

EXPOSURE DRAFT

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015

No. , 2015

(Treasury)

**A Bill for an Act to amend the *Corporations Act
2001*, and for related purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	1
	Schedule 1—Amendment of the Corporations Act 2001	2
	Part 1—Amendments	2
	<i>Corporations Act 2001</i>	2
	Part 2—Application of amendments	34
	<i>Corporations Act 2001</i>	34

EXPOSURE DRAFT

1
2 **A Bill for an Act to amend the *Corporations Act***
3 ***2001*, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Corporations Amendment*
7 *(Professional Standards of Financial Advisers) Act 2015*.

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent	

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

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

20 **3 Schedules**

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22 repealed as set out in the applicable items in the Schedule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

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

1 **Schedule 1—Amendment of the Corporations**
2 **Act 2001**

3 **Part 1—Amendments**

4 *Corporations Act 2001*

5 **1 Section 910A**

6 Insert:

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

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

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

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

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

17 *compliance scheme* has the meaning given by section 921FA.

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

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

- 21 (a) having the capacity to cast, or control the casting of, more
22 than one half of the maximum number of votes that might be
23 cast at a general meeting of the licensee; or
24 (b) directly or indirectly holding more than one half of the issued
25 share capital of the licensee (not including any part of the
26 issued share capital that carries no right to participate beyond
27 a specified amount in a distribution of either profits or
28 capital); or

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

- 1 (c) the capacity to control the composition of the licensee's
2 board or governing body; or
3 (d) the capacity to determine the outcome of decisions about the
4 licensee's financial and operating policies; and
5 (e) for paragraph (d), the following matters must be taken into
6 account in determining whether a person has the capacity to
7 determine the outcome of decisions about a body corporate
8 licensee's financial and operating policies:
9 (i) the practical influence the person can exert (rather than
10 the rights it can enforce);
11 (ii) any practice or pattern of behaviour affecting the
12 licensee's financial or operating policies is to be taken
13 into account (whether or not it involves a breach of an
14 agreement or a breach of trust).

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

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

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

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

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

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

26 ***Register of Relevant Providers*** means the Register of Relevant
27 Providers established and maintained under section 922Q.

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

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

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

1 **6 After paragraph 920A(1)(da)**

2 Insert:

- 3 (db) ASIC has reason to believe that the person was authorised, in
4 contravention of subsection 921C(2) or (3), to provide
5 personal advice to retail clients in relation to relevant
6 financial products; or

7 **7 After Division 8 of Part 7.6**

8 Insert:

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

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

11 **921B Meaning of *education and training standards***

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

14 *Preconditions for relevant providers*

- 15 (2) The first standard is that the person has completed a bachelor
16 degree, or equivalent qualification, approved by the standards
17 body.
- 18 (3) The second standard is that the person has undertaken a year of
19 either or both work and training that meets the requirements set by
20 the standards body.
- 21 (4) The third standard is that the person has passed an exam approved
22 by the standards body.

23 *Continuing standard for relevant providers*

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

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

1 **921C Limitation on authorisation to provide personal advice unless**
2 **preconditions met**

3 *Financial services licensees*

- 4 (1) ASIC must not grant an applicant an Australian financial services
5 licence that covers the provision of personal advice to retail clients
6 in relation to relevant financial products if:
7 (a) the applicant is a natural person; and
8 (b) the applicant has not met the education and training standards
9 in subsections 921B(2) to (4).

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

12 *Authorised representatives*

- 13 (2) A financial services licensee must not, under section 916A,
14 authorise a person to provide personal advice to retail clients, on
15 behalf of the licensee, in relation to relevant financial products if:
16 (a) the person is a natural person; and
17 (b) the person has not met the education and training standards in
18 subsections 921B(2) to (4).

19 *Employees and directors*

- 20 (3) A financial services licensee must not authorise an employee or
21 director of the licensee, or of a related body corporate of the
22 licensee, to provide personal advice to retail clients, on behalf of
23 the licensee, in relation to relevant financial products if the
24 employee or director has not met the education and training
25 standards in subsections 921B(2) to (4).

26 *Exemption in relation to time-sharing schemes*

- 27 (4) Subsections (1) to (3) do not apply in relation to a person if the
28 only relevant financial product in relation to which the person
29 provides financial advice is a time-sharing scheme.

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

1 **921D Relevant providers to meet continuing professional standards**

2 (1) A relevant provider must comply with subsection 921B(5).

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

5 Note 2: Section 922HA requires a notice to be given at the end of each
6 financial year confirming whether a relevant provider has complied
7 with this section.

8 *Exemption in relation to time-sharing schemes*

9 (2) Subsection (1) does not apply in relation to a person if the only
10 relevant financial product in relation to which the person provides
11 financial advice is a time-sharing scheme.

12 **Subdivision B—Ethical standards**

13 **921E Relevant providers to comply with the Code of Ethics**

14 (1) A relevant provider must comply with the Code of Ethics.

15 Note: Breaches, or alleged breaches, of the Code of Ethics must be notified
16 under sections 921JA and 922HB.

17 (2) Subsection (1) does not apply at a time if a compliance scheme
18 does not cover the relevant provider at that time.

19 Note 1: A relevant provider must be covered by a compliance scheme within
20 60 business days of certain events occurring.

21 Note 2: A relevant provider cannot breach the Code of Ethics at a time if the
22 provider is not required to comply with the Code at that time.

23 **Division 8B—Compliance schemes**

24 **Subdivision A—Compliance schemes to cover relevant**
25 **providers**

26 **921FA Meaning of *compliance scheme***

27 (1) A *compliance scheme* is a scheme:

28 (a) that meets the requirements of this section; and

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

1 (b) under which compliance with the Code of Ethics by relevant
2 providers covered by the scheme is monitored and enforced.

3 (2) There are 2 kinds of compliance scheme:

4 (a) a compliance scheme of a professional association; and

5 (b) a compliance scheme of a financial services licensee.

6 *Compliance scheme of a professional association*

7 (3) Under the compliance scheme of a professional association, the
8 association must monitor and enforce compliance with the Code of
9 Ethics by any relevant provider covered by the scheme.

10 *Compliance scheme of a financial services licensee*

11 (4) Under the compliance scheme of a financial services licensee:

12 (a) another person must monitor compliance with the Code of
13 Ethics by any relevant provider who:

14 (i) is authorised by the licensee to provide personal advice
15 to retail clients in relation to relevant financial products;
16 and

17 (ii) is covered by the scheme; and

18 (b) the licensee must enforce, on the advice of the other person
19 mentioned in paragraph (a), compliance with the Code of
20 Ethics by those relevant providers.

21 (5) The other person mentioned in paragraph (4)(a) must not be an
22 associate of the licensee mentioned in subsection (4).

23 *Scheme to deal with complaints*

24 (6) A compliance scheme must set out how a person may make a
25 complaint to the monitoring body for the scheme in relation to a
26 breach, or alleged breach, of the Code of Ethics by a relevant
27 provider covered by the scheme.

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

- 1 (a) either:
2 (i) the relevant provider is a financial services licensee; or
3 (ii) the relevant provider has been authorised by a financial
4 services licensee to provide personal advice to retail
5 clients in relation to relevant financial products; and
6 (b) an approval is in force in relation to a compliance scheme of
7 the licensee under section 921H; and
8 (c) the condition in subsection (3) is met for the relevant
9 provider in relation to that kind of scheme.

10 *Notifying ASIC of compliance schemes that cover relevant*
11 *providers*

- 12 (3) The condition in this subsection is met for a relevant provider in
13 relation to a kind of compliance scheme if:
14 (a) both of the following apply:
15 (i) the notice lodged under section 922D in relation to the
16 relevant provider stated that a compliance scheme of
17 that kind is to cover the relevant provider;
18 (ii) no notice given by the relevant provider is in force
19 under subsection (4) of this section stating that a
20 compliance scheme of the other kind is to cover the
21 relevant provider; or
22 (b) a notice given by the relevant provider is in force under
23 subsection (4) of this section stating that a compliance
24 scheme of that kind is to cover the relevant provider.
25 (4) If a compliance scheme of a kind covers a relevant provider, the
26 relevant provider may give a notice to ASIC under this section
27 stating that a compliance scheme of the other kind is to cover the
28 relevant provider.
29 (5) A relevant provider may revoke a notice given under subsection (4)
30 by giving a notice in writing to ASIC.

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

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

2 **921H Approval of compliance schemes**

- 3 (1) A professional association or a financial services licensee may
4 apply to ASIC for approval of its scheme.
- 5 (2) The application must set out details of the scheme, including:
6 (a) arrangements for monitoring compliance with the Code of
7 Ethics by relevant providers covered by the scheme; and
8 (b) sanctions for breaches of the Code of Ethics by relevant
9 providers covered by the scheme; and
10 (c) arrangements for resolving disputes between the monitoring
11 body for the scheme and relevant providers covered by the
12 scheme; and
13 (d) arrangements for making complaints to the monitoring body
14 for the scheme in relation to breaches, or alleged breaches, of
15 the Code of Ethics by relevant providers covered by the
16 scheme; and
17 (e) for a compliance scheme of a financial services licensee—the
18 name of the monitoring body for the scheme.

19 *Approval of compliance scheme*

- 20 (3) ASIC may approve the scheme if it is satisfied that compliance
21 with the Code of Ethics will be appropriately monitored and
22 enforced under the scheme.
- 23 (4) ASIC must notify the applicant in writing if ASIC approves the
24 scheme.
- 25 (5) The notice must set out the details mentioned in subsection (2).

26 *Revocation of approval*

- 27 (6) Without limiting subsection 33(3) of the *Acts Interpretation Act*
28 *1901*, ASIC may revoke an approval of a compliance scheme if
29 ASIC is satisfied that the monitoring body for the scheme has not
30 complied with section 921JA.

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

1 **Subdivision C—Other provisions**

2 **921J Obligation to ensure that compliance scheme is publicly**
3 **available**

- 4 (1) A professional association or financial services licensee that has a
5 compliance scheme in relation to which an approval is in force
6 under section 921H must ensure that the scheme is publicly
7 available.

8 *Offence*

- 9 (2) A person commits an offence if:
10 (a) the person is a professional association or financial services
11 licensee; and
12 (b) the person has a compliance scheme; and
13 (c) an approval under section 921H is in force in relation to the
14 scheme; and
15 (d) the scheme is not publicly available.

16 Penalty: 10 penalty units.

17 **921JA Obligation on monitoring body to report breaches of Code of**
18 **Ethics**

- 19 (1) A monitoring body for a compliance scheme must notify a
20 financial services licensee of a breach, or alleged breach, of the
21 Code of Ethics by a relevant provider if:
22 (a) the scheme covers the relevant provider; and
23 (b) the relevant provider is authorised by the licensee to provide
24 personal advice to retail clients in relation to relevant
25 financial products.
- 26 (2) The monitoring body must notify the licensee within 30 days of an
27 employee or officer of the body first becoming aware of the breach
28 or alleged breach.

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

1 **Division 8C—The standards body**

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

3 **921L Functions of the standards body**

- 4 (1) The functions of the standards body are:
- 5 (a) to make the legislative instruments mentioned in
- 6 subsection (2); and
- 7 (b) to review those instruments regularly, in consultation with:
- 8 (i) financial services licensees; and
- 9 (ii) relevant providers; and
- 10 (iii) associations representing consumers of financial
- 11 services; and
- 12 (iv) ASIC and the Department; and
- 13 (c) if an exam approved for the purposes of subsection 921B(4)
- 14 is to be administered by the standards body—to administer
- 15 the exam; and
- 16 (d) any other function prescribed by this Act.
- 17 (2) The standards body may, by legislative instrument:
- 18 (a) do any one or more of the following in one or more
- 19 determinations:
- 20 (i) approve bachelor degrees and equivalent qualifications
- 21 for the purposes of subsection 921B(2);
- 22 (ii) set requirements for work and training for the purposes
- 23 of subsection 921B(3);
- 24 (iii) approve an exam for the purposes of
- 25 subsection 921B(4);
- 26 (iv) set requirements for continuing professional
- 27 development for the purposes of subsection 921B(5);
- 28 (b) make a Code of Ethics for the purposes of section 921E.
- 29 (3) The standards body may charge fees for things done in performing
- 30 its functions.

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

1 **921M Commencement of Code of Ethics and amendments of Code**
2 **of Ethics**

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

8 **Subdivision B—Nomination of the standards body**

9 **921MA Minister to nominate the standards body**

- 10 (1) The Minister may (subject to subsection (2)) nominate, in writing,
11 a body corporate as the standards body.
- 12 (2) The Minister may nominate a body corporate under subsection (1)
13 only if the following requirements are met:
- 14 (a) the body is a company limited by guarantee;
- 15 (b) the Minister is satisfied that the body is likely to comply with
16 its obligations under this Act and other laws of the
17 Commonwealth;
- 18 (c) the body's constitution provides the following:
- 19 (i) the body must not be operated for profit;
- 20 (ii) a member of the body is not entitled to a dividend;
- 21 (iii) the body must have 7 directors;
- 22 (iv) at least 3 directors (excluding the chair of the board of
23 directors) must have experience in carrying on a
24 financial services business or providing a financial
25 service;
- 26 (v) at least 2 directors (excluding the chair of the board of
27 directors) must have experience in representing
28 consumers of financial services;
- 29 (vi) at least one director (excluding the chair of the board of
30 directors) must have experience in the field of ethics;
- 31 (vii) a director must not hold a managerial or executive office
32 in a professional association or association representing
33 consumers of financial services;
-

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

- 1 (viii) a director must not represent any professional
2 association, or association representing consumers of
3 financial services, to which the director belongs;
4 (ix) a director, except the chair of the board of directors,
5 must be appointed by the other directors;
6 (x) a director, when appointing another director to the
7 board, must not have an actual or perceived conflict of
8 interest in relation to that appointment;
9 (xi) the Minister must appoint the chair of the board of
10 directors;
11 (xii) the Minister must not appoint, or terminate the
12 appointment of, any other director of the standards
13 body.

14 (3) The nomination must specify the day on which it takes effect.

15 **921MB Minister may revoke nomination under section 921MA**

- 16 (1) The Minister may, at any time, revoke a nomination under
17 section 921MA.
- 18 (2) The revocation must specify:
19 (a) the day on which it takes effect; and
20 (b) whether legislative instruments made by the standards body
21 under subsection 921L(2) continue in force or are taken to be
22 revoked on that day.
- 23 (3) A revocation under subsection (1) that specifies that a legislative
24 instrument is taken to be revoked on a day has effect according to
25 its terms.
- 26 (4) If no nomination under section 921MA is in force at a particular
27 time, the Minister may make a legislative instrument under
28 subsection 921L(2) as if the Minister were the standards body.
- 29 (5) If a nomination comes into force after the Minister has made an
30 instrument under subsection (4), the standards body may vary or
31 revoke the instrument.

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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

2 **921S Modification of the standards body's constitution**

- 3 (1) As soon as practicable after a modification (except a minor or
4 technical modification) of the standards body's constitution takes
5 effect, the standards body must notify the Minister in writing of the
6 modification.
- 7 (2) The notice must:
- 8 (a) set out the text of the modification; and
9 (b) specify the date on which the modification takes effect; and
10 (c) contain an explanation of the purpose of the modification.
- 11 (3) If no notice is lodged with the Minister within 21 days after the
12 modification takes effect, the modification ceases to have effect.

13 **921T Disallowance of modifications of the standards body's**
14 **constitution**

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

23 **921U Minister may direct the standards body to do certain things**

- 24 (1) The Minister may give a written direction to the standards body if
25 the Minister considers that the standards body is not complying
26 with its obligations under this Act or under any arrangement it has
27 with the Commonwealth.
- 28 (2) The standards body must comply with the direction.
- 29 (3) The Minister may, at any time, vary or revoke a direction.

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

- 1 (4) The Minister must not make a direction in relation to the
2 appointment or removal of a director of the standards body.
- 3 (5) Despite paragraph (b) in the definition of *director* in section 9, the
4 Minister is not a director of the standards body.

5 **921V Annual report**

- 6 As soon as practicable after the end of a financial year, the
7 standards body must:
- 8 (a) publish on its website the annual report for the financial year
9 prepared under Chapter 2M; and
10 (b) give a copy of the report to the Minister.

11 **8 Before section 922A**

12 Insert:

13 **Subdivision A—Registers generally**

14 **9 At the end of Division 9 of Part 7.6**

15 Add:

16 **Subdivision B—Notice requirements relating to the Register of** 17 **Relevant Providers**

18 **922D Obligation to notify ASIC about a person who becomes a** 19 **relevant provider**

20 *Notice to include details about relevant provider*

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

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

26 *Content of notice*

- 27 (2) The notice must include:
-

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

- 1 (a) for a relevant provider who is a financial services licensee—
2 the information in section 922E; or
3 (b) for a relevant provider who is not a financial services
4 licensee—the information in section 922F.

5 **922E Information about a relevant provider who is a financial**
6 **services licensee**

- 7 (1) For the purposes of paragraph 922D(2)(a), the notice must include
8 the following:
9 (a) the relevant provider's name;
10 (b) the address of the relevant provider's principal place of
11 business;
12 (c) the licence number given to the relevant provider under
13 subsection 913C(1);
14 (d) the year in which the relevant provider first provided
15 personal advice to retail clients in relation to relevant
16 financial products in accordance with the law (including the
17 law of a State or Territory);
18 (e) if applicable, the ABN of the relevant provider;
19 (f) information about both of the following:
20 (i) the relevant financial products in relation to which the
21 relevant provider is authorised to provide personal
22 advice to retail clients;
23 (ii) whether the relevant provider is authorised to provide
24 class of product advice in relation to some or all of
25 those products;
26 (g) the recent advising history of the relevant provider for the 5
27 years ending immediately before the time the notice is
28 lodged;
29 (h) information about both of the following:
30 (i) the educational qualifications of, and any training
31 courses completed by, the relevant provider, to the
32 extent that the qualifications and training courses are
33 relevant to the provision of financial services;
34 (ii) the relevant provider's membership (if any) of a
35 professional association if an approval is in force under
-

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

- 1 section 921H in relation to a compliance scheme of the
2 association;
3 (i) whether a compliance scheme of a professional association or
4 a financial services licensee is to cover the relevant provider.

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

6 *Educational qualifications and memberships*

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

13 **922F Information about a relevant provider who is not a financial** 14 **services licensee**

- 15 (1) For the purposes of paragraph 922D(2)(b), the notice must include
16 the following:
17 (a) the relevant provider's name;
18 (b) the address of the relevant provider's principal place of
19 business;
20 (c) the relevant provider's date and place of birth;
21 (d) the name of the licensee on whose behalf the relevant
22 provider is authorised to provide personal advice to retail
23 clients in relation to relevant financial products;
24 (e) the licence number given to that licensee under
25 subsection 913C(1);
26 (f) the year in which the relevant provider first provided
27 personal advice to retail clients in relation to relevant
28 financial products in accordance with the law (including the
29 law of a State or Territory);
30 (g) if the relevant provider is a relevant provider as a result of
31 section 916B—each of the following:
32 (i) the name of the authorised representative who
33 authorised the relevant provider under that section;

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

- 1 (ii) the number allocated to the authorised representative by
2 ASIC;
- 3 (h) if applicable, the ABN of any of the following:
- 4 (i) the relevant provider;
- 5 (ii) the licensee referred to in paragraph (d);
- 6 (iii) the authorised representative referred to in
7 paragraph (g);
- 8 (i) details of both of the following:
- 9 (i) the relevant financial products in relation to which the
10 relevant provider is authorised to provide personal
11 advice to retail clients;
- 12 (ii) whether the relevant provider is authorised to provide
13 class of product advice in relation to some or all of
14 those products;
- 15 (j) the recent advising history of the relevant provider for the 5
16 years ending immediately before the time the notice is
17 lodged;
- 18 (k) information about both of the following:
- 19 (i) the educational qualifications of, and any training
20 courses completed by, the relevant provider, to the
21 extent that the qualifications and training courses are
22 relevant to the provision of financial services;
- 23 (ii) the relevant provider's membership (if any) of a
24 professional association if an approval is in force under
25 section 921H in relation to a compliance scheme of the
26 association;
- 27 (l) whether a compliance scheme of a professional association or
28 a financial services licensee is to cover the relevant provider.

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

Educational qualifications and memberships

- 30
- 31 (2) For the purposes of subparagraph (1)(k)(i), if a relevant provider
32 has more than 5 educational qualifications or has completed more
33 than 5 training courses, the notice must include the 5 qualifications
34 or training courses that the person lodging the notice believes, on
35 reasonable grounds, are most relevant to the provision of financial
36 services.
-

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

Information already registered

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

922G Meaning of *recent advising history*

9

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

11 information:

- 12 (a) for a relevant provider who is or was a financial services
- 13 licensee authorised to provide personal advice to retail clients
- 14 in relation to relevant financial products—each period during
- 15 which the relevant provider was such a licensee;
- 16 (b) for a relevant provider who is or was authorised to provide
- 17 personal advice to retail clients in relation to relevant
- 18 financial products on behalf of one or more financial services
- 19 licensees—the following information:
- 20 (i) the name of each licensee;
- 21 (ii) if the relevant provider is or was a relevant provider as a
- 22 result of section 916B—the name of each authorised
- 23 representative who authorised the relevant provider
- 24 under that section;
- 25 (iii) each period during which the relevant provider was
- 26 authorised by each licensee or each authorised
- 27 representative to provide such advice.

28 Note: If a relevant provider is covered by paragraphs (a) and (b) of this

29 section, the relevant provider's recent advising history includes all the

30 information required under those paragraphs.

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

- 31
- 32
- 33 (1) A notice must be lodged under this section, in accordance with
- 34 section 922L, if there is a change in a matter, particulars of which
-

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

1 are entered for a relevant provider in the Register of Relevant
2 Providers (other than a change that is a direct consequence of an
3 act by ASIC).

4 Note: An example of a change in a matter would be a person ceasing to be a
5 relevant provider.

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

11 **922HA Obligation to notify ASIC of compliance with continuing**
12 **professional development standard**

- 13 (1) A notice must be lodged under this section, in accordance with
14 section 922L, at the end of each financial year in relation to each
15 person who is a relevant provider at that time.

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

- 19 (2) The notice must state whether the relevant provider complied with
20 section 921D during that financial year.

21 Note: Section 921D requires a relevant provider to meet the continuing
22 professional development standard in subsection 921B(5).

23 *Requirement to retain information*

- 24 (3) A financial services licensee must retain evidence of the continuing
25 professional development undertaken by:
26 (a) if the licensee is a relevant provider—the licensee; and
27 (b) in any case—any relevant provider authorised by the licensee
28 to provide personal advice to retail clients in relation to
29 relevant financial products.
- 30 (4) The evidence must be retained for a year after the end of the
31 financial year.

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

1 *Offence*

2 (5) A person commits an offence if:

3 (a) the person is required to retain evidence under this section;
4 and

5 (b) the person fails to retain the evidence in accordance with this
6 section.

7 Penalty: 50 penalty units.

8 **922HB Obligation to notify ASIC in relation to breaches of the Code**
9 **of Ethics**

10 (1) A notice must be lodged under this section, in accordance with
11 section 922L, if:

12 (a) a financial services licensee becomes aware of a breach, or an
13 alleged breach, of the Code of Ethics by a relevant provider;
14 or

15 (b) a sanction is imposed on a relevant provider under a
16 compliance scheme that covers the relevant provider in
17 relation to a breach by the relevant provider of the Code of
18 Ethics.

19 (2) The notice must include the following information:

20 (a) the name of the licensee;

21 (b) if the relevant provider is not the licensee—the name of the
22 relevant provider;

23 (c) details of the breach;

24 (d) details of the sanction imposed.

25 **922J Obligation to notify ASIC about a person who starts to control**
26 **a body corporate licensee**

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

30 (2) The notice must include the following information:

31 (a) the name of the licensee;

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

- 1 (b) the licence number given to the licensee under
2 subsection 913C(1);
3 (c) the name of the person who starts to control the licensee;
4 (d) the day the person starts to control the licensee.

5 **922K Obligation to notify ASIC about a person who ceases to**
6 **control a body corporate licensee**

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

10 Note: Subsection 922P(2) provides that a notice is not required to be lodged
11 when a person starts and then ceases to control a body corporate
12 licensee within 30 business days.

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

19 **922L Requirement for notice to be lodged**

20 *Notice in prescribed form*

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

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

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

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

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

When notice must be lodged

- 1
- 2 (2) A notice under a notice provision must be lodged within 30
3 business days of the following day:
4 (a) if the notice is lodged under subsection 922HA(1)—the last
5 day of the financial year;
6 (b) if the notice is lodged under subsection 922HB(1)—the day
7 the financial services licensee mentioned in that subsection
8 first becomes aware of the breach, or alleged breach, of the
9 Code of Ethics or a sanction is imposed;
10 (c) if the notice is lodged under any other notice provision—the
11 day of the event mentioned in subsection (1) of the notice
12 provision.
- 13 (3) The information contained in the notice must be accurate as at the
14 day mentioned in paragraph (2)(a), (b) or (c).

Who must cause notice to be lodged

- 15
- 16 (4) The following person must cause a notice under section 922D,
17 922H, 922HA or 922HB to be lodged in relation to a relevant
18 provider:
19 (a) if the relevant provider is a financial services licensee—the
20 licensee;
21 (b) otherwise—the financial services licensee on whose behalf
22 the relevant provider is authorised to provide personal advice
23 to retail clients in relation to relevant financial products.
- 24 (5) A notice under section 922J or 922K relating to a person who starts
25 or ceases to control a body corporate licensee must be lodged by
26 the licensee.

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

- 27
- 28 (1) A person commits an offence if:
29 (a) the person is required to cause a notice to be lodged under a
30 notice provision; and
31 (b) the person fails to cause the notice to be lodged in accordance
32 with that provision.

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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

4 Penalty: 50 penalty units.

5 (2) However, subsection (1) does not apply if:

6 (a) the person fails to cause the notice to be lodged in accordance
7 with section 922D; and

8 (b) the only reason the person fails to cause the notice to be
9 lodged in accordance with that section is because the
10 information referred to in paragraph 922F(1)(f), (j) or (k) is
11 not included in the notice; and

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

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

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

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

21 **922N Obligation for relevant providers to provide information to** 22 **financial services licensees**

23 *Information about relevant provider*

24 (1) A person must provide information to a financial services licensee
25 in accordance with this section if:

26 (a) the person:

27 (i) has become a relevant provider; or

28 (ii) is a relevant provider at the end of a financial year; and

29 (b) the person has been authorised by the licensee to provide
30 personal advice to retail clients in relation to relevant
31 financial products; and

32 (c) the licensee has asked the person to provide the information
33 so that the licensee can comply with its obligation to lodge a

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

1 notice in accordance with section 922D or 922HA relating to
2 the person.

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

6 *When information must be given*

7 (2) The information must be given to the licensee within a period that
8 allows the licensee to comply with its obligation to lodge the notice
9 in accordance with section 922D or 922HA.

10 **922P Change in matter within 30 business days**

11 (1) Notices must be given under sections 922D, 922H, 922HA and
12 922HB in relation to a person who was a relevant provider even if
13 the person ceases to be a relevant provider before a notice has been
14 lodged under section 922D.

15 (2) A notice is not required to be given under sections 922J and 922K
16 in relation to a person who starts or ceases to control a body
17 corporate licensee if the person ceases to control the licensee
18 within 30 business days of starting to control the licensee.

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

20 **922Q Register of Relevant Providers**

21 *Register to include details of relevant providers*

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

24 *Contents of Register*

25 (2) The details that must be entered on the Register include the
26 following:

- 27 (a) the relevant provider's name;
28 (b) the relevant provider's principal place of business;

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

- 1 (c) the name of each financial services licensee on whose behalf
2 the relevant provider is or was authorised to provide personal
3 advice to retail clients in relation to relevant financial
4 products;
- 5 (d) if applicable, each person who controls the licensee;
- 6 (e) the relevant provider's date and place of birth;
- 7 (f) the licence number given under subsection 913C(1) to the
8 relevant provider and each licensee referred to in
9 paragraph (c);
- 10 (g) if applicable, the number given under section 922R;
- 11 (h) if the relevant provider is a relevant provider as a result of
12 section 916B:
- 13 (i) the name of the authorised representative who
14 authorised the relevant provider under that section; and
- 15 (ii) the number allocated to the authorised representative by
16 ASIC;
- 17 (i) the recent advising history of the relevant provider;
- 18 (j) the year in which the relevant provider first provided
19 personal advice to retail clients in relation to relevant
20 financial products in accordance with the law (including the
21 law of a State or Territory);
- 22 (k) whether the person is currently, or has ceased to be, a
23 relevant provider;
- 24 (l) whether the relevant provider complied with section 921D in
25 the previous financial year;
- 26 (m) if the relevant provider has been disqualified from managing
27 corporations—information contained on the register
28 established under section 1274AA;
- 29 (n) if the relevant provider has been banned or disqualified under
30 section 80 or 86 of the *National Consumer Credit Protection*
31 *Act 2009*—information about that banning or
32 disqualification;
- 33 (o) if the relevant provider has been banned, disqualified or
34 suspended under Division 8 of Part 7.6, or under
35 section 130F of the *Superannuation Industry (Supervision)*
36 *Act 1993*—information about that banning, disqualification
37 or suspension;
-

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

- 1 (p) if the relevant provider has given an undertaking under either
2 or both section 93AA of the ASIC Act and section 322 of the
3 *National Consumer Credit Protection Act 2009*—information
4 about that undertaking;
- 5 (q) if a monitoring body for a compliance scheme considers that
6 the relevant provider who is covered by the scheme has
7 breached the Code of Ethics:
8 (i) details of the breach; and
9 (ii) details of any sanction imposed on the relevant provider
10 in relation to the breach;
- 11 (r) information about both of the following:
12 (i) the relevant financial products in relation to which the
13 relevant provider is authorised to provide personal
14 advice to retail clients;
15 (ii) whether the relevant provider is authorised to provide
16 class of product advice in relation to some or all of
17 those products;
- 18 (s) if applicable, the ABN of any of the following:
19 (i) the relevant provider;
20 (ii) each licensee referred to in paragraph (c);
21 (iii) if applicable, the authorised representative referred to in
22 paragraph (h);
- 23 (t) information about both of the following:
24 (i) the educational qualifications of, and any training
25 courses completed by, the relevant provider (but not
26 courses completed for the purposes of
27 subsection 921B(5)), to the extent that the qualifications
28 and training courses are relevant to the provision of
29 financial services;
30 (ii) the relevant provider's membership (if any) of a
31 professional association if an approval is in force under
32 section 921H in relation to a compliance scheme of the
33 association;
- 34 (u) whether a compliance scheme of a professional association or
35 a financial services licensee covers the relevant provider;
- 36 (v) any other information that ASIC believes should be included
37 in the Register.
-

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

- 1 (3) ASIC must ensure that the details entered on the Register are kept
2 up-to-date.

3 **922R Relevant provider number**

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

7 **922S Correcting the Register**

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

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

14 **10 At the end of Division 10 of Part 7.6**

15 Add:

16 **923C Restriction on use of terms “financial adviser” and “financial
17 planner”**

- 18 (1) A person contravenes this subsection if:
19 (a) the person carries on a financial services business or provides
20 a financial service (whether or not on behalf of another
21 person); and
22 (b) the person assumes or uses, in this jurisdiction, a restricted
23 word or expression in relation to the service; and
24 (c) the person is not a relevant provider.

25 Note 1: For the meanings of *restricted word or expression* and *assume or use*,
26 see subsection (8).

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

- 29 (2) A person contravenes this subsection if:
30 (a) the person carries on a financial services business or provides
31 a financial service; and
-

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

- 1 (b) another person (the *adviser*) provides a financial service on
2 behalf of the person; and
3 (c) the person assumes or uses, in this jurisdiction, a restricted
4 word or expression in relation to the service; and
5 (d) the adviser is not a relevant provider.

6 Note 1: For the meanings of *restricted word or expression* and *assume or use*,
7 see subsection (8).

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

10 *Advice to wholesale clients*

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

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

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

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

27 *Advice as employee or director*

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

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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

3 (6) It is not a contravention of subsection (2) for a person to assume or
4 use a restricted word or expression if:

5 (a) another person (the *adviser*) is an employee or director of a
6 body; and

7 (b) the adviser provides advice to the body; and

8 (c) the person assumes or uses the restricted word or expression
9 only in relation to that advice.

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

12 *Continuing contravention*

13 (7) If a person assumes or uses a word or expression in circumstances
14 that give rise to the person committing an offence under
15 subsection (1) or (2), the person commits the offence in respect of:

16 (a) the first day on which the offence is committed; and

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

21 *References to restricted word or expression*

22 (8) In this section:

23 (a) a reference to a restricted word or expression is a reference
24 to:

25 (i) the expression *financial adviser* or *financial planner*;
26 or

27 (ii) any other word or expression specified in the
28 regulations as a restricted word or expression for the
29 purposes of this section; or

30 (iii) any other word or expression (whether or not in
31 English) that is of like import to a word or expression
32 covered by any of the previous subparagraphs; and

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

- 1 (b) a reference to a restricted word or expression being assumed
2 or used includes a reference to the restricted word or
3 expression being assumed or used:
4 (i) as part of another word or expression; or
5 (ii) in combination with other words, letters or other
6 symbols.

7 *Contravention does not affect compensation arrangements*

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

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

14 **11 Subsection 926A(1)**

15 Omit “Divisions 4 and 8”, substitute “Divisions 4, 8 and 8A”.

16 **12 Schedule 3 (after table item 269A)**

17 Insert:

18 269AAA	Subsection 923C(1)	10 penalty units for each day, or part of a day, in respect of which the offence is committed.
269AAB	Subsection 923C(2)	10 penalty units for each day, or part of a day, in respect of which the offence is committed.

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 2 Application of amendments

1 **Part 2—Application of amendments**

2 *Corporations Act 2001*

3 **13 After Part 10.23 of Chapter 10**

4 Insert:

5 **Part 10.23A—Transitional provisions relating to**
6 **the Corporations Amendment (Professional**
7 **Standards of Financial Advisers) Act 2015**
8

9 **1546A Definitions**

10 In this Part:

11 *amending Act* means the *Corporations Amendment (Professional*
12 *Standards of Financial Advisers) Act 2015*.

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

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

17 *existing provider* means a person who is a relevant provider
18 immediately before 1 July 2017.

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

20 **1546B Existing providers to meet certain education and training**
21 **standards**

22 *Completion of qualifications*

23 (1) An existing provider must have done either of the following by
24 1 July 2019:

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Application of amendments **Part 2**

- 1 (a) the provider must have met the education and training
2 standard in subsection 921B(2);
3 (b) the provider must have completed one or more courses
4 determined by the standards body to give the provider
5 qualifications equivalent to the standard.

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

9 *Passing exams*

- 10 (2) An existing provider must have met the education and training
11 standard in subsection 921B(4) before 1 July 2019.

12 Note 1: The standard in subsection 921B(4) is that a person has passed an
13 exam approved by the standards body.

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

16 Note 3: An existing provider is not required to meet the standard in
17 subsection 921B(3), which is that a person has undertaken a year of
18 either or both work and training that meets the requirements set by the
19 standards body.

20 *Failing to meet the education and training standards*

- 21 (3) If, at the start of 1 July 2019, the person fails to comply with this
22 section, the person is taken, after that time, to have ceased to be a
23 relevant provider.

- 24 (4) Subsection (3) does not prevent a person who has ceased to be a
25 relevant provider again becoming a relevant provider.

26 *Standards body may determine courses*

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

29 **1546C Application of limitation on authorisation to provide personal** 30 **advice**

- 31 (1) Section 921C, as inserted by the amending Act, applies in relation
32 to:
-

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 2 Application of amendments

- 1 (a) any Australian financial services licence granted on or after
2 1 July 2017; and
3 (b) any authorisation given on or after 1 July 2017 to a person
4 who is not a relevant provider before that day.

5 Note: Section 921C provides that a person cannot provide certain financial
6 advice unless the person meets certain preconditions.

- 7 (2) Section 921C, as inserted by the amending Act, applies, on and
8 after 1 July 2019, in relation to a person who ceases to be a
9 relevant provider under subsection 1546B(3).
10 (3) Section 921C, as inserted by the amending Act, does not apply in
11 relation to a person who is an existing provider while the person
12 continues to be a relevant provider.

13 **1546D Application of continuing professional development standard** 14 **for relevant providers**

- 15 (1) Section 921D, as inserted by the amending Act, applies on and
16 after 1 July 2017.

17 Note: Section 921D provides that certain relevant providers must meet the
18 continuing professional development standard.

- 19 (2) Section 922HA, as inserted by the amending Act, applies in
20 relation to the financial year beginning on 1 July 2017 and later
21 financial years.

22 Note 1: Section 922HA requires ASIC to be notified of relevant providers'
23 compliance with continuing development standards.

24 Note 2: For the application of section 922N (as it applies in relation to
25 subparagraph 922N(1)(a)(ii)), see subsection 1546N(2).

26 **1546DA Application of Code of Ethics to relevant providers**

27 Sections 921E, 921JA and 922HB, as inserted by the amending
28 Act, apply on and after 1 July 2019.

29 Note: Section 921E requires a relevant provider to comply with the Code of
30 Ethics. Sections 921JA and 922HB require notification of breaches, or
31 alleged breaches, of the Code of Ethics.

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Application of amendments **Part 2**

1 **1546DB Application of obligation to ensure compliance scheme**
2 **covers relevant providers**

3 (1) Section 921F, as inserted by the amending Act, applies on and after
4 2 April 2019:

5 (a) in relation to a person who becomes a financial services
6 licensee on or after that day; and

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

9 (i) in relation to a person who becomes a relevant provider
10 on or after that day; and

11 (ii) in relation to a person who becomes a relevant provider
12 before that day as if subsection 921F(2) required the
13 scheme to cover the provider by 1 July 2019.

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

16 (2) Section 921J, as inserted by the amending Act, applies on and after
17 1 July 2019.

18 Note: Section 921J requires a professional association or financial services
19 licensee to make its compliance scheme publicly available.

20 **1546E Application of obligation to notify ASIC about a person who**
21 **becomes a relevant provider**

22 Section 922D, as inserted by the amending Act, applies in relation
23 to a person who becomes a relevant provider if:

24 (a) the person becomes a relevant provider after commencement;
25 or

26 (b) both of the following apply:

27 (i) the person becomes a relevant provider before
28 commencement;

29 (ii) immediately before commencement, a notice has not
30 been lodged in accordance with section 922D, as
31 notionally inserted into this Act by Schedule 8D of the
32 *Corporations Regulations 2001*.

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

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 2 Application of amendments

1 **1546H Application of requirements relating to information about**
2 **membership of professional associations**

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

6 “(h) information about both of the following:

- 7 (i) the educational qualifications of, and any training
8 courses completed by, the relevant provider;
9 (ii) the relevant provider’s membership (if any) of
10 professional bodies;

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

17 (2) Section 922F, as inserted by the amending Act, applies until the
18 start of 1 July 2019 as if paragraph 922F(1)(k) were replaced with
19 the following:

20 “(k) information about both of the following:

- 21 (i) the educational qualifications of, and any training
22 courses completed by, the relevant provider;
23 (ii) the relevant provider’s membership (if any) of
24 professional bodies;

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

31 **1546K Application of ongoing obligation to notify ASIC when there**
32 **is a change in a matter for a relevant provider**

33 Section 922H, as inserted by the amending Act, applies in relation
34 to a change in a matter if:

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Application of amendments **Part 2**

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

8 **1546L Application of obligation to notify ASIC about a person who**
9 **starts to control a body corporate licensee**

- 10 Section 922J, as inserted by the amending Act, applies in relation
11 to a person who starts to control a body corporate licensee if:
12 (a) the person starts to control the licensee after commencement;
13 or
14 (b) both of the following apply:
15 (i) the person starts to control the licensee before
16 commencement;
17 (ii) immediately before commencement, a notice has not
18 been lodged in accordance with section 922J, as
19 notionally inserted into this Act by Schedule 8D of the
20 *Corporations Regulations 2001*.

21 **1546M Application of obligation to notify ASIC about a person who**
22 **ceases to control a body corporate licensee**

- 23 Section 922K, as inserted by the amending Act, applies in relation
24 to a person who ceases to control a body corporate licensee if:
25 (a) the person ceases to control the licensee after
26 commencement; or
27 (b) both of the following apply:
28 (i) the person ceases to control the licensee before
29 commencement;
30 (ii) immediately before commencement, a notice has not
31 been lodged in accordance with section 922K, as
32 notionally inserted into this Act by Schedule 8D of the
33 *Corporations Regulations 2001*.

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 2 Application of amendments

1 **1546N Application of obligation for relevant providers to provide**
2 **information to financial services licensees**

- 3 (1) Section 922N, as inserted by the amending Act, applies in relation
4 to a request made of a person mentioned in
5 subparagraph 922N(1)(a)(i) if:
6 (a) the request (as mentioned in paragraph 922N(1)(c)) is made
7 after commencement (whether the person becomes a relevant
8 provider before or after commencement); or
9 (b) both of the following apply:
10 (i) the request (as mentioned in paragraph 922N(1)(c), as
11 notionally inserted into this Act by Schedule 8D of the
12 *Corporations Regulations 2001*) is made before
13 commencement;
14 (ii) immediately before commencement, the person has not
15 provided the information requested.
- 16 (2) Section 922N, as inserted by the amending Act, applies in relation
17 to a request made of a person mentioned in
18 subparagraph 922N(1)(a)(ii) in relation to the financial year
19 beginning on 1 July 2017 and later financial years.

20 **1546P Application of requirements relating to Register of Relevant**
21 **Providers**

22 Section 922Q, as inserted by the amending Act, applies until the
23 start of 1 July 2019 as if subparagraph 922Q(2)(q)(ii) were
24 replaced with the following:

- 25 “(ii) the relevant provider’s membership (if any) of
26 professional associations, to the extent that the
27 memberships are relevant to the provision of financial
28 services;”

29 **1546Q Relevant provider numbers given before commencement**

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

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Application of amendments **Part 2**

1 **1546QA Continuation of Register**

2 The repeal of regulation 7.6.06B of the *Corporations*
3 *Regulations 2001* by the *Corporations Amendment (Professional*
4 *Standards of Financial Advisers) Regulation 2015* does not affect
5 the continuity of the register of relevant providers established
6 under that regulation.

7 **1546R Application of restriction on use of terms “financial adviser”**
8 **and “financial planner”**

9 The following provisions, as inserted by the amending Act, apply
10 on and after 1 July 2017:

- 11 (a) section 923C;
12 (b) items 269AAA and 269AAB of the table in Schedule 3.

13 Note: Section 923C provides that, in certain circumstances, it is an offence
14 to use the terms “financial adviser” or “financial planner” in relation
15 to a person who is not a relevant provider, and the table in Schedule 3
16 specifies the relevant penalties for the offence.

17 **1546S Application of exemptions and modifications by ASIC in**
18 **relation to existing providers**

19 Subsection 926A(1), as amended by the amending Act, applies:

- 20 (a) for a person who becomes a relevant provider before 1 July
21 2017—on and after 1 July 2019; and
22 (b) for a person who becomes a relevant provider on or after
23 1 July 2017—on and after that day.

24 Note: The effect of this section is that ASIC may only exempt a person from
25 provisions in Division 8A of Part 7.6, or modify the effect of
26 provisions in that Division, if:
27 (a) the person becomes an existing provider before 1 July 2017; and
28 (b) ASIC makes the exemption or modification in relation to the
29 person before 1 July 2019.

30 **1546T Obligation to notify ASIC of certain information**

- 31 (1) A notice must be lodged under this section, in accordance with
32 section 922L, if a person is:
33 (a) an existing provider; and
-

EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 2 Application of amendments

- 1 (b) a relevant provider on 17 May 2019.
- 2 (2) The notice must include:
- 3 (a) the address of the relevant provider's principal place of
- 4 business; and
- 5 (b) whether a compliance scheme of a professional association or
- 6 a financial services licensee is to cover the relevant provider.
- 7 (3) Subdivision B of Division 9 of Part 7.6 applies as if a reference in
- 8 that Subdivision to a notice provision or section 922D included a
- 9 reference to this section.
- 10 (4) Despite subsection 922L(2), the notice must be lodged before
- 11 1 July 2019.
- 12 (5) For the purposes of Divisions 8A and 8B of Part 7.6, a notice given
- 13 under this section is taken to have been given under section 922D.

14 **1546U Obligation to notify ASIC when exams passed**

- 15 (1) A notice must be lodged under this section, in accordance with
- 16 section 922L, if an existing provider passes an exam in accordance
- 17 with subsection 1546B(2).
- 18 (2) The notice must state that the existing provider has passed the
- 19 exam.
- 20 (3) The notice must be lodged, in accordance with section 922L, by a
- 21 financial services licensee within 30 business days of the financial
- 22 services licensee becoming aware that the existing provider has
- 23 passed the exam.
- 24 (4) Subdivision B of Division 9 of Part 7.6 applies as if a reference in
- 25 that Subdivision to a notice provision or section 922D included a
- 26 reference to this section.

27 **1546V Review**

- 28 The Minister must cause a review of Divisions 8A, 8B and 8C of
- 29 Part 7.6, as inserted by the amending Act, to be commenced before
- 30 31 December 2019.

EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**
Application of amendments **Part 2**

1 **1546W Application of exemptions and modifications by ASIC**

2 Section 926A applies as if:

3 (a) the reference to Division 8A in subsection 926A(1) were
4 omitted; and

5 (b) paragraph 926A(6)(b) included a reference to this Part.