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Dear Ms McCrea

### **Financial Services Royal Commission Additional commitment in response to Recommendation 4.2 - Restricting use of the term 'insurance' and 'insurer'**

Thank you for the opportunity to comment on the Treasury's exposure draft legislation and materials re: Restricting use of the term 'Insurance' and 'Insurer' – implementing Additional commitment in response to Recommendation 4.2 of the Banking, Superannuation & Financial Services Royal Commission, including:

- *Exposure Draft– Financial Sector Reform (Hayne Royal Commission Response–Protecting Consumers (2020 Measures)) Bill 2020: Use of terms “insurance” and “insurer” (ED);*
- *Exposure Draft Explanatory Memorandum (EM);*

This is a joint consumer submission from the Financial Rights Legal Centre (**Financial Rights**) Consumer Action Law Centre (**Consumer Action**), CHOICE, Financial Counselling Australia (**FCA**) and Consumer Credit Legal Service (WA) Inc (**CLSWA**).

Following significant evidence to the Royal Commission regarding the exemption of funeral expenses policies under financial services legislation<sup>1</sup> and the consumer protections that came with this, the Royal Commissioner recommended amending the law to remove the exclusion of funeral expenses policies from the definition of 'financial product.' This was intended to put

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<sup>1</sup> Including the *Corporations Act 2001*, the *Corporations Regulations 2001*, the *Life Insurance Act 1995*, the *Insurance Contracts Act 1984* and the *Australian Securities and Investment Commission Act 2001* 2001.

beyond doubt that the consumer protection provisions of the *Australian Securities and Investment Commission Act 2001* apply to funeral expenses policies.

As part of this reform, the government also agreed to restrict the ability of firms to use terms such as 'insurer' and 'insurance' to only those firms that have a legitimate interest in using terminology regarding insurance. This includes APRA-regulated insurers, brokers and other distributors. This restriction will avoid confusion for consumers as to the nature of the products they are purchasing.

The ED is a straightforward implementation of this recommendation and commitment ensuring that it is a strict liability office for a person or business to describe a product or service that they offer as insurance if it is not.

We therefore support this ED as drafted. It is a loophole that needs to be closed.

However, we note that the proposed restriction on the use of the word insurer/insurance will likely impact upon rental car agreements. Generally, rental agreements can be complicated, unclear and difficult to understand. A common misconception is that rental car companies offer insurance, where in fact they offer a liability limitation product. Many of these agreements use the term "insurance" and "insurance policy". They also currently use insurance terms such as "excess", "loss waiver," "damage liability," "third party loss," "liability coverage" or "damage protection."

As we understand it, this legislation will ensure that car rental agreements are no longer able to use this terminology – an outcome we strongly support. However the proposed reform is unlikely to prevent car rental agreements using other terms of insurance - such as "excess", "loss waiver," etc – that will give the product the patina of insurance. Ideally these agreements would be prevented from doing so and we think that this potential outcome needs to be considered by Treasury.

Please contact Policy and Advocacy Officer **Drew MacRae** at **Financial Rights Legal Centre** on 02 8204 1386 or at [drew.macrae@financialrights.org.au](mailto:drew.macrae@financialrights.org.au) if you have any questions.

Kind Regards,



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