

EXPOSURE DRAFT

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Inserts for
**Financial Sector Reform (Hayne Royal
Commission Response—Protecting
Consumers (2020 Measures)) Bill 2020:
FSRC Rec 2.2 (disclosure of lack of
independence)**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule [2.2]	1 July 2020.	1 July 2020

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Schedule [2.2]—Disclosure of lack of independence

Corporations Act 2001

1 At the end of subsection 923A(1)

Add:

Note 3: A Financial Services Guide may need to include a statement relating to the restriction in this subsection (see paragraphs 942B(2)(fa) and 942C(2)(ga)).

2 At the end of section 923A

Add:

(6) To avoid doubt, for the purposes of this section a restricted word or expression is not assumed or used if the restricted word or expression is included in a statement in accordance with a requirement in paragraph 942B(2)(fa) or 942C(2)(ga).

3 Subsection 941C(7)

Omit “paragraphs 942B(2)(a) and (h), or paragraphs 942C(2)(a) and (i),”, substitute “paragraphs 942B(2)(a), (fa) and (h), or paragraphs 942C(2)(a), (ga) and (i),”.

4 Paragraph 941D(3)(a)

Omit “paragraphs 942B(2)(e), (f) and (i), or paragraphs 942C(2)(f), (g) and (j),”, substitute “paragraphs 942B(2)(e), (f), (fa) and (i), or paragraphs 942C(2)(f), (g), (ga) and (j),”.

5 After paragraph 942B(2)(f)

Insert:

(fa) if the authorised services provided by the providing entity include the provision of personal advice to retail clients, and the providing entity would contravene subsection 923A(1) by assuming or using a restricted word or expression (within the meaning of subsection 923A(5)) in relation to such provision of personal advice—a statement that:

(i) sets out that the providing entity is not independent, impartial or unbiased (which are restricted words or

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- 1 expressions within the meaning of subsection 923A(5))
2 in relation to the provision of personal advice, and
3 explains the reasons why; and
4 (ii) if any other word or expression has been specified as a
5 restricted word or expression in regulations made for the
6 purposes of subparagraph 923A(5)(a)(ii)—sets out that
7 the providing entity is not able to assume or use the
8 restricted word or expression in relation to the provision
9 of personal advice, and explains the reasons why; and
10 (iii) meets the requirements (if any) determined in an
11 instrument under subsection (7A); and

6 After subsection 942B(7)

12 Insert:

- 13
14 (7A) ASIC may, by legislative instrument, determine requirements for a
15 statement for the purposes of subparagraph (2)(fa)(iii).
16 (7B) Without limiting subsection (7A), the instrument may include the
17 following:
18 (a) requirements that a specified form, or specified form of
19 words, be used for the statement;
20 (b) requirements for the statement to include specified
21 information;
22 (c) requirements about the presentation, structure and format of
23 the statement, including the location of the statement within
24 the Financial Services Guide.

7 After paragraph 942C(2)(g)

25 Insert:

- 26
27 (ga) if the authorised services provided by the providing entity
28 include the provision of personal advice to retail clients, and
29 the providing entity would contravene subsection 923A(1) by
30 assuming or using a restricted word or expression (within the
31 meaning of subsection 923A(5)) in relation to such provision
32 of personal advice—a statement that:
33 (i) sets out that the providing entity is not independent,
34 impartial or unbiased (which are restricted words or
35 expressions within the meaning of subsection 923A(5))
36 in relation to the provision of personal advice, and
37 explains the reasons why; and

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- 1 (ii) if any other word or expression has been specified as a
2 restricted word or expression in regulations made for the
3 purposes of subparagraph 923A(5)(a)(ii)—sets out that
4 the providing entity is not able to assume or use the
5 restricted word or expression in relation to the provision
6 of personal advice, and explains the reasons why; and
7 (iii) meets the requirements (if any) determined in an
8 instrument under subsection (7A); and

9 **8 After subsection 942C(7)**

10 Insert:

11 (7A) ASIC may, by legislative instrument, determine requirements for a
12 statement for the purposes of subparagraph (2)(ga)(iii).

13 (7B) Without limiting subsection (7A), the instrument may include the
14 following:

- 15 (a) requirements that a specified form, or specified form of
16 words, be used for the statement;
17 (b) requirements for the statement to include specified
18 information;
19 (c) requirements about the presentation, structure and format of
20 the statement, including the location of the statement within
21 the Financial Services Guide.

22 **9 In the appropriate position in Chapter 10**

23 Insert:

24 **Part 10.46—Application and transitional provisions** 25 **relating to Schedule [2.2] to the Financial** 26 **Sector Reform (Hayne Royal Commission** 27 **Response—Protecting Consumers (2020** 28 **Measures)) Act 2020** 29

30 **1673 Application of disclosure of lack of independence reforms**

31 The amendments made by Schedule [2.2] to the *Financial Sector*
32 *Reform (Hayne Royal Commission Response—Protecting*

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1 *Consumers (2020 Measures)) Act 2020* apply in relation to a
2 financial service provided on or after 1 July 2020.

3 **1673A Obligation to give updated Financial Services Guide**

4 (1) If:

5 (a) the providing entity has given a Financial Services Guide to
6 the client under section 941A or 941B before 1 July 2020;
7 and

8 (b) the providing entity will provide a financial service to the
9 client on or after 1 July 2020; and

10 (c) paragraph 942B(2)(fa) or 942C(2)(ga), as inserted by
11 Schedule [2.2] to the *Financial Sector Reform (Hayne Royal*
12 *Commission Response—Protecting Consumers (2020*
13 *Measures)) Act 2020*, applies in relation to the providing
14 entity and the financial service;

15 the providing entity must, before the financial service is provided
16 to the client, give the client:

17 (d) another Financial Services Guide that contains the statement
18 required by whichever of the paragraphs referred to in
19 paragraph (c) of this subsection is applicable; or

20 (e) a Supplementary Financial Services Guide that contains that
21 statement.

22 (2) Subsections 941A(1) and 941B(1) apply as if the reference in those
23 subsections to “this Division” included a reference to this section.