

EXPOSURE DRAFT EXPLANATORY MATERIAL

Issued by authority of the Treasurer

Corporations Act 2001

Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2020

Section 1364 of the *Corporations Act 2001* 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 these Regulations is to exclude certain people from regulation for insurance claims handling under the *Corporations Act 2001*.

The Government has introduced the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 (the Bill) to implement recommendation 4.8 of the Financial Services Royal Commission.

In recommendation 4.8 of the Financial Services Royal Commission, Commissioner Hayne recommended regulating insurance claims handling as a ‘financial service’.

The Bill will amend the *Corporations Act 2001* to require people who handle insurance claims to comply with the same obligations as those which currently apply to people providing financial services under that Act. Those obligations include:

- holding an Australian financial services licence;
- acting efficiently, honestly and fairly (amongst other obligations); and
- providing appropriate disclosure to consumers.

The obligations also include a requirement that people who provide financial services to retail clients have an internal dispute resolution process in place and be a member of the Australian Financial Complaints Authority (AFCA).

These Regulations exclude certain people from regulation for claims handling as a claimant intermediary under the *Corporations Act 2001*. Therefore, in those circumstances, a person listed in these regulations will not be required to comply with the obligations in the *Corporations Act 2001* to:

- hold an Australian financial services licence when handling claims;
- act efficiently, honestly and fairly when handling claims (amongst other obligations); or
- provide appropriate disclosure to consumers when handling claims.

In addition a person listed in these Regulations will not be required to have an internal dispute resolution process in place or be a member of the AFCA when handling the claims of retail clients.

The persons excluded by these Regulations are:

- mortgage brokers and mortgage intermediaries;
- insurance brokers;
- qualified accountants;
- veterinarians
- travel agents;
- financial advisers;
- property managers;
- estate managers; and
- public trustees.

The purpose of these Regulations is to exclude certain parties not intended to be captured but that meet the claimant intermediary definition when handling insurance claims. These people are excluded because handling claims is typically not their core business and often they often do so for no monetary benefits. This will avoid the unnecessary regulatory burden of requiring these parties to obtain an Australian financial services licence.

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

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

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

Details of the *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2020*

Section 1

Section 1 provides that the name of these Regulations is the *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2020*.

Section 2

Section 2 provides that these Regulations commence immediately after the commencement of Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

Section 3

Section 3 states that these Regulations are made under the *Corporations Act 2001*.

Section 4

Section 4 gives effect to the Schedule to the Regulations, which amends the *Corporation Regulations 2001*.

Schedule 1

Item 1 inserts a new regulation into the *Corporation Regulations 2001* that excludes certain people from being claimant intermediaries.

A claimant intermediary is defined in the Bill as a person who carries on a business of representing an insureds under an insurance contract for a reward (see section 761CAA of the *Corporations Act 2001*).

The Bill amends the *Corporations Act 2001* to require a claimant intermediary to:

- hold an Australian financial services licence;
- act efficiently, honestly and fairly (amongst other obligations); and
- provide appropriate disclosure to consumers.

In addition, claimant intermediaries who handle retail insurance claims will be required to have an internal dispute resolution process in place and be a member of the AFCA.

These Regulations exclude the below people from regulation under the *Corporations Act 2001* for insurance claims handling as a claimant intermediary:

- mortgage brokers and intermediaries as defined in the *National Consumer Credit Protection Act 2009*;
- insurance brokers as defined in the *Insurance Contracts Act 1984*;

- qualified accountants (see section 88B of the *Corporations Act 2001*);
- veterinarians;
- travel agents;
- a person with who holds an Australian financial services licence to provide financial product advice (see section 766B of the *Corporations Act 2001*);
- property managers;
- estate managers; and
- public trustees.

These people are excluded from regulation under the *Corporations Act 2001* to obtain an Australian financial services licence for insurance claims handling as a claimant intermediary, because handling claims is typically not their core business and often they often do so for no monetary benefits.

The framework under the Bill is instead intended to require people to obtain an Australian financial services licence where their main business is acting for the consumer to handle insurance claims.

The people listed are also excluded from regulation under the *Corporations Act 2001* for claims handling as a claimant intermediary as they are generally already regulated under other frameworks.

To obtain access to the exclusion these Regulations require the listed people to have a pre-existing relationship with the insured, generally by already having provided a service to the insured in relation to their main businesses.

This requirement is an integrity measure to ensure that the listed persons are genuinely conducting a non-claims handling related business and are not taking advantage of the exclusion for preferential regulatory treatment.

Certain listed people can only access the exclusion if they are assisting the consumer in relation to a claim which relates to their main business (for example, veterinarians can only assist in relation to claims which related to the management or prevention of a disease, injury or condition of an animal).