



Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 05 August 2021

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---------------------------------|---|---|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The later of: (a) the day after this instrument is registered; and (b) immediately after the commencement of Schedule 11 to the <i>Financial Sector Reform (Hayne Royal Commission Response) Act 2020</i> . | 1 October 2021 (paragraph (b) applies) |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Corporations Act 2001*;
- (b) the *Corporations (Fees) Act 2001*;
- (c) the *National Consumer Credit Protection (Fees) Act 2009*;
- (d) the *National Consumer Credit Protection Act 2009*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Corporations (Fees) Regulations 2001

1 At the end of Part 3

Add:

Division 3—Amendment made by Schedule 1 to the Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021

12 Provisions relating to continued application of section 912D of the Corporations Act

(1) Despite the amendment made by the amending Schedule to item 143 of the table in clause 1 of Schedule 1, that item continues to apply, in relation to documents lodged under subsection 912D(1) or (2) of the Corporations Act (as those subsections continue to apply because of subsection 1671A(2) of that Act), as if that amendment had not happened.

(2) In this regulation:

amending Schedule means Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021*.

2 Clause 1 of Schedule 1 (table item 143, column 1)

Omit “912D(1) or (2)”, substitute “912DAA(1), 912DAB(1), 912DAC(1)”.

Corporations Regulations 2001

3 Paragraphs 1.0.05A(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) written notice that is to be lodged with ASIC in accordance with subsection 912DAC(1) of the Act may be lodged with ASIC in the prescribed form; and

4 Regulation 7.6.02A

Before “For”, insert “(1)”.

5 Regulation 7.6.02A

Omit “subparagraph 912D(1)(a)(iii)”, substitute “paragraph 912D(3)(c)”.

6 Paragraph 7.6.02A(ac)

Repeal the paragraph.

7 Paragraph 7.6.02A(d)

Omit “(*Transfers of Business*)”, substitute “(*Transfer and Restructure*)”.

8 At the end of regulation 7.6.02A

Add:

Certain breaches not required to be notified

- (2) For the purposes of paragraph 912D(4)(b) of the Act:
- (a) the following civil penalty provisions of the Act are prescribed:
- (i) subsection 798H(1);
 - (ii) subsection 901E(1);
 - (iii) subsection 922M(5);
 - (iv) subsection 941A(3);
 - (v) subsection 941B(4);
 - (vi) subsection 962G(4);
 - (vii) subsection 962S(5);
 - (viii) subsection 962S(8);
 - (ix) subsection 962U(3);
 - (x) subsection 962V(3);
 - (xi) subsection 981B(3);
 - (xii) subsection 981C(2);
 - (xiii) subsection 1012A(5);
 - (xiv) subsection 1012B(6);
 - (xv) subsection 1012C(11);
 - (xvi) subsection 1017BA(4B);
 - (xvii) subsection 1017BB(5AA);
 - (xviii) subsection 1021E(8);
 - (xix) subsection 1021G(3);
 - (xx) section 1101AC; and
- (b) all civil penalty provisions of Commonwealth legislation that is specified in subregulation (1) are prescribed.

9 Paragraph 9.4AB.01(2)(c)

Repeal the paragraph, substitute:

- (c) subsection 912DAA(1);
- (ca) subsection 912DAC(1);

10 After paragraph 9.4AB.02(2)(a)

Insert:

- (aa) subsection 912DAB(8);

11 In the appropriate position in Chapter 10

Insert:

Part 10.41—Application provisions relating to the Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021

10.41.01 Provisions relating to continued application of section 912D of the Act

Lodgment with ASIC

- (1) Despite the repeal of paragraphs 1.0.05A(2)(b) and (c) by item 3 of the amending Schedule, those paragraphs, as in force immediately before the commencement of the amending Schedule, continue to apply in relation to reports or written notices to be given to ASIC under subsections 912D(1) and (2) of the Act (as those subsections continue to apply because of subsection 1671A(2) of the Act) as if that repeal had not happened.

Obligation to notify ASIC of certain matters

- (2) Despite the amendment of regulation 7.6.02A by item 5 of the amending Schedule, that regulation continues to apply, for the purposes of subparagraph 912D(1)(a)(iii) of the Act (as that subparagraph continues to apply because of subsection 1671A(2) of the Act), as if that amendment had not happened.

Infringement notices

- (3) Despite the amendment of paragraph 9.4AB.01(2)(c) by item 9 of the amending Schedule, that paragraph continues to apply, in relation to alleged offences against subsection 912D(1B) or (2) of the Act (as those subsections continue to apply because of subsection 1671A(2) of the Act), as if that amendment had not happened.

Definitions

- (4) In this regulation:

amending Schedule means Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021*.

National Consumer Credit Protection (Fees) Regulations 2010

12 Clause 1 of Schedule 1 (after table item 6)

Insert:

- | | | |
|----|---|--------|
| 6A | Lodgment of a report under subsection 50B(1) or 50C(1) of the National Credit Act | no fee |
|----|---|--------|

National Consumer Credit Protection Regulations 2010**13 After regulation 12**

Insert:

12A Obligations of licensees—breaches of certain civil penalty provisions not required to be reported to ASIC

For the purposes of paragraph 50A(4)(b) of the Act:

- (a) the following civil penalty provisions of the Act are prescribed:
- (i) subsection 52(2);
 - (ii) subsection 53(1);
 - (iii) subsection 53(4);
 - (iv) subsection 71(1);
 - (v) subsection 71(2);
 - (vi) subsection 71(4);
 - (vii) subsection 88(1);
 - (viii) subsection 113(1);
 - (ix) subsection 120(1);
 - (x) subsection 124B(1);
 - (xi) subsection 126(1);
 - (xii) subsection 127(1);
 - (xiii) subsection 132(2);
 - (xiv) subsection 133AC(2);
 - (xv) subsection 133AD(2);
 - (xvi) subsection 133AE(2);
 - (xvii) subsection 133BC(1);
 - (xviii) subsection 133BD(1);
 - (xix) subsection 133BFA(2);
 - (xx) subsection 133BJ(1);
 - (xxi) subsection 133BU(2);
 - (xxii) subsection 133CR(1);
 - (xxiii) subsection 133CR(3);
 - (xxiv) subsection 133CU(1);
 - (xxv) subsection 133DC(2);
 - (xxvi) subsection 133DD(2);
 - (xxvii) subsection 133DE(1);
 - (xxviii) subsection 133DE(2);
 - (xxix) subsection 136(1);
 - (xxx) subsection 143(1);
 - (xxxi) subsection 149(1);
 - (xxxii) subsection 150(1);
 - (xxxiii) subsection 155(2);
 - (xxxiv) subsection 158(1);
 - (xxxv) subsection 160(1);
 - (xxxvi) subsection 160(2);

- (xxxvii) subsection 160B(1);
- (xxxviii) subsection 160C(1);
- (xxxix) section 238D; and
- (b) subsection 174(3) of the Code is prescribed; and
- (c) all civil penalty provisions of Commonwealth legislation that is covered by paragraph (d) of the definition of *credit legislation* in subsection 5(1) of the Act are prescribed.

12B Obligations of licensees—breaches of certain key requirements not required to be reported to ASIC

For the purposes of paragraph 50A(4)(c) of the Act, the key requirements (within the meaning of the Code) contained in the following provisions of the Code are prescribed:

- (a) subsection 17(3);
- (b) subsection 17(4);
- (c) subsection 17(5);
- (d) subsection 17(6);
- (e) paragraphs 17(8)(a) and (b);
- (f) subsection 17(9);
- (g) subsection 17(11);
- (h) paragraphs 17(15)(a) and (b);
- (i) subsection 17(15A);
- (j) subsection 34(6);
- (k) section 35.

14 After paragraph 37(2)(c)

Insert:

- (ca) subsection 50B(2);

15 Before paragraph 38(2)(a)

Insert:

- (aa) subsections 50C(1) and (5);