

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

ASIC Supervisory Cost Recovery Levy Act 2017

Corporations Regulations 2001

Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Claims Handling and Settling Services) Regulations 2020

Section 1364 of the *Corporations Act 2001* and section 13 of the *ASIC Supervisory Cost Recovery Levy Act 2017* provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Acts.

The purpose of the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Claims Handling and Settling Services) Regulations 2020* (the Regulations) is to implement recommendation 4.8 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) to make handling and settling an insurance claim, or potential insurance claim, a ‘financial service’ under the *Corporations Act 2001*.

For consumers, the intrinsic value of an insurance product lies in the ability to make a successful claim when an insured event occurs. Insurers and their representatives are expected to handle and settle an insurance claim fairly, transparently and without delay. When an insurance claim is not handled and settled in this manner, it can lead to disputes and financial loss to the insured, which can undermine public trust in the financial sector.

In recommendation 4.8 of the Financial Services Royal Commission, Commissioner Hayne recommended removing the exemption for handling and settling an insurance claim from the definition of a ‘financial service’. Commissioner Hayne observed that there is no basis in principle or in practice for continuing to exclude handling and settling an insurance claim from the definition of a ‘financial service’.

The Regulations give effect to the Government’s response to the Financial Services Royal Commission by repealing regulation 7.1.33 of the *Corporations Regulations 2001* to make handling and settling an insurance claim a ‘financial service’. As a result, persons handling and settling an insurance claim will be subject to a variety of obligations under the *Corporations Act 2001* including the requirement to hold an Australian financial services licence and the general conduct obligations to act efficiently, honestly and fairly in section 912A of the *Corporations Act 2001*.

The Regulations also amend the *Corporations Regulations 2001* to appropriately apply the existing financial services regime to handling and settling an insurance claim. The Regulations also create a new subsector to enable ASIC to recover its

regulatory costs incurred from supervising persons that handle and settle insurance claims.

The Regulations support Schedule [x] of the Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Bill 2020 which establishes the financial service of handling and settling an insurance claim.

Details of the Regulations are set out in Attachment A.

The *Corporations Act 2001* does not specify any conditions that need to be met before the power to make the Regulations is exercised.

The *ASIC Supervisory Cost Recovery Levy Act 2017* requires the Minister be satisfied that the Regulations are consistent with the objectives of the cost recovery regime in subsection 9(2) of the *ASIC Supervisory Cost Recovery Levy Act 2017*.

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

The Regulations commence on 1 July 2020

A statement of Compatibility with Human Rights is at Attachment B.

Details of the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Claims Handling and Settling Services) Regulations 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Claims Handling and Settling Services) Regulations 2020* (the Regulations).

Section 2 – Commencement

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

Section 3 – Authority

The section provides that the Regulations are made under the *Corporations Act 2001* and the *ASIC Supervisory Cost Recovery Levy Act 2017*.

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 – Implementing Recommendation 4.8 of the Financial Services Royal Commission

Item 3 of Schedule [x] gives effect to recommendation 4.8 of the Financial Services Royal Commission to remove the exclusion of handling and settling an insurance claim from the definition of a ‘financial service’ for the purposes of the *Corporations Act 2001*.

This is done by repealing regulation 7.1.33 of the *Corporations Regulations 2001*. The repeal of regulation 7.1.33 makes handling and settling an insurance claim a financial service. As a result persons who handle and settle an insurance claim will be subject to a variety of obligations under the Act including the requirement to hold an Australian financial services licence and the general conduct obligations to act honestly efficiently and fairly in section 912A of the *Corporations Act 2001*.

The ASIC Supervisory Cost Recovery Amendments

Items 6 to 8 of Schedule [x] provide for a new subsector to enable ASIC to recover its regulatory costs incurred from supervising persons that handle and settle insurance claims.

A person forms part of the ‘claims handling and settling services providers’ subsector if it holds an Australian financial services licence authorising it to handle and settle an insurance claim.

Persons that fall within the claims handling and settling services providers subsector will pay a levy calculated in accordance with the graduated levy component formula in section 10 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*. All licensed claims handling and settling services providers will pay a minimum levy of \$500. Each entity will also pay a graduated component depending on its share of the total number of claims under insurance products in relation to which the entity provided claims handling and settling services in the financial year. ASIC will prescribe its regulatory costs and the total number of claims under insurance products in relation to which claims handling and settling services are provided for each financial year as part of its annual legislative instrument.

The amendments only apply to levies payable in relation to the 2021-22 financial year and later financial years.

Other Consequential Changes

Item 1 of Schedule [x] creates three new classes of financial services. These services are claims handling and settling services in relation to:

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

As a result of this amendment, where a person handles and settles an insurance claim as an authorised representative of multiple Australian financial service licensees, the licensees will only be jointly and severally liable if the conduct is within authority in relation to each of the licensees.

Item 4 of Schedule [x] removes an exclusion for handling and settling an insurance claim from the obligation for licensees to inform the holder of a financial product that a transaction has taken place. This will mean that persons who handle and settle insurance claims will be required to inform the holder of insurance products when a claim is finalised under the person's insurance product.

Item 2 of Schedule [x] prescribes certain types of advice that will not be regarded as a necessary part of handling and settling an insurance claim and may therefore be considered 'financial product advice' for the purposes of the *Corporations Act 2001*. The types of advice prescribed are advice relating to:

- how an amount to be paid to a person in settlement of a claim under an insurance product is to be structured;
- the management or use of an amount paid, or to be paid, to a person in settlement of a claim under an insurance product; and
- advice that is given in response to a claim, or potential claim, made under an insurance product and which relates to other insurance products or financial products.

Item 5 of Schedule [x] makes the amendments made by the Regulations apply in relation to handling and settling an insurance claim or a potential insurance claim that has been made on or after 1 July 2020 under an existing insurance product. However the amendments will not apply to handling and settling an existing insurance claim or a potential insurance claim that has been made before 1 July 2020.