

SUMMARY OF IMPLEMENTATION OF HIH ROYAL COMMISSION RECOMMENDATIONS

HIH Royal Commission recommendations	Response to date
<p>1 (proposes review of the <i>Corporations Act 2001</i> (Corporations Act), the relevant accounting standards and the Australian Stock Exchange (ASX) Listing Rules relating to directors' remuneration).</p>	<p>The Government referred this recommendation to the ASX for its consideration.</p> <p>The Government's CLERP 9 Bill will amend the Corporations Act relating to the disclosure of director and executive remuneration and the payment of termination benefits to directors.</p>
<p>2 (proposes the Corporations Act be changed to impose duties based on functions rather than status (for example, director or officer)).</p>	<p>The Government's CLERP 9 Bill will correct anomalies in the current legislation relating to the definition of 'officer'.</p> <p>The Government has referred outstanding matters to the Corporations and Markets Advisory Committee to undertake a wider review clarifying the classes of personnel to which both the general duties (in Chapter 2D) and other specific duties in the Corporations Act apply.</p>
<p>3 (proposes that the Government broaden the membership of the Australian Accounting Standards Board (AASB) to include non-accountants).</p>	<p>Current legislation already permits the appointment of non-accountants to the AASB. In addition, the Government consulted the Financial Reporting Council (FRC) regarding this recommendation. The FRC, which appoints members to the AASB, recommends that the selection criterion that candidates have relevant accounting knowledge and experience be retained.</p>
<p>4 (proposes that Australia participate in the development of international accounting standards).</p>	<p>This recommendation is being implemented through Australia's adoption of international accounting standards. The FRC's decision that Australia work towards adopting international standards for financial periods beginning on or after 1 January 2005 has been endorsed by the Government.</p>
<p>5 (proposes Australia reserve the right to require more stringent accounting standards that are not inconsistent with relevant international standards).</p>	<p>This recommendation reflects the current situation.</p>
<p>6 (proposes that the AASB alter its Urgent Issues Group (UIG) or create a separate group to promptly issue binding rules on the interpretation/application of accounting standards; and that this group include lawyers and users of financial statements).</p>	<p>The Government referred this recommendation to the FRC and AASB for consideration. Importantly, the AASB noted that the UIG membership is not restricted to accountants and presently includes user representation.</p> <p>The AASB noted that the benefits of adopting International Accounting Standards Board (IASB) Standards will be eroded if rival interpretations are developed and issued by national interpretive bodies. The only body that can issue authoritative interpretations of IASB Standards is the International Financial Reporting Interpretations Committee.</p> <p>Under the Government's CLERP 9 Bill, a Financial Reporting Panel (FRP) will be established to resolve disputes between companies and the Australian Securities and Investments Commission (ASIC) on the application of accounting standards on a case-by-case basis. It is not proposed that the FRP's remit cover the issuing of binding interpretations.</p>

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<p>7 (proposes that the accounting bodies encourage their members to consult independent third parties or the UIG when there is disagreement with company management about the interpretation or application of accounting standards).</p>	<p>The Government referred this recommendation to the FRC and the AASB for consideration. Importantly, the AASB noted this recommendation is inconsistent with the UIG charter, which does not allow it to give guidance on resolving accounting issues that are specific to the circumstances of a particular reporting entity. The AASB suggested it may be necessary to establish a separate panel to provide such guidance.</p> <p>The professional accounting bodies support this function being given to the FRP.</p> <p>The CLERP 9 Bill is framed so that the obligation to determine the application of accounting standards in particular situations remains primarily with directors and other members of company management.</p> <p>There are no restrictions on those responsible for preparing accounts to consult with third parties if appropriate.</p>
<p>8 (proposes amendments to accounting standard AASB 1023 <i>Financial Reporting of General Insurance Activities</i> to correct a number of deficiencies that were identified in the standard).</p>	<p>The Government referred this recommendation to the AASB for consideration.</p> <p>The AASB is in the process of amending AASB 1023 consistent with this recommendation and in conjunction with the adoption of international accounting standards.</p>
<p>9 (proposes a standard of independence for auditors be contained in legislation and professional standards).</p>	<p>The Government's CLERP 9 Bill will require auditors to meet a general standard of auditor independence. The standard in the CLERP 9 Bill and that in the professional standards are broadly consistent.</p>
<p>10 (proposes that the Corporations Act be amended to require the board to provide a statement in the annual report that identifies all non-audit services provided by the audit firm and the fees applicable to each item of work, explaining why those non-audit services do not compromise audit independence).</p>	<p>The Government will implement this recommendation in the CLERP 9 Bill.</p>
<p>11 (proposed that the CLERP 9 proposal for a 'waiting period' of 2 years before a former partner directly involved in the audit of a client can become a director or senior manager of the client, be extended).</p>	<p>This recommendation will be implemented, in part, in the Government's CLERP 9 Bill.</p> <p>Following consultations, the CLERP 9 Bill provides for a 2 year cooling off period to apply to a former partner of an audit firm directly involved in the audit of a client before that person can join the client as a director or in a senior management position. The CLERP 9 Bill also applies the 2 year cooling off period to a director and lead or review auditor of an audit company who was directly involved in the audit of the audit client.</p> <p>The CLERP 9 Bill does not apply a cooling off period to partners not directly involved in the audit of the audit client.</p> <p>The prohibition on more than one former partner being a director or senior member of the audit client is contained in the CLERP 9 Bill.</p>

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<p>12 (proposes that the CLERP 9 proposal for rotation of the lead engagement partner and review partner be extended to key senior audit personnel).</p>	<p>The Government's CLERP 9 Bill will implement this recommendation by requiring mandatory rotation of the lead and review partners of a listed company after 5 consecutive years with a 2 year cooling off period before a person who has played a significant role in the audit can be reassigned to that client.</p>
<p>13 (proposed amendments to the Corporations Act to require changes to the content of the audit report, such as the inclusion of disclosure of alternative accounting treatments and significant matters, the inclusion of an audited operating and financial review in the annual report, and to require audit reports to be presented in plain English).</p>	<p>These requirements are better suited for inclusion in the auditing standards rather than being prescribed in legislation.</p> <p>The Government referred this recommendation to the Auditing & Assurance Standards Board (AuASB) for consideration. The AuASB considers that detailed disclosure of alternative accounting treatments that could be adopted by an entity for a particular transaction or event, by the auditor in the auditor's report, is likely to be confusing to users of the financial report.</p> <p>In relation to requiring disclosure in the auditor's report about significant matters arising in the audit process, auditors are required under Australian Auditing Standard AUS 710 <i>Communication with Management on Matters Arising from an Audit</i> to consider communicating significant matters about the audit, or as identified from audit procedures performed, to appropriate levels of management.</p> <p>With regard to disclosures about subsequent events, this is addressed in AASB 1002 <i>Events Occurring After Reporting Date</i>, while the auditor's responsibilities are stated in AUS 706 <i>Subsequent Events</i>.</p> <p>The CLERP 9 Bill requires an operating and financial review be prepared as part of the Directors' Report.</p> <p>In relation to ensuring audit reports are presented in plain English, the AuASB has released a Guidance Note which looks to promote plain English audit reports.</p>
<p>14 (proposes that the Corporations Act be amended to require listed companies to include a brief summary of the nature and scope of the audit services provided by their auditor each year).</p>	<p>This requirement is better suited for inclusion in the auditing standards rather than being prescribed in legislation.</p> <p>The Government referred this recommendation to the AuASB for its consideration. The AuASB issued an Audit and Assurance Alert in May 2002, which provides details about the type of, and the format for, making additional voluntary disclosures regarding the type and nature of any non-audit or other services provided to an audit client, which are additional to the existing disclosure requirements.</p>
<p>15 (proposes that both the Australian Prudential Regulation Authority (APRA) and the Institute of Actuaries of Australia (IAA) introduce compulsory certification of the completeness and accuracy of data).</p>	<p>The Government referred this recommendation to APRA and the IAA for consideration.</p> <p>In its recent discussion paper, 'Prudential Supervision of General Insurance – Stage 2 Reforms,' APRA sought the views of industry on its proposal to extend the annual Board declaration to incorporate these matters.</p> <p>APRA is currently reviewing comments it has received from industry and the IAA in response to this proposal.</p>

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<p>16 (proposes that the IAA and APRA introduce a requirement for more detailed disclosure of the exercise, incidence and impact of subjective judgement and departure from historical experience).</p>	<p>The Government referred this recommendation to APRA and the IAA for consideration.</p> <p>Prudential standards already require more detailed disclosure in the circumstances to which the recommendation refers.</p> <p>However, APRA is consulting with the IAA on whether IAA professional standards and guidance could also set out such requirements.</p>
<p>17 (proposes that APRA extend the qualifications of the Approved Actuary to require that they not be an employee or partner of the organisation to which the Approved Auditor belongs).</p>	<p>The Government referred this recommendation to APRA and the IAA for consideration.</p> <p>In its discussion paper, 'Prudential Supervision of General Insurance – Stage 2 Reforms', APRA sought the views of industry on the proposal that independence of actuaries and auditors be promoted by prudential standards prohibiting the appointment of an Approved Actuary and Approved Auditor from the same, or a related, firm.</p> <p>APRA is currently reviewing comments it has received from industry in response to this proposal.</p>
<p>18 (proposes changed governance arrangements for APRA, including replacing the non-executive board with an executive group comprising a CEO and 2-3 commissioners).</p>	<p>The Government progressed amendments to the <i>Australian Prudential Regulation Authority Act 1998</i> (APRA Act) last year to implement an enhanced governance structure from 1 July 2003. The new members commenced on 1 July 2003.</p>
<p>19 (proposes that the APRA Act be amended to provide the Chair with the power to establish an Advisory Board).</p>	<p>The Government referred this recommendation to APRA for its consideration.</p> <p>APRA is currently conducting a review of options in response to this recommendation and has had discussions with overseas prudential regulators on their arrangements with Advisory Boards.</p> <p>The APRA Act already allows APRA to engage external advisers and consultants.</p>
<p>20 (proposes that the direct involvement of representatives of ASIC and the Reserve Bank of Australia (RBA) in the governance of APRA be discontinued).</p>	<p>The Government progressed amendments to the APRA Act last year to give effect to this recommendation.</p>
<p>21 (proposes that the APRA Chair urgently instigate a review of APRA's organisational structure, balancing its cross-sectoral responsibilities with accountability and knowledge of financial services).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>APRA members have been reviewing APRA's organisational structure and will shortly announce revised arrangements.</p>
<p>22 (proposes that the Commonwealth Government consider removing the requirement for the Treasurer's agreement to operational decisions involving APRA's prudential oversight of general insurers).</p>	<p>The Government has accepted the policy intent of this recommendation and will remove the requirement for APRA to seek the Treasurer's agreement to make operational decisions that do not involve wider policy issues. The implementation of this recommendation is currently being examined by the Treasury. It is proposed that any necessary legislative amendments will be included in a proposed Financial Sector Legislation Amendment Bill.</p>

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<p>23 (proposes that the Government review the inconsistencies between the legislative provisions for merit review under the <i>Insurance Act 1973</i> and the <i>Banking Act 1959</i>).</p>	<p>The Government has accepted this recommendation. The implementation of this recommendation is currently being examined by the Treasury. It is expected that any necessary legislative amendments will be included in a proposed Financial Sector Legislation Amendment Bill.</p>
<p>24, 26, 27 and 28 (propose that APRA build the skills of staff involved in the supervision of general insurers, develop a more sceptical approach to supervision, review supervisory processes and continually question staff assumptions, views and conclusions about the financial viability of supervised entities).</p>	<p>The Government announced in the 2004-05 Budget an increase in APRA's funding of \$47.4 million over 4 years. This follows an increase of \$21.9 million over 4 years announced in the 2003-04 Budget. APRA's funding is reviewed each year in the Budget context.</p> <p>The increased funding will enable APRA to further build up staff levels in front-line supervision and specialist risk areas. It will also enable APRA to strengthen and establish dedicated teams of front-line supervisors to carry out supervision in respect of large groups, and strengthen its capacity to supervise large, complex and systemically important financial institutions.</p> <p>In addition, APRA is continuing to introduce, test and refine programmes designed to build and strengthen the capacity of its staff to supervise and regulate general insurers. A specialist Insurance Risk team has been recruited with significant experience in general insurance and reinsurance. In recent months, some experienced insurance sector people have been recruited into front-line supervisory roles.</p> <p>APRA also continues to consider and assess enhancements to prudential standards and reporting requirements. It has also implemented a more sophisticated risk-rating system (PAIRS and SOARS), which helps provide APRA with early identification of issues that may require attention.</p> <p>Treasury and APRA are also considering aspects of APRA's legal infrastructure.</p>
<p>25 (proposes that the Government adopt a three-year rolling fund arrangement to set APRA's budget).</p>	<p>The Government already sets APRA's funding for a 4 year period through the Budget process. This provides an annual opportunity (but not an obligation) to consider whether, in light of recent happenings, APRA's funding should be altered from its current baseline.</p>
<p>29 (proposes that APRA develop an internal system for tracking all relevant information concerning regulated entities).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>APRA is currently implementing an Electronic Document Management System.</p>
<p>30 (proposes that APRA develop mechanisms to investigate the reinsurance arrangements for general insurers on a random but frequent basis).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>APRA largely complies with this recommendation already. In addition, it has proposed in its discussion paper, 'Prudential Supervision of General Insurance – Stage 2 reforms', that insurers include additional information about their reinsurance arrangements in the Reinsurance Management Strategy (REMS) they must already lodge with APRA.</p> <p>APRA is currently reviewing comments it has received from industry on this proposal.</p>

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<p>31 (proposes that the effectiveness of the current memorandum of understanding (MOU) between APRA and ASIC be reviewed; that the processes for liaison, coordination and exchange of information between APRA and ASIC be reviewed on a regular basis; and that, to facilitate the exchange of information, the Commonwealth Government should make a regulation specifying ASIC for the purposes of s.56(5)(a) of the APRA Act).</p>	<p>The Government progressed amendments to the APRA Act last year to enhance the exchange of information between APRA and ASIC.</p> <p>APRA's cooperation and sharing of information with other financial sector supervisory agencies (including ASIC) is governed by the APRA Act.</p> <p>Responsibility for reviewing the MOU between APRA and ASIC was referred to APRA for its action.</p> <p>Consultations between APRA and ASIC are progressing.</p>
<p>32 (proposes that matters relating to the co-ordination of Commonwealth regulation affecting the insurance industry be the province of the Commonwealth Treasury).</p>	<p>Treasury continues to facilitate ongoing liaison and coordination between regulators.</p> <p>The Government appointed Treasury as a member of the Council of Financial Regulators (the Council) in 2003. The Council's membership already included the Reserve Bank of Australia (RBA) (Chair), APRA and ASIC.</p> <p>The Council's ultimate objectives are to contribute to the efficiency and effectiveness of regulation and to promote stability of the Australian financial system.</p>
<p>33 (proposes that coordination of matters related to the regulation of the insurance industry be addressed through the proposed ministerial council).</p>	<p>Refer to recommendation 54 (below).</p>
<p>34, 35, 36 (propose greater public disclosure of financial information by APRA and/or insurers).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>In response, APRA's discussion paper, 'Prudential Supervision of General Insurance – Stage 2 Reforms', proposes a number of options regarding information that APRA and/or insurers should consider releasing.</p> <p>APRA is currently reviewing comments it has received from industry on the options presented in the paper.</p>
<p>37 (proposes that APRA identify which regulatory activities should be disclosed publicly and by what means).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>APRA is continuing to develop guidelines for disclosure of APRA's regulatory activities, in consultation with ASIC.</p>
<p>38, 39 (propose that APRA use current supervisory powers and standards for the regulation of authorised insurers that operate as part of a corporate group, pending development and promulgation of a standard for such regulation).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>APRA is already using its powers in this area.</p> <p>APRA is developing a regime of consolidated supervision where authorised insurers operate as part of a group. This will be the subject of a separate consultation paper.</p>
<p>40 (proposes that APRA take steps to ensure that it effectively exchanges with relevant foreign regulators, information and intelligence on the operations of Australian insurers with international operations).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>New MOUs have been signed with the Financial Services Authority (UK) and the Reserve Bank of New Zealand.</p> <p>APRA is continuing to consult other overseas regulators in Germany, Singapore and France.</p> <p>APRA's cooperation and sharing of information with other financial sector supervisory agencies (including foreign regulators) is governed by the APRA Act.</p>

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<p>41 (proposes that APRA modify the prudential standards to require the annual production by an authorised general insurer's Approved Actuary of a report on the overall financial condition of the insurer).</p>	<p>The Government referred this recommendation to APRA for action.</p> <p>APRA's discussion paper, 'Prudential Supervision of General Insurance – Stage 2 Reforms', proposes the creation of a new prudential standard that would require an Approved Actuary to prepare a Financial Condition Report similar in concept to that already required for submission to APRA by Appointed Actuaries to life insurers.</p> <p>APRA is reviewing comments received from industry in response to this proposal.</p>
<p>42 (proposes that the Commonwealth Government amend the <i>Insurance Act 1973</i> to extend prudential regulation to insurance-like products, to the extent possible within constitutional limits).</p>	<p>The Government commissioned Mr Gary Potts, a former Executive Director of the Commonwealth Department of the Treasury, to examine the role of discretionary mutual funds in the insurance market, and that of direct offshore foreign insurers. Mr Potts provided his report to the Government at the end of January 2004.</p> <p>The Government intends to implement all of the recommendations of the Potts Review.</p>
<p>43, 44 (propose that the Commonwealth Government amend the Corporations Act to extend the grounds upon which APRA may apply for the winding-up of authorised general insurers, and to specify that courts may have regard to the interests of policyholders in determining such applications).</p>	<p>The Government accepted this recommendation, which is being considered by both Treasury and APRA.</p>
<p>45 (proposes that the ASX amend Listing Rule 3.1 or publish a guidance note making it clear that price sensitive announcements have the approval of either the board or a delegate of the board, subject to ratification by the board).</p>	<p>The Government referred this recommendation to the ASX for consideration.</p> <p>ASX Guidance Note 8 to Listing Rule 3.1 currently indicates that a director or executive officer who becomes aware of information must immediately consider whether that information should be given to the ASX, and that an entity cannot delay giving information to the ASX pending formal sign-off or adoption by the board. This is consistent with the continuous disclosure obligation.</p>
<p>46 (proposes that the ASX amend the Listing Rules to prohibit blacklisting of analysts).</p>	<p>The Government referred this recommendation to the ASX for consideration.</p> <p>To ensure that implementation of this recommendation does not detract from the primacy of the continuous disclosure obligation, the ASX has amended Guidance Note 8 - Continuous Disclosure: Listing Rule 3.1 to include discussion of this issue specifically. (It is important that the Rules not endorse briefing for analysts where they are given information not available to the wider market).</p> <p>More generally, conflicts of interests of financial services licensees are addressed in CLERP 9, which will also be supplemented by an ASIC Policy Statement.</p>

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<p>47, 48 (propose that the ASX clarify Listing Rule 11.1 so that it applies to any significant change in the business or assets of a listed company, whether it be by acquisition, disposal, amalgamation or otherwise; amend the Listing Rules to define significant change, so that it encompasses financial and geographic factors as well as the nature and scale of the company's business; and amend rule 11.2, so that it applies to any disposal of the whole or substantially the whole of the assets or operations of a listed company).</p>	<p>The Government referred these recommendations to the ASX for consideration.</p> <p>ASX Guidance Note 12 - Change of Activities has been substantially revised to incorporate these issues.</p> <p>In addition, the <i>Insurance Act 1973</i> has been amended to require court approval for transactions involving any disposal of the whole or substantially the whole of the assets or operations of a listed company.</p>
<p>49 (proposes that APRA become the sole prudential regulator of general insurance).</p>	<p>The Government referred this recommendation to the States and Territories for their consideration.</p> <p>A majority of States and Territories for which this recommendation is relevant have given in-principle support; in some cases, this support has been expressed subject to conditions.</p>
<p>50 (proposes that if the States and Territories remain involved with prudential regulation, that there be effective information exchange with APRA).</p>	<p>The Government referred this recommendation to the States and Territories for their consideration.</p> <p>A majority of States and Territories have expressed general agreement with this recommendation.</p>
<p>51, 52 (propose that the States and Territories reduce inconsistencies in their statutory schemes, and apply relevant prudential requirements to government insurers and statutory fund schemes).</p>	<p>The Government referred these recommendations to the States and Territories for their consideration.</p> <p>A majority of States and Territories for which this recommendation is relevant have indicated support for examining the impact of inconsistencies in statutory schemes.</p> <p>A majority of States and Territories considered that only prudential standards relevant to the operation of a government authority should be applied to statutory fund schemes.</p>
<p>53 (proposes that the States and Territories consider allowing greater price flexibility in their statutory schemes, and progress this through the proposed Ministerial Council or like arrangement).</p>	<p>The Government referred this recommendation to the States and Territories for their consideration.</p> <p>The States and Territories expressed mixed views on this recommendation. Several considered that their statutory schemes provide sufficient pricing flexibility, whilst others do not support this recommendation.</p>
<p>54 (proposes that the Commonwealth use a ministerial council or like arrangement to discuss and resolve issues relating to general insurance matters).</p>	<p>The Government referred this recommendation to the States and Territories for their consideration.</p> <p>A majority of States and Territories have endorsed the continuation of the Ministerial Meeting on Insurance Issues forum as the appropriate arrangement to implement this recommendation.</p>
<p>55 (proposes that the States and Territories abolish stamp duty on general insurance products).</p>	<p>The Government referred this recommendation to the States and Territories for their consideration.</p> <p>A majority of the States and Territories do not support this recommendation.</p>
<p>56 (proposes that those States and Territories that have not already done so, abolish fire services levies (FSL) on insurers).</p>	<p>The Government referred this recommendation to the States and Territories for their consideration.</p> <p>A majority of States and Territories advise that they are reviewing or have abolished the FSL.</p>

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57 (proposes that States and Territories should exclude the cost of the GST for the purposes of calculating stamp duties or any other State/Territory imposed levies on insurance premiums).	The Government referred this recommendation to the States and Territories for their consideration. A majority of the States and Territories do not support this recommendation.
58 (proposes that all governments avoid imposing levies and taxes on insurers that cannot be passed on to policyholders).	The Government referred this recommendation to the States and Territories for their consideration. A majority of the States and Territories do not consider it necessary to support this recommendation.
59, 60 (propose that the <i>Income Tax Assessment Act 1936</i> be amended to align it with the modified accounting standards proposed; and the law be amended to make contributions to catastrophe reserves tax deductible and releases assessable for tax).	Australia remains committed to adopting international accounting standards and considers it appropriate to await consideration by the IASB of arrangements for catastrophe reserves to examine the behavioural impacts arising from any new model, before aligning the taxation treatment of general insurers with their accounting treatment.
61 (proposes that the Commonwealth Government introduce a policyholder protection scheme where insurance companies fail).	The Government commissioned Professor Kevin Davis to conduct a technical study of Financial System Guarantees (announced on 12 September 2003). As foreshadowed at the time, the Government intends to conduct a broader consultation process before making a final decision on this matter. The Government has released the Davis Report and invites public submissions on the key issues and policy questions contained in the Government Discussion Paper on Financial System Guarantees.