Financial Sector Reform (Hayne Royal Commission Response) Act 2020

No. 135, 2020

An Act to amend the law in relation to the financial sector, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Financial Sector Reform (Hayne Royal Commission Response) Act 2020

No. 135, 2020

An Act to amend the law in relation to the financial sector, and for related purposes

[*Assented to 17 December 2020*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

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2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 December 2020
2. Schedule 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2021.	1 January 2021 (paragraph (b) applies)
3. Schedule 2, Part 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2021.	1 January 2021 (paragraph (b) applies)
4. Schedule 2, Part 2	Immediately after the commencement of the provisions covered by table item 3.	1 January 2021
5. Schedule 3	Immediately after the commencement of the provisions covered by table item 7.	5 October 2021
6. Schedule 4	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2021.	1 January 2021 (paragraph (b) applies)
7. Schedule 5	The later of: (a) the day after this Act receives the Royal Assent; and (b) 5 October 2021.	5 October 2021 (paragraph (b) applies)
8. Schedules 6 and 7	The later of: (a) the day after this Act receives the Royal	1 January 2021 (paragraph (b)

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
	Assent; and (b) 1 January 2021.	applies)
9. Schedule 8	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2021.	1 July 2021 (paragraph (b) applies)
10. Schedule 9	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2021.	1 January 2021 (paragraph (b) applies)
11. Schedules 10 and 11	1 October 2021.	1 October 2021
12. Schedule 12	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2021.	1 January 2021 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Enforceable code provisions

Corporations Act 2001

1 Section 9

Insert:

approved code of conduct means a code of conduct approved by ASIC by legislative instrument under section 1101A, and includes a replacement code of conduct approved under that section.

code of conduct means a code of conduct that relates to any aspect of the activities of:

(a) financial services licensees; or

(b) authorised representatives of financial services licensees; or

(c) issuers of financial products;

being activities in relation to which ASIC has a regulatory responsibility.

enforceable code provision means a provision of an approved code of conduct identified by ASIC under subsection 1101A(2).

mandatory code of conduct means a code of conduct that is declared by regulations under section 1101AE to be mandatory.

subscriber, in relation to an approved code of conduct:

(a) means a person or entity that agrees, in a way required by the applicant for the code's approval, to be bound by the code; and

(b) if a person or entity no longer agrees to be bound by the code—includes the person or entity during the period that the person or entity did agree to be so bound.

2 Division 2 of Part 7.12 (heading)

Repeal the heading, substitute:

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Division 2—Codes of conduct

3 After Division 2 of Part 7.12 (heading)

Insert:

Subdivision A—Approved codes of conduct

4 Section 1101A

Repeal the section, substitute:

1101A Approved codes of conduct

Applications

(1) If an application is made to approve a code of conduct, ASIC may, by legislative instrument, approve the code of conduct.

Identifying enforceable code provisions

(2) In the approval, ASIC may identify a provision of the code of conduct as an enforceable code provision if ASIC considers that:
  (a) the provision represents a commitment to a person by a subscriber to the code relating to transactions or dealings performed for, on behalf of or in relation to the person; and
  (b) a breach of the provision is likely to result in significant and direct detriment to the person; and
  (c) additional criteria prescribed by the regulations for the purposes of this paragraph (if any) are satisfied; and
  (d) it is appropriate to identify the provision of the code as an enforceable code provision, having regard to the matters prescribed by the regulations for the purposes of this paragraph (if any).

Note: See also section 1101AD.

ASIC to be satisfied of certain matters before making approval

(3) ASIC must not approve a code of conduct unless it is satisfied that:
  (a) to the extent that the code is inconsistent with this Act or any other law of the Commonwealth under which ASIC has

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regulatory responsibilities—the code imposes an obligation on a subscriber that is more onerous than that imposed by this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and

(b) each enforceable code provision:

(i) has been agreed with the applicant; and

(ii) is legally effective; and

(c) it is appropriate to approve the code, having regard to the following matters:

(i) whether the obligations of subscribers to the code are capable of being enforced;

(ii) whether the applicant has effective administrative systems for monitoring compliance with the code and making information obtained as a result of monitoring publicly available;

(iii) whether the applicant has effective administrative systems for maintaining, and making publicly available, an accurate list of subscribers to the code.

Revocation

(4) ASIC may, by legislative instrument, revoke an approval of an approved code of conduct:

(a) on application by the applicant for the approval; or

(b) if ASIC ceases to be satisfied of the matters mentioned in subsection (3); or

(c) if a review of the operation of the code is not completed by the applicant within the timeframe required by section 1101AB.

(5) Subsection (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.

1101AA Variations to approved codes of conduct

(1) If an application is made to vary an approved code of conduct, ASIC may, by legislative instrument, approve the variation.

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(2) Subsections 1101A(2) and (3) apply in relation to an application under subsection (1) as if it were an application to approve a code of conduct.

1101AB Review of approved codes of conduct

(1) The applicant, in relation to an approved code of conduct, must ensure that, every 5 years, an independent review is undertaken of the operation of the approved code of conduct.

(2) A review under subsection (1) must make provision for public consultation.

(3) A review of an approved code of conduct must be completed:
   (a) for the first review—before the end of the 5 year period beginning on the day the code of conduct was approved; and
   (b) for a subsequent review—within 5 years after the completion of the previous review.

(4) For the purposes of this section, a review is completed when a report of the review is given to ASIC.

(5) Within 10 business days of completing a review, the applicant must publish the report of the review on its website.

1101AC Obligation to comply with enforceable code provisions

If a person holds out that they comply with an approved code of conduct, the person must not breach an enforceable code provision of the approved code of conduct.

Civil penalty: 300 penalty units.

1101AD Regulations

The regulations may:
   (a) prescribe criteria of which ASIC must be satisfied before it identifies a provision of a code of conduct as an enforceable code provision; or
   (b) prescribe matters to which ASIC must have regard before it identifies a provision of a code of conduct as an enforceable code provision.

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Subdivision B—Mandatory codes of conduct

1101AE Mandatory codes of conduct

(1) The regulations may prescribe a code of conduct for the purposes of this Division and declare it to be a mandatory code of conduct.

(2) Regulations declaring a code of conduct a mandatory code of conduct may also:

(a) confer functions and powers on a person or body for the purposes of:

(i) monitoring compliance with the code of conduct; and

(ii) dealing with disputes or complaints arising under, or in relation to, the code of conduct; and

(iii) dealing with other associated administrative matters; or

(b) provide for and in relation to:

(i) the keeping of records by persons bound by the code of conduct; and

(ii) reporting obligations of such persons.

(3) If regulations prescribe a code of conduct, the code of conduct may prescribe pecuniary penalties not exceeding 1,000 penalty units for civil penalty provisions of the code of conduct.

(4) To avoid doubt, subsections 1317G(3) and (4) do not apply in relation to the contravention of a civil penalty provision of a mandatory code of conduct.

1101AF Obligation to comply with mandatory code of conduct

A person must not contravene a mandatory code of conduct.

Division 3—Other matters

5 Paragraph 1317C(ge)

After “section 1101A”, insert “or 1101AA”.

6 At the end of section 1317DAN

Add:

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; (e) civil penalty provisions of an approved code of conduct;
(f) civil penalty provisions of a mandatory code of conduct.

7 In the appropriate position in subsection 1317E(3)

Insert:

section 1101AC	failure to comply with an enforceable code provision	financial services
a provision of a regulation made under section 1101AD that includes the words "civil penalty" and one or more amounts in penalty units at the foot of the provision	failure to comply with a civil penalty provision of a mandatory code of conduct	financial services

8 In the appropriate position in Chapter 10

Insert:

Part 10.45—Transitional provisions relating to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1672 Transitional—Banking Code of Practice

(1) The following provisions have effect:
(a) the *Banking Code of Practice*, whose approval by ASIC was registered on the Federal Register of Legislation on 18 December 2019, is taken to be approved under section 1101A, as substituted by Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*;
(b) Division 2 of Part 7.12, as inserted by that Schedule to that Act, applies to the *Banking Code of Practice*.

(2) In this section:

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Banking Code of Practice means the *Banking Code of Practice*, published on 12 December 2019 by the Australian Banking Association Incorporated (ABN 60 117 262 978).

Note: The *Banking Code of Practice* could in 2020 be viewed on the Australian Banking Association's website (http://www.ausbanking.org.au).

National Consumer Credit Protection Act 2009

9 Subsection 5(1)

Insert:

approved code of conduct means a code of conduct approved by ASIC by legislative instrument under section 238A, and includes a replacement code of conduct approved under that section.

code of conduct means a code of conduct that relates to any aspect of the activities of:

(a) licensees; or

(b) credit representatives;

being activities in relation to which ASIC has a regulatory responsibility.

enforceable code provision means a provision of an approved code of conduct identified by ASIC under subsection 238A(2).

mandatory code of conduct means a code of conduct that is declared by regulations under section 238F to be mandatory.

subscriber, in relation to an approved code of conduct:

(a) means a person or entity that agrees, in a way required by the applicant for the code's approval, to be bound by the code; and

(b) if a person or entity no longer agrees to be bound by the code—includes the person or entity during the period that the person or entity did agree to be so bound.

10 Before Division 2 of Part 5-5

Insert:

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Division 1A—Codes of conduct

Subdivision A—Approved codes of conduct

238A Approved codes of conduct

Applications

(1) If an application is made to approve a code of conduct, ASIC may, by legislative instrument, approve the code of conduct.

Identifying enforceable code provisions

(2) In the approval, ASIC may identify a provision of the code of conduct as an enforceable code provision if ASIC considers that:
  (a) the provision represents a commitment to a person by a subscriber to the code relating to transactions or dealings performed for, on behalf of or in relation to the person; and
  (b) a breach of the provision is likely to result in significant and direct detriment to the person; and
  (c) additional criteria prescribed by the regulations for the purposes of this paragraph (if any) are satisfied; and
  (d) it is appropriate to identify the provision of the code as an enforceable code provision, having regard to the matters prescribed by the regulations for the purposes of this paragraph (if any).

Note: See also section 238E.

ASIC to be satisfied of certain matters before making approval

(3) ASIC must not approve a code of conduct unless it is satisfied that:
  (a) to the extent that the code is inconsistent with this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities—the code imposes an obligation on a subscriber that is more onerous than that imposed by this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and
  (b) each enforceable code provision:
    (i) has been agreed with the applicant; and

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(ii) is legally effective; and

(c) it is appropriate to approve the code, having regard to the following matters:

(i) whether the obligations of subscribers to the code are capable of being enforced;

(ii) whether the applicant has effective administrative systems for monitoring compliance with the code and making information obtained as a result of monitoring publicly available;

(iii) whether the applicant has effective administrative systems for maintaining, and making publicly available, an accurate list of subscribers to the code.

Revocation

(4) ASIC may, by legislative instrument, revoke an approval of an approved code of conduct:

(a) on application by the applicant for the approval; or

(b) if ASIC ceases to be satisfied of the matters mentioned in subsection (3); or

(c) if a review of the operation of the code is not completed by the applicant within the timeframe required by section 238C.

(5) Subsection (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.

238B Variations to approved codes of conduct

(1) If an application is made to vary an approved code of conduct, ASIC may, by legislative instrument, approve the variation.

(2) Subsections 238A(2) and (3) apply in relation to an application under subsection (1) as if it were an application to approve a code of conduct.

238C Review of approved codes of conduct

(1) The applicant, in relation to an approved code of conduct, must ensure that, every 5 years, an independent review is undertaken of the operation of the approved code of conduct.

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(2) A review under subsection (1) must make provision for public consultation.

(3) A review of an approved code of conduct must be completed:
  (a) for the first review—before the end of the 5 year period beginning on the day the code of conduct was approved; and
  (b) for a subsequent review—within 5 years after the completion of the previous review.

(4) For the purposes of this section, a review is completed when a report of the review is given to ASIC.

(5) Within 10 business days of completing a review, the applicant must publish the report of the review on its website.

238D Obligation to comply with enforceable code provisions

If a person holds out that they comply with an approved code of conduct, the person must not breach an enforceable code provision of the approved code of conduct.

Civil penalty: 300 penalty units.

238E Regulations

The regulations may:
  (a) prescribe criteria of which ASIC must be satisfied before it identifies a provision of a code of conduct as an enforceable code provision; or
  (b) prescribe matters to which ASIC must have regard before it identifies a provision of a code of conduct as an enforceable code provision.

Subdivision B—Mandatory codes of conduct

238F Mandatory codes of conduct

(1) The regulations may prescribe a code of conduct for the purposes of this Division and declare it to be a mandatory code of conduct.

(2) Regulations declaring a code of conduct a mandatory code of conduct may also:

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(a) confer functions and powers on a person or body for the purposes of:
  (i) monitoring compliance with the code of conduct; and
  (ii) dealing with disputes or complaints arising under, or in relation to, the code of conduct; and
  (iii) dealing with other associated administrative matters; or
(b) provide for and in relation to:
  (i) the keeping of records by persons bound by the code of conduct; and
  (ii) reporting obligations of such persons.

(3) If regulations prescribe a code of conduct, the code of conduct may prescribe pecuniary penalties not exceeding 1,000 penalty units for civil penalty provisions of the code of conduct.

(4) To avoid doubt, subsections 167B(1) and (2) do not apply in relation to the contravention of a civil penalty provision of a mandatory code of conduct.

238G Obligation to comply with mandatory code of conduct

A person must not contravene a mandatory code of conduct.

11 Section 241

Repeal the section.

12 After paragraph 288K(1)(c)

Insert:

(ca) civil penalty provisions of an approved code of conduct;
(cb) civil penalty provisions of a mandatory code of conduct;

13 Paragraph 327(1)(c)

Omit “section 241”, substitute “section 238A or 238B”.

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Schedule 2—Insurer avoidance of life insurance contracts, and duty to take reasonable care not to make a misrepresentation

Part 1—Insurer avoidance of life insurance contracts

Insurance Contracts Act 1984

1 Subsection 29(3)

Repeal the subsection, substitute:

(3) If:

(a) the failure was not fraudulent or the misrepresentation was not made fraudulently; and

(b) the insurer would not have been prepared to enter into a contract of life insurance with the insured on any terms, if the duty of disclosure had been complied with or the misrepresentation had not been made;

the insurer may, within 3 years after the contract was entered into, avoid the contract.

2 Application

(1) The amendments made by this Part apply to a contract of life insurance that is originally entered into after the commencement of this item.

(2) If:

(a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:

(i) increase a sum insured under the contract in respect of one or more of the life insureds; or

(ii) provide one or more additional kinds of insurance cover; and

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(b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;

then:

(c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and

(d) the amendments made by this Schedule apply to the contract to the extent of the variation.

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Part 2—Duty to take reasonable care not to make a misrepresentation

Insurance Contracts Act 1984

3 Subsection 11(1)

Insert:

> ***consumer insurance contract*** has the meaning given by section 11AB.
>
> ***duty to take reasonable care not to make a misrepresentation*** means the duty referred to in section 20B.
>
> ***relevant failure***, in relation to a contract of insurance, has the meaning given by section 27AA.

4 At the end of Part I

Add:

11AB Consumer insurance contracts

(1) For the purposes of this Act, a contract of insurance is a ***consumer insurance contract*** if the insurance is obtained wholly or predominantly for the personal, domestic or household purposes of the insured.

(2) A contract of insurance is also a ***consumer insurance contract*** if:
  (a) it is for new business; and
  (b) the insurer, before the contract is entered into, gives the insured a written notice stating that the contract is a consumer insurance contract.

(3) If it is alleged in a proceeding in relation to a contract of insurance that the contract is a consumer insurance contract, it is presumed that the contract is a consumer insurance contract unless the contrary is established.

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5 Section 12

Omit all the words after "a duty other", substitute:

than:

(a) in relation to a consumer insurance contract or proposed consumer insurance contract—the duty to take reasonable care not to make a misrepresentation; or

(b) in relation to any other contract of insurance or proposed contract of insurance—the duty of disclosure.

6 Before Division 1 of Part IV

Insert:

Division 1A—Consumer insurance contracts: insured's duty to take reasonable care not to make a misrepresentation

20A Application of this Division

This Division applies in relation to:

(a) consumer insurance contracts; and

(b) proposed contracts of insurance that, if entered into, would be consumer insurance contracts.

20B The insured's duty to take reasonable care not to make a misrepresentation

(1) Subject to this Act, an insured has a duty to take reasonable care not to make a misrepresentation to the insurer before the relevant contract of insurance is entered into.

(2) Whether or not an insured has taken reasonable care not to make a misrepresentation is to be determined with regard to all the relevant circumstances.

(3) Without limiting subsection (2), the following matters may be taken into account in determining whether an insured has taken reasonable care not to make a misrepresentation:

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(a) the type of consumer insurance contract in question, and its target market;
(b) explanatory material or publicity produced or authorised by the insurer;
(c) how clear, and how specific, any questions asked by the insurer of the insured were;
(d) how clearly the insurer communicated to the insured the importance of answering those questions and the possible consequences of failing to do so;
(e) whether or not an agent was acting for the insured;
(f) whether the contract was a new contract or was being renewed, extended, varied or reinstated.

(4) Any particular characteristics or circumstances of the insured of which the insurer was aware, or ought reasonably to have been aware, are to be taken into account in determining whether an insured has taken reasonable care not to make a misrepresentation.

(5) The insured is not to be taken to have made a misrepresentation merely because the insured:
(a) failed to answer a question; or
(b) gave an obviously incomplete or irrelevant answer to a question.

(6) To avoid doubt, a misrepresentation made fraudulently is made in breach of the duty to take reasonable care not to make a misrepresentation.

20C Warranties of existing facts to be representations

A statement with respect to the existence of a state of affairs that is:
(a) made in or in connection with a contract of insurance; and
(b) made by or attributable to the insured;
does not have effect as a warranty but has effect as though it were a statement made to the insurer by the insured during the negotiations for the contract but before it was entered into.

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7 Division 1 of Part IV (heading)

Repeal the heading, substitute:

Division 1—Other contracts: insured's duty of disclosure

8 Before section 21

Insert:

20E Application of this Division

This Division applies in relation to:

(a) contracts of insurance that are not consumer insurance contracts; and

(b) proposed contracts of insurance that, if entered into, would not be consumer insurance contracts.

9 Sections 21A and 21B

Repeal the sections.

10 Paragraph 22(1)(b)

Repeal the paragraph.

11 Paragraph 22(1)(c)

Omit "section 31A", substitute "subsection 27AA(2)".

12 Division 2 of Part IV (heading)

Repeal the heading, substitute:

Division 2—Other contracts: misrepresentations by insured

13 Before section 23

Insert:

23A Application of this Division

This Division applies in relation to:

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(a) contracts of insurance that are not consumer insurance contracts; and
(b) proposed contracts of insurance that, if entered into, would not be consumer insurance contracts.

14 Division 3 of Part IV (heading)

Repeal the heading, substitute:

Division 3—Remedies for relevant failures

15 Before section 27A

Insert:

27AA Meaning of *relevant failure*

(1) In this Act, a ***relevant failure*** in relation to a contract of insurance is:
  (a) if the contract is, or would be, a consumer insurance contract—a misrepresentation made by the insured in breach of the duty to take reasonable care not to make a misrepresentation; or
  (b) otherwise:
    (i) a failure by the insured to comply with the duty of disclosure; or
    (ii) a misrepresentation made by the insured to the insurer before the contract was entered into.

(2) Without limiting subsection (1), if, in relation to a contract of life insurance under which a person other than the insured would become a life insured:
  (a) the life insured made a misrepresentation during the negotiations for the contract but before it was entered into; and
  (b) the misrepresentation would have been a breach of the duty to take reasonable care not to make a misrepresentation if that duty had applied to the life insured in relation to the contract;

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then the misrepresentation is a ***relevant failure*** in relation to the contract (whether or not the contract is a consumer insurance contract).

16 Subsection 28(1)

Repeal the subsection, substitute:

(1) This section applies if a relevant failure occurs in relation to a contract of general insurance, but does not apply if the insurer would have entered into the contract, for the same premium and on the same terms and conditions, even if the failure had not occurred.

17 Subsection 28(2)

Omit "the failure was fraudulent or the misrepresentation was made fraudulently", substitute "the relevant failure was fraudulent".

18 Subsection 28(3)

Omit "the failure had not occurred or the misrepresentation had not been made", substitute "the relevant failure had not occurred".

19 Subsection 29(1)

Repeal the subsection (not including the note), substitute:

Scope

(1) This section applies if a relevant failure occurs in relation to a contract of life insurance, but does not apply if:
  (a) the insurer would have entered into the contract even if the failure had not occurred; or
  (b) the failure was in respect of the date of birth of one or more of the life insureds.

20 Subsection 29(2)

Omit "the failure was fraudulent or the misrepresentation was made fraudulently", substitute "the relevant failure was fraudulent".

21 Paragraph 29(3)(a)

Omit "failure was not fraudulent or the misrepresentation was not made fraudulently", substitute "relevant failure was not fraudulent".

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22 Paragraph 29(3)(b)

Omit "duty of disclosure had been complied with or the misrepresentation had not been made", substitute "relevant failure had not occurred".

23 Subsection 29(4) (definition of *Q*)

Omit "the duty of disclosure had been complied with or the misrepresentation had not been made", substitute "the relevant failure had not occurred".

24 Subsection 29(6)

Omit "the duty of disclosure had been complied with or the misrepresentation had not been made", substitute "the relevant failure had not occurred".

25 Paragraph 29(7)(b)

Omit "no failure to comply with the duty of disclosure, and no misrepresentation, by the insureds under the similar contracts before they were entered into", substitute "no relevant failure in relation to the similar contracts".

26 Subsection 31(1)

Omit "failure to comply with the duty of disclosure or fraudulent misrepresentation", substitute "relevant failure".

27 Subsection 31(2)

Omit "failure or misrepresentation", substitute "relevant failure".

28 Section 31A

Repeal the section.

29 Section 32 (heading)

Omit "**Non-disclosure or misrepresentation**", substitute "**Relevant failure**".

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30 Subsection 32(1)

Omit "failure to comply with the duty of disclosure, or a misrepresentation was made to the insurer,", substitute "relevant failure".

31 Subsection 32(2)

Omit "failure to comply with the duty of disclosure, or the misrepresentation,", substitute "relevant failure".

32 Subsection 32(2)

Omit "or misrepresentation".

33 Section 32A (heading)

Omit "**Non-disclosure or misrepresentation**", substitute "**Relevant failure**".

34 Section 32A

Omit "failure to comply with the duty of disclosure, or a misrepresentation was made to the insurer,", substitute "relevant failure".

35 At the end of paragraph 60(1)(a)

Add "or".

36 Paragraphs 60(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) there was a relevant failure; or

37 Application of amendments

(1) The amendments made by this Part apply to contracts of insurance, other than contracts of life insurance, that are entered into on or after 5 October 2021.

(2) Subject to subitem (3), the amendments made by this Part apply to contracts of life insurance that are entered into on or after 5 October 2021 (not including contracts of life insurance entered into before that day and extended, varied or reinstated on or after that day as mentioned in paragraph 11(9)(a) or (c) of the *Insurance Contracts Act 1984*).

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(3) If:

(a) subitem (2) does not apply to a contract of life insurance; and

(b) on or after 5 October 2021, the contract is varied to:

(i) increase a sum insured under the contract in respect of one or more of the life insureds; or

(ii) provide one or more additional kinds of insurance cover; and

(c) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;

then:

(d) the contract is treated, to the extent of the variation, as if it had been entered into on or after 5 October 2021; and

(e) the amendments made by this Part apply to the contract to the extent of the variation.

(4) Despite anything else in this item, the amendments made by this Part apply, on and after the commencement of this item, to a contract of insurance that is entered into on or after that commencement if the insurer gives the insured written notice before the contract is entered into that the contract is a consumer insurance contract.

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Schedule 3—Deferred sales model for add-on insurance

Australian Securities and Investments Commission Act 2001

1 Subsection 12BA(1)

Insert:

add-on insurance deferral period has the meaning given by section 12DP.

add-on insurance pre-deferral period has the meaning given by section 12DP.

add-on insurance product, in relation to a product or service, has the meaning given by section 12DO.

2 After Subdivision D of Division 2 of Part 2

Insert:

Subdivision DA—Deferred sales for add-on insurance products

12DO Meaning of *add-on insurance product*

(1) An ***add-on insurance product***, in relation to another product or service (the ***principal product or service***), is a financial product that:

(a) is offered or sold to a consumer (the ***customer***) in connection with the customer acquiring, or entering into a commitment to acquire, the principal product or service; and

(b) is offered or sold by:

(i) the provider of the principal product or service; or

(ii) another person, in accordance with an arrangement to which the provider of the principal product or service is a party; and

(c) manages financial risk (within the meaning of section 12BAA) relating to the principal product or service; and

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(d) either:
  (i) is a contract of insurance; or
  (ii) provides for the customer to benefit from a contract of insurance to which the provider of the financial product is a party.

(2) For the purposes of subsection (1), ***contract of insurance*** includes:
  (a) a contract that would ordinarily be regarded as a contract of insurance even if some of its provisions are not by way of insurance; and
  (b) a contract that includes provisions of insurance in so far as those provisions are concerned, even if the contract would not ordinarily be regarded as a contract of insurance.

(3) The regulations may provide that a customer is, for the purposes of this Subdivision, taken to have entered into a commitment to acquire a product or service of a specified class at a time specified in the regulations.

12DP Meaning of *add-on insurance deferral period* and *add-on insurance pre-deferral period*

(1) If a person (the ***customer***) who acquires, or enters into a commitment to acquire, a product or service (the ***principal product or service***) is given the information determined under paragraph (4)(a), in the form and manner determined under paragraph (4)(b), in connection with the acquisition or proposed acquisition, then:
  (a) there is an ***add-on insurance deferral period*** in relation to the customer acquiring, or entering into a commitment to acquire, the principal product or service; and
  (b) the add-on insurance deferral period is the period beginning at the later of:
    (i) the time the customer enters into the commitment (or, if the customer acquires the principal product or service without previously entering into a commitment to do so, the time the customer acquires the principal product or service); and
    (ii) the time the customer is given the information;

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and ending at the end of 4 days after the day on which the period begins.

(2) If the information determined under paragraph (4)(a) is not given in the form and manner determined under paragraph (4)(b) in connection with the acquisition or proposed acquisition, there is no ***add-on insurance deferral period*** in relation to the customer acquiring, or entering into a commitment to acquire, the principal product or service.

Note: There is no obligation for a person who provides a product or service to give the information to a customer. However, if the information is not given and there is no add-on insurance deferral period, certain conduct relating to the sale or offer of add-on insurance products may be prohibited (see sections 12DQ to 12DR).

(3) The ***add-on insurance pre-deferral period*** in relation to the principal product or service is a period that:

(a) begins when the customer indicates an intention to acquire the principal product or service; and

(b) if there is an add-on insurance deferral period in relation to the customer acquiring, or entering into a commitment to acquire, the principal product or service—ends immediately before the start of that period; and

(c) if there is no such add-on insurance deferral period—does not end.

(4) ASIC may, by legislative instrument, determine the following:

(a) information to be given for the purposes of subsection (1);

(b) the form and manner in which the information is to be given (which may require the information to be given to a particular customer each time the customer enters into a commitment to acquire, or acquires, the products or services).

(5) Information determined under paragraph (4)(a):

(a) must include information that relates to a customer giving notice that the customer does not want to receive:

(i) offers of add-on insurance products; or

(ii) requests or invitations for the customer to ask or apply for add-on insurance products;

in relation to the principal product or service; and

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(b) may include information relating to any other matter that ASIC thinks appropriate.

12DQ Prohibition on selling add-on insurance products before end of add-on insurance deferral period etc.

Contraventions by provider of principal product or service

(1) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***customer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal product or service***) from the first person; and

(b) the first person also sells a financial product to the customer; and

(c) the financial product is an add-on insurance product in relation to the principal product or service.

Note: Failure to comply with this subsection is an offence (see section 12GB).

(2) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***customer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal product or service***) from the first person; and

(b) a third person sells the customer a financial product that is an add-on insurance product in relation to the principal product or service.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exception for sale after add-on insurance deferral period

(3) Subsections (1) and (2) do not apply if:

(a) there is an add-on insurance deferral period in relation to the customer acquiring, or entering into a commitment to acquire, the principal product or service; and

(b) the add-on insurance product is sold to the customer after the end of the add-on insurance deferral period.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

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Contravention by third party provider

(4) A person (the ***third party provider***) contravenes this subsection if:
  (a) the third party provider sells a financial product to a consumer (the ***customer***); and
  (b) the financial product is an add-on insurance product in relation to a product or service (the ***principal product or service***) offered or provided by another person; and
  (c) either:
    (i) there is no add-on insurance deferral period in relation to the customer acquiring, or entering into a commitment to acquire, the principal product or service; or
    (ii) there is such an add-on insurance deferral period, and the third party provider sells the add-on insurance product to the customer before the end of the period.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Timing of sale

(5) For the purposes of this section, an add-on insurance product is taken to be sold to a customer no later than the first time at which no further action from the customer is required for the sale to occur (even if the sale does not occur until a later time).

12DR Prohibition on offering add-on insurance product during add-on insurance deferral period

Offer by provider of principal product or service

(1) A person (the ***principal provider***) contravenes this subsection if:
  (a) another person (the ***customer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal product or service***) from the principal provider; and
  (b) the principal provider offers a financial product for issue or sale to the customer, or requests or invites the customer to ask or apply for a financial product or to purchase a financial product; and

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(c) the financial product is an add-on insurance product in relation to the principal product or service; and

(d) the offer, request or invitation is made otherwise than in writing.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exceptions for subsection (1)—offer made outside add-on insurance deferral period

(2) Subsection (1) does not apply if the offer, request or invitation is made:

(a) during the add-on insurance pre-deferral period in relation to the principal product or service; or

(b) if there is an add-on insurance deferral period in relation to the customer acquiring, or entering into a commitment to acquire, the principal product or service—after the end of the period of 6 weeks beginning on the first day of the add-on insurance deferral period.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Offer by third party provider

(3) A person (the ***third party provider***) contravenes this subsection if:

(a) another person (the ***customer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal product or service***); and

(b) the third party provider offers a financial product for issue or sale to the customer, or requests or invites the customer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add-on insurance product in relation to the principal product or service; and

(d) the offer, request or invitation is made otherwise than in writing; and

(e) there is an add-on insurance deferral period in relation to the customer acquiring, or entering into a commitment to acquire, the principal product or service; and

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(f) the offer, request or invitation is made during the period of 6 weeks beginning on the first day of the add-on insurance deferral period.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exception for subsections (1) and (3)—contact initiated by customer

(4) Subsections (1) and (3) do not apply if:

(a) the offer, request or invitation is made in response to contact initiated by the customer; and

(b) either:

(i) the offer, request or invitation is made after the end of the add-on insurance deferral period; or

(ii) the offer, request or invitation relates only to the purpose for which the customer initiated the contact.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

12DS Prohibition on offering add-on insurance product—customer opt-out

(1) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***customer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal product or service***); and

(b) the first person offers a financial product for issue or sale to the customer, or requests or invites the customer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add-on insurance product in relation to the principal product or service; and

(d) before the offer, request or invitation is made, the customer informs the first person that the customer does not want to receive such offers, requests or invitations.

Note: Failure to comply with this subsection is an offence (see section 12GB).

(2) A person (the ***first person***) contravenes this subsection if:

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(a) another person (the ***customer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal product or service***); and

(b) the first person offers a financial product for issue or sale to the customer, or requests or invites the customer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add-on insurance product in relation to the principal product or service; and

(d) before the offer, request or invitation is made, the customer informs any of the following that the customer does not want to receive such offers, requests or invitations:

(i) the person who provided the principal product or service (if that person is not the first person);

(ii) any person (other than the first person) with whom the person mentioned in subparagraph (i) has an arrangement of a kind mentioned in subparagraph 12DO(1)(b)(ii).

12DT Right of return and refund for add-on insurance product sold in contravention of section 12DQ

(1) If a person (the ***first person***) contravenes a subsection of section 12DQ in relation to an add-on insurance product sold (whether by the first person or by any other person) to another person (the ***customer***), the customer has a right of return and refund exercisable at any time during the period starting when the product was sold and ending:

(a) if, under section 1019B of the *Corporations Act 2001*, the customer has a right to return the product within a particular period—1 month after the end of that period; or

(b) otherwise—1 month and 14 days after the product was sold.

(2) If the add-on insurance product is returned under subsection (1):

(a) if the product is constituted by a legal relationship between the customer and any other person—by force of this section, that relationship is terminated, with effect from the time of the return, without penalty to the customer; and

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(b) by force of this section, any contract for the acquisition of the product by the customer is terminated, with effect from the time of the return, without penalty to the customer.

(3) The amount of a refund paid under subsection (1) in relation to an add-on insurance product:

(a) must be the entire amount paid for the product; but

(b) may be reduced by any amount paid as a result of a claim under the product.

(4) This section applies in addition to any other penalties for or in relation to contraventions of section 12DQ.

12DU Exception for financial advisers

Section 12DQ does not apply in relation to the sale of an add-on insurance product, and sections 12DR and 12DS do not apply in relation to an offer to issue or sell an add-on insurance product, or a request or invitation to ask or apply for an add-on insurance product, by a person if:

(a) the person sells the add-on insurance product, or makes the offer, request or invitation, in the course of providing personal advice (within the meaning of Chapter 7 of the *Corporations Act 2001*) in circumstances where Division 2 (best interests obligations) of Part 7.7A of that Act applies; and

(b) the add-on insurance product relates to a principal product or service that is provided by the person, and that the person recommends in the course of providing the advice.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

12DV Exception for product covered by product intervention order

(1) Section 12DQ does not apply in relation to the sale of an add-on insurance product by a person if a product intervention order in force under Part 7.9A of the *Corporations Act 2001*:

(a) covers that sale; and

(b) provides for a period during which the product must not be sold.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) Sections 12DR and 12DS do not apply in relation to:
  (a) an offer to issue or sell; or
  (b) a request or invitation to ask or apply for;
an add-on insurance product that would, if offered to a consumer, be covered by a product intervention order in force under Part 7.9A of the *Corporations Act 2001* that provides for a period during which the product must not be sold to the consumer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

12DW Exception for comprehensive motor vehicle insurance

(1) Section 12DQ does not apply in relation to the sale of an add-on insurance product by a person if the add-on insurance product provides insurance cover:
  (a) to an individual who:
    (i) wholly or partly owns a motor vehicle; or
    (ii) has the use of a motor vehicle under a lease of at least 4 months' duration; and
  (b) in respect of all of the following (whether or not the product also provides insurance cover in respect of other matters):
    (i) loss of, or damage to, the motor vehicle resulting from an accident;
    (ii) loss of, or damage to, property of another person resulting from an accident in which the motor vehicle is involved;
    (iii) loss of, or damage to, the motor vehicle caused by fire, theft or malicious acts.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) Sections 12DR and 12DS do not apply in relation to an offer to issue or sell an add-on insurance product described in subsection (1) of this section, or a request or invitation to ask or apply for such an add-on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

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(3) In this section:

motor vehicle means a motor-powered vehicle that:

(a) is designed to travel by road; and

(b) is designed to carry passengers, or is a motorcycle; and

(c) does not have a carrying capacity that exceeds 2 tonnes.

12DX Exemption by regulations

Regulations may exempt a class of products

(1) The regulations may exempt a class of add-on insurance products from sections 12DQ, 12DR and 12DS.

Conditions on exemptions

(2) An exemption under subsection (1) may be subject to conditions specified in the regulations.

Note: A person who contravenes a condition may commit an offence (see section 12DZA).

12DY Exemption by ASIC

(1) ASIC may, by notifiable instrument, exempt from sections 12DQ, 12DR and 12DS:

(a) an add-on insurance product sold by a specified person; or

(b) a class of add-on insurance products sold by a specified person.

Note: For review of a decision to refuse to make an exemption under subsection (1), or to vary or revoke such an exemption, see section 244.

(2) In considering whether to make an exemption under subsection (1), ASIC must have regard to the following:

(a) any evidence as to whether the add-on insurance product, or the class of add-on insurance products, has historically been good value for money;

(b) whether, without an exemption, there is a high risk of underinsurance or non-insurance;

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(c) any evidence as to whether the add-on insurance product, or the class of add-on insurance products, is well understood by consumers;

(d) any differences between the add-on insurance product, or add-on insurance products in the class, and financial products of a similar kind that are not sold as add-on insurance products;

(e) any other matters that ASIC considers relevant.

Conditions on exemptions

(3) An exemption under subsection (1) may be subject to conditions specified in the exemption.

Note 1: A person who contravenes a condition may commit an offence (see section 12DZA).

Note 2: For review of a decision to impose or vary a condition on an exemption under subsection (1), see section 244.

12DZ Effect of exemption

(1) Section 12DQ does not apply in relation to the sale of an add-on insurance product by a person if an exemption under subsection 12DX(1) or 12DY(1) applies to the add-on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) Sections 12DR and 12DS do not apply in relation to an offer to issue or sell an add-on insurance product, or a request or invitation to ask or apply for an add-on insurance product, if an exemption under subsection 12DX(1) or 12DY(1) applies to the add-on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Product intervention orders

(3) Subsections (1) and (2) do not apply to an add-on insurance product if:

(a) a product intervention order is in force under Part 7.9A of the *Corporations Act 2001* in relation to the product; and

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(b) the product intervention order provides for a period during which the product must not be sold.

12DZA Contravention of conditions on exemption

(1) A person who:

(a) sells or offers to sell an add-on insurance product, if an exemption under section 12DX or 12DY applies to the product; or

(b) sells a product or service, if:

(i) there is an arrangement between the person and another person that relates to the provision by the other person of add-on insurance products in relation to that kind of product or service; and

(ii) an exemption under section 12DX or 12DY applies to any of those add-on insurance products; or

(c) offers an add-on insurance product for issue or sale to a consumer, or requests or invites a consumer to ask or apply for an add-on insurance product or to purchase an add-on insurance product, where an exemption under section 12DX or 12DY applies to the add-on insurance product;

must not contravene a condition of the exemption.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Product intervention orders

(2) Subsection (1) does not apply to an add-on insurance product if:

(a) a product intervention order is in force under Part 7.9A of the *Corporations Act 2001* in relation to the product; and

(b) the product intervention order provides for a period during which the product must not be sold.

3 Subsections 12AE(1) and (3)

After "Subdivision D (sections 12DA to 12DN)", insert ", Subdivision DA (sections 12DO to 12DZA)".

4 Section 12GB (at the end of the heading)

Add "**or DA**".

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5 Subsections 12GB(1), (1A) and (1B)

Omit "other than section 12DA", substitute ", other than section 12DA, or a provision of Subdivision DA".

6 Paragraphs 12GB(2)(a) and (3)(a)

After "Subdivision D (sections 12DA to 12DN)", insert "or Subdivision DA (sections 12DO to 12DZA)".

7 Subsection 12GB(4)

After "Subdivision D (sections 12DA to 12DN)", insert "or Subdivision DA (sections 12DO to 12DZA)".

8 After paragraph 12GBA(6)(b)

Insert:

(ba) a provision of Subdivision DA;

9 After subsection 12GBCN(3)

Insert:

(3A) Despite subsection (1), in proceedings referred to in that subsection:

(a) in relation to a contravention by a person of subsection 12DQ(4), it is necessary to prove that the person was reckless as to the matters in paragraph 12DQ(4)(c); and

(b) in relation to a contravention by a person of subsection 12DR(3), it is necessary to prove that the person was reckless as to the matters in paragraphs 12DR(3)(e) and (f); and

(c) in relation to a contravention by a person of subsection 12DS(2), it is necessary to prove that the person was reckless as to the matters in paragraph 12DS(2)(d).

(3B) For the purposes of subsection (3A), a person is reckless as to a fact if:

(a) the person is aware of a substantial risk that the fact exists; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

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10 Subsection 12GF(1)

Omit "or Subdivision D (sections 12DA to 12DN)", substitute ", Subdivision D (sections 12DA to 12DN) or Subdivision DA (sections 12DO to 12DZA)".

11 Subsections 12GI(1) and (4)

After "Subdivision D (sections 12DA to 12DN)", insert "or Subdivision DA (sections 12DO to 12DZA)".

12 Subsection 12GI(4)

After "amount to a contravention of a provision of Subdivision D", insert "or DA".

13 Subsection 12GLA(4) (after paragraph (b) of the definition of *contravening conduct*)

Insert:

(ba) contravenes a provision of Subdivision DA (sections 12DO to 12DZA); or

14 Paragraph 12GN(1)(c)

After "Subdivision D (sections 12DA to 12DN)", insert "or Subdivision DA (sections 12DO to 12DZA)".

15 After paragraph 12GXA(b)

Insert:

(ba) a provision of Subdivision DA;

16 Subsection 12GXB(2) (table item 1, column headed "If the infringement notice is for an alleged contravention of ...")

Omit "Subdivision C or D (other than section 12DA or 12DE, subsection 12DG(1) or section 12DI or 12DM)", substitute "Subdivision C, D (other than section 12DA or 12DE, subsection 12DG(1) or section 12DI or 12DM) or DA".

17 At the end of subsection 244(2)

Add:

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; or (d) to refuse to make an exemption under subsection 12DY(1); or

(e) to vary or revoke an exemption under subsection 12DY(1); or

(f) to impose or vary a condition on an exemption under subsection 12DY(1).

18 In the appropriate position

Insert:

Part 31—Application and transitional provisions relating to Schedule 3 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

329 Application—deferred sales model for add-on insurance

(1) The amendments made by Schedule 3 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* apply in relation to a principal product or service (within the meaning of section 12DO) if:

(a) a person enters into a commitment to acquire the principal product or service on or after the commencement of that Schedule; or

(b) a person acquires the principal product or service on or after the commencement of that Schedule without previously having entered into such a commitment.

(2) Regulations made for the purposes of subsection 12DO(3) apply for the purposes of this section.

Corporations Act 2001

19 Section 9

Insert:

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

20 After paragraph 992A(2)(a)

Insert:

(b) an offer of, or a request or invitation relating to, a financial product that is an add-on insurance product in relation to a product or service (the ***principal product or service***) that the consumer has indicated an intention to acquire from:

(i) the person making the offer, request or invitation; or

(ii) another person with whom that person has an arrangement that relates to the provision of add-on insurance products in relation to products or services that include the principal product or service; or

21 At the end of subsection 992A(2)

Add:

Note 2: Subdivision DA of Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001* deals with offers, requests or invitations relating to add-on insurance products.

22 After subsection 992A(2)

Insert:

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

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

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

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

(ii) if there is no such add-on insurance deferral period—the add-on insurance pre-deferral period (within the meaning of that section).

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Schedule 4—Caps on commissions

Australian Securities and Investments Commission Act 2001

1 Subsection 12AC(2)

After "section 12GF", insert "or 12GFA".

2 Subsection 12BA(1)

Insert:

add-on risk product has the meaning given by subsection 12DMC(2).

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

commission includes:

(a) any financial or other benefit in the nature of a commission; and

(b) in relation to an add-on risk product provided to a person in connection with the person providing a warranty to another person—the amount (if any) by which the consideration for the warranty exceeds so much of the consideration for the add-on risk product as relates to the warranty.

It may take any form of monetary consideration, or any form of non-monetary consideration to which a monetary value can be assigned.

long-term lease, of a motor vehicle, means a contract for the hire of the motor vehicle for a fixed period of more than 4 months, or for an indefinite period.

money has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

motor vehicle means:

(a) any motor-powered vehicle of a kind intended for use as land transport (other than rail transport), whether or not it is for use on a road; or

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(b) any other vehicle of a kind intended to be towed by such a motor-powered vehicle;

but does not include a vehicle (other than a vehicle for use on a road) that is of a kind intended primarily for use by persons with restricted mobility.

National Credit Code has the same meaning as in the *National Consumer Credit Protection Act 2009*.

3 After section 12DMB

Insert:

12DMC Caps on commissions for add-on risk products supplied in connection with motor vehicles

Commissions not to exceed determined caps

(1) A person contravenes this subsection if:

(a) the person provides a commission to another person, or receives a commission from another person, in connection with the supply (by any person to any person) of a financial service; and

(b) the financial service is the provision of an add-on risk product to a person (the ***product recipient***) in connection with:

(i) the sale or long-term lease of a motor vehicle to the product recipient; or

(ii) the provision of credit connected with the sale or long-term lease of a motor vehicle to the product recipient; or

(iii) the provision of a warranty by the product recipient in connection with the sale or long-term lease of a motor vehicle to another person by the product recipient; and

(c) the person acquiring the motor vehicle does so as a consumer (within the meaning of the Australian Consumer Law); and

(d) providing the add-on risk product is covered by a determination under subsection (3); and

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(e) the value of the commission exceeds the cap that applies, under that determination, to providing the add-on risk product.

Note: For the value of the commission, see subsections (5) to (7).

*Meaning of **add-on risk product***

(2) An ***add-on risk product*** is a financial product that is a facility through which, or through the acquisition of which, a person manages financial risk (within the meaning of subsection 12BAA(5)).

ASIC may determine caps

(3) ASIC may, by legislative instrument, determine a cap on the value of commissions provided in connection with an add-on risk product of a kind specified in the instrument.

(4) Without limiting subsection (5), the determination may do either or both of the following:

(a) limit the circumstances in which provision of an add-on risk product of that kind is covered by the determination;

(b) provide for the way in which the value of commissions is to be ascertained for the purposes of the determination.

Valuing commissions

(5) The value of a commission provided in connection with an add-on risk product is:

(a) the value ascertained in accordance with the determination under subsection (3) that covers the provision of the add-on risk product; or

(b) if the determination does not provide for the way in which the value is to be ascertained—the sum of:

(i) to the extent that the commission is expressed as an amount of money—that amount; and

(ii) otherwise—the market value of so much of the commission as is not expressed as an amount of money.

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(6) In working out the market value of something for the purposes of subparagraph (5)(b)(ii) disregard anything that would prevent or restrict its conversion to money.

(7) If a commission is provided in connection with 2 or more add-on risk products, apportion the value of the commission between the add-on risk products:
  (a) in accordance with the determination under subsection (3) that covers the provision of the add-on risk products; or
  (b) if the determination does not provide for such apportionment—on a reasonable basis.

Multiple commissions

(8) For the purposes of this Act, if more than one commission is provided (by one or more persons to one or more persons) in connection with the add-on risk product, subsection (1) applies as if:
  (a) one single commission is provided that comprises all of those commissions; and
  (b) if those commissions are provided by more than one person—that single commission is jointly provided by all of those persons; and
  (c) the value of that single commission is the sum of the values of all of those commissions.

Commissions for consumer credit insurance

(9) This section does not affect the application of section 145 of the National Credit Code to a commission paid in connection with consumer credit insurance (within the meaning of the National Credit Code) unless the insurance:
  (a) is an add-on risk product of a kind covered by a determination under subsection (3); and
  (b) is provided in connection with:
    (i) the sale or long-term lease of a motor vehicle; or
    (ii) the provision of credit connected with the sale or long-term lease of a motor vehicle.

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Note: In the absence of an applicable determination under subsection (3), section 145 of the National Credit Code imposes a 20% cap on commissions provided in connection with consumer credit insurance.

4 After subsection 12GB(1)

Insert:

(1AA) A person commits an offence if the person contravenes section 12DMC.

Penalty: 60 penalty units.

(1AB) Subsection (1AA) is an offence of strict liability.

5 Paragraph 12GB(2)(a)

After "offences", insert "against subsection (1)".

6 Subsection 12GB(2)

Omit "that provision. This applies whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time.", substitute "subsection (1) in relation to that provision.".

7 After subsection 12GB(2)

Insert:

(2A) If:

(a) a person is convicted of 2 or more offences against subsection (1AA) constituted by contraventions of section 12DMC; and

(b) the contraventions appear to the Court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time;

the Court must not, in respect of the offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against subsection (1AA).

(2B) Subsection (2) or (2A) applies whether or not the person is also convicted of an offence or offences constituted by, or relating to,

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another contravention or other contraventions of the provision in question that were of a different nature or occurred at a different time.

8 Subsections 12GB(3), (5) and (6)

After "subsection (1)", insert "or (1AA)".

9 After section 12GF

Insert:

12GFA Recovering commissions that exceed a cap under section 12DMC

(1) If:

(a) a person provides a commission to another person in connection with the supply (by any person to any person) of a financial service; and

(b) the financial service is the provision of an add-on risk product to another person (the ***consumer***) in connection with:

(i) the sale or long-term lease of a motor vehicle to the consumer; or

(ii) the provision of credit connected with the sale or long-term lease of a motor vehicle to the consumer; and

(c) providing the commission contravenes section 12DMC;

the consumer is entitled to recover the value of the commission from the person.

Note: For the value of the commission, see subsections 12DMC(5) to (7).

(2) If:

(a) a person (the ***motor vehicle dealer***) receives a commission in connection with the supply (by any person to any person) of a financial service; and

(b) the financial service is the provision of an add-on risk product to the motor vehicle dealer in connection with the giving of a warranty by the motor vehicle dealer in connection with the sale or long-term lease of a motor vehicle to another person (the ***consumer***); and

(c) providing the commission contravenes section 12DMC;

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the consumer is entitled to recover the value of the commission from the motor vehicle dealer.

Note: For the value of the commission, see subsections 12DMC(5) to (7).

(3) This section does not affect the other person's right to recover loss or damage under section 12GF.

10 Section 12GG

After "section 12GF", insert "or 12GFA".

11 Subsection 12GM(1)

After "section 12GF", insert ", 12GFA".

12 Paragraph 12GN(1)(c)

After "subsection 12GF(1)", insert "or 12GFA(1) or (2)".

13 In the appropriate position

Insert:

Part 32—Application and transitional provisions relating to Schedule 4 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

330 Application—caps on commissions

The amendments made by Schedule 4 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* apply to commissions provided in connection with supplies of add-on risk products that are supplies under contracts, arrangements or understandings entered into on or after the commencement of that Schedule.

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National Consumer Credit Protection Act 2009

14 At the end of section 145 of the *National Credit Code*

Add:

ASIC determinations of caps on commissions

(6) Despite subsection (1), this section does not apply to commission mentioned in that subsection if the insurance:

(a) is an add-on risk product of a kind covered by a determination under subsection 12DMC(3) of the *Australian Securities and Investments Commission Act 2001*; and

(b) is provided in connection with:

(i) the sale or long-term lease of a motor vehicle; or

(ii) the provision of credit connected with the sale or long-term lease of a motor vehicle.

Note: Under subsection 12DMC(3) of the *Australian Securities and Investments Commission Act 2001*, ASIC may determine caps for commissions provided in connection with consumer credit insurance for credit connected with the sale or long-term lease of a motor vehicle.

15 Subsection 204(1) of the *National Credit Code*

Insert:

add-on risk product has the meaning given by subsection 12DMC(2) of the *Australian Securities and Investments Commission Act 2001*.

long-term lease, of a motor vehicle, has the meaning given by subsection 12BA(1) of the *Australian Securities and Investments Commission Act 2001*.

motor vehicle has the meaning given by subsection 12BA(1) of the *Australian Securities and Investments Commission Act 2001*.

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Schedule 5—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 or sale to another person (the ***consumer***), or request or invite the consumer to ask or apply for a financial product or to purchase a financial product, if:
  (a) the consumer 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 consumer.

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

Exceptions

(2) Subsection (1) does not apply to:
  (a) an offer, request or invitation made in the course of the giving of advice to the consumer by a person who is required under Division 2 of Part 7.7A to act in the best interests of the consumer in relation to the advice; or
  (c) an offer, request or invitation of a kind prescribed by the regulations.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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*Meaning of **unsolicited contact***

(4) Contact by a person with the consumer, in connection with a financial product, is ***unsolicited contact*** with the consumer in connection with the product if:

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

(i) a telephone call;

(ii) a face-to-face meeting;

(iii) any other real-time interaction in the nature of a discussion or conversation; and

(b) either:

(i) the consumer did not consent to the contact; or

(ii) if the consumer consented to the contact—the requirements of subsection (5) are not met.

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

(a) in the case of an offer of that financial product for issue or sale to the consumer, either:

(i) the consent was a consent to the person contacting the consumer for the purpose of making the offer; or

(ii) offering to the consumer that financial product for issue or sale was reasonably within the scope of the consumer's consent; and

(b) in the case of a request or invitation to the consumer to ask or apply for a financial product or to purchase a financial product, either:

(i) the consent was a consent to the person requesting or inviting the consumer to ask or apply for, or to purchase, that financial product; or

(ii) requesting or inviting the consumer to ask or apply for, or to purchase, that financial product was reasonably within the scope of the consumer's consent; and

(c) the consumer gave the consent before the start of the contact; and

(d) giving the consent was a positive and voluntary act of the consumer; and

(e) the consent was clear, and a reasonable person would have understood that the consumer consented to the contact; and

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(f) if the consent indicated the form of contact that the consumer wants—the contact is in that form; and

(g) the consent was given:

(i) within 6 weeks before the contact occurs; or

(ii) within such longer period (not exceeding 12 weeks) as the consumer agrees to, if the issue or sale of the financial product reasonably requires a period exceeding 6 weeks to allow for a medical examination; and

(h) the consent was not withdrawn before the contact occurs.

For the purposes of this subsection, take into account any variations that the consumer makes to the consent before the contact occurs.

(6) The consumer may vary or withdraw the consent at any time. The variation or withdrawal may take any form, regardless of the form of the consent.

(7) To avoid doubt, advertising an offer, or publishing a statement about an offer, is not ***unsolicited contact*** if:

(a) because of subsection 734(4), (5), (6), (7), (8) or (9), the advertisement or publication does not contravene subsection 734(2); or

(b) because of paragraphs 1018A(1)(c) to (e), or because of subsection 1018A(3), (4) or (5), the advertisement or publication does not contravene subsection 1018A(1); or

(c) because of paragraphs 1018A(2)(c) to (f), or because of subsection 1018A(3), (4) or (5), the advertisement or publication does not contravene subsection 1018A(2).

Application of this section to superannuation products

(8) This section, and regulations made for the purposes of this section, apply to financial products that are beneficial interests in a regulated superannuation fund as if each class of beneficial interest in the fund were a separate financial product.

Strict liability

(9) An offence based on subsection (1) is an offence of strict liability.

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992AA Right of return and refund for hawked financial products

(1) If a person (the ***issuer***) contravenes section 992A in relation to a financial product issued or sold to another person (the ***consumer***), the consumer has a right of return and refund exercisable at any time during the period starting when the financial product was issued or sold and ending:
   (a) if, under section 1019B, the consumer has a right to return the financial product within a particular period—1 month after the end of that period; or
   (b) otherwise—1 month and 14 days after the financial product was issued or sold.

(2) If the financial product is returned under subsection (1):
   (a) if the financial product is constituted by a legal relationship between the consumer and the issuer—by force of this section, that relationship is terminated, with effect from the time of the return, without penalty to the consumer; and
   (b) by force of this section, any contract for the acquisition of the product by the consumer is terminated, with effect from the time of the return, without penalty to the consumer; and
   (c) such additional consequences (which may include the imposition of additional obligations) apply as are specified in the regulations.

(3) However:
   (a) this section does not apply in relation to a financial product included in a class of financial products that the regulations exclude from this section; and
   (b) if the regulations provide that this section applies in relation to a class of financial products only if specified additional requirements are satisfied—this section does not apply in relation to a financial product included in that class unless those requirements are satisfied; and
   (c) in circumstances specified in the regulations, this section does not apply to any financial product.

(4) This section, and regulations made for the purposes of this section, apply in relation to financial products that are beneficial interests in

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a regulated superannuation fund as if each class of beneficial interest in the fund were a separate financial product.

(5) This section applies in addition to any other penalties for or in relation to breaches of section 992A.

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Part 2—Other amendments

Competition and Consumer Act 2010

3 Section 95 of Schedule 2

Omit "section 736, 992A or 992AA", substitute "section 992A".

4 Section 95 of Schedule 2 (note)

Repeal the note, substitute:

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

5 Section 187 of Schedule 2

Omit "section 736, 992A or 992AA", substitute "section 992A".

6 Section 187 of Schedule 2 (note)

Repeal the note, substitute:

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

Corporations Act 2001

7 Subsection 1200F(1) (table item 3)

Omit ", other than sections 736 and 738".

8 Subsection 1200F(1) (table item 4)

Omit "section 992AA", substitute "section 992A".

9 Schedule 3 (table items dealing with subsections 736(1), 992A(3) and 992AA(1))

Repeal the items.

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Schedule 6—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

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(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:

(a) in the case of an individual—50 penalty units; or

(b) in the case of a body corporate—500 penalty units.

Use of the word “insurer”

(2) 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 ***insurer*** to describe (expressly or by implication) the person in connection with a product or service that the person supplies, or proposes to supply, in the course of carrying on the business; and

(c) either:

(i) the product or service is not insurance; or

(ii) the person would breach a requirement mentioned in subsection (3) if the person supplied the product or service in the course of carrying on the business; and

(d) in a case where the product or service is not insurance—it is likely in all the circumstances (including the use of the word ***insurer***) that the product or service could be mistakenly believed to be insurance.

Penalty:

(a) in the case of an individual—50 penalty units; or

(b) in the case of a body corporate—500 penalty units.

(3) For the purposes of subparagraph (2)(c)(ii), the requirements are the requirements imposed by the following provisions:

(a) section 9 or 10 of this Act (need to be authorised to carry on insurance business);

(b) section 17 of the *Life Insurance Act 1995* (registration of life companies);

(c) section 10 of the *Private Health Insurance (Prudential Supervision) Act 2015* (carrying on health insurance business without registration).

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Exceptions

(4) Subsections (1) and (2) do not apply if:
  (a) the person is a government entity; or
  (b) the person:
    (i) is covered by a determination under subsection (6); and
    (ii) if that determination is subject to conditions—meets those conditions; or
  (c) the product or service is of a kind prescribed by the regulations; or
  (d) the product or service is State insurance (within the meaning of paragraph 51(xiv) of the Constitution) not extending beyond the limits of the State concerned.

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

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

Determinations by ASIC

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

(7) ASIC must not:
  (a) revoke a determination under subsection (6) relating to a specified person; or
  (b) vary such a determination by varying or including conditions to which the determination is subject;

unless ASIC has notified the person in writing that it is considering revoking or varying the determination.

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Strict liability

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

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Schedule 7—Claims handling and settling services

Corporations Act 2001

1 Section 9

Insert:

> ***claims handling and settling service***, when used in a provision outside Chapter 7, has the same meaning as in Chapter 7.

2 Section 9 (at the end of paragraph (a) of the definition of *professional investor*)

Add "whose Australian financial services licence covers the provision of financial services that are not limited to claims handling and settling services".

3 Section 761A (paragraph (b) of the definition of *binder*)

Repeal the paragraph, substitute:

(b) provide a claims handling and settling service, on behalf of the insurer as insurer, in relation to risk insurance products;

4 Section 761A

Insert:

> ***Cash Settlement Fact Sheet*** means a Cash Settlement Fact Sheet required by section 948C to be given in accordance with Division 3A of Part 7.7.
>
> ***claimant intermediary*** has the meaning given by section 761CAA.
>
> ***claims handling and settling service*** has the meaning given by section 766G.
>
> ***insurance claims manager*** has the meaning given by section 761DA.
>
> ***insurance fulfilment provider*** means a person who carries on a business of providing goods or services to persons insured under

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insurance products in satisfaction of the liability of the insurers under those products.

5 After section 761C

Insert:

761CAA Meaning of *claimant intermediary*

(1) A person is a ***claimant intermediary*** if the person:

(a) carries on a business of representing persons insured under insurance products in pursuing claims under those products; and

(b) represents those persons insured for a benefit given as consideration for that service, whether a monetary benefit or otherwise and whether given to the person providing the services or another person nominated by that person.

(2) The regulations may prescribe circumstances in which a person is not a ***claimant intermediary*** despite subsection (1).

6 After section 761D

Insert:

761DA Meaning of *insurance claims manager*

(1) A person is an ***insurance claims manager*** if:

(a) the person carries on a business of providing claims handling and settling services on behalf of one or more insurers; and

(b) where the person, as part of that business, also provides goods or other services—providing claims handling and settling services on behalf of one or more insurers is the primary part of the business.

(2) The regulations may prescribe:

(a) circumstances in which, for the purposes of subsection (1), providing claims handling and settling services on behalf of one or more insurers is taken to be the primary part of a business carried on by a person; and

(b) circumstances in which, for the purposes of subsection (1), providing claims handling and settling services on behalf of

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one or more insurers is taken not to be the primary part of a business carried on by a person.

7 After paragraph 766A(1)(ea)

Insert:

(eb) provide a claims handling and settling service (see section 766G); or

8 After subsection 766B(7)

Insert:

(7A) A recommendation or a statement of opinion, or a report of either of those things, is not financial product advice if giving the recommendation, statement of opinion or report could reasonably be regarded as a necessary part of providing a claims handling and settling service.

(7B) The regulations may prescribe:

(a) circumstances in which giving a recommendation, statement of opinion or report could reasonably be regarded as a necessary part of providing a claims handling and settling service for the purposes of subsection (7A); and

(b) circumstances in which giving a recommendation, statement of opinion or report could not reasonably be regarded as a necessary part of providing a claims handling and settling service for the purposes of subsection (7A).

9 Subsection 766B(8)

Omit “and (7)”, substitute “, (7) and (7A)”.

10 At the end of Division 4 of Part 7.1

Add:

766G Meaning of *claims handling and settling service*

(1) A person provides a ***claims handling and settling service*** if:

(a) the person makes a recommendation, or states an opinion, in the following circumstances:

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(i) the recommendation, or statement of opinion, is made in response to an inquiry by or on behalf of another person about an existing or a potential claim by the other person under an insurance product;

(ii) the recommendation, or statement of opinion, could reasonably be expected to influence a decision whether to continue with the existing claim or to make the potential claim; or

(b) the person assists another person to make a claim under an insurance product; or

(c) the person represents a person insured under an insurance product in pursuing a claim under the product; or

(d) the person assesses whether an insurer has a liability under an insurance product, or provides assistance in relation to such an assessment; or

(e) the person makes a decision to accept or reject all or part of a claim under an insurance product; or

(f) the person quantifies the extent of the insurer's liability to another person under an insurance product, or provides assistance in relation to the quantification of the extent of such a liability; or

(g) the person offers to settle all or part of a claim under an insurance product; or

(h) the person satisfies a liability of the insurer under an insurance product in full or partial settlement of a claim under the insurance product.

(2) For the purposes of this Act, a claims handling and settling service provided in relation to an insurance product is to be treated as having been provided to the insured under the insurance product (who may be a person insured as a third party beneficiary under the contract of insurance that constitutes the insurance product, within the meaning of the *Insurance Contracts Act 1984*).

11 At the end of Division 1 of Part 7.6

Add:

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910D Insurance fulfilment providers taken to be acting on behalf of financial services licensees

An insurance fulfilment provider who:

(a) provides goods or services to a person insured under an insurance product in satisfaction of the liability of the insurer under the product; and

(b) has been engaged by a financial services licensee, or by another person on behalf of a financial services licensee, to provide those goods or services; and

(c) does not (apart from this section) provide those goods or services as a representative of the financial services licensee;

is taken to be acting on behalf of the financial services licensee in providing the goods or services.

12 After paragraph 911A(2)(ej)

Insert:

(ek) the service is a claims handling and settling service in relation to an insurance product, and the person providing the service is not one of the following:

(i) the insurer under the insurance product;

(ii) an insurance fulfilment provider who has authority from the insurer to reject all or part of a claim under the insurance product;

(iii) an insurance claims manager;

(iv) an insurance broker (within the meaning of the *Insurance Contracts Act 1984*) who provides the claims handling and settling service in relation to the insurance product on behalf of the insurer;

(v) a person who has provided, or has entered into an arrangement to provide, financial product advice to a person insured under the insurance product (including a person insured as a third party beneficiary under the contract of insurance that constitutes the insurance product, within the meaning of the *Insurance Contracts Act 1984*) and who also provides the claims handling and settling service on behalf of the insurer under the insurance product;

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(vi) if the insurance product is prescribed by the regulations for the purposes of this subparagraph—a claimant intermediary representing a person insured under the product in pursuing a claim under the product;

(el) the service is a claims handling and settling service in relation to an insurance product and all of the following apply:

(i) the claims handling and settling service is provided under an arrangement between the issuer of the insurance product and a financial services licensee;

(ii) the issuer of the insurance product is prescribed by the regulations, or of a class prescribed by the regulations;

(iii) under the arrangement, the financial services licensee, or their authorised representatives, may provide the claims handling and settling service in relation to the insurance product;

(iv) the provision of the claims handling and settling service is covered by the financial services licensee's Australian financial services licence;

(v) the claims handling and settling service is provided to the insured as a retail client;

(em) the service is the provision of a claims handling and settling service in relation to an insurance product provided to a wholesale client under an arrangement between the issuer of the insurance product and a financial services licensee;

(en) the service is a claims handling and settling service of one of the following kinds:

(i) advice given by a lawyer, in a professional capacity as a lawyer, about matters of law, legal interpretation or the application of the law to any facts;

(ii) except as prescribed by the regulations—other advice given by a lawyer in the ordinary course of activities as a lawyer, that is reasonably regarded as a necessary part of those activities;

(iii) action taken by a lawyer, in a professional capacity as a lawyer, to determine whether an insurer is liable to another person under an insurance product, or to quantify the extent of the insurer's liability;

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(iv) negotiation by a lawyer, in a professional capacity as a lawyer, of the settlement of a claim under an insurance product;

(v) other conduct by a lawyer, in a professional capacity as a lawyer and on behalf of another person, that could reasonably regarded as a necessary part of acting on instruction and for which the lawyer has not received and is not entitled to receive a benefit other than the payment of professional charges, the reimbursement for expenses incurred on behalf of the other person, or the payment on account of expenses to be incurred on behalf of the other person;

13 After paragraph 911B(1)(e)

Insert:

; (f) these conditions are satisfied:

(i) the service is a claims handling and settling service in relation to an insurance product; and

(ii) the principal holds an Australian financial services licence covering the provision of the service; and

(iii) either the provider is not a person described in subparagraphs 911A(2)(ek)(i) to (vi) (insurers etc.) or, if the provider is a person described in one of those subparagraphs, the claims handling and settling service is of a kind described in paragraph 911A(2)(en) (legal services);

(g) these conditions are satisfied:

(i) the service is a claims handling and settling service in relation to an insurance product; and

(ii) the principal is an authorised representative of a financial services licensee; and

(iii) the financial services licensee holds an Australian financial services licence covering the provision of the service; and

(iv) the authorisation by the financial services licensee covers the provision of the service by the authorised representative; and

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(v) the authorised representative has entered into an arrangement with the provider for the provider to provide the service on behalf of the authorised representative and the financial services licensee; and

(vi) either the provider is not a person described in subparagraphs 911A(2)(ek)(i) to (vi) (insurers etc.) or, if the provider is a person described in one of those subparagraphs, the claims handling and settling service is of a kind described in paragraph 911A(2)(en) (legal services).

14 Paragraph 912A(1)(ca)

Repeal the paragraph, substitute:

(ca) take reasonable steps to ensure that its representatives comply with the financial services laws, except to the extent that:

(i) those representatives are insurance fulfilment providers; and

(ii) the financial services laws relate to the provision of claims handling and settling services by those representatives; and

15 At the end of subsection 916C(1)

Add:

; or (c) the only financial services provided by the person as authorised representative of any financial services licensee are claims handling and settling services.

16 Subsection 940C(1)

Omit “or a Statement of Advice”, substitute “, a Statement of Advice or a Cash Settlement Fact Sheet”.

17 After subsection 941C(7)

Insert:

Claims handling and settling service

(7A) The providing entity does not have to give the client a Financial Services Guide if:

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(a) the financial service consists only of a claims handling and settling service; and
(b) the claims handling and settling service does not consist only of representing the client as a person insured under an insurance product in pursuing a claim under that product.

18 After Division 3 of Part 7.7

Insert:

Division 3A—Cash Settlement Fact Sheet

Subdivision A—When this Division applies

948B Situation in which this Division applies

This Division applies in relation to the provision of a claims handling and settling service in the following circumstances:

(a) the service is offering to settle all or part of a claim under a general insurance product using a cash payment;
(b) the service is provided:
  (i) by a financial services licensee (the ***providing entity***); or
  (ii) by a person (the ***providing entity***) in their capacity as authorised representative of a financial services licensee (the ***authorising licensee***), or of 2 or more financial services licensees (the ***authorising licensees***); or
  (iii) by another person on behalf of a financial services licensee (the ***providing entity***), or on behalf of 2 or more financial services licensees (each of which is a ***providing entity***);
(c) the service is provided to a person (the ***client***) as a retail client who is insured under the insurance product;
(d) cash payment is not the only option legally available to the client to settle the claim, or the part of the claim.

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Subdivision B—Requirement for a Cash Settlement Fact Sheet to be given

948C Obligation to give client a Cash Settlement Fact Sheet

(1) The providing entity must give the client a Cash Settlement Fact Sheet in accordance with this Division.

(2) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

948D Timing for giving a Cash Settlement Fact Sheet

The Cash Settlement Fact Sheet must be given to the client when the offer to settle all or part of the claim using a cash payment is made.

Subdivision C—Contents of a Cash Settlement Fact Sheet

948E Title of Cash Settlement Fact Sheet

(1) The title "Cash Settlement Fact Sheet" must be used on the cover of, or at or near the front of, a Cash Settlement Fact Sheet.

(2) In any other part of the Cash Settlement Fact Sheet, "Cash Settlement Fact Sheet" may be abbreviated to "CSFS".

948F Content of Cash Settlement Fact Sheet

(1) A Cash Settlement Fact Sheet must contain:
  (a) a statement outlining the options for settlement legally available to the client under the insurance product; and
  (b) a statement setting out the sum insured under the insurance product; and
  (c) a statement setting out:
    (i) the total amount of the cash settlement being offered; and
    (ii) the amount of each component of the total amount of cash settlement being offered (such as components

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representing the sum insured, additional payments relating to emergencies and ex gratia payments); and

(d) a statement that the client should consider obtaining independent legal or financial advice before settling; and

(e) if, despite accepting the offer, the client would be entitled under the insurance product to have the payout reviewed—an outline of the rights of review; and

(f) any other information prescribed by the regulations.

(2) The Cash Settlement Fact Sheet must be given in writing.

(3) The Cash Settlement Fact Sheet must be dated. The date must be the date on which the Cash Settlement Fact Sheet was prepared or its preparation completed.

(4) The Cash Settlement Fact Sheet may also contain other information.

(5) The information included in the Cash Settlement Fact Sheet must be worded and presented in a clear, concise and effective manner.

19 Paragraph 951A(b)

After "Statement of Advice", insert ", Cash Settlement Fact Sheet".

20 Subsection 952B(1) (paragraph (b) of the definition of *defective*)

Omit "a Statement of Advice, or is", substitute "a Statement of Advice, a Cash Settlement Fact Sheet, or".

21 Subsection 952B(1) (after subparagraph (b)(ii) of the definition of *defective*)

Insert:

(iia) if it is a Cash Settlement Fact Sheet—there is an omission from the Cash Settlement Fact Sheet of material required by section 948F; or

22 Subsection 952B(1) (after paragraph (c) of the definition of *disclosure document or statement*)

Insert:

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(ca) a Cash Settlement Fact Sheet; or

23 Paragraph 952E(2)(a)

Repeal the paragraph, substitute:

(a) the representative gives (see subsection (5)) a person a disclosure document or statement that is one of the following, in circumstances in which the document or statement is required by a provision of this Part to be given to the person:

(i) a Statement of Advice;

(ii) a Cash Settlement Fact Sheet;

(iii) information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2); and

24 Paragraph 952F(1)(b)

Repeal the paragraph, substitute:

(b) the licensee provides the representative with a disclosure document or statement, being:

(i) a Statement of Advice; or

(ii) a Cash Settlement Fact Sheet; or

(iii) information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2); or

25 Subparagraph 952F(1)(c)(i)

After “a Statement of Advice,”, insert “a Cash Settlement Fact Sheet,”.

26 Paragraph 952G(1)(b)

Repeal the paragraph, substitute:

(b) the licensee provides the representative with a disclosure document or statement, being:

(i) a Statement of Advice; or

(ii) a Cash Settlement Fact Sheet; or

(iii) information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2); or

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27 Subparagraph 952G(1)(c)(i)

After "a Statement of Advice,", insert "a Cash Settlement Fact Sheet,".

28 After section 952J

Insert:

952JA Offence if a Cash Settlement Fact Sheet does not comply with certain requirements

(1) A financial services licensee, or an authorised representative of a financial services licensee, commits an offence if:

(a) the licensee or representative gives (see subsection (3)) a person a Cash Settlement Fact Sheet in circumstances in which it is required by a provision of this Part to be given to the person; and

(b) the Cash Settlement Fact Sheet does not comply with section 948E.

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

(2) For the purposes of an offence based on subsection (1), strict liability applies to paragraph (b) of that subsection.

(3) In this section, ***give*** means give by any means (including orally), and is not limited to the meaning it has because of section 940C.

29 Subsection 953A(1) (paragraph (b) of the definition of *defective*)

Omit "a Statement of Advice, or is", substitute "a Statement of Advice, a Cash Settlement Fact Sheet, or".

30 Subsection 953A(1) (after subparagraph (b)(ii) of the definition of *defective*)

Insert:

(iia) if it is a Cash Settlement Fact Sheet—there is an omission from the Cash Settlement Fact Sheet of material required by section 948F; or

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31 Subsection 953A(1) (after paragraph (c) of the definition of *disclosure document or statement*)

Insert:

(ca) a Cash Settlement Fact Sheet; or

32 In the appropriate position in subsection 1317E(3)

Insert:

subsection 948C(2)	obligation to give client a Cash Settlement Fact Sheet	uncategorised

33 In the appropriate position in Chapter 10

Insert:

Part 10.48—Application and transitional provisions relating to Schedule 7 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1675 Definitions

In this Part:

commencement day means the day on which Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* commences.

transition period has the meaning given by section 1675B.

1675A Application of claims handling and settling services reforms

Subject to this Part, the amendments made by Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* apply to claims made under insurance products, or potential claims that arise under insurance products, on or after the commencement day.

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1675B Transition periods

(1) For the purposes of this Part, the ***transition period*** for a person begins on the commencement day and ends on:

(a) if the person lodges an application for an Australian financial services licence covering claims handling and settling services and ASIC gives the applicant notice in writing on or before 30 June 2021 that the application is granted—the last licence-processing day; or

(b) if the person lodges an application for an Australian financial services licence covering claims handling and settling services, the application complies with section 913A and is pending on 30 June 2021—the earlier of:

(i) if, after 30 June 2021, the person withdraws the application—the day on which the application is withdrawn; and

(ii) if, after 30 June 2021, ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8)—the day on which ASIC gives that notification; and

(iii) if ASIC refuses to grant the person an Australian financial services licence covering claims handling and settling services—the day on which ASIC gives the person notice in writing of the refusal; and

(iv) the last licence-processing day; or

(c) if the person lodges an application for ASIC to vary the conditions on the licence to specify that claims handling and settling services are financial services that the licensee is authorised to provide and ASIC gives the applicant notice in writing on or before 30 June 2021 that the application is granted—the last licence-processing day; or

(d) if the person is a financial services licensee and lodges an application for ASIC to vary the conditions on the licence to specify that claims handling and settling services are financial services that the licensee is authorised to provide, the application complies with paragraph 914A(2)(b) and is pending on 30 June 2021—the earlier of:

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(i) if, after 30 June 2021, the person withdraws the application—the day on which the application is withdrawn; and

(ii) if, after 30 June 2021, ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8)—the day on which ASIC gives that notification; and

(iii) if ASIC refuses to grant the person the variation—the day on which ASIC gives the person notice in writing of the refusal; and

(iv) the last licence-processing day; or

(e) otherwise—30 June 2021.

(2) In this section:

last licence-processing day means the later of:

(a) 31 December 2021; and

(b) if the Minister determines another day under subsection (3)—that other day.

pending: an application is ***pending*** on a particular day if the application has been lodged on or before that day and each of the following is satisfied:

(a) the application has not been withdrawn by the applicant on or before that day;

(b) ASIC has not, on or before that day, given the applicant notice in writing that the application has been granted or refused;

(c) ASIC has not, on or before that day, notified that applicant in writing that ASIC refuses to receive the application under subsection 1274(8).

(3) The Minister may, by notifiable instrument, determine a day that is after 31 December 2021 and before 1 July 2022 to be the last licence-processing day.

1675C Application during transition period

(1) Despite section 1675A, a claims handling and settling service provided by or on behalf of a person during the transition period

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for that person is not to be treated as a financial service, except for the purposes of:

(a) section 912C; and

(b) section 912CA; and

(c) section 912E.

(2) Nothing in this section prevents:

(a) a financial services licensee from giving a person a notice under section 916A during the transition period for the licensee authorising the person to provide claims handling and settling services after the end of that transition period; or

(b) an authorised representative of a financial services licensee giving an individual written notice under section 916B during the transition period for the licensee authorising that individual to provide specified claims handling and settling services or claims handling and settling services on behalf of the licensee after the end of the transition period for the authorised representative.

34 In the appropriate position in Schedule 3

Insert:

Subsection 952JA(1)	30 penalty units

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Schedule 8—Trustees of registrable superannuation entities should have no other duty

Superannuation Industry (Supervision) Act 1993

1 After subsection 29E(5)

Insert:

Licences held by bodies corporate

(5A) An additional condition is imposed on each RSE licence held by an RSE licensee that is a body corporate. The condition is that the RSE licensee must not have a duty to act in the interests of another person, other than a duty that arises in the course of:

(a) performing the RSE licensee's duties, or exercising the RSE licensee's powers, as a trustee of a registrable superannuation entity; or

(b) providing personal advice.

2 Application

The amendment of the *Superannuation Industry (Supervision) Act 1993* made by this Schedule applies in relation to any duty that exists on or after the commencement of this item, whether the duty arose before, on or after that commencement.

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Schedule 9—Adjustment of APRA and ASIC's roles in superannuation

Part 1—Adjustments relating to industry supervision

Superannuation Industry (Supervision) Act 1993

1 Sections 4 and 6

Repeal the sections, substitute:

4 Simplified outline of supervision responsibilities

> Sections 5 and 6 set out the functions, powers and duties of APRA, ASIC and the Commissioner of Taxation in administering this Act.
>
> APRA is generally responsible for prudential regulation and member outcomes. It is also generally responsible for licensing and supervision of RSE licensees.
>
> ASIC is generally responsible for protecting consumers from harm, market integrity, disclosure and record keeping.
>
> The Commissioner of Taxation is generally responsible for self managed superannuation funds, data and payment standards, tax file numbers and the compassionate release of superannuation amounts.

5 General administration of Act

(1) Subject to this section, the general administration of a provision is determined under the general administration table in section 6. If a provision is covered by column 1 of the table, the general administration of the provision is conferred on a person, body or bodies in accordance with column 3 of the table.

(2) Powers and duties are also conferred by the provisions referred to in subsection (3) of this section on:

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(a) APRA for the purposes of APRA's administration of the provisions it administers (including provisions both APRA and ASIC administer); and
(b) ASIC for the purposes of ASIC's administration of the provisions it administers (including provisions both APRA and ASIC administer); and
(c) the Commissioner of Taxation for the purposes of the administration of the provisions the Commissioner of Taxation administers.

(3) The provisions are Parts 1, 25, 26, 27, 28, 29, 29A and 30, but not including any of the following provisions:
(a) Division 3 of Part 25 (see instead item 58 of the general administration table);
(b) sections 328 and 332 (see instead subsection (8) of this section).

Note: Generally APRA, ASIC and the Commissioner of Taxation are not referred to in these provisions, Regulator is used instead. See the definition of ***Regulator*** in section 10.

Special rules about ASIC

(4) Despite paragraph (2)(b):
(a) powers and duties conferred on ASIC by section 255 are conferred only in relation to persons who are relevant persons in relation to superannuation entities; and
(b) powers and duties conferred on ASIC by section 256 are conferred only in relation to the affairs of superannuation entities.

Special rules about the Commissioner of Taxation

(5) Despite paragraph (2)(c):
(a) powers and duties conferred on the Commissioner of Taxation by Divisions 4 to 8 of Part 25 (other than section 285) are conferred only in relation to:
(i) persons who are relevant persons in relation to superannuation entities; and
(ii) the affairs of superannuation entities; and

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(b) powers and duties are not conferred on the Commissioner of Taxation by section 342 (about pre-1 July 88 funding credits and debits).

(6) Nothing in subsection (5) limits the powers and duties conferred on the Commissioner of Taxation by Part 25 (as mentioned in paragraph (2)(c)) in relation to contributing employers.

Note: The Commissioner of Taxation's powers and duties under Part 25 in relation to contributing employers are found in sections 255 and 256, with related provisions in Divisions 7, 8 and 9 of that Part.

(7) To avoid doubt, for the purposes of the definition of ***taxation law*** in subsection 995-1(1) of the *Income Tax Assessment Act 1997*, the Commissioner of Taxation is taken to have the general administration of a provision of this Act or the regulations that confers powers and duties on the Commissioner of Taxation.

Note: An effect of a provision being administered by the Commissioner of Taxation is that people who acquire information under the provision are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

Modification and exemption powers

(8) Powers and duties are also conferred by sections 328 and 332 on:
(a) APRA for the purposes of the administration of provisions administered by APRA (including provisions both APRA and ASIC administer) or by the Commissioner of Taxation; and
(b) ASIC for the purposes of the administration of provisions administered solely by ASIC.

Directions

(9) The Minister may, by legislative instrument, give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

6 General administration table

(1) The following table has effect for the purposes of subsection 5(1).

Note: Under that subsection, the general administration of a provision referred to in column 1 of the table is conferred as set out in column 3.

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General administration table

Item	Column 1 Provisions	Column 2 Topic	Column 3 Regulator
1	Part 2A, to the extent it is not covered by item 2 of this table	licensing of RSE licensees	APRA
2	Section 29JCA	false representation about RSE status	both APRA and ASIC
3	Part 2B, to the extent it is not covered by item 4 of this table	registrable superannuation entities	APRA
4	Sections 29P to 29QC	obligations of RSE licensees	ASIC
5	Part 2C, to the extent it is not covered by item 6 of this table	MySuper	APRA
6	Subsection 29SAA(3)	MySuper notice requirements	ASIC
7	Part 3, to the extent it is not covered by item 8 or 9 of this table	operating standards	(a) ASIC, to the extent the provisions relate to disclosure or record-keeping (see subsection (2)); and (b) subject to paragraph (a), the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (c) APRA, to the remaining extent
8	Division 3 of Part 3	portability forms	the Commissioner of Taxation
9	Regulations made under Part 3	release on compassionate grounds	the Commissioner of Taxation, to the extent that the regulations relate to the making and notification of determinations that an

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General administration table			
Item	**Column 1** **Provisions**	**Column 2** **Topic**	**Column 3** **Regulator**
			amount of benefits in a superannuation entity may be released on compassionate grounds
10	Part 3A	prudential standards	APRA
11	Part 3B, to the extent it is not covered by item 12 or 13 of this table	superannuation data and payment	APRA
12	Divisions 1 and 4 of Part 3B	superannuation data and payment	the Commissioner of Taxation
13	Division 2 of Part 3B	compliance with superannuation data and payment regulations and standards	(a) the Commissioner of Taxation, to the extent the provisions relate to any of the following: (i) employers; (ii) payments and information given to the Commissioner of Taxation; (iii) self managed superannuation funds; and (b) APRA, to the remaining extent
14	Part 4	accounts, audit and reporting obligations for superannuation entities	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
15	Part 5, to the extent it is not covered by item 16 of this table	notices about complying fund status	(a) the Commissioner of Taxation, to the extent the provisions do any of the following:

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General administration table			
Item	**Column 1** **Provisions**	**Column 2** **Topic**	**Column 3** **Regulator**
			(i) relate to self managed superannuation funds; (ii) require or permit the Commissioner of Taxation to do something; and (b) APRA, to the remaining extent
16	Sections 40 and 41	notices about complying superannuation fund status	(a) in relation to an entity that is a self managed superannuation fund on the last day of the most recently ended year of income—the Commissioner of Taxation; and (b) in relation to an entity that is not a self managed superannuation fund on the last day of the most recently ended year of income—APRA; and (c) subject to paragraphs (a) and (b), the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (d) APRA, to the remaining extent
17	Part 6, to the extent it is	governing rules of	(a) ASIC, to the extent the provisions relate to

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General administration table

Item	Column 1 Provisions	Column 2 Topic	Column 3 Regulator
	not covered by items 18 to 21 of this table	superannuation entities	disclosure or record-keeping (see subsection (2)); and (b) subject to paragraph (a), the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (c) APRA, to the remaining extent
18	Sections 52, 52A and 54B	covenants and consequences of breaching covenants	both APRA and ASIC
19	Sections 52B and 52C	covenants of SMSFs	the Commissioner of Taxation
20	Section 54A	prescribed covenants	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) both APRA and ASIC, to the remaining extent
21	Section 60A	dismissal of trustee of public offer entity	APRA
22	Part 7, to the extent it is not covered by items 23 to 26 of this table	regulated superannuation funds	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
23	Sections 62 and 68	sole purpose test;	(a) the Commissioner of Taxation, to the extent

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General administration table			
Item	**Column 1 Provisions**	**Column 2 Topic**	**Column 3 Regulator**
		victimisation of trustees	the provisions relate to self managed superannuation funds; and (b) both APRA and ASIC, to the remaining extent
24	Section 64A	compliance with tribunal determination	(a) the Commissioner of Taxation, to the extent the provision relates to self managed superannuation funds; and (b) ASIC, to the remaining extent
25	Section 68A	use of goods or services to influence employers	ASIC
26	Section 68B	promotion of illegal early release schemes	(a) the Commissioner of Taxation, to the extent the provision relates to self managed superannuation funds; and (b) ASIC, to the remaining extent
27	Part 8	in-house asset rules	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
28	Part 9	equal representation of employers and members—employer-sponsored funds	APRA

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General administration table			
Item	**Column 1** **Provisions**	**Column 2** **Topic**	**Column 3** **Regulator**
29	Part 10	approved deposit funds	APRA
30	Part 11	pooled superannuation trusts	APRA
31	Part 11A, to the extent it is not covered by item 32 of this table	general fees rules	APRA
32	Section 99F	cost of financial product advice	ASIC
33	Part 12, to the extent it is not covered by items 34 to 36 of this table	duties of trustees and investment managers	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
34	Sections 101 and 103	dispute resolution systems; duty to keep minutes and records	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) ASIC, to the remaining extent
35	Section 105	duty to keep reports	(a) ASIC, to the extent the provision relates to disclosure or record-keeping (see subsection (2)); and (b) subject to paragraph (a), the Commissioner of Taxation, to the extent the provision relates to self managed superannuation funds;

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General administration table			
Item	**Column 1 Provisions**	**Column 2 Topic**	**Column 3 Regulator**
			and (c) APRA, to the remaining extent
36	Section 108A	duty to identify multiple accounts	both APRA and ASIC
37	Part 14	other provisions applying to superannuation entities	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
38	Part 15, to the extent it is not covered by item 39 of this table	standards for trustees, custodians and investment managers	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
39	Section 126K	disqualified persons	(a) the Commissioner of Taxation, to the extent the provision relates to self managed superannuation funds; and (b) both APRA and ASIC, to the remaining extent
40	Part 16, to the extent it is not covered by items 41 to 43 of this table	actuaries and auditors	(a) ASIC, to the extent the provisions relate to auditors of self managed superannuation funds; and (b) subject to paragraph (a), the Commissioner of

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General administration table

Item	Column 1 Provisions	Column 2 Topic	Column 3 Regulator
			Taxation, to the extent the provisions relate to self managed superannuation funds; and (c) APRA, to the remaining extent
41	Section 128N	actuaries and auditors—ASIC may disclose information	ASIC
42	Section 128P	actuaries and auditors—Commissioner of Taxation may refer matter to ASIC	the Commissioner of Taxation
43	Division 2 of Part 16	actuaries and auditors—obligations	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
44	Part 16A	APRA's powers to issue directions	APRA
45	Part 17, to the extent it is not covered by item 46 of this table	suspension or removal of trustee	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
46	Section 140	notice by acting trustee	APRA
47	Part 18	amalgamation of funds	APRA

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General administration table			
Item	**Column 1 Provisions**	**Column 2 Topic**	**Column 3 Regulator**
48	Part 19	public offer entities	ASIC
49	Part 20	contraventions relating to SMSFs	the Commissioner of Taxation
50	Part 21	civil and criminal consequences of contravening civil penalty provisions	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) both APRA and ASIC, to the extent the provisions relate to, or are being applied for the purposes of, a provision administered by both those bodies; and (c) ASIC, to the extent the provisions relate to, or are being applied for the purposes of, a provision administered by ASIC; and (d) APRA, to the remaining extent
51	Part 22	infringement notices	APRA
52	Part 23	financial assistance	APRA
53	Part 24, to the extent it is not covered by item 54 of this table	eligible rollover funds	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
54	sections 242K, 242L and 242M	obligations relating to eligible rollover	both APRA and ASIC

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General administration table			
Item	**Column 1** **Provisions**	**Column 2** **Topic**	**Column 3** **Regulator**
		funds	
55	Part 24A	pre-1 July 1995 transitional provisions	APRA
56	Part 24B	small funds	as provided by the provisions of Part 24B
57	Part 25, to the extent it is not covered by item 58 of this table	monitoring and investigation	see section 5
58	Division 3 of Part 25	monitoring and investigation—APRA requirements	APRA
59	Part 25A, to the extent it is not covered by item 60 of this table	tax file numbers	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
60	Divisions 1 and 3A of Part 25A, section 299NA and subsection 299U(2A)	tax file numbers	the Commissioner of Taxation
61	Part 32	transitional provisions for tax file numbers	APRA

Note: Subsection 10(4) extends the meaning of ***self managed superannuation fund*** for the purposes of this section, sections 5, 42 and 42A, and Part 20.

Disclosure and record-keeping provisions

(2) For the purposes of the general administration table, a provision relates to disclosure or record-keeping to the extent to which the provision relates to:

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(a) keeping of reports to members of, or beneficiaries in, funds; or
(b) disclosure of information to members of, or beneficiaries in, funds; or
(c) disclosure of information about funds (including disclosure of information to ASIC but not including disclosure of information to APRA); or
(d) any other matter prescribed by regulations for the purposes of this paragraph.

2 Subsection 10(1)

Insert:

general administration table means the table in section 6.

3 Subsection 10(1) (definition of *Regulator*)

Repeal the definition, substitute:

Regulator means:
(a) if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by APRA (other than a provision that is administered by both APRA and ASIC)—APRA; or
(b) if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC (other than a provision that is administered by both APRA and ASIC)—ASIC; or
(c) if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by both APRA and ASIC—either APRA or ASIC, but, if the context requires the reference to be particularly to one of those bodies, then ***Regulator*** means that body; or
(d) if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Commissioner of Taxation—the Commissioner of Taxation.

Note: In relation to paragraph (c), the context may require ***Regulator*** to mean the same body as has been referred to elsewhere. For example, in subsection 344(1), the Regulator who may be requested to reconsider a decision is required by the context to be a reference to the body who made the reviewable decision.

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4 Subsection 10(1) (note to the definition of *self managed superannuation fund*)

Omit "sections 6, 42 and 42A,", substitute "sections 5, 6, 42 and 42A and Part 20".

5 Subsection 10(4)

Omit "6,", substitute "5, 6,".

6 Subsection 19(4)

Omit "APRA, or such other body or person as is specified in the regulations,", substitute "the Commissioner of Taxation".

7 Subsection 19(4A)

Repeal the subsection (including the heading).

8 Subsection 40(4) (note)

Repeal the note, substitute:

Note: Because "the Regulator" is whichever of APRA or the Commissioner of Taxation is administering this provision in respect of a fund, a notice given by one of those Regulators could revoke a notice given by the other Regulator. This might happen if a fund became, or stopped being, a self managed superannuation fund after the first notice was given.

9 Subparagraphs 42(1AA)(b)(ii) and (c)(ii)

Omit "APRA", substitute "the Commissioner of Taxation".

10 Paragraphs 42(1AC)(b) and (c)

Omit "APRA" (wherever occurring), substitute "the Commissioner of Taxation".

11 Subparagraph 42(1AC)(d)(ii)

Omit "APRA", substitute "the Commissioner of Taxation".

12 Subsection 42(3)

Repeal the subsection.

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13 Subparagraphs 42A(3)(c)(ii) and (d)(ii)

Omit "APRA", substitute "the Commissioner of Taxation".

14 Subsection 42A(4)

Omit "APRA" (wherever occurring), substitute "the Commissioner of Taxation".

15 Subsection 42A(7)

Repeal the subsection (including the heading).

16 Paragraphs 193(l), (m) and (n)

Repeal the paragraphs, substitute:

(l) subsection 242M(1).

17 Section 253 (note 2)

Omit "subsection 6(2AA)", substitute "subsection 5(4)".

18 Section 253 (note 3)

Omit "subsection 6(2AB)", substitute "subsection 5(5)".

19 Section 253 (note 3)

Omit "subsection 6(2AC)", substitute "subsection 5(6)".

20 Subsection 265(1)

Omit "member of the staff" (wherever occurring), substitute "member of staff".

21 Subsection 265(1)

Omit "the other Regulator", substitute "another person or body referred to in the definition of ***Regulator*** in subsection 10(1)".

22 Subsection 298A(1)

Omit "the other Regulator", substitute "another person or body referred to in the definition of ***Regulator*** in subsection 10(1)".

23 Paragraphs 315(1)(a) to (f)

Omit "by APRA or the Regulator".

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24 Subsection 315(3)

Omit "by APRA or the Regulator".

25 Subsection 336F(1)

Omit "APRA", substitute "the Regulator".

26 Parts 33 and 34

Repeal the Parts.

27 Saving

Appointments

(1) An appointment:

(a) made under subsection 265(1) of the *Superannuation Industry (Supervision) Act 1993*; and

(b) in force immediately before the commencement of this item;

has effect, from that commencement, as if it had been made under that subsection as amended by this Part.

Authorisations

(2) An authorisation:

(a) made under subsection 298A(1) of the *Superannuation Industry (Supervision) Act 1993*; and

(b) in force immediately before the commencement of this item;

has effect, from that commencement, as if it had been made under that subsection as amended by this Part.

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Part 2—Adjustments relating to financial services

Australian Securities and Investments Commission Act 2001

28 Subsection 12BA(1)

Insert:

registrable superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

superannuation trustee service has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

29 After paragraph 12BAB(1)(e)

Insert:

(ea) provide a superannuation trustee service; or

30 At the end of subsection 12GBB(5)

Add:

; and (e) in the case of a contravention by the trustee of a registrable superannuation entity—the impact that the penalty under consideration would have on the beneficiaries of the entity.

31 Section 93C

Before "A person", insert "(1)".

32 At the end of section 93C

Add:

(2) If:

(a) a person commits an offence against this Act in the person's capacity as trustee of a registrable superannuation entity; and

(b) the penalty applicable to the offence is, or includes, a fine;

then, in determining the fine for the offence, the court must take into account the impact that the fine under consideration would have on the beneficiaries of the entity.

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Corporations Act 2001

33 Section 9

Insert:

> ***registrable superannuation entity*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.
>
> ***RSE licensee*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

34 Section 761A (definition of *registrable superannuation entity*)

Repeal the definition.

35 Section 761A

Insert:

> ***RSE licence*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.
>
> ***superannuation trustee service*** that a person provides has the meaning given by section 766H.

36 Section 761A (definition of *trustee*)

Repeal the definition, substitute:

> ***trustee*** means:
>
> (a) in relation to a superannuation entity to which paragraph (b) does not apply—the person who is the trustee of the entity for the purposes of the *Superannuation Industry (Supervision) Act 1993*; or
>
> (b) in relation to a regulated superannuation fund that is the scheme provided for by the *Australian Defence Force Cover Act 2015*—CSC (within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*).

37 Subsection 761G(6) (heading)

Repeal the heading, substitute:

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Products and services relating to superannuation and RSAs

38 Paragraphs 761G(6)(b) and (c)

After "or an RSA product,", insert "or is a superannuation trustee service,".

39 Subsection 761G(7)

After "traditional trustee company service", insert "or a superannuation trustee service".

40 Section 761GA

Omit "or a crowd-funding service", substitute ", a crowd-funding service or a superannuation trustee service".

41 Before paragraph 766A(1)(f)

Insert:

(ec) provide a superannuation trustee service (see section 766H); or

42 At the end of section 766A

Add:

Overlap between financial services

(5) The fact that conduct constitutes the provision of a financial service is not to be taken to imply that the conduct does not also constitute the provision of another financial service.

Note: For example, conduct may constitute providing a superannuation trustee service and also providing another financial service (such as dealing in a financial product that is a superannuation product).

43 Before Division 5 of Part 7.1

Insert:

766H Meaning of provides a *superannuation trustee service*

(1) A person provides a ***superannuation trustee service*** if the person operates a registrable superannuation entity as trustee of the entity.

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Note 1: The meaning of ***person*** here is affected by section 761FA (about multiple trustees).

Note 2: To determine whether a person to whom the service is provided is a retail client, see subsection 761G(6).

(2) However, the following do not constitute the provision of a ***superannuation trustee service***:

(a) the operation of an exempt public sector superannuation scheme;

(b) conduct of a kind prescribed by regulations made for the purposes of this paragraph.

44 After paragraph 911A(2)(g)

Insert:

(ga) the service is a superannuation trustee service that is provided only to wholesale clients;

45 After subsection 911A(4)

Insert:

(4A) A person is not exempt under any paragraph of subsection (2) for a superannuation trustee service unless the exemption expressly covers a superannuation trustee service.

46 Before paragraph 914A(4)(a)

Insert:

(aa) ASIC cannot impose, vary or revoke a condition on the licence if the licensee is authorised to provide a superannuation trustee service and doing so would, in ASIC's opinion, have the result of preventing the licensee from providing that service, unless:

(i) APRA has agreed in writing with the proposed action; or

(ii) the licensee applied under paragraph 914A(2)(b) for ASIC to take the proposed action; or

(iii) the licensee's RSE licence is not in effect, and is not treated by section 29GB of the *Superannuation Industry (Supervision) Act 1993* as if it were in effect;

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47 Paragraph 914A(4)(a)

Before "ASIC cannot", insert "if paragraph (aa) does not apply,".

48 Paragraph 914A(4)(b)

Omit "paragraph (a) does not", substitute "paragraphs (aa) and (a) do not".

49 Subsection 914A(5A)

Repeal the subsection, substitute:

(5A) A failure to comply with a requirement of this section to consult or inform APRA about, or to consider advice from ASIC about, or to get the agreement of APRA about, an imposition, variation or revocation of a condition does not invalidate the action taken.

50 Before paragraph 915I(1)(a)

Insert:

(aa) ASIC cannot suspend or cancel the licensee's licence if the licensee is authorised to provide a superannuation trustee service unless:

(i) APRA has agreed in writing with the proposed action; or

(ii) the licensee applied under paragraph 915B(1)(e), (2)(d), (3)(d) or (4)(d) for ASIC to take the proposed action; or

(iii) the licensee's RSE licence is not in effect, and is not treated by section 29GB of the *Superannuation Industry (Supervision) Act 1993* as if it were in effect;

51 Paragraph 915I(1)(a)

Before "ASIC cannot", insert "if paragraph (aa) does not apply,".

52 Paragraph 915I(1)(b)

Omit "paragraph (a) does not", substitute "paragraphs (aa) and (a) do not".

53 Subsection 915I(3)

Repeal the subsection, substitute:

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(3) A failure to comply with a requirement of this section to consult or inform APRA about, or to consider advice from ASIC about, or to get the agreement of APRA about, a suspension or cancellation, or a revocation of a suspension, of a licence does not invalidate the action taken.

54 After subsection 920A(3)

Insert:

Special procedure for RSE licensees

(3A) If a person against whom ASIC proposes to make a banning order is a financial services licensee who is authorised to provide a superannuation trustee service, the following provisions apply:

(a) ASIC cannot make the banning order if doing so would, in ASIC's opinion, have the result of preventing the licensee from providing that service, unless:

(i) APRA agrees in writing to the making of the banning order; or

(ii) the licensee's RSE licence is not in effect, and is not treated by section 29GB of the *Superannuation Industry (Supervision) Act 1993* as if it were in effect;

(b) if ASIC makes the banning order and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

(3B) A failure to comply with a requirement of subsection (3A) to get the agreement of APRA about a banning order does not invalidate the action taken.

55 After subsection 941C(3A)

Insert:

Providing entity is merely providing a superannuation trustee service

(3B) The providing entity does not have to give the client a Financial Services Guide if:

(a) the providing entity is the trustee of a registrable superannuation entity; and

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(b) the financial service consists only of a superannuation trustee service.

56 Section 960

Repeal the following definitions:

(a) definition of ***registrable superannuation entity***;

(b) definition of ***RSE licensee***.

57 Section 1311A

Before "A person", insert "(1)".

58 At the end of section 1311A

Add:

(2) If:

(a) a person commits an offence in the person's capacity as trustee of a registrable superannuation entity; and

(b) the penalty applicable to the offence is, or includes, a fine;

then, in determining the fine for the offence, the court must take into account the impact that the fine under consideration would have on the beneficiaries of the entity.

59 At the end of subsection 1317G(6)

Add:

; and (e) in the case of a contravention by the trustee of a registrable superannuation entity—the impact that the penalty under consideration would have on the beneficiaries of the entity.

60 In the appropriate position in Chapter 10

Insert:

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Part 10.49—Transitional provisions relating to Schedule 9 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1676 Definitions

In this Part:

amending Schedule means Schedule 9 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

commencement day means the day on which Schedule 9 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* commences.

1676A Automatic extension of licence conditions on the commencement day—licensees who are authorised to deal

(1) This section applies to an Australian financial services licensee if, just before the commencement day:
  (a) the licensee's Australian financial services licence authorised the licensee to deal in a superannuation product; and
  (b) the licensee was also an RSE licensee.

(2) The licensee's Australian financial services licence is taken from the commencement day to be subject to a condition authorising the licensee to provide a superannuation trustee service.

1676B Automatic extension of licence conditions—licence applications pending just before commencement day

(1) This section applies if:
  (a) before the commencement day, a person lodges an application for an Australian financial services licence authorising the person to deal in a superannuation product; and

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(b) on or after the commencement day, ASIC decides the application by granting the person an Australian financial services licence authorising the person to deal in a superannuation product; and

(c) at the time the licence is granted, the person is an RSE licensee.

(2) The licensee's Australian financial services licence is taken from the time it is granted to also be subject to a condition authorising the licensee to provide a superannuation trustee service.

1676C Automatic extension of licence conditions—variation applications pending just before commencement day

(1) This section applies if:

(a) before the commencement day, a person lodges an application for ASIC to vary the conditions on the person's Australian financial services licence by authorising the person to deal in a superannuation product; and

(b) on or after the commencement day, ASIC decides the application by varying the conditions on the person's licence to authorise the person to deal in a superannuation product; and

(c) at the time the licence is varied, the person is an RSE licensee.

(2) The licensee's Australian financial services licence is taken from the time it is so varied to also be subject to a condition authorising the licensee to provide a superannuation trustee service.

1676D Automatic licence conditions may be varied etc.

If an Australian financial services licence is subject to a condition authorising a licensee to provide a superannuation trustee service as a result of the operation of this Part, ASIC may, in accordance with the provisions of Part 7.6:

(a) vary or revoke the condition; or

(b) vary, suspend or cancel the licence;

as if the authorisation to provide a superannuation trustee service had been specified by ASIC under subsection 914A(6).

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Superannuation Industry (Supervision) Act 1993

61 After subsection 29EA(2A)

Insert:

(2B) If:

(a) a condition is expressed to have effect as mentioned in subsection (2A); and

(b) a provision of the prudential standards (the ***inconsistent provision***) is inconsistent with the condition to any extent;

the inconsistent provision is to be disregarded to the extent of the inconsistency in determining, for the purposes of any law of the Commonwealth, whether the RSE licensee has complied with its obligations under the prudential standards.

62 Subsection 29JA(1)

Omit "no later than 10 business days", substitute "within 30 days".

63 Subsection 56(2)

Repeal the subsection, substitute:

(2) A provision in the governing rules of a superannuation entity is void in so far as it would have the effect of exempting a trustee of the entity from, or indemnifying a trustee of the entity against:

(a) liability for breach of trust if the trustee:

(i) fails to act honestly in a matter concerning the entity; or

(ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the entity, the degree of care and diligence that the trustee was required to exercise; or

(b) liability for an amount of a criminal, civil or administrative penalty incurred by the trustee of the entity in relation to a contravention of a law of the Commonwealth (including this Act); or

(c) the payment of any amount payable under an infringement notice (however described) given under a law of the Commonwealth (including this Act); or

(d) liability for the costs of undertaking a course of education in compliance with an education direction (within the meaning of this Act).

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64 Subsection 57(2)

Repeal the subsection, substitute:

(2) A provision of the governing rules of a superannuation entity is void in so far as it would have the effect of indemnifying a director of the trustee against:

(a) a liability that arises because the director:

(i) fails to act honestly in a matter concerning the entity; or

(ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the entity, the degree of care and diligence that the director is required to exercise; or

(b) liability for an amount of a criminal, civil or administrative penalty incurred by the director in relation to a contravention of a law of the Commonwealth (including this Act); or

(c) the payment of any amount payable under an infringement notice (however described) given under a law of the Commonwealth (including this Act); or

(d) liability for the costs of undertaking a course of education in compliance with an education direction (within the meaning of this Act).

65 Application—breach reporting

The amendment of section 29JA of the *Superannuation Industry (Supervision) Act 1993* made by item 62 of this Schedule applies in relation to breaches of which the RSE licensee becomes aware on or after 1 October 2021.

66 Application and transitional—indemnification

The amendments of sections 56 and 57 of the *Superannuation Industry (Supervision) Act 1993* made by items 63 and 64 of this Schedule apply in relation to:

(a) liabilities imposed on or after 1 January 2022; and

(b) amounts that become payable under infringement notices (however described) given on or after 1 January 2022.

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Schedule 10—Reference Checking and Information Sharing Protocol

Corporations Act 2001

1 Section 910A

Insert:

Reference Checking and Information Sharing Protocol means the protocol determined by ASIC under subsection 912A(3A).

2 Before subsection 912A(1)

Insert:

General obligations

3 After paragraph 912A(1)(cb)

Insert:

(cc) comply with the Reference Checking and Information Sharing Protocol in relation to:

(i) if the licensee is an individual to whom the Protocol applies—the licensee; and

(ii) if a former, current or prospective representative of the licensee is an individual to whom the Protocol applies—the representative; and

4 Before subsection 912A(2)

Insert:

Dispute resolution system

5 After subsection 912A(3)

Insert:

Reference Checking and Information Sharing Protocol

(3A) ASIC may, by legislative instrument, determine a protocol for:

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(a) sharing information about any or all of the following:
  (i) a financial services licensee who is an individual;
  (ii) individuals who are former, current or prospective representatives of a financial services licensee;

  by that licensee with another financial services licensee; and

(b) sharing information about any or all of the following:
  (i) a financial services licensee who is an individual;
  (ii) individuals who are former, current or prospective representatives of a financial services licensee;

  by that licensee with a licensee within the meaning of the *National Consumer Credit Protection Act 2009*; and

(c) keeping and retaining records of information shared, and the circumstances under which the information is shared.

(3B) The Reference Checking and Information Sharing Protocol must not:

(a) require or permit personal information (within the meaning of the *Privacy Act 1988*) to be shared, other than with the consent of the individual to whom the information relates; or

(b) require information to be shared in relation to conduct that occurred more than 5 years before the information is shared.

Application of Reference Checking and Information Sharing Protocol

(3C) The Reference Checking and Information Sharing Protocol applies to an individual mentioned in subparagraph (3A)(a)(i) or (ii) if there are reasonable grounds to suspect that the individual will provide personal advice to retail clients about relevant financial products if the individual becomes a representative of the other financial services licensee mentioned in paragraph (3A)(a).

(3D) The Reference Checking and Information Sharing Protocol applies to an individual mentioned in subparagraph (3A)(b)(i) or (ii) if there are reasonable grounds to suspect that, if the individual becomes a representative of the licensee mentioned in paragraph (3A)(b), the individual will:

(a) provide credit assistance in relation to credit contracts secured by mortgages over residential property; and

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(b) be a mortgage broker or a director, employee or agent of a mortgage broker.

(3E) Expressions used in subsection (3D) that are also used in the *National Consumer Credit Protection Act 2009* (other than Reference Checking and Information Sharing Protocol) have the same meaning in that subsection as they have in that Act.

Qualified privilege

(3F) A person has qualified privilege in relation to information shared in accordance with the Reference Checking and Information Sharing Protocol about an individual to whom the Protocol applies.

(3G) A person who has qualified privilege under subsection (3F) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

6 Before subsection 912A(4)

Insert:

Adequate resources to provide financial services—APRA regulated bodies

7 Before subsection 912A(5)

Insert:

Adequate risk management systems—APRA regulated bodies

8 Before subsection 912A(5A)

Insert:

Civil penalty provision

9 Subsection 912A(5A)

After “paragraph (1)(a), (aa), (ca),”, insert “(cc),”.

10 Before subsection 912A(6)

Insert:

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Definitions

11 In the appropriate position in Chapter 10

Insert:

Part 10.43—Application provisions relating to Schedule 10 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1670 Application of Reference Checking and Information Sharing Protocol

The amendments made by Schedule 10 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* apply in relation to information shared on or after 1 October 2021.

National Consumer Credit Protection Act 2009

12 Subsection 5(1)

Insert:

Reference Checking and Information Sharing Protocol means the protocol determined by ASIC under subsection 47(3A).

13 After paragraph 47(1)(e)

Insert:

(ea) comply with the Reference Checking and Information Sharing Protocol in relation to:

(i) if the licensee is an individual to whom the Protocol applies—the licensee; and

(ii) if a former, current or prospective representative of the licensee is an individual to whom the Protocol applies—the representative; and

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14 After subsection 47(3)

Insert:

Reference Checking and Information Sharing Protocol

(3A) ASIC may, by legislative instrument, determine a protocol for:

(a) sharing information about any or all of the following:

(i) a licensee who is an individual;

(ii) individuals who are former, current or prospective representatives of a licensee;

by that licensee with another licensee; and

(b) sharing information about any or all of the following:

(i) a licensee who is an individual;

(ii) individuals who are former, current or prospective representatives of a licensee;

by that licensee with a financial services licensee within the meaning of the *Corporations Act 2001*; and

(c) keeping and retaining records of information shared, and the circumstances under which that information is shared.

(3B) The Reference Checking and Information Sharing Protocol must not:

(a) require or permit personal information (within the meaning of the *Privacy Act 1988*) to be shared, other than with the consent of the individual to whom the information relates; or

(b) require information to be shared in relation to conduct that occurred more than 5 years before the information is shared.

Application of Reference Checking and Information Sharing Protocol

(3C) The Reference Checking and Information Sharing Protocol applies to an individual mentioned in subparagraph (3A)(a)(i) or (ii) if there are reasonable grounds to suspect that, if the individual becomes a representative of the licensee mentioned in paragraph (3A)(a), the individual will:

(a) provide credit assistance in relation to credit contracts secured by mortgages over residential property; and

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(b) be a mortgage broker or a director, employee or agent of a mortgage broker.

(3D) The Reference Checking and Information Sharing Protocol applies to an individual mentioned in subparagraph (3A)(b)(i) or (ii) if there are reasonable grounds to suspect that the individual will provide personal advice to retail clients about relevant financial products if the individual becomes a representative of the financial services licensee mentioned in paragraph (3A)(b).

(3E) Expressions used in subsection (3D) that are also used in the *Corporations Act 2001* (other than Reference Checking and Information Sharing Protocol) have the same meaning in that subsection as they have in that Act.

Qualified privilege

(3F) A person has qualified privilege in relation to information shared in accordance with the Reference Checking and Information Sharing Protocol about an individual to whom the Protocol applies.

(3G) A person who has qualified privilege under subsection (3F) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

15 Subsection 47(4)

After “paragraph (1)(a), (b), (e),”, insert “(ea),”.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

16 In the appropriate position

Insert:

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Schedule 15—Application provisions relating to Schedule 10 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1 Application of Reference Checking and Information Sharing Protocol

The amendments made by Schedule 10 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* apply in relation to information shared on or after 1 October 2021.

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Schedule 11—Breach reporting and remediation

Corporations Act 2001

1 Paragraph 601FC(1)(l)

Repeal the paragraph.

2 Section 910A

Insert:

core obligation has the meaning given by subsection 912D(3).

knowledge, in Subdivisions B and C of Division 3 of this Part, has the meaning given by section 5.3 of the *Criminal Code*.

recklessness, in Subdivisions B and C of Division 3 of this Part, has the meaning given by section 5.4 of the *Criminal Code*.

reportable situation has the meaning given by section 912D.

3 Before section 912A

Insert:

Subdivision A—General obligations

4 Before section 912C

Insert:

Subdivision B—Providing information and assistance to ASIC

5 Section 912D

Repeal the section, substitute:

912D What are *reportable situations*?

(1) There is a ***reportable situation*** in relation to a financial services licensee if one of the following paragraphs is satisfied:

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(a) the financial services licensee or a representative of the financial services licensee has breached a core obligation and the breach is significant;

(b) the financial services licensee or a representative of the financial services licensee is no longer able to comply with a core obligation and the breach, if it occurs, will be significant;

(c) the financial services licensee or a representative of the financial services licensee conducts an investigation into whether there is a reportable situation of the kind mentioned in paragraph (a) or (b) and the investigation continues for more than 30 days;

(d) an investigation described in paragraph (c) discloses that there is no reportable situation of the kind mentioned in paragraph (a) or (b).

(2) There is also a ***reportable situation*** in relation to a financial services licensee if:

(a) in the course of providing a financial service, the financial services licensee or a representative of the financial services licensee has engaged in conduct constituting gross negligence; or

(b) the financial services licensee or a representative of the financial services licensee has committed serious fraud; or

(c) any other circumstances prescribed by the regulations for the purposes of this paragraph exist.

(3) Each of the following is a ***core obligation***:

(a) an obligation under section 912A or 912B, other than the obligation under paragraph 912A(1)(c);

(b) the obligation under paragraph 912A(1)(c), so far as it relates to provisions of this Act or the ASIC Act referred to in paragraphs (a), (b), (ba) and (c) of the definition of ***financial services law*** in section 761A;

(c) in relation to financial services, other than traditional trustee company services provided by a licensed trustee company—the obligation under paragraph 912A(1)(c), so far as it relates to Commonwealth legislation that is covered by paragraph (d) of that definition and that is specified in regulations made for the purposes of this paragraph;

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(d) in relation to traditional trustee company services provided by a licensed trustee company—the obligation under paragraph 912A(1)(c), so far as it relates to Commonwealth, State or Territory legislation, or a rule of common law or equity, that is covered by paragraph (d) or (e) of that definition.

(4) For the purposes of this section, a breach of a core obligation is taken to be ***significant*** if:

(a) the breach is constituted by the commission of an offence under any law and the commission of the offence is punishable on conviction by a penalty that may include imprisonment for a maximum period of:

(i) if the offence involves dishonesty—3 months or more; or

(ii) in any other case—12 months or more; or

(b) the breach is constituted by the contravention of a civil penalty provision under any law, other than a civil penalty provision prescribed by the regulations for the purposes of this paragraph; or

(c) the breach is constituted by a contravention of subsection 1041H(1) of this Act or subsection 12DA(1) of the ASIC Act (misleading or deceptive conduct in relation to a financial product or a financial service); or

(d) the breach results, or is likely to result, in material loss or damage to:

(i) in the case of a managed investment scheme—a member or members of the scheme; or

(ii) in the case of a superannuation entity—a member or members of the entity; or

(iii) in all cases—a person or persons to whom the financial services licensee or a representative of the financial services licensee provides a financial product or a financial service as a wholesale or retail client; or

(e) any other circumstances prescribed by the regulations for the purposes of this paragraph exist.

(5) Otherwise, for the purposes of this section, a breach of a core obligation is ***significant*** having regard to the following:

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(a) the number or frequency of similar breaches;
(b) the impact of the breach on the financial services licensee's ability to provide financial services covered by the licence;
(c) the extent to which the breach indicates that the financial services licensee's arrangements to ensure compliance with those obligations are inadequate;
(d) any other matters prescribed by regulations made for the purposes of this paragraph.

912DAA Obligation to lodge a report—reportable situations in relation to the financial services licensee

Reporting a reportable situation to ASIC

(1) If there are reasonable grounds to believe that a reportable situation has arisen in relation to a financial services licensee:
(a) the financial services licensee must lodge a report in relation to the reportable situation with ASIC; and
(b) the report must be lodged in accordance with this section.

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

Report must be in the prescribed form

(2) The report must be lodged with ASIC in writing in the prescribed form.

Period within which report must be lodged

(3) The report must be lodged with ASIC within 30 days after the financial services licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe the reportable situation has arisen.

Strict liability applies in relation to paragraphs (1)(a) and (b)

(4) Strict liability applies in relation to paragraphs (1)(a) and (b).

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If report is received by APRA

(5) A report that a financial services licensee is required to lodge under this section in relation to a reportable situation is taken to have been lodged with ASIC if:
  (a) the licensee is a body regulated by APRA; and
  (b) the licensee has given a report to APRA that contains all of the information that is required in a report under this section in relation to the reportable situation.

(6) Subsection (1) does not apply to a financial services licensee in relation to a reportable situation if:
  (a) the licensee is a body regulated by APRA; and
  (b) the auditor or actuary of the licensee gives APRA a written report about a matter to which the reportable situation relates; and
  (c) the report is given before, or within 10 business days after, the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe that the reportable situation has arisen.

Civil penalty provision

(7) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

912DAB Obligation to lodge a report—reportable situations in relation to other financial services licensees

Reporting a reportable situation to ASIC

(1) A financial services licensee (the ***reporting licensee***) must lodge a report with ASIC in accordance with this section if there are reasonable grounds to believe that:
  (a) a reportable situation has arisen in relation to another financial services licensee of the kind mentioned in:
    (i) paragraph 912D(1)(a) or (b) (significant breach or likely breach of a core obligation); or

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(ii) subsection 912D(2) (gross negligence or serious fraud); and

(b) one of the following is an individual who has engaged in conduct that forms part of the reportable situation:

(i) the other financial services licensee;

(ii) an employee of the other financial services licensee or of a related body corporate of the other financial services licensee, acting within the scope of the employee's employment;

(iii) a director of the other financial services licensee or of a related body corporate of the other financial services licensee, acting within the scope of the director's duties as director;

(iv) another representative of the other financial services licensee acting within the scope of the representative's authority given by the licensee; and

(c) the individual provides personal advice to retail clients in relation to relevant financial products.

Report must be in the prescribed form

(2) The report must be lodged with ASIC in writing in the prescribed form.

Period within which report must be lodged

(3) The report must be lodged with ASIC within 30 days after the reporting licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b) and (c).

If the reportable situation already reported to ASIC

(4) Subsection (1) does not apply in relation to a reportable situation if there are reasonable grounds to believe that ASIC is aware of:

(a) the existence of the reportable situation; and

(b) all of the information that is required in a report under this section in relation to the reportable situation.

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A copy of the report must be given to the other financial services licensee

(5) The reporting licensee must give a copy of any report that the reporting licensee is required to lodge with ASIC under subsection (1) to the other financial services licensee within 30 days after the reporting licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b) and (c).

(6) A financial services licensee has qualified privilege in relation to a copy of a report given under subsection (5).

(7) A financial services licensee who has qualified privilege under subsection (6) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

Civil penalty provision

(8) A person contravenes this subsection if the person contravenes subsection (1) or (5).

Note: This subsection is a civil penalty provision (see section 1317E).

912DAC Obligation to give notice—participants in licensed market or licensed CS facility

(1) If a financial services licensee becomes a participant in a licensed market or a licensed CS facility, or ceases to be such a participant:
   (a) the financial services licensee must lodge written notice of that fact with ASIC; and
   (b) the notice must be lodged in accordance with this section.

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

(2) The notice must say when the event happened and identify the market or facility.

(3) The notice must be given as soon as practicable after the event happened.

(4) A person contravenes this subsection if the person contravenes subsection (1).

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Note: This subsection is a civil penalty provision (see section 1317E).

912DAD ASIC must publish details of certain reports

(1) ASIC must, for each financial year, publish information about:
  (a) reports lodged with ASIC during the financial year under section 912DAA in relation to reportable situations of the kind mentioned in paragraphs 912D(1)(a) and (b) (breaches and likely breaches of core obligations); and
  (b) reports lodged with APRA during the financial year, as described in subsections 912DAA(5) and (6), in relation to reportable situations of the kind mentioned in paragraphs 912D(1)(a) and (b) (breaches and likely breaches of core obligations); and
  (c) the entities in relation to which those reports are lodged with ASIC or APRA.

(2) The information must:
  (a) be published within 4 months after the end of the financial year; and
  (b) be published on ASIC's website; and
  (c) include the information (if any) prescribed by the regulations, which may include personal information (within the meaning of the *Privacy Act 1988*) in relation to a financial services licensee who is an individual; and
  (d) if the regulations prescribe how the information is to be organised—be organised in accordance with the regulations.

(3) The regulations may prescribe circumstances in which information need not be included in the information published by ASIC under this section.

(4) ASIC may correct any error in, or omission from, information published under this section.

6 Before section 912F

Insert:

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Subdivision C—Notifying and remediating clients affected by reportable situations

912EA Reporting to clients affected by a reportable situation

Notifying an affected client of a reportable situation

(1) A financial services licensee must take reasonable steps to notify a person (the ***affected client***) of a reportable situation in accordance with this section if:

(a) the licensee, or a representative of the licensee, provides or has provided personal advice to the affected client as a retail client in relation to a relevant financial product; and

(b) there are reasonable grounds to believe that the reportable situation has arisen in relation to the licensee as mentioned in:

(i) paragraph 912D(1)(a) (significant breach of a core obligation); or

(ii) subsection 912D(2) (gross negligence or serious fraud); and

(c) there are reasonable grounds to suspect that:

(i) the affected client has suffered or will suffer loss or damage as a result of the reportable situation; and

(ii) the affected client has a legally enforceable right to recover the loss or damage from the licensee.

Form and period for giving notice

(2) A notice under this section must:

(a) be given in writing within 30 days after the financial services licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b) and (c); and

(b) if ASIC has approved the form in which the notice must be given:

(i) be in the approved form; and

(ii) include the information, statements, explanations or other matters required by the form; and

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(iii) be accompanied by any other material required by the form.

Qualified privilege

(3) A financial services licensee has qualified privilege in relation to a notice given under this section.

(4) A financial services licensee who has qualified privilege under subsection (3) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

Civil penalty provision

(5) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

912EB Obligation to investigate reportable situations that may affect clients

Obligation to investigate

(1) A financial services licensee must conduct an investigation into a reportable situation in accordance with this section if:

(a) the licensee, or a representative of the licensee, provides or has provided personal advice to a person as a retail client (the ***affected client***) in relation to a relevant financial product; and

(b) there are reasonable grounds to believe that the reportable situation has arisen in relation to the licensee as mentioned in:

(i) paragraph 912D(1)(a) (significant breach of a core obligation); or

(ii) subsection 912D(2) (gross negligence or serious fraud); and

(c) there are reasonable grounds to suspect that:

(i) the affected client has suffered or will suffer loss or damage as a result of the reportable situation; and

(ii) the affected client has a legally enforceable right to recover the loss or damage from the licensee.

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Period within which investigation must be commenced

(2) The investigation must be commenced within 30 days after the financial services licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b) and (c).

Matters to be considered in the investigation

(3) In conducting the investigation, the financial services licensee must:
  (a) identify the conduct that gave rise to the reportable situation; and
  (b) quantify the loss or damage that there are reasonable grounds to believe:
    (i) the affected client has suffered or will suffer as a result of the reportable situation; and
    (ii) the affected client has a legally enforceable right to recover from the licensee; and
  (c) do anything else prescribed by the regulations for the purposes of this paragraph.

Completing the investigation

(4) The investigation must be completed as soon as is reasonably practicable after it is commenced.

Notifying affected client

(5) The financial services licensee must take reasonable steps to give the affected client a notice of the outcome of the investigation:
  (a) in writing within 10 days after the completion of the investigation; and
  (b) if ASIC has approved the form in which the notice must be given:
    (i) in the approved form; and
    (ii) that includes the information, statements, explanations or other matters required by the form; and
    (iii) that is accompanied by any other material required by the form.

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(6) A financial services licensee has qualified privilege in relation to a notice given under subsection (5).

(7) A financial services licensee who has qualified privilege under subsection (6) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

Compensating the affected client for loss or damage

(8) If, after the investigation is completed, there are reasonable grounds to believe that:

(a) the affected client has suffered or will suffer loss or damage as a result of the reportable situation; and

(b) the affected client has a legally enforceable right to recover the loss or damage from the financial services licensee;

the licensee must take reasonable steps to pay the affected client an amount equal to the loss or damage within 30 days after the investigation is completed.

Civil penalty provision

(9) A person contravenes this subsection if the person contravenes subsection (1), (5) or (8).

Note: This subsection is a civil penalty provision (see section 1317E).

Nothing affects right of affected client to pursue legally enforceable rights

(10) Nothing in this section affects any legally enforceable right of the affected client to recover loss or damage that the affected client suffers, or will suffer, as a result of a reportable situation.

(11) However, a court may take into account the amount paid by the financial services licensee under this section when quantifying the amount of compensation (if any) to be paid by the licensee in relation to that loss or damage.

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912EC Obligation to keep records of compliance

(1) A financial services licensee must keep records sufficient to enable the licensee's compliance with this Subdivision to be readily ascertained.

Note 1: For preservation of records, see section 1101C.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(2) The regulations may specify records that the financial services licensee must keep as part of the obligation in subsection (1).

Subdivision D—Miscellaneous

7 Subsection 1317E(3) (table item dealing with subsection 912D(3))

Repeal the item.

8 In the appropriate position in subsection 1317E(3)

Insert:

subsection 912DAA(7)	failure by a financial services licensee to report to ASIC a reportable situation in relation to the licensee	uncategorised
subsection 912DAB(8)	failure by a financial services licensee to report to ASIC a reportable situation in relation to another financial services licensee, or to give a copy of the report to the other financial services licensee	uncategorised
subsection 912DAC(4)	failure by a financial services licensee to notify ASIC that the licensee has become, or ceased to be, a participant in a licensed market or a licensed CS facility	uncategorised
subsection 912EA(5)	failure by a financial services licensee to notify an affected client of a reportable situation	uncategorised
subsection 912EB(9)	failure by a financial services licensee to investigate a reportable situation, notify an affected client of the outcome of the investigation or compensate an	uncategorised

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affected client

9 In the appropriate position in Chapter 10

Insert:

Part 10.44—Application and transitional provisions relating to Schedule 11 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1671 Definitions

In this Part:

amending Schedule means Schedule 11 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

1671A Continued application of paragraph 601FC(1)(l) and section 912D

(1) Despite the repeal of paragraph 601FC(1)(l) by item 1 of the amending Schedule, that paragraph (as in force immediately before 1 October 2021) continues to apply to the responsible entity of a registered scheme in relation to a breach of this Act if:
  (a) the breach occurs before 1 October 2021; and
  (b) before 1 October 2021, the responsible entity knows of the breach.

(2) Despite the repeal of section 912D by item 5 of the amending Schedule, subsections 912D(1) to (1D) and subsection 912D(3) (to the extent that it relates to subsections 912D(1) to (1D)), as in force immediately before 1 October 2021, continue to apply to a financial services licensee in relation to a breach or likely breach of an obligation mentioned in paragraph 912D(1)(a) (as in force immediately before 1 October 2021) if:
  (a) the obligation is breached or is likely to be breached before 1 October 2021; and

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(b) before 1 October 2021, the licensee knows that the obligation has been breached or is likely to be breached.

(3) Despite the repeal of section 912D by item 5 of the amending Schedule, subsection 912D(2) and subsection 912D(3) (to the extent that it relates to subsection 912D(2)), as in force immediately before 1 October 2021, continue to apply to a financial services licensee if:

(a) the licensee becomes a participant, or ceases to be a participant, in a licensed market or a licensed CS facility before 1 October 2021; and

(b) before 1 October 2021, the licensee knows of that circumstance.

1671B Application of sections 912DAA and 912DAB

Sections 912DAA and 912DAB, as inserted by item 5 of the amending Schedule, apply:

(a) to the responsible entity of a registered scheme in relation to a breach of this Act that occurs before 1 October 2021, but in respect of which paragraph 601FC(1)(l) (as in force immediately before 1 October 2021) does not apply on or after 1 October 2021 (see subsection 1671A(1)); and

(b) to a financial services licensee in relation to a breach or likely breach of an obligation mentioned in paragraph 912D(1)(a) (as in force immediately before 1 October 2021) that occurs before 1 October 2021, but in respect of which subsections 912D(1) to (1D) (as in force immediately before 1 October 2021) do not apply on or after 1 October 2021 (see subsection 1671A(2)); and

(c) in relation to reportable situations arising on or after 1 October 2021.

1671C Application of section 912DAC

Section 912DAC, as inserted by item 5 of the amending Schedule, applies:

(a) to a financial services licensee who becomes a participant, or ceases to be a participant, in a licensed market or a licensed CS facility before 1 October 2021, but in respect of which

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subsection 912D(2) (as in force immediately before 1 October 2021) does not apply on or after 1 October 2021 (subsection 1671A(3)); and

(b) to a financial services licensee who becomes a participant, or ceases to be a participant, in a licensed market or a licensed CS facility on or after 1 October 2021.

1671D Application of ASIC's obligations to publish information under section 912DAD

Section 912DAD, as inserted by item 5 of the amending Schedule, applies in relation to financial years ending on or after 30 June 2022.

1671E Application of provisions dealing with notifying and compensating a person affected by a reportable situation

Subdivision C of Division 3 of Part 7.6, as inserted by item 6 of the amending Schedule, applies in relation to reportable situations arising on or after 1 October 2021.

10 Schedule 3 (table items dealing with subsections 912D(1B) and 912D(2))

Repeal the items.

11 In the appropriate position in Schedule 3

Insert:

Subsection 912DAA(1)	2 years imprisonment
Subsection 912DAC(1)	1 year imprisonment
Subsection 912EC(1)	5 years imprisonment

National Consumer Credit Protection Act 2009

12 Subsection 5(1)

Insert:

core obligation has the meaning given by subsection 50A(3).

knowledge, in Division 5 of Part 2-2: see section 53C.

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recklessness, in Division 5 of Part 2-2: see section 53C.

reportable situation has the meaning given by section 50A.

13 Before section 47

Insert:

Subdivision A—General obligations

14 Before section 49

Insert:

Subdivision B—Providing information and assistance to ASIC

15 After section 50

Insert:

50A What are *reportable situations*?

(1) There is a ***reportable situation*** in relation to a licensee if one of the following paragraphs is satisfied:

(a) the licensee or a representative of the licensee has breached a core obligation and the breach is significant;

(b) the licensee or a representative of the licensee is no longer able to comply with a core obligation and the breach, if it occurs, will be significant;

(c) the licensee or a representative of the licensee conducts an investigation into whether there is a reportable situation of the kind mentioned in paragraph (a) or (b) and the investigation continues for more than 30 days;

(d) an investigation described in paragraph (c) discloses that there is no reportable situation of the kind mentioned in paragraph (a) or (b).

(2) There is also a ***reportable situation*** in relation to a licensee if:

(a) in the course of engaging in a credit activity, the licensee or a representative of the licensee has engaged in conduct constituting gross negligence; or

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(b) the licensee or a representative of the licensee has committed serious fraud; or

(c) any other circumstances prescribed by the regulations for the purposes of this paragraph exist.

(3) Each of the following is a ***core obligation***:

(a) an obligation under section 47, other than the obligation under paragraph 47(1)(d);

(b) the obligation under paragraph 47(1)(d), so far as it relates to this Act, the Transitional Act and Division 2 of Part 2 of the ASIC Act and regulations made for the purpose of that Division;

(c) the obligation under paragraph 47(1)(d), so far as it relates to Commonwealth legislation that is covered by paragraph (d) of the definition of ***credit legislation***.

(4) For the purposes of this section, a breach of a core obligation is taken to be ***significant*** if:

(a) the breach is constituted by the commission of an offence under any law and the commission of the offence is punishable on conviction by a penalty that may include imprisonment for a maximum period of:

(i) if the offence involves dishonesty—3 months or more; or

(ii) in any other case—12 months or more; or

(b) the breach is constituted by a contravention of a civil penalty provision under any law, other than a civil penalty provision prescribed by the regulations for the purposes of this paragraph; or

(c) the breach is constituted by a contravention of a key requirement (as defined for the purposes of the National Credit Code), other than a key requirement prescribed by the regulations for the purposes of this paragraph; or

(d) the breach is constituted by a contravention of subsection 12DA(1) of the ASIC Act (misleading or deceptive conduct in relation to a financial service); or

(e) the breach results, or is likely to result, in material loss or damage to a credit activity client of the licensee; or

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(f) any other circumstances prescribed by the regulations for the purposes of this paragraph exist.

(5) Otherwise, for the purposes of this section, a breach of a core obligation is ***significant*** having regard to the following:

(a) the number or frequency of similar breaches;

(b) the impact of the breach on the licensee's ability to engage in credit activities covered by the licence;

(c) the extent to which the breach indicates that the licensee's arrangements to ensure compliance with those obligations are inadequate;

(d) any other matters prescribed by regulations made for the purposes of this paragraph.

(6) For the purposes of this section, a person is a ***credit activity client*** of a licensee if the person is a consumer who:

(a) is a party to a credit contract, or will be a party to a proposed credit contract, in relation to which the licensee, or a representative of the licensee, performs the obligations, or exercises the rights, of a credit provider; or

(b) is a person to whom the licensee, or a representative of the licensee, provides a credit service; or

(c) is a party to a consumer lease, or will be a party to a proposed consumer lease, in relation to which the licensee, or a representative of the licensee, performs the obligations, or exercises the rights, of a lessor; or

(d) is a mortgagor under a mortgage, or will be the mortgagor under a proposed mortgage, in relation to which the licensee, or a representative of the licensee, performs the obligations, or exercises the rights of a mortgagee; or

(e) is the guarantor under a guarantee, or will be the guarantor under a proposed guarantee, in relation to which the licensee, or a representative of the licensee, performs the obligations, or exercises the rights, of a beneficiary under the guarantee; or

(f) is a person in relation to whom the licensee, or a representative of the licensee, engages in a prescribed activity mentioned in item 6 of the table in subsection 6(1).

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50B Obligation to lodge a report—reportable situations in relation to the licensee

Reporting a reportable situation to ASIC

(1) If there are reasonable grounds to believe that a reportable situation has arisen in relation to a licensee:
  (a) the licensee must lodge a report in relation to the reportable situation with ASIC; and
  (b) the report must be lodged in accordance with this section.

Civil penalty: 5,000 penalty units.

Offence

(2) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the requirement.

Criminal penalty: 2 years imprisonment.

Report must be in the approved form

(3) The report must be lodged with ASIC in writing in the approved form.

Period within which report must be lodged

(4) The report must be lodged with ASIC within 30 days after the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe that the reportable situation has arisen.

Strict liability applies in relation to paragraphs (1)(a) and (b)

(5) Strict liability applies in relation to paragraphs (1)(a) and (b).

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If report is received by APRA

(6) A report that a licensee is required to lodge with ASIC under this section in relation to a reportable situation is taken to have been lodged with ASIC if:
  (a) the licensee is a body regulated by APRA; and
  (b) the licensee has given a report to APRA that contains all of the information that is required in a report under this section in relation to the reportable situation.

(7) Subsection (1) does not apply to a licensee in relation to a reportable situation if:
  (a) the licensee is a body regulated by APRA; and
  (b) the auditor or actuary of the licensee gives APRA a written report about a matter to which the reportable situation relates; and
  (c) the report is given before, or within 10 business days after, the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe that the reportable situation has arisen.

50C Obligation to lodge a report—reportable situations in relation to other licensees

Reporting a reportable situation to ASIC

(1) A licensee (the ***reporting licensee***) must lodge a report with ASIC in accordance with this section if there are reasonable grounds to believe that:
  (a) a reportable situation has arisen in relation to another licensee of the kind mentioned in:
    (i) paragraph 50A(1)(a) or (b) (significant breach or likely breach of a core obligation); or
    (ii) subsection 50A(2) (gross negligence or serious fraud); and
  (b) one of the following is an individual who has engaged in conduct that forms part of the reportable situation:
    (i) the other licensee;

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(ii) an employee of the other licensee or of a related body corporate of the other licensee, acting within the scope of the employee's employment;

(iii) a director of the other licensee or of a related body corporate of the other licensee, acting within the scope of the director's duties as director;

(iv) another representative of the other licensee acting within the scope of the representative's authority given by the licensee; and

(c) the individual is a mortgage broker.

Civil penalty: 5,000 penalty units.

Report must be in the approved form

(2) The report must be lodged with ASIC in writing in the approved form.

Period within which report must be lodged

(3) The report must be lodged with ASIC within 30 days after the reporting licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b) and (c).

If the reportable situation already reported to ASIC

(4) Subsection (1) does not apply in relation to a reportable situation if there are reasonable grounds to believe that ASIC is aware of:

(a) the existence of the reportable situation; and

(b) all of the information that is required in a report under this section in relation to the reportable situation.

A copy of the report must be given to the other licensee

(5) The reporting licensee must give a copy of any report that the reporting licensee is required to lodge with ASIC under subsection (1) to the other licensee within 30 days after the reporting licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b) and (c).

Civil penalty: 5,000 penalty units.

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(6) A licensee has qualified privilege in relation to a copy of a report given under subsection (5).

(7) A licensee who has qualified privilege under subsection (6) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

50D ASIC must publish details of certain reports

(1) ASIC must, for each financial year, publish information about:
  (a) reports lodged with ASIC during the financial year under section 50B in relation to reportable situations of the kind mentioned in paragraphs 50A(1)(a) and (b) (breaches and likely breaches of core obligations); and
  (b) reports lodged with APRA during the financial year, as described in subsections 50B(6) and (7), in relation to reportable situations of the kind mentioned in paragraphs 50A(1)(a) and (b) (breaches and likely breaches of core obligations); and
  (c) the entities in relation to which those reports are lodged with ASIC or APRA.

(2) The information must:
  (a) be published within 4 months after the end of the financial year; and
  (b) be published on ASIC's website; and
  (c) include the information (if any) prescribed by the regulations, which may include personal information (within the meaning of the *Privacy Act 1988*) in relation to a licensee who is an individual; and
  (d) if the regulations prescribe how the information is to be organised—be organised in accordance with the regulations.

(3) The regulations may prescribe circumstances in which information need not be included in the information published by ASIC under this section.

(4) ASIC may correct any error in, or omission from, information published under this section.

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16 Before section 52

Insert:

Subdivision C—Notifying and remediating consumers affected by reportable situations

51A Reporting to consumers affected by a reportable situation

Notifying an affected consumer of a reportable situation

(1) A licensee must take reasonable steps to notify a consumer (the ***affected consumer***) of a reportable situation in accordance with this section if:

(a) the licensee, or a representative of the licensee, provides or has provided credit assistance to the affected consumer in relation to a credit contract secured by a mortgage over residential property; and

(b) the licensee, or the representative of the licensee, is a mortgage broker; and

(c) there are reasonable grounds to believe that a reportable situation has arisen in relation to the licensee as mentioned in:

(i) paragraph 50A(1)(a) (significant breach of a core obligation); or

(ii) subsection 50A(2) (gross negligence or serious fraud); and

(d) there are reasonable grounds to suspect that:

(i) the affected consumer has suffered or will suffer loss or damage as a result of the reportable situation; and

(ii) the affected consumer has a legally enforceable right to recover the loss or damage from the licensee.

Civil penalty: 5,000 penalty units.

Form and period for giving notice

(2) A notice under this section must:

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(a) be given in writing within 30 days after the licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b), (c) and (d); and

(b) if ASIC has approved the form in which the notice must be given:

(i) be in the approved form; and

(ii) include the information, statements, explanations or other matters required by the form; and

(iii) be accompanied by any other material required by the form.

Qualified privilege

(3) A licensee has qualified privilege in relation to a notice given under this section.

(4) A licensee who has qualified privilege under subsection (3) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

51B Obligation to investigate reportable situations that may affect consumers

Obligation to investigate

(1) A licensee must conduct an investigation into a reportable situation in accordance with this section if:

(a) the licensee, or a representative of the licensee, has provided credit assistance to a consumer (the ***affected consumer***) in relation to a credit contract secured by a mortgage over residential property; and

(b) the licensee, or the representative of the licensee, is a mortgage broker; and

(c) there are reasonable grounds to believe that a reportable situation has arisen in relation to the licensee as mentioned in:

(i) paragraph 50A(1)(a) (significant breach of a core obligation); or

(ii) subsection 50A(2) (gross negligence or serious fraud); and

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(d) there are reasonable grounds to suspect that:
  (i) the affected consumer has suffered or will suffer loss or damage as a result of the reportable situation; and
  (ii) the affected consumer has a legally enforceable right to recover the loss or damage from the licensee.

Civil penalty: 5,000 penalty units.

Period within which investigation must be commenced

(2) The investigation must be commenced within 30 days after the licensee first knows of, or is reckless with respect to, the circumstances mentioned in paragraphs (1)(a), (b), (c) and (d).

Matters to be considered in the investigation

(3) In conducting the investigation, the licensee must:
  (a) identify the conduct that gave rise to the reportable situation; and
  (b) quantify the loss or damage that there are reasonable grounds to believe:
    (i) the affected consumer has suffered or will suffer as a result of the reportable situation; and
    (ii) the affected consumer has a legally enforceable right to recover from the licensee; and
  (c) do anything else prescribed by the regulations for the purposes of this paragraph.

Completing the investigation

(4) The investigation must be completed as soon as is reasonably practicable after it is commenced.

Notifying affected consumer

(5) The licensee must take reasonable steps to give the affected consumer a notice of the outcome of the investigation:
  (a) in writing within 10 days after the investigation is completed; and
  (b) if ASIC has approved the form in which the notice must be given:

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(i) in the approved form; and
(ii) that includes the information, statements, explanations or other matters required by the form; and
(iii) that is accompanied by any other material required by the form.

Civil penalty: 5,000 penalty units.

(6) A licensee has qualified privilege in relation to a notice given under subsection (5).

(7) A licensee who has qualified privilege under subsection (6) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

Compensating the affected consumer for loss or damage

(8) If, after the investigation is completed, there are reasonable grounds to believe that:
(a) the affected consumer has suffered or will suffer loss or damage as a result of the reportable situation; and
(b) the affected consumer has a legally enforceable right to recover the loss or damage from the licensee;

the licensee must take reasonable steps to pay the affected consumer an amount equal to the loss or damage within 30 days after the investigation is completed.

Civil penalty: 5,000 penalty units.

Nothing affects right of affected consumer to pursue legally enforceable rights

(9) Nothing in this section affects any legally enforceable right of the affected consumer to recover loss or damage that the affected consumer suffers, or will suffer, as a result of a reportable situation.

(10) However, a court may take into account the amount paid by the licensee under this section when quantifying the amount of compensation (if any) to be paid by the licensee in relation to that loss or damage.

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51C Obligation to keep records of compliance

Obligation to keep records of compliance

(1) A licensee must keep records sufficient to enable the licensee's compliance with this Subdivision to be readily ascertained.

(2) The regulations may specify records that the licensee must keep as part of the obligation in subsection (1).

Offence

(3) A person commits an offence if:
  (a) the person is subject to a requirement in relation to records under subsection (1); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes subsection (1).

Criminal penalty: 5 years imprisonment.

Subdivision D—Miscellaneous

17 At the end of Division 5 of Part 2-2

Add:

53C Knowledge and recklessness

In this Division:

knowledge has the meaning given by section 5.3 of the *Criminal Code*.

recklessness has the meaning given by section 5.4 of the *Criminal Code*.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

18 In the appropriate position

Insert:

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Schedule 16—Application and transitional provisions relating to Schedule 11 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1 Definitions

In this Schedule:

amending Schedule means Schedule 11 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

2 Reportable situations to which sections 50B and 50C of the National Credit Act will apply

Sections 50B and 50C of the National Credit Act, as inserted by item 15 of the amending Schedule, apply in relation to reportable situations arising on or after 1 October 2021.

3 Application of ASIC's reporting obligations under section 50D of the National Credit Act

Section 50D of the National Credit Act, as inserted by item 15 of the amending Schedule, applies in relation to financial years ending on or after 30 June 2022.

4 Application of provisions dealing with notifying and compensating a person affected by a reportable situation

Subdivision C of Division 5 of Part 2-2 of the National Credit Act, as inserted by item 16 of the amending Schedule, applies in relation to reportable situations arising on or after 1 October 2021.

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Schedule 12—Statutory obligation to cooperate and formalising ASIC meeting procedures

Part 1—Cooperation obligation

Australian Prudential Regulation Authority Act 1998

1 After section 10A

Insert:

10B Cooperation with ASIC

(1) The object of this section is to require APRA to support ASIC in performing and exercising ASIC's functions and powers effectively.

(2) In performing and exercising its functions and powers, APRA must, so far as is practicable, work in cooperation with ASIC.

(3) The performance or exercise of a function or power by APRA is not invalid merely because of a failure by APRA to comply with subsection (2).

(4) The performance or exercise of a function or power by APRA does not give rise to an action or other proceeding for damages merely because of a failure by APRA to comply with subsection (2).

(5) If a law (other than this section) requires APRA to cooperate with ASIC:
   (a) this section does not affect the operation of that law; and
   (b) that law does not affect the operation of this section.

Australian Securities and Investments Commission Act 2001

2 At the end of Division 1 of Part 2

Add:

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12AA Cooperation with APRA

(1) The object of this section is to require ASIC to support APRA in performing and exercising APRA's functions and powers effectively.

(2) In performing and exercising its functions and powers, ASIC must, so far as is practicable, work in cooperation with APRA.

(3) The performance or exercise of a function or power by ASIC is not invalid merely because of a failure by ASIC to comply with subsection (2).

(4) The performance or exercise of a function or power by ASIC does not give rise to an action or other proceeding for damages merely because of a failure by ASIC to comply with subsection (2).

(5) If a law (other than this section) requires ASIC to cooperate with APRA:
   (a) this section does not affect the operation of that law; and
   (b) that law does not affect the operation of this section.

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Part 2—Financial regulator information

Australian Prudential Regulation Authority Act 1998

3 After Part 5

Insert:

Part 5A—Giving information etc. to ASIC

55A ASIC may request information or documents

(1) ASIC may request APRA to give it any of the following:
  (a) specified information or documents covered by section 55C;
  (b) information or documents covered by section 55C of a specified kind.

(2) The request must be in writing.

(3) ASIC may, in writing, amend or withdraw the request.

55B APRA must comply with request

(1) If ASIC gives APRA a request under section 55A, APRA must comply with the request as soon as practicable.

(2) APRA need not notify any person (other than ASIC) that it plans to comply with subsection (1), or has complied with that subsection.

(3) Despite subsection (1), APRA need not comply with the request if:
  (a) the Chair makes a determination under subsection (4); and
  (b) the Chair gives a copy of the determination to ASIC.

(4) The Chair may determine, in writing, that APRA need not comply with the request if the Chair considers that complying with the request would compromise the proper functioning of APRA.

(5) The Chair's power to make a determination under subsection (4) may only be exercised by the Chair personally.

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55C Information and documents covered by request

(1) This section covers information or documents if:
  (a) in the case of information—the information was given or produced (whether or not voluntarily) to APRA in writing by another person (including a person advising APRA); and
  (b) in the case of documents—the documents were given or produced (whether or not voluntarily) to APRA by another person (including a person advising APRA); and
  (c) ASIC considers the information or documents to be relevant to the exercise or performance of its functions or powers.

(2) Without limiting the scope of subsection (1), this section also covers information in writing or documents that:
  (a) are required or permitted to be created by law as a record (however described); and
  (b) are created in accordance with that law.

Example: Notes of an examination recorded in writing in accordance with subsection 58(1) of the *Insurance Act 1973*.

(3) Without limiting the scope of subsection (1), and despite subsection (4), this section also covers information in writing or documents of a kind specified in the regulations.

(4) Despite subsections (1) and (2), this section does not cover any of the following kinds of information or documents:
  (a) information or documents concerning the internal administrative functioning of APRA;
  (b) information or documents that discloses matter in respect of which APRA or any other person has claimed legal professional privilege;
  (c) information or documents of a kind specified in the regulations.

55D Notifying ASIC of reasonable belief of material breach of ASIC provisions

(1) Subsection (2) applies if APRA has a reasonable belief that a material breach of a legislative provision of which ASIC has the general administration may have occurred, or may be occurring.

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(2) APRA must notify ASIC of that reasonable belief as soon as practicable.

4 Paragraph 56(2)(c)

After "(5A),", insert "(5AB), (5AC),".

5 After subsection 56(5A)

Insert:

(5AB) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purpose of APRA complying with any of the following:

(a) section 55B (ASIC requests);

(b) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

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

(5AC) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is by ASIC, for the purposes of the performance of ASIC's functions, or the exercise of ASIC's powers; and

(b) the protected information was disclosed previously to ASIC, or the protected document was produced previously to ASIC, for the purpose of APRA complying with any of the following:

(i) section 55B (ASIC requests);

(ii) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

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

6 Before subsection 56(10)

Insert:

(9B) Subsection (9) does not apply if the information is disclosed, or the document is produced, in accordance with subsection (5AB) or (5AC).

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7 Subsection 56(12)

After "(5A),", insert "(5AB), (5AC),".

8 Application

(1) Subject to this item, the amendments made by this Part of the *Australian Prudential Regulation Authority Act 1998* apply in relation to requests made by ASIC under section 55A of that Act on or after the commencement of this item, whether or not the information or documents requested were given to APRA before that commencement.

(2) Section 55D of the *Australian Prudential Regulation Authority Act 1998*, as inserted by this Part, applies in relation to breaches of legislative provisions that may have occurred before, on or after the commencement of this item.

Australian Securities and Investments Commission Act 2001

9 After Part 6

Insert:

Part 6A—Giving information etc. to APRA

122B APRA may request information or documents

(1) APRA may request ASIC to give it any of the following:
  (a) specified information or documents covered by section 122D;
  (b) information or documents covered by section 122D of a specified kind.

(2) The request must be in writing.

(3) APRA may, in writing, amend or withdraw the request.

122C ASIC must comply with request

(1) If APRA gives ASIC a request under section 122B, ASIC must comply with the request as soon as practicable.

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(2) ASIC need not notify any person (other than APRA) that it plans to comply with subsection (1), or has complied with that subsection.

(3) Despite subsection (1), ASIC need not comply with the request if:
  (a) the Chairperson makes a determination under subsection (4); and
  (b) the Chairperson gives a copy of the determination to APRA.

(4) The Chairperson may determine, in writing, that ASIC need not comply with the request if the Chairperson considers that complying with the request would compromise the proper functioning of ASIC.

(5) The Chairperson's power to make a determination under subsection (4) may only be exercised by the Chairperson personally.

122D Information and documents covered by request

(1) This section covers information or documents if:
  (a) in the case of information—the information was given or produced (whether or not voluntarily) to ASIC in writing by another person (including a person advising ASIC); and
  (b) in the case of documents—the documents were given or produced (whether or not voluntarily) to ASIC by another person (including a person advising ASIC); and
  (c) APRA considers the information or documents to be relevant to the exercise or performance of its functions or powers.

(2) Without limiting the scope of subsection (1), this section also covers information in writing or documents that:
  (a) are required or permitted to be created by law as a record (however described); and
  (b) are created in accordance with that law.

Example: Notes of an examination recorded in writing in accordance with subsection 58(1) of the *Insurance Act 1973*.

(3) Without limiting the scope of subsection (1), and despite subsection (4), this section also covers information in writing or documents of a kind specified in the regulations.

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(4) Despite subsections (1) and (2), this section does not cover any of the following kinds of information or documents:
  (a) information or documents concerning the internal administrative functioning of ASIC;
  (b) information or documents that discloses matter in respect of which ASIC or any other person has claimed legal professional privilege;
  (c) information or documents of a kind specified in the regulations.

(5) Despite subsection (1), (2), and (3), this section does not cover information or documents communicated to a member or a staff member in accordance with paragraph 68(p) of the *Telecommunications (Interception and Access) Act 1979*.

122E Notifying APRA of reasonable belief of material breach of APRA provisions

(1) Subsection (2) applies if ASIC has a reasonable belief that a material breach of a legislative provision of which APRA has the general administration may have occurred, or may be occurring.

(2) ASIC must notify APRA of that reasonable belief as soon as practicable.

10 In the appropriate position

Insert:

Part 29—Application provisions relating to Schedule 12 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

325 Definitions

In this Part:

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amending Act means the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

commencement time means the time when Schedule 12 to the amending Act commences.

326 Application

(1) Subject to this section, the amendments to this Act made by Part 2 of Schedule 12 to the amending Act apply in relation to requests made by APRA under section 122B on or after the commencement time, whether or not the information or documents requested were given to ASIC before that time.

(2) Section 122E, as inserted by Part 2 of Schedule 12 to the amending Act, applies in relation to breaches of legislative provisions that may have occurred before, on or after the commencement time.

Insurance Act 1973

11 Paragraph 109E(1)(c)

After “(5A),”, insert “(5AB), (5AC),”.

Life Insurance Act 1995

12 Paragraph 231E(1)(c)

After “(5A),”, insert “(5AB), (5AC),”.

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Part 3—ASIC meeting procedures

Australian Securities and Investments Commission Act 2001

13 Subsection 59(3)

Omit "(other than section 104)".

14 Section 103

Repeal the section, substitute:

103 Times and places of meetings

(1) ASIC must hold the meetings that are necessary for the efficient performance and exercise of its functions and powers.

(2) Meetings are to be held at the times and places that the Chairperson determines.

(3) The Chairperson must convene a meeting if requested in writing by 2 or more members.

15 Section 104

Repeal the section.

16 Section 107

Repeal the section, substitute:

107 Voting at meetings

(1) A question arising at a meeting is to be determined by a majority of the votes of the members present and voting.

(2) The person presiding at a meeting has:
  (a) a deliberative vote; and
  (b) if necessary, also a casting vote.

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107A Conduct of meetings

(1) ASIC may regulate proceedings at its meetings as it considers appropriate.

(2) However, proceedings at a meeting must not be inconsistent with this Division.

Note 1: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which members may participate in meetings.

Note 2: Requirements relating to disclosure of interests are contained in Division 1 of Part 7 of this Act.

107B ASIC resolutions without meetings

A resolution is taken to have been passed at a meeting if:

(a) ASIC has determined:

(i) that resolutions may be passed in accordance with this section; and

(ii) the method of indicating agreement with a resolution passed in accordance with this section; and

(b) without meeting, a majority of the members indicate agreement with the resolution in accordance with the method determined by ASIC; and

(c) that majority would have constituted a quorum at a meeting; and

(d) all members were informed of the proposed resolution, or reasonable efforts were made to inform all members of the proposed resolution.

[*Minister's second reading speech made in—*
House of Representatives on 12 November 2020
Senate on 9 December 2020]

(153/20)

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