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FINANCIAL SECTOR REFORM (HAYNE ROYAL COMMISSION RESPONSE—  
PROTECTING CONSUMERS (2020 MEASURES)) BILL 2020: USE OF TERMS  
“INSURANCE” AND “INSURER”

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Bill	Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Use of terms “insurance” and “insurer”
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry



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# Chapter 1

## Use of terms ‘insurance’ and ‘insurer’

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### Outline of chapter

1.1 Schedule 2 to this Bill amends the *Insurance Act 1973* to restrict the ability of firms to use the terms ‘insurer’ and ‘insurance’ to only those firms that have a legitimate interest in using terminology regarding insurance.

### Context of amendments

1.2 The use of a variety of phrases associated with financial services is restricted under the current law. For example, there are currently restrictions on the use of the term ‘bank’ and similar terms in the *Banking Act 1959*.

1.3 As part of the response to Recommendation 4.2 of the Financial Services Royal Commission, the Government announced it would restrict the ability of firms to use the terms ‘insurer’ and ‘insurance’ to only those firms that have a legitimate interest in using terminology regarding insurance. The objective of this change is to avoid confusion for consumers as to the nature of the products they are purchasing.

### Summary of new law

1.4 Schedule 2 to this Bill makes it 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.

1.5 The Bill also makes it a strict liability offence for a business to describe itself as an insurer if the business could mistakenly be believed to offer insurance, and either the product is not insurance or the person is not appropriately registered or authorised under either the:

- *Insurance Act 1973*;
- *Life Insurance Act 1995*; or
- *Private Health Insurance (Prudential Supervision) Act 2015*.

1.6 The offences do not apply to government entities, State insurance, products or services prescribed by the regulations, or entities exempted by ASIC.

### **Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
It is 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.	It is not an offence to use the term insurance in relation to a product which is not insurance.
It is a strict liability offence for a business to describe itself as an insurer if the business could mistakenly be believed to offer insurance and either the product is not insurance or the person is not appropriately registered or authorised under either the: <ul style="list-style-type: none"> <li>• <i>Insurance Act 1973</i>;</li> <li>• <i>Life Insurance Act 1995</i>; or</li> <li>• <i>Private Health Insurance (Prudential Supervision) Act 2015</i>.</li> </ul>	It is not an offence to use the term insurer in relation to a person who is not appropriately authorised or registered as an insurer.

### **Detailed explanation of new law**

1.7 Schedule ? to this Bill creates two new strict liability offences, one offence relating to the use of the term ‘insurance’ and another separate offence relating to the use of the term ‘insurer’.

1.8 The Bill makes it a strict liability offence for a person to use the term ‘insurance’ if:

- the person carries on a business or is proposing to carry on a business;
- 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;

- the product or service is not insurance; and
- 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.

*[Schedule ?, item 5, subsections 114(1) and (8) of the Insurance Act 1973]*

1.9 The penalty for the offence is 50 penalty units in the case of an individual or 500 penalty units in the case of a body corporate. *[Schedule ?, item 5, subsection 114(1) of the Insurance Act 1973]*

1.10 The term insurance takes on its ordinary meaning. This will ensure it remains fit for purpose and can be interpreted in a way that achieves the intent of these reforms.

1.11 The Bill makes it a strict liability offence for a person to use the term 'insurer' if:

- the person carries on a business or is proposing to carry on a business;
- the person uses the word insurer to describe the person in connection with a product or service that the person supplies, in the course carrying on of the business;
- 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; and
- either:
  - the product or service is not insurance;
  - the person is required to be authorised to carry on an insurance business under the *Insurance Act 1973* but is not so authorised;
  - the person is required to be a registered life company under the *Life Insurance Act 1995* but is not so registered; or
  - the person is required to be registered to carry on a health insurance businesses under the *Private Health Insurance (Prudential Supervision) Act 2015* but is not so authorised.

*[Schedule ?, item 5, subsections 114(2), (3) and (8) of the Insurance Act 1973]*

1.12 The penalty for the offence is 50 penalty units in the case of an individual or 500 penalty units in the case of a body corporate. *[Schedule ?, item 5, subsection 114(2) of the Insurance Act 1973]*

1.13 The offences do not apply to government entities. While government entities are not prudentially regulated by APRA, government entities are generally financially supported by government and therefore products issued by government entities do not suffer from the same vulnerability as products issued by the private sector. Therefore it is less likely for confusion to result in relation to products issued by government entities. *[Schedule ?, item 5, paragraph 114(4)(a) of the Insurance Act 1973]*

1.14 An entity is a government entity if it is a Department of State of the Commonwealth, a State, or a Territory, a Department of the Parliament, an Executive or Statutory Agency, or an entity that is established for a public purpose by a law of the Commonwealth, a State or a Territory. *[Schedule ?, items 1 and 5, the definition of ‘government entity’ in subsections 3(1) and 114(5) of the Insurance Act 1973]*

1.15 ASIC may, by legislative instrument, determine that the offences do not apply to a specific person or a class of persons. The terms ‘insurance’ and ‘insurer’ are used in relation to a wide variety of products in various circumstances. Therefore to ensure that the regime operates as intended and does not result in unintended consequences, ASIC has the ability to exempt a specific person or a class of person from the offences. *[Schedule ?, item 5, paragraph 114(4)(b) and subsection 114(6) of the Insurance Act 1973]*

1.16 The determination by ASIC to exempt a specific person or class of person from the offences may be subject to conditions. ASIC may revoke or vary the determination. However ASIC must not revoke or vary a determination in relation to a specific person unless ASIC has notified the person in writing that it is considering revoking or varying the determination. *[Schedule ?, item 5, subsections 114(6) and (7) of the Insurance Act 1973]*

1.17 The regulations can prescribe that the offences do not apply to certain products and services. The terms ‘insurance’ and ‘insurer’ are used in relation to a wide variety of products in various circumstances. Therefore to ensure that the regime operates as intended and does not result in unintended consequences, the regulations have the ability to exempt certain products or services. As the exemption of a certain type of product or service is a more substantial exclusion, the power is granted to regulations to ensure greater scrutiny. *[Schedule ?, item 5, paragraph 114(4)(c) of the Insurance Act 1973]*

1.18 The offences do not apply to State insurance (within the meaning of paragraph 51(xiv) of the Constitution). *[Schedule ?, item 5, paragraph 114(4)(d) of the Insurance Act 1973]*

1.19 Amendments are made to the administration of the *Insurance Act 1973* to make ASIC responsible for the enforcement of the offences as the offences are intended to operate as a consumer protection measure.  
*[Schedule ?, items 2 to 4, section 8 of the Insurance Act 1973]*

## **Application and transitional provisions**

1.20 The amendments commence on the day after Royal Assent.