

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

*Corporations Act 2001*

*Treasury Laws Amendment (Financial Services Improved Consumer Protection)  
(Funeral Expenses Facilities) Regulations 2019*

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Treasury Laws Amendment (Financial Services Improved Consumer Protection) (Funeral Expenses Facilities) Regulations 2019* (the Regulations) is to implement recommendation 4.2 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) to remove the exemption for funeral expenses policies from the definition of financial products under the Act.

The Financial Services Royal Commission uncovered evidence of the significant harm caused to vulnerable consumers by the poor sales practices adopted by funeral expenses policies providers. Funeral expenses policies provide for the payment of funeral costs up to a nominated limit. The payout of the policy only covers the cost of the funeral or things incidental to it, but nothing else. Commissioner Hayne observed that many funeral expenses policies are of little value because:

- the actual funeral costs incurred for a policyholder may be less than the nominated limit under the person's policy; and
- the amount a policyholder pays in premiums over the life of a policy may be more than the amount that may be payable as a benefit (being actual funeral costs) under the person's policy.

In recommendation 4.2 of the Financial Services Royal Commission, Commissioner Hayne recommended the removal of the exclusion of funeral expenses policies from the definition of financial products under the Act.

The Regulations give effect to the Government's response to the Financial Services Royal Commission by repealing Regulation 7.1.07D of the *Corporations Regulations 2001* to make funeral expenses policies a financial product. As a result, funeral expenses policies providers will be subject to a variety of obligations under the Act including:

- the requirement to hold an Australian financial services licence;
- the general conduct obligations contained in section 912A of the Act; and
- the anti-hawking provisions in the Act.

A new regulation is created to give funeral services entities an exemption from needing to hold an Australian financial services licence when providing financial product advice in relation to a friendly society financial product or dealing in a friendly society funeral product.

Details of the Regulations are set out in Attachment A.

Public consultation on the Regulations was conducted between 1 October 2019 and 18 October 2019. There were 10 submissions received through the consultation process from various industry participants, industry bodies and consumer groups.

The Act does not specify any conditions that need to be met before the power to make the Regulations is exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 April 2020. The amendments apply to entities that do not already have an Australian financial services licence from commencement. The amendments apply to entities that already have an Australian financial services licence from 1 January 2021.

### **Regulation Impact Statement**

The amendments will result in low increases to compliance costs.

The Financial Services Royal Commission Final Report has been certified as being informed by a process and analysis equivalent to a Regulation Impact Statement for the purposes of the Government decision to implement this reform.

The Financial Services Royal Commission Final Report can be found at this link: <https://financialservices.royalcommission.gov.au/Pages/reports.aspx>

A Statement of compatibility with Human Rights is at Attachment B.

**Details of the Treasury Laws Amendment (Financial Services Improved Consumer Protection) (Funeral Expenses Facilities) Regulations 2019**

**Section 1 - Name of Regulations**

This section provides that the title of the Regulations is the *Treasury Laws Amendment (Financial Services Improved Consumer Protection) (Funeral Expenses Facilities) Regulations 2019*

**Section 2 - Commencement**

This section provides that the Regulations commence on 1 April 2020.

**Section 3 - Authority**

This section provides that the Regulations are made under the *Corporations Act 2001*.

**Section 4 - Schedules**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Funeral expenses facilities**

*Making funeral expenses policies a financial product*

Item 2 of Schedule 1 gives effect to recommendation 4.2 of the Financial Services Royal Commission to remove the exclusion of funeral expenses policies from the definition of financial products for the purposes of the Act.

This is done by repealing regulation 7.1.07D of the *Corporations Regulations 2001*. The repeal of regulation 7.1.07D makes funeral expenses policies a financial product. As a result, funeral expenses policies providers will be subject to a variety of obligations under the *Corporations Act 2001* including:

- the requirement to hold an Australian financial services licence;
- the general conduct obligations contained in section 912A of the Act; and
- the anti-hawking provisions in the Act.

*Exemption for funeral services entities*

Item 3 of Schedule 1 creates a new provision to give funeral services entities an exemption from needing to hold an Australian financial services licence in limited circumstances where they meet all of the requirements prescribed in the regulations. This amendment preserves the existing treatment of funeral services entities who have been relying on the funeral expenses policies exemption to sell friendly society funeral products without needing to hold an Australian financial services licence.

The exemption only applies to funeral services entities as defined (see below) and employees, directors and other officers of funeral services entities when the financial services are being provided in the ordinary course of the funeral services entity's business. The exemption only applies in relation to the provision of financial product advice in relation to a friendly society funeral product and dealing in a friendly society funeral product

Items 1 and 4 of Schedule 1 provide definitions for a friendly society funeral product and funeral services entity.

A friendly society funeral product is defined as a financial product that is an account provided by a friendly society for the sole purpose of saving money to meet the whole or a part of the expenses of and incidental to the funeral, burial or cremation of a person on the death of that person. The terms 'funeral', 'burial' and 'cremation' already exist in the law and have their ordinary meaning which incorporate a variety of cultural practices.

A friendly society includes the same entities as defined under the *Insurance Contracts Act 1984*.

A funeral services entity is defined as an entity that carries on a business of supplying:

- services for the care and preparation of human bodies for burial or cremation; and
- services for the arrangement, supervision or conduct of a funeral, burial or cremation; and
- other associated services.

Funeral services entities can be structured in a range of ways including as a body corporate, partnership, unincorporated body, individual or trust structure.

#### *Application of amendments*

Item 5 of Schedule 1 provides for an application provision for the amendments. Under this provision, the amendments apply to entities that do not already have an Australian financial services licence from commencement on 1 April 2020. The amendments apply to entities that already have an Australian financial services licence from 1 January 2021

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Treasury Laws Amendment (Financial Services Improved Consumer Protection) (Funeral Expenses Facilities) Regulations 2019***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The Regulations implement recommendation 4.2 of the Financial Services Royal Commission to remove the exemption for funeral expenses policies from the definition of financial products under the Act.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.