

28 February 2020

Diane Brown  
Division Head - Financial System Division  
Treasury  
Langton Crescent  
Parkes ACT 2600

By email: FSRCconsultations@treasury.gov.au

Dear Ms Brown

**EXPOSURE DRAFT – FINANCIAL SECTOR REFORM (HAYNE ROYAL COMMISSION RESPONSE – PROTECTING CONSUMERS (2020 MEASURES)): HAWKING OF FINANCIAL PRODUCTS, ENFORCEABLE CODE PROVISIONS, DEFERRED SALES MODEL FOR ADD-ON INSURANCE, DUTY OF DISCLOSURE TO INSURER, BREACH REPORTING**

Suncorp Group Limited (*Suncorp*) welcomes the opportunity to respond to the omnibus bill consultation. As stated previously, the Royal Commission reforms will produce good consumer outcomes across the financial services system provided they are well designed and legislated.

Suncorp has begun work to implement most Royal Commission reforms affecting our business, including some yet to be legislated. We have also been central in driving the insurance industry to lift its level of service, including taking a leading role in the creation of the new General Insurance Code of Practice which begins, in part, from June 2020. We have also expended significant resources implementing the new Banking Code of Practice and have been a signatory since 2004.

Our feedback in this submission focuses on two themes:

- Ensuring the reforms contained in the omnibus bill lift industry accountability and customer protection, without removing sources of customer value or contributing to underinsurance.
- Ensuring that the reforms are not unnecessarily complex, both for customers to understand and for industry to implement.

We are concerned that some of these reforms will significantly impact our ability to provide our customers with the information and assistance they require at the time they require it. We are currently seeing first-hand how our customers need certainty and simplicity as we respond to the 2019-2020 bushfires, hailstorms and storms as well as the ongoing impact of the drought. We also know that only around one in five surveyed Australians could answer three basic questions measuring financial literacy, according to a survey undertaken by Deloitte Access Economics by the Australian Banking Association.<sup>1</sup>

The proposed hawking reforms will have significant impacts on our ability to provide customers with meaningful information when they require it and limit our ability to prevent unintentional underinsurance. Taken together, the complexity of the hawking and add-on insurance reforms risk confusing customers over when and how they can purchase products. We would like to work further with the Government and Treasury to ensure that these reforms are well designed and improve customer outcomes.

Suncorp is a member of the Australian Banking Association ('**ABA**') and the Insurance Council of Australia ('**ICA**'). We broadly support their submissions. Finally, if you have any questions, please contact Pip Freebairn, Senior Manager, Government, Industry & Public policy on 0402 417368 or pip.freebairn@suncorp.com.au.

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<sup>1</sup> Deloitte Access Economics (2019), [Choice in Banking](#), prepared for the Australian Banking Association, p.17.

Regards,

A handwritten signature in black ink, appearing to read "Steve Johnston", with a small horizontal line underneath the name.

Steve Johnston  
Group CEO and Managing Director  
Suncorp Group Limited

# Suncorp response to the Exposure Draft and related materials

## Executive Summary

Suncorp accepted the recommendations of the Hayne Royal Commission and has actively and positively engaged with Treasury in policy discussions and development of these reforms. We also have contributed to industry discussions and submissions via the ABA and the ICA, and have consulted with consumer groups. We thank Treasury for the opportunity to respond to the Exposure Draft and related materials for the omnibus bill.

Our submission addresses eight of the reforms Treasury is consulting on, namely:

- Prohibit the hawking of financial products – Recommendation 4.1
- Deferred sales model – Recommendation 4.3
- Enforceability of Code – Recommendation 1.15
- Duty to take reasonable care not to make a misrepresentation to an insurer – Recommendation 4.5
- Restricting the use of the term *insurer* – Recommendation 4.2
- No deducting advice fees from MySuper accounts – Recommendation 3.2
- Strengthening breach reporting – Recommendations 2.8 and 7.2

This is the first time Suncorp has provided feedback to Treasury on the anti-hawking and breach reporting reforms. As we have previously provided formal and informal feedback on other reforms, Suncorp's feedback on these reforms is reiterated at a high level in this submission.

While many of these reforms will strengthen protections and improve outcomes for customers, Suncorp is concerned the current drafting of the hawking reforms will lead to customer detriment and underinsurance. Greater clarity and certainty are required in the Exposure Draft and Explanatory Memorandum (**EM**) to ensure that customers are able to seek information on financial products without the need to first fully understand how each product works. Any limits on providing customers with useful information when they contact us should be carefully calibrated to balance customer protection with convenience. The current drafting does not balance these issues appropriately.

Suncorp also notes that it will not be feasible for industry to meet the current implementation date of 1 July 2020 for the hawking reforms, especially as this will require training for frontline staff working in our call centres and stores. We propose that the implementation date for the anti-hawking reforms should be aligned with the introduction of the deferred sales model from 1 July 2021, given the interplay between the reforms and the need to minimise any resulting customer confusion.

On the breach reporting recommendations, Suncorp notes that the proposed reforms will substantially raise reporting requirements to ASIC, which we do not believe will meet the intention of improving customer outcomes. Suncorp would welcome further opportunities to discuss how these reforms could be modified with Treasury and ASIC to ensure they improve customer outcomes without introducing an unnecessarily onerous compliance regime.

Suncorp welcomes any further opportunity to discuss these reforms with Treasury and the Government.

## Table of Contents

Suncorp response to the Exposure Draft and related materials .....	3
Executive Summary .....	3
RC Recommendation 4.1: Prohibit the hawking of financial products .....	5
Summary of Proposals .....	5
Discussion .....	5
Examples .....	7
Implementation timeframe .....	8
Table 1: Change required ahead of hawking implementation.....	10
RC Recommendation 4.3: Deferred sales model for add-on insurance .....	11
Summary of Proposals .....	11
Discussion .....	11
RC Recommendation 1.15: Enforceability of financial services industry codes .....	13
Summary of Proposals .....	13
Discussion .....	13
RC Recommendation 4.5: Duty to take reasonable care not to make a misrepresentation to an insurer.....	16
Summary of Proposals .....	16
Discussion .....	16
RC Recommendation 4.2: Restricting the use of the term ‘Insurance’ and ‘Insurer’.....	19
Proposal .....	19
Discussion .....	19
RC Recommendation 3.2: No deducting advice fees from MySuper accounts .....	20
Proposal .....	20
Discussion .....	20
RC Recommendations 2.8 and 7.2: Strengthening breach reporting requirements for AFS licensees .....	21
Summary of Proposals .....	21
Discussion .....	21

## RC Recommendation 4.1: Prohibit the hawking of financial products

### Summary of Proposals

Suncorp proposes:

- *The EM's examples indicate inconsistencies between the treatment of products that are difficult to reconcile. Suncorp strongly recommends that these examples are removed. Suncorp does not consider that legislated or codified definitions of 'related product' are required in the explanatory memorandum. Given the customer implications, ASIC should be given time to develop regulatory guidance that ensures that conversations valued by customers can continue to take place.*
- *Customers should be able to seek information on financial products without the need to first fully understand how each product works.*
- *Home and motor insurance should not be considered as unrelated products in the EM, given they are commonly understood as related products in the minds of customers. Further, customers derive significant value through bundled discounts and streamlined claims experience if they hold their home and motor policies at the same insurer.*
- *A six-week limit on customer contact following a customer request is an arbitrary timeframe that will have meaningful impacts on our customers when it comes to insurance products. We believe that the limit on customer contact should be determined by referring to the attributes of each particular product.*
- *The implementation date for the anti-hawking reforms should be aligned with the introduction of the deferred sales model from 1 July 2021, given the crossover between the reforms and the need to minimise any resulting customer confusion. Suncorp will not be able to make the significant people, processes and system changes required by the proposed July 2020 start date.*

### Discussion

#### What is the problem that is being solved?

The Royal Commission's Final Report notes the basis for long-standing bans on 'hawking' as '*because [hawking] too readily allows the fraudulent or unscrupulous to prey upon the unsuspecting. There is no real check on what is said to the target and often the target is not able to check the truth of what is said.*'<sup>2</sup> The issues identified in the Royal Commission relate to the environment in which sales of products have been attempted, and the pressure placed on potential customers by aggressive sales staff – such as the pressure-selling tactics employed during unsolicited outbound telephone calls played during the Round 6 hearings. These are examples of environments that provide poor choice architecture – they place customers in a situation where they are unable to make good decisions.

These environmental factors are compounded when the provider offers poor information regarding the product, or the offered product itself is a poor product that would not provide the customer with value. The examples raised in the Royal Commission centred around low-value funeral insurance and life insurance sold to vulnerable people during unsolicited contact from unscrupulous providers. The case studies showed the need for reforms that minimise the sale of poor products through pressure selling techniques. Suncorp is currently implementing the Design and Distribution Obligations/Product Intervention Power (DDO/PIP) reforms and notes the introduction of the deferred sales model for add-on insurance products. These reforms will go a long way to address the poor practices. In addition, as an ABA member, Suncorp has been working to implement the recommendations from the Sedgwick Review to change sales models and associated remuneration for sales staff, along with conduct and cultural programs, which seek to ensure that good sales practices and consumer outcomes are actively promoted.

We are concerned that the anti-hawking reforms proposed in the Exposure Draft and explained through the Explanatory Memorandum go beyond solving the issues identified in the Royal Commission and will erode sources of intrinsic customer value. This is discussed below.

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<sup>2</sup> Royal Commission into Banking, Superannuation and the Financial Services Industry, *Final Report*, p13.

## Scope of hawking

Suncorp supports the scope criteria outlined in the EM that relate to the:

- the **purpose or function** of the request;
- the products within the ‘broad **class** of products’ requested; or
- the products which respond to the **associated risks**.

Our concern is that the examples of hawking cited in the EM are also confusing and inconsistent with the scope outlined above. For example, the EM explicitly calls out established products that have been typically sold together, like home and motor insurance, as no longer being allowed to be discussed in a customer interaction on the other (see Example 1.12). Yet these products respond to associated risk in our customers’ mind, namely natural disasters spanning bushfire, storm, hail, cyclone and flooding, which can damage or destroy what are a typical household’s largest assets.

Testing completed by Suncorp to implement previous anti-hawking reforms revealed that these products are associated in the minds of our customers and are considered in the same class of product. We note that the expansive definition that has been given to life insurance products that includes total permanent disability, trauma, income protection and term life as to be considered in a broad class of product. This is despite the different events having given rise to the claim, that is accident, sickness or death.

In summary, Suncorp does not consider that a legislated definition of ‘related product’ or codification of hawking is required via the EM. Given the customer implications, ASIC should be given time to develop a regulatory guidance that ensures that conversations valued by customers can continue to take place. Suncorp proposes that this regulatory guidance would replace the need to provide examples within the EM.

We also note the requirements within the EM that the customer must be clear, precise and must understand what they are requesting for a product to be offered or sales made within the one customer interaction. This does not allow a customer to make general requests. In practice, this will be challenging to implement for frontline staff and could potentially lead to customer detriment if our customers are unable to find out information on products about which they do not hold a strong understanding and subsequently take these up within the one interaction. A report by ABA found that only 18% of surveyed respondents gave correct responses to a standard financial literacy test.<sup>3</sup> To make informed choices, consumers should also easily be able seek information on the differences between products without being required to be precise in their request.

## Ensuring customer value is maintained

Suncorp believes that home and motor insurance should be considered as within the same class for the purposes of this reform. We believe our customers view these policies as the same class and value holding these policies at the same insurer. Benefits for customers include:

- Multi-policy discounts, which provide customers with value.
- The opportunity to have a conversation to understand policy coverage between the two classes of products. Suncorp has received customer claims made on home contents policies for damage to cars parked in garages, which shows that customers do not always understand how coverage works between the two products.
- The convenience of holding policies with the same insurer at purchase and renewal time.
- The convenience and streamlined claims experience if car and home insurance policies are held at the same insurer and the customer makes a claim for an insurable event like a bushfire.

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<sup>3</sup> Deloitte Access Economics (2019), [Choice in Banking](#), prepared for the Australian Banking Association, p.17.

## Customer contact timeframe

Suncorp also wishes to understand the reasoning for the six-week timeframe, which would prevent insurers from contacting customers beyond six weeks after a customer makes an initial request for a product. This is an arbitrary timeframe that bears no relationship to the annual cycle of an insurance policy. Through the course of our conversation with customers, they may ask us to contact them when a policy with another insurer is up for renewal at a later date. This can take place anytime between four weeks and up to 12 months after the customer contact when the policy is up for renewal and they wish to seek a quote on one of our products.

Customers booking an insurer to call them back at a convenient time is valued by the customer as it reduces the search cost associated with switching. It also helps the customer find a more competitive quote on an insurance product. The ACCC second interim report on Northern Australia Insurance in November 2019 showed that many Australians fail to shop around on insurance, which the ACCC attributed to the time taken to complete online quotes and compare product features.<sup>4</sup> Given a call is a valuable opportunity for the customer to elicit this information, we believe that this practice is valued by customers and should continue.

We also note that in many cases property settlement dates are longer than six weeks after the contract is signed. This would prevent us from calling a customer if they made a request during the mortgage application process for a call to discuss home contents insurance at settlement time. If we are unable to follow up on their request in their timeframe, this may add pressure to customers during what is likely to be a stressful time. It would also limit our ability to offer policies in the most affordable way through the application of bundled discounts.

We appreciate Treasury's intention to provide clarity by providing a time period, but we would ask that it is not to be a prescriptive time and rather be 'reasonably in line with the attributes of a product'. In this case, up to 12 months is a reasonable timeframe.

## Examples

The following are some examples of customer interactions that Suncorp has with our customers, which have been drawn from real calls, as well as complaints Suncorp received.

### Example A – Customer has a lapsed policy

A customer calls through on the motor line and the specialist raises with the customer that their home policy has lapsed a few weeks earlier. The specialist asks the customer if they meant for this to occur. Often, the customer did not actually intend for this to occur and had forgotten to pay it after they received their renewal letter leading to them be unaware they were uninsured. Many of these customers have then asked if they can pay immediately so they have insurance to cover their home. Without this type of discussion with customers they may not be aware they have forgotten to renew their policy and could be at risk of having no cover if their home was damaged or destroyed. AFCA has made it clear in cases where a customer has inadvertently let a policy lapse and then face an insurable event that insurers hold responsibility to ensure that the customers have received their renewal. Suncorp is aware that some of our customers do not regularly read their email or update us if they change their email address. It is therefore vital that we can continue to have these conversations with our customers over the phone.

### Example B – Customer not understanding product coverage

A customer calls through on the motor line to insure their car and update their address after moving house. During the conversation with our specialist, the customer advises they have just moved out of their parents' home and into their first rental. In this instance, the specialist might ask the customer if they require any information on contents insurance for their new home. The customer advised they did not realise they would need contents insurance in a rental as they had a misconception that their landlord's insurance would cover their contents if something happened to the house.

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<sup>4</sup> ACCC (November 2019), [Northern Australia Insurance Inquiry](#), Second Interim Report

### **Example C – Outbound calls for customers**

Suncorp may make outbound calls to a customer who has been struggling to make payments or may have other needs. If in the course of this conversation, the customer reveals they have lost their job, we may be able to suggest more appropriate products for their circumstances, with lower coverage including our low-income *Essentials* product.

### **Example D – Insurance and at-risk situations**

Customers are sometimes unaware of situations where they are at risk for insurance liability purposes. For example, when a customer signs a contract to purchase a new home, they may not be aware that building insurance is required immediately to manage their at-risk position.

First home buyers are often not aware of this requirement due to their lack of previous experience buying a property. A customer may ring to enquire about shifting their motor insurance address and tell their specialist they had just signed a contract to purchase a new home and would be moving in six weeks on the day of settlement. In this scenario, the insurance specialist on the line would not be able to raise home insurance and the customer may not be aware that they remain at risk.

### **Example E – Customer seeks information**

Customers have been dissatisfied that they were not told about products during a discussion about their banking needs. We have also received complaints about not proactively raising products or offers (such as discounts) with customers in the course of the conversation. The proposed reforms could rule out a specialist proactively raising multipolicy discounts, which is a source of value to many of our customers.

### **Example F – Not proactively offering suitable products**

We have received complaints from customers who had a mortgage offset account balance greater than their loan balance and the additional excess balance was not earning interest. The customer dissatisfaction was that when the customer called, they weren't advised about setting up a different style of account, such as a higher interest earning account. In these instances, customers have requested compensation from Suncorp about the potential loss of interest earnings. We note that products have a cooling off period where customers are able to cancel with no costs incurred. This is further protection for the consumer when buying these products off the back of a discussion before having had a chance to fully consider the Product Disclosure Statement etc.

### **Example G – Broker-introduced customers**

When mortgage customers are introduced to Suncorp via broker, Suncorp generally seeks to provide an outbound welcome call to explain the benefits and features of their home lending package and ensure they are aware of the options they could take out, such as waived monthly fees on savings accounts. The brokers may not have explained the package in detail and the Store or Contact Centre staff have been able to explain what is available for the customer to take advantage of at a time that is more convenient (for example, after settlement of their loan and potentially when moving house). This outbound call supports better customer outcomes by explaining the full benefits of the home lending package they have purchased. Finally, on the insurance side, we note that insurance brokers offer a valuable service to customers, enabling them with a central point of contact to purchase insurance policies. It is unclear how this reform would apply to those brokers not operating under the personal advice model.

### **Implementation timeframe**

Suncorp notes the significant interplay between anti-hawking reforms and the introduction of the deferred sales model for add-on insurance. We hope these reforms will be complementary and will encourage better customer outcomes, rather than leading to regulatory overlap and confusion both for our customers and our frontline staff. For this reason, we believe that the introduction of the anti-hawking reforms should be aligned to introduction of the add-on insurance reforms from July 2021.

Suncorp does not believe that a start date of 1 July 2020 for the anti-hawking reforms will be feasible. The changes to people, processes, real estate and systems required to implement this reform and ensure that we are meeting



our obligations while serving our customers are expansive. We will also be required to renegotiate existing contracts with third party providers. Table 1 lists these changes which we believe will take a full year to embed into our business.

It is crucial that we have time to provide adequate training to our customer-facing employees, given that breaches of this law would be a strict liability offence, such that the subjective intention of the provider when contacting the consumer is not relevant. We note that under the existing hawking regime, the maximum penalty for an offence is 6 months imprisonment or 60 penalty units for a person. Suncorp believes it is unfair to place our frontline staff, based in call centres and stores, in a position where they could be at risk of a fine because we have been unable to train them sufficiently before the start date of the reform.

**Table 1: Change required ahead of hawking implementation**

<b>Change</b>	<b>Change Description</b>	<b>Cross-Dependencies and Other Factors</b>
<b>Collateral*</b>	<ul style="list-style-type: none"> <li>– Contracts for distribution, referral and outsourcing will require review and amending. Changes will need to be embedded in line with legislation commencement timeframes.</li> <li>– If legislation takes effect July 1 2020, Suncorp will be unable to action future-dated customer requests for calls past this date, detrimentally affecting customers expecting our contact on a product after this time.</li> </ul>	<ul style="list-style-type: none"> <li>– Suncorp currently has contractual obligations with third parties relating to customer leads. The new laws will require renegotiation of these terms, which cannot be finalised until the laws have been passed. Implementation of changes resulting from renegotiation would need to extend beyond this.</li> </ul>
<b>Processes</b>	<ul style="list-style-type: none"> <li>– Creation of new processes for frontline staff, including amended scripting and customer contact/selling processes.</li> <li>– Significant updating of training processes for existing staff, induction materials, ongoing training pieces and learning facilitation.</li> </ul>	<ul style="list-style-type: none"> <li>– While planning and other aspects of this work can commence prior to legislation passage, approval of changes would not be able to occur until after passage of the laws.</li> </ul>
<b>People</b>	<ul style="list-style-type: none"> <li>– <b>Significant</b> training and coaching for frontline staff would be required, involving training on new systems, processes, behavioural changes including system-based role play and general culture and change training. This includes staff in call centres and in stores, so would require a significant roll out of training across Suncorp.</li> <li>– Comprehensive training in line with legislation is expected to take 16 weeks, excluding design and testing.</li> <li>– Training updates will require design, testing, implementation and checks for effectiveness prior to legislation taking effect.</li> <li>– Workforce planning resulting from these changes may have impacts on real estate decisions that would take time to work through.</li> </ul>	<ul style="list-style-type: none"> <li>– A large amount of critical regulatory change is already underway for frontline staff. For example: Customer Experiencing Vulnerability and Family Violence, Complaints, Unfair Contract Terms.</li> <li>– The heavy burden of change in such short timeframes will affect both our staff's ability to absorb the changes and mental wellbeing, resulting in the likelihood of ineffective training. This has the potential to negatively impact customer service and experience. It is also happening against a backdrop of high claims activity owing to recent natural disasters.</li> <li>– Contracts impacted by both hawking and add-on insurance legislation changes would benefit from an aligned implementation timeframe, with benefits of greater front-line staff understanding of the changes resulting in less confusion, creating a better customer experience.</li> </ul>
<b>Data &amp; Technology</b>	<ul style="list-style-type: none"> <li>– System capability uplift will be required for customer record keeping systems, to capture the date of permission to contact customer as well as information about requests to ensure compliance with the six-week timeframe.</li> <li>– Several digital sales methods and automated processes will need to be revised.</li> </ul>	<ul style="list-style-type: none"> <li>– Similar system changes may be required to be made for the changes relating to the deferred sales model for add-on insurance. An aligned timeframe for implementation between Add-On and Hawking requirements would assist ability to effectively implement these changes.</li> </ul>
<b>Overall Transition Period</b>	<p>Suncorp believes it is not feasible to have the above changes effectively implemented and embedded in the business by July 1, 2020. Given the breadth of training, contractual obligations and people impact, the proposed commencement date does not provide adequate time to design, approve, and effectively roll out the changes that will be required by the new laws. An estimated 9-12 months would be required to have all necessary training, system and people changes embedded in operation. Given the nexus between anti-hawking and the deferred sales model for add-on insurance laws, an alignment of commencement date to July 1, 2021 will better enable industry to implement the changes and ultimately create better outcomes for customers</p>	

## RC Recommendation 4.3: Deferred sales model for add-on insurance

### Summary of Proposals

Suncorp proposes:

- Like comprehensive motor insurance, home building and contents insurance, motor insurance in general including motorbike and caravan insurance, and landlord protection insurance should also be exempt from the regime through legislation. These products meet Treasury's criteria for exemption. They are similar in nature to comprehensive car insurance as they protect what are likely to be a customer's largest assets and could lead to consumer detriment if subject to a deferred sales period.
- This reform should be focused on retail clients only, and wholesale clients should be excluded given the reform is designed to enhance protections for individuals and small businesses. Wholesale or commercial insurance clients, who are typically larger, frequently buy insurance through a broker who is acting on behalf of the insurer.
- This reform should be applied at a brand level rather than Australian Financial Services License level to allow for customer choice, which is the intention of the regime.
- The legislation should clearly exempt two products that the Government does not intend to be covered by the reform. Lender's Mortgage Insurance (**LMI**) should be expressly excluded as it is not purchased by the consumer. Compulsory Third Party (**CTP**) should be excluded as the product must be purchased before car registration under state law and is regulated by the states.
- Suncorp also seeks an exemption for our low-income insurance product Essentials, which is offered by Good Shepherd Microfinance to low-income and vulnerable customers who apply for their No Income Loans Scheme.

### Discussion

Suncorp supports reforms to the sale of add-on insurance and the introduction of the deferred sales model. These reforms will complement ASIC's Product Intervention Power and Design and Distribution Obligation reforms and have a strong nexus with anti-hawking reforms contained in the Exposure Draft.

### Exemptions from the deferred sales model

We recognise that the deferred sales model will capture all add-on insurance products by default and minimise exemptions, in line with the Royal Commission recommendation. Exemptions should only arise where there is strong quantitative evidence of product value and consumer understanding. Suncorp supports the criteria identified by Treasury that enables a product to be exempt from the deferred sales model.

The criteria outlined by the Exposure Draft are:

- any evidence as to whether the add-on insurance product has historically been good value for money;
- whether, without an exemption, there is a high risk of underinsurance or non-insurance;
- any evidence as to whether the add-on insurance product, or the class of add-on insurance products, is well understood by consumers;
- any differences between the add-on insurance product, or add-on insurance products in the class, and financial products of a similar kind that are not sold as add-on insurance products.

Suncorp argues that building and contents insurance, caravan insurance and landlord insurance should follow comprehensive motor insurance by being classed as exempt from the regime, either through legislation or by regulation. This owes to the demonstrated value of these products and likelihood of consumer detriment if they are sold under a deferred sales model.

If building and contents insurance are included in the regime, the detriment to a customer could be significant. In many instances, customers are unaware of their risk when purchasing a house, as when the customer is accountable for damage to a property differs from state to state. Practically, the pre-deferral period may be triggered upon application for a home loan, and before a contract of sale for a property is exchanged. This restricts the Bank's ability to inform and educate a customer on their obligations to obtain building and contents insurance,

potentially resulting in poor customer outcomes. In some circumstances this could contribute to someone incurring loss with no insurance (for example, if the property is destroyed or is damaged during a natural disaster).

Lender's Mortgage Insurance (**LMI**) may arguably fall within the scope of the current draft legislation. LMI:

- is sold to a consumer but is for the benefit of the bank;
- is sold in relation to a principal mortgage product;
- is a product that manages financial risk for a bank;
- is a contract of insurance; and
- supports a robust and competitive first-home buyer mortgage market.

Suncorp argues LMI should not be captured because it covers a substantially different risk profile and is not a retail insurance product. Therefore, it should not fall within the category of add-on insurances covered by the reforms. If LMI was not omitted from the scope of the reform, it would impact on the ability of our customers, including first-home buyers, to gain access to affordable lending and the property market.

We also understand it is not the intention of Treasury to capture CTP insurance, a product that must be purchased before car registration under state law and is regulated by states. However, under the current drafting, it could be included given it is a product covered by the ASIC Act. Given this, it would be prudent for CTP to be explicitly excluded in this reform.

### **Wholesale clients**

The deferred sales model is aimed at enhancing protections for individuals and small businesses and applying the regime to retail clients (as that term is understood in the Corporations Act) is the most appropriate. We do not believe that the deferred sales model should be applied to wholesale or commercial insurance clients, who are typically larger, frequently buy insurance through a broker, who acts on their behalf. A wholesale client is also more likely to be informed when purchasing the product.

### **License arrangements**

We note that many financial services companies operate a portfolio of brands, where product features and price will differ between brands, offering customers the ability to find a product that is most suitable to their circumstances. Customers who have been offered an add-on insurance product may independently seek another quote directly from the same insurer but via a different brand in the four-day deferral period. This should be allowed for a customer seeking a quote from a brand that differs from the add-on insurance product. This would ensure a better customer experience for a customer shopping around.

### **Essentials Product Exemption**

Suncorp underwrites Australia's only micro-insurance product called *Essentials*. This product is designed for low-income Australians to help them insure their assets with a product that is suitable to their circumstances and needs.

Essentials is offered to customers who take out a No Interest Loan Scheme (NILS) loan or grant. The NILS product is distributed by 178 community organisations in partnership with Good Shepherd Microfinance. These organisations refer these customers to Essentials if it is appropriate to their needs. Suncorp currently have 5,000 customers who come to us through the Good Shepherd Microfinance provider network. We would ask that referrals of this nature be excluded from the Act. We believe that an exemption should be made for Essentials to continue its purpose of providing insurance to those who are often excluded from financial services.

## RC Recommendation 1.15: Enforceability of financial services industry codes

### Summary of Proposals

Suncorp makes the following proposals in relation to the Exposure Draft materials:

- *The ability for enforceable provisions of industry codes to be amended to strengthen customer protections, without requiring regulatory approval at the time of amendment. Regulatory approvals can then be made at a later date.*
- *On determining which provisions of an industry code are enforceable:*
  - *Industry bodies developing codes should initially nominate provisions to become enforceable, consistent with RC Recommendation 1.15.*
  - *ASIC to engage with industry to develop a clear process for determining which Code provisions are made enforceable including reasonable consultation periods. Suncorp notes the difficulty in enforcing code provisions that are not definitive in their nature.*
- *Only provisions which set out specific obligations and provide extra protection to customers beyond existing laws should be considered for enforceability.*
- *Before taking an action or hearing any matters related to a breach of an enforceable code provision, both ASIC and the Courts should be required to take into account any previous determinations or sanctions imposed in relation to the relevant conduct.*
- *To provide a level playing field, all participants in an industry should be encouraged to subscribe to the relevant industry code.*
- *ASIC to engage with industry and consumer groups to define what constitutes significant detriment.*

### Discussion

Suncorp supports measures that ensure financial service providers are accountable for delivering high-quality products and services to customers. Suncorp is a strong supporter of industry codes developed and maintained by our industry bodies, including the General Insurance Code of Practice (the GI Code), and the Code of Banking Practice (the Banking Code). The industry-appointed Chair of the ICA's Code Committee is from Suncorp, and we are actively leading the industry to work together to put the customers first and lift standards beyond the law. Suncorp has subscribed to the Banking Code of Practice since 2004.

### The role of voluntary industry codes and maintaining industry ability to amend Codes without regulatory approval

Industry codes play an important role in setting, articulating, and improving industry practice and consumer protection. They provide a benchmark for industry behaviours and practice and allow industry to respond quickly to changing community expectations without the need to wait for legislative amendments. This provides consumers with clarity on the service standards they can expect from industry, while ensuring the industry has a consistent approach to identifying consumer hardship and industry breaches. Codes also set clear expectation for industry behaviours and principles that strive to deliver greater consumer trust and confidence in the industry.

The Exposure Draft materials provide that before varying an approved code of conduct ASIC must approve any amendments. Suncorp is concerned that this approach will diminish the public's ability to have confidence that industry codes reflect community expectations and standards, particularly as they evolve. For example, negotiations between an industry and ASIC may require multiple iterations of a Code, before changes are formalised, creating a lack of certainty for customers.

Suncorp proposes that the enforceable codes regime should provide the ability for industry codes (including enforceable provisions) to be amended to *strengthen* customer protections, without requiring regulatory approval at the time of amendment. Revisions to regulatory approvals can be made at a later date, following appropriate consultation.

## **Nomination of and process of determining enforceable provisions**

Recommendation 1.15 from the Royal Commission indicated that industries with voluntary codes should be allowed to nominate the provisions that they wished to be made enforceable to ASIC. This would be followed by a negotiation with ASIC over the provisions to be designated as enforceable. Instead, the Exposure Draft materials suggest that ASIC will have the sole responsibility for determining the provisions that should be enforceable.

Suncorp proposes that the legislation be revised to be in line with the Royal Commission process. Industry bodies that develop and administer codes would initially nominate the provisions to be made enforceable. ASIC designation of enforceable provisions should then be a second step, following a reasonable period of consultation between ASIC and the relevant industry.

Suncorp believes ASIC should engage with the industry and consumer groups to define what would constitute significant detriment. The Exposure Draft sets out that ASIC may identify a code provision for enforceability through determining if a breach of that provision could result in significant detriment to the customer. However what one customer may define as significant detriment may differ from another. To ensure greater clarity for customers and the industry, Suncorp believes a clear set of guidelines for what constitutes significant detriment needs to be determined by all industry stakeholders.

We also note that ASIC should take regard of events and conditions that can be outside of the control of the insurer when it comes to meeting code obligations. Widescale natural catastrophes could impact our ability to meet an enforceable provision, and ASIC should have the ability to give relief from that obligation at appropriate times.

## **Interaction with other reforms and compliance regimes**

Interaction between the enforceable code regime and existing and forthcoming reporting regimes and laws must be considered, including the recent proposals for the Breach Reporting reform and the Financial Accountability Regime. Only provisions which provide protects above existing and forthcoming regimes and laws should be considered for enforceability.

Where there are new issues raised by a customer, as noted in our previous submission to Treasury on this reform we believe that it would be appropriate for AFCA to be able to hear those new issues. Other than in such a case, the enforceable code regime should not enable customers to re-prosecute concerns that have already been determined under other regulatory regimes or through an external dispute resolution process.

Similarly, Suncorp proposes that before taking an action or hearing any matters related to a breach of an enforceable code provision, both ASIC and the Courts should be required to take into account any previous determinations or sanctions imposed in relation to the relevant conduct.

Where possible, duplication must also be avoided in reporting. As it currently stands, Suncorp is monitored by two code enforcement bodies to ensure compliance with each code. The Banking Code Compliance Committee ('**BCCC**') monitors the bank code and the Code Governance Committee ('**CGC**') monitors the GI Code. It is unclear how these bodies will interact with ASIC when codes are enforceable. For example, where a code subscriber identifies a breach of an enforceable provision, will they be required to self-report to both the BCCC/CGC and to ASIC? The BCCC already has clear expectations for banks to report to ASIC any breaches of financial services legislation within a set timeframe. If double reporting is required there is the potential for the reporting process to become onerous and add to administrative burden for little benefit to customers.

Further, will a code subscriber be exposed to potential sanction from the relevant Code enforcement committee, as well as ASIC both in relation to code enforcement and under other regimes? Where the breach of the code, could also result in breaches of other financial service law requirements, for example any accountability obligations under FAR, it is unclear how the different reporting and penalty regimes will interact. There may also be circumstances where the code subscriber has already addressed the concern with the affected customer through AFCA or via self-reporting through the code enforcement framework. Again, it is unclear how different penalty and compensation regimes will work together.

While the role of Code-based enforcement bodies (such as the BCCC) may not be able to be provided for in legislation, the interaction between these bodies and ASIC is a critical aspect of the operation of code enforcement and should at least be discussed in Regulatory Guidance or formal arrangements between the various code regulators (including ASIC).

Where there are new issues raised by a customer, as noted in our previous submission to Treasury on this reform, we believe that it would be appropriate for AFCA to be able to hear those new issues. Other than in such a case, the enforceable code regime should not enable customers to re-prosecute concerns that have already been determined under other regulatory regimes or through an external dispute resolution process.

Suncorp proposes that before taking an action or hearing any matters related to a breach of an enforceable code provision, both ASIC and the Courts should be required to take into account any previous determinations, remediation undertaken and sanctions imposed in relation to the relevant conduct.

### **Compliance with Codes across industry**

Suncorp believes that codes should remain voluntary and industry driven. Signatories make significant investments in developing and implementing codes, demonstrating their commitment to their customers and differentiating themselves from non-signatory competitors. We would strongly encourage all industry participants to subscribe to the voluntary Codes, which is often a requirement of industry association membership.

The enforceable codes regime creates legal obligations that will apply to code subscribers but not to industry participants that do not subscribe to the relevant code. While our preference is for code subscription to remain voluntary, to ensure a level playing field in terms of legal obligations we suggest that all financial services providers should be required to subscribe to at least one of the codes relevant to their industry.<sup>5</sup> In addition to creating fairness between industry participants, this will also create greater consistency for consumers in understanding the obligations of participants in an industry.

While Suncorp is in favour of all participants in an industry being required to subscribe to a relevant industry code, we caution against this being achieved through the Government mandating code content, as outlined in the Exposure Draft materials. As is currently the case, industry should retain the role of driving development and improvement of codes and should remain able to quickly respond to community expectations.

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<sup>5</sup> For example, a customer-owned bank would have the option of subscribing to one or both of the Customer Owned Banking Association Code, or the Australian Banking Association Code.

## RC Recommendation 4.5: Duty to take reasonable care not to make a misrepresentation to an insurer

### Summary of Proposals

Suncorp proposes the following changes to the Exposure Draft materials:

- To preserve the existing effective, low-friction renewals process, clarify the operation of the proposed legislation in relation to the renewals process for ‘consumer insurance contracts’;
- To provide certainty for customers and insurers regarding the duty, amend the draft bill to include a provision that a customer’s failure to answer can be a misrepresentation.
- Revise the EM to clarify application of the misrepresentation regime to group policies of insurance that are not for life insurance and include examples.
- To remove uncertainty over the relationship between this reform and DDO, delete the reference to a product’s target market. Alternatively if the reference to a target market is retained, then Example 1.1 should refer to a specific type of product rather than a ‘consumer insurance contract’.
- To provide guidance to insurers and encourage steps to assist customers with vulnerabilities, revise the EM to refer to the effect on the duty of steps that insurers can take to address particular characteristics of customers, including through examples.

### Discussion

Each day, thousands of Australians enter into insurance policies and receive offers to renew policies. When doing so, they provide information to insurers that guides insurers on whether to accept the risk covered by the policy and determine the premium to be paid. The process of obtaining that information, and verifying it at renewal, is governed by the duty of disclosure regime set out in the *Insurance Contracts Act*. RC Recommendation 4.5 proposes to replace the existing duty of disclosure for ‘consumer contracts’ with a regime that requires a consumer to not make a misrepresentation to an insurer.

Suncorp welcomes this reform and supports the reduction of information asymmetry when insurance policies are sold. There are, however, several areas where the proposed amendments to the Insurance Contracts Act (*the IC Act*) require clarification in order for the misrepresentation model to operate smoothly, achieve the consumer protection objectives and provide certainty for insurers.

#### Renewals of ‘consumer insurance contracts’ – failure to answer

The current IC Act sets out an effective, low-friction renewals process that enables insurers to seek updates to information that customers have already provided. This process should be replicated in the regime to apply to consumer insurance contracts. In particular, insurers should not be required to effectively start a new quote process at the time of renewals (which would be a poor customer experience); rather, insurers should be permitted to rely on information previously provided and seek updates to that information (particularly for any ‘knock-out’ questions that would result in denial of coverage for claims).<sup>6</sup>

The existing IC Act provisions for the duty of disclosure address failures by a customer to respond to insurers’ questions, including provisions that address where an obviously incomplete or irrelevant answer is provided.<sup>7</sup> Both of these provisions are in Part IV of the IC Act, which will be retained but will no longer apply to ‘consumer insurance contracts’.

In the new regime to apply to ‘consumer insurance contracts’, clarification is required for how the relevant provision<sup>8</sup> would apply in the circumstances of a renewal, where a customer is asked to verify information

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<sup>6</sup> The latter approach, if adopted, would be consistent with the approach set out by ASIC in its draft Regulatory Guidance for the Design and Distribution Obligations – see *Attachment to CP 325 – Draft Regulatory Guide*. In particular, see p.56 (‘Reliance on existing information about the consumer’) and Example 14: Renewal of general insurance policies on pp.57-58.

<sup>7</sup> Current sections 21B(3) and 27.

<sup>8</sup> Section 20B(5).



previously provided, not new questions. This is particularly important for consumer contracts, which are most commonly transactions directly between customers and insurers.

The misrepresentation model implemented in the UK also allows for a failure to reply to be considered as a misrepresentation. An equivalent provision should be included in the Australian reform.

### **Definition of ‘consumer insurance contracts’**

Suncorp welcomes the proposed definition of ‘consumer insurance contracts’. The proposed definition provides an appropriate balance between the increased protections to be offered to consumers who require products for personal, domestic or household use, and other customers who are more sophisticated (and who often have advisors with specialist skill and expertise). Further, we welcome the focus on distinguishing consumer contracts from other contracts by reference to the products themselves, rather than an approach which focuses solely on the relevant customer’s features or other criteria that are not suited to distinguishing between consumers and more sophisticated customers (for example, the number of a business’ employees or the premium payable).

In relation to small business insurance, we will be moving to the misrepresentation model for AAMI and GIO packaged products, which are distributed directly to customers. We have adopted this approach so that small business customers who deal directly with us have the same protections as for consumer insurance contracts.

### **Group policies**

The Draft EM discusses the application of the misrepresentation regime to group life contracts, on the basis that a group life contract is a ‘consumer insurance contract’.

The EM does not discuss the application of the regime to other types of insurance contracts that can be issued on a group basis, sometimes for personal use by consumers – for example group travel insurance, fleet motor insurance (which can include vehicles used both for commercial purposes and vehicles for predominantly personal use), group personal accident insurance, or group public liability insurance. The EM should clarify the application of the regime to group policies that are not life insurance.

### **Target market for product – relevance to insured’s duty to not misrepresent**

The proposed list of factors to be taken into account when determining whether an insured complied with their duty includes *‘the type of insurance in question, and its target market’*.<sup>9</sup>

The target market for a product is the class of consumers for whom that product is likely to be consistent with their likely objectives, financial situation and needs of the consumer. The intention of the Design and Distribution Obligations is that a product should not be offered to a customer that does not fit within the product’s target market. Questions asked by insurers will assist them to determine whether a customer is within the product’s target market. The EM does not clearly explain why the target market for a product should affect the standard to which a customer should be held when responding to questions asked by the insurer, particularly when the other factors to be considered in assessing compliance with the duty already take into account the influence of the insurer’s questions on the customer’s replies. Further, the examples provided do not provide any clarity on this issue.

In the absence of any link between a product’s target market and the accuracy of a customer’s responses to questions asked of them, a product’s target market should not be a relevant factor when determining whether the customer has complied with the duty. Accordingly, we recommend this aspect of the proposal and relevant sections of the Explanatory Memorandum be deleted.

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<sup>9</sup> Section 20B(3).

### **Particular characteristics of the insured**

The discussion in paragraphs 1.45 to 1.48 of the EM focuses on the insurer's knowledge of particular characteristics of the insured and their effect on the duty the insured must comply with. But the EM does not mention the effect of any actions an insurer takes to address those characteristics or assist the insured.

For example, if an insurer is aware that a customer has a vision impairment and makes written materials available in a more accessible format (for example, in a larger font, or a format compatible with screen-reader technology) then would the standard expected of a customer to discharge their duty still be lowered (as in Example 1.9)? Similarly, where a customer on a telephone call has a strong accent and appears to have limited understanding of English, would the offer of a translation service act to offset any impact of those characteristics on the insured's duty?

In addition to highlighting the effect of particular characteristics on the duty, the EM should also discuss steps that insurers can take to address those characteristics. This would not only provide certainty for insurers regarding the operation of the duty but may also encourage insurers to provide services to assist vulnerable customers.

### **Commencement and transitional arrangements**

Suncorp welcomes the alignment of this reform with other reforms that will require amendments to disclosure documents, such as the introduction of Design and Distribution Obligations and the Unfair Contract Terms regime. This approach will reduce the number of updates to customer-facing documents, reducing confusion for customers and reducing the compliance burden for insurers.

## RC Recommendation 4.2: Restricting the use of the term ‘Insurance’ and ‘Insurer’

### Proposal

- *Suncorp supports this reform but notes that Superannuation Trustees offering insurance products issued by a licenced life insurer as part of their product should be able to offer these benefits as insurance.*

### Discussion

As a licenced insurer, Suncorp strongly supports the implementation of this recommendation to provide greater protections to consumers. However, we believe that the proposal could inadvertently restrict a superannuation trustee from appropriately describing the benefits offered within their super fund as ‘insurance’. As part of its superannuation offering, the trustee of the Suncorp Master Trust Suncorp, Suncorp Portfolio Services Limited (SPSL), can generally provide our wealth customers with a range of insurance products that are issued by a licensed life insurer through a third-party arrangement. These are life insurance (death and terminal illness), total & permanent disability and income protection cover. These products are often provided as default insurance cover for customers, to satisfy MySuper obligations for instance, or depending on the super offering, a customer can choose to take out insurance cover. This is reflected in our super PDS which detail insurance provided in accordance with the Corporations Act legislation. It is not unusual for a PDS to refer to these benefits as ‘insurance’.

Suncorp believes an exemption should be introduced to allow superannuation trustees to describe insurance products issued by a licenced life insurer as ‘insurance’ in disclosure documentation.

## RC Recommendation 3.2: No deducting advice fees from MySuper accounts

### Proposal

- *Suncorp believes the draft legislation should be expanded to allow the Trustee the flexibility to either gather the documentary evidence (as per the current drafting) or seek annual confirmation from the member through its own mechanisms.*

### Discussion

Suncorp supports the intent of the recommendation to ensure superannuation customers are not paying a fee for no service, or a fee for inappropriate service, and to provide greater clarity for customers around what service they receive for the fees they do pay.

However, Suncorp believes the proposed draft is too prescriptive on the steps required to be taken by the trustee when it determines if an ongoing advice fee should continue to be charged.

Requiring the Trustee to obtain copies of documentation of an agreement between the member and the adviser places unnecessary administrative burden on the trustee. Further, due to each advisor having their own standard form and agreement to obtain client consent, it adds risks associated with the potential misinterpretation of the large number of standard forms and agreements.

To reduce this risk Suncorp believes the draft legislation should be expanded to allow the trustee the flexibility to either gather the documentary evidence (as per the current drafting) or seek annual confirmation directly from the member.

For example, a secure online opt-in mechanism could be made available to members by the Trustee. This would present the member with the agreed duration (not to exceed 12 months), value and frequency of advice fee deduction which requires their consent in a more streamlined way. Such a method would both improve the servicing experience for the member and provide greater efficiency for the Trustee.

In addition, online solutions and/or outbound correspondence from the trustee also allows the trustee to ensure that the consent being provided by the member is precisely aligned to the workings of their product (such as enforcing maximum advice fee limits common in many superannuation products or limiting deduction frequencies to those offered by the trustee), providing greater consumer protections than the approach dictated by the current drafting. This flexibility also provides the trustee with an opportunity to remind the member that the fee charged must relate to superannuation advice permitted under the law.

## **RC Recommendations 2.8 and 7.2: Strengthening breach reporting requirements for AFS licensees**

### **Summary of Proposals**

- *Suncorp proposes a simpler system, similar to the breach reporting provided to Code Monitoring Committees, where all breaches are reported to ASIC above an agreed materiality threshold.*

### **Discussion**

Suncorp understands the desire for greater transparency over the breach reporting processes within each organisation, however we believe that the proposed regime is very complex without a corresponding improvement in customer outcomes. The Explanatory Memorandum states that the proposed scheme will *'provide greater certainty for industry, resulting in more consistent reporting, improved regulatory oversight and better outcomes for consumers.'* Suncorp is concerned that without changes to the Exposure Draft these objectives will not be met.

Suncorp proposes a simpler system, where all breaches are reported to ASIC above an agreed materiality threshold. This would remove the need for complex systems and processes to identify relevant breaches and investigations but would still provide ASIC with transparency over each organisation's breach processes at a material level. Materiality thresholds could be standardised in legislation. Alternatively, they could be set by ASIC according to industry-based or organisation size-based materiality thresholds, or on an individual basis according to the maturity of an organisation's operations and breach processes.

### **Inconsistency with ASIC Enforcement Review Taskforce recommendations**

The ASIC Enforcement Review Taskforce ('the Taskforce') recommended that the obligation to report investigations was intended to apply where investigations had been underway for 30 days and *no conclusion had been reached* on either the existence of the breach and/or its significance.

Suncorp supported the recommendations of the ASIC Enforcement Review Taskforce in its review of self-reporting of contraventions by financial services and credit licensees. Commissioner Hayne's Final Report endorsed the recommendations, however the proposal in the Exposure Draft differs from the Taskforce's recommendations.

The proposed obligation in new section 912DAB sets a much lower threshold, with reporting required regardless of whether the investigation finds any reasonable grounds to conclude that there has been a breach. It would also capture reporting of investigations that are completed within 30 days and where no breach is found. This will result in unnecessary reporting and duplication for entities, removing incentives for organisations to quickly determine the existence of a breach and move to a focus on remediation and improvement for customers.

Suncorp believes that the reform should align with the intended outcomes of the Taskforce. We support the ABA's submission on this point, which provides further explanation of the issue.

### **Additional Complexity**

Suncorp has significant concerns about the additional complexity of the proposed breach reporting requirements.

Currently, a licensee is required to consider whether:

- a breach of a relevant financial services law has occurred, and
- if so, whether the breach is significant, having regard to the factors set out in section 912D.

The proposed regime will have significantly more complex requirements, including assessment of whether a 'core' obligation has been breached, the significance of any breach, and reporting at both the start and conclusion of any investigation. These requirements will require increased resources and will increase a focus on meeting time-based requirements, rather than improving customer outcomes.

For the reasons discussed below, we believe there should be some materiality thresholds in relation to breaches of core obligations. As an alternative, the 'core' obligations deemed to be significant (per s.912D(5)) should be listed by ASIC in regulatory guidance. Regardless of the approach adopted, clear regulatory guidance from ASIC will also be required on the terms 'investigations', 'gross negligence', 'reasonably knows' and 'reasonable grounds to believe'.

### **Materiality**

The concept of 'deemed significance' will result in far greater numbers of breaches being reported to ASIC, diverting resources away from customer-focused programs.

The proposed definition of when a breach or likely breach of a core obligation is significant is very broad. One of the proposed criteria is that a breach will be significant if it attracts a civil penalty provision. There are civil penalty provisions for relatively minor breaches, meaning that the reporting requirements will be significantly expanded under the proposals. In order to comply with the new requirements, industry will need to invest heavily in systems, processes, training, monitoring and people resources to administer these requirements.

Suncorp suggests a materiality threshold be applied when considering the 'loss or damage' to customers. Under the current proposals, any loss as a result of a breach would be reportable. This is the case even where these are isolated and/or have quickly been identified and remediated. That result would drive up compliance costs for industry without any apparent benefit for customers. Suncorp recommends that a materiality threshold be applied, consistent with the Taskforce's recommendation. We note that relatively minor breaches are now civil penalty offences. Rather than all civil penalty provisions being deemed as a reportable situation, we suggest that Treasury consider incorporating a materiality threshold where the breach is administrative in nature.

### **Transition period**

We note it is proposed that this legislation will commence on 1 April 2021. As noted above, these changes to the breach reporting framework will require significant system changes and testing, training of staff, process design and implementation, monitoring and additional resources to ensure compliance with the new regime. It is likely that ASIC will be required to develop a regulatory guidance, which will be required before Suncorp can begin implementation.

If the legislation or regulatory guidance is delayed, Suncorp is concerned that we will not be given sufficient time to implement this reform, especially given the impact of other Royal Commission-related regulatory reforms. If this occurs, Suncorp believes a longer transition time will be required for entities to make the necessary changes outlined above.