



Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) 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 05 August 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
	Schedule 1—Amendments	2
	<i>Corporations Regulations 2001</i>	<i>2</i>

1 Name

This instrument is the *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) 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	5 October 2021.	5 October 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Note: This table relates only to the provisions of this instrument as originally made.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 *Corporations Act 2001*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Corporations Regulations 2001

1 Regulations 7.8.21A to 7.8.22A

Repeal the regulations, substitute:

7.8.21A Exceptions to prohibition on hawking of financial products

For the purposes of paragraph 992A(2)(c) of the Act, the following kinds of offer, request or invitation are prescribed:

- (a) an offer for the issue or sale of:
 - (i) listed securities; or
 - (ii) an interest in a listed managed investment scheme; that is made by telephone by a financial services licensee;
- (b) an offer for the issue or sale of securities that is made to a client by a financial services licensee through whom the client has bought or sold securities in the last 12 months;
- (c) an offer for the issue or sale of an interest in a managed investment scheme that is made to a client by a financial services licensee through whom the client has acquired or disposed of an interest in a managed investment scheme in the last 12 months;
- (d) a CSF offer;
- (e) an offer of, or a request or invitation relating to, a financial product that is made under an eligible employee share scheme;
- (f) an offer of, or a request or invitation relating to, a financial product that is an arrangement under which medical indemnity cover to which the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* applies is provided to:
 - (i) a medical practitioner (within the meaning of that Act); or
 - (ii) a registered health professional (within the meaning of that Act) in relation to whom regulations made for the purposes of Part 3 of that Act apply;
- (g) an offer of, or a request or invitation relating to, a financial product that is an interest in a scheme:
 - (i) that is in the nature of an insolvency litigation funding scheme, or a litigation funding arrangement, mentioned in regulation 5C.11.01; and
 - (ii) that is of a kind declared not to be a managed investment scheme by the regulations for the purposes of paragraph (n) of the definition of ***managed investment scheme*** in section 9 of the Act;
- (h) an offer of, or a request or invitation relating to, a financial product that is a basic banking product (within the meaning of Part 7.7A of the Act), if the offer, request or invitation was made in the course of contact with the consumer that the consumer initiated for any purpose;
- (i) an offer of, or a request or invitation relating to, a financial product that is a facility if:

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- (i) the definition of **basic deposit product** in section 761A of the Act does not apply to the facility, but would apply to the facility if paragraph (d) of that definition were disregarded; and
 - (ii) funds are able to be withdrawn or transferred from the facility on the instruction of, or by authority of, the depositor with prior notice of 31 days or less to the ADI that makes the facility available (whether or not the withdrawal or transfer will attract a reduction in the return generated for the depositor); and
 - (iii) the offer, request or invitation was made in the course of contact with the consumer that the consumer initiated for any purpose;
 - (j) an offer for the issue or sale of a financial product that is substantially similar to a financial product (the **current financial product**) that the recipient of the offer:
 - (i) already holds with the offeror; or
 - (ii) held with the offeror at any time during the period of 30 day before the day on which the offer is made;
 and that is in the nature of an offer to renew the current financial product.

2 Subregulations 7.8.23(1) and (3)

Omit “For paragraph 992A(4)(b)”, substitute “For the purposes of paragraph 992AA(2)(c)”.

3 Regulation 7.8.24

Omit “For subparagraph 992A(4)(c)(i) of the Act, the following subclasses of financial products are excluded from subsection 992A(4) of the Act.”, substitute “For the purposes of paragraph 992AA(3)(a) of the Act, the following classes of financial products are excluded from section 992AA of the Act.”.

4 Regulation 7.8.25

Omit “For paragraph 992A(4)(b)”, substitute “For the purposes of paragraph 992AA(2)(c)”.

5 Regulation 7.8.26

Repeal the regulation.

6 In the appropriate position in Chapter 10

Insert:

Part 10.39—Application provisions for the Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021

10.39.01 Right of return and refund for hawked financial products

- (1) Regulations 7.8.23 and 7.8.25, as in force immediately before the commencement of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021*,

continue in force after that commencement as if they had been made for the purposes of paragraph 992AA(2)(c) of the Act.

- (2) Regulation 7.8.24, as in force immediately before the commencement of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021*, continues in force after that commencement as if it had been made for the purposes of paragraph 992AA(3)(a) of the Act.