

## **EXPOSURE DRAFT EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

#### *Insurance Contracts Act 1984*

#### *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Regulations 2020: FSRC rec 4.5 (duty of disclosure to insurer)*

Section 78 of the *Insurance Contracts Act 1984* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Regulations 2020: FSRC rec 4.5 (duty of disclosure to insurer)* (the Regulations) is to amend the *Insurance Contracts Regulations 2017* (Insurance Contracts Regulations) to remove the concept of eligible contracts of insurance.

The draft *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Bill 2020: FSRC rec 4.5 (duty of disclosure to insurer)* (the Bill) would amend the Act to give effect to Recommendation 4.5 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The Bill replaces the existing duty of disclosure with a new duty for consumers to take reasonable care not to make a misrepresentation to the insurer before they enter into the insurance contract. The new duty applies to consumer insurance contracts. These are, broadly, general and life insurance contracts purchased for the insured's personal, domestic or household purposes.

The Bill also repeals sections 21A and 21B of the Act. These sections contain a modified duty of disclosure that applies in relation to eligible contracts of insurance.

Therefore, the concept of 'eligible contract of insurance' is no longer required. Accordingly, the Regulations make consequential amendments to remove the concept of eligible contracts of insurance from the Insurance Contracts Regulations.

The Regulations will commence on the day after they are registered on the Federal Register of Legislation.

The Act specifies no conditions to be met before the power to make the Regulations may be exercised.

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

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

## ATTACHMENT A

### Details of the Financial Sector Reform (Hayne Royal Commission Response— Protecting Consumers (2020 Measures)) Regulations 2020: FSRC rec 4.5 (duty of disclosure to insurer)

#### Item 1 of the Regulations – Subsection 4(1) (definition of *eligible contract of insurance*)

Item 1 of the Regulations repeals the definition of ‘eligible contract of insurance’ contained in the Insurance Contracts Regulations.

#### Item 2 of the Regulations – Section 6

Item 2 of the Regulations repeals section 6 of the Insurance Contracts Regulations which prescribes the classes of contracts which qualify as eligible contracts of insurance for the purposes of the section 21A(6) of the Act.

Item 2 substitutes the current section 6 with an application provision that provides that the Division only applies in relation to:

- contracts of insurance that are not consumer insurance contracts; and
- proposed contracts of insurance that, if entered into, would not be consumer insurance contracts.

This ensures that the insured’s duty of disclosure obligations do not apply to consumer insurance contracts.

#### Items 3 – 8 of the Regulations – Paragraphs 7(2)(a), 7(2)(b), 7(2)(c), 7(2)(d), 8(2)(a), 8(2)(b) and 8(2)(c)

These items make consequential amendments to the Insurance Contracts Regulations to remove references to eligible contracts of insurance from sections 7 and 8 of the Insurance Contracts Regulations.

#### Item 9 of the Regulations – Section 9

Item 9 removes section 9 which relates to the giving of an oral notice of an insured’s duty of disclosure when entering into an eligible contract of insurance.