

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

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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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 handing 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.