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Inserts for
**Financial Sector Reform (Hayne Royal
Commission Response—Protecting
Consumers (2020 Measures)) Bill 2020:
Hawking of financial products**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule ?	1 July 2020.	1 July 2020
2.		
3.		

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Schedule ?—Hawking of financial products

Part 1—Main amendments

Corporations Act 2001

1 Sections 736 and 738

Repeal the sections.

2 Sections 992A and 992AA

Repeal the sections, substitute:

992A Prohibition on hawking of financial products

General prohibition

- (1) A person must not offer a financial product for issue, transfer or sale to another person, or request or invite another person to ask or apply for a financial product or to purchase a financial product, if:
- (a) the other person is a retail client; and
 - (b) the offer, request or invitation is made in the course of, or because of, an unsolicited contact with the other person.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Exceptions

- (2) Subsection (1) does not apply to:
- (a) advice given to a person (the *client*) by a person who is required under Division 2 of Part 7.7A to act in the best interests of the client in relation to the advice; or
 - (b) an offer for the issue, transfer 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; or
 - (c) an offer for the issue, transfer 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; or
 - (d) an offer for the issue, transfer or sale of an interest in a managed investment scheme that is made to a client by a

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- 1 financial services licensee through whom the client has
2 acquired or disposed of an interest in a managed investment
3 scheme in the last 12 months; or
- 4 (e) a CSF offer; or
- 5 (f) an offer of, or a request or invitation relating to, a financial
6 product that is made under an eligible employee share
7 scheme; or
- 8 (g) an offer of, or a request or invitation relating to, a financial
9 product that is an arrangement under which medical
10 indemnity cover to which the *Medical Indemnity (Prudential
11 Supervision and Product Standards) Act 2003* applies is
12 provided to:
- 13 (i) a medical practitioner (within the meaning of that Act);
14 or
- 15 (ii) a registered health professional (within the meaning of
16 that Act) in relation to whom regulations made for the
17 purposes of Part 3 of that Act apply; or
- 18 (h) an offer of, or a request or invitation relating to, a financial
19 product that is an interest in a scheme:
- 20 (i) that is in the nature of a litigation funding scheme or
21 litigation funding arrangement; and
- 22 (ii) that is of a kind declared not to be a managed
23 investment scheme by the regulations for the purposes
24 of paragraph (n) of the definition of *managed*
25 *investment scheme* in section 9; or
- 26 (i) an offer of, or a request or invitation relating to, a financial
27 product if:
- 28 (i) the financial product is an interest in a superannuation
29 fund that is taken, under regulations made for the
30 purposes of paragraph 761E(7)(a), to be issued; and
- 31 (ii) the offer, request or invitation is made by or on behalf
32 of the trustee of the fund; or
- 33 (j) an offer of, or a request or invitation relating to, a financial
34 product that is an add-on insurance product in relation to a
35 product or service (the *principal product or service*) sold to a
36 consumer by:
- 37 (i) the person making the offer, request or invitation; or
38 (ii) another person with whom that person has an
39 arrangement that relates to the provision of add-on
40 insurance products in relation to products or services
41 that include the principal product or service.
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1 Note 1: Subdivision DA of Division 2 of Part 2 of the *Australian Securities*
2 *and Investments Commission Act 2001* deals with offers, requests or
3 invitations relating to add-on insurance products.

4 Note 2: A defendant bears an evidential burden in relation to the matters in
5 this subsection. See subsection 13.3(3) of the *Criminal Code*.

6 (3) However, paragraph (2)(j) does not apply if:

7 (a) making the offer, request or invitation is covered by any of
8 sections 12DU to 12DY of the *Australian Securities and*
9 *Investments Commission Act 2001*; or

10 (b) the offer, request or invitation is made after the end of the
11 period of 6 weeks beginning on the end of the first day of:

12 (i) the add-on insurance deferral period (within the
13 meaning of section 12DP of that Act) in relation to the
14 consumer acquiring, or entering into a commitment to
15 acquire, the principal product or service; or

16 (ii) if there is no such add-on insurance deferral period—the
17 add-on insurance pre-deferral period (within the
18 meaning of that section); or

19 (c) before the offer, request or invitation is made, the consumer
20 informed the person making the offer, request or invitation
21 that the consumer did not want to receive such offers,
22 requests or invitations.

23 *Meaning of unsolicited contact*

24 (4) Contact by a person with another person, in connection with a
25 financial product, is ***unsolicited contact*** with the other person in
26 connection with the product if:

27 (a) the contact is wholly or partly in one or more of the
28 following forms:

29 (i) a telephone call;

30 (ii) a face-to-face meeting;

31 (iii) any other form that a reasonable person would consider
32 creates an expectation of an immediate response from
33 the other person; and

34 (b) either:

35 (i) the other person did not request the contact; or

36 (ii) if the other person made such a request—the
37 requirements of subsection (5) are not met.

38 (5) For the purposes of subparagraph (4)(b)(ii), the requirements are:

39 (a) either:

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- 1 (i) the request was a request that the person offer for issue,
2 transfer or sale to the other person that financial
3 product; or
4 (ii) a reasonable person would consider that offering to the
5 other person that financial product for issue, transfer or
6 sale was reasonably within the scope of the request; and
7 (b) the request was a positive act of the other person; and
8 (c) the request was clear, and the other person understood what
9 was being requested; and
10 (d) if the request indicated the form of contact that the other
11 person wants—the contact is in that form; and
12 (e) the request was made within 6 weeks before the contact
13 occurs; and
14 (f) the request was not withdrawn before the contact occurs.

15 For the purposes of this subsection, take into account any
16 variations that the other person makes to the request before the
17 contact occurs.

- 18 (6) The other person may vary or withdraw the request at any time.
19 The variation or withdrawal may take any form, regardless of the
20 form of the request.
- 21 (7) To avoid doubt, advertising an offer, or publishing a statement
22 about an offer, is not *unsolicited contact* if:
23 (a) because of subsection 734(4), (5), (6), (7), (8) or (9), the
24 advertisement or publication does not contravene subsection
25 734(2); or
26 (b) because of paragraphs 1018A(1)(c) to (e), or because of
27 subsection 1018A(3), (4) or (5), the advertisement or
28 publication does not contravene subsection 1018A(1); or
29 (c) because of paragraphs 1018A(2)(c) to (f), or because of
30 subsection 1018A(3), (4) or (5), the advertisement or
31 publication does not contravene subsection 1018A(2).

32 *Strict liability*

- 33 (8) An offence based on subsection (1) is an offence of strict liability.

34 Note: For strict liability, see section 6.1 of the *Criminal Code*.

35 **992AA Right of return and refund for hawked financial products**

- 36 (1) If a person (the *issuer*) contravenes section 992A in relation to a
37 financial product issued, transferred or sold to another person (the
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- 1 *client*), the client has a right of return and refund exercisable at any
2 time during the period starting when the financial product was
3 issued, transferred or sold and ending:
- 4 (a) if, under section 1019B, the client has a right to return the
5 financial product within a particular period—one month after
6 the end of that period; or
7 (b) otherwise—one month and 14 days after the financial
8 product was issued, transferred or sold.
- 9 (2) If the financial product is returned under subsection (1):
- 10 (a) if the financial product is constituted by a legal relationship
11 between the client and the issuer—by force of this section,
12 that relationship is terminated, with effect from the time of
13 the return, without penalty to the client; and
14 (b) by force of this section, any contract for the acquisition of the
15 product by the client is terminated, with effect from the time
16 of the return, without penalty to the client; and
17 (c) such additional consequences (which may include the
18 imposition of additional obligations) apply as are specified in
19 the regulations.
- 20 (3) However:
- 21 (a) this section does not apply in relation to a financial product
22 included in a class of financial products that the regulations
23 exclude from this section; and
24 (b) if the regulations provide that this section applies in relation
25 to a class of financial products only if specified additional
26 requirements are satisfied—this section does not apply in
27 relation to a financial product included in that class unless
28 those requirements are satisfied; and
29 (c) in circumstances specified in the regulations, this section
30 does not apply to any financial product.
- 31 (4) This section applies in addition to any other penalties for or in
32 relation to breaches of section 992A.

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1 **Part 2—Other amendments**

2 ***Competition and Consumer Act 2010***

3 **3 Section 95 of Schedule 2**

4 Omit “section 736, 992A or 992AA”, substitute “section 992A”.

5 **4 Section 95 of Schedule 2 (note)**

6 Repeal the note, substitute:

7 Note: Section 992A of the *Corporations Act 2001* prohibits hawking of
8 financial products.

9 **5 Section 187 of Schedule 2**

10 Omit “section 736, 992A or 992AA”, substitute “section 992A”.

11 **6 Section 187 of Schedule 2 (note)**

12 Repeal the note, substitute:

13 Note: Section 992A of the *Corporations Act 2001* prohibits hawking of
14 financial products.

15 ***Corporations Act 2001***

16 **7 Section 9**

17 Insert:

18 *add-on insurance product* has the same meaning as in section
19 12DO of the *Australian Securities and Investments Commission*
20 *Act 2001*.

21 **8 Subsection 1200F(1) (table item 3)**

22 Omit “, other than sections 736 and 738”.

23 **9 Subsection 1200F(1) (table item 4)**

24 Omit “section 992AA”, substitute “section 992A”.

25 **10 Schedule 3 (table items dealing with subsections 736(1),**
26 **992A(3) and 992AA(1))**

27 Repeal the items.
