





# **Corporations Amendment (Professional Standards of Financial Advisers) Act 2017**

**No. 7, 2017**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Corporations Amendment (Professional Standards of Financial Advisers) Act 2017

No. 7, 2017

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## An Act to amend the law relating to financial services, and for related purposes

[Assented to 22 February 2017]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*.

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No. 7, 2017

*Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*

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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, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### Part 1—Amendments

#### *Corporations Act 2001*

##### **1 Section 910A**

Insert:

***basic banking product*** has the meaning given by section 961F.

***body corporate licensee*** means a body corporate that:

- (a) is a financial services licensee; and
- (b) is authorised to provide personal advice to retail clients in relation to relevant financial products.

***class of product advice*** means financial product advice about a class of products, but does not include a recommendation about a specific product in the class.

***Code of Ethics*** means the Code of Ethics, as in force from time to time, made by the standards body under paragraph 921U(2)(b).

***compliance scheme*** has the meaning given by section 921G.

***consumer credit insurance*** has the meaning given by section 11 of the *Insurance Contracts Act 1984*.

***control***, in relation to a body corporate licensee, means:

- (a) having the capacity to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the licensee; or
- (b) directly or indirectly holding more than one half of the issued share capital of the licensee (not including any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) the capacity to control the composition of the licensee's board or governing body; or

- (d) the capacity to determine the outcome of decisions about the licensee's financial and operating policies, taking into account:
- (i) the practical influence the person can exert (rather than the rights it can enforce); and
  - (ii) any practice or pattern of behaviour affecting the licensee's financial or operating policies (whether or not it involves a breach of an agreement or a breach of trust).

***covers***, in relation to a compliance scheme, has the meaning given by section 921J.

***CPD year*** (short for continuing professional development year): a financial services licensee's ***CPD year*** is the 12-month period beginning on the day of the year included in the most recent notice given by the licensee under section 922HA.

***education and training standards*** has the meaning given by section 921B.

***foreign qualification*** means a bachelor or higher degree, or equivalent qualification, awarded by a tertiary education institution outside Australia.

***limited-service time-sharing adviser***: a person is a ***limited-service time-sharing adviser*** if:

- (a) the person is a relevant provider; and
- (b) the only relevant financial product that the person provides advice in relation to is a time-sharing scheme; and
- (c) the person has not met any one or more of the education and training standards in subsections 921B(2) to (4).

***monitoring body*** for a compliance scheme means the person that monitors and enforces compliance with the Code of Ethics under the scheme.

***notice provision*** means section 922D, 922H, 922HA, 922HB, 922HD, 922J or 922K.

***professional association*** means a body or association that represents a section of the financial services industry.

**provisional relevant provider** means a relevant provider who is undertaking work and training in accordance with subsection 921B(4).

Note: For rules relating to provisional relevant providers, see Subdivision C of Division 8A and section 923C.

**recent advising history** has the meaning given by section 922G.

**Register of Relevant Providers** means the Register of Relevant Providers maintained under section 922Q.

**relevant financial products** means financial products other than:

- (a) basic banking products; or
- (b) general insurance products; or
- (c) consumer credit insurance; or
- (d) a combination of any of those products.

**relevant provider**: a person is a **relevant provider** if the person:

- (a) is an individual; and
- (b) is:
  - (i) a financial services licensee; or
  - (ii) an authorised representative of a financial services licensee; or
  - (iii) an employee or director of a financial services licensee; or
  - (iv) an employee or director of a related body corporate of a financial services licensee; and
- (c) is authorised to provide personal advice to retail clients, as the licensee or on behalf of the licensee, in relation to relevant financial products.

Note: For rules about when relevant providers can use the expressions “financial adviser” and “financial planner”, see section 923C.

**standards body** means the body corporate in relation to which a declaration under section 921X is in force.

**supervisor** of a provisional relevant provider has the meaning given by subsection 921F(2).

**2 Paragraph 912A(1)(f)**

After “adequately trained”, insert “(including by complying with section 921D)”.

**3 Subsection 913B(1) (note)**

Omit “Note”, substitute “Note 1”.

**4 At the end of subsection 913B(1)**

Add:

Note 2: There are limitations on ASIC granting an individual an Australian financial services licence that covers the provision of certain personal advice if the individual does not meet the education and training standards in subsections 921B(2) to (4) (see section 921C).

**5 At the end of subsection 916A(1)**

Add:

Note: There are limitations on a financial services licensee authorising an individual to provide certain personal advice if the individual does not meet the education and training standards in subsections 921B(2) to (4) (see section 921C).

**6 At the end of subsection 916A(3)**

Add:

; or (c) in contravention of subsection 921C(2).

**7 Subsection 916B(2)**

After “contrary to this section”, insert “or subsection 921C(3)”.

**8 Subsection 916B(2A)**

After “contrary to this section”, insert “or subsection 921C(3)”.

**9 At the end of subsection 916B(3)**

Add:

Note: There are limitations on sub-authorising an individual to provide certain personal advice if the individual does not meet the education and training standards in subsections 921B(2) to (4) (see section 921C).

## **10 After paragraph 920A(1)(da)**

Insert:

- (db) the person has not complied with any one or more of his or her obligations under section 921F (requirements relating to provisional relevant providers); or
- (dc) both of the following apply:
  - (i) a supervisor referred to in section 921F has not complied with any one or more of his or her obligations under that section in relation to a provisional relevant provider;
  - (ii) both the supervisor and the provisional relevant provider are authorised to provide personal advice to retail clients, on behalf of the person, in relation to relevant financial products; or
- (dd) both of the following apply:
  - (i) a provisional relevant provider has not complied with his or her obligations under subsection 921F(7);
  - (ii) the provisional relevant provider is authorised to provide personal advice to retail clients, on behalf of the person, in relation to relevant financial products; or
- (de) ASIC has reason to believe that the person was authorised, in contravention of subsection 921C(2), (3) or (4), to provide personal advice to retail clients in relation to relevant financial products; or

## **11 Paragraph 920A(1)(e)**

After “financial services law”, insert “(other than section 921E (relevant providers to comply with the Code of Ethics))”.

## **12 After Division 8 of Part 7.6**

Insert:

## **Division 8A—Professional standards for relevant providers**

### **Subdivision A—Education and training standards**

#### **921B Meaning of *education and training standards***

- (1) This section sets out the *education and training standards* for a person who is, or is to be, a relevant provider.

##### *Conditions for relevant providers*

- (2) The first standard is that:
- (a) the person has completed a bachelor or higher degree, or equivalent qualification, approved by the standards body under section 921U; or
  - (b) both of the following conditions are satisfied:
    - (i) the person has completed a foreign qualification;
    - (ii) the standards body has approved the foreign qualification under section 921V.
- (3) The second standard is that the person has passed an exam approved by the standards body.
- (4) The third standard is that the person has undertaken at least 1 year of work and training that meets the requirements set by the standards body.

Note: A relevant provider who is undertaking work and training in accordance with this subsection is a provisional relevant provider (see the definition of *provisional relevant provider* in section 910A). For rules relating to provisional relevant providers, see Subdivision C.

##### *Continuing standard for relevant providers*

- (5) The fourth standard is that the person meets the requirements for continuing professional development set by the standards body.

Note: A provisional relevant provider is not required to meet this standard (see section 921D).

## **921C Limitation on authorisation to provide personal advice unless conditions met**

### *Financial services licensees*

- (1) ASIC must not grant an applicant an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products if:
  - (a) the applicant is an individual; and
  - (b) the applicant has not met any one or more of the education and training standards in subsections 921B(2) to (4).

Note: Subsections 921B(2) to (4) set out the conditions for education and training for relevant providers.

### *Authorised representatives*

- (2) A financial services licensee must not, under section 916A, give a person a written notice authorising the person to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products if:
  - (a) the person is an individual; and
  - (b) either or both of the following subparagraphs apply:
    - (i) the person has not met either or both of the education and training standards in subsections 921B(2) and (3);
    - (ii) the person has not met the education and training standard in subsection 921B(4), and is not undertaking work and training in accordance with that subsection.

### *Sub-authorisations*

- (3) An authorised representative of a financial services licensee must not, under subsection 916B(3), give an individual a written notice authorising that individual to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products if either or both of the following paragraphs apply:
  - (a) the individual has not met either or both of the education and training standards in subsections 921B(2) and (3);
  - (b) the individual has not met the education and training standard in subsection 921B(4), and is not undertaking work and training in accordance with that subsection.

*Employees and directors*

- (4) A financial services licensee must not authorise an employee or director of the licensee, or of a related body corporate of the licensee, to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products if either or both of the following paragraphs apply:
- (a) the employee or director has not met either or both of the education and training standards in subsections 921B(2) and (3);
  - (b) the employee or director has not met the education and training standard in subsection 921B(4), and is not undertaking work and training in accordance with that subsection.

*Exemption in relation to time-sharing schemes*

- (5) This section does not apply in relation to a person who is to provide personal advice to retail clients in relation to relevant financial products if the only relevant financial product in relation to which the person is to provide personal advice to retail clients is a time-sharing scheme.

**921D Relevant providers to meet continuing professional development standard**

- (1) A relevant provider must comply with subsection 921B(5):
- (a) if the relevant provider is a financial services licensee—during the licensee’s CPD year; or
  - (b) if the relevant provider is authorised to provide personal advice to retail clients, on behalf of a financial services licensee, in relation to relevant financial products—during the licensee’s CPD year.

Note 1: Subsection 921B(5) requires a relevant provider to meet the continuing professional development standard.

Note 2: Section 922HB requires a notice to be given at the end of a financial services licensee’s CPD year if a relevant provider has not complied with this section during that year.

*Exemptions*

- (2) Subsection (1) does not apply in relation to a person if:
- (a) the person is a provisional relevant provider; or
  - (b) the only relevant financial product in relation to which the person provides personal advice to retail clients is a time-sharing scheme.

**Subdivision B—Ethical standards**

**921E Relevant providers to comply with the Code of Ethics**

A relevant provider must comply with the Code of Ethics.

Note: A failure to comply with the Code of Ethics must be notified under section 922HD.

**Subdivision C—Provisional relevant providers**

**921F Requirements relating to provisional relevant providers**

- (1) This section sets out the requirements in relation to a person who is a provisional relevant provider.

*Meaning of supervisor*

- (2) A **supervisor** of a provisional relevant provider is an individual who:
- (a) has supervisory responsibility for the provisional relevant provider; and
  - (b) is a relevant provider; and
  - (c) is not a provisional relevant provider; and
  - (d) is not a limited-service time-sharing adviser.

*Role of supervisors*

- (3) A supervisor of a provisional relevant provider must ensure that appropriate supervision is provided to the provisional relevant provider.

- (4) A supervisor of a provisional relevant provider must approve, in writing, any Statement of Advice provided by the provisional relevant provider to a retail client.

*Personal advice provided by provisional relevant providers*

- (5) For the purposes of this Act, personal advice provided (whether orally or in writing) by a provisional relevant provider at a particular time to a retail client in relation to a relevant financial product is taken to have been provided to the client by each person who is, at that time, a supervisor of the provisional relevant provider (instead of by the provisional relevant provider).

*Retail clients to be informed of certain matters*

- (6) A supervisor of a provisional relevant provider must ensure that a retail client is informed:
- (a) of the name of each supervisor of the provisional relevant provider (even if the retail client has been informed of the name of each previous supervisor); and
  - (b) that the provisional relevant provider is undertaking work and training in accordance with subsection 921B(4); and
  - (c) that each supervisor is responsible for any personal advice provided by the provisional relevant provider to the client in relation to a relevant financial product.

*Provisional relevant providers not to obstruct or hinder supervision*

- (7) A provisional relevant provider must not obstruct or hinder a supervisor of the provisional relevant provider in ensuring that appropriate supervision is provided to the provisional relevant provider.

Note: Under section 921U, the standards body may provide further for the purposes of this section.

## **Division 8B—Compliance schemes**

### **Subdivision A—Compliance schemes to cover relevant providers**

#### **921G Meaning of *compliance scheme***

- (1) A *compliance scheme* is a scheme:
  - (a) that meets the requirements of this section; and
  - (b) under which compliance with the Code of Ethics by relevant providers covered by the scheme is monitored and enforced.

#### *Monitoring body of compliance scheme*

- (2) A monitoring body for a compliance scheme must monitor and enforce compliance with the Code of Ethics by any relevant provider covered by the scheme.
- (3) A monitoring body for a compliance scheme must not be:
  - (a) a financial services licensee; or
  - (b) an associate of a financial services licensee.
- (4) A compliance scheme must name the monitoring body for the scheme.

#### *Disputes and complaints*

- (5) A compliance scheme must set out how a dispute is to be resolved between the monitoring body for the scheme and a relevant provider covered by the scheme.
- (6) A compliance scheme must set out how a person may make a complaint to the monitoring body for the scheme in relation to a failure to comply with, or possible failure to comply with, the Code of Ethics by a relevant provider covered by the scheme.

#### *Name of compliance scheme*

- (7) A compliance scheme must have a name.

**921H Financial services licensees to ensure compliance scheme covers relevant providers**

- (1) A financial services licensee must ensure that a compliance scheme covers:
- (a) if the licensee is a relevant provider—the licensee; and
  - (b) in any case—any relevant provider authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.

Note: For when a compliance scheme *covers* a relevant provider, see section 921J.

- (2) A compliance scheme must cover a relevant provider within 30 business days of the following:
- (a) the day the person becomes a relevant provider;
  - (b) if the relevant provider was previously covered by only one compliance scheme that has ceased to cover the relevant provider—the day that scheme ceased to cover the relevant provider.

**921J When a compliance scheme covers a relevant provider**

- (1) A compliance scheme *covers* a relevant provider if:
- (a) an approval is in force under section 921K in relation to the compliance scheme; and
  - (b) the condition in subsection (2) of this section is met for the relevant provider; and
  - (c) if the monitoring body for the compliance scheme is a professional association—the relevant provider is a member of the professional association.

*Notifying ASIC of the compliance scheme that covers a relevant provider*

- (2) The condition in this subsection is met for a relevant provider in relation to a compliance scheme if:
- (a) both of the following apply:
    - (i) the notice lodged under section 922D in relation to the relevant provider stated that the compliance scheme is to cover the relevant provider;

- (ii) no notice has been lodged under section 922H stating that another compliance scheme is to cover the relevant provider; or
- (b) the most recent notice lodged under section 922H, in relation to particulars entered on the Register of Relevant Providers about the compliance scheme that is to cover the relevant provider, stated that the compliance scheme is to cover the relevant provider.

Note: A notice must be lodged under section 922H when there is a change in a matter for a relevant provider.

## **Subdivision B—Approval of compliance schemes**

### **921K Approval of compliance schemes**

- (1) A monitoring body for a compliance scheme may apply to ASIC for approval of the compliance scheme.

Note: A monitoring body for a compliance scheme may propose to modify the scheme (see section 921R).

- (2) The application must set out details of the scheme, including:
  - (a) the name of the monitoring body for the scheme; and
  - (b) arrangements for monitoring compliance with the Code of Ethics by relevant providers covered by the scheme; and
  - (c) sanctions for failures to comply with the Code of Ethics by relevant providers covered by the scheme; and
  - (d) arrangements for resolving disputes between the monitoring body and relevant providers covered by the scheme; and
  - (e) arrangements for making complaints to the monitoring body in relation to failures to comply with, or possible failures to comply with, the Code of Ethics by relevant providers covered by the scheme.
- (3) The application must include evidence that the monitoring body has sufficient resources and expertise to appropriately monitor and enforce compliance with the Code of Ethics under the scheme.

#### *Approval of compliance scheme*

- (4) ASIC may approve the scheme if it is satisfied that:

- (a) compliance with the Code of Ethics will be appropriately monitored and enforced under the scheme; and
  - (b) the monitoring body has sufficient resources and expertise to appropriately monitor and enforce compliance with the Code of Ethics under the scheme.
- (5) ASIC may approve the scheme subject to any one or more conditions ASIC considers appropriate.
- (6) ASIC must, within a reasonable period, decide the application and notify the monitoring body of:
- (a) the decision; and
  - (b) any condition mentioned in subsection (5).

*Revocation of approval, imposition of additional conditions etc.*

- (7) ASIC may, in accordance with subsection (8), take an action specified under subsection (9) if ASIC is satisfied:
- (a) that compliance with the Code of Ethics is not being appropriately monitored or enforced under the scheme; or
  - (b) that the monitoring body has not complied with:
    - (i) section 921N (obligation to notify licensee of failure to comply with Code of Ethics); or
    - (ii) a request under section 921Q (obligation to provide ASIC with information); or
    - (iii) section 921T (obligation to notify ASIC of changes to monitoring body); or
    - (iv) section 922HD (obligation to notify ASIC in relation to failures to comply with the Code of Ethics); or
  - (c) that the monitoring body does not have sufficient resources or expertise to appropriately monitor or enforce compliance with the Code of Ethics under the scheme.
- (8) ASIC must not take an action specified under subsection (9) unless:
- (a) ASIC gives a written notice to the monitoring body:
    - (i) providing reasons why ASIC is considering taking the action; and

- (ii) stating that the monitoring body has 90 business days to make submissions to ASIC, in accordance with the notice, about the possible action; and
    - (b) ASIC has considered any submissions made by the monitoring body in accordance with the notice.
  - (9) The following actions are specified:
    - (a) revoking the approval of the scheme;
    - (b) varying a condition imposed in relation to the approval of the scheme;
    - (c) imposing an additional condition in relation to the approval of the scheme.
- Revocation of conditions etc.*
- (10) ASIC may revoke or vary a condition imposed in relation to the approval of the scheme if ASIC is satisfied that compliance with the Code of Ethics will continue to be appropriately monitored and enforced under the scheme if ASIC revokes or varies the condition.
  - (11) ASIC must, within a reasonable period, notify the monitoring body if ASIC revokes or varies a condition under subsection (10).

## **Subdivision C—Investigations by monitoring body**

### **921L Investigations by monitoring body**

*Investigation into failure, or possible failure, to comply with Code of Ethics*

- (1) The monitoring body for a compliance scheme must determine, in writing, whether a relevant provider covered by the scheme has failed to comply with the Code of Ethics if the monitoring body becomes aware of the failure, or possible failure, by the relevant provider to comply with the Code of Ethics.

*Notifying relevant provider of investigation*

- (2) Within a reasonable period of becoming so aware, the monitoring body must notify the relevant provider that the monitoring body:
  - (a) has become so aware; and

(b) is to make a determination under subsection (1).

Note: A monitoring body that fails to comply with this subsection may commit an offence (see subsection 921M(1)).

*Request for information*

- (3) After becoming so aware, the monitoring body may request, in writing, any one or more of the following persons to provide information, documents or any other reasonable assistance to the monitoring body, within a reasonable specified period:
- (a) if the relevant provider is a financial services licensee—the licensee;
  - (b) if the relevant provider is not a financial services licensee:
    - (i) the relevant provider; or
    - (ii) the financial services licensee on whose behalf the relevant provider is authorised to provide personal advice to retail clients in relation to relevant financial products; or
    - (iii) if the relevant provider is a relevant provider as a result of section 916B—the authorised representative who authorised the relevant provider under that section.

Note: A person who fails to comply with a request under this subsection may commit an offence (see subsection 921M(2)).

*Restriction on relevant provider leaving compliance scheme*

- (4) The relevant provider must not cause a notice to be lodged under section 922H stating that another compliance scheme is to cover the relevant provider before the monitoring body has made a determination under subsection (1).

Note: A relevant provider who fails to comply with this subsection may commit an offence (see subsection 921M(3)).

*Completion of investigation*

- (5) The monitoring body must make the determination:
- (a) if the relevant provider notifies the monitoring body that the relevant provider intends to cause a notice to be lodged under section 922H stating that another compliance scheme is to

cover the relevant provider—within 160 days of receiving the notice; or

- (b) otherwise—within a reasonable period of becoming aware of the failure, or possible failure, by the relevant provider to comply with the Code of Ethics.

Note: A monitoring body that fails to comply with this subsection may commit an offence (see subsection 921M(1)).

*Determination by monitoring body not a legislative instrument*

- (6) The determination is not a legislative instrument.

*Offence*

- (7) A person commits an offence if:
- (a) the person is a monitoring body for a compliance scheme; and
  - (b) information is disclosed to the person in accordance with subsection 70-40(3AA) of the *Tax Agent Services Act 2009*; and
  - (c) the person uses or discloses the information for a purpose other than monitoring or enforcing compliance with the Code of Ethics under the scheme.

Penalty: 10 penalty units.

**921M Offences relating to investigations by monitoring body**

*Failure by monitoring body to notify relevant provider of investigation or complete investigation*

- (1) A person commits an offence if:
- (a) the person is a monitoring body for a compliance scheme; and
  - (b) the person fails to comply with subsection 921L(2) or (5).

Penalty: 10 penalty units.

*Failure to comply with request for information*

- (2) A person commits an offence if:

- (a) a request is made of the person under subsection 921L(3);  
and
- (b) the person fails to comply with the request within the period specified.

Penalty: 10 penalty units.

*Leaving compliance scheme before investigation completed*

- (3) A person commits an offence if:
  - (a) the person is a relevant provider; and
  - (b) the person is covered by a compliance scheme; and
  - (c) the monitoring body for the scheme notifies the person that the monitoring body has become aware of a failure, or possible failure, by the person to comply with the Code of Ethics; and
  - (d) the person contravenes subsection 921L(4).

Penalty: 10 penalty units.

**921N Obligation to notify licensee of failure to comply with Code of Ethics**

- (1) A monitoring body for a compliance scheme that covers a relevant provider must notify a financial services licensee if:
  - (a) either:
    - (i) the monitoring body determines under subsection 921L(1) that the relevant provider has failed to comply with the Code of Ethics; or
    - (ii) the monitoring body imposes a sanction on the relevant provider in relation to a failure to comply with the Code of Ethics; and
  - (b) the relevant provider is authorised by the licensee to provide personal advice to retail clients in relation to relevant financial products.
- (2) The monitoring body must notify the licensee within 30 days after making the determination or imposing the sanction.

Note 1: The approval for a compliance scheme may be revoked if the monitoring body for the scheme does not comply with this section (see subsection 921K(7)).

Note 2: ASIC must be notified if a monitoring body becomes aware of a failure, or possible failure, to comply with the Code of Ethics by a relevant provider, or if a sanction is imposed on a relevant provider under a compliance scheme (see section 922HD).

## **Subdivision D—Other provisions**

### **921P Obligation to ensure that compliance scheme is publicly available**

- (1) A monitoring body for a compliance scheme must ensure that the scheme is publicly available while any approval given under section 921K is in force in relation to the scheme.

#### *Offence*

- (2) A person commits an offence if:
  - (a) the person is a monitoring body for a compliance scheme; and
  - (b) an approval given under section 921K is in force in relation to the scheme; and
  - (c) the scheme is not publicly available.

Penalty: 10 penalty units.

### **921Q Obligation to provide ASIC with information**

- (1) ASIC may request, in writing, a monitoring body for a compliance scheme to give ASIC any specified information or documents about the compliance scheme within a reasonable specified period.
- (2) The monitoring body must comply with the request within the period specified.

Note: The approval for a compliance scheme may be revoked if the monitoring body for the scheme does not comply with this section (see subsection 921K(7)).

### **921R Modification of compliance scheme**

- (1) While an approval given under section 921K is in force in relation to a compliance scheme, the monitoring body for the scheme may, by written notice given to ASIC, propose to modify the scheme.
- (2) The notice must:
  - (a) set out the text of the proposed modification; and
  - (b) contain an explanation of the purpose of the proposed modification.

#### *Disallowance of modification*

- (3) Within the 28-day period beginning on the day ASIC receives the notice, ASIC may, by written notice given to the monitoring body, disallow all or a specified part of the proposed modification if ASIC is satisfied on reasonable grounds that:
  - (a) compliance with the Code of Ethics will not be appropriately monitored or enforced under the scheme as modified; or
  - (b) if the proposed modification is a new monitoring body for the scheme—the new monitoring body does not have sufficient resources or expertise to appropriately monitor or enforce compliance with the Code of Ethics under the scheme.

#### *Effect of disallowance*

- (4) If ASIC disallows the proposed modification within the 28-day period, the proposed modification does not take effect.
- (5) If ASIC disallows a specified part of the proposed modification within the 28-day period:
  - (a) the specified part does not take effect; and
  - (b) the proposed modification without the specified part takes effect at the end of the period.

#### *No disallowance*

- (6) Otherwise, the proposed modification takes effect at the end of the 28-day period.

### **921S Obligation to review compliance scheme**

- (1) A monitoring body for a compliance scheme must cause another person to complete a review of the scheme before the end of:
  - (a) the 5-year period beginning on the day ASIC approves the scheme under section 921K; and
  - (b) each subsequent 5-year period.
- (2) The other person mentioned in subsection (1) must not be:
  - (a) an associate of the monitoring body; or
  - (b) a person covered by the scheme; or
  - (c) if a relevant provider covered by the scheme is authorised to provide personal advice to retail clients, on behalf of a financial services licensee, in relation to relevant financial products—the licensee; or
  - (d) if a relevant provider covered by the scheme is a member of a professional association—the professional association.
- (3) As soon as reasonably practical after the review has been completed, the monitoring body must:
  - (a) make the review publicly available; and
  - (b) give a copy of the review to ASIC.

### **921T Obligation to notify ASIC of changes to monitoring body**

A monitoring body for a compliance scheme must notify ASIC if the monitoring body significantly reduces the resources or expertise that it uses to monitor or enforce compliance with the Code of Ethics under the scheme.

Note: The approval for a compliance scheme may be revoked if the monitoring body for the scheme does not comply with this section (see subsection 921K(7)).

## **Division 8C—The standards body**

### **Subdivision A—Functions of the standards body**

#### **921U Functions of the standards body**

- (1) The functions of the standards body are:
-

- (a) to make the legislative instruments mentioned in subsections (2), (3) and (5); and
- (b) to review those instruments regularly; and
- (c) if an application is made under subsection 921V(1) for approval of a foreign qualification—to approve, or refuse to approve, the foreign qualification; and
- (d) if an exam approved for the purposes of subsection 921B(3) is to be administered by the standards body—to administer the exam; and
- (e) any other function prescribed by this Act.

*Legislative instruments*

- (2) The standards body must, by legislative instrument:
  - (a) do any or all of the following in one or more determinations:
    - (i) approve bachelor or higher degrees, or equivalent qualifications, for the purposes of paragraph 921B(2)(a);
    - (ii) approve an exam for the purposes of subsection 921B(3);
    - (iii) set requirements for work and training for the purposes of subsection 921B(4);
    - (iv) set requirements for continuing professional development for the purposes of subsection 921B(5) in relation to the CPD year of a financial services licensee, the period mentioned in subsection 1546E(5), or any other period determined by the standards body;
    - (v) specify a word or expression to refer to a provisional relevant provider; and
  - (b) make a Code of Ethics for the purposes of section 921E.
- (3) The standards body may, by legislative instrument, in one or more determinations, modify the operation of a provision in this Part in relation to a period determined by the standards body under subparagraph (2)(a)(iv).
- (4) A determination made under subsection (3) has effect according to its terms, despite any other provision of this Act.

- (5) The standards body may, by legislative instrument, do either or both of the following in one or more determinations:
- (a) provide further in relation to the requirements set out in section 921F (requirements relating to provisional relevant providers);
  - (b) set other requirements in relation to a person who is a provisional relevant provider.

*Consultation*

- (6) Before making a legislative instrument under subsection (2), (3) or (5), or when reviewing a legislative instrument under paragraph (1)(b), the standards body must consult:
- (a) financial services licensees; and
  - (b) relevant providers; and
  - (c) associations representing consumers of financial services; and
  - (d) professional associations; and
  - (e) ASIC and the Department; and
  - (f) any other person or body that the standards body considers it appropriate to consult.
- (7) Without limiting subsection (6), the standards body is taken to have consulted the persons and bodies mentioned in that subsection if, on its website, the standards body:
- (a) before making a legislative instrument under subsection (2), (3) or (5):
    - (i) makes the proposed legislative instrument, or a description of the content of the proposed legislative instrument, available; and
    - (ii) invites those persons and bodies to comment on the proposed legislative instrument; or
  - (b) when reviewing a legislative instrument under paragraph (1)(b)—invites those persons and bodies to comment on the legislative instrument.
- (8) A failure to comply with subsection (6) does not affect the validity or enforceability of a legislative instrument made under subsection (2), (3) or (5).

*Fees*

- (9) The standards body may charge fees for things done in performing its functions.

Note: For the treatment of legislative instruments made under this section when the declaration of a body corporate to be the standards body is revoked, see section 921Y.

**921V Approval of foreign qualifications**

*Application for approval*

- (1) A person who has completed a foreign qualification may apply to the standards body for approval of the foreign qualification.
- (2) An application under subsection (1) must be in a form approved, in writing, by the standards body.

*Approval or refusal to approve*

- (3) The standards body must either:
- (a) approve the foreign qualification in accordance with subsection (4); or
  - (b) refuse to approve the foreign qualification.
- (4) The standards body may approve the foreign qualification only if:
- (a) the standards body is satisfied that the foreign qualification gives the person qualifications equivalent to a degree or qualification approved by the standards body for the purposes of paragraph 921B(2)(a); or
  - (b) both of the following apply:
    - (i) the standards body specifies one or more courses to be completed by the person under subsection (5) of this section;
    - (ii) the person completes each of those courses.
- (5) The standards body may specify one or more courses for the purposes of paragraph (4)(b) only if the standards body is satisfied that (together with the person's foreign qualification) the course or courses will give the person qualifications equivalent to a degree or

qualification approved by the standards body for the purposes of paragraph 921B(2)(a).

*When approval takes effect*

- (6) An approval under paragraph (3)(a) comes into force:
- (a) if the standards body specifies one or more courses to be completed by the person under subsection (5)—when the person has completed all of those courses; or
  - (b) otherwise—when it is given.

*Review of decision*

- (7) A person may apply to the Tribunal for review of:
- (a) a decision by the standards body under paragraph (3)(b) to refuse to approve the person's foreign qualification; or
  - (b) a decision by the standards body under subsection (5) to specify one or more courses to be completed by the person.

*Notice of reviewable decision and review rights*

- (8) Section 1317D applies in relation to a decision mentioned in paragraph (7)(a) or (b) of this section as if:
- (a) the standards body were a decision maker for the purposes of section 1317D; and
  - (b) the decision were a decision to which section 1317B applied.

**921W Commencement of Code of Ethics and amendments of Code of Ethics**

- (1) The Code of Ethics must not commence earlier than 30 days after the Code is registered under the *Legislation Act 2003*.
- (2) An amendment of the Code of Ethics must not commence earlier than 30 days after the amendment is registered under the *Legislation Act 2003*.

## **Subdivision B—Declaration of the standards body**

### **921X Minister to declare a body corporate to be the standards body**

- (1) The Minister may (subject to subsection (2)), by notifiable instrument, declare a body corporate to be the standards body.
- (2) The Minister may make a declaration under subsection (1) only if the following requirements are met:
  - (a) the body is a company limited by guarantee;
  - (b) the Minister is satisfied that the body is likely to comply with its obligations under this Act and other laws of the Commonwealth;
  - (c) the body's constitution provides the following:
    - (i) the functions of the body mentioned in section 921U;
    - (ii) the body must not be operated for profit;
    - (iii) the body must have 9 directors;
    - (iv) at least 3 directors (excluding the chair of the board of directors) must have experience in carrying on a financial services business or providing a financial service;
    - (v) at least 3 directors (excluding the chair of the board of directors) must have experience in representing consumers of financial services;
    - (vi) at least one director (excluding the chair of the board of directors) must have experience in the field of ethics;
    - (vii) at least one director (excluding the chair of the board of directors) must have experience in designing, or the requirements of, educational courses or qualifications;
    - (viii) a director must not hold a managerial or executive office in a professional association or association representing consumers of financial services;
    - (ix) a director must not represent any professional association, or association representing consumers of financial services, to which the director belongs;
    - (x) the Minister must appoint each director;
    - (xi) a director may resign his or her appointment by giving the Minister, and the body, a written resignation;

- (xii) the resignation takes effect on the day it has been received by both the Minister and the body or, if a later day is specified in the resignation, on that later day.
- (3) The declaration must specify the time at which it takes effect.
- (4) The Minister must table the declaration in each House of the Parliament as soon as practicable.

**921Y Minister may revoke declaration under section 921X**

- (1) The Minister may, at any time, by notifiable instrument, revoke a declaration under section 921X.
- (2) The revocation must specify:
  - (a) the time at which it takes effect; and
  - (b) which legislative instruments made by the standards body under subsection 921U(2), (3) or (5) continue in force, and which are taken to be revoked at that time; and
  - (c) which approvals (if any) given by the standards body under paragraph 921V(3)(a) continue in force (or are to come into and continue in force), and which are taken to be revoked at that time.
- (3) A revocation under subsection (1) that specifies that a legislative instrument, or an approval, is taken to be revoked at a particular time has effect according to its terms.

*Tabling of revocation*

- (4) The Minister must table the revocation in each House of the Parliament as soon as practicable.

*Performance by Minister of certain functions of standards body when no declaration is in force*

- (5) If no declaration under section 921X is in force at a particular time, the Minister may make a legislative instrument or decision as if the Minister were performing the functions of the standards body under paragraph 921U(1)(a) or (c).

*Instruments and decisions made by Minister etc.*

- (6) If a declaration under section 921X comes into force after the Minister has made a legislative instrument or decision for the purposes of subsection (5) of this section, the standards body may vary or revoke the legislative instrument or decision.

*Relationship with Acts Interpretation Act 1901*

- (7) This section does not limit the operation of subsection 33(3) of the *Acts Interpretation Act 1901*.

## **Subdivision C—Other provisions relating to the standards body**

### **921Z Modification of the standards body’s constitution**

- (1) As soon as practicable after a significant modification of the standards body’s constitution takes effect, the standards body must notify the Minister in writing of the modification.
- (2) The notice must:
  - (a) set out the text of the modification; and
  - (b) specify the date on which the modification takes effect; and
  - (c) contain an explanation of the purpose of the modification.
- (3) If no notice is lodged with the Minister within 21 days after the modification takes effect, the modification ceases to have effect.
- (4) A notice made under this section is not a legislative instrument.

### **921ZA Disallowance of modifications of the standards body’s constitution**

- (1) Within 28 days after receiving a notice under section 921Z, the Minister may disallow all or a specified part of the modification of the standards body’s constitution.
- (2) As soon as practicable after all or part of a modification is disallowed, the Minister must give notice of the disallowance to the standards body. The modification ceases to have effect, to the extent of the disallowance, when the standards body receives the notice.

### **921ZB Minister may direct the standards body to do certain things**

- (1) The Minister may give a written direction to the standards body if the Minister considers that the standards body is not complying with its obligations under this Act or under any arrangement it has with the Commonwealth.
- (2) The standards body must comply with the direction.
- (3) The Minister may, at any time, vary or revoke a direction.
- (4) Despite paragraph (b) in the definition of *director* in section 9, the Minister is not a director of the standards body.

### **921ZC Annual report**

As soon as practicable after the end of a financial year, the standards body must:

- (a) publish on its website the annual report for the financial year prepared under Chapter 2M; and
- (b) give a copy of the report to the Minister.

### **13 Before section 922A**

Insert:

#### **Subdivision A—Registers generally**

### **14 At the end of subsection 922A(2)**

Add:

Note: The Register of Relevant Providers is maintained under Subdivision C of this Division.

### **15 Section 922B**

Repeal the section, substitute:

### **922B Fees for searching registers**

The regulations may prescribe the fees that a person must pay to ASIC to do the things mentioned in section 1274A in relation to a

register mentioned in section 922A or the Register of Relevant Providers.

Note: Section 1274A provides that ASIC may permit a person to search certain registers kept by ASIC for prescribed information.

## **16 At the end of Division 9 of Part 7.6**

Add:

### **Subdivision B—Notice requirements relating to the Register of Relevant Providers**

#### **922D Obligation to notify ASIC about a person who becomes a relevant provider**

*Notice to include details about relevant provider*

- (1) A notice must be lodged under this section, in accordance with section 922L, if a person becomes a relevant provider.

Note: A financial services licensee required to lodge a notice under this section may obtain information from a relevant provider under section 922N.

*Content of notice*

- (2) The notice must include:
  - (a) for a relevant provider who is a financial services licensee—the information in section 922E; or
  - (b) for a relevant provider who is not a financial services licensee—the information in section 922F.

#### **922E Information about a relevant provider who is a financial services licensee**

- (1) For the purposes of paragraph 922D(2)(a), the notice must include the following:
  - (a) the relevant provider's name;
  - (b) the address of the relevant provider's principal place of business;
  - (c) the licence number given to the relevant provider under subsection 913C(1);

- (d) the year in which the relevant provider first provided personal advice to retail clients in relation to relevant financial products in accordance with the law (including the law of a State or Territory);
- (e) if applicable, the ABN of the relevant provider;
- (f) information about both of the following:
  - (i) the relevant financial products in relation to which the relevant provider is authorised to provide personal advice to retail clients;
  - (ii) whether the relevant provider is authorised to provide class of product advice in relation to some or all of those products;
- (g) the recent advising history of the relevant provider for the 5 years ending immediately before the time the notice is lodged;
- (h) information about both of the following:
  - (i) the educational qualifications of, and any training courses completed by, the relevant provider, to the extent that the qualifications and training courses are relevant to the provision of financial services;
  - (ii) the relevant provider's membership (if any) of a professional association if an approval is in force under section 921K in relation to a compliance scheme monitored and enforced by the association;
- (i) the name of the compliance scheme that is to cover the relevant provider.

Note: For the meaning of *recent advising history*, see section 922G.

*Educational qualifications and memberships*

- (2) For the purposes of subparagraph (1)(h)(i), if a relevant provider has more than 5 educational qualifications or has completed more than 5 training courses, the notice must include the 5 qualifications or training courses that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services.

**922F Information about a relevant provider who is not a financial services licensee**

- (1) For the purposes of paragraph 922D(2)(b), the notice must include the following:
- (a) the relevant provider's name;
  - (b) the address of the relevant provider's principal place of business;
  - (c) the relevant provider's date and place of birth;
  - (d) the name of the financial services licensee on whose behalf the relevant provider is authorised to provide personal advice to retail clients in relation to relevant financial products;
  - (e) the licence number given to that licensee under subsection 913C(1);
  - (f) if the relevant provider is a provisional relevant provider—the fact that the relevant provider is a provisional relevant provider;
  - (g) if the relevant provider is a provisional relevant provider—the day the relevant provider began undertaking work and training in accordance with subsection 921B(4);
  - (h) except in relation to provisional relevant providers—the year in which the relevant provider first provided personal advice to retail clients in relation to relevant financial products in accordance with the law (including the law of a State or Territory);
  - (i) if the relevant provider is a relevant provider as a result of section 916B—each of the following:
    - (i) the name of the authorised representative who authorised the relevant provider under that section;
    - (ii) the number allocated to the authorised representative by ASIC;
  - (j) if applicable, the ABN of any of the following:
    - (i) the relevant provider;
    - (ii) the licensee referred to in paragraph (d);
    - (iii) the authorised representative referred to in paragraph (i);
  - (k) details of both of the following:

- (i) the relevant financial products in relation to which the relevant provider is authorised to provide personal advice to retail clients;
- (ii) whether the relevant provider is authorised to provide class of product advice in relation to some or all of those products;
- (l) the recent advising history of the relevant provider for the 5 years ending immediately before the time the notice is lodged;
- (m) information about both of the following:
  - (i) the educational qualifications of, and any training courses completed by, the relevant provider, to the extent that the qualifications and training courses are relevant to the provision of financial services;
  - (ii) the relevant provider's membership (if any) of a professional association if an approval is in force under section 921K in relation to a compliance scheme monitored and enforced by the association;
- (n) the name of the compliance scheme that is to cover the relevant provider.

Note: For the meaning of *recent advising history*, see section 922G.

*Educational qualifications and memberships*

- (2) For the purposes of subparagraph (1)(m)(i), if a relevant provider has more than 5 educational qualifications or has completed more than 5 training courses, the notice must include the 5 qualifications or training courses that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services.

*Information already registered*

- (3) The notice does not need to include the information referred to in paragraph (1)(h), (l) or (m) if:
  - (a) the person required under subsection 922L(4) to cause the notice to be lodged believes on reasonable grounds that the information has previously been lodged; or
  - (b) the information is already entered on the Register of Relevant Providers.

*Provisional relevant providers*

- (4) The notice does not need to include the information referred to in paragraph (1)(k) in relation to a provisional relevant provider if that information is not known at the time the notice relating to the provisional relevant provider is lodged by the licensee.

Note: A notice must be lodged under section 922H once this information is known.

**922G Meaning of *recent advising history***

The *recent advising history* of a relevant provider is the following information:

- (a) for a relevant provider who is or was a financial services licensee authorised to provide personal advice to retail clients in relation to relevant financial products—each period during which the relevant provider was such a licensee;
- (b) for a relevant provider who is or was authorised to provide personal advice to retail clients, on behalf of one or more financial services licensees, in relation to relevant financial products—the following information:
  - (i) the name of each licensee;
  - (ii) if the relevant provider is or was a relevant provider as a result of section 916B—the name of each authorised representative who authorised the relevant provider under that section;
  - (iii) each period during which the relevant provider was authorised by each licensee or each authorised representative to provide such advice.

Note: If a relevant provider is covered by paragraphs (a) and (b) of this section, the relevant provider's recent advising history includes all the information required under those paragraphs.

**922H Ongoing obligation to notify ASIC when there is a change in a matter for a relevant provider**

- (1) A notice must be lodged under this section, in accordance with section 922L, if:
- (a) there is a change in a matter, particulars of which are entered for a relevant provider in the Register of Relevant Providers

(other than a change that is a direct consequence of an act by ASIC); or

- (b) both of the following apply:
  - (i) a notice is lodged under section 922D in relation to a relevant provider by a financial services licensee without including the information referred to in paragraph 922F(1)(k);
  - (ii) the information becomes known to the licensee after the notice is lodged.

Note: For paragraph (1)(a) of this section, an example of a change in a matter would be a person ceasing to be a relevant provider. Another example would be a change in the compliance scheme that covers a relevant provider.

- (2) The notice must include the following information:
  - (a) the new particulars or information to be entered in the Register;
  - (b) the relevant provider's name;
  - (c) if applicable, the number given to the relevant provider under section 922R.

#### **922HA Obligation to notify ASIC of financial services licensee's CPD year**

- (1) A notice must be lodged under this subsection, in accordance with section 922L, if ASIC grants an applicant an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products.
- (2) A notice lodged under subsection (1) must include the day on which the licensee's CPD year is to begin.
- (3) A notice must be lodged under this subsection, in accordance with section 922L, if a financial services licensee:
  - (a) has previously lodged a notice under subsection (1) or this subsection specifying a particular day of the year; and
  - (b) decides that the licensee's CPD year is to begin on another day of the year; and
  - (c) has not lodged a notice under subsection (1) or this subsection in the 12-month period preceding that decision.

- (4) A notice lodged under subsection (3) must include the day on which the licensee's CPD year is to begin.

**922HB Obligation to notify ASIC of non-compliance with continuing professional development standard**

- (1) A notice must be lodged under this section, in accordance with section 922L, in relation to a person if, at the end of a financial services licensee's CPD year:
- (a) the person:
    - (i) is the licensee; or
    - (ii) is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and
  - (b) the person is a relevant provider; and
  - (c) the relevant provider has not complied with section 921D during the licensee's CPD year.

Note 1: A financial services licensee may obtain information from a relevant provider under section 922N for the purposes of determining whether to lodge a notice under this section.

Note 2: Subsection 921D(1) requires certain relevant providers to meet the continuing professional development standard in subsection 921B(5).

- (2) The notice must state that the relevant provider has not complied with section 921D during the licensee's CPD year.

**922HC Requirement to retain information**

- (1) A financial services licensee must retain evidence of the continuing professional development undertaken during the licensee's CPD year by:
- (a) if the licensee is a relevant provider—the licensee; and
  - (b) if a relevant provider is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products—the relevant provider.
- (2) The evidence must be retained for 12 months after the end of the CPD year.

*Offence*

- (3) A person commits an offence if:
- (a) the person is required to retain evidence under this section; and
  - (b) the person fails to retain the evidence in accordance with this section.

Penalty: 50 penalty units.

**922HD Obligation to notify ASIC in relation to failures to comply with the Code of Ethics**

- (1) A notice must be lodged under this subsection, in accordance with section 922L, if:
- (a) a monitoring body for a compliance scheme determines under subsection 921L(1) that a relevant provider covered by the scheme has failed to comply with the Code of Ethics; or
  - (b) a sanction is imposed on a relevant provider covered by a compliance scheme in relation to a failure to comply with the Code of Ethics by the relevant provider.
- (2) The notice must include the following information:
- (a) if the relevant provider is a financial services licensee—the name of the licensee;
  - (b) if the relevant provider is not a financial services licensee:
    - (i) the name of the relevant provider; and
    - (ii) the name of the financial services licensee on whose behalf the relevant provider is authorised to provide personal advice to retail clients in relation to relevant financial products;
  - (c) if paragraph (1)(a) applies—details of the failure to comply;
  - (d) if paragraph (1)(b) applies—details of the sanction imposed.
- (3) If, in relation to the same failure to comply, the events mentioned in paragraphs (1)(a) and (b) occur within 30 business days of one another:
- (a) a single notice may be lodged under subsection (1) within 30 business days of the later of those events; and

- (b) only one notice is taken to be required to be caused to be lodged for the purposes of subsection 922M(1).

**922J Obligation to notify ASIC about a person who starts to have control of a body corporate licensee**

- (1) A notice must be lodged under this section, in accordance with section 922L, if a person starts to have control of a body corporate licensee.

Note: Subsection 922P(3) provides that a notice is not required to be lodged when a person starts and then ceases to have control of a body corporate licensee within 30 business days.

- (2) The notice must include the following information:
- (a) the name of the licensee;
  - (b) the licence number given to the licensee under subsection 913C(1);
  - (c) the name of the person who starts to have control of the licensee;
  - (d) the day the person starts to have control of the licensee.

**922K Obligation to notify ASIC about a person who ceases to have control of a body corporate licensee**

- (1) A notice must be lodged under this section, in accordance with section 922L, if a person ceases to have control of a body corporate licensee.

Note: Subsection 922P(3) provides that a notice is not required to be lodged when a person starts and then ceases to have control of a body corporate licensee within 30 business days.

- (2) The notice must include the following information:
- (a) the name of the licensee;
  - (b) the licence number given to the licensee under subsection 913C(1);
  - (c) the name of the person who ceases to have control of the licensee;
  - (d) the day the person ceases to have control of the licensee.

## **922L Requirement for notice to be lodged**

### *Notice in prescribed form*

- (1) A notice under a notice provision must be in the prescribed form.

Note 1: Under section 350, a document that this Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in the regulations—be in that prescribed form; and
- (b) if a form for the document is not prescribed in the regulations but ASIC has approved a form for the document—be in that approved form.

Note 2: The prescribed form may deal with information that is required under more than one section of this Act.

### *When notice must be lodged*

- (2) A notice under a notice provision must be lodged within 30 business days of the following day:

- (a) if the notice is lodged under subsection 922HA(1)—the day ASIC grants the Australian financial services licence mentioned in that subsection;
- (b) if the notice is lodged under subsection 922HA(3)—the day the financial services licensee mentioned in that subsection decides that the licensee’s CPD year is to begin on another day of the year;
- (c) if the notice is lodged under subsection 922HB(1)—the last day of the CPD year of the financial services licensee mentioned in that subsection;
- (d) if the notice is lodged under subsection 922HD(1)—(subject to subsection 922HD(3)) the day the monitoring body mentioned in subsection 922HD(1) determines under subsection 921L(1) that a relevant provider has failed to comply with the Code of Ethics or a sanction is imposed;
- (e) if the notice is lodged under any other notice provision—the day of the event mentioned in subsection (1) of the notice provision.

- (3) The information contained in the notice must be accurate as at the day mentioned in paragraph (2)(a), (b), (c), (d) or (e).

*Who must cause notice to be lodged*

- (4) The following person must cause a notice under section 922D, 922H or 922HB to be lodged in relation to a relevant provider:
  - (a) if the relevant provider is a financial services licensee—the licensee;
  - (b) otherwise—the financial services licensee on whose behalf the relevant provider is authorised to provide personal advice to retail clients in relation to relevant financial products.
- (5) A notice under subsection 922HA(1) or (3) must be lodged by the financial services licensee mentioned in that section.
- (6) A notice under section 922HD must be lodged by the monitoring body mentioned in subsection 922HD(1).
- (7) A notice under section 922J or 922K relating to a person who starts or ceases to have control of a body corporate licensee must be lodged by the licensee.

**922M Offence for failing to comply with obligation to notify ASIC**

- (1) A person commits an offence if:
  - (a) the person is required to cause a notice to be lodged under a notice provision; and
  - (b) the person fails to cause the notice to be lodged in accordance with that provision.

Note: A notice must be lodged in accordance with section 922L in order to be lodged in accordance with a notice provision (see subsection (1) of the notice provision).

Penalty: 50 penalty units.

- (2) However, subsection (1) does not apply if:
  - (a) the person fails to cause the notice to be lodged in accordance with section 922D; and
  - (b) the only reason the person fails to cause the notice to be lodged in accordance with that section is because the information referred to in paragraph 922F(1)(h), (l) or (m) is not included in the notice; and

(c) subsection 922F(3) provides that the notice does not need to include that information.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) Subsection 4K(2) of the *Crimes Act 1914* does not apply to subsection (1) of this section.

Note: A person may commit an offence if the person knowingly gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

## **922N Obligation for relevant providers to provide information to financial services licensees**

### *Information about relevant provider*

- (1) A person must provide information to a financial services licensee in accordance with this section if:
- (a) the person is a relevant provider; and
  - (b) the person has been authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and
  - (c) the licensee has asked the person to provide the information so that the licensee can:
    - (i) comply with its obligation to lodge a notice relating to the person in accordance with section 922D; or
    - (ii) comply with its obligation to lodge, under section 922H, a notice relating to the person for the purposes of section 921H; or
    - (iii) determine whether the licensee has an obligation to lodge a notice under section 922HB.

Note: A person may commit an offence if the person knowingly gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

### *When information must be given*

- (2) The information must be given to the licensee within a period that allows the licensee to comply with the obligation referred to in paragraph (1)(c).

### **922P Change in matter within 30 business days**

- (1) Notices must be given under sections 922D, 922H and 922HD in relation to a person who was a relevant provider even if the person ceases to be a relevant provider before a notice has been lodged under section 922D.
- (2) A notice is not required to be given under section 922HB in relation to a person if:
  - (a) the person was a relevant provider at the end of a financial services licensee's CPD year; and
  - (b) the person was authorised at that time to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and
  - (c) the person ceases to be a relevant provider within 30 business days of becoming a relevant provider.
- (3) A notice is not required to be given under sections 922J and 922K in relation to a person who starts or ceases to have control of a body corporate licensee if the person ceases to have control of the licensee within 30 business days of starting to have control of the licensee.

### **Subdivision C—Register of Relevant Providers**

#### **922Q Register of Relevant Providers**

*Register to include details of relevant providers*

- (1) ASIC must enter details on a Register of Relevant Providers in respect of each person who is or was a relevant provider.

*Contents of Register*

- (2) The details that must be entered on the Register include the following:
  - (a) the relevant provider's name;
  - (b) the relevant provider's principal place of business;
  - (c) the name of each financial services licensee on whose behalf the relevant provider is or was authorised to provide personal

- advice to retail clients in relation to relevant financial products;
- (d) if applicable, each person who has control of the licensee;
  - (e) the relevant provider's date and place of birth;
  - (f) the licence number given under subsection 913C(1) to the relevant provider and each licensee referred to in paragraph (c);
  - (g) if applicable, the number given under section 922R;
  - (h) if the relevant provider is a relevant provider as a result of section 916B:
    - (i) the name of the authorised representative who authorised the relevant provider under that section; and
    - (ii) the number allocated to the authorised representative by ASIC;
  - (i) the recent advising history of the relevant provider;
  - (j) if the relevant provider is a provisional relevant provider:
    - (i) the fact that the relevant provider is a provisional relevant provider; and
    - (ii) the day the relevant provider began undertaking work and training in accordance with subsection 921B(4); and
    - (iii) a statement that the relevant provider is required to be supervised in accordance with Subdivision C of Division 8A;
  - (k) except in relation to provisional relevant providers—the year in which the relevant provider first provided personal advice to retail clients in relation to relevant financial products in accordance with the law (including the law of a State or Territory);
  - (l) whether the person is currently, or has ceased to be, a relevant provider;
  - (m) if a financial services licensee has lodged a notice under section 922HB in relation to the relevant provider—that the relevant provider did not comply with section 921D during the licensee's CPD year;
  - (n) if the relevant provider has been disqualified from managing corporations—information contained on the register established under section 1274AA;

- (o) if the relevant provider has been banned or disqualified under section 80 or 86 of the *National Consumer Credit Protection Act 2009*—information about that banning or disqualification;
- (p) if the relevant provider has been banned, disqualified or suspended under Division 8 of Part 7.6, or under section 130F of the *Superannuation Industry (Supervision) Act 1993*—information about that banning, disqualification or suspension;
- (q) if the relevant provider has given an undertaking under either or both section 93AA of the ASIC Act and section 322 of the *National Consumer Credit Protection Act 2009*—information about that undertaking;
- (r) if a monitoring body for a compliance scheme determines under subsection 921L(1) that the relevant provider who is covered by the scheme has failed to comply with the Code of Ethics:
  - (i) details of the failure to comply; and
  - (ii) details of any sanction imposed on the relevant provider in relation to the failure to comply;
- (s) if applicable, information about both of the following:
  - (i) the relevant financial products in relation to which the relevant provider is authorised to provide personal advice to retail clients;
  - (ii) whether the relevant provider is authorised to provide class of product advice in relation to some or all of those products;
- (t) if applicable, the ABN of any of the following:
  - (i) the relevant provider;
  - (ii) each licensee referred to in paragraph (c);
  - (iii) if applicable, the authorised representative referred to in paragraph (h);
- (u) information about both of the following:
  - (i) the educational qualifications of, and any training courses completed by, the relevant provider (but not courses completed for the purposes of subsection 921B(5)), to the extent that the qualifications

and training courses are relevant to the provision of financial services;

- (ii) the relevant provider's membership (if any) of a professional association if an approval is in force under section 921K in relation to a compliance scheme monitored and enforced by the association;
- (v) the name of the compliance scheme that is to cover the relevant provider;
- (w) any other information that ASIC believes should be included in the Register that relates to the provision of financial services by the relevant provider.

Note 1: Not all of the Register's contents are publicly available. However, section 1274A provides that ASIC may permit a person to search certain registers kept by ASIC for prescribed information.

Note 2: Information in paragraph (2)(s) may not be known in relation to a provisional relevant provider (see subsection 922F(4)).

### **922R Relevant provider number**

ASIC may give a unique number (or any unique combination of numbers, characters, symbols and letters) to a person who is a relevant provider.

### **922S Correcting the Register**

ASIC may correct any error in, or omission from, the Register of Relevant Providers.

Note: Australian Privacy Principle 13 applies to ASIC and requires it to take reasonable steps to correct personal information that is wrong or misleading so that the information is accurate, up to date, complete, relevant and not misleading (see Schedule 1 to the *Privacy Act 1988*).

## **17 At the end of Division 10 of Part 7.6**

Add:

### **923C Restriction on use of terms “financial adviser” and “financial planner”**

- (1) A person contravenes this subsection if:

- (a) the person carries on a financial services business or provides a financial service (whether or not on behalf of another person); and
- (b) the person assumes or uses, in this jurisdiction, a restricted word or expression in relation to the service; and
- (c) any of the following apply:
  - (i) the person is not a relevant provider;
  - (ii) the person is a provisional relevant provider;
  - (iii) the person is a limited-service time-sharing adviser.

Note 1: For the meanings of *restricted word or expression* and *assume or use*, see subsections (8) and (9) of this section.

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

- (2) A person (the *first person*) contravenes this subsection if:
- (a) the first person carries on a financial services business or provides a financial service; and
  - (b) another person provides a financial service on behalf of the person; and
  - (c) the first person assumes or uses, in this jurisdiction, a restricted word or expression in relation to the service; and
  - (d) any of the following apply:
    - (i) the first person is not a relevant provider;
    - (ii) the first person is a provisional relevant provider;
    - (iii) the first person is a limited-service time-sharing adviser.

Note 1: For the meanings of *restricted word or expression* and *assume or use*, see subsections (8) and (9) of this section.

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

*Advice to wholesale clients*

- (3) It is not a contravention of subsection (1) for a person to assume or use a restricted word or expression if:
- (a) the person provides advice to wholesale clients; and
  - (b) the person assumes or uses the restricted word or expression only in relation to that advice.

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

- (4) It is not a contravention of subsection (2) for a person to assume or use a restricted word or expression if:
- (a) another person (the *adviser*) provides a financial service on behalf of the person; and
  - (b) the adviser provides advice to wholesale clients; and
  - (c) the person assumes or uses the restricted word or expression only in relation to that advice.

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

*Advice as employee or director*

- (5) It is not a contravention of subsection (1) for a person to assume or use a restricted word or expression if:
- (a) the person is an employee or director of a body; and
  - (b) the person provides advice to the body; and
  - (c) the person assumes or uses the restricted word or expression only in relation to that advice.

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

- (6) It is not a contravention of subsection (2) for a person to assume or use a restricted word or expression if:
- (a) another person (the *adviser*) is an employee or director of a body; and
  - (b) the adviser provides advice to the body; and
  - (c) the person assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

*Continuing contravention*

- (7) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence under subsection (1) or (2), the person commits the offence in respect of:
- (a) the first day on which the offence is committed; and

- (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

*References to restricted word or expression*

- (8) In this section:
- (a) a reference to a restricted word or expression is a reference to:
    - (i) the expression *financial adviser* or *financial planner*; or
    - (ii) any other word or expression specified in the regulations as a restricted word or expression for the purposes of this section; or
    - (iii) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and
  - (b) a reference to a restricted word or expression being assumed or used includes a reference to the restricted word or expression being assumed or used:
    - (i) as part of another word or expression; or
    - (ii) in combination with other words, letters or other symbols.
- (9) However, a reference in this section to a restricted word or expression does not include a reference to a word or expression mentioned in paragraph (8)(a) if:
- (a) the word or expression mentioned in that paragraph is assumed or used in relation to a provisional relevant provider; and
  - (b) the word or expression is assumed or used as part of a word or expression specified by the standards body for the purposes of subparagraph 921U(2)(a)(v).

*Contravention does not affect compensation arrangements*

- (10) To avoid doubt, this section does not affect the obligation of a financial services licensee to have arrangements in place under section 912B.

Note: Section 912B requires financial services licensees to have in place compensation arrangements if the licensee provides financial services to retail clients.

**18 Paragraph 926A(6)(b)**

After “Part 10.2”, insert “or 10.23A”.

**19 Subsection 1274A(2)**

After “prescribed register”, insert “other than the Register of Relevant Providers”.

**20 Schedule 3 (after table item 269A)**

Insert:

269AAA	Subsection 923C(1)	10 penalty units for each day, or part of a day, in respect of which the offence is committed.
269AAB	Subsection 923C(2)	10 penalty units for each day, or part of a day, in respect of which the offence is committed.

***Tax Agent Services Act 2009***

**21 Subparagraph 60-125(8)(c)(iv)**

Omit “and”.

**22 At the end of paragraph 60-125(8)(c)**

Add:

- (v) if the decision or finding concerns a person \*covered by a \*compliance scheme who provides a tax (financial) advice service—the \*monitoring body for the scheme; and

**23 At the end of paragraph 60-125(8)(d)**

Add:

- ; and (iv) if subparagraph (c)(v) applies—the monitoring body for the relevant compliance scheme.

## 24 Before section 70-35

Insert:

### 70-34 Power to request information from monitoring bodies

- (1) This section applies if a person:
  - (a) provides a \*tax (financial) advice service; and
  - (b) is \*covered by a \*compliance scheme.
- (2) For the purposes of performing its functions, or exercising its powers, the Board may, by notice, request the \*monitoring body for the \*compliance scheme to give the Board:
  - (a) information relating to compliance by the person with the \*Code of Ethics under the scheme; or
  - (b) any other information relating to the scheme; or
  - (c) information relating to compliance by the person with the \*Code of Professional Conduct.

Note 1: Failure to give the information is an offence: see section 8C of the *Taxation Administration Act 1953*.

Note 2: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

- (3) The Board's request must:
  - (a) be in writing; and
  - (b) specify the period within which the \*monitoring body must comply with the request.

The period specified under paragraph (b) must be at least 14 days after the date of the request.

## 25 After subsection 70-40(3A)

Insert:

### *Disclosures to monitoring bodies for compliance schemes*

- (3AA) Subsection 70-35(1) does not apply if the record or disclosure is to a \*monitoring body for a \*compliance scheme for the purpose of the monitoring body monitoring or enforcing compliance with the \*Code of Ethics under the scheme.

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

## **26 Subsection 90-1(1)**

Insert:

***Code of Ethics*** has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

***compliance scheme*** has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

***covers***, in relation to a compliance scheme, has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

Note: See also section 18A of the *Acts Interpretation Act 1901* (parts of speech and grammatical forms).

***monitoring body*** for a compliance scheme has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

## Part 2—Application of amendments

### *Corporations Act 2001*

#### 27 After Part 10.23 of Chapter 10

Insert:

### **Part 10.23A—Transitional provisions relating to the Corporations Amendment (Professional Standards of Financial Advisers) Act 2017**

#### Division 1—Definitions

##### 1546A Definitions

In this Part:

***amending Act*** means the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*.

***commencement*** means the start of the day Part 1 of Schedule 1 to the amending Act commences.

***education and training standards*** has the meaning given by section 921B.

***existing provider*** means:

- (a) a person who:
  - (i) is a relevant provider at any time between 1 January 2016 and 1 January 2019 (except a person who has ceased to be a relevant provider under subsection 1546B(4) or (5)); and
  - (ii) is not banned, disqualified or suspended under Division 8 of Part 7.6 on 1 January 2019; or
- (b) a person who:
  - (i) at any time between 1 January 2016 and 1 January 2019, provides personal advice in a foreign country to

retail clients in relation to relevant financial products;  
and

- (ii) is not prohibited under the law of the foreign country from providing such advice on 1 January 2019.

**foreign country** includes a region, where:

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region's international relations.

**relevant financial products** has the meaning given by section 910A.

**relevant provider** has the meaning given by section 910A.

## **Division 2—Application and transitional provisions**

### **1546B Existing providers to meet certain education and training standards**

#### *Completion of qualifications*

- (1) An existing provider must have done either of the following by 1 January 2024:
- (a) met the education and training standard in subsection 921B(2);
  - (b) completed one or more courses determined by the standards body to give the provider qualifications equivalent to that standard.

Note: The standard in subsection 921B(2) is that a person has completed a bachelor or higher degree, or equivalent qualification, approved by the standards body, or a foreign qualification approved by the standards body.

- (2) To avoid doubt, an existing provider may meet the education and training standard in subsection 921B(2), or complete one or more courses in accordance with paragraph (1)(b) of this section, before this section commences.

*Exam*

- (3) An existing provider must have met the education and training standard in subsection 921B(3) before 1 January 2021.

Note 1: The standard in subsection 921B(3) is that a person has passed an exam approved by the standards body.

Note 2: ASIC must be notified when existing providers have passed the exam (see section 1546Y).

Note 3: An existing provider is not required to meet the standard in subsection 921B(4), which is that a person has undertaken at least a year of work and training that meets the requirements set by the standards body.

*Failing to meet the education and training standards*

- (4) If, at the start of 1 January 2024, a person who is an existing provider, and a relevant provider at that time, fails to comply with subsection (1), the person is taken for the purposes of this Act, after that time, to have ceased to be a relevant provider.
- (5) If, at the start of 1 January 2021, a person who is an existing provider, and a relevant provider at that time, fails to comply with subsection (3), the person is taken for the purposes of this Act, after that time, to have ceased to be a relevant provider.
- (6) Subsections (4) and (5) do not prevent the person again becoming a relevant provider.

*Standards body may determine courses*

- (7) The standards body may, by legislative instrument, determine courses for the purposes of paragraph (1)(b).

**1546C Application of limitation on authorisation to provide personal advice and offence**

*Limitation on authorisation to provide personal advice*

- (1) Section 921C, as inserted by the amending Act, applies in relation to:
- (a) any Australian financial services licence granted on or after 1 January 2019 to a person who is not a relevant provider before that day; and
  - (b) any authorisation given on or after that day to a person who is not a relevant provider before that day.

Note: Section 921C provides that a person cannot be granted a licence, or be authorised, to provide certain financial advice unless the person meets certain conditions.

- (2) Section 921C, as inserted by the amending Act, applies, on and after 1 January 2024, in relation to a person who ceases to be a relevant provider under subsection 1546B(4).
- (3) Section 921C, as inserted by the amending Act, applies, on and after 1 January 2021, in relation to a person who ceases to be a relevant provider under subsection 1546B(5).
- (4) Section 921C, as inserted by the amending Act, does not apply in relation to a person who is an existing provider while the person continues to be a relevant provider.

*Restriction on use of terms “financial adviser” and “financial planner”*

- (5) The following provisions, as inserted by the amending Act, apply on and after 1 January 2019:
- (a) section 923C;
  - (b) items 269AAA and 269AAB of the table in Schedule 3.

Note: Those provisions relate to offences for using the terms “financial adviser” and “financial planner”.

**1546D Application of requirements relating to provisional relevant providers**

Section 921F, as inserted by the amending Act, applies in relation to any authorisation given on or after 1 January 2019 to a person who is not a relevant provider before that day.

Note: Section 921F sets out the requirements in relation to a person who is a provisional relevant provider.

**1546E Application of continuing professional development standard for relevant providers**

- (1) Sections 921D and 922HA, as inserted by the amending Act, apply on and after 1 January 2019.

Note: Section 921D provides that certain relevant providers must meet the continuing professional development standard. Section 922HA requires ASIC to be notified of the day on which a financial services licensee's CPD year is to begin.

- (2) Sections 922HB and 922HC, as inserted by the amending Act, apply in relation to any CPD year of a financial services licensee that begins on or after 1 January 2019.

Note: Section 922HB requires ASIC to be notified if relevant providers do not comply with the continuing professional development standard. Section 922HC requires a financial services licensee to retain evidence of the continuing professional development of relevant providers.

- (3) Section 922N, as inserted by the amending Act, applies in relation to a request made of a person on or after 1 January 2019 for the purposes of subparagraph 922N(1)(c)(iii).

Note: Among other things, section 922N allows a financial services licensee to ask a person to provide information relating to whether the licensee must lodge a notice under section 922HB.

- (4) Subsection (5) applies if:
- (a) the first CPD year of a financial services licensee commences after 1 January 2019; and
  - (b) before the start of the licensee's first CPD year:
    - (i) the licensee is a relevant provider; or

- (ii) a relevant provider is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.
- (5) Sections 922HB, 922HC and 922Q, as inserted by the amending Act, apply as if a reference in those sections to a financial services licensee's CPD year included a reference to the period:
- (a) beginning on the later of 1 January 2019 and:
    - (i) if subparagraph (4)(b)(i) applies—the day the licensee is granted an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products; and
    - (ii) if subparagraph (4)(b)(ii) applies—the first day the relevant provider is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and
  - (b) ending on the day before the licensee's first CPD year.

Note 1: Among other things, section 922Q requires failures of relevant providers to comply with the continuing education standard to be entered on the Register.

Note 2: The standards body may, under subparagraph 921U(2)(a)(iv), set requirements for continuing professional development in relation to a period mentioned in subsection (5) of this section, and, in one or more determinations made under subsection 921U(3), modify the operation of a provision in Part 7.6 in relation to such a period.

#### **1546F Application of Code of Ethics to relevant providers**

Sections 921E and 922HD, as inserted by the amending Act, apply on and after 1 January 2020.

Note: Section 921E requires a relevant provider to comply with the Code of Ethics. Section 922HD requires ASIC to be notified of failures to comply with the Code of Ethics.

#### **1546G Application of obligations in relation to compliance schemes**

- (1) Section 921H, as inserted by the amending Act, applies on and after 15 November 2019:
  - (a) in relation to a person who becomes a financial services licensee on or after that day; and

(b) for a person who becomes a financial services licensee before that day:

- (i) in relation to a person who becomes a relevant provider on or after that day; and
- (ii) in relation to a person who becomes a relevant provider before that day as if subsection 921H(2) required the scheme to cover the relevant provider by 1 January 2020.

Note: Section 921H requires a financial services licensee to ensure that a compliance scheme covers each of its relevant providers.

(2) Section 921J, as inserted by the amending Act, applies on and after 15 November 2019.

Note: Section 921J sets out when a compliance scheme *covers* a relevant provider.

(3) Sections 921K, 921Q, 921R and 921T, as inserted by the amending Act, apply on and after the day this section commences.

Note: Section 921K provides that a monitoring body for a compliance scheme may apply to ASIC for approval of the scheme. Section 921Q provides that ASIC may request information about a compliance scheme from the monitoring body for the scheme. Section 921R provides that a monitoring body may propose to modify a scheme in certain circumstances. Section 921T requires a monitoring body to notify ASIC of certain reductions in the body's resources or expertise.

(4) Sections 921L, 921M, 921N, 921P and 921S, as inserted by the amending Act, apply on and after 1 January 2020.

Note: Sections 921L to 921N include provisions about investigations by monitoring bodies. Section 921P provides for compliance schemes to be made publicly available. Section 921S provides for the review of compliance schemes.

(5) Paragraphs 922E(1)(i) and 922F(1)(n), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922D on or after that day.

Note: Paragraphs 922E(1)(i) and 922F(1)(n) require notices lodged under section 922D in relation to a relevant provider to include the name of the compliance scheme that is to cover the relevant provider.

**1546H Application of obligation for standards body to publish annual report**

- (1) Section 921ZC, as inserted by the amending Act, applies on and after 1 July 2017.
- (2) If the declaration of a body corporate to be the standards body under section 921X takes effect at a time during a financial year, the first annual report published by the standards body must cover the period beginning at that time and ending at the end of the next financial year as if that period were a financial year.

**1546J Application of obligation to notify ASIC about a person who becomes a relevant provider**

Sections 922D, 922E and 922F, as inserted by the amending Act, apply (subject to subsection 1546G(5) and sections 1546K to 1546N) in relation to a person who becomes a relevant provider if:

- (a) the person becomes a relevant provider after commencement;  
or
- (b) both of the following apply:
  - (i) the person becomes a relevant provider before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922D, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

Note: Section 922D requires ASIC to be notified if a person becomes a relevant provider.

**1546K Application of requirements relating to information about relevant provider's principal place of business**

Paragraphs 922E(1)(b) and 922F(1)(b), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922D on or after that day.

Note: Paragraphs 922E(1)(b) and 922F(1)(b) require notices lodged under section 922D in relation to a relevant provider to include the address of the relevant provider's principal place of business.

**1546L Application of requirements relating to information about membership of professional associations where relevant provider is licensee**

Section 922E, as inserted by the amending Act, applies until the start of 15 November 2019 as if paragraph 922E(1)(h) were replaced with the following:

- (h) information about both of the following:
  - (i) the educational qualifications of, and any training courses completed by, the relevant provider;
  - (ii) the relevant provider's membership (if any) of professional bodies;

to the extent that the qualifications, training courses or memberships are relevant to the provision of financial services (and if the relevant provider has more than 5 memberships, the 5 memberships that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services);

**1546M Application of requirements relating to information about membership of professional associations where relevant provider is not licensee**

Section 922F, as inserted by the amending Act, applies until the start of 15 November 2019 as if paragraph 922F(1)(m) were replaced with the following:

- (m) information about both of the following:
  - (i) the educational qualifications of, and any training courses completed by, the relevant provider;
  - (ii) the relevant provider's membership (if any) of professional bodies;

to the extent that the qualifications, training courses or memberships are relevant to the provision of financial services (and if the relevant provider has more than 5 memberships, the 5 memberships that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services);

**1546N Application of requirements relating to information about provisional relevant provider's work and training**

Paragraphs 922F(1)(f) and (g), as inserted by the amending Act, apply in relation to notices lodged under section 922D on or after 1 January 2019.

Note: Paragraphs 922F(1)(f) and (g) require notices lodged under section 922D to include information in relation to provisional relevant providers and their work and training.

**1546P Application of ongoing obligation to notify ASIC when there is a change in a matter for a relevant provider**

Paragraph 922H(1)(a), as inserted by the amending Act, applies in relation to a change in a matter if:

- (a) the change occurs after commencement; or
- (b) both of the following apply:
  - (i) the change occurs before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922H, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

**1546Q Application of obligation to notify ASIC about a person who starts to have control of a body corporate licensee**

Section 922J, as inserted by the amending Act, applies in relation to a person who starts to have control of a body corporate licensee if:

- (a) the person starts to have control of the licensee after commencement; or
- (b) both of the following apply:
  - (i) the person starts to have control of the licensee before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922J, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

**1546R Application of obligation to notify ASIC about a person who ceases to have control of a body corporate licensee**

Section 922K, as inserted by the amending Act, applies in relation to a person who ceases to have control of a body corporate licensee if:

- (a) the person ceases to have control of the licensee after commencement; or
- (b) both of the following apply:
  - (i) the person ceases to have control of the licensee before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922K, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

**1546S Application of obligation for relevant providers to provide information to financial services licensees**

Section 922N, as inserted by the amending Act, applies in relation to a request made of a person if:

- (a) both of the following apply:
  - (i) the request is made of the person for the purposes of subparagraph 922N(1)(c)(i) or (ii);
  - (ii) the request is made after commencement (whether the person becomes a relevant provider before or after commencement); or
- (b) both of the following apply:
  - (i) the request (as mentioned in paragraph 922N(1)(c), as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*) is made before commencement;
  - (ii) immediately before commencement, the person has not provided the information requested.

**1546T Application of requirements relating to Register of Relevant Providers**

- (1) Paragraphs 922Q(2)(b), (r), and (v), as inserted by the amending Act, apply on and after 1 January 2020.
- (2) Subparagraph 922Q(2)(j)(ii) and paragraph 922Q(2)(m), as inserted by the amending Act, apply on and after 1 January 2019.
- (3) Section 922Q, as inserted by the amending Act, applies until the start of 1 January 2020 as if subparagraph 922Q(2)(u)(ii) were replaced with the following:
  - (ii) the relevant provider's membership (if any) of professional associations, to the extent that the memberships are relevant to the provision of financial services;
- (4) Otherwise, sections 922Q and 922S, as inserted by the amending Act, apply on and after commencement.

**1546U Relevant provider numbers given before commencement**

For the purposes of this Act, a number given by ASIC to a person in accordance with regulation 7.6.06A of the *Corporations Regulations 2001* is taken to have been given in accordance with section 922R of this Act, as inserted by the amending Act.

**1546V Continuation of Register of Relevant Providers**

The repeal of regulation 7.6.06B of the *Corporations Regulations 2001* by the *Corporations Amendment (Professional Standards of Financial Advisers) Regulations 2017* does not affect the continuity of the register of relevant providers established under that regulation.

### **Division 3—Transitional notices**

#### **1546W Obligation to notify ASIC of certain information**

- (1) A notice must be lodged under this section, in the prescribed form, if, before 15 November 2019, a notice was lodged in relation to a relevant provider under:
  - (a) section 922D, as inserted by the amending Act; or
  - (b) section 922D, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.
- (2) The notice must include:
  - (a) the address of the relevant provider's principal place of business; and
  - (b) the name of the compliance scheme that is to cover the relevant provider.
- (3) The notice must be lodged before 1 January 2020 by:
  - (a) if the relevant provider is a financial services licensee—the licensee; or
  - (b) otherwise—the financial services licensee on whose behalf the relevant provider is authorised to provide personal advice to retail clients in relation to relevant financial products.
- (4) Subsection 921J(2) applies, subject to this section, as if the reference in that subsection to section 922D included a reference to this section.

#### **1546X Obligation to notify ASIC of CDP year**

- (1) A notice must be lodged under this section, in the prescribed form, if, before 1 January 2019, ASIC granted an applicant an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products.
- (2) The notice must include the day of the year on which the relevant financial services licensee's CPD year begins.
- (3) The notice must be lodged by the licensee before 1 January 2019.

- (4) Subsection 922HA(3) applies as if a reference in that subsection to subsection 922HA(1) or (3) included a reference to this section.

**1546Y Obligation to notify ASIC when exams passed**

- (1) A notice must be lodged under this section, in the prescribed form, if an existing provider passes an exam for the purposes of complying with subsection 1546B(3).
- (2) The notice must state that the existing provider has passed the exam.
- (3) The notice must be lodged by a financial services licensee within 30 business days of the financial services licensee becoming aware that the existing provider has passed the exam.

**1546Z Obligation to notify ASIC of certain information after banning order**

- (1) A notice must be lodged under this section, in the prescribed form, if:
- (a) a person was banned, disqualified or suspended under Division 8 of Part 7.6 on 1 January 2019; and
  - (b) the person becomes a provisional relevant provider after that day.
- (2) The notice must include the day the person begins undertaking work and training in accordance with subsection 921B(4).
- (3) The notice must be lodged within 30 business days of the day mentioned in subsection (2) by the financial services licensee on whose behalf the person is authorised to provide personal advice to retail clients in relation to relevant financial products.

**1546ZA Offence for failing to lodge transitional notices**

Section 922M applies as if a reference in that section to a notice provision included a reference to a notice given under this Division.

Note: Section 922M provides that a person commits an offence if a person does not lodge certain notices.

## Division 4—Review

### 1546ZB Review

The Minister must cause a review of Divisions 8A, 8B and 8C of Part 7.6, as inserted by the amending Act, to be commenced before 31 December 2026.

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*[Minister's second reading speech made in—  
House of Representatives on 23 November 2016  
Senate on 8 February 2017]*

(175/16)

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