

EXPOSURE DRAFT

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Inserts for
**Financial Sector Reform (Hayne Royal
Commission Response—Protecting
Consumers (2020 Measures)) Bill 2020:
Use of terms “insurance” and “insurer”**

Commencement information

| Column 1 | Column 2 | Column 3 |
|-------------------|---------------------|---------------------|
| Provisions | Commencement | Date/Details |

| | | |
|---------------|---|--|
| 1. Schedule ? | The day after this Act receives the Royal Assent. | |
|---------------|---|--|

2.

3.

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Schedule ?—Use of terms “insurance” and “insurer”

Insurance Act 1973

1 Subsection 3(1)

Insert:

government entity has the meaning given by subsection 114(5).

2 Subsection 8(1)

Omit “subsection (3)”, substitute “subsections (2) and (3)”.

3 After subsection 8(1)

Insert:

(2) ASIC has the general administration of section 114.

4 Subsection 8(3)

After “APRA”, insert “or ASIC”.

5 Before section 115

Insert in Part X:

114 Use of words “insurance” and “insurer”

Use of the word “insurance”

(1) A person commits an offence if:

- (a) the person carries on a business or is proposing to carry on a business; and
- (b) the person uses the word *insurance* to describe (expressly or by implication) a product or service that the person supplies, or proposes to supply, in the course of carrying on the business; and
- (c) the product or service is not insurance; and
- (d) it is likely in all the circumstances (including the use of the word *insurance*) that the product or service could be mistakenly believed to be insurance.

Penalty:

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- 1 (a) in the case of an individual—50 penalty units; or
2 (b) in the case of a body corporate—500 penalty units.

3 *Use of the word “insurer”*

- 4 (2) A person commits an offence if:
5 (a) the person carries on a business or is proposing to carry on a
6 business; and
7 (b) the person uses the word *insurer* to describe (expressly or by
8 implication) the person in connection with a product or
9 service that the person supplies, or proposes to supply, in the
10 course of carrying on the business; and
11 (c) either:
12 (i) the product or service is not insurance; or
13 (ii) the person would breach a requirement mentioned in
14 subsection (3) if the person supplied the product or
15 service in the course of carrying on the business; and
16 (d) in a case where the product or service is not insurance—it is
17 likely in all the circumstances (including the use of the word
18 *insurer*) that the product or service could be mistakenly
19 believed to be insurance.

20 *Penalty:*

- 21 (a) in the case of an individual—50 penalty units; or
22 (b) in the case of a body corporate—500 penalty units.
- 23 (3) For the purposes of subparagraph (2)(c)(ii), the requirements are
24 the requirements imposed by the following provisions:
25 (a) section 9 or 10 of this Act (need to be authorised to carry on
26 insurance business);
27 (b) section 17 of the *Life Insurance Act 1995* (registration of life
28 companies);
29 (c) section 10 of the *Private Health Insurance (Prudential
30 Supervision) Act 2015* (carrying on health insurance business
31 without registration).

32 *Exceptions*

- 33 (4) Subsections (1) and (2) do not apply if:
34 (a) the person is a government entity; or
35 (b) the person:
36 (i) is covered by a determination under subsection (6); and

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- 1 (ii) if that determination is subject to conditions—meets
2 those conditions; or
3 (c) the product or service is of a kind prescribed by the
4 regulations; or
5 (d) the product or service is State insurance (within the meaning
6 of paragraph 51(xiv) of the Constitution) not extending
7 beyond the limits of the State concerned.

8 Note: The defendant bears an evidential burden in relation to the matters in
9 subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- 10 (5) A **government entity** is:
11 (a) a Department of State of the Commonwealth; or
12 (b) a Department of the Parliament established under the
13 *Parliamentary Service Act 1999*; or
14 (c) an Executive Agency, or Statutory Agency, within the
15 meaning of the *Public Service Act 1999*; or
16 (d) a Department of State of a State or Territory; or
17 (e) an entity that is established for a public purpose by a law of
18 the Commonwealth, a State or a Territory.

19 *Determinations by ASIC*

20 (6) ASIC may, by legislative instrument determine that subsections (1)
21 and (2) do not apply to a specified person or class of persons. The
22 determination may be subject to conditions.

- 23 (7) ASIC must not:
24 (a) revoke a determination under subsection (6) relating to a
25 specified person; or
26 (b) vary such a determination by varying or including conditions
27 to which the determination is subject;
28 unless ASIC has notified the person in writing that it is considering
29 revoking or varying the determination.

30 *Strict liability*

31 (8) Subsections (1) and (2) are offences of strict liability.

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