



THE HON JOSH FRYDENBERG MP
TREASURER
DEPUTY LEADER OF THE LIBERAL PARTY

Mr James Shipton
Chair
Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

Dear Mr *James* Shipton

I am writing in respect of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the Government's response, in which the Government has committed to take action on all 76 recommendations, and in some important areas to go further.

As you know, there are a number of Royal Commission recommendations directed to ASIC. While respecting ASIC's role as an independent regulator, I would like to underline the importance the Government places on ASIC taking prompt action in relation to:

- changing its approach to enforcement to more effectively deter and publicly denounce misconduct, by shifting to a 'why not litigate' stance and re-considering the appropriateness of the use of other regulatory tools (such as enforceable undertakings and infringement notices) (recommendation 6.2);
- engaging with APRA to review and update the existing Memorandum of Understanding to support effective cooperation and coordination between the regulators (recommendation 6.10);
- ensuring that, in your consideration and approval of a revised Banking Code of Conduct, that the changes made by the Australian Banking Association (ABA) are consistent with those recommendations directed to it (recommendations 1.8, 1.10 and 1.13); and
- actively engaging with relevant industry bodies to ensure that ASIC is satisfied that the provisions identified by industry for 'enforceable code provisions' are appropriate (recommendations 1.16 and 4.9).

The Government has also committed to end grandfathering of conflicted remuneration from 1 January 2021. Related to that commitment, I will shortly be writing to request that you undertake an inquiry to monitor and report for the period 1 July 2019 to 31 December 2020 on the extent to which product issuers are acting to end grandfathering and, where they have done so, are passing the benefits on to clients.

I know from our recent discussions that you and the other ASIC commissioners accept and understand the need for action in response to the Royal Commission's findings and recommendations. I am aware that change is already underway, including through the establishment of the Office of Enforcement within ASIC, the move to a 'why not litigate' approach to enforcement and the introduction of initiatives such as close and continuous monitoring, to more intensively supervise the sector.

Additionally, to support ASIC in its work, and to further strengthen ASIC's powers and capabilities, the Government has committed to:

- expand ASIC's role to become the primary conduct regulator in superannuation (while maintaining APRA's existing function in relation to the licensing and supervision of RSE licensees);
- establish a new ASIC-administered accountability regime, modelled on the Banking Executive Accountability Regime (BEAR), that will apply to firms regulated by ASIC and be focussed on conduct;
- remove barriers to the sharing and use of information between ASIC and APRA, including through a statutory obligation to co-operate, to facilitate closer collaboration and co-operation;
- provide ASIC with new powers to approve and enforce industry codes;
- implement the outstanding recommendations of the ASIC Enforcement Review relating to the breach reporting regime and a directions power;
- extend the scope of the proposed design and distribution obligations and ASIC's product intervention powers to credit products under the Credit Act and ASIC Act financial products;
- provide ASIC with the ability to cap commissions that may be paid to vehicle dealers in relation to the sale of add-on insurance products; and
- revise the ASIC Act to formalise ASIC's meeting procedures.

These measures are in addition to action the Government has already taken to support ASIC, such as providing additional funding of \$70.1 million and introducing legislation to Parliament to substantially strengthen penalty provisions. The Government will continue to pursue passage of this legislation as a priority.

The Government remains committed to ensuring that ASIC has the resources it needs, and will give further consideration to ASIC's resourcing needs as part of the 2019-20 Budget.

It is my expectation that with enhanced powers and resourcing, ASIC will further increase and intensify its monitoring and surveillance activities, and give active consideration to all available options in its regulatory toolkit when confronted with financial sector misconduct. It is imperative that ASIC counter perceptions that compliance with the law is voluntary. The community expects that your actions will send a clear message to firms that they must obey and comply with all the laws, not just those they find to be commercially acceptable.

In addition, the Government will, as recommended by the Royal Commission, establish an independently-chaired statutory oversight body to report on the performance of the financial system regulators against their mandates and the Government's Statements of Expectations. I encourage ASIC to work co-operatively with this body.

To ensure that the Government's expectations of ASIC are clear and reflect the outcomes of the Royal Commission, the Government will also update the 2018 Statement of Expectations. Consistent with the Government's response to recommendation 6.12, I expect that APRA and ASIC will be subject to accountability principles consistent with the BEAR.

The Government is committed to seeing lasting change within the financial sector. We will therefore establish a follow-up independent inquiry, commencing in three years, to assess changes in industry practice and consumer outcomes since the Royal Commission. I trust this will assist ASIC in pursuing change in the sector and within its organisation, and help restore public trust and confidence of the system more broadly.

I would like to take this opportunity to thank you for the assistance that you, the Commissioners, and many staff have provided during the course of the Royal Commission over the past year. I look forward to continued collaboration on the Government's ongoing reforms to strengthen the performance of the financial system and deliver better outcomes for consumers and a stronger economy for all Australians.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'J. Frydenberg', written in a cursive style.

THE HON JOSH FRYDENBERG MP

11 / 2 /2019