

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Superannuation Industry (Supervision) Act 1993

Corporations Regulations 2001

Superannuation Industry (Supervision) Regulations 1994

*Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators)
(Regulation of Superannuation) Regulations 2020*

Section 1364 of the *Corporations Act 2001* (Corporations Act) and section 353 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) 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 – Stronger Regulators) (Regulation of Superannuation) Regulations 2020* (the Regulations) is to remove certain exemptions from the requirement to hold an Australian financial services licence (AFSL) to provide financial services, and to make other minor amendments, in support of broader reforms to the roles and responsibilities of superannuation industry regulators.

Those broader reforms are made by Schedule # to the Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2020 Measures)) Bill 2020 (the Bill) and implement recommendations 3.8, 6.3, 6.4 and 6.5 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Financial Services Royal Commission).

The Bill makes adjustments to the SIS Act relating to the roles and responsibilities of superannuation industry regulators. The Bill expands the role of the Australian Securities and Investments Commission (ASIC) to include the promotion of consumer protection and market integrity in the superannuation industry. It also extends the AFSL regime to cover a broader range of activities undertaken by superannuation trustees.

The Regulations repeal the exemption for trustees of non-public offer superannuation funds from the requirement to hold an AFSL to deal in financial products (including superannuation interests). Consistent with the reforms made by the Bill, this is intended to ensure the regulation of superannuation entities by ASIC on a consistent basis and reflects that members of non-public offer funds should have the same degree of protection as members of other funds. The Regulations also repeal a related exemption.

Reflecting amendments made by the Bill, the Regulations make a number of minor amendments relating to exemptions for pooled superannuation trusts and the submission of certain notices to the Commissioner of Taxation.

The Corporations Act and SIS Act do not specify any conditions that need to be met before the power to make the Regulations is exercised.

Details of the Regulations are set out in the [Attachment](#).

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

The Regulations commence on the later of the day after registration and 1 July 2020. The Government intends to arrange registration prior to 1 July 2020, which will ensure they commence on that date.

Details of the *Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators) (Regulation of Superannuation) 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 – Stronger Regulators) (Regulation of Superannuation) Regulations 2020*.

Section 2 – Commencement

This section provides that the Regulations commence on the later of 1 July 2020 and the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the Corporations Act and the SIS 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 – Implementing Recommendations 3.8, 6.3, 6.4 and 6.5 of the Financial Services Royal Commission

Amendments to the Corporations Regulations 2001

Item 1 of Schedule 1 repeals the exemption for trustees of non-public offer superannuation funds from the requirement to hold an AFSL to deal in financial products (including a superannuation interest). Non-public offer superannuation funds are superannuation funds that are not offered to the public at large, with membership limited to employees of a particular employer or group of employers.

The removal of the exemption is intended to ensure the regulation of superannuation entities by ASIC on a consistent basis, and reflects that members of non-public offer funds should have the same degree of protection as members of other funds.

As a result of the amendments in the Bill and item 1 of Schedule 1 to these Regulations, from 1 July 2020, trustees of non-public offer funds must hold AFSL authorisations both to deal in a superannuation interest and to provide a superannuation trustee service.

However, while existing trustees of non-public offer funds must obtain an AFSL to continue operating, the Bill's transitional provisions ensure that they only need to meet the application requirements in respect of dealing in a superannuation interest if they apply for an AFSL before 1 July 2020. New applicants from 1 July 2020 must

comply with all of the ordinary AFSL application requirements in respect of each financial service they propose to provide.

Items 2, 3 and 4 of Schedule 1 extend existing exemptions for trustees of pooled superannuation trusts in the *Corporations Regulations 2001* that currently apply in relation to dealing in a financial product (including a superannuation interest). These exemptions only apply where the pooled superannuation trust does not invest the assets of a regulated superannuation fund below a certain asset size.

Items 2, 3 and 4 achieve this by amending the exemptions to expressly cover the new financial service introduced by the Bill – providing a superannuation trustee service. As a result, an AFSL is not required for:

- a superannuation trustee service provided by the trustee of a pooled superannuation trust in the following circumstances:
 - the pooled superannuation trust is used for investment of the assets of a regulated superannuation fund;
 - the regulated superannuation fund has net assets of at least \$10 million on the date that it first invests in the pooled superannuation trust;
- a superannuation trustee service provided by the trustee of a pooled superannuation trust in the following circumstances:
 - the pooled superannuation trust is used for investment of the assets of a regulated superannuation fund;
 - the regulated superannuation fund has net assets of at least \$5 million, but less than \$10 million, on the date that it first invests in the pooled superannuation trust;
 - the trustee has a reasonable expectation that the net assets of the regulated superannuation fund will equal or exceed \$10 million not later than 3 months of the date on which it first invests in the pooled superannuation trust; or
- a superannuation trustee service provided by the trustee of a pooled superannuation trust in circumstances in which the pooled superannuation trust is not used for the investment of the assets of a regulated superannuation fund.

Item 5 of Schedule 1 repeals the exemption from requiring an AFSL to deal in a financial product that consists only of a trustee of a superannuation fund paying the benefits of a member into a superannuation product or retirement savings account product. This exemption is made redundant by the repeal of the exemption for trustees of non-public offer superannuation funds from requiring an AFSL to deal in a superannuation product (see item 1 of Schedule 1).

Amendment to the Superannuation Industry (Supervision) Regulations 1994

Item 6 of Schedule 1 repeals regulation 1.04A of the *Superannuation Industry (Supervision) Regulations 1994*, which is made redundant by the Bill's clarification that the Commissioner of Taxation is responsible for receiving written notices from trustees of their elections to have the SIS Act apply to them as a regulated superannuation fund.