





# **Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021**

**No. 115, 2021**

**An Act to amend the law in relation 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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# **Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021**

**No. 115, 2021**

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## **An Act to amend the law in relation to financial services, and for related purposes**

*[Assented to 28 October 2021]*

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*.

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*No. 115, 2021      Financial Sector Reform (Hayne Royal Commission Response—  
Better Advice) Act 2021      1*

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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.

| Commencement information                                                        |                                                                                                                                                                                                                                      |                 |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Column 1                                                                        | Column 2                                                                                                                                                                                                                             | Column 3        |
| Provisions                                                                      | Commencement                                                                                                                                                                                                                         | Date/Details    |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.                                                                                                                                                                                          | 28 October 2021 |
| 2. Schedule 1, Parts 1 and 2                                                    | 1 January 2022.                                                                                                                                                                                                                      | 1 January 2022  |
| 3. Schedule 1, Part 3                                                           | At the same time as item 1150 of Schedule 1 to the <i>Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020</i> commences.                                                                                  |                 |
| 4. Schedule 2                                                                   | A single day to be fixed by Proclamation.<br>However, if the provisions do not commence within the period of 4 years beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |                 |

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

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Initial amendments

### Part 1—Main amendments

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

##### 1 Subsection 5(1)

Insert:

*Financial Services and Credit Panel* means a panel convened under subsection 139(1).

##### 2 Subsection 5(1) (paragraph (a) of the definition of *member*)

After “the Panel,”, insert “a Financial Services and Credit Panel,”.

##### 3 Subsection 5(1) (after paragraph (a) of the definition of *member*)

Insert:

(aa) in relation to a Financial Services and Credit Panel—a member of the panel appointed under subsection 140(1); and

##### 4 Subsection 5(1)

Insert:

*proposed action notice* has the same meaning as in Part 7.6 of the Corporations Act.

*relevant provider* has the same meaning as in Part 7.6 of the Corporations Act.

*restricted civil penalty provision* has the same meaning as in Part 7.6 of the Corporations Act.

*Tax Practitioners Board* means the Tax Practitioners Board established by section 60-5 of the *Tax Agent Services Act 2009*.

##### 5 After paragraph 11(2)(a)

Insert:

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- (aa) to provide such staff and support facilities to Financial Services and Credit Panels as are necessary or desirable for the performance and exercise by the panels of their functions and powers;

**6 Section 93AA (heading)**

After “**undertakings**”, insert “**given to ASIC**”.

**7 At the end of subsection 102(2)**

Add:

; or (f) a Financial Services and Credit Panel.

**8 After paragraph 127(2A)(c)**

Insert:

- (ca) a Financial Services and Credit Panel;
- (cb) the Tax Practitioners Board;

**9 Paragraph 127(4)(e)**

Omit “legislation; or”, substitute “legislation;”.

**10 Paragraph 127(4)(f)**

Repeal the paragraph.

**11 After paragraph 136(1)(d)**

Insert:

- (da) information about the following:
  - (i) the activities (if any) that have been undertaken by each Financial Services and Credit Panel during the period;
  - (ii) the exams (if any) that have been administered by ASIC under subsection 921B(3) of the Corporations Act during the period;
  - (iii) the warnings (if any) and reprimands (if any) given by ASIC to relevant providers under section 921S of the Corporations Act during the period;
  - (iv) if, during the period, ASIC decided not to follow a recommendation in a notice given to ASIC under subsection 921Q(1) of the Corporations Act (recommendations to ASIC in relation to restricted civil

penalty provisions)—the recommendation and the reasons why ASIC decided not to follow it;

## **12 After Part 8**

Insert:

# **Part 9—Financial Services and Credit Panels**

## **Division 1—ASIC to convene panels**

### **139 ASIC to convene panels**

- (1) ASIC may, in writing, convene one or more Financial Services and Credit Panels.
- (2) ASIC must, in circumstances prescribed by the regulations (if any), convene a panel under subsection (1) to perform functions or exercise powers under the corporations legislation in relation to a relevant provider.
- (3) A panel convened under subsection (1) must consist of the following members appointed under subsection 140(1):
  - (a) a Chair;
  - (b) at least 2 other members.
- (4) The Chair must be a staff member.

## **Division 2—Panel members**

### **140 Appointment of panel members**

- (1) A member of a Financial Services and Credit Panel is to be appointed by ASIC by written instrument.
  - (2) If a determination is in force under subsection 141(1), a person must not be appointed as a member of a Financial Services and Credit Panel unless the person is specified in the determination.
  - (3) However, subsection (2) does not apply in relation to the appointment of the Chair of a Financial Services and Credit Panel.
-

### **141 Minister may specify persons who are eligible to be appointed to panels**

- (1) The Minister may make a written determination specifying persons who are eligible to be appointed to Financial Services and Credit Panels.
- (2) The Minister must not specify a person for the purposes of subsection (1) unless:
  - (a) the person is not a member of ASIC; and
  - (b) the person is not a staff member; and
  - (c) the Minister is satisfied that the person has experience or knowledge in at least one of the following fields:
    - (i) business;
    - (ii) administration of companies;
    - (iii) financial markets;
    - (iv) financial products and financial services;
    - (v) law;
    - (vi) economics;
    - (vii) accounting;
    - (viii) taxation;
    - (ix) credit activities and credit services.
- (3) In specifying a person for the purposes of subsection (1), the Minister may consult the Tax Practitioners Board.
- (4) A determination made under subsection (1) is not a legislative instrument.

### **142 Disclosure of interests to ASIC**

A person specified in a determination in force under subsection 141(1) must give written notice to ASIC of all interests, pecuniary or otherwise, that the person has or acquires and that could conflict with the proper performance of the person's duties if the person were to be appointed as a member of a Financial Services and Credit Panel.

### 143 Allowances

- (1) A member of a Financial Services and Credit Panel is to be paid the allowances that are determined by the Remuneration Tribunal. If no determination of those allowances by the Tribunal is in operation, a member is to be paid the allowances that are prescribed under subsection (3).
- (2) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (3) The Minister may, by legislative instrument, prescribe allowances for the purposes of subsection (1).

### 144 Resignation

- (1) A member of a Financial Services and Credit Panel may resign the member's appointment by giving ASIC a written resignation.
- (2) The resignation takes effect on the day it is received by ASIC or, if a later day is specified in the resignation, on that later day.

### 145 Termination of appointment

ASIC may at any time terminate the appointment of a member of a Financial Services and Credit Panel.

### 146 Other terms and conditions

A member of a Financial Services and Credit Panel holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined in writing by ASIC.

### 147 Application of finance law

A member of a Financial Services and Credit Panel (other than the Chair of the panel) is not an official of ASIC for the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

## **Division 3—Decisions of panels**

### **Subdivision A—Decisions of panels at meetings**

#### **148 Convening meetings**

- (1) The Chair of a Financial Services and Credit Panel must hold such meetings as are necessary for the panel to:
  - (a) perform its functions and exercise its powers under the corporations legislation; and
  - (b) perform functions or exercise powers delegated to the panel by ASIC under section 102 of this Act.
- (2) The Chair of a Financial Services and Credit Panel may convene a meeting at any time.
- (3) However, the Chair of a Financial Services and Credit Panel must not convene a meeting if the Chair has or acquires any interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of the Chair's duties in a matter being considered or about to be considered by the panel.
- (4) The Chair of a Financial Services and Credit Panel must, by written notice given to ASIC, disclose any interest of a kind mentioned in subsection (3).

#### **149 Presiding at meetings**

The Chair of a Financial Services and Credit Panel must preside at all meetings of the panel.

#### **150 Disclosure of interests to panels**

- (1) A member of a Financial Services and Credit Panel (other than the Chair of the panel) who has or acquires any interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of the member's duties in a matter being considered or about to be considered by the panel must disclose the nature of the interest to the Chair of the panel.

## **Schedule 1** Initial amendments

### **Part 1** Main amendments

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- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded:
  - (a) if the disclosure is made at a meeting of the panel—in the minutes of that meeting; or
  - (b) otherwise—in the minutes of the next meeting of the panel after the disclosure is made.
- (4) At a meeting of the panel after the disclosure is made, the member:
  - (a) must not be present during any deliberation by the panel on the matter; and
  - (b) must not take part in any decision of the panel with respect to the matter.

### **151 Quorum**

- (1) At a meeting of a Financial Services and Credit Panel, a quorum is constituted by a majority of members of the panel.
- (2) However, if:
  - (a) a member of the panel is required under section 150 not to be present during the deliberations, or to take part in any decision, of the panel with respect to a particular matter; and
  - (b) when the member leaves the meeting concerned there is no longer a quorum present;the remaining members of the panel at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

### **152 Voting at meetings**

- (1) A question arising at a meeting of a Financial Services and Credit Panel is to be determined by a majority of the votes of the members of the panel present and voting.
- (2) The Chair of the panel has a deliberative vote and, if the votes are equal, a casting vote.

### **153 Participation in meetings etc.**

- (1) The Chair of a Financial Services and Credit Panel may decide to hold all or part of a meeting:
  - (a) at a particular place; or
  - (b) using any technology that allows an individual to participate in the meeting, or that part of the meeting, without being physically present at the meeting or that part of the meeting.
- (2) If the Chair of the panel decides to hold all or part of a meeting using technology of a kind mentioned in paragraph (1)(b):
  - (a) each member of the panel may use that technology to participate in the meeting or that part of the meeting; and
  - (b) the meeting or that part of the meeting may be held at 2 or more places at the same time.

### **154 Conduct of meetings**

A Financial Services and Credit Panel may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

### **155 Minutes**

A Financial Services and Credit Panel must keep minutes of its meetings.

### **Subdivision B—Decisions of panels without meetings**

#### **156 Decisions without meetings**

- (1) A Financial Services and Credit Panel is taken to have made a decision at a meeting if:
  - (a) the Chair of the panel informs the other members of the panel of the proposed decision, or makes reasonable efforts to do so; and
  - (b) without meeting, a majority of the members of the panel entitled to vote on the proposed decision indicate agreement with the decision; and

- (c) that agreement is indicated in accordance with the method determined by the panel under subsection (2).
- (2) Subsection (1) applies only if:
  - (a) the Chair of the panel is not prevented by subsection 148(3) from convening a meeting in relation to the proposed decision; and
  - (b) the panel:
    - (i) has determined that it may make decisions of that kind without meeting; and
    - (ii) has determined the method by which members of the panel are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(b):
  - (a) a member of the panel (other than the Chair of the panel) is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the panel; and
  - (b) if:
    - (i) the number of members indicating agreement with the decision is equal to the number of members not indicating agreement with the decision; and
    - (ii) the Chair of the panel indicates the Chair's agreement with the decision;a majority of the members of the panel entitled to vote on the proposed decision is taken to have indicated agreement with the decision.
- (4) The panel must keep a record of decisions made in accordance with this section.

## **Division 4—Panel hearings**

### **Subdivision A—General**

#### **157 When hearings are to be held**

- (1) A Financial Services and Credit Panel may only hold a hearing as required or permitted by this section.

- (2) A Financial Services and Credit Panel must hold a hearing if:
- (a) the panel proposes to make:
    - (i) a decision to make an order, as an ASIC delegate, against a person under subsection 920A(1) of the Corporations Act (ASIC's power to make a banning order); or
    - (ii) a decision to make an order, as an ASIC delegate, against a person under subsection 80(1) of the *National Consumer Credit Protection Act 2009* (ASIC's power to make a banning order); or
  - (b) a relevant provider requests that the panel hold a hearing in response to a proposed action notice given to the relevant provider.
- (3) A Financial Services and Credit Panel may hold a hearing if ASIC makes a request of the panel under:
- (a) paragraph 171E(3)(a) of this Act (variation, withdrawal and enforcement of undertakings given to Financial Services and Credit Panels); or
  - (b) subsection 921N(2) or paragraph 921N(4)(a) of the Corporations Act (variation or revocation of instruments affecting relevant providers).

### **158 Panels to take account of evidence and submissions**

A Financial Services and Credit Panel must take into account the following:

- (a) any evidence given, or any submission made, to it at a hearing of the panel;
  - (b) any submission lodged with it under subsection 162(2);
  - (c) any submission made in response to a proposed action notice;
- in making a decision on a matter to which the evidence or submission relates.

## Subdivision B—Hearing procedures

### 159 Proceedings at hearings

- (1) A hearing of a Financial Services and Credit Panel must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the panel permits.
- (2) At a hearing of a Financial Services and Credit Panel, the panel:
  - (a) is not bound by the rules of evidence; and
  - (b) may, on such conditions as it thinks fit, permit a person to intervene; and
  - (c) must observe the rules of natural justice.
- (3) The Chair of a Financial Services and Credit Panel may decide to hold all or part of a hearing of the panel:
  - (a) at a particular place; or
  - (b) using any technology that allows an individual to participate in the hearing, or that part of the hearing, without being physically present at the hearing or that part of the hearing.
- (4) If the Chair of a Financial Services and Credit Panel decides to hold all or part of a hearing using technology of a kind mentioned in paragraph (3)(b):
  - (a) each participant in the hearing (including each member of the panel) may use that technology to participate in the hearing or that part of the hearing; and
  - (b) the hearing or that part of the hearing may be held at 2 or more places at the same time.
- (5) Subdivision A of Division 3 (decisions of panels at meetings) applies, so far as practicable, in relation to a hearing of a Financial Services and Credit Panel as if the hearing were a meeting of the panel.

### 160 Notice of hearings

If a Financial Services and Credit Panel holds a hearing in relation to a proposed decision affecting a person:

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- (a) the Chair of the panel must appoint a time for the hearing and give written notice of that time to the person; and
- (b) if the Chair of the panel decides under paragraph 159(3)(a) to hold the hearing, or part of the hearing, at a particular place—the Chair must give written notice of the place to the person; and
- (c) if the Chair of the panel decides under paragraph 159(3)(b) to hold the hearing, or part of the hearing, using technology that allows an individual to participate in the hearing, or that part of the hearing, without being physically present at the hearing or that part of the hearing—the Chair must give notice of the technology to be used to the person.

### **161 Who may be present at hearings etc.**

- (1) A person must not be present at a hearing, or a part of a hearing, of a Financial Services and Credit Panel in relation to a proposed decision affecting a person (the *affected person*) unless:
  - (a) the panel has decided, under paragraph 163(2)(a), to hold the hearing or the part of the hearing, as the case may be, in public; or
  - (b) the person is required by a summons under subsection 165(1) to appear at the hearing; or
  - (c) the Chair of the panel gives a written direction naming the person; or
  - (d) both the following apply:
    - (i) the person is a staff member;
    - (ii) the Chair of the panel has not directed the person to leave the hearing or the part of the hearing, as the case may be; or
  - (e) the person is covered by subsection (2).

Note: Failure to comply with this subsection is an offence (see subsection 171(1)).

- (2) This subsection covers the following:
  - (a) the affected person;
  - (b) a person who is, under section 164, representing:
    - (i) the affected person; or

- (ii) a person required by a summons under subsection 165(1) to appear at the hearing.

## **162 Appearance of affected persons at hearings**

- (1) A person does not need to appear at a hearing of a Financial Services and Credit Panel in relation to a proposed decision affecting the person (even if the person requested the hearing in response to a proposed action notice given to the person).
- (2) If the person chooses not to appear at the hearing, the person may, before the day of the hearing, lodge with the panel any written submissions that the person wishes the panel to take into account in relation to the proposed decision.

## **163 Affected persons may request hearings to be held in public**

- (1) A person may request that a hearing (or a part of a hearing) of a Financial Services and Credit Panel in relation to a proposed decision affecting the person be held in public.
- (2) The panel must decide to:
  - (a) hold the hearing (or that part of the hearing) in public; or
  - (b) not hold the hearing (or that part of the hearing) in public.
- (3) In making a decision under subsection (2), the panel must have regard to the following:
  - (a) whether evidence that may be given, or a matter that may arise, during the hearing (or that part of the hearing) is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;
  - (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing (or that part of the hearing) took place in public;
  - (c) whether it is in the public interest that the hearing (or that part of the hearing) take place in public;
  - (d) any other relevant matter.

## **164 Representation at hearings**

- (1) At a hearing of a Financial Services and Credit Panel, an individual may appear in person or be represented by an employee of the individual approved by the panel.
- (2) A body corporate may be represented at a hearing of a Financial Services and Credit Panel by an officer or employee of the body corporate approved by the panel.
- (3) An unincorporated association, or a person in the person's capacity as a member of an unincorporated association, may be represented at a hearing of a Financial Services and Credit Panel by a member, officer or employee of the association approved by the panel.
- (4) Any person may be represented at a hearing of a Financial Services and Credit Panel by a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court.

## **165 Power to require persons to appear and give evidence etc.**

- (1) At or prior to a hearing of a Financial Services and Credit Panel in relation to a proposed decision affecting a person (the *affected person*), the Chair of the panel may, by written summons given to a person (other than the affected person):
  - (a) require the person to appear before the panel at the hearing to give evidence, to produce specified documents, or to do both; and
  - (b) require the person to attend from day to day unless excused, or released from further attendance, by the Chair.

Note 1: The affected person does not need to appear at the hearing (see subsection 162(1)).

Note 2: Failure to comply with a requirement made under this subsection is an offence (see subsection 170(1)).
- (2) At a hearing of a Financial Services and Credit Panel, the panel may take evidence on oath or affirmation, and for that purpose the Chair of the panel may:
  - (a) require a person appearing at the hearing to either take an oath or make an affirmation; and

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- (b) administer an oath or affirmation to a person appearing at the hearing.

Note: Failure to comply with a requirement made under this subsection is an offence (see subsection 170(2)).

- (3) The oath or affirmation to be taken or made by a person for the purposes of subsection (2) is an oath or affirmation that the evidence the person will give will be true.
- (4) The Chair of a Financial Services and Credit Panel presiding at a hearing of the panel:
  - (a) may require a person appearing at the hearing to answer a question put to the person; and
  - (b) may require a person appearing at the hearing pursuant to a summons issued under this section to produce a document specified in the summons.

Note: Failure to comply with a requirement made under this subsection is an offence (see subsection 170(3)).

- (5) The Chair of a Financial Services and Credit Panel may permit a person appearing at a hearing of the panel to give evidence by tendering, and if the Chair so requires, verifying by oath or affirmation, a written statement.

### 166 Allowances and expenses

A person required by a summons under subsection 165(1) to appear at a hearing of a Financial Services and Credit Panel in relation to a proposed decision affecting a person (the *affected person*) is entitled to be paid the prescribed allowances and expenses (if any) by:

- (a) if the summons was issued at the affected person's request—the affected person; or
- (b) otherwise—ASIC.

### 167 Panels may restrict publication of certain material

- (1) If, at a hearing of a Financial Services and Credit Panel, the panel is satisfied that it is desirable to restrict the publication of evidence given before the panel, or matters contained in documents lodged

with the panel, the panel may give a written direction restricting the publication of that evidence or those matters.

Note: Failure to comply with a direction in force under this subsection is an offence (see subsection 171A(1)).

- (2) In determining whether it is desirable to restrict the publication of evidence given before the panel, or matters contained in documents lodged with the panel, the panel must have regard to:
- (a) whether evidence that has been or may be given, or a matter that has arisen or may arise, during the hearing is:
    - (i) of a confidential nature; or
    - (ii) relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law; and
  - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the panel gives a direction restricting the publication of that evidence or those matters; and
  - (c) whether it is in the public interest that the panel gives a direction restricting the publication of that evidence or those matters; and
  - (d) any other relevant matter.

## **Subdivision C—Offences**

### **168 Contempt of panels**

- (1) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission results in the obstruction or hindering of a Financial Services and Credit Panel, or a member of the panel, in the performance or exercise of any of the panel's functions and powers.

Penalty: 2 years imprisonment.

- (2) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission results in the disruption of a hearing.

Penalty: 2 years imprisonment.

### 169 Giving false evidence

- (1) A person commits an offence if:
  - (a) the person gives evidence at a hearing of a Financial Services and Credit Panel; and
  - (b) the evidence is false or misleading in a material particular.

Penalty: 2 years imprisonment.

- (2) Subsection (1) does not apply if the person, when giving the evidence, reasonably believed that it was true and not misleading.

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

### 170 Failing to comply with certain requirements

- (1) A person commits an offence if:
  - (a) the person is required to do something in accordance with a summons given to the person under subsection 165(1); and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
  - (a) the person is required under paragraph 165(2)(a) to take an oath or make an affirmation; and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

- (3) A person commits an offence if:
  - (a) the person is required under subsection 165(4) to answer a question or produce a document; and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

- (4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

### **171 Being present at hearings**

- (1) A person commits an offence if:
  - (a) the person is present at a hearing, or a part of a hearing, of a Financial Services and Credit Panel; and
  - (b) the panel has not decided, under paragraph 163(2)(a), to hold the hearing or the part of the hearing, as the case may be, in public; and
  - (c) the person is not named in a direction of the Chair of the panel in force under paragraph 161(1)(c); and
  - (d) the person is not covered by subsection 161(2).

Penalty: 30 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

### **171A Publication of restricted material**

- (1) A person commits an offence if:
  - (a) the person publishes evidence given before, or matters contained in documents lodged with, a Financial Services and Credit Panel; and
  - (b) a direction restricting the publication of that evidence or those matters is in force under subsection 167(1).

Penalty: 120 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

### **Subdivision D—Other matters**

#### **171B Reference to Court of question of law arising at hearing**

- (1) ASIC may, at the request of the Chair of a Financial Services and Credit Panel, refer to the Court for decision a question of law arising at a hearing of the panel.
- (2) Where a question is referred under subsection (1), the panel must not, in relation to a matter to which the hearing relates:
  - (a) make, while the reference is pending, a decision to which the question is relevant; or

- (b) proceed in a manner, or make a decision, that is inconsistent with the Court's opinion on the question.
- (3) Where a question is referred under subsection (1):
  - (a) ASIC must send to the Court all documents that were before the panel in connection with the hearing; and
  - (b) at the end of the proceeding in the Court in relation to the reference, the Court must cause the documents to be returned to ASIC.

### **171C Protection of panel members etc.**

- (1) A member of a Financial Services and Credit Panel has, in the performance or exercise of any of the member's functions and powers as a member in relation to a hearing of the panel, the same protection and immunity as a Justice of the High Court.
- (2) A barrister, solicitor or other person representing a person at a hearing of a Financial Services and Credit Panel has the same protection and immunity as a barrister in appearing for a party in a proceeding in the High Court.
- (3) Subject to this Act, a person who is required by a summons under subsection 165(1) to appear at a hearing of a Financial Services and Credit Panel, or a person appearing at a such a hearing, has the same protection as a witness in a proceeding in the High Court.

## **Division 5—Information given to panel members**

### **171D Use and disclosure of information**

- (1) A person commits an offence if:
  - (a) the person is or was a member of a Financial Services and Credit Panel; and
  - (b) the person uses or discloses information; and
  - (c) the information was obtained by the person in connection with the performance of the panel's functions or the exercise of the panel's powers.

Penalty: 2 years imprisonment.

- (2) Subsection (1) does not apply if the use or disclosure:
- (a) is required or permitted by a law of the Commonwealth or a prescribed law of a State or Territory; or
  - (b) is made to ASIC for the purposes of the performance of ASIC's functions, or the exercise of its powers, under the corporations legislation or the *National Consumer Credit Protection Act 2009*; or
  - (c) is made to the Tax Practitioners Board for the purposes of the performance of the Board's functions, or the exercise of its powers, under the *Tax Agent Services Act 2009*; or
  - (d) is made for the purposes of the performance of the panel's functions or the exercise of its powers; or
  - (e) is made to another Financial Services and Credit Panel for the purposes of the performance of the other panel's functions or the exercise of the other panel's powers.

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

## **Division 6—Enforceable undertakings**

### **171E Variation, withdrawal and enforcement of undertakings given to Financial Services and Credit Panels**

- (1) A Financial Services and Credit Panel may accept a written undertaking given by a person in connection with a matter in relation to which the panel may make an instrument under subsection 921K(1) of the Corporations Act (power of Financial Services and Credit Panels to take action against relevant providers).

#### *Variation or withdrawal of undertaking*

- (2) The person may apply to ASIC to withdraw or vary the undertaking.
- (3) If the person makes an application under subsection (2), ASIC must decide to:
- (a) request a Financial Services and Credit Panel to decide whether it consents to the person withdrawing or varying the undertaking; or

- (b) refuse to make such a request.
- (4) The person may withdraw or vary the undertaking only if:
  - (a) ASIC makes a request of a Financial Services and Credit Panel under paragraph (3)(a) in relation to the variation or withdrawal; and
  - (b) the panel consents to the variation or withdrawal.

*Enforcement of undertaking*

- (5) If ASIC considers that the person who gave the undertaking has breached any of its terms, ASIC may apply to the Court for an order under subsection (6).
- (6) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.

## **Division 7—Electronic communication**

### **171F Electronic communication of documents**

*Documents given by panels etc.*

- (1) Section 921W of the Corporations Act applies in relation to a document that is required or permitted under this Part to be given to a person by:
  - (a) a Financial Services and Credit Panel; or
  - (b) the Chair of a Financial Services and Credit Panel; or
  - (c) ASIC;

as if the document were covered by subsection (1) of that section.

*Documents given to panels etc.*

- (2) Section 921X of the Corporations Act applies in relation to a document that is required or permitted under this Part to be given by a person to:
- (a) a Financial Services and Credit Panel; or
  - (b) the Chair of a Financial Services and Credit Panel; or
  - (c) ASIC;
- as if the document were covered by subsection (1) of that section.

### **13 At the end of subsection 244(2)**

Add:

- ; or (d) to refuse, under paragraph 171E(3)(b), to make a request mentioned in paragraph 171E(3)(a).

## ***Corporations Act 2001***

### **14 Section 9**

Insert:

***BAS agent*** has the same meaning as in the *Tax Agent Services Act 2009*.

***Financial Services and Credit Panel***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***proposed action notice***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***registered tax agent*** has the same meaning as in the *Tax Agent Services Act 2009*.

***response period***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***restricted civil penalty provision***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

**15 Paragraph 766B(5)(c)**

Omit “(within the meaning of the *Tax Agent Services Act 2009*)”.

**16 Section 910A**

Insert:

*cancellation time*, in relation to a registration prohibition order, has the meaning given by subparagraph 921L(1)(c)(i).

**17 Section 910A (definition of *Code of Ethics*)**

Repeal the definition, substitute:

*Code of Ethics* means the Code of Ethics in force under section 921E.

**18 Section 910A**

Repeal the following definitions:

- (a) definition of *compliance scheme*;
- (b) definition of *covers*.

**19 Section 910A**

Insert:

*CPD provision* (short for continuing professional development provision) means:

- (a) subsection 921BA(4); or
- (b) subsection 921BB(3).

*Financial Services and Credit Panel* has the same meaning as in the ASIC Act.

**20 Section 910A (definition of *monitoring body*)**

Repeal the definition.

**21 Section 910A (definition of *notice provision*)**

Omit “922HD,”.

**22 Section 910A (definition of *professional association*)**

Repeal the definition.

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## 23 Section 910A

Insert:

**prohibition end day**, in relation to a registration prohibition order, has the meaning given by subparagraph 921L(1)(c)(ii).

**proposed action notice** has the meaning given by subsection 921P(1).

**qualified tax relevant provider**: a person is a **qualified tax relevant provider** if:

- (a) the person is a relevant provider; and
- (b) if a determination is in force under subsection 921BB(1)—the person meets each requirement set out in the determination that is of a kind mentioned in any of paragraphs (a) to (d) of that subsection.

**registration prohibition order** has the meaning given by paragraph 921L(1)(c).

**registration suspension order** has the meaning given by paragraph 921L(1)(b).

**response period**, for a proposed action notice, has the meaning given by paragraph 921P(2)(b).

**restricted civil penalty provision** has the meaning given by subsection 921Q(3).

## 24 Section 910A (definition of *standards body*)

Repeal the definition.

## 25 Section 910A

Insert:

**suspension period**, in relation to a registration suspension order, has the meaning given by paragraph 921L(1)(b).

**tax (financial) advice service** has the same meaning as in the *Tax Agent Services Act 2009*.

*Tax Practitioners Board* means the Tax Practitioners Board established by section 60-5 of the *Tax Agent Services Act 2009*.

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

Omit “section 921D”, substitute “the CPD provisions”.

**27 Subsection 913B(1) (note 2)**

Omit “the education and training standards in subsections 921B(2) to (4)”, substitute “certain requirements”.

**28 Subsection 916A(1) (note)**

Omit “the education and training standards in subsections 921B(2) to (4)”, substitute “certain requirements”.

**29 Subsection 916B(3) (note)**

Omit “the education and training standards in subsections 921B(2) to (4)”, substitute “certain requirements”.

**30 Paragraph 920A(1)(e)**

Omit “section 921E”, substitute “subsection 921E(3)”.

**31 After subsection 920A(1)**

Insert:

(1AA) Subsection (1) has effect subject to subsection (2).

**32 Subsection 920A(2)**

Omit “However, ASIC may only make a banning order against a person”, substitute “Subject to subsection (3), if ASIC has not delegated its power to make a banning order against a person to a Financial Services and Credit Panel, ASIC may make the order only”.

**33 At the end of subsection 920A(2)**

Add:

Note: If ASIC delegates its power to make a banning order against a person to a Financial Services and Credit Panel, the panel may make the order only after holding a hearing in relation to the proposed order (see section 157 of the ASIC Act).

### **34 Subsection 920A(3)**

Repeal the subsection, substitute:

- (3) ASIC may make a banning order against a person without giving the person the opportunities mentioned in subsection (2) if:
- (a) either:
    - (i) ASIC has not delegated its power to make the banning order to a Financial Services and Credit Panel; or
    - (ii) ASIC exercises its power to make the banning order despite such a delegation; and
  - (b) ASIC's grounds for making the banning order are or include both of the following:
    - (i) that the suspension or cancellation of the relevant licence took place under section 915B;
    - (ii) that the person has been convicted of serious fraud.

Note: See section 34AB of the *Acts Interpretation Act 1901* (effect of delegation).

### **35 Division 8A of Part 7.6 (at the end of the heading)**

Add “etc.”.

### **36 Paragraph 921B(2)(a)**

Omit “standards body under section 921U”, substitute “Minister”.

### **37 Subparagraph 921B(2)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) the Minister has approved the foreign qualification under section 921G.

### **38 Subsection 921B(3)**

Omit “approved by the standards body”, substitute “administered under this subsection by ASIC in accordance with principles approved by the Minister”.

### **39 Subsection 921B(4)**

Omit “standards body”, substitute “Minister”.

**40 Subsection 921B(5)**

Omit “standards body”, substitute “Minister”.

**41 Subsection 921B(5) (note)**

Repeal the note.

**42 At the end of section 921B**

Add:

*Determinations by Minister*

- (6) The Minister may, by legislative instrument, do any or all of the following in one or more determinations:
- (a) approve bachelor or higher degrees, or equivalent qualifications, for the purposes of paragraph (2)(a);
  - (b) approve principles for the purposes of subsection (3);
  - (c) set requirements for work and training for the purposes of subsection (4);
  - (d) set requirements for continuing professional development for the purposes of subsection (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 Minister.
- (7) Before exercising the power in subsection (6), the Minister must be satisfied that doing so is necessary or desirable to ensure that relevant providers are adequately trained and competent to provide personal advice to retail clients in relation to relevant financial products.

**43 After section 921B**

Insert:

**921BA Relevant providers to meet education and training standards**

*Qualifications*

- (1) A relevant provider must meet the education and training standard in subsection 921B(2).

*Exam*

- (2) A relevant provider must meet the education and training standard in subsection 921B(3).

*Work and training*

- (3) A relevant provider must either:
- (a) meet the education and training standard in subsection 921B(4); or
  - (b) be undertaking work and training in accordance with that subsection.

*Continuing professional development*

- (4) A relevant provider must comply with subsection 921B(5):
- (a) in the case of a relevant provider who is a financial services licensee—during the licensee’s CPD year; or
  - (b) in the case of a relevant provider who 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: 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 subsection during that year.

*Civil liability*

- (5) A person contravenes this subsection if the person contravenes subsection (1), (2), (3) or (4).

Note 1: This subsection is a restricted civil penalty provision (see sections 921Q and 1317E).

Note 2: ASIC or a Financial Services and Credit Panel may take certain other action against a relevant provider who contravenes subsection (1), (2), (3) or (4) (see Division 8B).

Note 3: Exemptions apply in relation to certain relevant providers (see section 921BC).

**921BB Additional requirements for relevant providers who provide tax (financial) advice services**

- (1) The Minister may, by legislative instrument, determine any or all of the following requirements for a person who provides, or is to provide, a tax (financial) advice service:
  - (a) a requirement that the person has completed one or more specified bachelor or higher degrees;
  - (b) a requirement that the person has completed one or more specified qualifications;
  - (c) a requirement that the person has completed one or more specified courses;
  - (d) a requirement that the person has undertaken specified work and training;
  - (e) a requirement for continuing professional development in relation to the CPD year of a financial services licensee or any other period determined by the Minister.
- (2) Before exercising the power in subsection (1), the Minister must be satisfied that doing so is necessary or desirable to ensure that relevant providers are adequately trained and competent to provide tax (financial) advice services.

*Continuing professional development*

- (3) If a determination in force under subsection (1) sets out a requirement mentioned in paragraph (1)(e), a relevant provider who provides tax (financial) advice services must comply with that requirement:
  - (a) in the case of a relevant provider who is a financial services licensee—during the licensee’s CPD year; or
  - (b) in the case of a relevant provider who 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: 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 subsection during that year.

*Civil liability*

- (4) A person contravenes this subsection if the person contravenes subsection (3).

Note 1: This subsection is a restricted civil penalty provision (see sections 921Q and 1317E).

Note 2: ASIC or a Financial Services and Credit Panel may take certain other action against a relevant provider who contravenes subsection (3) (see Division 8B).

Note 3: Exemptions apply in relation to certain relevant providers (see section 921BC).

**921BC Exemptions for certain relevant providers**

*Time-sharing schemes*

- (1) Sections 921BA and 921BB do not apply to a relevant provider if the only relevant financial product in relation to which the relevant provider provides personal advice to retail clients is a time-sharing scheme.

*Provisional relevant providers*

- (2) The CPD provisions do not apply to provisional relevant providers.

**44 Sections 921C and 921D**

Repeal the sections, substitute:

**Subdivision AA—Limitations on authorisation to provide personal advice**

**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 the applicant is an individual and any of the following paragraphs apply:

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- (a) the applicant has not met any one or more of the education and training standards in subsections 921B(2) to (4);
- (b) if:
  - (i) the applicant is to provide a tax (financial) advice service; and
  - (ii) a determination in force under subsection 921BB(1) sets out a requirement mentioned in any of paragraphs (a) to (c) of that subsection;the applicant has not met the requirement;
- (c) if:
  - (i) the applicant is to provide a tax (financial) advice service; and
  - (ii) a determination in force under subsection 921BB(1) includes a requirement for a person who is to provide a tax (financial) advice service to have undertaken specified work and training;the applicant has not undertaken that work and training.

*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 the person is an individual and any of the following paragraphs apply:
  - (a) the person has not met either or both of the education and training standards in subsections 921B(2) and (3);
  - (b) 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;
  - (c) if:
    - (i) the person is to provide a tax (financial) advice service; and
    - (ii) a determination in force under subsection 921BB(1) sets out a requirement mentioned in any of paragraphs (a) to (d) of that subsection;the person has not met the requirement.

*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 any 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;
  - (c) if:
    - (i) the individual is to provide a tax (financial) advice service; and
    - (ii) a determination in force under subsection 921BB(1) sets out a requirement mentioned in any of paragraphs (a) to (d) of that subsection;the individual has not met the requirement.

*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 any 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;
  - (c) if:
    - (i) the employee or director is to provide a tax (financial) advice service; and

- (ii) a determination in force under subsection 921BB(1) sets out a requirement mentioned in any of paragraphs (a) to (d) of that subsection;  
the employee or director has not met the requirement.

*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.

**45 Section 921E**

Repeal the section, substitute:

**921E Code of Ethics**

- (1) The Minister may, by legislative instrument, make a Code of Ethics.
- (2) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the Code of Ethics may make different provision in relation to different classes of relevant provider.
- (3) A relevant provider must comply with the Code of Ethics.

Note 1: Subsection (3) is a restricted civil penalty provision (see sections 921Q and 1317E).

Note 2: ASIC or a Financial Services and Credit Panel may take certain other action against a relevant provider who contravenes subsection (3) (see Division 8B).

**46 Section 921F (note)**

Repeal the note.

**47 At the end of section 921F**

Add:

*Civil liability*

- (8) A person contravenes this subsection if the person contravenes subsection (3), (4), (6) or (7).

Note 1: Subsection (8) is a restricted civil penalty provision (see sections 921Q and 1317E).

Note 2: ASIC or a Financial Services and Credit Panel may take certain other action against a relevant provider who contravenes subsection (3), (4), (6) or (7) (see Division 8B).

**48 At the end of Division 8A of Part 7.6**

Add:

**Subdivision D—Other matters**

**921G Approval of foreign qualifications**

*Application for approval*

- (1) A person who has completed a foreign qualification may apply to the Minister in the form approved, in writing, by the Minister for approval of the foreign qualification.

*Approval or refusal to approve*

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

- (4) The Minister may specify one or more courses for the purposes of paragraph (3)(b) only if the Minister 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 Minister for the purposes of paragraph 921B(2)(a).

*When approval comes into force*

- (5) An approval under paragraph (2)(a) comes into force:
- (a) if the Minister specifies one or more courses to be completed by the person under subsection (4)—when the person has completed all of those courses; or
  - (b) otherwise—when it is given.

#### **921H Modifications of Part in relation to continuing professional development**

- (1) The Minister may, by legislative instrument, determine modifications of the operation of a provision in this Part in relation to a period determined by the Minister under:
- (a) paragraph 921B(6)(d); or
  - (b) paragraph 921BB(1)(e).
- (2) A determination made under subsection (1) has effect according to its terms, despite any other provision of this Act.

#### **49 Divisions 8B and 8C of Part 7.6**

Repeal the Divisions, substitute:

#### **Division 8B—Action against relevant providers**

##### **Subdivision A—Action by Financial Services and Credit Panels**

#### **921K Power of Financial Services and Credit Panels to take action against relevant providers**

- (1) Subject to subsections (2) and (3), a Financial Services and Credit Panel may make an instrument of a kind specified in subsection 921L(1) in relation to a relevant provider if:
-

- (a) the relevant provider becomes an insolvent under administration; or
- (b) the relevant provider is convicted of fraud; or
- (c) the panel reasonably believes, having regard to the matters specified in section 921U but subject to Part VIIC of the *Crimes Act 1914*, that the relevant provider is not a fit and proper person to provide personal advice to retail clients in relation to relevant financial products; or
- (d) the panel reasonably believes that the relevant provider has contravened a financial services law (including a restricted civil penalty provision); or
- (e) the relevant provider has been involved in the contravention of a financial services law (including a restricted civil penalty provision) by another person; or
- (f) the relevant provider has, at least twice, been linked to a refusal or failure to give effect to a determination made by AFCA relating to a complaint that relates to:
  - (i) a financial services business; or
  - (ii) credit activities (within the meaning of the *National Consumer Credit Protection Act 2009*); or
- (g) subsection 920A(1C) (when a person has been an officer of a corporation unable to pay its debts) applies to the relevant provider in relation to 2 or more corporations.

Note 1: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

Note 2: Subsection 921E(3) (relevant providers to comply with the Code of Ethics) is a financial services law.

Note 3: To work out whether a relevant provider has been linked as described in paragraph (f), see section 910C.

*Proposed action notice given in relation to relevant circumstances*

- (2) A Financial Services and Credit Panel must not make an instrument under subsection (1) in relation to a relevant provider because of circumstances (the ***relevant circumstances***) mentioned in that subsection unless:

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- (a) the panel gave the relevant provider a proposed action notice in relation to a proposal to make the instrument because of the relevant circumstances and either:
  - (i) no submission or request for a hearing was made within the response period for the notice; or
  - (ii) a submission or request for a hearing was made within the response period for the notice and the panel has taken into account the submission or held the hearing (as the case may be); or
- (b) all of the following apply:
  - (i) the panel gave the relevant provider a proposed action notice in relation to a proposal to make a different instrument in relation to the relevant circumstances or to give the relevant provider an infringement notice in relation to the relevant circumstances;
  - (ii) a submission or request for a hearing was made within the response period for the notice;
  - (iii) the panel has taken into account the submission or held the hearing (as the case may be).

#### *Infringement notices, warnings and reprimands*

- (3) A Financial Services and Credit Panel must not make an instrument under subsection (1) in relation to a relevant provider because of circumstances mentioned in that subsection if the panel, or another Financial Services and Credit Panel, has given the relevant provider an infringement notice, or a warning or reprimand, in relation to those circumstances.

#### *When a person contravenes a financial services law*

- (4) To avoid doubt, a person contravenes a financial services law if a person fails to comply with a duty imposed under that law, even if the provision imposing the duty is not an offence provision or a civil penalty provision.

#### *Instruments not legislative*

- (5) An instrument made under subsection (1) is not a legislative instrument.
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*Interaction with ASIC Act*

- (6) Subsection (2) does not limit section 158 of the ASIC Act (panels to take account of evidence and submissions).

**921L Instruments that Financial Services and Credit Panels may make in relation to relevant providers**

- (1) For the purposes of subsection 921K(1), the following kinds of instrument are specified:
- (a) a written direction that a relevant provider:
    - (i) undertake specified training; or
    - (ii) receive specified counselling; or
    - (iii) receive specified supervision; or
    - (iv) report specified matters to ASIC;
  - (b) a written order (a **registration suspension order**) suspending a relevant provider's registration under subsection 921ZC(1) for a period (the **suspension period**) specified in the order;
  - (c) a written order (a **registration prohibition order**) that:
    - (i) cancels the registration of a relevant provider under subsection 921ZC(1) at a time (the **cancellation time**) specified in the order; and
    - (ii) provides that the relevant provider is not to be registered under that subsection until after a day (the **prohibition end day**) specified in the order.

- Note: If a registration prohibition order is in force against a relevant provider:
- (a) the relevant provider's registration under subsection 921ZC(1) will cease to be in force at the cancellation time specified in the order (unless the registration has ceased to be in force at an earlier time) (see sections 921ZD and 921ZE); and
  - (b) ASIC must refuse to register the relevant provider until after the prohibition end day specified in the order (see subsection 921ZC(3)).

*Effect of paragraph (1)(a) direction*

- (2) A relevant provider must comply with a direction in relation to the relevant provider that is in force under paragraph (1)(a).

Note: This subsection is a civil penalty provision (see section 1317E).

*Effect of registration suspension order*

- (3) For the purposes of this Part, if a registration suspension order is in force against a relevant provider, the relevant provider's registration under subsection 921ZC(1) is taken not to be in force during the suspension period specified in the order.

*Suspension period and cancellation time*

- (4) The suspension period specified in a registration suspension order that is made in relation to a relevant provider must begin at or after the time a copy of the order is given to the relevant provider.
- (5) The cancellation time specified in a registration prohibition order that is made in relation to a relevant provider must be a time that is at or after a copy of the order is given to the relevant provider.

*When instruments come into force*

- (6) An instrument of a kind specified in subsection (1) that is made in relation to a relevant provider comes into force when a copy of it is given to the relevant provider in accordance with subsection 921M(1).

**921M Copy of instrument to be given to relevant provider etc.**

- (1) If, under subsection 921K(1), a Financial Services and Credit Panel makes an instrument in relation to a relevant provider, the panel must:
- (a) give a copy of the instrument to the relevant provider; and
  - (b) at the same time, give a copy of the instrument to:
    - (i) ASIC; and
    - (ii) 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—the licensee; and
  - (c) at the same time, give the relevant provider a written notice informing the relevant provider of their right to make an application under subsection 921N(3) in relation to the instrument.

Note: ASIC must enter details of certain instruments in the Register of Relevant Providers (see paragraph 922Q(2)(uc)).

- (2) A copy of an instrument given to a person under paragraph (1)(a) or (b) must be accompanied by a statement of reasons for the decision to make the instrument.
- (3) A failure to comply with subsection (1) or (2) in relation to an instrument does not affect the validity of the instrument.

### **921N Variation or revocation of instruments affecting relevant providers**

- (1) This section applies if an instrument of a kind specified in subsection 921L(1) is in force against a relevant provider.

#### *Variation or revocation at ASIC's initiative*

- (2) ASIC may request a Financial Services and Credit Panel to make a decision under subsection (5) in relation to the instrument if ASIC is satisfied that there has been a change in any of the circumstances on the basis of which the instrument was made.

#### *Application by relevant provider for variation or revocation*

- (3) The relevant provider may apply to ASIC in the approved form for:
  - (a) the instrument to be revoked; or
  - (b) a specified variation to be made to the instrument.
- (4) If the relevant provider makes an application under subsection (3), ASIC must decide to:
  - (a) request a Financial Services and Credit Panel to make a decision under subsection (5) in relation to the instrument; or
  - (b) refuse to make such a request.

#### *Decisions of Financial Services and Credit Panel about variations or revocations*

- (5) If ASIC makes a request of a Financial Services and Credit Panel under subsection (2) or paragraph (4)(a), the panel must decide to:
  - (a) revoke the instrument; or

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- (b) if the relevant provider made an application under subsection (3)—make the variation of the instrument specified in the application; or
  - (c) make a variation of the instrument (even if the relevant provider made an application under subsection (3) and the application specified another variation); or
  - (d) refuse to revoke the instrument; or
  - (e) refuse to vary the instrument.
- (6) The panel must give written notice of the panel's decision to:
- (a) if the decision is mentioned in paragraph (5)(a), (b) or (c)—all of the following:
    - (i) the relevant provider;
    - (ii) ASIC;
    - (iii) 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—the licensee; or
  - (b) otherwise—the relevant provider.
- (7) A notice given under subsection (6) must be accompanied by a statement of reasons for the decision to which the notice relates.

### Subdivision B—Proposed action notices etc.

#### 921P Proposed action notice

- (1) A Financial Services and Credit Panel must give a written notice (a ***proposed action notice***) to a relevant provider if the panel proposes to:
- (a) make an instrument under subsection 921K(1) in relation to the relevant provider because of circumstances (the ***relevant circumstances***) mentioned in that subsection; or
  - (b) give the relevant provider an infringement notice for the alleged contravention by the relevant provider of a restricted civil penalty provision.
- (2) The proposed action notice must:
- (a) set out details of the action proposed to be taken, including:

- (i) for an action mentioned in paragraph (1)(a)—the relevant circumstances; and
  - (ii) for an action mentioned in paragraph (1)(b)—the alleged contravention and the amount to be stated in the infringement notice for the purposes of paragraph 1317DAP(1)(f); and
- (b) invite the relevant provider to do either of the following within the period of 28 days beginning on the day the notice is given (or such longer period as is approved by the panel) (the *response period*):
- (i) make a submission, in writing, in relation to the action;
  - (ii) make a request, in writing, that the panel hold a hearing under Division 4 of Part 9 of the ASIC Act in relation to the action; and
- (c) inform the relevant provider that if no submission or request for a hearing is made within the response period, the panel may take the action; and
- (d) for an action mentioned in paragraph (1)(a)—inform the relevant provider that if the panel makes an instrument under subsection 921K(1), ASIC may be required to enter details of the instrument in the Register of Relevant Providers in accordance with paragraph 922Q(2)(uc).

### **921Q Recommendations to ASIC in relation to restricted civil penalty provisions**

- (1) If a Financial Services and Credit Panel reasonably believes that a relevant provider has contravened a restricted civil penalty provision, the panel may, by written notice given to ASIC, recommend that ASIC make an application under subsection 1317J(1) in relation to the alleged contravention.

Note: If ASIC decides to not follow the panel's recommendation, ASIC must report on the recommendation and ASIC's reasons for not following it (see subparagraph 136(1)(da)(iv) of the ASIC Act).

- (2) Subsection (1) applies whether or not the panel also makes an instrument under subsection 921K(1) in relation to the alleged contravention by the relevant provider.
- (3) Each of the following is a *restricted civil penalty provision*:

- (a) subsection 921BA(5);
- (b) subsection 921BB(4);
- (c) subsection 921E(3);
- (d) subsection 921F(8);
- (e) section 921Y.

**921R Notices to Tax Practitioners Board about qualified tax relevant providers who are registered tax agents**

- (1) ASIC must give a written notice to the Tax Practitioners Board if an action specified in subsection (2) is taken against a qualified tax relevant provider who is a registered tax agent.
  - (2) The following actions are specified:
    - (a) a Financial Services and Credit Panel making an instrument under subsection 921K(1) in relation to the qualified tax relevant provider;
    - (b) ASIC giving the qualified tax relevant provider a warning or reprimand under subsection 921S(1);
    - (c) a Financial Services and Credit Panel giving the qualified tax relevant provider a warning or reprimand under subsection 921T(1);
    - (d) a Financial Services and Credit Panel giving the qualified tax relevant provider an infringement notice for the alleged contravention by the qualified tax relevant provider of a restricted civil penalty provision;
    - (e) ASIC making an application under subsection 1317J(1) in relation to the alleged contravention by the qualified tax relevant provider of a restricted civil penalty provision;
    - (f) a Financial Services and Credit Panel accepting an undertaking by the qualified tax relevant provider under subsection 171E(1) of the ASIC Act.
  - (3) A notice under subsection (1) must include:
    - (a) details of the action; and
    - (b) if the action is a Financial Services and Credit Panel making an instrument under subsection 921K(1)—the panel’s reasons for making the instrument; and
-

- (c) if the action is ASIC giving the qualified tax relevant provider a warning or reprimand—ASIC’s reasons for giving the warning or reprimand; and
- (d) if the action is a Financial Services and Credit Panel giving the qualified tax relevant provider a warning or reprimand—the panel’s reasons for giving the warning or reprimand.

*Notice about variation etc. of certain instruments*

- (4) ASIC must give a written notice to the Tax Practitioners Board if:
  - (a) ASIC has given a notice to the Tax Practitioners Board under subsection (1); and
  - (b) an instrument mentioned in that notice is subsequently varied, revoked or withdrawn.
- (5) A notice under subsection (4) must include details of the variation, revocation or withdrawal, as the case may be.

## **Subdivision C—Warnings and reprimands**

### **921S Warnings and reprimands by ASIC**

- (1) ASIC must give a relevant provider a written warning or reprimand if:
  - (a) ASIC reasonably believes that one or more of the following circumstances exist or have occurred in relation to the relevant provider:
    - (i) the relevant provider is not a fit and proper person to provide personal advice to retail clients in relation to relevant financial products, having regard to the matters specified in section 921U but subject to Part VIIC of the *Crimes Act 1914*;
    - (ii) the relevant provider has contravened a financial services law (including a restricted civil penalty provision);
    - (iii) a circumstance mentioned in any of paragraphs 921K(1)(a), (b), (e), (f) or (g) (power of Financial Services and Credit Panels to take action against relevant providers); and

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- (b) ASIC has not convened, and does not propose to convene, a Financial Services and Credit Panel under subsection 139(1) of the ASIC Act to perform functions or exercise powers under the corporations legislation in relation to that circumstance or those circumstances; and
- (c) ASIC has not exercised, and does not propose to exercise, any of its powers under the corporations legislation (other than this section) against the relevant provider in relation to that circumstance or those circumstances.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (2) 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, ASIC must give a copy of the warning or reprimand to the licensee.
- (3) The warning or reprimand, and any copy of the warning or reprimand given to a financial services licensee under subsection (2), must be accompanied by a statement of reasons for the decision to give the warning or reprimand.
- (4) A warning or reprimand given under subsection (1) is not a legislative instrument.

#### **921T Warnings and reprimands by Financial Services and Credit Panels**

- (1) A Financial Services and Credit Panel may give a relevant provider a written warning or reprimand if the panel reasonably believes that:
  - (a) the relevant provider is not a fit and proper person to provide personal advice to retail clients in relation to relevant financial products, having regard to the matters specified in section 921U but subject to Part VIIC of the *Crimes Act 1914*; or
  - (b) the relevant provider has contravened a financial services law (including a restricted civil penalty provision); or

- (c) a circumstance mentioned in any of paragraphs 921K(1)(a), (b), (e), (f) or (g) (power of Financial Services and Credit Panels to take action against relevant providers) exists or has occurred in relation to the relevant provider.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (2) If a Financial Services and Credit Panel gives a relevant provider a warning or reprimand under subsection (1), the panel must, at the same time, give a copy of the warning or reprimand to:
  - (a) ASIC; and
  - (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—the licensee.
- (3) The warning or reprimand, and each copy of the warning or reprimand given to a person under subsection (2), must be accompanied by a statement of reasons for the decision to give the warning or reprimand.
- (4) A warning or reprimand given under subsection (1) is not a legislative instrument.

## **Subdivision D—Fit and proper person test**

### **921U Fit and proper person test for relevant providers**

The following matters are specified in relation to a relevant provider and a Financial Services and Credit Panel:

- (a) whether any of the following of the relevant provider has ever been suspended or cancelled:
  - (i) an Australian financial services licence;
  - (ii) an Australian credit licence, or a registration under the Transitional Act, within the meaning of the *National Consumer Credit Protection Act 2009*;
- (b) whether any of the following has ever been made against the relevant provider:

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- (i) a banning order, or a disqualification order under Subdivision B of Division 8 of this Part;
- (ii) a banning order, or a disqualification order, under Part 2-4 of the *National Consumer Credit Protection Act 2009*;
- (c) whether the relevant provider has ever been disqualified under this Act, or any other law of the Commonwealth or of a State or Territory, from managing corporations;
- (d) whether the relevant provider has ever been banned from engaging in a credit activity (within the meaning of the *National Consumer Credit Protection Act 2009*) under a law of a State or Territory;
- (e) whether the relevant provider has ever been linked to a refusal or failure to give effect to a determination made by AFCA;
- (f) whether the relevant provider has ever been an insolvent under administration;
- (g) whether, in the last 10 years, the relevant provider has been convicted of an offence;
- (h) any relevant information given to ASIC, or an authority of a State or Territory, in relation to the relevant provider;
- (i) whether, in the last 10 years, a Financial Services and Credit Panel has made an instrument under subsection 921K(1) in relation to the relevant provider;
- (j) whether, in the last 10 years, a Financial Services and Credit Panel has given the relevant provider an infringement notice (unless the infringement notice was withdrawn);
- (k) any other matter prescribed by the regulations;
- (l) any other matter the panel considers relevant.

**Subdivision E—Review of decisions made under this Division etc.**

**921V Review of decisions etc.**

*Review of decisions*

- (1) A person may apply to the Tribunal for review of any of the following:
-

- (a) a decision by a Financial Services and Credit Panel to make an instrument under subsection 921K(1);
- (b) a decision by a Financial Services and Credit Panel that is covered by paragraph 921N(5)(c), (d) or (e);
- (c) a decision by a Financial Services and Credit Panel to give a relevant provider a warning or reprimand under subsection 921T(1).

*Notice of reviewable decisions and review rights*

- (2) Section 1317D applies in relation to a decision by a Financial Services and Credit Panel that is covered by subsection (1) of this section as if:
  - (a) the panel were a decision maker for the purposes of section 1317D; and
  - (b) the decision were a decision to which section 1317B applied.

**Subdivision F—Electronic communication**

**921W Electronic communication of documents given by Financial Services and Credit Panels etc.**

- (1) This section applies to any document that is required or permitted to be given to a person:
  - (a) by a Financial Services and Credit Panel, or the Chair of a Financial Services and Credit Panel, under a provision of this Act; or
  - (b) by ASIC under any of the following:
    - (i) Division 8A of this Part (Professional standards for relevant providers etc.);
    - (ii) this Division;
    - (iii) Division 8C of this Part (Registration of relevant providers);
    - (iv) Division 3 of Part 9.4AB (Infringement notices given by Financial Services and Credit Panels).
- (2) The document may be given to the recipient by means of an electronic communication.

- (3) The document may be given by giving the recipient (by means of an electronic communication or otherwise) sufficient information to allow the recipient to access the document electronically.
- (4) However, an electronic communication or electronic access may only be used if, at the time the electronic communication is used or information about the electronic access is given:
  - (a) it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference; and
  - (b) there is a nominated electronic address in relation to the recipient.

**921X Electronic communication of documents given to Financial Services and Credit Panels etc.**

- (1) This section applies to any document that is required or permitted to be given to:
  - (a) a Financial Services and Credit Panel, or the Chair of a Financial Services and Credit Panel, under a provision of this Act; or
  - (b) ASIC under any of the following:
    - (i) Division 8A of this Part (Professional standards for relevant providers etc.);
    - (ii) this Division;
    - (iii) Division 8C of this Part (Registration of relevant providers);
    - (iv) Division 3 of Part 9.4AB (Infringement notices given by Financial Services and Credit Panels).

*Giving a document to a Financial Services and Credit Panel etc.*

- (2) The document may be given to the recipient by means of an electronic communication.

*Signing the document*

- (3) If the document is required to be signed by the person under a provision mentioned in subsection (1), that requirement is taken to have been met in relation to the electronic communication of the document if:

- (a) the person receives a copy or counterpart of the document:
    - (i) that is in a physical form; or
    - (ii) by means of an electronic communication; and
  - (b) the copy or counterpart includes the entire contents of the document; and
  - (c) the person indicates, by means of an electronic communication, that the person has signed the document; and
  - (d) a method is used to identify the person and to indicate the person's intention in respect of the information communicated in the document; and
  - (e) the method used was either:
    - (i) as reliable as appropriate for the purpose for which the document was generated or communicated, in light of all the circumstances, including any relevant agreement; or
    - (ii) proven in fact to have fulfilled the functions described in paragraph (d), by itself or together with further evidence.
- (4) For the purposes of paragraph (3)(b), a copy or counterpart of a document need not include:
- (a) the signature of another person signing the document; or
  - (b) any material included in the document to identify another person signing the document or to indicate another person's intention in respect of the contents of the document.

## **Division 8C—Registration of relevant providers**

### **Subdivision A—Requirement for relevant providers to be registered**

#### **921Y Unregistered relevant providers not to provide personal advice**

A relevant provider must not provide personal advice to retail clients in relation to relevant financial products unless a registration of the relevant provider under subsection 921ZC(1) is in force.

Note: This section is a restricted civil penalty provision (see sections 921Q and 1317E).

**921Z Financial services licensees not to continue to authorise unregistered relevant providers to provide personal advice**

*Authorised representatives*

- (1) A financial services licensee contravenes this subsection if:
- (a) the licensee has given a relevant provider a written notice under subsection 916A(1) authorising the relevant provider to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and
  - (b) the relevant provider provides such advice; and
  - (c) at the time when the relevant provider does so:
    - (i) the licensee has not revoked the authorisation under subsection 916A(4); and
    - (ii) no registration of the relevant provider under subsection 921ZC(1) is in force.

*Employees and directors*

- (2) A financial services licensee contravenes this subsection if:
- (a) the licensee authorises a relevant provider who is 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; and
  - (b) the relevant provider provides such advice; and
  - (c) at the time when the relevant provider does so:
    - (i) the licensee has not ceased to authorise the relevant provider as described in paragraph (a); and
    - (ii) no registration of the relevant provider under subsection 921ZC(1) is in force.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

*Civil liability*

- (4) A person contravenes this subsection if the person contravenes subsection (1) or (2).

Note: This subsection is a civil penalty provision (see section 1317E).

**Subdivision B—Applications for registration**

**921ZA Application for registration—relevant providers who are financial services licensees**

- (1) A relevant provider who is a financial services licensee may apply to ASIC to be registered under subsection 921ZC(1).

Note: A notice must be lodged with ASIC under section 922D if a person becomes a relevant provider.

- (2) The application must:
- (a) be in the approved form; and
  - (b) include the following written declarations by the relevant provider:
    - (i) that the relevant provider is a fit and proper person to provide personal advice to retail clients in relation to relevant financial products;
    - (ii) if subsection 921BA(1) applies to the relevant provider—that the relevant provider has met the education and training standard in subsection 921B(2);
    - (iii) if subsection 921BA(2) applies to the relevant provider—that the relevant provider has met the education and training standard in subsection 921B(3);
    - (iv) if subsection 921BA(3) applies to the relevant provider—that the relevant provider has met the education and training standard in subsection 921B(4);
    - (v) if the relevant provider provides, or is to provide, a tax (financial) advice service—that the relevant provider is a qualified tax relevant provider.

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

- (3) Subject to Part VIIC of the *Crimes Act 1914*, the relevant provider must have regard to the matters specified in section 921U (other than the matters specified in paragraphs (h) and (l) of that section) for the purposes of making a declaration mentioned in subparagraph (2)(b)(i) of this section.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

**921ZB Application for registration—relevant providers who are not financial services licensees**

- (1) A financial services licensee may apply to ASIC to register a relevant provider under subsection 921ZC(1).

Note 1: A notice must be lodged with ASIC under section 922D if a person becomes a relevant provider.

Note 2: An application cannot be made under this subsection in relation to a provisional relevant provider (see subparagraph (2)(b)(v) of this section).

- (2) The application must:

(a) be in the approved form; and

(b) include the following:

- (i) a written declaration by the licensee that the relevant provider has given the licensee a declaration that the relevant provider is a fit and proper person to provide personal advice to retail clients in relation to relevant financial products;
- (ii) a written declaration by the licensee as to whether the licensee is aware of any reason why the relevant provider might not be a fit and proper person to provide personal advice to retail clients in relation to relevant financial products;
- (iii) if subsection 921BA(1) applies to the relevant provider—a written declaration by the licensee that the relevant provider has met the education and training standard in subsection 921B(2);
- (iv) if subsection 921BA(2) applies to the relevant provider—a written declaration by the licensee that the

relevant provider has met the education and training standard in subsection 921B(3);

- (v) if subsection 921BA(3) applies to the relevant provider—a written declaration by the licensee that the relevant provider has met the education and training standard in subsection 921B(4);
- (vi) if the relevant provider provides, or is to provide, a tax (financial) advice service—a written declaration by the licensee that the relevant provider is a qualified tax relevant provider.

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

- (3) Subject to Part VIIC of the *Crimes Act 1914*, the relevant provider and the licensee must have regard to the matters specified in section 921U (other than the matters specified in paragraphs (h) and (l) of that section) for the purposes of making a declaration mentioned in subparagraph (2)(b)(i) or (ii) of this section.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

## **Subdivision C—Registration and period of registration**

### **921ZC Registration of relevant providers**

- (1) Subject to subsections (2) and (3), if an application is made in accordance with section 921ZA or 921ZB to register a relevant provider, ASIC must register the relevant provider by recording in the Register of Relevant Providers that the relevant provider is registered under this subsection.

#### *Refusal to register relevant provider*

- (2) ASIC must refuse to register the relevant provider if:
  - (a) a banning order is in force against the relevant provider that has the effect that the relevant provider is prohibited from providing personal advice to retail clients in relation to relevant financial products; or

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- (b) a disqualification order under Division 8 is in force against the relevant provider that has the effect of disqualifying the relevant provider from providing personal advice to retail clients in relation to relevant financial products.
- (3) If a registration prohibition order is in force against the relevant provider, ASIC must refuse to register the relevant provider until after the prohibition end day specified in the order.

*Notice of registration*

- (4) If:
  - (a) the application is made in accordance with section 921ZA; and
  - (b) ASIC registers the relevant provider under subsection (1);ASIC must, as soon as practicable after recording in the Register of Relevant Providers that the relevant provider is registered under subsection (1), give a written notice of the registration to the relevant provider.
- (5) If:
  - (a) the application is made in accordance with section 921ZB; and
  - (b) ASIC registers the relevant provider under subsection (1);ASIC must, as soon as practicable after recording in the Register of Relevant Providers that the relevant provider is registered under subsection (1), give a written notice of the registration to:
  - (c) the relevant provider; and
  - (d) the applicant.

*Notice of refusal to register relevant provider*

- (6) If ASIC refuses to register the relevant provider, ASIC must, within 5 business days after the refusal, give a written notice of the refusal to:
  - (a) the relevant provider; and
  - (b) if the application is made in accordance with section 921ZB—the applicant.

- (7) The notice must specify which of the following provisions apply in relation to the relevant provider:
- (a) paragraph (2)(a) or (b);
  - (b) subsection (3).

**921ZD Period of registration—relevant providers who are financial services licensees**

If a relevant provider who is a financial services licensee makes an application in accordance with section 921ZA, and ASIC registers the relevant provider under subsection 921ZC(1), the registration:

- (a) comes into force when ASIC records in the Register of Relevant Providers that the relevant provider is registered under subsection 921ZC(1); and
- (b) remains in force until the earliest of the following:
  - (i) the cancellation time specified in a registration prohibition order in force against the relevant provider;
  - (ii) the time when a banning order against the relevant provider takes effect;
  - (iii) the relevant provider's Australian financial services licence ceases to be in force.

**921ZE Period of registration—relevant providers who are not financial services licensees**

If a financial services licensee makes an application in accordance with section 921ZB in relation to a relevant provider, and ASIC registers the relevant provider under subsection 921ZC(1), the registration:

- (a) comes into force when ASIC records in the Register of Relevant Providers that the relevant provider is registered under subsection 921ZC(1); and
- (b) remains in force until the earliest of the following:
  - (i) the cancellation time specified in a registration prohibition order in force against the relevant provider;
  - (ii) the time when a banning order against the relevant provider takes effect;

- (iii) the licensee ceases to authorise the relevant provider to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.

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

#### **50 Paragraphs 922E(1)(h) and (i)**

Repeal the paragraphs, substitute:

- (h) information about 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.

#### **51 Subsection 922E(2) (heading)**

Omit “*and memberships*”.

#### **52 Subsection 922E(2)**

Omit “subparagraph (1)(h)(i)”, substitute “paragraph (1)(h)”.

#### **53 Paragraphs 922F(1)(m) and (n)**

Repeal the paragraphs, substitute:

- (m) information about 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.

#### **54 Subsection 922F(2) (heading)**

Omit “*and memberships*”.

#### **55 Subsection 922F(2)**

Omit “subparagraph (1)(m)(i)”, substitute “paragraph (1)(m)”.

#### **56 Subsection 922H(1) (note)**

Omit “Another example would be a change in the compliance scheme that covers a relevant provider.”.

**57 Section 922HB (heading)**

Omit “**continuing professional development standard**”, substitute “**CPD provisions**”.

**58 Paragraph 922HB(1)(c)**

Repeal the paragraph, substitute:

- (c) during the licensee’s CPD year:
  - (i) a CPD provision applied to the relevant provider; and
  - (ii) the relevant provider did not comply with that provision.

**59 Subsection 922HB(1) (note 1)**

Omit “Note 1”, substitute “Note”.

**60 Subsection 922HB(1) (note 2)**

Repeal the note.

**61 Subsection 922HB(2)**

Repeal the subsection, substitute:

- (2) The notice must state which of the CPD provisions the relevant provider did not comply with during the licensee’s CPD year.

**62 Section 922HD**

Repeal the section.

**63 Paragraph 922L(2)(d)**

Repeal the paragraph.

**64 Subsection 922L(3)**

Omit “, (d)”.

**65 Subsection 922L(6)**

Repeal the subsection.

**66 Subparagraph 922N(1)(c)(ii)**

Repeal the subparagraph.

**67 Subsection 922P(1)**

Omit “, 922H and 922HD”, substitute “and 922H”.

**68 Paragraph 922Q(2)(m)**

After “in relation to the relevant provider”, insert “and a CPD provision”.

**69 Paragraph 922Q(2)(m)**

Omit “section 921D”, substitute “the CPD provision”.

**70 Paragraph 922Q(2)(q)**

Repeal the paragraph, substitute:

- (q) information about any undertaking that the relevant provider has given under:
  - (i) section 93AA or 171E of the ASIC Act; or
  - (ii) section 322 of the *National Consumer Credit Protection Act 2009*;

**71 Paragraph 922Q(2)(r)**

Repeal the paragraph.

**72 Paragraphs 922Q(2)(u) and (v)**

Repeal the paragraphs, substitute:

- (u) information about the educational qualifications of, and any training courses completed by, the relevant provider (but not courses completed in accordance with a CPD provision), to the extent that the qualifications and training courses are relevant to the provision of financial services;
- (ua) whether a registration of the relevant provider is in force under subsection 921ZC(1);
- (ub) whether the relevant provider provides, or is to provide, a tax (financial) advice service;
- (uc) if an instrument of a kind prescribed by regulations made for the purposes of subsection (3) is given to, or made in relation to, the relevant provider—details of the instrument;
- (ud) if a Financial Services and Credit Panel gives the relevant provider an infringement notice and the relevant provider

pays the amount stated in the notice before the end of the payment period for the notice—all of the following:

- (i) details of the notice;
- (ii) a statement that the relevant provider has complied with the notice;
- (iii) a statement that compliance with the notice is not an admission of guilt or liability;
- (iv) a statement that the relevant provider is not regarded as having contravened the provision specified in the notice;
- (ue) any declaration under section 1317E that the relevant provider has contravened a restricted civil penalty provision;

### **73 At the end of section 922Q**

Add:

- (3) The regulations may prescribe instruments of one or more of the following kinds:
  - (a) an instrument made by a Financial Services and Credit Panel under subsection 921K(1);
  - (b) a warning or reprimand given by ASIC under subsection 921S(1);
  - (c) a warning or reprimand given by a Financial Services and Credit Panel under subsection 921T(1).

### **74 Paragraph 923C(9)(b)**

Omit “specified by the standards body for the purposes of subparagraph 921U(2)(a)(v)”, substitute “determined by the Minister under subsection (9A)”.

### **75 After subsection 923C(9)**

Insert:

- (9A) The Minister may, by legislative instrument, determine a word or expression for the purposes of paragraph (9)(b).

### **76 Before section 1317DAM**

Insert:

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## Division 1—General

### 77 After subsection 1317DAM(1)

Insert:

- (1A) Subject to section 1317DAPA, if a Financial Services and Credit Panel believes on reasonable grounds that a person has contravened a restricted civil penalty provision, the panel may give the person an infringement notice for the alleged contravention.

### 78 Subsection 1317DAM(2)

Omit “The”, substitute “An”.

### 79 Subsection 1317DAM(4)

After “ASIC”, insert “or a Financial Services and Credit Panel”.

### 80 Paragraph 1317DAP(1)(k)

Repeal the paragraph, substitute:

- (k) state that the person may apply to:
- (i) if the notice was given to the person by a Financial Services and Credit Panel—the panel; or
  - (ii) otherwise—ASIC;
- to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and

### 81 Paragraph 1317DAP(2)(c)

After “provision”, insert “that is not a restricted civil penalty provision”.

### 82 Paragraph 1317DAP(2)(d)

After “provision”, insert “that is not a restricted civil penalty provision”.

### 83 At the end of subsection 1317DAP(2)

Add:

- ; and (e) for a single contravention of a restricted civil penalty provision—12 penalty units; and

- (f) for multiple contraventions of a restricted civil penalty provision—12 penalty units multiplied by the number of contraventions.

#### **84 After section 1317DAP**

Insert:

#### **1317DAPA Giving infringement notices in relation to restricted civil penalty provisions**

##### *Giving an infringement notice following proposed action notice*

- (1) A Financial Services and Credit Panel must not give a person an infringement notice for the alleged contravention by the person of a restricted civil penalty provision unless:
- (a) the panel gave the person a proposed action notice in relation to a proposal to give the infringement notice to the person and either:
    - (i) no submission or request for a hearing was made within the response period for the notice; or
    - (ii) a submission or request for a hearing was made within the response period for the notice and the panel has considered the submission or held the hearing (as the case may be); or
  - (b) all of the following apply:
    - (i) the panel gave the relevant provider a proposed action notice in relation to a proposed instrument under subsection 921K(1) in relation to the person and circumstances mentioned in that subsection;
    - (ii) those circumstances consist of, or include, the contravention;
    - (iii) a submission or request for a hearing was made within the response period for the proposed action notice;
    - (iv) the panel has considered the submission or held the hearing (as the case may be).

*Instruments under subsection 921K(1) and warnings and reprimands*

- (2) A Financial Services and Credit Panel must not give a person an infringement notice for the alleged contravention by the person of a restricted civil penalty provision if:
- (a) the panel, or another Financial Services and Credit Panel, has:
    - (i) made an instrument under subsection 921K(1) in relation to the person; or
    - (ii) given the person a warning or reprimand; because of circumstances mentioned in subsection 921K(1) or 921T(1); and
  - (b) those circumstances consist of, or include, the contravention.

**85 Before section 1317DAQ**

Insert:

**Division 2—Infringement notices given by ASIC**

**1317DAPB Application of Division**

This Division applies in relation to an infringement notice given to a person by ASIC.

**86 After section 1317DAT**

Insert:

**Division 3—Infringement notices given by Financial Services and Credit Panels**

**1317DATA Application of Division**

This Division applies in relation to an infringement notice given to a person by a Financial Services and Credit Panel.

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**1317DATB Payment period, extension of time and payment by instalments**

- (1) Sections 1317DAQ, 1317DAR and 1317DAS apply, in relation to an infringement notice given to a person by a Financial Services and Credit Panel, with the modifications provided for in subsections (2) to (6) of this section.
- (2) The following provisions apply, in accordance with subsection (1), as if any reference in them to ASIC were a reference to the Chair of the panel:
  - (a) subsections 1317DAQ(2) to (5);
  - (b) subsections 1317DAR(2) to (5);
  - (c) subsections 1317DAS(2) to (5).
- (3) The following provisions apply, in accordance with subsection (1), as if any reference in them to ASIC were a reference to the panel:
  - (a) subsection 1317DAR(1);
  - (b) subsection 1317DAS(1).
- (4) Section 1317DAQ applies, in accordance with subsection (1) of this section, as if subsection 1317DAQ(6) were omitted and the following subsection substituted:
- “(6) If the panel under subsection 1317DATC(3) refuses, or under subsection 1317DATC(5) is taken to refuse, a representation made for the notice to be withdrawn, the *payment period* ends on the later of the following days:
  - (a) the last day of the period that, without the withdrawal, would be the payment period for the notice;
  - (b) the day that is 7 days after the day the person was given notice of the panel’s decision not to withdraw the notice;
  - (c) the day that is 7 days after the day on which the panel is taken to have refused to withdraw the infringement notice.”.
- (5) Section 1317DAR applies, in accordance with subsection (1) of this section, as if paragraph 1317DAR(2)(b) were omitted and the following paragraph substituted:
  - “(b) if ASIC requests, in writing, that the Chair of the panel that gave the infringement notice extend the period.”.

- (6) Section 1317DAS applies, in accordance with subsection (1) of this section, as if paragraph 1317DAS(2)(b) were omitted and the following paragraph substituted:

“(b) if ASIC requests, in writing, that the Chair of the panel that gave the infringement notice make such an arrangement.”.

### **1317DATC Withdrawal of an infringement notice given by a Financial Services and Credit Panel**

#### *Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given by a Financial Services and Credit Panel may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

#### *Withdrawal of notice*

- (2) ASIC may request a Financial Services and Credit Panel (whether or not the panel gave the infringement notice to the person) to make a decision under subsection (3) in relation to the infringement notice if:
- (a) a person makes representations in relation to the notice under subsection (1); or
  - (b) ASIC is satisfied that there has been a change in any of the circumstances on the basis of which the notice was given to the person.
- (3) If ASIC makes a request under subsection (2), the panel must, within 14 days after it is made:
- (a) decide to withdraw, or refuse to withdraw, the infringement notice; and
  - (b) give the person a written notice of its decision.
- (4) When deciding whether to withdraw, or refuse to withdraw, the infringement notice, the panel:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC in accordance with subsection (1); and
  - (b) may take into account the following:
-

- (i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;
  - (ii) the circumstances of the alleged contravention of the restricted civil penalty provision to which the notice relates;
  - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;
  - (iv) any other matter the panel considers relevant.
- (5) If the panel does not comply with subsection (3):
- (a) the panel is taken to have refused to withdraw the infringement notice; and
  - (b) the refusal is taken to have occurred on the last day of the 14 day period.

*Refund of amount if infringement notice withdrawn*

- (6) If:
- (a) the panel withdraws the infringement notice; and
  - (b) the person has already paid all or part of the amount stated in the notice;
- ASIC must refund to the person an amount equal to the amount paid.

## **87 Before section 1317DAU**

Insert:

## **Division 4—Other matters**

### **88 Section 1317DAV**

Repeal the section, substitute:

#### **1317DAV Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of:

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- (i) a provision subject to an infringement notice under this Part; or
- (ii) a restricted civil penalty provision; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part, or a restricted civil penalty provision, if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of:
  - (i) a provision subject to an infringement notice under this Part; or
  - (ii) a restricted civil penalty provision; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened:
  - (i) a provision subject to an infringement notice under this Part; or
  - (ii) a restricted civil penalty provision.

**89 In the appropriate position in subsection 1317E(3)**

Insert:

|                     |                                                                                                                            |               |
|---------------------|----------------------------------------------------------------------------------------------------------------------------|---------------|
| subsection 921BA(5) | relevant providers to meet education and training standards                                                                | uncategorised |
| subsection 921BB(4) | relevant providers who provide tax (financial) advice services to meet requirement for continuing professional development | uncategorised |
| subsection 921E(3)  | relevant providers to comply with the Code of Ethics                                                                       | uncategorised |
| subsection 921F(8)  | requirements relating to provisional relevant providers                                                                    | uncategorised |
| subsection 921L(2)  | relevant providers to comply with                                                                                          | uncategorised |

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|                    |                                                                                                                      |               |
|--------------------|----------------------------------------------------------------------------------------------------------------------|---------------|
|                    | direction under paragraph 921L(1)(a)                                                                                 |               |
| section 921Y       | unregistered relevant providers not to provide personal advice                                                       | uncategorised |
| subsection 921Z(4) | financial services licensees not to continue to authorise unregistered relevant providers to provide personal advice | uncategorised |

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## **90 After subsection 1317J(1)**

Insert:

(1A) However, ASIC must not make an application under subsection (1) in relation to an alleged contravention of a restricted civil penalty provision unless:

- (a) a Financial Services and Credit Panel has given ASIC a notice under subsection 921Q(1) in relation to the alleged contravention; or
- (b) both of the following apply:
  - (i) a Financial Services and Credit Panel has given a person an infringement notice for the alleged contravention;
  - (ii) the person has not paid the amount that is payable under the infringement notice within the payment period for the infringement notice.

## **91 Section 1546A (subparagraph (a)(i) of the definition of *existing provider*)**

Omit “(except a person who has ceased to be a relevant provider under subsection 1546B(4) or (5))”.

## **92 Section 1546B**

Repeal the section.

## **93 Subsections 1546C(2) to (4)**

Repeal the subsections.

## **94 Subsection 1546E(5) (note 1)**

Omit “1”.

**95 Subsection 1546E(5) (note 2)**

Repeal the note.

**96 Section 1546Y**

Repeal the section.

**97 Division 4 of Part 10.23A**

Repeal the Division.

**98 In the appropriate position in Chapter 10**

Insert:

**Part 10.57—Transitional provisions relating to the  
Financial Sector Reform (Hayne Royal  
Commission Response—Better Advice) Act  
2021**

**Division 1—Definitions**

**1684 Definitions**

In this Part:

*amending Act* means the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*.

*exam cut-off day*, for an existing provider, means:

- (a) if, on 1 January 2022, regulations made for the purposes of paragraph 1684B(a) prescribe a day in relation to the existing provider—that day; or
- (b) otherwise—1 January 2022.

*existing provider* has the meaning given by section 1546A.

*old Tax Agent Services Act* means the *Tax Agent Services Act 2009* as in force immediately before 1 January 2022.

*registered tax (financial) adviser* has the meaning given by the old Tax Agent Services Act.

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

*standards body* has the meaning given by section 910A, as in force immediately before 1 January 2022.

## **Division 2—Transitional provisions for existing providers**

### **1684A Application—qualifications for existing providers**

*Existing providers who are relevant providers on 1 January 2026*

- (1) Subsection 921BA(1) and subsection 921BA(5) in so far as it relates to subsection 921BA(1), as inserted by Schedule 1 to the amending Act, apply on and after 1 January 2026 in relation to an existing provider who is a relevant provider if the existing provider is a relevant provider on 1 January 2026.

*Existing providers who are not relevant providers on 1 January 2026*

- (2) If an existing provider who is a relevant provider is not a relevant provider on 1 January 2026, subsection 921BA(1) and subsection 921BA(5) in so far as it relates to subsection 921BA(1), as inserted by Schedule 1 to the amending Act, apply on and after 1 January 2026 in relation to the existing provider as if the reference in subsection 921BA(1), as inserted by Schedule 1 to the amending Act, to meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act, were a reference to:
  - (a) meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act; or
  - (b) completing one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard.

**1684B Application—exam for existing providers**

Subsection 921BA(2) and subsection 921BA(5) in so far as it relates to subsection 921BA(2), as inserted by Schedule 1 to the amending Act, apply, in relation to an existing provider who is a relevant provider, on and after:

- (a) if, on 1 January 2022, regulations made for the purposes of this paragraph prescribe a day in relation to the existing provider—that day; or
- (b) otherwise—1 January 2022.

**1684C Application—existing providers who meet certain education and training standards exempt from work and training requirement**

- (1) Subsection 921BA(3) and subsection 921BA(5) in so far as it relates to subsection 921BA(3), as inserted by Schedule 1 to the amending Act, do not apply in relation to an existing provider who is a relevant provider.
- (2) Subsection (1) has effect subject to subsections (3) and (4).

*Consequences of failing to gain qualifications for existing providers who are relevant providers on certain days*

- (3) The provisions mentioned in subsection (1) apply, in relation to an existing provider who is a relevant provider, on and after 1 January 2026 if (and only if), at the start of that day:
  - (a) the existing provider is a relevant provider; and
  - (b) the existing provider has not:
    - (i) met the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act; or
    - (ii) completed one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard.

*Consequences of failing to pass exam for existing providers who are relevant providers on certain days*

- (4) The provisions mentioned in subsection (1) apply to an existing provider who is a relevant provider on and after the exam cut-off day for the existing provider, if (and only if), at the start of that day:
- (a) the existing provider is a relevant provider; and
  - (b) the existing provider has not met the education and training standard in subsection 921B(3), as amended by Schedule 1 to the amending Act.

**1684D Application—limitation on authorisation of existing providers to provide personal advice**

- (1) The following provisions (the *relevant provisions*), as inserted by Schedule 1 to the amending Act, do not apply in relation to an existing provider:
- (a) paragraph 921C(1)(a);
  - (b) paragraphs 921C(2)(a) and (b);
  - (c) paragraphs 921C(3)(a) and (b);
  - (d) paragraphs 921C(4)(a) and (b).
- (2) Subsection (1) has effect subject to subsections (3) and (5).

*Consequences of failing to gain qualifications*

- (3) Subject to subsection (4), the relevant provisions begin to apply on 1 January 2026, in relation to an existing provider if, at the start of that day, the existing provider has not:
- (a) met the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act; or
  - (b) completed one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard.

*Exemption in relation to existing providers who are not relevant providers on 1 January 2026*

- (4) If, under subsection (3), the relevant provisions begin to apply to an existing provider who is not a relevant provider on 1 January 2026, the relevant provisions apply in relation to the existing provider as if:
- (a) a reference in them to meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act, were a reference to:
    - (i) meeting the education and training standard in that subsection; or
    - (ii) completing one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard; and
  - (b) they did not include a reference to the education and training standard in subsection 921B(4), as amended by Schedule 1 to the amending Act, or a reference to undertaking work and training in accordance with that subsection.

*Consequences of failing to pass exam*

- (5) Subject to subsection (6), the relevant provisions begin to apply, in relation to an existing provider, on the exam cut-off day for the existing provider if, at the start of that day, the existing provider has not met the education and training standard in subsection 921B(3), as amended by Schedule 1 to the amending Act.

*Exemption in relation to existing providers who are not relevant providers on exam cut-off day*

- (6) If, under subsection (5), the relevant provisions begin to apply to an existing provider who is not a relevant provider on the exam cut-off day for the existing provider, the relevant provisions apply in relation to the existing provider as if:
- (a) a reference in them to meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act, were a reference to:
    - (i) meeting the education and training standard in that subsection; or
-

- (ii) completing one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard; and
- (b) they did not include a reference to the education and training standard in subsection 921B(4), as amended by Schedule 1 to the amending Act, or a reference to undertaking work and training in accordance with that subsection.

*Consequences of relevant provisions beginning to apply to existing provider*

- (7) If, on a particular day, any of the relevant provisions begin to apply to an existing provider who is a relevant provider, the existing provider is taken for the purposes of this Act to have ceased to be a relevant provider on that day.
- (8) Subsection (7) does not prevent the existing provider again becoming a relevant provider.

**1684E Transitional—Minister may determine courses for certain purposes**

- (1) The Minister may, by legislative instrument, determine courses for the purposes of the following provisions:
  - (a) paragraph 1684A(2)(b);
  - (b) subparagraph 1684C(3)(b)(ii);
  - (c) paragraph 1684D(3)(b);
  - (d) subparagraphs 1684D(4)(a)(ii) and (6)(a)(ii).

*Saving of determinations made by standards body*

- (2) A determination that:
  - (a) was made under subsection 1546B(7), as in force immediately before 1 January 2022; and
  - (b) was in force immediately before that day;continues in force (and may be dealt with) on and after that day as if it had been made under subsection (1) of this section.

### **Division 3—Other transitional provisions**

#### **1684F Transitional—exams**

If, immediately before 1 January 2022, a person met the education and training standard in subsection 921B(3), as in force at that time, the person is taken, at and after that time, to have met the education and training standard in subsection 921B(3), as amended by Schedule 1 to the amending Act.

#### **1684G Application—continuing professional development**

Subsection 921BA(4) and subsection 921BA(5) in so far as it relates to subsection 921BA(4), as inserted by Schedule 1 to the amending Act, apply in relation to a financial services licensee's CPD year that begins on or after 1 January 2022.

#### **1684H Application—action against relevant providers**

Section 921K, as inserted by Schedule 1 to the amending Act, applies in relation to an act or omission by a relevant provider that occurs, or a circumstance that arises in relation to a relevant provider, on or after 1 January 2022.

#### **1684J Application—recommendations to ASIC in relation to restricted civil penalty provisions**

Section 921Q, as inserted by Schedule 1 to the amending Act, applies in relation to an act or omission by a relevant provider that occurs on or after 1 January 2022.

#### **1684K Application—warnings and reprimands**

Sections 921S and 921T, as inserted by Schedule 1 to the amending Act, apply in relation to an act or omission by a relevant provider that occurs, or a circumstance that arises in relation to a relevant provider, on or after 1 January 2022.

**1684L Application—requirement for relevant providers to be registered**

Sections 921Y and 921Z, as inserted by Schedule 1 to the amending Act, apply on and after 1 January 2023.

**1684M Saving—determinations made for education and training standards**

An instrument that:

- (a) was made under subparagraph 921U(2)(a)(i), (iii) or (iv), as in force immediately before 1 January 2022; and
  - (b) was in force immediately before that day;
- continues in force (and may be dealt with) on and after that day as if it had been made under subsection 921B(6), as added by Schedule 1 to the amending Act.

**1684N Saving—word or expression to refer to a provisional relevant provider**

A determination that:

- (a) was made under subparagraph 921U(2)(a)(v), as in force immediately before 1 January 2022; and
  - (b) was in force immediately before that day;
- continues in force (and may be dealt with) on and after that day as if it had been made under subsection 923C(9A), as inserted by Schedule 1 to the amending Act.

**1684P Saving—Code of Ethics**

The Code of Ethics that:

- (a) was made under paragraph 921U(2)(b), as in force immediately before 1 January 2022; and
  - (b) was in force immediately before that day;
- continues in force (and may be dealt with) on and after that day as if it had been made under section 921E, as amended by Schedule 1 to the amending Act.

**1684Q Transitional—approvals of foreign qualifications**

An application for approval of a foreign qualification that:

- (a) was made under subsection 921V(1), as in force immediately before 1 January 2022; and
- (b) had not been finally determined at the start of that day; may be dealt with, on and after that day, as if it had been made under subsection 921G(1), as added by Schedule 1 to the amending Act.

**1684R Saving—approvals of foreign qualifications that are in force**

An approval of a foreign qualification that:

- (a) was given under paragraph 921V(3)(a), as in force immediately before 1 January 2022; and
- (b) was in force immediately before that day; continues in force (and may be dealt with) on and after that day as if it had been given under paragraph 921G(2)(a), as added by Schedule 1 to the amending Act.

**1684S Transitional—approvals of foreign qualifications that are not yet in force**

If:

- (a) for the purposes of approving a foreign qualification for a person, one or more courses were specified for the person under subsection 921V(5), as in force immediately before 1 January 2022; and
  - (b) immediately before that day, the person had not completed all of those courses;
- section 921G, as added by Schedule 1 to the amending Act, has effect on and after that day, as if the courses were specified for the person under subparagraph 921G(3)(b)(i).

**1684T Transitional—orders under section 30-20 of the old Tax Agent Services Act**

- (1) This section applies if a relevant provider does not comply with:
-

- (a) an order under section 30-20 of the old Tax Agent Services Act that is in force against the relevant provider immediately before 1 January 2022; or
- (b) an order made on or after that day against the relevant provider, in relation to an act or omission before that day, under section 30-20 of the old Tax Agent Services Act.

*Action by Financial Services and Credit Panels*

- (2) If no other Financial Services and Credit Panel has taken action against the relevant provider under this subsection, a Financial Services and Credit Panel may do one of the following:
  - (a) give the relevant provider a warning or reprimand;
  - (b) make an instrument of a kind specified in subsection 921L(1), as inserted by Schedule 1 to the amending Act, in relation to the relevant provider.

*Action by ASIC*

- (3) If no Financial Services and Credit Panel has taken action against the relevant provider under subsection (2), ASIC may make an order against the relevant provider.
- (4) If:
  - (a) no Financial Services and Credit Panel has taken action against the relevant provider under subsection (2); and
  - (b) ASIC has not made an order against the relevant provider under subsection (3);

ASIC must give the relevant provider a warning or reprimand.

*Application of Act to action taken by Financial Services and Credit Panels under subsection (2)*

- (5) This Act applies in relation to a warning or reprimand given under paragraph (2)(a) as if the warning or reprimand were given under subsection 921T(1), as inserted by Schedule 1 to the amending Act.
- (6) This Act applies in relation to an instrument made, or proposed to be made, under paragraph (2)(b) as if the instrument were made, or proposed to be made, under subsection 921K(1), as inserted by Schedule 1 to the amending Act.

*Application of Act to action taken by ASIC under subsection (3) or (4)*

- (7) This Act applies in relation to an order made, or proposed to be made, under subsection (3) as if the order were a banning order.
- (8) This Act applies in relation to a warning or reprimand given under subsection (4) as if the warning or reprimand were given under subsection 921S(1), as inserted by Schedule 1 to the amending Act.

**1684U Transitional—deemed registration of certain relevant providers**

- (1) This section applies in relation to a person if:
  - (a) the person is a relevant provider; and
  - (b) immediately before 1 January 2022, the person was a registered tax (financial) adviser; and
  - (c) the person's registration (the *old registration*) as a registered tax (financial) adviser continues, or is, in force on and after that day because of item 139 or 140 of Schedule 1 to the amending Act.
- (2) On and after the application day for the person, this Act applies in relation to the person as if:
  - (a) the person were registered under subsection 921ZC(1), as inserted by Schedule 1 to the amending Act, because of an application in accordance with:
    - (i) if the relevant provider is a financial services licensee—section 921ZA, as inserted by Schedule 1 to the amending Act; or
    - (ii) if the relevant provider is not a financial services licensee—section 921ZB, as inserted by Schedule 1 to the amending Act; and
  - (b) the person's registration under subsection 921ZC(1), as inserted by Schedule 1 to the amending Act, came into force on the application day for the person.
- (3) For the purposes of this section, the *application day* for a person is:

- (a) if the person's old registration continues in force because of item 139 of Schedule 1 to the amending Act—1 January 2022; or
- (b) if the person's old registration is in force because of item 140 of Schedule 1 to the amending Act—the day the old registration comes into force under that item.

#### **1684V Transitional—transfer of documents**

- (1) After 1 January 2022, any document that:
  - (a) was in the possession of a director or employee of the standards body immediately before that day; and
  - (b) relates to the functions of the standards body (other than the exam function);is to be transferred to the Secretary of the Department.
- (2) After 1 January 2022, any document that:
  - (a) was in the possession of a director or employee of the standards body immediately before that day; and
  - (b) relates to the exam function of the standards body;is to be transferred to ASIC.
- (3) In this section:

*exam function* means the function mentioned in paragraph 921U(1)(d), as in force immediately before 1 January 2022.

#### **99 In the appropriate position in Schedule 3**

Insert:

Subsection 921Z(3)

20 penalty units

## Part 2—Other amendments

### Division 1—Amendments

#### *Freedom of Information Act 1982*

##### **100 Division 1 of Part II of Schedule 2 (after table item dealing with the Australian Postal Corporation)**

Insert:

Australian Securities and Investments Commission, in relation to documents:

- (a) concerning its functions under subsection 921B(3) of the *Corporations Act 2001*; or
- (b) transferred to it in accordance with subsection 1684V(2) of that Act.

##### **101 Division 1 of Part II of Schedule 2 (table item dealing with the Department of the Treasury)**

Repeal the item, substitute:

Department of the Treasury in relation to documents:

- (a) in respect of activities of the Australian Loan Council; or
- (b) in respect of the commercial activities of the Royal Australian Mint;  
or
- (c) concerning the performance of a function, or the exercise of a power, under section 921G of the *Corporations Act 2001*; or
- (d) transferred to the Secretary of the Department in accordance with subsection 1684V(1) of that Act.

#### *National Consumer Credit Protection Act 2009*

##### **102 After subsection 80(1)**

Insert:

- (1A) Subsection (1) has effect subject to subsection (4).

### **103 Subsection 80(4)**

Omit “Despite subsection (1), ASIC may only make a banning order against a person”, substitute “Subject to subsection (5), if ASIC has not delegated its power to make a banning order against a person to a Financial Services and Credit Panel, ASIC may make the order only”.

### **104 At the end of subsection 80(4)**

Add:

Note: If ASIC delegates its power to make a banning order against a person to a Financial Services and Credit Panel, the panel may make the order only after holding a hearing in relation to the proposed order (see section 157 of the ASIC Act).

### **105 Subsections 80(5) and (6)**

Repeal the subsections, substitute:

(5) ASIC may make a banning order against a person without giving the person the opportunities mentioned in subsection (4) if:

(a) either:

(i) ASIC has not delegated its power to make the banning order to a Financial Services and Credit Panel; or

(ii) ASIC exercises its power to make the banning order despite such a delegation; and

(b) subsection (6) or (6A) applies.

Note: See section 34AB of the *Acts Interpretation Act 1901* (effect of delegation).

(6) This subsection applies if:

(a) ASIC’s grounds for making a banning order against a person include that ASIC has suspended or cancelled a licence of the person (see paragraph (1)(a)); and

(b) the suspension or cancellation took place without a hearing under section 54.

(6A) This subsection applies if:

(a) ASIC’s grounds for making a banning order against a person include that the person has been convicted of fraud (see paragraph (1)(c)); and

(b) the person has been convicted of serious fraud.

***Tax Agent Services Act 2009***

**106 Paragraphs 2-5(a), (b) and (c)**

Omit “tax agents, BAS agents and tax (financial) advisers”, substitute “tax agents and BAS agents”.

**107 Section 20-5 (heading)**

Omit “tax agent, BAS agent or tax (financial) adviser”, substitute “tax agent or BAS agent”.

**108 Subparagraph 20-5(2)(c)(ii)**

Omit “arrangements; or”, substitute “arrangements; and”.

**109 Subparagraph 20-5(2)(c)(iii)**

Repeal the subparagraph.

**110 Subparagraph 20-5(3)(d)(ii)**

Omit “arrangements; or”, substitute “arrangements; and”.

**111 Subparagraph 20-5(3)(d)(iii)**

Repeal the subparagraph.

**112 Section 20-10**

Omit “tax agents, BAS agents and tax (financial) advisers”, substitute “tax agents and BAS agents”.

**113 Subsection 20-30(2)**

Repeal the subsection, substitute:

- (2) The Board must also notify the Commissioner of the Board’s decision.

**114 Subsection 40-20(3)**

Repeal the subsection, substitute:

- (3) The Board must also notify the Commissioner of the Board’s decision and the reasons for the decision.

### **115 Section 50-1**

Omit:

You contravene a civil penalty provision if you are unregistered and provide tax agent services for a fee, advertise that you can provide tax agent services or represent yourself as registered.

You also contravene a civil penalty provision if you are registered and you make a false or misleading statement, employ or use the services of an entity whose registration has been terminated, or sign a declaration or statement that was prepared by an unregistered entity who was not working under the supervision or control of a registered tax agent, BAS agent or tax (financial) adviser.

substitute:

You may contravene a civil penalty provision if you are unregistered and provide tax agent services for a fee, advertise that you can provide such services or represent yourself as registered.

You contravene a civil penalty provision if you are neither registered nor a qualified tax relevant provider and you provide tax (financial) advice services for a fee or advertise that you can provide such services.

You also contravene a civil penalty provision if you are registered and you make a false or misleading statement, employ or use the services of an entity whose registration has been terminated, or sign a declaration or statement that was prepared by an unregistered entity who was not working under the supervision or control of a registered tax agent or BAS agent.

### **116 Subsections 50-5(2A) and 50-10(2A)**

Repeal the subsections.

### **117 Section 50-15 (heading)**

Omit “**tax agent, BAS agent or tax (financial) adviser**”, substitute “**tax agent or BAS agent**”.

## 118 After Subdivision 50-A

Insert:

### Subdivision 50-AA—Conduct that relates to tax (financial) advice services

#### Table of sections

|       |                                                                            |
|-------|----------------------------------------------------------------------------|
| 50-17 | Providing tax (financial) advice services if not registered or qualified   |
| 50-18 | Advertising tax (financial) advice services if not registered or qualified |

#### 50-17 Providing tax (financial) advice services if not registered or qualified

You contravene this section if:

- (a) either:
  - (i) you provide a service that you know, or ought reasonably to know, is a \*tax (financial) advice service; or
  - (ii) a service that you know, or ought reasonably to know, is a tax (financial) advice service is provided on your behalf by another person; and
- (b) the tax (financial) advice service is not a \*BAS service; and
- (c) either:
  - (i) you charge or receive a fee or other reward for providing the tax (financial) advice service; or
  - (ii) the other person charges or receives a fee or other reward for providing the tax (financial) advice service on your behalf; and
- (d) you are not a \*registered tax agent or a \*qualified tax relevant provider; and
- (e) in the case of the tax (financial) advice service provided on your behalf by another person—that other person is not a registered tax agent or a qualified tax relevant provider; and
- (f) in the case of you providing the tax (financial) advice service as a legal service—you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax (financial) advice service.

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

### **50-18 Advertising tax (financial) advice services if not registered or qualified**

You contravene this section if:

- (a) you advertise that:
  - (i) you will provide a \*tax (financial) advice service; or
  - (ii) another person will provide a tax (financial) advice service on your behalf; and
- (b) the tax (financial) advice service is not a \*BAS service; and
- (c) you are not a \*registered tax agent or a \*qualified tax relevant provider; and
- (d) if the tax (financial) advice service would be provided on your behalf by another person—that other person is not a registered tax agent or a qualified tax relevant provider; and
- (e) if the tax (financial) advice service would be provided as a legal service—you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax (financial) advice service.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

### **119 Subsection 50-25(1A)**

Repeal the subsection.

### **120 Subsection 50-25(2)**

Omit “Subsections (1) and (1A) do”, substitute “Subsection (1) does”.

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**121 Section 60-1**

Omit:

The Board must also report to the Minister on its operations each year, maintain a register of registered tax agents, BAS agents and tax (financial) advisers, and publish decisions to terminate or suspend the registration of a registered tax agent, BAS agent or tax (financial) adviser.

substitute:

The Board must also report to the Minister on its operations each year, maintain a register of registered tax agents and BAS agents, and publish decisions to terminate or suspend the registration of a registered tax agent or BAS agent.

**122 Paragraph 60-15(a)**

Omit “tax agents, BAS agents and tax (financial) advisers”, substitute “tax agents and BAS agents”.

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

Repeal the subparagraph, substitute:

- (iv) if the decision or finding concerns a \*registered tax agent in relation to providing a \*tax (financial) advice service—\*ASIC; and

**124 Subparagraph 60-125(8)(c)(v)**

Repeal the subparagraph.

**125 Subparagraph 60-125(8)(d)(iii)**

Omit “\*ASIC; and”, substitute “\*ASIC.”.

**126 Subparagraph 60-125(8)(d)(iv)**

Repeal the subparagraph.

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**127 Paragraph 60-135(1)(a)**

Omit “tax agents, BAS agents and tax (financial) advisers”, substitute “tax agents and BAS agents”.

**128 Section 70-34**

Repeal the section.

**129 Subsection 70-40(3AA)**

Repeal the subsection, substitute:

*Disclosures to Financial Services and Credit Panels*

(3AA) Subsection 70-35(1) does not apply if the record or disclosure is to a \*Financial Services and Credit Panel for the purpose of the panel performing any of its functions or exercising any of its powers.

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

**130 Subsection 90-1(1)**

Repeal the following definitions:

- (a) definition of *Code of Ethics*;
- (b) definition of *compliance scheme*;
- (c) definition of *covers*.

**131 Subsection 90-1(1)**

Insert:

*Financial Services and Credit Panel* has the same meaning as in the *Australian Securities and Investments Commission Act 2001*.

**132 Subsection 90-1(1) (definition of *monitoring body*)**

Repeal the definition.

**133 Subsection 90-1(1)**

Insert:

*qualified tax relevant provider* has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

### 134 Subsection 90-1(1)

Repeal the following definitions:

- (a) definition of *registered tax agent, BAS agent or tax (financial) adviser*;
- (b) definition of *registered tax agents, BAS agents and tax (financial) advisers*;
- (c) definition of *registered tax (financial) adviser*.

### 135 Subsection 90-1(1)

Insert:

*relevant provider* has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

### 136 Amendments of listed provisions—tax agent or BAS agent

Omit “tax agent, BAS agent or tax (financial) adviser” (wherever occurring) and substitute “tax agent or BAS agent” in the following provisions:

- (a) section 20-1;
- (b) subsections 20-5(1), (2) and (3);
- (c) subsection 20-20(1);
- (d) paragraph 20-25(7)(a);
- (e) subsection 20-40(1);
- (f) section 20-45;
- (g) section 30-1;
- (h) section 30-5;
- (i) subsection 30-10(5);
- (j) paragraph 30-20(1)(b);
- (k) subsection 30-25(4);
- (l) subsections 30-35(1), (2) and (3);
- (m) subsection 40-5(1);
- (n) subsection 40-10(1);
- (o) subsection 40-15(1);
- (p) paragraph 50-15(a);
- (q) subparagraph 50-25(1)(c)(i);

- (r) paragraph 60-135(1)(b);
- (s) subsection 60-135(3);
- (t) section 60-140.

## **Division 2—Application of amendments to the Tax Agent Services Act 2009**

### **137 Definitions**

In this Division:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

*old Act* means the *Tax Agent Services Act 2009* as in force immediately before 1 January 2022.

*relevant provider* has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

### **138 Application—providing or advertising tax (financial) advice services**

Sections 50-17 and 50-18 of the *Tax Agent Services Act 2009*, as inserted by Division 1 of this Part, apply in relation to conduct engaged in on or after 1 January 2022.

### **139 Transitional—registration of registered tax (financial) advisers who are relevant providers**

- (1) This item applies if:
  - (a) a person is a relevant provider; and
  - (b) immediately before 1 January 2022:
    - (i) the person was a registered tax (financial) adviser under the old Act; and
    - (ii) the person's registration (the *old registration*) as a registered tax (financial) adviser was due to expire at the end of a period (the *old registration period*) that ends on or after that day; and
  - (c) item 140 of this Schedule does not apply to the person.
- (2) Despite the amendments of the old Act made by Division 1 of this Part:

- (a) the old Act continues to apply in relation to the old registration on and after 1 January 2022 as if those amendments had not been made; and
- (b) the old registration continues in force on and after 1 January 2022 until the end of the old registration period, unless terminated before the end of that period.

**140 Transitional—pending applications for registration of registered tax (financial) advisers who are relevant providers**

- (1) This item applies if:
  - (a) a person is a relevant provider; and
  - (b) before 1 January 2022, the person made an application:
    - (i) under section 20-20 of the old Act for registration as a registered tax (financial) adviser; or
    - (ii) under section 20-50 of the old Act for renewal of the person's registration as a registered tax (financial) adviser; and
  - (c) immediately before 1 January 2022, the application had not been finally determined.
- (2) Despite the amendments of the old Act made by Division 1 of this Part:
  - (a) the old Act continues to apply, on and after 1 January 2022, in relation to the application, as if those amendments had not been made; and
  - (b) if the application is granted:
    - (i) the old Act continues to apply to the registration, or the renewed registration, on and after the day the application is granted as if those amendments had not been made; and
    - (ii) the registration, or the renewed registration, is in force on and after 1 January 2022 for the period determined under subsection 20-25(4) of the old Act in relation to the application, unless terminated before the end of that period.

**141 Transitional—providing or advertising tax (financial) advice services**

- (1) This item applies if:
  - (a) a person's registration as a registered tax (financial) adviser continues or is in force because of item 139 or 140 of this Schedule; and
  - (b) that registration is suspended for a period (the *suspension period*) under subsection 30-25(1) of the old Act as it continues to apply to the registration under those items.
- (2) During the suspension period, the person is taken not to be a qualified tax relevant provider for the purposes of paragraphs 50-17(d) and 50-18(c) of the *Tax Agent Services Act 2009*, as inserted by Division 1 of this Part.

## Part 3—Contingent amendments

### *Corporations Act 2001*

#### **142 Subsection 921L(1) (paragraph (b) of the note)**

Omit “ASIC”, substitute “the Registrar”.

#### **143 After subparagraph 921M(1)(b)(i)**

Insert:

(ia) the Registrar; and

#### **144 Subsection 921M(1) (note)**

Repeal the note.

#### **145 After subparagraph 921N(6)(a)(ii)**

Insert:

(ia) the Registrar;

#### **146 Paragraph 921P(2)(d)**

Omit “ASIC may be required to enter details of the instrument in the Register of Relevant Providers in accordance with paragraph 922Q(2)(uc)”, substitute “the Registrar may be required to enter details of the instrument in the records maintained under section 922A”.

#### **147 Subsection 921ZA(1)**

Omit “ASIC”, substitute “the Registrar”.

#### **148 Subsection 921ZA(1) (note)**

Omit “ASIC”, substitute “the Registrar”.

#### **149 Paragraph 921ZA(2)(a)**

Repeal the paragraph, substitute:

(a) meet any requirements of the data standards; and

**150 Subsection 921ZB(1)**

Omit “ASIC”, substitute “the Registrar”.

**151 Subsection 921ZB(1) (note 1)**

Omit “ASIC”, substitute “the Registrar”.

**152 Paragraph 921ZB(2)(a)**

Repeal the paragraph, substitute:

- (a) meet any requirements of the data standards; and

**153 Subsection 921ZC(1)**

Omit “ASIC must register the relevant provider by recording in the Register of Relevant Providers that the relevant provider is registered under this subsection”, substitute “the Registrar must register the relevant provider by recording in the records maintained under section 922A that the relevant provider is registered under this subsection”.

**154 Subsection 921ZC(2)**

Omit “ASIC”, substitute “The Registrar”.

**155 Subsection 921ZC(3)**

Omit “ASIC”, substitute “the Registrar”.

**156 Subsections 921ZC(4) and (5)**

Repeal the subsections, substitute:

*Notice of registration*

(4) If:

- (a) the application is made in accordance with section 921ZA;  
and  
(b) the Registrar registers the relevant provider under subsection (1);

the Registrar must, as soon as practicable after recording in the records maintained under section 922A that the relevant provider is registered under subsection (1) of this section, give a written notice of the registration to the relevant provider.

(5) If:

(a) the application is made in accordance with section 921ZB;  
and

(b) the Registrar registers the relevant provider under  
subsection (1) of this section;

the Registrar must, as soon as practicable after recording in the records maintained under section 922A that the relevant provider is registered under subsection (1) of this section, give a written notice of the registration to:

(c) the relevant provider; and

(d) the applicant.

**157 Subsection 921ZC(6)**

Omit “ASIC” (wherever occurring), substitute “the Registrar”.

**158 Section 921ZD**

Omit “ASIC registers”, substitute “the Registrar registers”.

**159 Paragraph 921ZD(a)**

Omit “ASIC records in the Register of Relevant Providers”, substitute “the Registrar records in the records maintained under section 922A”.

**160 Section 921ZE**

Omit “ASIC registers”, substitute “the Registrar registers”.

**161 Paragraph 921ZE(a)**

Omit “ASIC records in the Register of Relevant Providers”, substitute “the Registrar records in the records maintained under section 922A”.

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## **Schedule 2—Later amendments**

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

#### **1 Division 8C of Part 7.6**

Repeal the Division, substitute:

### **Division 8C—Registration for the purpose of providing personal advice**

#### **921Y Unregistered relevant providers not to provide personal advice**

A relevant provider must not provide personal advice to retail clients in relation to relevant financial products unless a registration of the relevant provider under subsection 921ZC(1) is in force.

Note 1: This section is a restricted civil penalty provision (see sections 921Q and 1317E).

Note 2: See also Division 2 (requirement to be licensed or authorised) and Subdivision AA of Division 8A (limitations on authorisation to provide personal advice).

#### **921ZA Application for registration**

- (1) A person may apply to the Registrar to be registered under subsection 921ZC(1).
- (2) The application must:
  - (a) meet any requirements of the data standards; and
  - (b) include the following declarations by the person:
    - (i) that the person is a fit and proper person to provide personal advice to retail clients in relation to relevant financial products;
    - (ii) if subsection 921BA(1) applies to the person—that the person has met the education and training standard in subsection 921B(2);

- (iii) if subsection 921BA(2) applies to the person—that the person has met the education and training standard in subsection 921B(3);
- (iv) if subsection 921BA(3) applies to the person—that the person has met the education and training standard in subsection 921B(4);
- (v) if the person provides, or is to provide, a tax (financial) advice service and a determination is in force under subsection 921BB(1)—that the person meets each requirement set out in the determination that is of a kind mentioned in any of paragraphs (a) to (d) of that subsection.

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

- (3) Subject to Part VIIC of the *Crimes Act 1914*, the person must have regard to the matters specified in section 921U (other than the matters specified in paragraphs (h) and (l) of that section) for the purposes of making a declaration mentioned in subparagraph (2)(b)(i) of this section.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

### 921ZC Registration

- (1) Subject to subsections (2) and (3), if:
  - (a) a person makes an application in accordance with section 921ZA or 921ZD; and
  - (b) the Registrar is satisfied that the person's identity has been established;the Registrar must register the person by recording in the records maintained under section 922A that the person is registered under this subsection.

#### *Refusal to register person*

- (2) The Registrar must refuse to register the person if:
-

- 
- (a) a banning order is in force against the person that has the effect that the person is prohibited from providing personal advice to retail clients in relation to relevant financial products; or
  - (b) a disqualification order under Division 8 is in force against the person that has the effect of disqualifying the person from providing personal advice to retail clients in relation to relevant financial products.
- (3) If a registration prohibition order is in force against the person, the Registrar must refuse to register the person until after the prohibition end day specified in the order.

*Notice of new registration*

- (4) If the person made an application in accordance with section 921ZA and the Registrar registers the person under subsection (1), the Registrar must give the person a written notice of the registration as soon as practicable after doing so.

*Notice of refusal to register person*

- (5) If the Registrar refuses to register the person, the Registrar must, within 5 business days after the refusal, give the person a written notice of the refusal.
- (6) The notice must specify which of the following provisions apply in relation to the person:
- (a) paragraph (2)(a) or (b);
  - (b) subsection (3).

**921ZD Application for registration renewal**

- (1) If a person is registered under subsection 921ZC(1), and the registration is in force, the person may apply to the Registrar to renew (or further renew) that registration.
- (2) Subsections 921ZA(2) and (3) apply in relation to an application under subsection (1) of this section in the same manner as they apply in relation to an application under subsection 921ZA(1).

### **921ZE Period of registration**

- (1) If a person makes an application in accordance with section 921ZA, and the Registrar registers the person under subsection 921ZC(1), the registration:
  - (a) comes into force when the Registrar records in the records maintained under section 922A that the person is registered under subsection 921ZC(1); and
  - (b) remains in force until the earliest of the following:
    - (i) the cancellation time specified in a registration prohibition order in force against the person;
    - (ii) the time when a banning order against the person takes effect;
    - (iii) the end of the financial year in which the person was registered.
- (2) If a person makes an application under subsection 921ZD(1), and the Registrar registers the person under subsection 921ZC(1), the registration:
  - (a) comes into force immediately after the end of the financial year in which the application is made; and
  - (b) remains in force until the earliest of the following:
    - (i) the cancellation time specified in a registration prohibition order in force against the person;
    - (ii) the time when a banning order against the person takes effect;
    - (iii) the end of the next financial year.

### **2 Subdivision B of Division 9 of Part 7.6 (at the end of the heading)**

Add “etc.”.

### **3 Subsection 922H(1)**

Omit “A notice”, substitute “Subject to subsection (3), a notice”.

### **4 At the end of section 922H**

Add:

- (3) If:
-

- (a) a relevant provider is authorised to provide personal advice to retail clients, on behalf of a financial services licensee, in relation to relevant financial products; and
  - (b) the relevant provider is required, under section 922PA, to notify the Registrar of a change in a matter;
- the financial services licensee is not required to cause a notice under this section to be lodged in relation to that change.

**5 At the end of Subdivision B of Division 9 of Part 7.6**

Add:

**922PA Obligation for persons registered under subsection 921ZC(1) to notify Registrar of certain changes**

- (1) A person must lodge a notice with the Registrar if:
  - (a) a registration of the person under subsection 921ZC(1) is in force; and
  - (b) there is a change in a matter, particulars of which are entered for the person under section 922Q, in the records maintained under section 922A (other than a change that is a direct consequence of an act by ASIC); and
  - (c) the change is of a kind specified in the data standards for the purposes of this paragraph.
- (2) The notice must:
  - (a) be lodged within 30 business days after the change; and
  - (b) meet any requirements of the data standards.
- (3) A person commits an offence if:
  - (a) the person is required to lodge a notice in accordance with this section; and
  - (b) the person fails to do so.

**6 Subdivision C of Division 9 of Part 7.6 (at the end of the heading)**

Add “etc.”.

**7 Section 922Q (at the end of the heading)**

Add “etc.”.

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## 8 Section 922Q

Omit “each person who is or was a relevant provider”, substitute:

each person:

- (a) who is or was a relevant provider; or
- (b) for whom a registration under subsection 921ZC(1) is in force.

## 9 Subsection 1317E(3) (table item dealing with subsection 921Z(4))

Repeal the item.

## 10 At the end of Part 10.57

Add:

## Division 4—Transitional provisions for Schedule 2 to the amending Act

### 1684W Application—amendments made by Schedule 2 to the amending Act

- (1) If a registration of a person under old subsection 921ZC(1) is in force immediately before the Schedule 2 commencement time, the person is taken to be registered under new subsection 921ZC(1) during the period:
  - (a) starting at the Schedule 2 commencement time; and
  - (b) ending at the earliest of the following:
    - (i) the cancellation time specified in a registration prohibition order in force against the person;
    - (ii) the time when a banning order against the person takes effect;
    - (iii) the end of the next 30 June after the Schedule 2 commencement time.

- (2) In this section:

***new subsection 921ZC(1)*** means subsection 921ZC(1), as substituted by Schedule 2 to the amending Act.

**old subsection 921ZC(1)** means subsection 921ZC(1), as in force immediately before the Schedule 2 commencement time.

**Schedule 2 commencement time** means the start of the day Schedule 2 to the amending Act commences.

**11 Schedule 3 (table item dealing with subsection 921Z(3))**

Repeal the item.

**12 In the appropriate position in Schedule 3**

Insert:

Subsection 922PA(3)

20 penalty units

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[*Minister's second reading speech made in—  
House of Representatives on 24 June 2021  
Senate on 4 August 2021*]

(81/21)

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