

2010-2011-2012

The Parliament of the
Commonwealth of Australia

THE SENATE

EXPOSURE DRAFT

Corporations Amendment (Future of Financial Advice) Bill 2012

(Government)

- (1) Schedule 1, item 10, page 9 (line 5), omit “the commencing day”, substitute “the application day”.

[election to commence on or after 1 July 2012]
- (2) Schedule 1, item 10, page 9 (line 8), omit “a representative”, substitute “a person acting as a representative”.

[election to commence on or after 1 July 2012]
- (3) Schedule 1, item 10, page 9 (line 11), omit “a representative”, substitute “a person acting as a representative”.

[election to commence on or after 1 July 2012]
- (4) Schedule 1, item 10, page 9 (line 15), omit “the commencing day”, substitute “the application day”.

[election to commence on or after 1 July 2012]
- (5) Schedule 1, item 10, page 9 (lines 16 and 17), omit subsection 962D(2), substitute:
 - (2) In this section:

application day means:

 - (a) where:
 - (i) the client enters into the ongoing fee arrangement with a financial services licensee, or a person acting as a representative of a financial services licensee;
and

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(ii) the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions under this Part are to apply to the licensee and persons acting as representatives of the licensee, on and from a day specified in the notice;

the day specified in the notice; or

(b) in any other case—1 July 2013.

[election to commence on or after 1 July 2012]

(6) Schedule 1, item 10, page 13 (line 24), omit “This Subdivision applies”, substitute “(1) This Subdivision applies, on and after the application day,”.

[election to commence on or after 1 July 2012]

(7) Schedule 1, item 10, page 13 (after line 25), at the end of section 962R, add:

(2) In this section:

application day means:

(a) where:

(i) the client has entered into the ongoing fee arrangement with a financial services licensee, or a person acting as a representative of a financial services licensee; and

(ii) that licensee or representative is the fee recipient in relation to the arrangement on 1 July 2012; and

(iii) the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions under this Part are to apply to the licensee and persons acting as representatives of the licensee, on and from a day specified in the notice;

the day specified in the notice; or

(b) where:

(i) the client has entered into the ongoing fee arrangement with a financial services licensee, or a person acting as a representative of a financial services licensee; and

(ii) because the rights of the licensee or representative under the arrangement have been assigned, another person is the fee recipient in relation to the arrangement on 1 July 2012; and

(iii) the other person has lodged notice with ASIC in accordance with subsection 967(1) or (3) that the obligations and prohibitions under this Part are to apply to the person, on and from a day specified in the notice;

the day specified in the notice; or

(c) in any other case—1 July 2013.

[election to commence on or after 1 July 2012]

(8) Schedule 1, item 10, page 14 (after line 23), at the end of Part 7.7A, add:

Division 7—Transition

966 Transition period

In this Division:

transition period means the period beginning on 1 July 2012 and ending on 30 June 2013.

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967 Best interests obligations and remuneration provisions to apply during transition period

- (1) A financial services licensee may, during the transition period, lodge notice in the prescribed form with ASIC that the obligations and prohibitions imposed under this Part are to apply to the licensee, and any person acting as a representative of the licensee, on and from a day specified in the notice that falls in the transition period.
- (2) If a notice is lodged with ASIC in accordance with subsection (1), ASIC must publish a copy of the notice in the *Gazette*.
- (3) A person:
 - (a) who would be subject to an obligation or prohibition under Division 3 of this Part, if it applied; and
 - (b) who would not be subject to the obligation or prohibition as a financial services licensee, or a person acting as a representative of a financial services licensee;may, during the transition period, lodge notice in the prescribed form with ASIC that the obligations and prohibitions imposed under this Part are to apply to the person on and from a day specified in the notice that falls in the transition period.
- (4) If a notice is lodged with ASIC in accordance with subsection (3), ASIC must publish a copy of the notice in the *Gazette*.

968 Notice to clients in transition period

- (1) A financial services licensee who lodges a notice with ASIC in accordance with subsection 967(1) must ensure that any person in relation to whom the licensee, or a person acting as a representative of the licensee, has an obligation or is subject to a prohibition under Division 3 of this Part during the transition period (the *client*) is given a notice in writing, on or before the notice day for the client, stating that the obligations and prohibitions imposed under this Part begin to apply to the licensee, and any person acting as a representative of the licensee, on a day specified in the notice given to the client.
- (2) The *notice day* for a person to whom the licensee, or a person acting as a representative of the licensee, is obliged to give a fee disclosure statement during the transition period:
 - (a) unless paragraph (b) applies—is the disclosure day for the arrangement in relation to which the fee disclosure statement is to be given; and
 - (b) if a fee disclosure statement is given before the end of a period of 30 days beginning on that disclosure day, is the day on which it is given.

[election to commence on or after 1 July 2012]