



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

---

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 18 February 2021

David Hurley  
Governor-General

By His Excellency's Command

Josh Frydenberg  
Treasurer

---



---

## Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
	<b>Schedule 1—Duty to take reasonable care not to make a misrepresentation</b>	<b>2</b>
	<i>Insurance Contracts Regulations 2017</i>	2
	<b>Schedule 2—Claims handling and settling services</b>	<b>4</b>
	<i>Corporations Regulations 2001</i>	4



---

## 1 Name

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

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	19 February 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following:

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

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Duty to take reasonable care not to make a misrepresentation**

### *Insurance Contracts Regulations 2017*

#### **1 Subsection 4(1) (definition of *eligible contract of insurance*)**

Repeal the definition.

#### **2 Section 6**

Repeal the section.

#### **3 Paragraph 7(2)(a)**

Omit “that is not an eligible contract of insurance”.

#### **4 Paragraph 7(2)(b)**

Omit “Schedule 1; and”, substitute “Schedule 1.”.

#### **5 Paragraphs 7(2)(c) and (d)**

Repeal the paragraphs.

#### **6 Subsection 7(3)**

After “a life insured”, insert “(other than under a consumer insurance contract)”.

#### **7 At the end of section 7**

Add:

Note: This section does not apply to consumer insurance contracts (see section 20E of the Act).

#### **8 Paragraph 8(2)(a)**

Omit “that is not an eligible contract of insurance”.

#### **9 Paragraph 8(2)(b)**

Omit “Schedule 3; and”, substitute “Schedule 3.”.

#### **10 Paragraph 8(2)(c)**

Repeal the paragraph.

#### **11 At the end of section 8**

Add:

Note: This section does not apply to consumer insurance contracts (see section 20E of the Act).

#### **12 Section 9**

Repeal the section.

#### **13 Subsection 40(2) (example 1)**

Repeal the example.

**14 Subsection 40(2) (example 2)**

Omit “Example 2”, substitute “Example”.

**15 In the appropriate position in Part 5**

Insert:

**42 Application of amendments made by the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021***

The amendments of this instrument made by Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* have the same application as the amendments of the Act made by Part 2 of Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

**16 Part 1 of Schedule 1 (heading)**

Omit “, other than eligible contracts of insurance”, substitute “(other than consumer insurance contracts)”.

**17 Part 2 of Schedule 1 (at the end of the heading)**

Add “(other than consumer insurance contracts)”.

**18 Parts 3 and 4 of Schedule 1**

Repeal the Parts.

**19 Schedule 2 (at the end of the heading)**

Add “(other than under a consumer insurance contract)”.

**20 Part 1 of Schedule 3 (heading)**

Omit “, other than eligible contracts of insurance”, substitute “(other than consumer insurance contracts)”.

**21 Part 2 of Schedule 3 (at the end of the heading)**

Add “(other than consumer insurance contracts)”.

**22 Part 3 of Schedule 3**

Repeal the Part.

**23 Schedule 4**

Repeal the Schedule.

## Schedule 2—Claims handling and settling services

### *Corporations Regulations 2001*

#### **1 After regulation 7.1.04CA**

Insert:

#### **7.1.04CB When providing certain claims handling and settling services is not the primary part of a business**

For the purposes of paragraph 761DA(2)(b) of the Act, circumstances in which a person's provision of claims handling and settling services on behalf of one or more insurers is taken not to be the primary part of a business carried on by the person are when those services are:

- (a) investigating the validity of claims under insurance products, or providing assistance in relation to such investigations; or
- (b) assessing the extent of insurers' liabilities to other persons under insurance products under which claims are made, or providing assistance in relation to such assessments.

#### **2 At the end of subregulation 7.1.04F(2)**

Add:

- ; (g) the provision of a claims handling and settling service in relation to a general insurance product;
- (h) the provision of a claims handling and settling service in relation to an investment life insurance product;
- (i) the provision of a claims handling and settling service in relation to a life risk insurance product.

#### **3 Before regulation 7.1.08**

Insert:

#### **7.1.08AA Meaning of *financial product advice*—advice that is not regarded as a necessary part of providing claims handling and settling services**

*Advice about how to structure or use insurance claim payouts*

- (1) For the purposes of paragraph 766B(7B)(b) of the Act, giving a recommendation or statement of opinion, or a report of either of those things, cannot reasonably be regarded as a necessary part of providing a claims handling and settling service if the recommendation, statement or report relates to:
  - (a) how an amount to be paid to a person in settlement of a claim under an insurance product should be structured; or
  - (b) the management or use of an amount paid, or to be paid, to a person in settlement of a claim under an insurance product.

*Advice about other insurance products or financial products*

- (2) For the purposes of paragraph 766B(7B)(b) of the Act, giving a recommendation or statement of opinion, or a report of either of those things, cannot reasonably



---

be regarded as a necessary part of providing a claims handling and settling service if the recommendation, statement or report:

- (a) is given in response to a claim, or potential claim, made under an insurance product; and
- (b) relates to other insurance products not held by the person making the claim or financial products.

#### **4 Regulation 7.1.33**

Repeal the regulation.

#### **5 After regulation 7.6.01**

Insert:

##### **7.6.01AAAA Need for Australian financial services licence: prescribed insurance products in relation to claimant intermediaries**

For the purposes of subparagraph 911A(2)(ek)(vi) of the Act, general insurance products are prescribed.

##### **7.6.01AAAB Need for Australian financial services licence: issuers of insurance products**

For the purposes of subparagraph 911A(2)(el)(ii) of the Act, the following issuers of insurance products are prescribed:

- (a) Lloyd's underwriters (within the meaning of the *Insurance Act 1973*);
- (b) unauthorised foreign insurers (within the meaning of the *Insurance Regulations 2002*).

#### **6 Paragraph 7.9.62(4)(f)**

Repeal the paragraph.

#### **7 In the appropriate position in Chapter 10**

Insert:

### **Part 10.42—Application provisions relating to the Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021**

#### **10.42.01 Application of claims handling and settling services reforms**

The amendments made by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* apply in relation to claims or potential claims in relation to an insurance product made on or after the day on which that Schedule commences.