

COVID-19 – IMPACT ON INSURANCE REGULATORY REFORMS

Current as at 25 March 2020

1. Current Australian Government Response

1.1 Coronavirus Business Liaison Unit

- (a) The Coronavirus Business Liaison Unit overseen by Dr Gordon de Brouwer has been created in Treasury to build on existing efforts to support confidence, employment and business continuity.
- (b) The Unit is engaging with peak business and industry groups on systemic issues arising from Coronavirus to ensure these are being brought to the attention of Government. The Unit is hearing from business on a regular basis. NIBA and the ICA are part of this Group.
- (c) To find out about specific measures for business in response to the Coronavirus, visit www.business.gov.au and to find out more information about the Government's response to the Coronavirus visit www.australia.gov.au.

1.2 Australian Government's Economic Response to Coronavirus

- (a) The Government is moving quickly to implement a package of reforms to support households and businesses and address the significant economic consequences of the Coronavirus. A package of legislation was passed by the Parliament on 23 March 2020 after urgent consideration. The Government is moving to immediately make, and register, supporting instruments.
- (b) The elements of the package are:
 - (i) A temporary increase in the threshold at which creditors can issue a statutory demand on a company and the time companies have to respond to statutory demands they receive;
 - (ii) A temporary increase in the threshold for a creditor to initiate bankruptcy proceedings, an increase in the time period for debtors to respond to a bankruptcy notice, and extending the period of protection a debtor receives after making a declaration of intention to present a debtor's petition;
 - (iii) Temporary relief for directors from any personal liability for trading while insolvent; and
 - (iv) Providing temporary flexibility in the Corporations Act 2001 to provide targeted relief for companies from provisions of the Act to deal with unforeseen events that arise as a result of the Coronavirus health crisis. For owners or directors of a

business that are currently struggling due to the Coronavirus, the ATO will tailor solutions for their circumstances, including temporary reduction of payments or deferrals, or withholding enforcement actions including Director Penalty Notices and wind-ups.

- (c) The Government has released Fact Sheets providing detail located at <https://treasury.gov.au/coronavirus>.

1.3 Impact on insurance Regulatory reforms

- (a) Prior to COVID -19 there were a number of reforms implemented and proposed following the Financial Services Royal Commission. Some the key ones and timing are summarised in the table below.

Some Key Insurance Related Reforms	
Currently in force	Product intervention power – legislation has been passed and this power is currently in force.
February 2020	Updated requirements for Internal Dispute Resolution (IDR) – changes to ASIC RG165 Licensing: Internal and external dispute resolution and associated legislative instruments were to be released in February 2020. NIBA is monitoring this position.
1 July 2020:	<p>Recommendation 1.15 - Enforceability of financial services industry codes</p> <p>Recommendations 2.1 and 2.2 - Ongoing fee arrangements and disclosure of lack of independence</p> <p>Lack of independence disclosure – FSGs are required to be provided to new clients on or after 1 July 2020 and if a financial service will be provided to the client on or after that date (SFSG can be used).</p> <p>Ongoing Fee disclosure – All arrangements will be subject to the changes from this date but some pre-1 July 2020 ongoing fee arrangements are subject to transition rules.</p> <p>Recommendation 3.4 and 4.1 - No hawking of superannuation and insurance products</p> <p>Recommendation 6.14 - Financial Regulator Assessment Authority</p> <p>Recommendation 4.8 - Removal of claims handling exemption – exposure draft legislation released. Changes will apply to claims or potential claims under insurance products made on or after this date, unless a transition period applies, in which case the date is 30 June 2021.</p> <p>General Insurance Code of Practice – signatories must be compliant with the updated Code's requirement to have policies to support customers experiencing family violence by this date.</p>
Mid 2020	<p>Additional commitment in response to recommendation 4.2 - restricting use of the term 'Insurance' and 'Insurer' - from the day after Royal Assent.</p> <p>Additional commitment in response to recommendation 7.2 – ASIC directions power – applies from date after Royal Assent whether condition allowing direction occurred before or after that date.</p> <p>Recommendation 4.4 - Cap on vehicle dealer commissions- applies to commissions provided in connection with supplies of add-on products under contracts, arrangements or understandings entered into on or after the day after the Bill receives Royal Assent.</p> <p>Recommendation 4.6 - Limiting avoidance of life insurance contracts – applies to contracts of life insurance that are originally entered into after the commencement of the Bill, which commences on the day after it receives Royal Assent . It also catches such contracts entered into before that date in relation to certain variations made after that date.</p>
December 2020	<p>Recommendation 7.1 – Compensation scheme of last resort – Consultation concluded in February 2020. Government intends to establish the scheme by the end of 2020.</p> <p>Recommendation 4.12 and 6.8 – Extension of the BEAR to all APRA-regulated financial services and institutions – Consultation concluded. Legislation is to be introduced by the end of 2020.</p>
1 January 2021	Changes to the General Insurance Code of Practice – all Code signatories are to be compliant by this date.

1 April 2021	Recommendations 1.6, 2.7, 2.8, 2.9 and 7.2 Strengthening breach reporting Breach changes – apply to reportable situations arising on or after 1 April 2021.
5 April 2021	Recommendation 4.5 - Duty to take reasonable care not to make a misrepresentation to an insurer – applies to contracts entered into after 5 April 2021 and certain variations of life contracts pre that date that occur after that date.
6 April 2021	Design and Distribution Obligations – will take effect from this date. Imposes significant new obligation on insurer to make a target market determination for retail client products. Also imposes associated obligations on distributors of these products.
	FSRC Recommendation 4.7 – Application of unfair contract terms provisions to insurance contracts – exposure draft legislation released. Proposed start date April 6 2021. Applies unfair contract rules to standard form insurance contracts.
Mid 2021	Recommendation 4.3 - Deferred sales model for add-on insurance: <ul style="list-style-type: none"> • the pre-insurance deferral period rules apply unless there has been a Relevant Commitment before the Commencement Date • the deferral period and post-deferral period rules: <ul style="list-style-type: none"> ○ won't apply if there has been a prior Relevant Commitment before the Commencement Date ○ will apply if there has been a Relevant Commitment from or after the Commencement Date.

- (b) To deliver regulatory certainty at a time when Parliamentary sittings will also be disrupted, the Treasurer will be given a temporary instrument-making power in the Corporations Act 2001 to temporarily amend provisions of the Act to provide relief from specific obligations or to modify obligations to enable compliance with legal requirements during the crisis. The instrument-making power will apply for six months. Any instrument made under this power will apply for up to six months from the date it is made.
- (c) This may be used to delay the implementation of the DDO and ASIC PIP reforms which are already law.
- (d) For reforms that are only proposed, it is expected that their implementation will be delayed but no details are available on the length of any delay. The following provides details on what the regulators are doing in this regard.

2. Regulator Responses

2.1 Council of Financial Regulators

- (a) The Council of Financial Regulators (the Council) is the coordinating body for Australia's main financial regulatory agencies. There are four members: the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), the Australian Treasury and the Reserve Bank of Australia (RBA).
- (b) Financial regulators and the Australian Government are working closely together to help ensure that Australia's financial markets continue to operate effectively and that credit is available to households and businesses.
- (c) Given the disruption being caused by COVID-19, Council members are examining how the timing of regulatory initiatives might be adjusted to allow financial institutions to concentrate on their businesses and assist their customers.
- (d) The Council's current focus appears mostly to be in relation to credit and lenders.

2.2 ASIC

- (a) ASIC has issued 20-070MR ASIC [See here](#) which recalibrates its regulatory priorities to focus on COVID-19 challenges. ASIC confirms that it:
- (i) will coordinate with the Council of Financial Regulators;
 - (i) will focus its regulatory efforts on challenges created by the COVID-19 pandemic and that until at least 30 September 2020, the other matters that ASIC will afford priority are where there is the risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters.
 - (ii) will work constructively and pragmatically with the firms it regulates, mindful that they may encounter difficulties in complying with their regulatory obligations due to the impact of COVID-19.
 - (iii) has immediately suspended a number of near-term activities which are not time-critical. These include consultation, regulatory reports and reviews, such as the ASIC report on executive remuneration, updated internal dispute resolution guidance and a consultation paper on managed discretionary accounts. Stakeholders will shortly be notified of deferred consultation and publications relevant to them.
 - (iv) will also suspend its enhanced on-site supervisory work such as the Close and Continuous Monitoring Program.
 - (v) where provide relief or waivers from regulatory requirements. This will include requirements on listed companies associated with secondary capital raisings and audits. ASIC has already indicated a 'take no action' stance in relation to the timing of AGMs until 31 July and the conduct of AGMs by electronic means.
 - (vi) will also work with financial institutions to further accelerate the payment of outstanding remediation to customers.
 - (vii) will take account of the circumstances in which lenders, acting reasonably, are currently operating when administering the law.
 - (viii) will maintain its enforcement activities and continue to investigate and take action where the public interest warrants us to do so against any person or entity that breaks the law. However, it will focus on action necessary to prevent

immediate consumer harm, egregious illegal conduct and other time critical matters.

- (ix) will maintain key business as usual functions, including registry operations and services, receipt of whistleblower, breach and misconduct reports and general contact points for industry.
- (b) ASIC specifically notes “*Information for insurers - ASIC encourages fair and efficient insurance claims handling. ASIC expects firms involved in handling insurance claims to act with the utmost good faith. ASIC expects industry to communicate clearly and accurately to customers about their cover recognising the changing situation they may be facing.*”

2.3 APRA

- (a) The Australian Prudential Regulation Authority (**APRA**) has suspended the majority of its planned policy and supervision initiatives in response to the impact of COVID-19. [See here](#)
- (b) The decision is intended to allow APRA-regulated entities to dedicate time and resources to maintaining their operations and supporting customers, while also enabling APRA to intensify its focus on monitoring and responding to the impact of a rapidly changing environment on entities' financial and operational capacity.
- (c) APRA is therefore suspending all substantive public consultations and actions to finalise revisions to the prudential framework that are currently underway or upcoming, including consultations on prudential and reporting standards. It will keep the situation under review, but presently does not plan to recommence consultation on any non-essential matters before **30 September 2020**.

IMPORTANT NOTICE

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