





# **Financial Services Reform Amendment Act 2003**

**No. 141, 2003**

**An Act to amend the law relating to financial  
services and markets, and for other purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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**An Act to amend the law relating to financial  
services and markets, and for other purposes**

[Assented to 17 December 2003]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Financial Services Reform  
Amendment Act 2003*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Schedule 1	The 28th day after this Act receives the Royal Assent	14 January 2004
3. Schedule 2, items 1 to 46C	The day after this Act receives the Royal Assent	18 December 2003
3A. Schedule 2, items 46D, 46E and 46F	1 July 2004	1 July 2004
3B. Schedule 2, items 47 to 72	The day after this Act receives the Royal Assent	18 December 2003
3C. Schedule 2, item 72A	1 July 2004	1 July 2004
3D. Schedule 2, items 73 to 87	The day after this Act receives the Royal Assent	18 December 2003
4. Schedule 2, item 88	1 July 2004	1 July 2004
4A. Schedule 2, item 88A	1 July 2004	1 July 2004
5. Schedule 2, items 89 to 113	The day after this Act receives the Royal Assent	18 December 2003
5A. Schedule 3, items 1A to 1E	The day after this Act receives the Royal Assent	18 December 2003

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 3, item 1	The later of: (a) the commencement of item 25 of Schedule 2 to this Act; and (b) immediately after the commencement of item 29 of Schedule 1 to the <i>Taxation Laws Amendment Act (No. 5) 2003</i>	
7. Schedule 3, item 2	The day after this Act receives the Royal Assent	18 December 2003
8. Schedule 4	The day after this Act receives the Royal Assent	18 December 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

### **3 Schedule(s)**

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

**Schedule 1—Amendment of the Corporations Act 2001 relating to unsolicited offers to purchase financial products off-market**

**1 Section 760B (table item 9, column 3)**

Omit “and sale”, substitute “, sale and purchase”.

**2 Part 7.9 of Chapter 7 (heading)**

Repeal the heading, substitute:

**Part 7.9—Financial product disclosure and other provisions relating to issue, sale and purchase of financial products**

**3 Subsection 1010A(1)**

Omit “Division 6”, substitute “Divisions 5A and 6”.

**4 Subsection 1010A(1)**

Omit “that Division”, substitute “those Divisions”.

**5 Subsection 1010A(2)**

Omit “Division 6”, substitute “Divisions 5A and 6”.

**6 Subsection 1010B(1)**

Omit “Nothing in this Part”, substitute “Apart from Division 5A, nothing in this Part”.

**7 After Division 5 of Part 7.9**

Insert:

## **Division 5A—Unsolicited offers to purchase financial products off-market**

### **1019C Definitions**

In this Division:

*date of offer* has the meaning given by subsection 1019I(1).

*offeree*, in relation to an offer to which this Division applies, has the meaning given by subsection 1019D(1).

*offeror*, in relation to an offer to which this Division applies, has the meaning given by subsection 1019D(1).

*offer to which this Division applies* means an offer to which this Division applies because of section 1019D.

### **1019D Offers to which this Division applies**

- (1) This Division applies to an offer in relation to which the following paragraphs are satisfied:
  - (a) the offer is an unsolicited offer to purchase a financial product made by a person (the *offeror*) to another person (the *offeree*);
  - (b) the offer is made otherwise than on a licensed market;
  - (c) one or more of the following apply:
    - (i) the offer is made in the course of a business of purchasing financial products;
    - (ii) the offeror was not in a personal or business relationship with the offeree before the making of the offer;
    - (iii) the offer is made in circumstances specified in regulations made for the purposes of this subparagraph;
  - (d) the offer is not:
    - (i) made to the issuer of the financial products; or
    - (ii) to buy back shares under a buy-back authorised by section 257A; or
    - (iii) made under a compromise or arrangement approved at a meeting held as a result of an order under subsection 411(1) or (1A); or
    - (iv) to acquire securities under an off-market bid; or

- (v) to compulsorily acquire or buy out securities under Chapter 6A; or
  - (vi) to acquire shares from a dissenting shareholder under section 414; or
  - (vii) made in relation to particular financial products that are specified in regulations made for the purposes of this subparagraph; or
  - (viii) made in circumstances that are specified in regulations made for the purposes of this subparagraph;
- (e) the offer is made or received in this jurisdiction.
- (2) The regulations may clarify:
- (a) when an offer is, or is not, made in the course of a business of purchasing financial products; or
  - (b) when an offeror was, or was not, in a previous personal or business relationship with an offeree.

Regulations made for the purposes of this subsection have effect despite anything else in this section.

#### **1019E How offers are to be made**

- (1) An offer to which this Division applies must not be made otherwise than by sending an offer document in printed or electronic form to the offeree in accordance with the following requirements:
- (a) the document must be sent to an address of the offeree (which may be an electronic address);
  - (b) either the envelope or the container in which it is sent, or the message that accompanies it, must be addressed to the offeree.
- (2) The offer document must be sent to the offeree as soon as practicable after the date of offer.

#### **1019F Prohibition on inviting offers to sell**

A person must not invite another person to make an offer to sell a financial product in circumstances in which, if the invitation were instead an offer to purchase the financial product, that offer would be an offer to which this Division applies.

### **1019G Duration and withdrawal of offers**

- (1) An offer to which this Division applies cannot remain open more than 12 months after the date of offer.
- (2) The offer may be withdrawn by the offeror at any time, but not within 1 month of the date of offer.
- (3) The offer may only be withdrawn by the offeror by sending a withdrawal document in printed or electronic form to the offeree in accordance with paragraphs 1019E(1)(a) and (b). The withdrawal document must identify the offeror and be dated.
- (4) A purported withdrawal of the offer contrary to subsection (2) or (3) is ineffective.

### **1019H Terms of offer cannot be varied**

- (1) The terms of an offer to which this Division applies, as set out in the offer document, cannot be varied.
- (2) A purported variation of the terms of the offer is ineffective.
- (3) This section does not:
  - (a) affect the offeror's obligation under section 1019J to update the market value of the financial product to which the offer relates; or
  - (b) prevent the offeror from withdrawing the offer in accordance with section 1019G or paragraph 1019J(2)(a) and making another offer on different terms; or
  - (c) prevent the offeree from making a counter-offer on different terms.

### **1019I Contents of offer document**

- (1) The offer document by which an offer to which this Division applies is made must identify the offeror and be dated (this date is the *date of offer*).
- (2) The offer document must also contain the following:
  - (a) the price at which the offeror wishes to purchase the financial products;

- (b) if the financial product is able to be traded on a licensed market and there is a market value for the product as traded on that market—the market value of the product as at the date of offer;
  - (c) if paragraph (b) does not apply—a fair estimate of the value of the product as at the date of offer, and an explanation of the basis on which that estimate was made;
  - (d) the period during which the offer remains open (which must be consistent with subsection 1019G(1));
  - (e) a statement to the effect that the offer may be withdrawn by sending a withdrawal document to the offeree, but generally not within 1 month of the date of offer;
  - (f) any other information specified in regulations made for the purposes of this paragraph.
- (3) The regulations may clarify:
- (a) the manner in which a fair estimate of the value of a financial product (see paragraph (2)(c)) is to be worked out; and
  - (b) the level of detail required in the explanation of the basis on which the estimate was made.
- Regulations made for the purposes of this subsection have effect despite anything else in this section.
- (4) The offer document must be worded and presented in a clear, concise and effective manner.

### **1019J Obligation to update market value**

- (1) This section applies if:
- (a) the offer document by which an offer to which this Division applies is made states the market value of the financial product to which the offer relates as at the date of the offer; and
  - (b) while the offer remains open, there is an increase or decrease in the market value of the product when compared to:
    - (i) unless subparagraph (ii) applies—the market value (the ***currently stated value***) stated as mentioned in paragraph (a); or
    - (ii) if this section has previously applied in relation to the offer and one or more supplementary offer documents have been sent to the offeree—the market value (the

- currently stated value*) stated as mentioned in paragraph (3)(c) in the supplementary offer document most recently sent to the offeree; and
- (c) the increase or decrease, expressed as a percentage of the currently stated value, exceeds the percentage specified in the regulations for the purposes of this paragraph.
- (2) The offeror must, within 10 business days of this section applying because of a particular increase or decrease in value:
- (a) withdraw the offer by sending a withdrawal document, in printed or electronic form, to the offeree in accordance with paragraphs 1019E(1)(a) and (b):
- (i) that identifies the offeror and that is dated; and
- (ii) that contains a statement to the effect that the offer is withdrawn because of a change in the market value of the product, and that withdrawal for this reason is permitted even within 1 month of the date of offer; or
- (b) send a supplementary offer document (see subsection (3)) in printed or electronic form to the offeree in accordance with paragraphs 1019E(1)(a) and (b).
- Nothing in section 1019G affects the effectiveness of a withdrawal of the offer under paragraph (a) of this subsection.
- (3) A supplementary offer document must:
- (a) identify the offer to which it relates; and
- (b) be dated; and
- (c) state the market value of the financial product to which the offer relates as at that date; and
- (d) state the price that was stated in the offer document as required by paragraph 1019I(2)(a), and contain a statement to the effect that this is still the price at which the offeror wishes to purchase the product and that the terms of the offer remain unchanged; and
- (e) contain a statement to the effect that the document has been prepared because the market value of the product has changed.
- (4) A supplementary offer document must be worded and presented in a clear, concise and effective manner.

- (5) In this section, a reference to stating a market value of a financial product includes a reference to purporting to state the market value of the product.

### **1019K Rights if requirements of Division not complied with**

*First situation covered by this section—offers to which this Division applies*

- (1) This section applies if, in relation to an offer to which this Division applies, the offeree (the **seller**) accepts the offer and enters into a contract for the sale of the financial product to the offeror (the **buyer**), and one or more of the following paragraphs applies:
- (a) section 1019E was not complied with in relation to the offer;
  - (b) the offer was accepted after the period referred to in subsection 1019G(1);
  - (c) the offeror gave the offeree an offer document and either:
    - (i) the offer document did not comply with section 1019I; or
    - (ii) there was a misleading or deceptive statement in the offer document;
  - (d) in a situation to which section 1019J applies, either:
    - (i) subsection 1019J(2) was not complied with; or
    - (ii) subsection 1019J(2) was complied with, but the offeree did not receive the withdrawal document, or the supplementary offer document, as the case requires, until after the offeree had accepted the offer;
  - (e) in a situation to which section 1019J applies, the offeror gave the offeree a supplementary offer document and either:
    - (i) the supplementary offer document did not comply with subsection 1019J(3); or
    - (ii) there was a misleading or deceptive statement in the supplementary offer document.

*Second situation covered by this section—invitations prohibited by section 1019F*

- (2) This section applies if, in response to an invitation prohibited by section 1019F, a person (the **seller**) makes an offer to sell a financial product to the person who made the invitation (the

**buyer**), and that person accepts the offer and enters into a contract for the purchase of that financial product from the seller.

*Seller's right to refuse to transfer, or to seek the return of, the financial product*

- (3) The seller has:
- (a) the right to refuse to transfer the financial product to the buyer; or
  - (b) if the seller has already transferred the financial product to the buyer—the right to have the financial product returned to the seller, if the buyer still holds the product.

The seller's right under paragraph (a) or (b) is conditional on the seller repaying any money that has been paid to the seller for the purchase of the financial product.

*How the seller's right is to be exercised*

- (4) The seller's right under subsection (3) must be exercised by notifying the buyer in one of the following ways:
- (a) in writing;
  - (b) electronically;
  - (c) in any other way specified in regulations made for the purposes of this paragraph.

Also, if the regulations require the seller to comply with other requirements in order to exercise that right, those other requirements must be complied with.

- (5) The seller's right under subsection (3) can only be exercised during the period of 30 days starting on the day the contract was entered into.

*Effect of exercise of seller's right*

- (6) On the exercise of the seller's right under subsection (3), the contract referred to in subsection (1) or (2) is, by force of this section, terminated from that time without penalty to the seller.

*Regulations may provide for certain matters*

- (7) The regulations may provide for consequences and obligations (in addition to those provided for by subsection (6)) to apply if the seller's right under subsection (3) is exercised.
- (8) The regulations may provide that, in specified circumstances, the amount to be repaid as mentioned in subsection (3) is to be increased or reduced in accordance with the regulations.

**8 Paragraph 1020E(7)(a)**

After "paragraph (b)", insert "or (c)".

**9 At the end of subsection 1020E(7)**

Add:

- ; or (c) if subparagraph (1)(a)(i) applies and the disclosure document or statement is an offer document of a kind referred to in section 1019E or a supplementary offer document of a kind referred to in section 1019J—the offeror referred to in subsection 1019D(1).

**10 At the end of Subdivision A of Division 7 of Part 7.9**

Add:

**1021P Offences relating to offers to which Division 5A applies**

*Failure to comply with requirements of section 1019E relating to how offers are made*

- (1) A person commits an offence if:
  - (a) the person makes an offer; and
  - (b) the offer is an offer to which Division 5A applies (see section 1019D); and
  - (c) in making the offer, the person fails to comply with a requirement of section 1019E.

*Contravening section 1019F by inviting offers to sell*

- (2) A person commits an offence if:
  - (a) the person invites another person to make an offer to sell a financial product; and

- (b) in making the invitation, the person contravenes section 1019F.

*Failure to comply with requirements of section 1019G relating to duration and withdrawal of offers*

- (3) A person commits an offence if:
  - (a) the person makes an offer; and
  - (b) the offer is an offer to which Division 5A applies (see section 1019D); and
  - (c) either:
    - (i) the offer remains open for longer than is permitted by subsection 1019G(1); or
    - (ii) in purporting to withdraw the offer, the person fails to comply with a requirement of subsection 1019G(2) or (3).

*Failure to comply with requirements of section 1019I relating to price or value*

- (4) A person commits an offence if:
  - (a) the person makes an offer; and
  - (b) the offer is an offer to which Division 5A applies (see section 1019D); and
  - (c) the person gives the offeree an offer document; and
  - (d) either:
    - (i) the offer document does not comply with paragraph 1019I(2)(a), (b) or (c); or
    - (ii) material of a kind referred to in paragraph 1019I(2)(a), (b) or (c) that is included in the offer document is misleading or deceptive.

*Failure to comply with other requirements of section 1019I*

- (5) A person commits an offence if:
  - (a) the person makes an offer; and
  - (b) the offer is an offer to which Division 5A applies (see section 1019D); and
  - (c) the person gives the offeree an offer document; and
  - (d) either:

- (i) the offer document does not comply with subsection 1019I(1), or paragraph 1019I(2)(d), (e) or (f); or
- (ii) material of a kind referred to in subsection 1019I(1), or paragraph 1019I(2)(d), (e) or (f), that is included in the offer document is misleading or deceptive.

*Failure to comply with requirements of section 1019J*

- (6) A person commits an offence if:
  - (a) the person makes an offer; and
  - (b) the offer is an offer to which Division 5A applies (see section 1019D); and
  - (c) section 1019J applies because of an increase or decrease in the market value of the financial product to which the offer relates; and
  - (d) one of the following subparagraphs applies:
    - (i) the person fails to comply with subsection 1019J(2) in relation to that increase or decrease; or
    - (ii) the person gives the offeree a supplementary offer document in relation to that increase or decrease, but that document does not comply with subsection 1019J(3); or
    - (iii) the person gives the offeree a supplementary offer document in relation to that increase or decrease, but material of a kind referred to in subsection 1019J(3) that is included in that document is misleading or deceptive.

**11 Subsection 1022A(1) (at the end of the definition of *defective*)**

Add:

- ; or (e) if it is an offer document of a kind referred to in section 1019E—there is an omission from the document of material required by section 1019I; or
- (f) if it is a supplementary offer document of a kind referred to in section 1019J—there is an omission from the document of material required by subsection 1019J(3).

**12 Subsection 1022A(1) (at the end of the definition of *disclosure document or statement*)**

Add:

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- ; or (d) an offer document of a kind referred to in section 1019E; or
- (e) a supplementary offer document of a kind referred to in section 1019J.

### **13 After paragraph 1022B(1)(a)**

Insert:

- (aa) a person makes an offer to which Division 5A applies (see section 1019D) to another person (the *client*) otherwise than by sending the client an offer document in accordance with section 1019E; or
- (ab) a person makes an invitation prohibited by section 1019F to another person (the *client*); or
- (ac) a person:
  - (i) is required by subsection 1019J(2), in relation to an offer made to another person (the *client*), to send the client a withdrawal document or a supplementary offer document; and
  - (ii) does not send (in accordance with paragraphs 1019E(1)(a) and (b)) the client anything purporting to be either of those things by the time they are required to do so; or

### **14 Subparagraph 1022B(1)(c)(i)**

After “statement” (first occurring), insert “(other than an offer document of a kind referred to in section 1019E or a supplementary offer document of a kind referred to in section 1019J)”.

### **15 After subparagraph 1022B(1)(c)(i)**

Insert:

- (ia) makes an offer to which Division 5A applies (see section 1019D) by sending another person (the *client*) an offer document in accordance with section 1019E, but that offer document is defective; or
- (ib) in a situation to which section 1019J applies, sends a person (the *client*) a supplementary offer document in accordance with that section but that supplementary offer document is defective; or

### **16 After paragraph 1022B(2)(a)**

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Insert:

- (aa) if paragraph (1)(aa) applies—because the client was not sent an offer document in accordance with section 1019E; or
- (ab) if paragraph (1)(ab) applies—because the client received an invitation prohibited by section 1019F rather than being sent an offer document in accordance with section 1019E; or
- (ac) if paragraph (1)(ac) applies—because the client was not sent a withdrawal document or a supplementary offer document as required by subsection 1019J(2); or

**17 Paragraph 1022B(2)(c)**

After “given”, insert “or sent”.

**18 Subsection 1022B(2)**

After “paragraph (a),”, insert “(aa), (ab), (ac),”.

**19 Paragraph 1022B(3)(a)**

After “paragraph (1)(a)”, insert “, (aa), (ab), (ac)”.

**20 Paragraph 1022B(3)(b)**

After “paragraph (1)(c)”, insert “(other than subparagraph (1)(c)(ia) or (ib))”.

**21 After paragraph 1022B(3)(b)**

Insert:

- (ba) if subparagraph (1)(c)(ia) or (ib) applies—the person who made the offer; or

**22 Paragraph 1022B(5)(a)**

After “paragraph (1)(c)”, insert “(other than subparagraph (1)(c)(ia) or (ib))”.

**23 After paragraph 1438(2)(e)**

Insert:

- (ea) Division 5A (unsolicited offers to purchase financial products off-market);

**24 Schedule 3 (after table item 309A)**

Insert:

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Amendment of the Corporations Act 2001 relating to unsolicited offers to purchase  
financial products off-market **Schedule 1**

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309AA	Subsection 1021P(1)	100 penalty units or imprisonment for 2 years, or both.
309AB	Subsection 1021P(2)	100 penalty units or imprisonment for 2 years, or both.
309AC	Subsection 1021P(3)	50 penalty units.
309AD	Subsection 1021P(4)	100 penalty units or imprisonment for 2 years, or both.
309AE	Subsection 1021P(5)	50 penalty units.
309AF	Subsection 1021P(6)	50 penalty units.

## Schedule 2—Other amendments of the Corporations Act 2001

### 1A Section 9

Insert:

*body regulated by APRA* has the meaning given by subsection 3(2) of the *Australian Prudential Regulation Authority Act 1998*.

### 1 Section 9 (definition of *declared professional body*)

Repeal the definition.

### 2 Section 9 (both definitions of *dispose*)

Repeal the definitions, substitute:

*dispose* has a meaning affected by the following paragraphs:

- (a) when used in relation to financial products in a provision outside Chapter 7, otherwise than in a situation to which paragraph (b) applies, *dispose* has the same meaning as it has in Chapter 7;
- (b) for the purposes of Chapter 6, a person who has a relevant interest in securities *disposes* of the securities if, and only if, they cease to have a relevant interest in the securities.

### 3 Section 9 (definition of *licence*)

Repeal the definition.

### 4 Section 9 (definition of *licensee*)

Repeal the definition.

### 4A Section 9 (paragraph (b) of the definition of *professional investor*)

Repeal the paragraph, substitute:

- (b) the person is a body regulated by APRA, other than a trustee of any of the following (within the meaning of the *Superannuation Industry (Supervision) Act 1993*):
  - (i) a superannuation fund;
  - (ii) an approved deposit fund;

- (iii) a pooled superannuation trust;
- (iv) a public sector superannuation scheme;

**5 Section 9 (definition of *responsible officer*)**

Omit “a licence”, substitute “an Australian financial services licence”.

**6 Section 761A (subparagraph (c)(ii) of the definition of *basic deposit product*)**

Omit “2 years”, substitute “5 years”.

**7 Section 761A (paragraph (d) of the definition of *basic deposit product*)**

Before “funds”, insert “unless subparagraph (c)(ii) applies and the period referred to in that subparagraph expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility—”.

**7A Section 761A (definition of *body regulated by APRA*)**

Repeal the definition.

**8 Section 761A (definition of *declared professional body*)**

Repeal the definition.

**9 Section 761A**

Insert:

*employer-sponsor* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**9A Section 761A (definition of *execution-related telephone advice*)**

Repeal the definition.

**9B Section 761A**

Insert:

*further market-related advice* means advice to which subsection 946B(1) applies.

## 10 Section 761A

Insert:

*self-managed superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

## 11 Section 761A

Insert:

*superannuation entity* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

## 12 After paragraph 761E(3A)(a)

Insert:

- (aa) an employer of the client making a further contribution, for the benefit of the client, to a superannuation fund of which the client is already a member;

## 12A After subsection 764A(1)

Insert:

- (1A) If a single contract of insurance provides 2 or more kinds of cover, paragraph (1)(d) applies separately in relation to that contract, in relation to each of those kinds of cover, as if the contract only provided that kind of cover.

Note: Because of this subsection (including as it is affected by subsection (1B)), a single contract of insurance may constitute 2 or more separate general insurance products.

- (1B) If a contract of insurance provides a kind of cover in relation to 2 or more kinds of asset, subsection (1A) applies to the contract, in relation to each of those kinds of asset, as if the cover provided by the contract in relation to that kind of asset constituted a separate kind of cover.

## 12B Subsection 764A(2)

After “paragraphs (1)(d), (e) and (f)”, insert “and subsections (1A) and (1B)”.

## 13 Subsection 766B(1)

Omit all the words from and including “However”.

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**13A After subsection 766B(1)**

Insert:

- (1A) However, subject to subsection (1B), the provision or giving of an exempt document or statement does not constitute the provision of financial product advice.
- (1B) Subsection (1A) does not apply for the purpose of determining whether a recommendation or statement of opinion made by an outside expert, or a report of such a recommendation or statement of opinion, that is included in an exempt document or statement is financial product advice provided by the outside expert.

**13B Subsection 766B(9)**

Insert:

*outside expert*, in relation to an exempt document or statement, means an expert who is not:

- (a) the person by whom, or on whose behalf, the exempt document or statement was prepared; or
- (b) an employee or director of that person.

**14 Subsection 766C(7)**

Omit “not to be”, substitute “to be, or not to be”.

**15 At the end of subsection 766C(7)**

Add “Regulations made for the purposes of this subsection have effect despite anything else in this section.”.

**16 At the end of paragraph 766E(3)(c)**

Add “by the trustees of that fund or trust”.

**17 After paragraph 766E(3)(c)**

Insert:

- (ca) the operation of a statutory fund by a life company (within the meaning of the *Life Insurance Act 1995*);

**18 Subsection 854B(2)**

Repeal the subsection.

**25 Paragraph 911A(2)(h)**

Repeal the paragraph, substitute:

(h) all of the following apply:

- (i) the person is regulated by an overseas regulatory authority;
- (ii) the provision of the service by the person is covered by an exemption specified by ASIC in writing under this subparagraph and published in the *Gazette*; and
- (iii) the service is provided only to wholesale clients;

**26 Paragraph 911A(2)(j)**

Omit “(within the meaning of the *Superannuation Industry (Supervision) Act 1993*)”.

**27 Section 911A(5)**

After “or an exemption”, insert “under subparagraph (2)(h)(ii) or”.

**28 Paragraph 911A(5)(b)**

After “an exemption”, insert “under subparagraph (2)(h)(ii) or”.

**29 Paragraph 911C(d)**

Omit “or” (last occurring).

**30 Paragraph 911C(e)**

Repeal the paragraph.

**31 Paragraph 911C(f)**

Repeal the paragraph.

**32 At the end of subsection 912C(1A)**

Add:

- ; and (d) may require a statement containing information to be provided on a periodic basis, or each time a particular event or circumstance occurs, without ASIC having to give a further written notice.

**33 Subsection 912C(2)**

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Omit “such a statement”, substitute “a statement, or each statement in a class of statements, under subsection (1)”.

### **34 After section 912C**

Insert:

#### **912CA Regulations may require information to be provided**

The regulations may require a financial services licensee, or each financial services licensee in a class of financial services licensees, to provide ASIC with specified information about:

- (a) the financial services provided by the licensee or its representatives; or
- (b) the financial services business carried on by the licensee.

### **35 Subsection 912D(1)**

Repeal the subsection (including the note), substitute:

(1) If:

- (a) a financial services licensee breaches, or is likely to breach:
  - (i) any of the obligations under section 912A or 912B, other than the obligation under paragraph 912A(1)(c); or
  - (ii) the obligation under paragraph 912A(1)(c), so far as it relates to provisions of this Act or the ASIC Act referred to in paragraphs (a), (b) and (c) of the definition of *financial services law* in section 761A; or
  - (iii) the obligation under paragraph 912A(1)(c), so far as it relates to Commonwealth legislation that is covered by paragraph (d) of that definition and that is specified in regulations made for the purposes of this subparagraph; and
- (b) the breach, or likely breach, is significant, having regard to the following:
  - (i) the number or frequency of similar previous breaches;
  - (ii) the impact of the breach or likely breach on the licensee’s ability to provide the financial services covered by the licence;

- (iii) the extent to which the breach or likely breach indicates that the licensee's arrangements to ensure compliance with those obligations is inadequate;
- (iv) the actual or potential financial loss to clients of the licensee, or the licensee itself, arising from the breach or likely breach;
- (v) any other matters prescribed by regulations made for the purposes of this paragraph;

the licensee must give a written report on the matter to ASIC as soon as practicable, and in any case within 5 business days, after becoming aware of the breach or likely breach.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (1A) For the purposes of subsection (1), a financial services licensee is **likely to breach** an obligation referred to in that subsection if, and only if, the person is no longer able to comply with the obligation.

### 36 Subsection 912F(1)

Repeal the subsection (including the note), substitute:

- (1) Whenever a financial services licensee identifies itself in a document of a kind specified in regulations made for the purposes of this subsection, the document must include the licensee's licence number (see section 913C).

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

### 37 Subsection 916F(1)

Omit "10 business days", substitute "15 business days".

### 38 After subsection 916F(1)

Insert:

- (1AA) Subsection (1) does not apply to an authorisation of a representative if:
- (a) the authorisation is by a body corporate and is given as mentioned in section 916B; and
  - (b) the relevant consent under subsection 916B(5) was given in respect of a specified class of individuals of which the representative is a member; and

- (c) the representative is an employee of the body corporate; and
- (d) the only financial services that the representative is authorised to provide are either or both of the following:
  - (i) general advice that relates to financial products covered by regulations made for the purposes of this paragraph;
  - (ii) dealing in financial products covered by regulations made for the purposes of this paragraph.

Note 1: Regulations made for the purposes of paragraph (d) may be expressed to cover all financial products, or only one or more specified kinds of financial products.

Note 2: A defendant bears an evidential burden in relation to the matters in subsection (1AA). See subsection 13.3(3) of the *Criminal Code*.

### **39 Subsection 916F(1A)**

Omit “10 business days”, substitute “15 business days”.

### **40 Paragraph 916F(3)(b)**

Repeal the paragraph, substitute:

- (b) the person revokes an authorisation to which subsection (1) applied.

### **41 Paragraph 920A(1)(d)**

Repeal the paragraph.

### **42 At the end of Part 7.6**

Add:

## **Division 12—Miscellaneous**

### **926A Exemptions and modifications by ASIC**

- (1) The *provisions to which this section applies* are all provisions of this Part other than Divisions 4 and 8.
- (2) ASIC may:
  - (a) exempt a person or class of persons from all or specified provisions to which this section applies; or
  - (b) exempt a financial product or class of financial products from all or specified provisions to which this section applies; or

- (c) declare that provisions to which this section applies apply in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.
- (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (4) An exemption or declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* if the exemption or declaration is expressed to apply in relation to a class of persons or a class of financial products (whether or not it is also expressed to apply in relation to one or more persons or products identified otherwise than by reference to membership of a class).
- (4A) If subsection (4) does not apply to an exemption or declaration, the exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
- (5) If conduct (including an omission) of a person would not have constituted an offence if a particular declaration under paragraph (2)(c) had not been made, that conduct does not constitute an offence unless, before the conduct occurred (in addition to complying with the requirements of subsection 48(1) of the *Acts Interpretation Act 1901* as applying because of section 46A of that Act, or with the gazettal requirement of subsection (4A), as the case may be):
- (a) the text of the declaration was made available by ASIC on the Internet; or
  - (b) ASIC gave written notice setting out the text of the declaration to the person.
- In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (a) or (b) was complied with before the conduct occurred.
- (6) For the purpose of this section, the ***provisions to which this section applies*** include:
- (a) definitions in this Act, or in the regulations, as they apply to references in those provisions; and

- (b) any provisions of Part 10.2 (transitional provisions) that relate to those provisions.

Note: Because of section 761H, a reference to the provisions to which this section applies, or to provisions of Part 10.2, also includes a reference to regulations or other instruments made for the purposes of those provisions.

### **926B Exemptions and modifications by regulations**

- (1) The regulations may:
  - (a) exempt a person or class of persons from all or specified provisions of this Part; or
  - (b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or
  - (c) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.
- (2) For the purpose of this section, the *provisions of this Part* include:
  - (a) definitions in this Act, or in the regulations, as they apply to references in this Part; and
  - (b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

### **43 Subsection 940C(1)**

Omit “, or information or a statement that section 950D or 950E requires to be given,”.

### **44 Paragraph 940C(6)(c)**

Repeal the paragraph.

### **45 Subsection 941C(6)**

Omit “or otherwise relates to,” substitute “is the provision of financial product advice (see section 766B) about, or in any other way relates to,”.

### **45A Paragraph 942B(2)(g)**

Omit “execution-related telephone advice (see section 946B),” substitute “further market-related advice (see subsection 946B(1))”.

### **45B Subparagraph 942B(2)(g)(i)**

Omit “execution-related telephone advice”, substitute “further market-related advice”.

**45C Paragraphs 942B(8)(a) and (b)**

Omit “execution-related telephone advice”, substitute “further market-related advice”.

**45D Paragraph 942C(2)(h)**

Omit “execution-related telephone advice (see section 946B)”, substitute “further market-related advice (see subsection 946B(1))”.

**45E Subparagraph 942C(2)(h)(i)**

Omit “execution-related telephone advice”, substitute “further market-related advice”.

**45F Paragraphs 942C(8)(a) and (b)**

Omit “execution-related telephone advice”, substitute “further market-related advice”.

**46 After section 942D**

Insert:

**942DA Combining a Financial Services Guide and a Product Disclosure Statement in a single document**

- (1) A Financial Services Guide and a Product Disclosure Statement may be combined in a single document (a *combined FSG and PDS*) in circumstances specified in regulations made for the purposes of this section.
- (2) Those regulations may also provide that this Chapter applies in relation to a combined FSG and PDS as if specified provisions were omitted, modified or varied as specified in the regulations.
- (3) A Financial Services Guide and a Product Disclosure Statement must not be combined in a single document except as permitted under subsection (1).

**46A Subsections 946B(1) and (2)**

Repeal the subsections, substitute:

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*Further market-related advice*

- (1) The providing entity does not have to give the client a Statement of Advice for particular advice (the **further market-related advice**) if:
- (a) the providing entity is a participant in a licensed market, or is an authorised representative of a participant in a licensed market; and
  - (b) the providing entity has previously given the client a Statement of Advice that set out the client's relevant personal circumstances in relation to the advice (the **previous advice**) set out in that Statement; and
  - (c) the further market-related advice recommends that the client:
    - (i) acquire or dispose of, or not acquire or dispose of; or
    - (ii) accept or refuse an offer or invitation which, if accepted, would result in the client acquiring or disposing of, or offering to acquire or dispose of; securities, managed investment products or derivatives that are able to be traded on a licensed market; and
  - (d) the following conditions are satisfied:
    - (ia) the providing entity has, either immediately before the further market-related advice is given, or within the preceding 12 months, checked with the client whether the client's objectives, financial situation and needs have changed since the last time the providing entity checked with the client about those matters; and
    - (i) the client's relevant personal circumstances in relation to the further market-related advice (determined having regard to the client's objectives, financial situation and needs as currently known to the providing entity) are not significantly different from the client's relevant personal circumstances in relation to the previous advice; and
    - (ii) so far as the basis on which advice is given relates to other matters—the basis on which the further market-related advice is given is not significantly different from the basis on which the previous advice was given; and
  - (e) the providing entity has a reasonable belief that:
    - (i) the client requires the further market-related advice to be provided promptly; or
-

- (ii) it is in the client's interests that the further market-related advice be provided promptly; and
- (f) either:
  - (i) the further market-related advice does not contain any other kind of financial product advice; or
  - (ii) the only other kind of financial product advice contained in the further market-related advice is cash management facility advice; and
- (g) the further market-related advice is given:
  - (i) by telephone; or
  - (ii) by fax; or
  - (iii) by e-mail; or
  - (iv) by another kind of electronic communication specified in regulations made for the purposes of this subparagraph.

Note: Paragraphs 947B(2)(b) and 947C(2)(b) require a Statement of Advice to include information about the basis on which the advice is or was given, which may include the client's relevant personal circumstances, in which case paragraph (b) of this subsection would be satisfied.

(2) For the purposes of subsection (1):

***able to be traded on a licensed market*** means:

- (a) in relation to securities or managed investment products—either:
  - (i) the securities or products are admitted to quotation on a licensed market and their admission to quotation is not suspended; or
  - (ii) the securities or products are not admitted to quotation on a licensed market, but are further securities or products of a kind that are already admitted to quotation on the market and whose admission to quotation is not suspended; and
- (b) in relation to derivatives:
  - (i) the standard terms of the arrangement that constitutes the derivative are set out in the operating rules of a licensed market; and
  - (ii) under the operating rules of that market, the derivatives are able to be dealt with on the market.

***cash management facility*** means:

- (a) an interest in a registered scheme of a kind commonly known as a cash common fund or a cash management trust; or
- (b) a basic deposit product; or
- (c) a bank accepted bill.

*cash management facility advice* means advice about the use (but not the establishment) of a cash management facility in connection with an acquisition or disposal of securities, managed investment products or derivatives to which the further market-related advice relates.

**46B Subsection 946B(3)**

Omit “at the same time as the advice is provided to the client”, substitute “in the same communication as is used to provide the further market-related advice to the client”.

**46C Subsection 946B(3A)**

Omit “the advice”, substitute “the further market-related advice”.

**46D At the end of subsection 947B(2)**

Add:

- ; and (h) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (d) and subparagraph (e)(i), any amounts are to be stated in dollars.

**46E At the end of subsection 947C(2)**

Add:

- ; and (i) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (e) and subparagraph (f)(i), any amounts are to be stated in dollars.

**46F At the end of subsection 947D(2)**

Add:

- ; (d) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (a), any amounts are to be stated in dollars.

**47 At the end of Subdivision D of Division 3 of Part 7.7**

Add:

**947E Statement of Advice not to be combined with Financial Services Guide or Product Disclosure Statement**

A Statement of Advice must not be combined in a single document with a Financial Services Guide or a Product Disclosure Statement.

**47A At the end of subsection 949A(1)**

Add:

; and (c) the advice is not provided in circumstances specified in regulations made for the purposes of this paragraph.

**48 Subsection 951B(1)**

Omit “, subject to subsection (2)”.

**49 Subsection 951B(2)**

Repeal the subsection.

**50 At the end of subsection 951B(6)**

Add:

Note: Because of section 761H, a reference to this Part or Part 10.2 also includes a reference to regulations or other instruments made for the purposes of this Part or Part 10.2 (as the case requires).

**51 At the end of Division 6 of Part 7.7**

Add:

**951C Exemptions and modifications by regulations**

- (1) The regulations may:
  - (a) exempt a person or class of persons from all or specified provisions of this Part; or
  - (b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or
  - (c) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.
- (2) For the purpose of this section, the *provisions of this Part* include:
  - (a) definitions in this Act, or in the regulations, as they apply to references in this Part; and

- (b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

**52 Subsection 952B(1) (paragraph (b) of the definition of *defective*)**

Omit “or by section 950D or 950E” (wherever occurring).

**53 Subsection 952B(1) (paragraph (d) of the definition of *disclosure document or statement*)**

Omit “or by section 950D or 950E”.

**53A After subsection 952B(1)**

Insert:

- (1A) For the avoidance of doubt, if section 941E (information must be up to date) is not complied with in relation to a Financial Services Guide, then, for the purposes of the definition of *defective* in subsection (1):

- (a) if the circumstance constituting the non-compliance is that particular information included in the Financial Services Guide is not as up to date as section 941E requires it to be—the information so included constitutes a misleading statement in the Financial Services Guide; and
- (b) if the circumstance constituting the non-compliance is a failure to include particular information that was not previously required to be included in the Financial Services Guide—the failure to include the information constitutes an omission from the Statement of material required by section 942B or 942C.

Note 1: The effect of section 943D (information in a Supplementary Financial Services Guide is taken to be contained in the Financial Services Guide it supplements) must be taken into account in determining whether section 941E is complied with in relation to a Financial Services Guide.

Note 2: Whether the inclusion of out of date information, or the failure to include information, results in the Financial Services Guide being *defective* as defined in subsection (1) depends on whether the materiality test set out in that definition is satisfied.

**54 Paragraph 952I(1)(b)**

After “942B(5)”, insert “or 942DA(3)”.

**55 Paragraph 952I(2)(b)**

After “942B(5)”, insert “or 942DA(3)”.

**56 Paragraph 952J(1)(b)**

After “947A”, insert “or “947E”.

**57 Subsection 953A(1) (paragraph (b) of the definition of *defective*)**

Omit “or by section 950D or 950E” (wherever occurring).

**58 Subsection 953A(1) (paragraph (d) of the definition of *disclosure document or statement*)**

Omit “or by section 950D or 950E”.

**58A After subsection 953A(1)**

Insert:

(1A) For the avoidance of doubt, if section 941E (information must be up to date) is not complied with in relation to a Financial Services Guide, then, for the purposes of the definition of *defective* in subsection (1):

- (a) if the circumstance constituting the non-compliance is that particular information included in the Financial Services Guide is not as up to date as section 941E requires it to be—the information so included constitutes a misleading statement in the Financial Services Guide; and
- (b) if the circumstance constituting the non-compliance is a failure to include particular information that was not previously required to be included in the Financial Services Guide—the failure to include the information constitutes an omission from the Statement of material required by section 942B or 942C.

Note: The effect of section 943D (information in a Supplementary Financial Services Guide is taken to be contained in the Financial Services Guide it supplements) must be taken into account in determining whether section 941E is complied with in relation to a Financial Services Guide.

**59 Paragraph 953B(1)(c)**

Omit “, 949B, 950B or 950C”, substitute “or 949B”.

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**60 Paragraph 953B(3)(a)**

Omit “or a member of a declared professional body”.

**61 Subparagraph 981B(1)(b)(i)**

Omit “behalf or”, substitute “behalf of”.

**62 Subsection 981H(1)**

Omit “subsections (2) and (3)”, substitute “subsection (3)”.

**63 Subsection 981H(2)**

Repeal the subsection.

**64 At the end of section 992A**

Add:

- (5) For the purposes of this section:
  - (a) a reference to offering a financial product for issue (or offering to issue a financial product) includes a reference to inviting an application for the issue of the financial product; and
  - (b) a reference to offering a financial product for sale (or offering to sell a financial product) includes a reference to inviting an offer to purchase the financial product.

**65 At the end of section 992AA**

Add:

- (3) For the purposes of this section:
  - (a) a reference to offering interests in a managed investment scheme for issue includes a reference to inviting an application for the issue of interests in the scheme; and
  - (b) a reference to offering interests in a managed investment scheme for sale includes a reference to inviting an offer to purchase interests in the scheme.

**66 Subsection 992B(1)**

Omit “, subject to subsection (2)”.

**67 Subsection 992B(2)**

Repeal the subsection.

**68 At the end of subsection 992B(6)**

Add:

Note: Because of section 761H, a reference to this Part or Part 10.2 also includes a reference to regulations or other instruments made for the purposes of this Part or Part 10.2 (as the case requires).

**69 At the end of Division 8 of Part 7.8**

Add:

**992C Exemptions and modifications by regulations**

- (1) The regulations may:
  - (a) exempt a person or class of persons from all or specified provisions of this Part; or
  - (b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or
  - (c) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.
- (2) For the purpose of this section, the *provisions of this Part* include:
  - (a) definitions in this Act, or in the regulations, as they apply to references in this Part; and
  - (b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

**70 After subsection 1012D(2)**

Insert:

*Recommendation or issue situation—interests in self-managed superannuation funds*

- (2A) In a recommendation situation or issue situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if:
  - (a) the financial product is an interest in a self-managed superannuation fund; and
  - (b) the regulated person believes on reasonable grounds that the client has received, or has, and knows that they have, access

to, all of the information that the Product Disclosure Statement would be required to contain.

*Recommendation, issue or sale situation—no information required to be in Product Disclosure Statement*

- (2B) In a recommendation situation, issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if, because of section 1013F, no information would be required to be included in the Statement.

**71 At the end of subsection 1012D(10)**

Add:

- ; and (c) a reference to information that a Product Disclosure Statement would be required to contain includes a reference to information that would be required to be in any statement that the Product Disclosure Statement would be required to contain.

Note: The following heading to subsection 1012D(10) is inserted “*Interpretation*”.

**71A Paragraph 1012G(3)(a)**

Omit “read the client a statement, prepared by or on behalf of the product issuer, that contains”, substitute “orally communicate the following information to the client”.

**71B After subsection 1012G(3)**

Insert:

- (3A) The information referred to in paragraph (3)(a) must be communicated in a clear, concise and effective manner.

**72 Paragraph 1012IA(3)(b)**

Omit “and (2)”, substitute “, (2) and (2A)”.

**72A At the end of subsection 1013D(1)**

Add:

- ; and (m) unless in accordance with the regulations, for information to be disclosed in accordance with paragraphs (b), (d) and (e), any amounts are to be stated in dollars.

**73 Subsection 1013F(1)**

After “information” (first occurring), insert “, or a statement containing information,”.

**74 At the end of Subdivision C of Division 2 of Part 7.9**

Add:

**1013M Combining a Product Disclosure Statement and a Financial Services Guide in a single document**

For provisions about combining a Product Disclosure Statement and a Financial Services Guide in a single document, see section 942DA and regulations made for the purposes of that section.

**75 Paragraph 1015C(3)(c)**

Repeal the paragraph.

**76 Paragraph 1015C(3)(f)**

Omit “, (c)”.

**77 Subsection 1015D(2)**

After “responsible person for the Statement”, insert “, not being a trustee of a self-managed superannuation fund,”.

**77A Subsection 1016A(1)**

Insert:

*defective*, in relation to a Product Disclosure Statement as at a particular time, means that the Product Disclosure Statement, if it had been given to a person at that time, would have been *defective* as defined in Subdivision A of Division 7.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

**77B Subsection 1016A(1) (subparagraph (b)(i) of the definition of *eligible application*)**

Repeal the subparagraph, substitute:

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- (i) was included in, or accompanied, a Product Disclosure Statement (relating to the product) that was given to the applicant and that was not defective as at the time when the application was made; or

**78 Subsection 1016A(1) (definition of *superannuation entity*)**

Repeal the definition.

**78A Paragraph 1016A(2)(f)**

Omit “it is a restricted issue that”, substitute “the issue or sale”.

**78B Subsection 1016A(2) (note)**

Repeal the note, substitute:

- Note 1: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).
- Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

**78C Subparagraph 1016A(3)(b)(i)**

Repeal the subparagraph, substitute:

- (i) was included in, or accompanied, a Product Disclosure Statement (relating to an interest in the entity) that was given to the person and that was not defective as at the time when the application was made; or

**78D Subsection 1016B(1)**

Omit “to which the Statement applies”, substitute “, pursuant to an application made in response to the Statement,”.

**78E Subsection 1016B(1) (note)**

Repeal the note, substitute:

- Note 1: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).
- Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

**78F Section 1016C**

After “a financial product of that kind”, insert “, pursuant to an application made in response to the Statement,”.

### **78G Section 1016C (after note 1)**

Insert:

Note 1A: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

### **78H Subsection 1016D(1)**

After “a financial product of that kind”, insert “, pursuant to an application made in response to the Statement,”.

### **78I Subsection 1016D(1) (after note 1)**

Insert:

Note 1A: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

### **78J Paragraphs 1016D(2)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) an issue or transfer to a person of a financial product of that kind is void if:
  - (i) the issue or transfer is pursuant to an application made in response to the Statement; or
  - (ii) the person should have been given the Statement; and
- (d) if:
  - (i) an issue or transfer of a financial product to a person is void because of paragraph (c); and
  - (ii) the responsible person received money from that person on account of the issue or transfer—the responsible person must, as soon as practicable, return the money to that person.

### **78K Subsection 1016D(2) (note)**

Repeal the note, substitute:

Note 1: Paragraphs (c) and (d) do not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

Note 2: Failure to comply with paragraph (d) is an offence (see subsection 1311(1)).

### **78L Paragraphs 1016E(1)(c) and (d)**

Repeal the paragraphs (but not the note), substitute:

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- (c) in relation to a Product Disclosure Statement for a financial product, the responsible person becomes aware that the Product Disclosure Statement was defective as at the time when it was prepared, or that it became or has become defective as at some later time.

**78M Subsection 1016E(2)**

After “the Product Disclosure Statement”, insert “(the *first Product Disclosure Statement*)”.

**78N After paragraph 1016E(2)(a)**

Insert:

or (aa) the responsible person must give the applicant:

- (i) a new Product Disclosure Statement for the financial products, and an additional statement that identifies the respects in which the new Product Disclosure Statement is materially different from the first Product Disclosure Statement; and
- (ii) 1 month to withdraw their application and be repaid; or

**78O Subparagraph 1016E(2)(b)(i)**

Omit “paragraph (1)(c) or (d)”, substitute “paragraph (1)(c)”.

**78P After paragraph 1016E(2)(b)**

Insert:

(ba) the responsible person must issue or sell the financial products to the applicant and give them:

- (i) a new Product Disclosure Statement for the financial products, and an additional statement that identifies the respects in which the new Product Disclosure Statement is materially different from the first Product Disclosure Statement; and
- (ii) 1 month to return the financial products and be repaid; or

**78Q Subparagraph 1016E(2)(c)(i)**

Omit “paragraph (1)(c) or (d)”, substitute “paragraph (1)(c)”.

**78R Subsection 1016E(2) (note)**

Repeal the note, substitute:

- Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- Note 2: If the responsible person chooses the option given by paragraph (aa) or (b), that option does not require the responsible person to wait until the end of the month referred to in subparagraph (aa)(ii) or (b)(ii) before going ahead and issuing or selling the financial products to the applicant if the applicant indicates before then that they still wish to proceed with the application.
- Note 3: However, if the responsible person chooses the option given by paragraph (aa) or (b), whether the responsible person may go ahead and issue or sell the financial products to the applicant at the end of the month referred to in subparagraph (aa)(ii) or (b)(ii) (or earlier, as mentioned in note 2) is affected by this subsection and sections 1016A to 1016E (including as those provisions are affected by subsections (2A) and (2B) of this section).
- Note 4: If the responsible person chooses the option given by paragraph (c), sections 1016A to 1016D do not prohibit the issue or sale of the financial products under that paragraph (see subsection (2C) of this section).

### **78S After subsection 1016E(2)**

Insert:

- (2A) If, in accordance with paragraph (2)(aa), the responsible person gives the applicant a new Product Disclosure Statement for the financial products and the additional statement referred to in subparagraph (2)(aa)(i):
- (a) subsection (2), and sections 1016B, 1016C, 1016D and 1016E, apply in relation to the application, from the time when the applicant is given the new Product Disclosure Statement (the *correction time*), as if the application had been made in response to the new Product Disclosure Statement; and
  - (b) if:
    - (i) the reason for giving the new Product Disclosure Statement was that the responsible person became aware that the first Product Disclosure Statement was defective as at the time when it was prepared, or had become defective by the time the application was made; and
    - (ii) the financial products are *relevant financial products* as defined in section 1016A;

section 1016A applies in relation to the application, from the correction time, as if the first Product Disclosure Statement had instead contained the content of the new Product Disclosure Statement.

Note 1: Because of paragraph (a):

- (a) if this section applies to the new Product Disclosure Statement, the responsible person's ability to proceed to issue or sell the financial products pursuant to the application will be affected by subsection (2), and by sections 1016B, 1016C and 1016D, as those provisions apply in relation to the new Product Disclosure Statement (even though the application was actually made in response to the first Product Disclosure Statement); and
- (b) sections 1016B, 1016C and 1016D, as they relate to the first Product Disclosure Statement, cease to apply in relation to the application.

Note 2: Because of paragraph (b), the application may be an **eligible application** as defined in section 1016A, even though the first Product Disclosure Statement was actually defective as at the time when the application was made.

(2B) If:

- (a) in accordance with paragraph (2)(b), the responsible person gives the applicant a Supplementary Product Disclosure Statement that relates to the financial products; and
- (b) the reason for giving the Supplementary Product Disclosure Statement was that the responsible person became aware that the first Product Disclosure Statement was defective as at the time when it was prepared, or had become defective by the time the application was made; and
- (c) the financial products are **relevant financial products** as defined in section 1016A;

section 1016A applies in relation to the application, from the time when the applicant is given the Supplementary Product Disclosure Statement, as if the Supplementary Product Disclosure Statement had been given to the applicant before the application was made.

Note 1: Because of this subsection and section 1014D (information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements), the application may be an **eligible application** as defined in section 1016A, even though the Supplementary Product Disclosure Statement was not actually given until after the time when the application was made.

Note 2: The responsible person's ability to proceed to issue or sell the financial products pursuant to the application will be affected by subsection (2), and by sections 1016B, 1016C and 1016D, as those

provisions apply in relation to the first Product Disclosure Statement as affected by the Supplementary Product Disclosure Statement and any other Supplementary Product Disclosure Statements.

- (2C) If the responsible person chooses to comply with paragraph (2)(c), nothing in sections 1016A to 1016D applies to the issue or sale of the financial products under that paragraph.

Note: This subsection affects the elements of the offences under sections 1016A to 1016D, and so it is not an exception in relation to which a defendant bears an evidential burden under subsection 13.3(3) of the *Criminal Code*.

## 78T At the end of section 1016E

Add:

- (5) For the purposes of this section, *defective*, when used in relation to a Product Disclosure Statement at a particular time, means that the Product Disclosure Statement, if it had been given to a person at that time, would have been *defective* as defined in Subdivision A of Division 7.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

## 79 Subsection 1017B(1)

Repeal the subsection, substitute:

*Issuer to notify holders of changes and events*

- (1) If:
- (a) a person (the *holder*) acquired a financial product as a retail client (whether or not it was acquired from the issuer); and
  - (b) either:
    - (i) the financial product was offered in this jurisdiction; or
    - (ii) the holder applied for the financial product in this jurisdiction; and
  - (c) the product is not specified in regulations made for the purposes of this paragraph; and
  - (d) the circumstances in which the product was acquired are not specified in regulations made for the purposes of this paragraph;

the issuer must, in accordance with subsections (3) to (8), notify the holder of changes and events referred to in subsection (1A).

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

*The changes and events that must be notified*

(1A) The changes and events that must be notified are:

- (a) any material change to a matter, or significant event that affects a matter, being a matter that would have been required to be specified in a Product Disclosure Statement for the financial product prepared on the day before the change or event occurs; and
- (b) any other change, event or other matter of a kind specified in regulations made for the purposes of this paragraph.

Note: Paragraph (a) applies whether or not a Product Disclosure Statement for the financial product was in fact prepared (or required to be prepared) on the day before the change or event occurs.

**80 Subsections 1017B(2), (3), (5), (6) and (8)**

Omit “responsible person” (wherever occurring), substitute “issuer”.

**81 Subsection 1017C(1)**

Omit “the responsible person for a Product Disclosure Statement for a financial product”, substitute “the issuer of a financial product”.

**82 Subsections 1017C(2) and (3)**

Repeal the subsections, substitute:

*Information for concerned person related to a superannuation product*

- (2) If the financial product is a superannuation product, then, subject to subsection (4), the issuer must, on request by a concerned person, give the concerned person information that the concerned person reasonably requires for the purposes of:
  - (a) understanding any benefit entitlements that the concerned person may have, has or used to have under the superannuation product; or
  - (b) understanding the main features of:
    - (i) the relevant sub-plan; or

- (ii) if there is no relevant sub-plan—the superannuation entity; or
- (c) making an informed judgment about the management and financial condition of:
  - (i) the superannuation entity; and
  - (ii) the relevant sub-plan (if any); or
- (d) making an informed judgment about the investment performance of:
  - (i) the relevant sub-plan; or
  - (ii) if there is no relevant sub-plan—the superannuation entity; or
- (e) understanding the particular investments of:
  - (i) the superannuation entity; and
  - (ii) the relevant sub-plan (if any).

The information must be given in accordance with the other requirements of this section.

Note 1: Subsection (9) defines *concerned person* and *relevant sub-plan*.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

*Information for concerned person related to an RSA product*

- (2A) If the financial product is an RSA product, then, subject to subsection (4), the issuer must, on request by a concerned person, give the concerned person information that the concerned person reasonably requires for the purposes of:
- (a) understanding any benefit entitlements that the concerned person may have, has or used to have under the RSA product;  
or
  - (b) understanding the main features of the RSA product.

The information must be given in accordance with the other requirements of this section.

Note 1: Subsection (9) defines *concerned person*.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

*Information for employer-sponsor related to a superannuation product*

- (3) If the financial product is a superannuation product, then, subject to subsection (4), the issuer must, on request by an employer-sponsor, give the employer-sponsor information that the employer-sponsor reasonably requires for the purposes of:
- (a) understanding the kinds of benefits to which the employer-sponsor's employees are entitled or will or may become entitled; or
  - (b) understanding the main features of:
    - (i) the relevant sub-plan; or
    - (ii) if there is no relevant sub-plan—the superannuation entity; or
  - (c) making an informed judgment about the management and financial condition of:
    - (i) the superannuation entity; and
    - (ii) the relevant sub-plan (if any); or
  - (d) making an informed judgment about the investment performance of:
    - (i) the relevant sub-plan; or
    - (ii) if there is no relevant sub-plan—the superannuation entity; or
  - (e) a matter related to the *Superannuation Guarantee (Administration) Act 1992*.

The information must be given in accordance with the other requirements of this section.

Note 1: Subsection (9) defines *relevant sub-plan*.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

*Information for employer related to an RSA product*

- (3A) If the financial product is an RSA product, then, subject to subsection (4), the issuer must, on request by an employer who made an application to acquire the RSA product on behalf of an employee, give the employer information that the employer reasonably requires for the purposes of:
- (a) understanding the kinds of benefits to which the employer's employees are entitled or will or may become entitled; or

- (b) understanding the main features of the RSA product; or
- (c) a matter related to the *Superannuation Guarantee (Administration) Act 1992*.

The information must be given in accordance with the other requirements of this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

### **83 Subsections 1017C(4) and (5)**

Omit “responsible person” (wherever occurring), substitute “issuer”.

### **84 Subsection 1017C(5)**

Omit “concerned person or an employee-sponsor, give the concerned person or the employer-sponsor”, substitute “person who is a concerned person, an employer-sponsor (if the financial product is a superannuation product) or an employer referred to in subsection (3A) (if the financial product is an RSA product), give the person”.

### **85 Subsections 1017C(6), (7) and (8)**

Omit “responsible person” (wherever occurring), substitute “issuer”.

### **86 Subsection 1017C(9) (definition of *concerned person*)**

Repeal the definition, substitute:

*concerned person:*

- (a) in relation to a superannuation product—means a person who:
  - (i) is, or was within the preceding 12 months, a member of the superannuation entity; or
  - (ii) is a beneficiary of the superannuation entity; or
- (b) in relation to an RSA product—means a person who:
  - (i) is, or was within the preceding 12 months, a holder of the RSA product; or
  - (ii) has a right or a claim under the RSA product.

### **87 Subsection 1017C(9) (definition of *relevant sub-plan*)**

Omit “or an RSA product”.

### **88 Paragraph 1017D(5)(c)**

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Repeal the paragraph, substitute:

- (c) details of transactions in relation to the product during the reporting period as required by regulations made for the purposes of this paragraph;

**88A After subsection 1017D(5)**

Insert:

- (5A) Unless in accordance with the regulations:
  - (a) for information to be disclosed in accordance with paragraphs (5)(a), (b), (c), (d) and (e), any amounts are to be stated in dollars; and
  - (b) for any other information in relation to amounts paid by the holder of the financial product during the period, any amounts are to be stated in dollars.

**89 Subsection 1017E(2A)**

Omit “subsections (2B) and (2C)”, substitute “subsection (2C)”.

**90 Subsection 1017E(2B)**

Repeal the subsection.

**91 After subparagraph 1020E(1)(a)(i)**

Insert:

- (ia) a disclosure document or statement does not comply with a requirement of this Part that it be worded and presented in a clear, concise and effective manner; or

**91A Subsection 1020E(11) (paragraph (a) of the definition of *defective*)**

Omit “Subdivision A”, substitute “Subdivision B”.

**91B Subsection 1020E(11) (paragraph (b) of the definition of *defective*)**

Omit all the words from and including “being a statement”.

**91C Subsection 1020E(11) (definition of *disclosure document or statement*)**

Omit “Subdivision A”, substitute “Subdivision B”.

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**92 Subsection 1020F(1)**

Omit “, subject to subsection (3)”.

**93 Subsections 1020F(2) and (3)**

Repeal the subsections.

**94 At the end of subsection 1020F(7)**

Add:

Note: Because of section 761H, a reference to this Part or Part 10.2 also includes a reference to regulations or other instruments made for the purposes of this Part or Part 10.2 (as the case requires).

**95 Subsection 1020G(2)**

Repeal the subsection.

**95A Section 1021A**

Omit “This Division”, substitute “This Subdivision”.

**95B Subsection 1021B(1)**

Omit “this Division”, substitute “this Subdivision”.

**95C Subsection 1021B(1) (paragraph (d) of the definition of *defective*)**

Repeal the paragraph, substitute:

(d) if it is information required by paragraph 1012G(3)(a)—there is an omission from the information of material required by that paragraph;

**95D Subsection 1021B(1) (paragraph (c) of the definition of *disclosure document or statement*)**

Repeal the paragraph, substitute:

(c) information required by paragraph 1012G(3)(a).

**95E Subsection 1021B(1)**

Insert:

*regulated person* has the same meaning as it has in Division 2.

**95F After subsection 1021B(1)**

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Insert:

(1A) For the avoidance of doubt, if section 1012J (information must be up to date) is not complied with in relation to a Product Disclosure Statement, then, for the purposes of the definition of *defective* in subsection (1):

- (a) if the circumstance constituting the non-compliance is that particular information included in the Product Disclosure Statement is not as up to date as section 1012J requires it to be—the information so included constitutes a misleading statement in the Product Disclosure Statement; and
- (b) if the circumstance constituting the non-compliance is a failure to include particular information that was not previously required to be included in the Product Disclosure Statement—the failure to include the information constitutes an omission from the Statement of material required by section 1013C.

Note 1: The effect of section 1014D (information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements) must be taken into account in determining whether section 1012J is complied with in relation to a Product Disclosure Statement.

Note 2: Whether the inclusion of out of date information, or the failure to include information, results in the Product Disclosure Statement being *defective* as defined in subsection (1) depends on whether the materiality test set out in that definition is satisfied.

**95G Subsection 1021B(2)**

After “to a document or statement”, insert “, or to information,”.

**95H Subsection 1021B(2)**

After “to be a document or statement”, insert “, or to be information,”.

**95I Subparagraph 1021C(1)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) is required by paragraph 1012G(3)(a) to orally communicate information (the *required disclosure document or statement*) to another person; and

**95J Subparagraph 1021C(1)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) if subparagraph (a)(ii) applies—orally communicate to the other person anything purporting to be the information required by paragraph 1012G(3)(a) by the time they are required to do so.

**95K Subparagraph 1021C(3)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) is required by paragraph 1012G(3)(a) to orally communicate information (the *required disclosure document or statement*) to another person; and

**95L Subparagraph 1021C(3)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) if subparagraph (a)(ii) applies—orally communicate to the other person anything purporting to be the information required by paragraph 1012G(3)(a) by the time they are required to do so.

**95M Paragraph 1021C(4)(a)**

After “giving”, insert “or communication”.

**95N Paragraph 1021C(4)(b)**

After “give”, insert “or communicate”.

**95O Paragraphs 1021D(1)(a) and (2)(a)**

After “disclosure document or statement”, insert “(not being information required by paragraph 1012G(3)(a))”.

**95P Subsection 1021D(3)**

Omit “or paragraph 1012G(3)(a)”.

**95Q Paragraphs 1021E(1)(a) and (2)(a)**

After “disclosure document or statement”, insert “(not being information required by paragraph 1012G(3)(a))”.

**95R Subsection 1021E(5)**

Omit “or paragraph 1012G(3)(a)”.

**95S Paragraph 1021F(1)(a)**

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After “disclosure document or statement”, insert “(not being information required by paragraph 1012G(3)(a))”.

**95T Subsection 1021F(2)**

Omit “or paragraph 1012G(3)(a)”.

**95U After section 1021F**

Insert:

**1021FA Paragraph 1012G(3)(a) obligation—offences relating to communication of information**

*Offence where information known to be defective*

- (1) A person (the *providing entity*) commits an offence if:
- (a) the providing entity communicates information required by paragraph 1012G(3)(a) to another person in circumstances in which the providing entity is required to do so; and
  - (b) the providing entity knows that the information is defective.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D and 1012E.

*Offence whether or not information known to be defective*

- (2) A person (the *providing entity*) commits an offence if:
- (a) the providing entity communicates information required by paragraph 1012G(3)(a) to another person in circumstances in which the providing entity is required to do so; and
  - (b) the information is defective.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D and 1012E.

- (3) For the purposes of an offence based on subsection (2), strict liability applies to the physical element of the offence specified in paragraph (2)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Defences*

- (4) In any proceedings against a person for an offence based on subsection (1) or (2), it is a defence if the person took reasonable

steps to ensure that the information communicated would not be defective.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) In any proceedings against a person for an offence based on subsection (2), it is a defence if the information communicated was defective because of information, or an omission from information, provided to the person (whether in a document or otherwise) by the issuer of the financial product concerned.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

**1021FB Paragraph 1012G(3)(a) obligation—offences relating to information provided by product issuer for communication by another person**

*Product issuer knows information is defective*

- (1) The issuer of a financial product commits an offence if:
- (a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:
    - (i) for the purpose of the information being communicated under paragraph 1012G(3)(a); or
    - (ii) knowing that it is likely that the information will be so communicated; and
  - (b) the issuer knows that, if the person communicates the provided information for the purpose of paragraph 1012G(3)(a), the information communicated will be defective.

*Product issuer knows information is not all the required information*

- (2) The issuer of a financial product commits an offence if:
- (a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:
    - (i) for the purpose of it being communicated under paragraph 1012G(3)(a); or
    - (ii) knowing that it is likely that it will be so communicated; and

- (b) the provided information relates to a matter or matters, but the issuer knows that it is not all of the information relating to the matter or matters that is required to be so communicated; and
- (c) the issuer is reckless as to whether the person will or may communicate information for the purposes of paragraph 1012G(3)(a) on the basis that the provided information is all the information relating to the matter or matters that is required to be so communicated.

*Product issuer provides information that results in information required by paragraph 1012G(3)(a) being defective*

- (3) The issuer of a financial product commits an offence if:
  - (a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:
    - (i) for the purpose of it being communicated under paragraph 1012G(3)(a); or
    - (ii) knowing that it is likely that it will be so communicated; and
  - (b) the person communicates the information for the purpose of paragraph 1012G(3)(a); and
  - (c) the information communicated is defective because it includes the provided information (whether or not it is defective for other reasons).
- (4) For the purposes of an offence based on subsection (3), strict liability applies to the physical element of the offence specified in paragraph (3)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Defence to subsection (3) offence*

- (5) In any proceedings against the issuer of a financial product for an offence based on subsection (3), it is a defence if the issuer took reasonable steps to ensure that the information they provided would not be such as to make the information communicated for the purpose of paragraph 1012G(3)(a) defective.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

*Product issuer does not provide all the required information*

- (6) The issuer of a financial product commits an offence if:
- (a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:
    - (i) for the purpose of it being communicated under paragraph 1012G(3)(a); or
    - (ii) knowing that it is likely that it will be so communicated; and
  - (b) the provided information relates to a matter or matters, but it is not all of the information relating to the matter or matters that is required to be so communicated; and
  - (c) the person communicates information for the purpose of paragraph 1012G(3)(a) on the basis that the provided information is all the information relating to the matter or matters that is required to be so communicated; and
  - (d) the information communicated is defective because it includes only that information about the matter or matters (whether or not it is also defective for other reasons).
- (7) For the purposes of an offence based on subsection (6), strict liability applies to the physical elements of the offence specified in paragraphs (6)(b) and (d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Defence to subsection (6) offence*

- (8) In any proceedings against the issuer of a financial product for an offence based on subsection (6), it is a defence if the issuer took reasonable steps to ensure that the information they provided about the matter or matters would be all the information about the matter or matters that would be required by paragraph 1012G(3)(a) to be communicated.

Note: A defendant bears an evidential burden in relation to the matters in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

**95V Section 1021G**

Omit “read”, substitute “communicate”.

**96 Subparagraph 1021H(1)(b)(i)**

After “1013G”, insert “or subsection 942DA(3)”.

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**96A Subsection 1021H(3)**

Omit “or paragraph 1012G(3)(a)”.

**96B Subparagraphs 1021I(1)(a)(i) and (ii)**

After “disclosure document or statement”, insert “(not being information required by paragraph 1012G(3)(a))”.

**96C Paragraph 1021I(1)(b)**

Omit “or paragraph 1012G(3)(a)”.

**96D Subsection 1021I(2)**

Omit “or paragraph 1012G(3)(a)”.

**96E Paragraphs 1021J(1)(a) and (3)(a)**

After “disclosure document or statement”, insert “(not being information required by paragraph 1012G(3)(a))”.

**96F Subsection 1021J(4)**

Omit “or reading”.

**96G Subsection 1021J(5)**

Repeal the subsection.

**96H Subsection 1022A(1) (paragraph (d) of the definition of *defective*)**

Repeal the paragraph, substitute:

- (d) if it is information required by paragraph 1012G(3)(a)—there is an omission from the information of material required by that paragraph.

**96I Subsection 1022A(1) (paragraph (c) of the definition of *disclosure document or statement*)**

Repeal the paragraph, substitute:

- (c) information required by paragraph 1012G(3)(a).

**96J Subsection 1022A(1)**

Insert:

*regulated person* has the same meaning as it has in Division 2.

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**96K After subsection 1022A(1)**

Insert:

- (1A) For the avoidance of doubt, if section 1012J (information must be up to date) is not complied with in relation to a Product Disclosure Statement, then, for the purposes of the definition of *defective* in subsection (1):
- (a) if the circumstance constituting the non-compliance is that particular information included in the Product Disclosure Statement is not as up to date as section 1012J requires it to be—the information so included constitutes a misleading statement in the Product Disclosure Statement; and
  - (b) if the circumstance constituting the non-compliance is a failure to include particular information that was not previously required to be included in the Product Disclosure Statement—the failure to include the information constitutes an omission from the Statement of material required by section 1013C.

Note: The effect of section 1014D (information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements) must be taken into account in determining whether section 1012J is complied with in relation to a Product Disclosure Statement.

**96L Subsection 1022A(2)**

After “to a document or statement”, insert “, or to information,”.

**96M Subsection 1022A(2)**

After “to be a document or statement”, insert “, or to be information,”.

**96N Paragraph 1022B(1)(b)**

Repeal the paragraph, substitute:

- (b) a person:
  - (i) is required by paragraph 1012G(3)(a) to orally communicate information (the *required disclosure document or statement*) to another person (the *client*); and
  - (ii) does not orally communicate to the other person anything purporting to be the information required by that paragraph by the time they are required to do so; or

**96O Paragraph 1022B(2)(b)**

Repeal the paragraph, substitute:

- (b) if paragraph (1)(b) applies—because the information required by paragraph 1012G(3)(a) was not communicated to the client; or

**96P After paragraph 1022B(3)(a)**

Insert:

- (aa) if paragraph (1)(c) applies and the disclosure document or statement is information required by paragraph 1012G(3)(a)—subject to subsection (5A), the person first-referred to in paragraph (1)(c) of this section; or

**96Q Paragraph 1022B(3)(b)**

After “applies”, insert “and the disclosure document or statement is not information required by paragraph 1012G(3)(a)”.

**96R Subsection 1022B(4)**

After “paragraph (1)(a) or (b) applies”, insert “, or paragraph (1)(c) applies so far as it relates to information required by paragraph 1012G(3)(a)”.

**96S Paragraph 1022B(5)(b)**

After “disclosure document or statement”, insert “(not being information required by paragraph 1012G(3)(a))”.

**96T After subsection 1022B(5)**

Insert:

(5A) If:

- (a) paragraph (3)(aa) applies; and
- (b) the person referred to in that paragraph is not the issuer, or an authorised representative of the issuer, of the financial product to which the required disclosure document or statement relates; and
- (c) the required disclosure document or statement was defective because of information, or an omission from information, provided to that person (whether in a document or otherwise) by the issuer of the product;

the issuer of the product is the liable person, rather than the person who would otherwise be the liable person because of paragraph (3)(aa) or subsection (4).

**96U After subsection 1022B(7)**

Insert:

- (7A) If subsection (5A) applies, the issuer of the financial product is not liable under subsection (2) if the issuer took reasonable steps to ensure that the information provided as mentioned in paragraph (5A)(c) would not be such as to make the required disclosure document or statement defective.

**97 At the end of Part 7.10**

Add:

**Division 5—Miscellaneous**

**1045A Exemptions and modifications by regulations**

- (1) The regulations may:
- (a) exempt a person or class of persons from all or specified provisions of this Part; or
  - (b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or
  - (c) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.
- (2) For the purpose of this section, the *provisions of this Part* include:
- (a) definitions in this Act, or in the regulations, as they apply to references in this Part; and
  - (b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

**98 At the end of subsection 1075A(7)**

Add:

Note: Because of section 761H, a reference to this Part or Part 10.2 also includes a reference to regulations or other instruments made for the purposes of this Part or Part 10.2 (as the case requires).

**99 Subparagraph 1101B(1)(a)(iv)**

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Repeal the subparagraph.

**100 Subparagraph 1101B(4)(a)(iv)**

Repeal the subparagraph.

**101 Subparagraph 1274(2)(a)(ia)**

Omit “section 675 or subsection 792C(1)”, substitute “subsection 792C(1), section 1015B or section 1015D”.

**102 Subparagraph 1274(2)(a)(iv)**

Omit “, 452”.

**103 Subsection 1308(8)**

Omit “, Australian market licence or an application to become a declared professional body under section 918A”, substitute “or Australian market licence”.

**103A Paragraph 1414(2)(b)**

Repeal the paragraph, substitute:

- (b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 796A(2) of the amended Corporations Act;

**104 At the end of section 1416**

Add:

- (3) Subsection (1) gives a full power to disapply, apply and modify provisions as mentioned in that subsection, including for reasons that do not have an express or implied connection with the transition to the relevant new legislation.

Note: So (for example), a change to the day-to-day operation of the relevant old legislation as continuing to apply may be achieved by a modification under paragraph (1)(b) (whether that change is to an existing rule, or is the addition of a new rule).

**104A Paragraph 1426(2)(b)**

Repeal the paragraph, substitute:

- (b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an

application by the licensee under subsection 825A(2) of the amended Corporations Act.

**104B Paragraph 1428(2)(b)**

Repeal the paragraph, substitute:

- (b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 825A(2) of the amended Corporations Act.

**105 Paragraph 1431(2)(d)**

Omit “10 business days referred to in that section”, substitute “15 business days referred to in subsections 916F(1) and (1A)”.

**106 Subsection 1437(2)**

Omit “, subject to subsection (3)”.

**107 Subsection 1437(3)**

Repeal the subsection, substitute:

- (3) A declaration under paragraph (2)(b) may provide for the continued application (with or without modifications, and to the exclusion of provisions of the amended Corporations Act) of provisions referred to in paragraph (1)(b), even after the end of the period of 2 years starting on the FSR commencement.

**108 Subsection 1442(2)**

Omit “, subject to subsection (3)”.

**109 Subsection 1442(3)**

Repeal the subsection, substitute:

- (3) A declaration under paragraph (2)(b) may provide for the continued application (with or without modifications, and to the exclusion of provisions of the amended Corporations Act) of provisions referred to in paragraph (1)(b), even after the end of the period of 2 years starting on the FSR commencement.

**110 Schedule 3 (table item 272C)**

Repeal the item.

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**111 Schedule 3 (table item 273A)**

Repeal the item.

**112 Schedule 3 (after table item 296C)**

Insert:

296D	Subsection 1017C(2A)	100 penalty units or imprisonment for 2 years, or both.
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**113 Schedule 3 (after table item 297A)**

Insert:

297AA	Subsection 1017C(3A)	100 penalty units or imprisonment for 2 years, or both.
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**114 Schedule 3 (after table item 304C)**

Insert:

304D	Subsection 1021FA(1)	200 penalty units or imprisonment for 5 years, or both.
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304E	Subsection 1021FA(2)	100 penalty units or imprisonment for 2 years, or both.
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304F	Subsection 1021FB(1)	200 penalty units or imprisonment for 5 years, or both.
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304G	Subsection 1021FB(2)	200 penalty units or imprisonment for 5 years, or both.
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304H	Subsection 1021FB(3)	100 penalty units or imprisonment for 2 years, or both.
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304I	Subsection 1021FB(6)	100 penalty units or imprisonment for 2 years, or both.
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## **Schedule 3—Amendment of other Acts**

### ***Australian Securities and Investments Commission Act 2001***

#### **1A Subsection 12AE(1)**

After “subsection (2),”, insert “Subdivision C (sections 12CA to 12CC),”.

#### **1B Subsection 12AE(3)**

After “provided by”, insert “Subdivision C (sections 12CA to 12CC),”.

#### **1C Subsection 12BAB(10)**

Omit “not to be”, substitute “to be, or not to be,”.

#### **1D At the end of subsection 12BAB(10)**

Add “Regulations made for the purposes of this subsection have effect despite anything else in this section.”.

#### **1E Paragraph 127(4C)(a)**

After “conducts”, insert “, or is involved in the supervision of,”.

### ***Income Tax Assessment Act 1997***

#### **1 Subsection 995-1(1) (note 2 to paragraph (c) of the definition of *financial entity*)**

Repeal the note, substitute:

Note 2: Paragraph 911A(2)(h) of that Act exempts financial services provided to wholesale clients by a person who is regulated by an overseas regulatory authority if the provision of the service is covered by an exemption from the Australian Securities and Investments Commission (ASIC).

### ***Retirement Savings Accounts Act 1997***

#### **2 Subsection 182(1A) (subparagraph (b)(iv) of the definition of *regulatory provision*)**

Omit “1017C(2), (3)”, substitute “1017C(2A), (3A)”.

## **Schedule 4—Transitional provisions**

### ***Corporations Act 2001***

#### **1 At the end of Chapter 10**

Add:

### **Part 10.4—Transitional provisions relating to the Financial Services Reform Amendment Act 2003**

#### **1449 Definition**

In this Part:

***amending Act*** means the *Financial Services Reform Amendment Act 2003*.

#### **1450 Application of Part 10.2 to Chapter 7 as amended by Schedule 2 to the amending Act**

- (1) Subject to subsection (2), the provisions of Division 1 of Part 10.2 (including regulations and determinations made for the purposes of that Division, and the powers given by that Division to deal with matters in regulations and determinations) also apply to the provisions of Chapter 7 as amended by Schedule 2 to the amending Act.

Note: Division 1 of Part 10.2 deals with the phasing-in of the new financial services regime.

- (2) However, subsection (1) does not produce the result that a provision of Chapter 7 as amended, added or inserted by an amendment in Schedule 2 to the amending Act applies in relation to a person, matter or circumstance:
- (a) at a time that is before the commencement of the amendment;  
or
  - (b) contrary to section 1451.

- (3) The powers given by Division 2 of Part 10.2 to deal with matters in regulations and determinations apply in relation to the provisions of Chapter 7 as amended by Schedule 2 to the amending Act as if the amendments in Schedule 2 to the amending Act were **relevant amendments** for the purposes of that Division. However (in addition to subsections 1444(2) and 1445(3)) such regulations and determinations are of no effect to the extent that they are inconsistent with section 1451.

#### **1451 Provisions relating to the scope of the amendments of Chapter 7 made by Schedule 2**

*Application of amendments of section 916F*

- (1) The amendments made by items 37, 38 and 39 of Schedule 2 to the amending Act do not apply to authorisations made before the commencement of the amendment, unless the relevant 10 day period for notification has not ended by the commencement of the items.
- (2) The amendment made by item 40 of Schedule 2 to the amending Act applies to revocations made after the commencement of the item.

*Application of certain amendments of sections 952B and 953A*

- (2A) The amendments made by items 53A and 58A of Schedule 2 to the amending Act apply in relation to the giving of Financial Services Guides after the commencement of the items.

*Application of amendments of section 981H*

- (3) The amendments made by items 62 and 63 of Schedule 2 to the amending Act apply, after the commencement of those items, to money paid to a person before that commencement as mentioned in subsection 981H(1), even if an agreement referred to in subsection 981H(2) was in force in relation to the money immediately before that commencement.

*Application of certain amendments of section 1016A*

- (3A) The amendments made by items 77A, 77B and 78C of Schedule 2 to the amending Act apply in relation to applications for financial

products, and applications to become a standard employer-sponsor, whether made before or after the commencement of the items.

*Application of amendments of sections 1016B to 1016E*

- (3B) The amendments made by items 78D to 78T of Schedule 2 to the amending Act apply in relation to Product Disclosure Statements whether prepared or given before or after the commencement of the items.

*Application of amendment of section 1017D*

- (4) The amendment made by item 88 of Schedule 2 to the amending Act does not apply to statements prepared before the commencement of the item.

*Application of amendments of section 1017E*

- (5) The amendments made by items 89 and 90 of Schedule 2 to the amending Act apply, after the commencement of those items, to money paid to a person before that commencement as mentioned in subsection 1017E(1), even if an agreement referred to in subsection 1017E(2B) was in force in relation to the money immediately before that commencement.

*Application of amendments of section 1020E*

- (6) The amendment made by item 91 of Schedule 2 to the amending Act does not apply to disclosure documents or statements prepared before the commencement of the item.
- (7) The amendments made by items 91A, 91B and 91C of Schedule 2 to the amending Act apply to disclosure documents or statements, and to advertisements or statements of a kind referred to in subsection 1018A(1) or (2), whether prepared, given or published before or after the commencement of the items.

*Application of certain amendments of sections 1021B and 1022A*

- (8) The amendments made by items 95F and 96K of Schedule 2 to the amending Act apply in relation to the giving of Product Disclosure Statements after the commencement of the items.

**1452 Amendments of section 1274**

- (1) The amendment made by item 101 of Schedule 2 to the amending Act applies to documents even if they were lodged before the commencement of the item.
  - (2) The amendment made by item 102 of Schedule 2 to the amending Act removes a reference to a repealed provision. However, the amendment does not produce the result that a document that was lodged under that provision when it was in force now becomes available for inspection under section 1274.
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*[Minister's second reading speech made in—  
House of Representatives on 26 June 2003  
Senate on 24 November 2003]*

(114/03)

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