

## **EXPLANATORY STATEMENT**

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

*Corporations Act 2001*

*Insurance Contracts Act 1984*

*Financial Sector Reform (Hayne Royal Commission Response)  
(2021 Measures No. 1) Regulations 2021*

Section 1364 of the *Corporations Act 2001* (the Corporations Act) and section 78 of the *Insurance Contracts Act 1984* (the Insurance Contracts Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the respective acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the respective acts.

The purpose of the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* (the Regulations) is to amend the *Insurance Contracts Regulations 2017* (Insurance Contracts Regulations) to remove the concept of eligible contracts of insurance. The Regulations also amend the *Corporations Regulations 2001* (Corporations Regulations) to make handling an insurance claim a ‘financial service’ under the Corporations Act.

Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* amends the Insurance Contracts Act to give effect to Recommendation 4.5 and Recommendation 4.6 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission).

Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* replaces the existing duty of disclosure with a new duty for consumers to take reasonable care not to make a misrepresentation to the insurer before they enter into the insurance contract. The new duty applies to consumer insurance contract.

These are, broadly, general and life insurance contracts purchased for the insured’s personal, domestic or household purposes. The *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* also repeals sections 21A and 21B of the Insurance Contracts Act. These sections contain a modified duty of disclosure that applies in relation to eligible contracts of insurance.

Therefore, the concept of ‘eligible contract of insurance’ is no longer required. Accordingly, Schedule 1 to the Regulations make consequential amendments to remove the concept of eligible contracts of insurance from the Insurance Contracts Regulations.

Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* gives effect to Recommendation 4.8 of the Financial Services Royal Commission.

Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* amends Chapter 7 of the Corporations Act to appropriately apply the financial services regime to insurance claims handling. Currently, rules which protect consumers of financial products and services do not extend to people who handle insurance claims, due to effect of regulation 7.1.33 of the Corporations Regulations.

A number of independent inquiries, most prominently the Financial Services Royal Commission, have concluded that these rules should apply to people who handle insurance claims. Commissioner Hayne noted that the value of insurance to consumers is the ability to make a claim when an insured event occurs and therefore there was no justification for not applying these rules to people who handle insurance claims.

Schedule 2 to the Regulations give effect to the Government's response to the Financial Services Royal Commission by removing regulation 7.1.33 of the Corporations Regulations to make claims handling a 'financial service'. As a result someone who handles insurance claims will be required to:

- hold an Australian financial services licence;
- act efficiently, honestly and fairly (amongst other obligations); and
- provide appropriate disclosure to consumers.

In addition, when providing financial services to retail clients, the Regulations will require a person have an internal dispute resolution process in place and be a member of the Australian Financial Complaints Authority (AFCA).

The Regulations also make further consequential amendments to the Corporations Regulations to ensure that the existing rules appropriately apply to claims handling.

Public consultation on Schedule 1 to the Regulations was conducted between 31 January 2020 and 28 February 2020. Public consultation on the Schedule 2 to the Regulations was conducted between 29 November 2019 and 10 January 2020.

Schedule 1 to the Regulations received 15 submissions. Schedule 2 to the Regulations received 37 submissions. Consultation included feedback from consumer groups, industry and the Australian Securities and Investments Commission.

As a result of the consultation, several amendments were made to the Regulations to take into account the feedback from affected stakeholders and ensure that the Regulations operate effectively.

The Regulations will commence on the day after they are registered on the Federal Register of Legislation.

The Insurance Contracts Act and the Corporations Act do not specify any conditions to be met before the power to make the Regulations may be exercised.

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 Office of Best

Practice Regulation has agreed that this measure will result in a compliance cost of \$4.8 million a year for business.

The Financial Services Royal Commission Final Report can be accessed through the Australian Parliament House website.<sup>1</sup>

Details of the Regulations are set out in Attachment A.

A Statement of Compatibility with Human Rights in relation to the Regulations is at Attachment B.

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<sup>1</sup> <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fbc83795c-b7fa-4b42-a93b-fa012cffffc2%22>

**Details of the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021***

**Section 1 – Name of the Regulations**

This section provides that the name of the instrument is the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* (the Regulations).

**Section 2 - Commencement**

This section provides that the Regulations commence the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

Section 3 provides that the Regulations are made under:

- the *Corporations Act 2001* (Corporations Act); and
- the *Insurance Contracts Act 1984* (Insurance Contracts Act).

**Section 4 – Schedule**

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

**Schedule 1 - Amendments to the *Insurance Contracts Regulations 2017***

**Item 1 – Section 4(1) (definition of eligible contract of insurance)**

Item 1 repeals the definition of ‘eligible contract of insurance’ contained in the *Insurance Contracts Regulations 2017* (Insurance Contracts Regulations).

**Item 2 – Section 6**

Item 2 repeals section 6 of the Insurance Contracts Regulations which prescribes the classes of contracts which qualify as eligible contracts of insurance for the purposes of the section 21A(6) of the Insurance Contracts Act.

Item 2 substitutes the current section 6 with an application provision that provides that the Division only applies in relation to:

- contracts of insurance that are not consumer insurance contracts; and
- proposed contracts of insurance that, if entered into, would not be consumer insurance contracts.

This ensures that the insured's duty of disclosure obligations do not apply to consumer insurance contracts.

#### Items 3 – 11 – Sections 7(2)(a), 7(2)(b), 7(2)(c), 7(2)(d), 8(2)(a), 8(2)(b) and 8(2)(c)

These items make consequential amendments to the Insurance Contracts Regulations to remove references to eligible contracts of insurance from sections 7 and 8 of the Insurance Contracts Regulations.

Sections 7 and 8 of the Insurance Contracts Regulations are made for the purposes of paragraph 22(4)(a) and (b) of the Insurance Contracts Act and requires the insurer to provide written notice and a reminder notice of the matters mentioned in subsection 22(1) of the Insurance Contracts Act.

These amendments also make it clear that section 7 and 8 do not apply to consumer insurance contracts by adding in a note at the end of the section.

#### Item 12 – Section 9

Item 12 makes a consequential amendment by repealing section 9 of the Insurance Contracts Regulations. Section 9 is made for the purposes of subsection 69(1A) of the Insurance Contracts Act, and provides that words may be used to inform an insured orally of the matters mentioned in subsection 22(1) of the Insurance Contracts Act for the original entering into of an eligible contract of insurance are set out in Schedule 4.

Schedule 4 to the Insurance Contracts Regulations has been removed as it relates to eligible contracts of insurance.

#### Item 13 – 14 – Section 40

Item 13 makes consequential amendments to the examples to subsection 40(2) of the Insurance Contracts Regulations to remove 'example 1' as the example relates to an 'eligible contract of insurance', which the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* has repealed. Therefore, this example is not required.

Item 14 would remove the '2' in the title of the example to reflect that is the only example in section 40.

#### Item 15 – Application of the amendments

Item 15 inserts an application provision for the Insurance Contracts Regulations to commence on the same date as the amendments for the duty to take reasonable care not to make a misrepresentation in the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*. These amendments apply from 5 October 2021.

Items 16 – 21 – Schedules 1 - 3

Items 16 – 21 make consequential amendments to Schedules 1 – 3 to the Insurance Contracts Regulations to reflect that the duty of disclosure notice requirements are not required for consumer insurance contracts.

Items 22 – 23 – Schedules 3 - 4

Items 22 – 23 repeal Part 3 of Schedule 3 and the whole of Schedule 4 of the Insurance Contracts Regulations as these provisions relate specifically to the notice requirements for ‘eligible contracts of insurance’, which the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* has repealed. Therefore, these provisions are not required.

## **Schedule 2 – Amendments to the *Corporations Regulations 2001***

### Item 1 – Regulation 7.1.04CB

Item 1 inserts regulation 7.1.04CB to provide that people who investigate or assess insurance claims are not required to be licensed under the regime. Item 1 achieves this by providing that where a person runs a business which involves investigating or assessing an insurance claim, they are not considered to do this as the primary part of their business. Without item 1, such people would likely be considered claims managers under section 761DA of the Corporations Act and would therefore be required to obtain an Australian financial services licence.

### Item 2 – Regulation 7.1.04F(2)

Item 2 makes an amendment to subregulation 7.1.04F(2) to insert three new classes of claims handling. The classes are claims handling in relation to:

- general insurance products;
- investment life insurance products; and
- life risk insurance products.

The effect of this provision is that where someone handles claims as a representative of multiple Australian financial service licensees, the licensees will be jointly and severally liable if the representative is authorised to do the same class of claims handling for the licensees

### Item 3 – Regulation 7.1.08AA

Item 3 inserts new regulation 7.1.08AA to prevent certain types of advice being given by someone handling claims without being licensed as a financial adviser. The types of advice are:

- how an insurance benefit should be structured (e.g. lump sum versus regular payments);
- how an insurance benefit should be managed or used (e.g. invested in certain products or schemes); and
- advice which relates to other insurance products not held by the person making the claim or financial products (e.g. advice about certain products which an insurance benefit could be invested in).

### Item 4 – Regulation 7.1.33

Item 4 repeals regulation 7.1.33 of the Corporations Regulations.

Chapter 7 of the Corporations Act contains rules to protect consumers of financial products and services, such as investments and financial advice. Currently these rules

do not apply to people who handle insurance claims, due to the effect of regulation 7.1.33 which provides an exemption for these services.

Therefore, by repealing regulation 7.1.33, a person who handles insurance claims will be required to:

- hold an Australian financial services licence;
- act efficiently, honestly and fairly (amongst other obligations); and
- provide appropriate disclosure to consumers.

In addition, when providing financial services to retail clients, item 4 will require a person have an internal dispute resolution process in place and be a member of the Australian Financial Complaints Authority (AFCA).

#### Item 5 – Regulations 7.6.01AAAA and 7.6.01AAAB

Item 5 inserts two new provisions into the Corporations Regulations.

Regulation 7.6.01AAAA provides that people who represent an insured to pursue an insurance claim must get an Australian financial services licence if they represent an insured to pursue a claim under a general insurance product.

Regulation 7.6.01AAAB allows Lloyd’s underwriters and unauthorised foreign insurers to handle claims without an Australian financial services licence if they authorise another person who has an Australian financial service licence for handling claims.

#### Item 6 – Regulation 7.9.62(4)(f)

Item 6 makes a consequential amendment by repealing paragraph 7.9.62(4)(f) of the Corporations Regulations. Section 1017F of the Corporations Act provides that when certain transactions occur, the issuer or seller of the product (or another person specified in the Corporations Regulations) must provide confirmation of the transaction. Paragraph 7.9.62(4)(f) provides that the acceptance or settlement of a claim relating to an insurance product is not required to be confirmed under section 1017F of the Corporations Act. Therefore, the repeal of paragraph 7.9.62(4)(f) will require someone who handles claims to inform the holder of the insurance product when a claim is finalised.

#### Item 7 – Regulation 10.42.01

Item 7 inserts an application provision into the Corporations Regulations. The effect of the application provision is that Schedule 2 to the Regulations apply in relation handling an insurance claim that has been lodged after the commencement of Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* for an existing insurance product. These Regulations will not apply to handling an insurance claim lodged before the commencement of Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.



**Statement of Compatibility with Human Rights**

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

**Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021**

These Regulations are 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 purpose of the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* (the Regulations) is to amend the *Insurance Contracts Regulations 2017* to remove the concept of eligible contracts of insurance.

The Regulations also amend the *Corporations Regulations 2001* to make handling an insurance claim a ‘financial service’ under the *Corporations Act 2001*.

**Human rights implications**

The Regulations do not engage any of the applicable rights or freedoms.

**Conclusion**

The Regulations are compatible with human rights as they do not raise any human rights issues.