

COVID-19 – GOVERNMENT AND ASIC ANNOUNCE DELAY OF INSURANCE REGULATORY REFORMS

Current as at 11 May 2020

The Hon Josh Frydenberg MP Treasurer has [announced](#) that the Morrison Government will give a **six month deferral** to the implementation of commitments associated with the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry as a result of the significant impacts of the coronavirus.

This applies to those measures:

- that the Government indicated would be introduced into the Parliament by 30 June 2020 - which will now be introduced by December 2020;
- originally scheduled for introduction by December 2020 – which will now be introduced by 30 June 2021;
- commencement dates contained in Royal Commission related exposure draft legislation issued prior to the coronavirus pandemic.

ASIC has also announced in 20-109MR that it is deferring the commencement date of the design and distribution obligations 5 October 2021 (originally to commence on 5 April 2021).

Draft guidance for the design and distribution obligations was released for consultation on 19 December 2019, with consultation closing on 11 March 2020. ASIC will continue to work towards releasing final guidance on both reforms in mid-2020 responding to industry requests for that guidance to be finalised as soon as possible.

Unfair contracts terms reforms have not been referred to at this point. We understand from Treasury that the commencement date for the UCT regime will commence as currently legislated on 5 April 2021.

The postponement is to allow industry participants can focus on immediate priorities and the needs of their customers at this difficult time. ASIC expect entities will continue preparing for commencement on the extended timeline.

The Treasurer will have 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.

The key insurance related reforms are noted in the table below along with original proposed timing.

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.
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	<p>Changes to the General Insurance Code of Practice – all Code signatories are to be compliant by this date.</p>
1 April 2021	<p>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.</p>
5 April 2021	<p>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.</p>
6 April 2021	<p>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.</p>
	<p>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.</p>
Mid 2021	<p>Recommendation 4.3 - Deferred sales model for add-on insurance:</p> <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.

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