p>Recommendation 4.13: Universal terms review</p> <p>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.</p>	<p>Westpac is awaiting further updates from Treasury subsequent to its 2019 consultation. Westpac will review any proposed changes arising out of the Treasury review and determine actions required to comply with these changes.</p>



<p>Recommendation 4.14: Additional scrutiny for related party engagements</p> <p>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.</p>	<p>Due to the COVID-19 pandemic, APRA suspended all substantive public consultations and actions to finalise revisions to the prudential framework that are currently underway or upcoming, including consultations on prudential and reporting standards. APRA has now indicated that it intends to finalise its updates to SPS 250 in the first half of 2021.</p> <p>Since the last update, Westpac Life Insurance Services (WLIS) is no longer providing group life insurance to BT Super. This was the Group's only life insurance arrangement involving a related party.</p> <p>Westpac will review the finalised SPS 250 once released and will take any further actions required to comply with the Standard.</p>
<p>Recommendation 4.15: Status attribution to be fair and reasonable</p> <p>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.</p>	<p>As stated above for RC 4.14, APRA intends to finalise its updates to SPS 250 in the first half of 2021.</p> <p>Westpac will review the finalised Prudential Standard once released and take any actions required to ensure its existing practices comply with the Prudential Standard and this recommendation.</p>

RECOMMENDATION
WESTPAC STATUS
CULTURE, GOVERNANCE AND REMUNERATION
Recommendation 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.

On 23 July 2019, APRA released a discussion paper and draft Prudential Standard CPS 511 to strengthen remuneration practices across all APRA-regulated entities. Consultation on the proposed reforms took place in October 2019 and APRA has been considering the extensive feedback received. Westpac provided its response on 18 October 2019.

Due to the COVID-19 pandemic, APRA suspended all substantive public consultations and actions to finalise revisions to the prudential framework that are currently underway or upcoming, including consultations on prudential and reporting standards. APRA has announced that it will recommence consultation on a revised standard in the later part of 2020 with a view to finalising requirements in mid-2021.

Westpac will review the amendments once finalised and will make any changes necessary to comply with the Prudential Standard and this recommendation.

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.

Refer to 5.1.

Recommendation 5.3: Revised prudential standards and guidance

In revising its prudential standards and guidance about the design and implementation of remuneration systems, APRA should:

- 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.

Refer to 5.1.

RECOMMENDATION	WESTPAC STATUS
<p>Recommendation 5.4: Remuneration of frontline staff</p> <p>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.</p>	<p>Westpac conducts an annual review of the design and implementation of remuneration arrangements for our front-line roles in our Consumer and Business divisions. We have established governance committees to support the review and approval of front-line performance and reward frameworks and have a structured framework to annually test and understand the effectiveness of our remuneration arrangements.</p> <p>Key changes over the last few years have focused on continuing to support our service culture and strategy and ensure alignment to the Sedgwick recommendations.</p> <p>Examples include:</p> <ul style="list-style-type: none"> from 1 October 2020, most Consumer frontline roles will be on a fixed pay only approach; this means we are replacing variable reward with a permanent fixed pay increase. This will empower our people to be more flexible, and to focus solely on doing exactly what our customers need, without being concerned about what is means for their pay; limiting financial measures in balanced scorecards for lender roles to no more than 30%; introducing a maximum variable reward cap for lending roles of 50% of fixed pay effective from 1 October 2019. Only a very small number of lender roles have earned above this level historically and the majority receive well below 50% of fixed pay in variable reward; and introducing consistent application for risk and conduct consequences across all roles, including front line roles within the group.
<p>Recommendation 5.5: The Sedgwick Review</p> <p>Banks should implement fully the recommendations of the Sedgwick Review.</p>	<p>Westpac has been compliant with the Sedgwick recommendations relating to its employees since 1 October 2018. Westpac has implemented all Sedgwick Recommendations relating to third-party arrangements effective from 1 January 2019 (excluding Recommendation 18 relating to mortgage broker remuneration given the Government's policy reform in this area).</p>
<p>Recommendation 5.6: Changing culture and governance</p> <p>All financial services entities should, as often as reasonably possible, take proper steps to:</p> <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. 	<p>Westpac has frameworks in place which encompass regular assessments of risk culture, organisational culture and governance.</p> <p>In addition to the regular assessments, other more detailed reviews of are undertaken to determine the effectiveness of our existing programs. In 2018, Westpac carried out a self-assessment of culture, governance and accountability (CGA) frameworks and practices. In 2019, a reassessment was conducted to determine whether the CGA Program remains appropriate and fit for purpose. The CGA Reassessment Report was submitted to APRA on 26 June 2020 (ahead of the 30 June 2020 deadline). The report was then publicly released on 17 July 2020. Since then, Westpac has launched a comprehensive Group-wide transformation program, CORE – Customer Outcomes and Risk Excellence – to manage our response and strengthen the management of non-financial risk.</p>

RECOMMENDATION

WESTPAC STATUS

REGULATORS

Recommendation 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.

Westpac's approach to dealing with regulators and its documented strategy in how we deal with regulators is to act in open, co-operative and constructive way.

The Government published for consultation a proposal paper to extend the executive accountability regime on 22 January 2020. The consultation closed on 14 February 2020.

The Government has not yet determined an implementation timeframe for the FAR and intends to consult on timeframes as part of the consultation on the exposure draft legislation.

Westpac will review any exposure draft legislation once released and determine any further actions required to comply.

Recommendation 6.8: Extending the BEAR

Over time, provisions modelled on the BEAR should be extended to APRA-regulated financial services institutions. APRA and ASIC should jointly administer those new provisions

Westpac's current BEAR mapping processes extend to all its APRA-regulated financial services subsidiaries.

The Government published for consultation a proposal paper to extend the executive accountability regime on 22 January 2020. The consultation closed on 14 February 2020 and Westpac made a submission.

The Government has not yet determined an implementation timeframe and intends to consult on timeframes as part of the consultation on the exposure draft legislation.

Westpac will review exposure draft legislation once released and determine any further actions required to comply.

OTHER IMPORTANT STEPS

Recommendation 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.

The Government has confirmed that it proposes an industry-funded, forward-looking compensation scheme of last resort, and for the payment of historical unpaid claims in accordance with the resources allocated in the 2019-20 Budget.

In December 2019, the Government released for public consultation a discussion paper to further explore and seek views on four aspects of the CSLR. The Consultation closed on 7 February 2020.

Recommendation 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.

Draft legislation implementing this recommendation was released for consultation on 31 January 2020. This legislation is now anticipated to have an effective date of 1 January 2021, with a transitional period to 1 October 2021.

Westpac had commenced assessing the impact of draft legislation upon its release on 31 January 2020. Westpac will review any amendments to the draft legislation once it is finalised and will make any changes necessary to comply.

