

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Financial Services (Improved Consumer Protection)(No. 1) Regulations 2019: funeral expenses facilities

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Financial Services (Improved Consumer Protection)(No. 1) Regulations 2019: funeral expenses facilities* (the Regulations) is to implement recommendation 4.2 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) to remove the exemption for funeral expenses policies from the definition of financial products under the Act.

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

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 Act.

The regulations give effect to the Government's response to the Financial Services Royal Commission by repealing Regulation 7.1.07D of the *Corporations Regulations 2001* to make funeral expenses policies a financial product from 1 April 2020. As a result, from 1 April 2020, funeral expenses policy providers will be subject to a variety of obligations under the Act including:

- the requirement to hold an Australian financial services licence;
- the general conduct obligations contained in section 912A of the Act; and
- the anti-hawking provisions in the Act.

A new regulation is created to give funeral services entities an exemption from needing to hold an Australian financial services licence when providing financial services advice or dealing in a friendly society funeral product.

The Regulations support Schedule 1 of the exposure draft *Financial Services (Improved Consumer Protection) (No. 1) Bill 2019: funeral expenses facilities* which makes legislative amendments 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.

Details of the Regulations are set out in the [Attachment A](#).

The Act does not specify any conditions that need to be met before the power to make the Regulations is exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 April 2020.

Details of the Financial Services (Improved Consumer Protection) (No. 1) Regulations 2019: funeral expenses facilities

Schedule 1 – Funeral expenses facilities

Making funeral expenses policies a financial product

Item 2 of Schedule 1 gives effect to recommendation 4.2 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) to remove the exclusion of funeral expenses policies from the definition of financial products for the purposes of the Act.

This is done by repealing regulation 7.1.07D of the *Corporations Regulations 2001*. The repeal of regulation 7.1.07D makes funeral expenses policies a financial product from 1 April 2020. As a result, from 1 April 2020, funeral expenses policies providers will be subject to a variety of obligations under the *Corporations Act 2001* including:

- the requirement to hold an Australian financial services licence;
- the general conduct obligations contained in section 912A of the Act; and
- the anti-hawking provisions in the Act.

Exemption for funeral services entities

Item 3 of Schedule 1 creates a new provision to give funeral services entities an exemption from needing to hold an Australian financial services licence when providing financial services advice or dealing in a friendly society funeral product. This amendment preserves the existing treatment of funeral services entities who have been relying on the funeral expenses policy exemption to sell friendly society funeral products without needing to hold an Australian financial services licence.

The exemption applies to funeral services entities as defined (see below) and employees, directors and other officers of funeral services entities when the financial services are being provided in the ordinary course of the funeral services entity's business.

Items 1 and 4 of Schedule 1 provide definitions for a friendly society funeral product and funeral services entity.

A friendly society funeral product is defined as a financial product that is an account provided by a friendly society for the sole purpose of saving money to meet the whole or a part of the expenses of and incidental to the funeral, burial or cremation of a person on the death of that person. A friendly society includes the same entities as defined under the *Insurance Contracts Act 1984*.

A funeral services entity is defined as an entity that carries on a business of supplying:

- services for the care and preparation of human bodies for burial or cremation; and
- services for the arrangement, supervision or conduct of a funeral, burial or cremation; and
- other associated services.

Funeral services entities can be structured in a range of ways including as a body corporate, partnership, unincorporated body, individual or trust structure.