

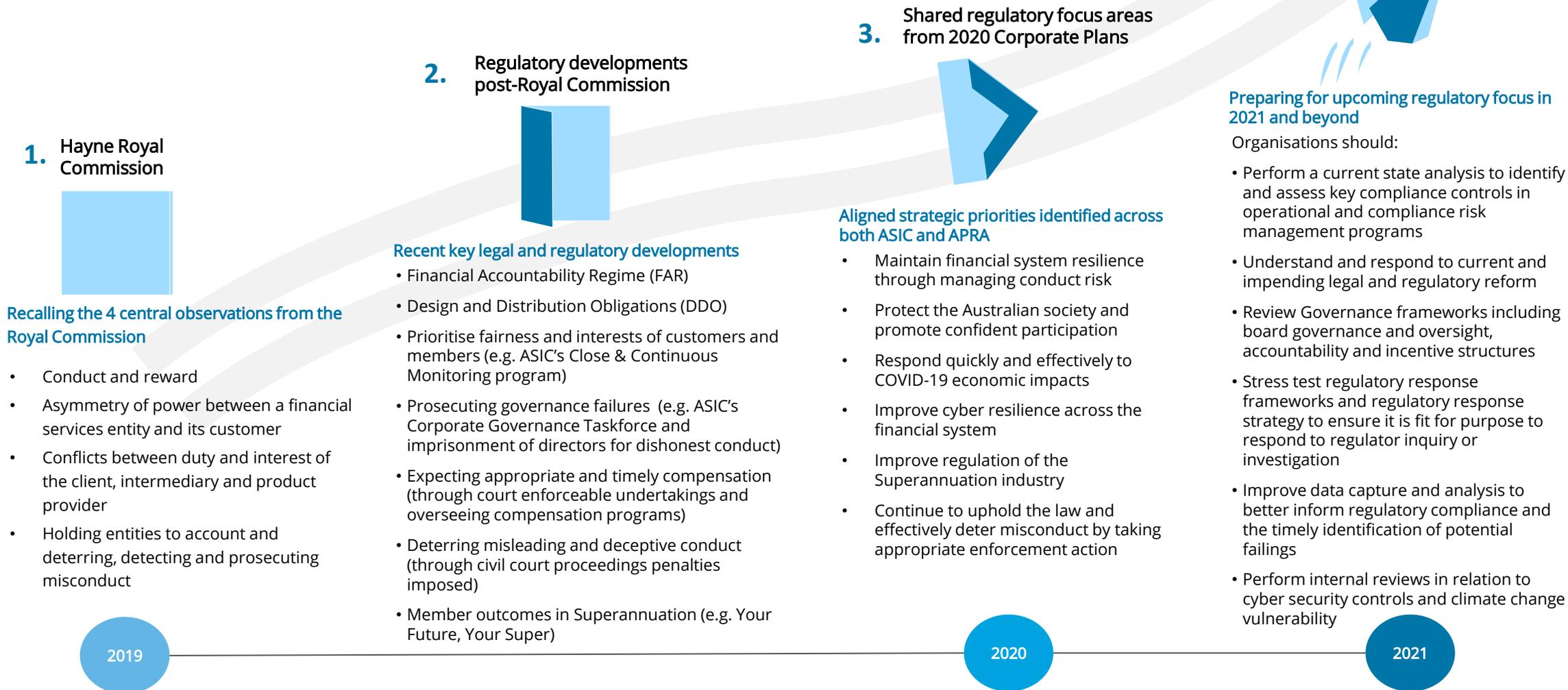
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ASIC and APRA Corporate Plans  
Responding to regulatory activity

# Executive Summary

In late 2020 both ASIC and APRA released their 4 year corporate plans. The plans provide excellent insight into current and emerging regulatory priorities and therefore where firms should ensure that their strategies align to regulatory expectations. Since the Hayne Royal Commission, there has been, and continues to be, a significant focus on enforcement through litigation and the bolstering of regulatory capacity to hold financial services organisations to account. However, COVID-19 has renewed the regulatory priorities of maintaining financial system resilience and managing liquidity and credit risk, whilst bringing risks relating to cyber security and climate change to the forefront. Organisations face a further period of remarkable change and uncertainty and should lean into the challenge by having regard to the regulators' stated priorities and as necessary assess and uplift their internal capabilities and strategies for managing regulatory risk and regulatory inquiry.



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# 1 | Background and context



In understanding and responding to the focus areas of ASIC and APRA's Corporate Plans, organisations are in a better position to manage regulatory and reputational risk.



# Background and context

## Journey from the Royal Commission

The 2020 - 2024 ASIC and APRA Corporate Plans pursue a number of the themes identified by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (“**Royal Commission**”).

Recalling the **four central observations** from the Royal Commission

### 1. **Conduct and reward**

The direct connection between the way people are rewarded, and poor conduct.

### 2. **Asymmetry of power**

The significant power and information imbalance between a financial services entity and its customer is core

### 3. **Conflicts between duty and interest**

The interests of the client, intermediary and product provider are both different and opposed

### 4. **Holding entities to account**

Deterrence depends on whether an entity believes that misconduct will be detected, denounced and justly punished

Commissioner Hayne’s four central observations have **emerged** in the ASIC and APRA Corporate Plans through the following **regulatory focus areas**:

Expecting regulated entities to <b>prioritise fairness and the interests</b> of customers and/or members	<b>Improving cyber resilience</b> across the financial system through establishing a baseline of cyber controls and enabling Board and executive oversight.	Monitoring and deterring <b>opportunistic conduct</b> , misleading and deceptive advertising and predatory lending
Ensuring regulated entities to provide <b>appropriate and timely compensation</b> where losses resulted from poor conduct	Improving governance, accountability and risk culture through extending the <b>Financial Accountability Regime</b>	<b>Responding</b> quickly and effectively to COVID-19 and its economic impacts
Requiring commitment from regulated entities to <b>design and distribute products</b> that meet the needs of consumers	Protecting Superannuation investments through <b>enhanced governance and improved member outcomes</b>	<b>Prosecuting governance failures</b> within corporations, schemes and Superannuation funds including at ASIC by its “why not litigate?” enforcement approach
Maintaining financial system resilience, including fostering <b>operational resilience</b> of regulated entities through COVID-19	Protecting consumers from harm and promote confident participation in the financial system	Building organisational capacity

■ Expectations for organisations

■ Internal priorities that are likely to become expectations for organisations

■ Internal priorities

## 2. Key summary of the Strategic Priorities



# Key aspects of the ASIC Corporate Plan for 2020 - 2024

## A brief summary of each of ASIC's key strategic priorities



### Protecting consumers from harm at a time of heightened vulnerability

In response to the rise in consumer anxiety triggered by the COVID-19 pandemic, and the potential for opportunistic behaviour targeting consumer vulnerabilities, ASIC is focussing on taking swift and effective action against conduct such as predatory lending, mis-selling of harmful products, scams and provision of inappropriate advice.

In protecting consumers, ASIC is also taking action to help ensure organisations offer appropriate support and services to consumers, including ensuring that hardship assistance is provided fairly and insurance claims are processed efficiently with utmost good faith.



### Maintaining financial system resilience and stability

Whilst COVID-19 has significant impact across financial markets, regulatory and government priorities aim to minimise impact and maintain stability. This includes supervising market infrastructure operations, responding to market dislocation, monitoring cyber resilience and market abuse, and enabling sound and fair managed investments including liquidity management and winding up.



### Supporting Australian businesses to respond to the effects of the COVID-19 pandemic

Relief has been provided for some regulatory obligations to enable a businesses to respond faster, and provide guidance to clarify ASIC expectations and enable informed decisions. Examples of this include publishing expectations on good and transparent conduct, updating frequently asked questions for the regulated sector, guiding registered liquidators on changes to processes and procedures and supporting relevant Government initiatives.



### Continuing to identify, disrupt and take enforcement action against the most harmful conduct

This is perhaps the broadest strategic priority in the ASIC Corporate Plan. Building upon the regulatory focus on protecting consumers from harmful conduct and the existing "why not litigate?" approach, this strategic priority focusses on ASIC's use of regulatory tools to take action against misconduct. The type of misconduct targeted include exploitation of COVID-19 environment, misleading and deceptive advertising, unlicensed conduct, failure to disclose material negative information or deliberate misleading of the market.

This priority also includes targeting governance failures within corporations, schemes and Superannuation funds, which links in with the regulatory focus on ensuring accountability of office-holders (a shared regulatory focus with APRA). Accelerating payment of remediation to customers is also a continuing priority.



### Continuing to build organisational capacity in challenging times

This strategic priority is designed to enable ASIC to build robust internal capabilities. Central to this is ASIC's recognition of its own operational vulnerabilities. This includes operational elements such as internal culture, systems, staff engagement, ability to mobilise and respond to situations such as COVID-19 and the ability to coordinate with domestic and international regulators to collectively respond to crises.

# Key aspects of the APRA Corporate Plan for 2020 - 2024

## A brief summary of the strategic focus areas



### Improving Member Outcomes SPS 515

An ongoing focus to improve outcomes for Superannuation fund members. This includes actively driving Superannuation trustee culture to deliver quality outcomes to members, and addressing underperformance in the Superannuation industry through improving financial performance across the industry and exiting underperforming funds.

APRA will also enhance the prudential framework pertaining to insurance (SPS 250), investment governance (SPS 530) and operational risk in Superannuation funds, and sharpen supervisory focus to address key issues relating to outsourcing and conflicts of interest, trustee board capabilities and governance, and unlisted asset valuation.



### Transforming governance, culture, remuneration and accountability in regulated institutions

APRA seeks to transform regulated institutions' management of financial and non-financial risk, expressing the view that significant uplift is required. This involves:

- Strengthening the prudential framework through clarifying expectations of boards and senior managers, including implementing the Financial Accountability Regime across all prudentially regulated industries (in collaboration with Treasury and ASIC).
- Developing new tools to assess and benchmark governance, culture, remuneration and accountability practices, and sharing APRA's insights with industry and the broader public to reinforce prudential expectations.



### Managing the impact of climate-related financial risks

Climate-change related impacts, including physical and transition risks of extreme weather events such as bushfires and water scarcity, continue to be reviewed by APRA. Recognised as a driver of financial risks, APRA expects regulated entities to enhance their capacity to manage and respond to climate risks. APRA is also leading work on a climate vulnerability assessment, beginning with large ADIs in 2021.



### Maintain financial system resilience

Aligned to one of the ASIC strategic priorities and in recognition of the economic and social impact of COVID-19, APRA will seek to reinforce the resilience of regulated entities and the Australian financial system through protecting the interests of Australian depositors, insurance policyholders and superannuation members.

Key objectives include:

- maintaining balance sheet strength and low incidence of failure in APRA-regulated entities,
- enhancing contingency planning for adverse events, as informed by regular stress testing
- For the **Banking** sector, focussing on key risk areas including capital, liquidity and funding, credit and operational risk
- For the **Insurance** sector, focussing on key risk areas including capital, sustainability of insurance products and responding to material risks and issues that could impact the viability and solvency of insurers
- For the **Superannuation** sector, assessing the impact of the evolving external environment on liquidity and investment risk, defined benefit funds, vulnerabilities arising from loss of member accounts and changing member activity, as well as operational resilience of key service providers.



### Improving cyber resilience across the financial system

APRA noted the increase frequency, sophistication and impact of cyber-attacks which requires a continuous cycle of investment in sound practices, recognising also that this is heightened in the COVID-19 environment. APRA expresses a focus beyond its directly regulated population to include the broader eco-system of suppliers and providers that financial institutions rely upon as well as supporting and leveraging the Australian Government's 2020 Cyber Security Strategy.

APRA's aspiration is a financial system that can stand firm against cyber-attacks. See [Prudential Standard CPS 234](#) for more information.

# Shared focus areas

Understanding the aligned strategic priorities across both Corporate Plans

Promote confident participation in the financial system to support long-term economic recovery

## 01 Maintain financial system resilience

## 02 Protect Australian Society

## 03

### Extracts from ASIC Corporate Plan

- Supporting the efficient administration of companies in insolvency
- Enabling the sound and fair operation of managed investments, including liquidity management and winding up, where necessary
- Continuing to monitor and enforce adherence to continuous disclosure requirements to help ensure the market is accurately informed

### Extracts from APRA Corporate Plan

- Focussing on key risks areas including capital, liquidity and funding, credit and operational risk
- Protecting the stability of the financial system by analysing the impact of loan repayment deferrals and determining appropriate regulatory response

### Example Enforcement Activities\*

- Enforcement action against an Australian Bank for breaches to liquidity requirements (Oct 2020)
- Enforcement action by APRA against Big4 bank including Enforceable Undertaking to address risk governance weakness (Dec 2020)

- Targeting misconduct arising from behaviour seeking to exploit the COVID-19 environment, predatory lending practices, opportunistic conduct such as scams, unlicensed conduct and misleading or deceptive advertising.
- Disrupting mis-selling of harmful products and the provision of poor advice to consumers affected by pandemic-related investment losses or hardship
- Participating in global dialogue on issues affecting consumers and retail investors via multilateral forums (e.g. International Financial Consumer Protection Organisation, OECD, IOSCO)

- Protect the Australian community by establishing and enforcing prudential standards and practices
- Continuing to influence direction of the insurance industry to address sustainability and affordability issues and poor customer outcomes
- Working collaboratively with domestic and international regulatory agencies

- Civil penalty proceedings against an Australian insurer for alleged misleading sale of travel insurance through Expedia (Sep 2020)
- Enforceable Undertaking imposed on an Automotive financing company.(Oct 2020)
- Civil penalty proceedings against a Credit fund for misleading and deceptive advertising (Dec 2020)

- Changing behaviours to drive good consumer and investor outcomes
- Acting against misconduct to maintain trust and integrity in the financial system
- Supporting strong and innovative development of the financial system, including continuing climate risk disclosure and governance
- Helping Australians to be in control of their financial lives through National Financial Capability Strategy, consumer and investor communication and continuing the school banking review.

- Facilitating the resolution or exit of persistently underperforming Superannuation funds by using data-driven insights and effective supervision
- Promoting competition within the financial services industry by resuming licensing of new entrants
- Performing climate change supervisory reviews and vulnerability assessments

- Penalty imposed on a Big4 bank for unconscionable conduct regarding periodic payment fees (Oct 2020)
- Penalty imposed on a Big4 bank for use of third party referrals (Oct 2020)
- Civil penalty proceedings against a Big4 bank for overcharged interest as part of Royal Commission case study (Dec 2020)

# Shared focus areas

Understanding the aligned strategic priorities across both Corporate Plans

## 04 Improve Cyber Resilience

## 05 Improve regulation of Superannuation industry

## 06 Improve governance accountability and risk culture

### Extracts from ASIC Corporate Plan

- Supervising market infrastructure providers and participants to ensure smooth and continuous operation of markets, including monitoring their cyber resilience
- Working with entities to mitigate potential harms as a result of technology disruptions and cyber risks

- Delivering as a conduct regulator for Superannuation through targeting:
  - Provision of inappropriate products to Superannuation fund members that either provide little benefit or offer poor value for money
  - Inappropriate disclosures or practices concerning fees
  - Trustees failing to act in the best interests of members
  - Provision of inappropriate personal advice to members (see Report 639)

- Monitoring changes in governance practices in response to the current circumstances, including risk oversight, holding of member meetings, payment of dividends, executive pay decisions and executive share trading
- Targeting egregious governance failure within corporations, schemes and Superannuation funds , including preparing for implementation and co-regulation of FAR with APRA.

### Extracts from APRA Corporate Plan

- Translating 2020 - 2024 Cyber Security Strategy into an actionable program of work and mobilise resources for execution
- Establishing a baseline of cyber controls by reinforcing embedding of non-negotiable cyber practices, facilitating sharing of relevant and timely cyber information and enabling effective incident response
- Enabling the Board and executives of financial institutions to oversee and direct correction of cyber exposures
- Identifying and focusing on addressing weak links within the broader financial eco-system and supply chain
- Using impactful regulatory tools and approaches to actively harmonise regulatory cyber efforts

- Improving outcomes for Superannuation members, and ensure Superannuation fund members are protected by robust governance practices and operational controls and systems, designed to safeguard members' funds
- Driving Superannuation trustee culture of continuous improvement and delivering quality outcomes to Superannuation members to and through retirement, including addressing underperformance in the Superannuation industry and taking enforcement action requiring trustees to improve performance or transfer members to another product.

- Supporting Treasury in the development of the Financial Accountability Regime (FAR), with consultation planned in 2021 subject to introduction of FAR into Parliament.
- Improving remuneration practices and ensuring appropriate consequences for poor risk management. This includes policy development in prudential standards, prudential practice guides, reporting and disclosure requirements on remuneration to address key recommendations from the Royal Commission.

### Example Enforcement Activities

- Proceedings against financial advice group for alleged failure to have adequate cyber security systems (Aug 2020)

- Civil penalty proceedings against Superannuation fund for charging fees for no service (Aug 2020)
- Directions and new license conditions imposed on Superannuation fund (Aug 2020)

- Penalty imposed on a Sports governing body Vice President for breaching director's duties (Nov 2020)
- ASIC resolves to close its investigation and take no further action on its investigation of directors of a Big4 bank in relation to anti-money laundering and counter-terrorism breach (Dec 2020)

# Shared focus areas

## Understanding the aligned strategic priorities across both Corporate Plans

### 07 Respond quickly and effectively to COVID-19 and its economic impacts

### 08 Build Organisational Capacity

#### Extracts from ASIC Corporate Plan

- Facilitating the timely completion of recapitalisations and other urgent transactions
- Identifying innovative solutions to maintain efficient and effective supervision of organisations and markets despite limitations imposed by COVID-19
- Responding promptly to market dislocation or disorder

- Putting systems in place to operate effectively while staff are working remotely, including conducting investigations and litigation in a COVID-19 environment
- Coordinating quickly and effectively with domestic and international regulators to respond to crisis impacts as they develop
- Using data and intelligence effectively to ensure decisions are informed by systematic and insightful analysis
- Working closely with other regulators, in particular APRA (e.g. through formal engagement structure led by the APRA - ASIC Committee, and recent recruitment of APRA personnel into ASIC senior executive team).

#### Extracts from APRA Corporate Plan

- Protecting the financial safety and soundness of APRA-regulated institutions and directing resources to those considered high-risk
- Fostering operational resilience during a period of significant disruption, including assessing operational risk and compliance transformation programs and recovery planning reviews, performing ADI stress tests, credit portfolio reviews.

- Improving and broadening risk-based supervision, resolution capability, external engagement and collaboration
- Transforming data-enabled decision making, leadership, culture and ways of working

#### Example Enforcement Activities

- Federal Court order following application by ASIC to wind up an investment company, which issued secured debentures promoted by Mayfair 101 known as M Core Fixed Income Notes (Jan 2021)

- Consider the joint regulatory activities undertaken through the [Memorandum of Understanding reinforced in August 2020](#) between ASIC and APRA. See the [December 2020 Statement](#) here and in particular, the alignment of investigation and enforcement efforts relating to the a Big4 bank and a financial services organisation cases with ASIC as the lead regulator to address alleged misconduct and thereby focussing the organisations on a single regulatory response.

# 3 | Developments since publication of the Corporate Plans





Recent publications from ASIC and APRA exemplify activity in the areas of shared focus, demonstrating how the regulators will bring their strategies to life and the potential impact for business.

# Developments since the publication of both Corporate Plans

## How shared focus areas emerge in recent regulatory activities

Click on the underlined key words to access relevant source for further information.



### Maintain financial system resilience

Focus on credit risk management and liquidity standards emerged clearly in enforcement actions, most notably the enforceable undertaking against Westpac in December 2020. Other developments include expectations set for ADIs on management of loans, adjusting capital measures and handling customers with loan repayment deferrals.



### Improve regulation of the Superannuation sector

Monitoring conduct of Superannuation trustees led to the commencement of two civil penalty cases by ASIC against a large Superannuation fund (see ASIC Enforcement Update January to June 2020). Increasing focus from APRA on delivering better member outcomes and improving governance can be observed through recent remarks.



### Protect the Australian society

Monitoring conduct risk, prosecuting opportunistic and predatory lending behaviour and expecting prioritisation of customers and member outcomes are central to this. Activity emerged in publication of RG271 Internal Dispute Resolution, claims-handling as one of the Hayne reforms passed, using Product Intervention Order in relation to contracts for difference (CFDs) to protect retail clients and joint report published with IOSCO on retail market conduct risks. ASIC has also published CP335 relating to proposed updates to its remediation guidance.



### Improve governance, accountability and risk culture

Monitoring risk culture will continue through APRA's new Supervision Risk and Intensity (SRI) Model which is risk-based, forward looking and outcomes focussed. APRA also revised Prudential Standard CPS 511 relating to remuneration (open to submissions until February 2021) and published an information paper on findings from reviewing implementation of BEAR (now FAR), both of which may impact Boards and senior executives of APRA-regulated entities.



### Respond quickly and effectively to COVID-19 and its economic impacts

COVID-19 is seen by the regulators as a "real-world test of operational resilience" (similar to regulatory focus from the UK), and key issues identified include board oversight of risks exceeding risk tolerance levels, and reliance on offshore providers. Also emerging is a focus on climate-change related risks.



### Promote confident participation in the financial system to support long-term economic recovery

Acting against misconduct, accelerating remediation and compensation outcomes emerged through an update to RG 256 Client review and remediation conducted by advice licensees released to extend the guidance to all AFSL or ACL licensees, as well as trustees of regulated Superannuation funds.



### Improve cyber resilience across the financial system

Increasing focus from ASIC and APRA on organisations monitoring cyber risks, and having adequate controls and systems in place to manage cyber resilience. Most recently this led to ASIC proceedings against an AFSL licensee for failing to have adequate cyber security systems.



### Build organisational capacity

A data-based approach to regulation can be seen from the frequent publication of data on temporary loan deferrals and Superannuation early release schemes. However it is unclear exactly how this data is used for enforcement, and what other data intelligence is gathered with international counterparts. Recent updated Memorandum of Understanding signed between APRA and ACCC further strengthens collaboration with other regulators.

# Developments since the publication of both Corporate Plans

## Other relevant developments (December 2020)

NEW content



### Hayne reforms passed in December 2020

A tranche of reforms contained in the recommendations from the Hayne Royal Commission were passed through Parliament in December 2020. Notable reforms include anti-hawking of financial products and making Claims handling as the sixth financial service.



### Revised Breach Reporting Regime

As part of the Hayne reforms passed, changes to the breach reporting regime for AFSL licensees were also introduced in December 2020. The regime has been expanded to include:

- A number of new “reportable situations”.
- Two separate tests introduced to determine the significance of a breach.

In addition, reporting must be in the prescribed form and licensees will need to lodge breach reports within 30 calendar days.



### Final guidance released for DDO

The much-anticipated RG274 was released by ASIC in December 2020, setting out the regulator’s expectations for compliance and approach to administering the obligations from 5 October 2021. The guidance applies to Banking, Insurance, Superannuation and Investment Management sectors.



### Responsible lending obligations simplified

Consumer credit reforms were introduced in September 2020 to simplify access to credit for consumers and small businesses to help “kick start the economy”.

A key pillar of this was the removal of responsible lending obligations. The Treasurer noted the regulatory burden on lenders has resulted in higher costs and higher levels of conservatism in credit-decision making, which has resulted in consumers bearing the burden of higher obstacles to access credit.



### Your Future, Your Super

As part of the Morrison Government’s superannuation reform, the Your Future, Your Super package was released as part of the 2020 Budget, with key changes to start on 1 July 2021 including:

- Having superannuation follow the individual when changing jobs;
- Making it easier for members to choose a better fund through a comparison tool;
- Holding funds to account for underperformance;
- Increasing transparency and accountability.

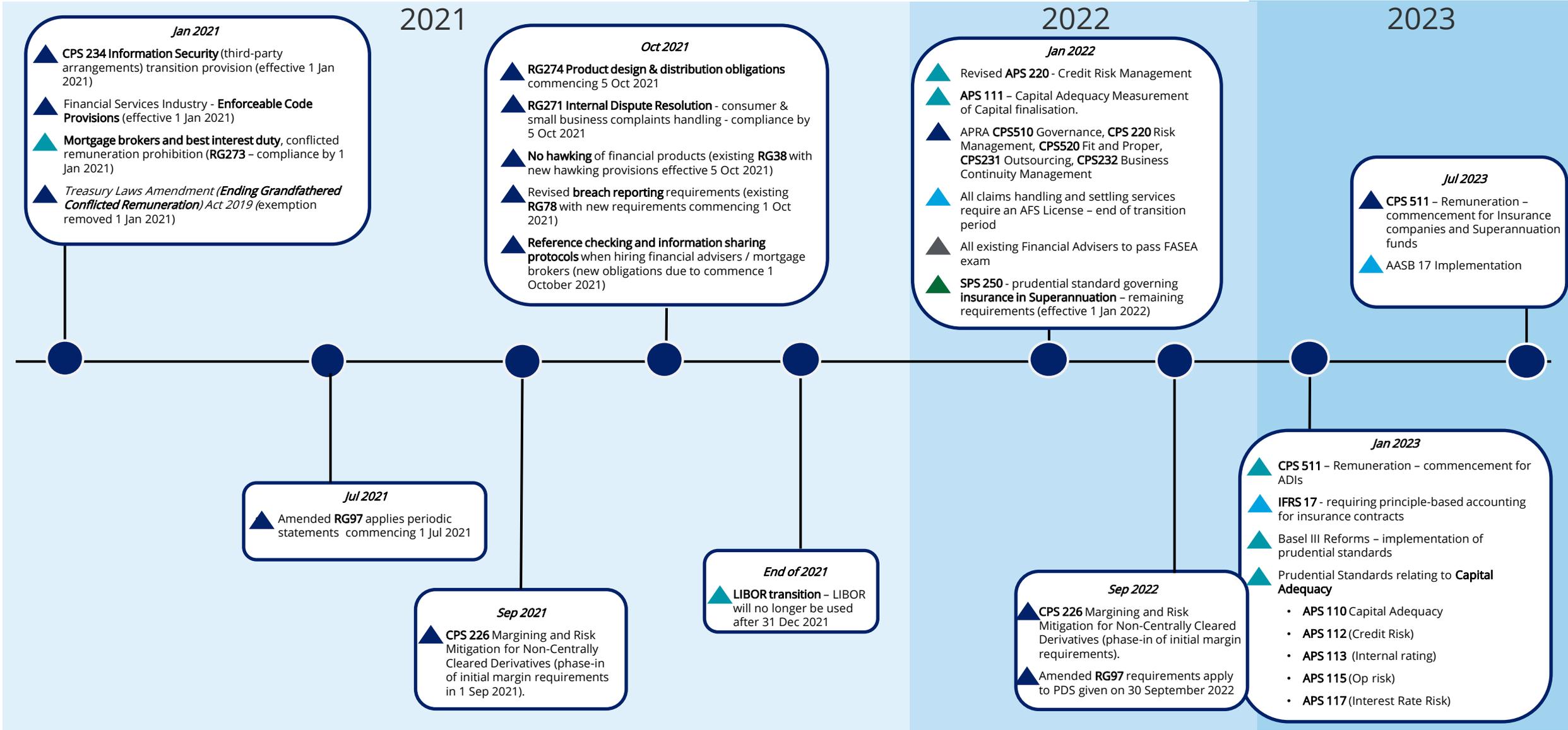
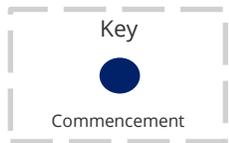
2021 will see a number of regulatory changes commence that were delayed due to COVID-19.

DDO, Revised Breach Reporting, RG271 Internal Dispute Resolution, implementation of Hayne reforms, enforcement of financial services industry codes and cessation of LIBOR are some of the key changes that should be considered and implemented in the coming year.



# Regulatory Horizon 2021 - 2023

Key upcoming changes applicable to Banking, Insurance, Wealth (including Advice) and Superannuation



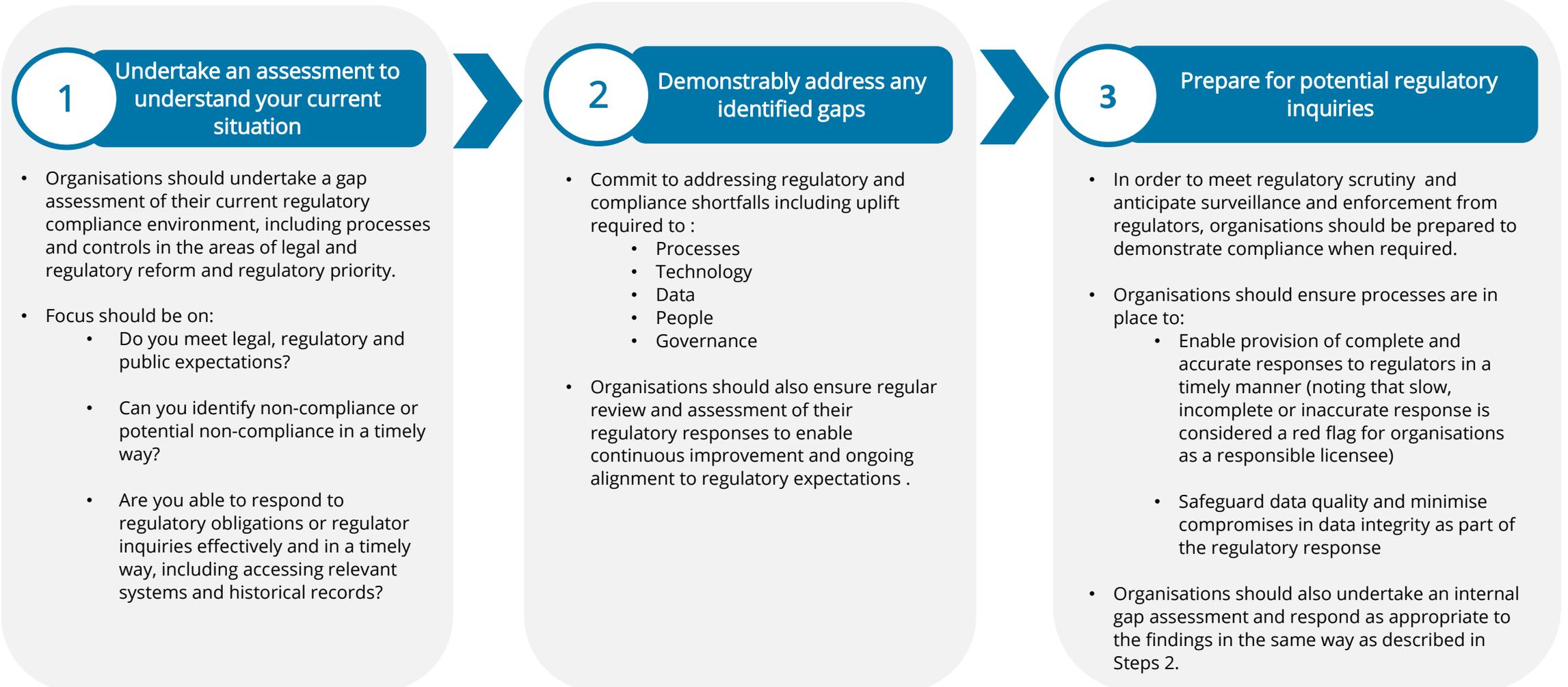
# 4 | Next steps and how we can support



# Next steps for organisations

## Taking pro-active action is what the regulators would expect

Since a number of recommendations from the Financial Services Royal Commission (FSRC) will become enforceable in the course of 2021, ASIC and APRA will commit significant resources to ensuring organisations are meeting the new obligations and to holding to account those who fall short. Organisations should act now to ensure they can demonstrate their compliance to meet regulator and community expectations.



# How we can support

## Our service offerings

Our team can support you with meeting the expectations of ASIC and APRA arising from their Corporate Plans and recent regulatory developments



### Current state assessment to identify and assess key compliance controls

- Conduct a current state assessment of your regulatory engagement processes and compliance frameworks to identify gaps or opportunities for improvements and develop a set of action plans to address any gaps and opportunities identified
- Perform controls assurance on key compliance controls within the organisation's regulatory engagement processes



### Data analysis to identify high-risk customer / member segments

- Use technology-based solutions to monitor and detect conduct issues in a customer facing environments and provide practical recommendations to address any identified gaps and enhance business processes.
- Perform ongoing compliance monitoring for regulatory requirements and provide insights to help focus your targeted audits where needed.



### Mock ASIC/APRA reviews to help you prepare for regulatory inquiries

- Test the organisation's demonstration of compliance in the event of a regulator review by performing targeted compliance reviews against key regulatory focus areas, and provide insights into the organisation's ability to respond to regulatory inquiries



### Regulatory strategy support

- Support the design and implementation of a coordinated regulator engagement strategy to respond to regulatory scrutiny with clarity and consistency and in a timely manner
- Design engagement strategies for a range of key internal stakeholders to align stakeholder support and accountability for regulatory strategy



### Supporting organisations to respond and prepare for upcoming regulatory change

- Provide guidance on preparing for regulatory change through understanding the Regulatory Change Lifecycle, conducting impact assessments and planning for regulatory change from design through to implementation.
- Perform regulatory portfolio assessments
- Perform post-implementation effectiveness reviews



### Remediate gaps identified and support the organisation to address conduct / compliance issues

- Perform root cause analysis and identify systemic issues to remediate and strengthen the existing compliance environment
- Support the establishment of a remediation program, including program design, methodology design, controls remediation and regulatory strategy (e.g. regulatory engagement)

# 5 | Our team



# How we can support

## Our team

### Governance, Regulation and Conduct Advisory



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