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| **EXPOSURE DRAFT** |

Inserts for

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

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule ? | The day after this Act receives the Royal Assent. |  |
| 2.  |  |  |
| 3.  |  |  |

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

Insurance Act 1973

1 Subsection 3(1)

Insert:

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

2 Subsection 8(1)

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

3 After subsection 8(1)

Insert:

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

4 Subsection 8(3)

After “APRA”, insert “or ASIC”.

5 Before section 115

Insert in Part X:

114 Use of words “insurance” and “insurer”

Use of the word “insurance”

 (1) A person commits an offence if:

 (a) the person carries on a business or is proposing to carry on a business; and

 (b) the person uses the word ***insurance*** to describe (expressly or by implication) a product or service that the person supplies, or proposes to supply, in the course of carrying on the business; and

 (c) the product or service is not insurance; and

 (d) it is likely in all the circumstances (including the use of the word ***insurance***) that the product or service could be mistakenly believed to be insurance.

Penalty:

 (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).

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.

Strict liability

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

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