

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2021

The *Corporations Act 2001* regulates corporations and the provision of financial products and services in Australia.

Section 1364 of the *Corporations Act 2001* (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 *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2021* (the Regulations) would finalise the implementation of recommendation 4.8 of the Financial Services Royal Commission. In recommendation 4.8 of the Financial Services Royal Commission, Commissioner Hayne recommended that insurance claims handling should be regulated as a ‘financial service’ under the Act. The recommendation was substantially implemented by the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (the Amending Act), which received Royal Assent on 17 December 2020 and the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* which were made on 18 February 2021.

The Amending Act amended the Act to require people who handle insurance claims to comply with the same obligations as those which currently apply to people providing financial services. Those obligations include:

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

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

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

The persons excluded by these Regulations are:

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

The purpose of these Regulations is to exclude certain parties from the claimant intermediary definition when handling insurance claims. These people are excluded because handling claims is typically not their core business and 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 Act 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*.

Consultation was conducted on these Regulations between 14 December 2020 and 25 January 2021. The Government received 14 submissions. Changes were made to include financial counsellors in the Regulations and to adjust the requirements for the existence of a pre-existing business relationship with the insured for a person to qualify for the exemptions.

Details of these Regulations are set out in Attachment A.

A statement of Compatibility with Human Rights of these Regulation is at Attachment B.

Details of the *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2021*

Section 1

Section 1 states that the name of these Regulations is the *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2021*.

Section 2

Section 2 states that these Regulations commence upon the day after they are registered on the Federal Register of Legislation.

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 as a person who carries on a business of representing an insured under an insurance contract for a reward (see section 761CAA of the *Corporations Act 2001*).

The *Corporations Act 2001* requires a claimant intermediary to:

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

In addition, claimant intermediaries who handle retail insurance claims are 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;
- financial advisers;
- financial counsellors;
- property managers;
- estate managers; and
- public trustees.

These people are excluded from regulation under the *Corporations Act 2001* from having 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 benefit.

The Act is instead intended to require people to obtain an Australian financial services licence when they derive a monetary benefit from 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 some of 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 some of 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).

Administrative and support staff working in the same business as the people listed in the Regulations can also access the exemption, for example, receptionists in a veterinarians office.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2021

These Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2021* is to exclude certain people from regulation for insurance claims handling under the *Corporations Act 2001*.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.