



FINANCIAL
SERVICES
COUNCIL

Restricting use of the term 'Insurance' and 'Insurer'

Additional Commitment in Response to Royal
Commission Recommendation 4.2

February 2020



1. About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

2. FSC Comments

2.1. Introduction

On 1 February 2019, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Royal Commission (**Royal Commission**) released its Final Report wherein the Commissioner recommended:

“The law should be amended to:

- *remove the exclusion of funeral expenses policies from the definition of ‘financial product’; and*
- *put beyond doubt that the consumer protection provisions of the ASIC Act apply to funeral expenses policies.”¹*

(Recommendation 4.2)

In its response to Recommendation 4.2, the Government stated its intention to implement an additional commitment: it will be made a strict liability offence for a business to describe a product or service that they offer as insurance, if the product or service is not insurance, in circumstances where it is likely that the product or service could mistakenly be believed to be insurance.²

On 31 January 2020, Treasury, in response to this additional commitment made in response to the Royal Commission, released:

- (a) An Exposure Draft (**ED**) of the *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Bill 2020: Use of terms “insurance” and “insurer”*; and
- (b) an Explanatory Memorandum to the Bill (**EM**).

2.2. Specific comments

We agree with the intent of the legislation.

We do stress however that the drafting should be carefully considered and reviewed to ensure there are no unintended consequences.

By way of example, a number of friendly societies offer risk insurance and are authorised to do so by various items of legislation (such as section 16C of the Life Insurance Act 1995) and are regulated by APRA. The relevant Exposure Draft does appear to contemplate that such bodies in the relevant respects could refer to the fact that they offer risk insurance products and to that extent may be regarded as insurers. It would be useful however if the final Explanatory Memorandum referred to such types of bodies.

¹ Recommendation 4.1 of the RC’s Final Report.

² See: <https://treasury.gov.au/publication/p2019-fsrc-response>