
FINANCIAL SERVICES (IMPROVED CONSUMER PROTECTION) (NO. 1) BILL
2019: FUNERAL EXPENSES FACILITIES

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Implementing Recommendation 4.2 of the Financial Services Royal Commission

Outline of chapter

1.1 This chapter provides an overview of the amendments in Schedule 1 to the Bill to implement recommendation 4.2 of the Financial Services Royal Commission to ensure that it is clear that the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* apply to funeral expenses policies.

Context of amendments

Funeral expenses policies

1.2 The Financial Services Royal Commission uncovered evidence of the significant harm that can be caused to vulnerable consumers through the poor sales practices adopted by some funeral expenses policy providers.

1.3 Funeral expenses policies provide for the payment of funeral costs up to a nominated limit. The payout of the policy only covers the cost of the funeral or things incidental to it, but nothing else.

1.4 Commissioner Hayne observed that many funeral expenses policies are of little value because:

- the actual funeral costs incurred for a policyholder may be less than the nominated limit under the person’s policy; and
- the amount a policyholder pays in premiums over the life of a policy may be more than the amount that may be payable as a benefit (being actual funeral costs) under the person’s policy.

1.5 Funeral expenses policies are carved out from the definition of ‘financial products’ by paragraph 765A(1)(y) of the *Corporations Act 2001* and regulation 7.1.07D of the *Corporations Regulations 2001*. The effect of the carve out is that providers of funeral expenses policies:

- do not have to obtain an Australian financial services licence;

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- are not bound by the general conduct obligations contained in section 912A of the *Corporations Act 2001*; and
 - are not restrained by the anti-hawking provisions in the *Corporations Act 2001*.

1.6 The exemption of funeral expenses policies from the definition of financial products is also used by funeral directors to sell funeral expenses policies issued by friendly societies to consumers for the purpose of saving for a funeral.

The Financial Services Royal Commission Recommendation

1.7 In recommendation 4.2 of the Financial Services Royal Commission, Commissioner Hayne recommended the removal of the exclusion of funeral expenses policies from the definition of financial products under the *Corporations Act 2001*.

1.8 Commissioner Hayne also recommended amending the *Australian Securities and Investments Commission Act 2001* to put beyond doubt that the consumer protection provisions under that Act apply to funeral expenses policies.

Implementing the Government’s response to recommendation 4.2 of the Financial Services Royal Commission

1.9 The Government’s response to the Financial Services Royal Commission, *Restoring trust in Australia’s financial system*, committed the Government to:

- remove the exemption for funeral expenses policies from the definition of financial products for the purposes of the *Corporations Act 2001*; and
- ensure that it is clear that the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* apply to funeral expenses policies.

1.10 This Bill gives effect to the Government’s commitment to implementing recommendation 4.2 of the Financial Services Royal Commission by making it clear that the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* apply to funeral expenses policies.

1.11 The *Financial Services (Improved Consumer Protection) (No. 1) Regulations 2019: funeral expenses facilities* provides for the removal of the exemption for funeral expenses policies from the definition of financial products for the purposes of the *Corporations Act 2001*.

Summary of new law

1.12 The Bill amends *the Australian Securities and Investments Commission Act 2001* and *Corporations Act 2001* to ensure that it is clear that the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* apply to funeral expenses policies.

Detailed explanation of new law

Amendments to the Australian Securities and Investments Commission Act 2001

1.13 Paragraph 12BAA(8)(o) currently provides that funeral benefits are not financial products and are therefore not subject to the consumer protection provisions of Part 2, Division 2 of the *Australian Securities and Investments Commission Act 2001*.

1.14 While this exemption does not extend to funeral expenses policies, a number of submissions to the Financial Services Royal Commission advocated for this to be made clear in the legislation.

1.15 Commissioner Hayne agreed and in recommendation 4.2 of the Financial Services Royal Commission, recommended making appropriate legislative amendments to put beyond doubt that the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* apply to funeral expenses policies.

1.16 As such, to give effect to recommendation 4.2 of the Financial Services Royal Commission, section 12BAA of the *Australian Securities and Investments Commission Act 2001* is amended to expressly specify that funeral expenses policies (described as funeral expenses facilities) are not funeral benefits for the purposes of the *Australian Securities and Investments Commission Act 2001*. [*Schedule 1, item 1, subsection 12BAA(10) of the Australian Securities and Investments Commission Act 2001*]

1.17 The Bill does not provide for a definition of a funeral expenses facility in the *Australian Securities and Investments Commission Act 2001* as this has been included in the *Corporations Act 2001* instead (see below). The definition in the *Corporations Act 2001* will automatically flow through as a result of subsection 5(2) of the *Australian Securities and Investments Commission Act 2001* which provides for relevant undefined terms to have the same meaning as in the *Corporations Act 2001*.

Amendments to the Corporations Act 2001

1.18 Paragraph 765A(1)(w) of the *Corporations Act 2001* replicates paragraph 12BAA(8)(o) of the *Australian Securities and Investments*

Commission Act 2001 to provide that funeral benefits are not financial products.

1.19 The *Corporations Act 2001* is amended to include a new provision that expressly provides that funeral expenses policies (described as funeral expenses facilities) are not funeral benefits. *[Schedule 1, item 4, section 765B of the Corporations Act 2001]*

1.20 This amendment has been made to ensure the definition of a funeral benefit is consistent in the *Australian Securities and Investments Commission Act 2001* and *Corporations Act 2001*, and to put beyond any doubt that a funeral expenses policy is not a funeral benefit.

1.21 Funeral expenses policies have been described as funeral expenses facilities to better describe the nature of the product. A definition of a funeral expenses facility has been included in section 761A of the *Corporations Act 2001*. *[Schedule 1, item 3, section 761A of the Corporations Act 2001]*

1.22 The definition of a funeral expenses facility reflects the description of a funeral expenses facility in section 11 of the *Life Insurance Act 1995*.

1.23 The description of a funeral expenses facility in the *Life Insurance Act 1995* was the basis for the definition of funeral expenses policies in regulation 7.1.07D of the *Corporations Regulations 2001* which is to be repealed separately as part of the Government's commitment to give effect to recommendation 4.2 of the Financial Services Royal Commission.

1.24 The slight variation between the definitions in the *Life Insurance Act 1995* and the *Corporations Regulations 2001* does not have a substantive impact. In making these amendments, the original description of funeral expenses facilities in the *Life Insurance Act 1995* has been replicated to provide for consistent definitions across legislation.

1.25 To assist readers to navigate the legislation, a note is added to the definition of a funeral benefit in section 761A of the *Corporations Act 2001* to indicate that a funeral expenses facility is not a funeral benefit. *[Schedule 1, item 2, section 761A of the Corporations Act 2001 (at the end of the definition of funeral benefit)]*

1.26 The amendments in Schedule 1 to the Bill make it clear that the consumer protection provisions in the *Australian Securities and Investments Commission Act 2001* apply to funeral expenses policies and remove any possible doubt that funeral expenses policies will become a financial product once the exemption in regulation 7.1.07D of the *Corporations Regulations 2001* is removed.

Application and transitional provisions

1.27 The amendments apply from the day after Royal Assent.