

DRAFT EXPLANATORY MATERIAL

Australian Securities and Investments Commission Act 2001
Corporations Act 2001
Tax Agent Services Act 2009
Corporations (Fees) Act 2001

Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021
Corporations (Fees) Amendment (Relevant Providers) Regulations 2021

The following provisions provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Acts to be prescribed:

- subsection 139(1) of the *Australian Securities and Investments Commission Act 2001* (ASIC Act);
- section 166 of the ASIC Act;
- paragraph 912D(4)(b) of the *Corporations Act 2001* (Corporations Act);
- subsection 922Q(3) of the Corporations Act;
- paragraph 1684B(a) of the Corporations Act;
- subsection 1345A(1) of the Corporations Act;
- paragraph 20-20(2)(b) of the *Tax Agent Services Act 2009* (TAS Act);
- subsection 90-5(2) of the TAS Act;
- paragraph 20-5(1)(b) of the TAS Act; and
- section 8 of the *Corporations (Fees) Act 2001* (Corporations (Fees) Act).

The ASIC Act confers functions and powers on the Australian Securities and Investments Commission (ASIC) and establishes the Financial Services and Credit Panel (FSCP). The Corporations Act provides for the regulation of the financial services sector, including financial advisers. The TAS Act establishes the Tax Practitioners Board (TPB) and provides for the registration and regulation of tax agents and Business Activity Statement (BAS) agents. The Corporations (Fees) Act prescribes fees for chargeable matters under the Corporations Act.

The purpose of the *Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021* and the *Corporations (Fees) Amendment (Relevant Providers) Regulations 2021* are to support the amendments in the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021* (the Better Advice Bill), which implements:

- the Government's response to recommendation 2.10 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry by:

- expanding the role of the FSCP within ASIC to operate as the single disciplinary body for financial advisers to ensure that less serious misconduct does not go unaddressed;
 - creating new penalties and sanctions for financial advisers who have breached their obligations under the Corporations Act;
 - introducing a new registration system for financial advisers to improve the accountability and transparency of the financial services sector; and
 - transferring functions from the Financial Adviser Standards and Ethics Authority (FASEA) to the Minister responsible for administering the Corporations Act and to ASIC to streamline the regulation of financial advisers.
- the Government's response to recommendation 7.1 of the Independent Review of the TPB by introducing a single registration and disciplinary system under the Corporations Act for financial advisers who provide tax (financial) advice services.

The Regulations amend the *Australian Securities and Investments Commission Regulations 2001*, the *Corporations Regulations 2001*, the *Tax Agent Services Regulations 2009* and the *Corporations (Fees) Regulations 2001* to:

- prescribe criteria for when ASIC must convene an FSCP;
- set allowances for witnesses summoned to appear at a hearing of an FSCP;
- provide that breaches of the Code of Ethics and continuing professional development (CPD) requirements are not taken to be significant (and therefore may not be reportable) under the relevant breach reporting regime;
- prescribe sanctions that must be included on the Register of Relevant Providers;
- extend the deadline for certain existing providers to pass the financial adviser exam;
- provide for the Minister to be able to delegate the functions and powers to approve foreign qualifications to officers in the Department of Treasury;
- set requirements (including eligibility criteria and fees) to provide for persons, companies and partnerships to register as tax agents that provide tax (financial) services under the TAS Act; and
- make consequential amendments to the TAS Regulations to remove the requirement for persons who provide tax (financial) advice services to be registered under the TAS Act and no longer recognise tax (financial) adviser associations;
- set fees for the financial adviser exam and applications for registration of financial advisers.

Details of the Regulations are set out in [Attachment A](#) and [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 January 2022.

Details of the *Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on 1 January 2022.

Section 3 – Authority

The Regulations are made under the following:

- the *Australian Securities and Investments Commission Act 2001* (the ASIC Act);
- the *Corporations Act 2001* (the Corporations Act); and
- the *Tax Agent Services Act 2009* (the TAS Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments to the *Australian Securities and Investments Commission Regulations 2001*

Please note that throughout this document, the term ‘financial adviser’ is used instead of ‘relevant provider’.

The Regulations amend the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations) to specify the circumstances when ASIC must convene an FSCP and prescribe the allowances and expenses that must be paid to a witness who is given a summons to appear at an FSCP hearing.

Items 1, 2 and 3 – Convening an FSCP and witness allowances for FSCP hearings

Convening an FSCP

Section 139 of the ASIC Act provides ASIC with discretion to determine when to convene an FSCP. It also requires ASIC to convene an FSCP in circumstances prescribed in the regulations.

Item 1 of Schedule 1 to the Regulations inserts new section 12N of the ASIC Regulations to prescribe the circumstances in which ASIC must convene an FSCP (the Criteria). Outside of these circumstances, ASIC has discretion to determine whether to convene an FSCP. For example, ASIC may exercise its

discretion to convene a panel in response to a minor but repeated breach by a financial adviser.

If ASIC is taking other action against the adviser, ASIC is not required to convene an FSCP even if the Criteria are satisfied. This does not apply where ASIC issues a warning or reprimand under section 921S of the Corporations Act. For example, if ASIC has exercised, or proposed to exercise, its powers against a financial adviser for a breach by making a banning order, ASIC is not required to convene an FSCP.

The circumstances which warrant peer review by an FSCP (the Criteria), if ASIC is not taking other action, are:

- where the financial adviser becomes insolvent under administration, is convicted of fraud, or if ASIC reasonably believes that the person is not a fit and proper person to provide financial advice. These circumstances relate to the person's suitability to provide financial advice and warrant escalation to an FSCP (new paragraphs 12N(2)(a) - (c) of the ASIC Regulations);
- where the adviser fails to meet the education and training requirements, fails to supervise a provisional financial adviser, or provides financial advice while unregistered (new paragraph 12N(2)(d) of the ASIC Regulations);
- where the adviser has breached a financial services law (other than those already covered by paragraphs 12N(2)(a) – (d) of the ASIC Regulations) or has been involved in another person's breach of a financial services law, and ASIC forms a reasonable belief that the breach is serious (new paragraphs 12N(2)(e) and (f) of the ASIC Regulations); and
- where the adviser has at least twice been linked to a refusal or failure to give effect to a determination made by the Australian Financial Complaints Authority (AFCA) and ASIC reasonably believes that the consequences of those refusals or failures is serious (new paragraph 12N(2)(g) of the ASIC Regulations).

In each of the circumstances listed in paragraphs 12N(2)(a) – (d) of the ASIC Regulations, the matter must, in every case, be referred to an FSCP, regardless of the seriousness of the circumstances.

For the purposes of paragraphs 12N(2)(e), (f) and (g), a breach is serious if it results in material loss or damage to a client, material benefit to the financial adviser, or involves dishonesty or fraud.

Determining whether a breach results, or is likely to result, in material loss or damage to a client depends on the client's circumstances, including their financial circumstances.

Example 1

Sid makes a complaint to ASIC that he has suffered a financial loss as a result of implementing financial advice provided by a financial adviser. ASIC will assess whether the loss Sid has suffered is material, having regard to Sid's circumstances, including his financial circumstances. This would include considering a number of factors such as Sid's savings, annual income, existing investment portfolio, family commitments, employment security and expected retirement age. If ASIC investigates the matter and finds that there has been a contravention of the financial services law and it reasonably believes that the loss Sid has suffered is material, ASIC must refer the matter to the FSCP for determination (unless it proposes to exercise its own enforcement powers).

Allowances and expenses for witnesses at FSCP hearings

Section 165 of the ASIC Act provides that the Chair of an FSCP may summon a person (other than the financial adviser who is the subject of the disciplinary proceedings), to appear at a hearing of the panel to give evidence or produce specified documents. For example, the Chair may summon the adviser's financial services licensee, to appear at a hearing before the panel to give evidence. The power to summon witnesses to give evidence enables the panel to obtain access to all of the information it needs to make a decision on a disciplinary matter.

Section 166 of the ASIC Act provides that a person summoned to appear at a hearing of an FSCP is entitled to be paid the allowances and expenses prescribed in the regulations. While the financial adviser who is the subject of an FSCP hearing may appear at a hearing, they are not entitled to an allowance for their attendance, as the affected person cannot be given a summons to appear at an FSCP hearing.

If the summons is made on behalf of the panel, the allowances and expenses for witnesses summoned to appear at an FSCP hearing are payable by ASIC. However, if a summons is made at the request of the affected financial adviser, the allowances and expenses are to be paid by the affected financial adviser.

Item 1 of Schedule 1 to the Regulations inserts new section 12P of the ASIC Regulations, which provides that a person summoned by the Chair of an FSCP is entitled to be paid allowances and expenses in accordance with the requirements in Schedule 2 to the ASIC Regulations.

Items 2 and 3 of Schedule 1 to the Regulations amend Schedule 2 to the ASIC Regulations and provide that a person summoned to appear at an FSCP hearing is entitled to:

- if the person does not receive wages, salary or fees because of his or her attendance at the hearing - an amount equal to the amount of wages, salary or fees the person would have received had they not been required to attend the hearing; or
- otherwise —a specified amount for each day the person attends the hearing; and
- a reasonable amount for transport between the person's usual place of residence and the hearing and for meals and accommodation if the person is required to stay overnight.

These allowances and expenses are the same as the allowances and expenses required to be paid to a witness required to appear at a hearing of ASIC, the Company Auditor's Disciplinary Board and the Takeovers Panel.

Schedule 1 - Amendments to the Corporations Regulations 2001

The Regulations amend the *Corporations Regulations 2001* (Corporations Regulations) to:

- prescribe that contraventions of certain civil penalty provisions are not reportable situations for the purposes of the breach reporting regime;
- prescribe the sanctions that must be included on the Financial Advisers Register;
- extend the deadline for certain existing providers to pass the financial adviser exam; and
- provide for the Minister to be able to delegate specified functions and powers to officers in the Department of Treasury.

Item 4 – Civil penalty provisions that are not taken to be *significant* under the breach reporting regime

The breach reporting requirements in section 912D of the Corporations Act were introduced in Schedule 11 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* and commence on 1 October 2021. Subsection 912D(1) of the Corporations Act provides that a financial services licensee is required to report to ASIC if there is a ‘reportable situation’, such as that the licensee, or a representative of the licensee, has breached a core obligation and the breach is significant.

While breach reporting is one mechanism by which matters may be referred to ASIC, the reportable situations under the breach reporting requirements are not relevant for the purposes of determining whether or not a matter is to be considered by an FSCP (i.e. not all of the breaches reported under the breach reporting regime will be subject to disciplinary action by an FSCP).

However, the ‘reportability’ of a breach does not mean that ASIC is unable to take action against the adviser. There are other mechanisms through which ASIC can be made aware of a breach, including its own investigations and monitoring work, AFCA reports, consumer complaints and other reports from licensees.

Subsection 912D(4) of the Corporations Act provides that a breach of a core obligation is taken to be significant in certain circumstances, including if the breach is a contravention of a civil penalty provision (other than a civil penalty provision prescribed by regulations).

The Better Advice Bill creates the following new civil penalty provisions, which will automatically be considered significant under the breach reporting regime on commencement by virtue of their status as civil penalty provisions:

- failure to comply with education and training standards for financial advisers (subsection 921BA(5) of the Corporations Act);
- failure to comply with the CPD requirements for the provision of tax (financial) advice services (subsection 921BB(4) of the Corporations Act);
- failure to comply with the Code of Ethics (subsection 921E(3) of the Corporations Act);
- failure to comply with the requirements for provisional financial advisers and supervisors of provisional financial advisers (subsection 921F(8) of the Corporations Act);

- failure to comply with a direction or order made by an FSCP (subsection 921L(2) of the Corporations Act);
- providing financial advice while unregistered (section 921Y of the Corporations Act); and
- failure by a financial services licensee to cease to authorise a person to provide financial advice on the licensee's behalf at the time a financial adviser provides financial advice while unregistered (subsection 921Z(4) of the Corporations Act).

Item 4 of Schedule 1 to the Regulations amends section 7.6.02A of the Corporations Regulations to prescribe that contraventions of the following civil penalty provisions in the Better Advice Bill are not taken to be significant for the purposes of the breach reporting requirements in paragraph 912D(4)(b) of the Corporations Act:

- failing to comply with CPD requirements for financial advisers (subsection 921BA(4) of the Corporations Act);
- failing to comply with CPD requirements for the provision of tax (financial) advice services (subsection 921BB(4) of the Corporations Act); and
- breaching the Code of Ethics (subsection 921E(3) of the Corporations Act).

These breaches may still be reportable under the breach reporting regime if one of the other circumstances in the deemed significance test in subsection 912D(4) of the Corporations Act applies, or if the breach is otherwise significant under the test in subsection 912D(5) of the Corporations Act.

Example 2

Harry is a financial adviser who has engaged in deceptive conduct in the course of providing financial advice by asking a client to sign a blank form, signing the client's name on other documents and falsely declaring to have witnessed forms.

Harry has breached standard 9 of the Code of Ethics and may also have contravened other financial services laws. While a breach of the Code of Ethics is not a reportable situation in itself, because the breach also involves misleading or deceptive conduct it is a reportable situation under paragraph 912D(4)(d) of the Corporations Act. Harry's licensee must report the breach to ASIC within 30 days of becoming aware of the breach.

Example 3

Jane is a financial adviser who has failed to maintain adequate client records resulting in missing and inaccurate documents.

This is a breach of standard 8 of the Code of Ethics. Jane's licensee undertakes annual file reviews and in the last two reviews, has warned Jane to comply with the requirement to maintain complete and accurate records of clients. Jane's licensee undertakes its next annual file review and again finds Jane has failed to maintain adequate client records during the year. Taking into account the number and frequency of similar breaches, Jane's licensee determines that the breaches are significant, in accordance with paragraph 912D(5)(a) of the Corporations Act and reports the breaches to ASIC within 30 days.

Breaches of the CPD requirements are already required to be reported to ASIC by financial services licensees under section 922HB of the Corporations Act. It would therefore be duplicative to include them as reportable breaches under the breach reporting regime.

Moreover, Standard 1 of the Code of Ethics requires financial advisers to act in accordance with all applicable laws. If breaches of the Code of Ethics were included

in the breach reporting regime, then all breaches of a financial services law, no matter how minor would have been reportable by virtue of a breach of the Code of Ethics being a restricted civil penalty provision.

That is not to say that many of the breaches of the Code of Ethics will not be captured by the breach reporting requirements. Breaches must be reported if they are material, therefore material breaches of the Code of Ethics would be reportable. This applies to any breaches that meet the deemed significant test in subsection 912D(4) or by the test in subsection 912D(5) of the Corporations Act.

Item 5 – Inclusion of instrument details on the Financial Advisers Register

Section 922Q of the Corporations Act sets out the matters that must be included on the Register of Relevant Providers (Financial Advisers Register) and provides for regulations to be made prescribing which instruments must be included on the Register. The Register is publicly accessible from ASIC's Moneysmart website (www.moneysmart.gov.au).

Item 5 of Schedule 1 to the Regulations inserts new section 7.6.06D of the Corporations Regulation. This section prescribes that the following kinds of instruments must be included on the Financial Advisers Register:

- registration suspension orders or registration prohibition orders made by an FSCP under subsections 921K(1) of the Corporations Act; and
- directions to undertake specified training, counselling or supervision or to report specified matters to ASIC, unless it is the first time an instrument has been made against the financial adviser under subsection 921K(1) of the Corporations Act. First time 'offences' will not be listed.

Warnings or reprimands issued by ASIC or an FSCP under sections 921S or 921T of the Corporations Act will never be included on the Financial Advisers Register.

Example 4

In June 2023, an FSCP directs Bob, a financial adviser, to undertake training under subsection 921K(1) of the Corporations Act, because Bob has a habit of issuing his fee disclosure statements late.

As this is the first sanction an FSCP has made against Bob under subsection 921K(1) of the Corporations Act, the details of this direction must not be included on the Financial Advisers Register.

Example 5

In August 2023, an FSCP makes a registration suspension order under subsection 921K(1) of the Corporations Act against Sam, a financial adviser. The registration suspension is for a period of three months from August to November 2023. In July 2024, for a separate matter, an FSCP makes a direction requiring Sam to undertake additional training under subsection 921K(1) of the Corporations Act.

Details of both sanctions must be listed on the Register. In all circumstances, registration suspension orders must be included on the Register as these are serious sanctions that will usually be made for serious breaches. In this case, details of the direction to undertake additional training must also be included on the Register (as this is not the first time an FSCP has made a sanction under subsection 921K(1) against Sam).

Example 6

In October 2023, an FSCP issues Pat an infringement notice under subsection 1317DAM(1) of the Corporations Act for failing to approve his provisional financial adviser's Statement of Advice before it was provided to the client, which is an alleged contravention of a restricted civil penalty provision. In December 2023, for a separate matter, an FSCP imposes a direction requiring Pat to report specified matters to ASIC under subsection 921K(1) of the Corporations Act.

Details of the infringement notice may be required to be included on the Register if the circumstances meet the requirements in paragraph 922Q(2)(ud) of the Corporations Act.

The details of the direction to report specified matters to ASIC will not be included on the Register, as it is the first time an FSCP has made a sanction against Pat under subsection 921K(1) of the Corporations Act.

Example 7

In December 2023, ASIC gives Jess a warning letter under section 921S of the Corporations Act. Details of the warning letter must not be included on the Register.

Item 6 – Extension of time to pass the financial adviser exam

Section 1684B of the Corporations Act provides that an existing provider must pass the financial adviser exam by the exam cut-off day, which is either 1 January 2022, or the date prescribed by regulations (if any).

An 'existing provider' is defined in section 1546A of the Corporations Act as a person who:

- was a financial adviser at any time between 1 January 2016 and 1 January 2019 and was not banned, disqualified or subject to an enforceable undertaking under section 93AA of the ASIC Act to not provide financial product advice or a financial service on 1 January 2019; or
- at any time between 1 January 2016 and 1 January 2019, provided personal advice in a foreign country to retail clients in relation to relevant financial products and was not prohibited under the law of the foreign country from providing such advice on 1 January 2019.

Item 6 of Schedule 1 to the Regulation inserts new section 7.6.07B of the Corporations Regulations to extend the exam cut-off day to 1 October 2022 for an existing provider who has sat the exam at least twice before 1 January 2022. This means that the exam cut-off day is:

- 1 January 2022 - for an existing provider who has not sat the exam at all, or has only sat it once, before 1 January 2022; or
- 1 October 2022 – for an existing provider who has sat the exam at least twice before 1 January 2022.

An existing provider, who is authorised to provide financial advice on their exam cut-off day, and who fails to pass the exam by the exam cut-off day, will need to satisfy all of the education and training standards, as if they were a new entrant, before they can be authorised to provide financial advice again. This means that, if they have not already done so, the person would need to complete an approved degree or an equivalent qualification, undertake work and training and pass the exam.

On the other hand, an existing provider, who is not authorised as a financial adviser on their exam cut-off day, only needs to pass the financial adviser exam before they

are able to be authorised again to provide financial advice.

Item 7 – Delegation of functions for approval of foreign qualifications

Section 1345A of the Corporations Act provides that the Minister may delegate any of the Minister’s functions and powers under the Corporations Act that are prescribed by regulations to an officer of the Department of Treasury (the Department).

Item 7 of Schedule 1 to the Regulations amends section 9.5.01 of the Corporations Regulations to enable the Minister to delegate the following functions and powers to an officer of the Department:

- approving, or refusing to approve, foreign qualifications (subsection 921G(2) of the Corporations Act); and
- specifying courses for persons who have applied for approval of their foreign qualification (subsection 921G(4) of the Corporations Act).

For the purposes of delegating these functions and powers, an officer of the Department is:

- the Secretary;
- a Deputy Secretary; or
- an SES employee.

If the Minister decides to delegate these functions to the Department, the Minister may impose directions on how these powers and functions are to be performed. These directions will be prescribed in the instrument.

Schedule 1 - Amendments to the Tax Agent Services Regulations 2009

The Better Advice Bill implements recommendation 7.1 of the Independent Review of the TPB by removing the requirement for financial advisers who provide tax (financial) advice services to be registered under the TAS Act from 1 January 2022, and instead imposes new requirements for the provision of tax (financial) services under the Corporations Act.

A financial adviser provides a tax (financial) advice service if, as part of providing financial advice, the adviser also provides advice about tax liabilities, obligations or entitlements that arise, or could arise, under the relevant taxation laws that the client could rely on to identify their liabilities or claim any entitlements.

From 1 January 2022, to provide tax (financial) advice services, a person must either be a qualified tax relevant provider (regulated under the Corporations Act) or a registered tax agent (regulated under the TAS Act).

The Regulations create alternative pathways and transitional arrangements to support persons (other than financial advisers) who provide tax (financial) advice services to be registered as tax agents. Examples of persons who provide tax (financial) advice services who are not financial advisers (i.e. not relevant providers) include advisers who do not deal with wholesale clients (rather than retail clients), advisers who provide general advice (rather than personal advice) and robo-advisers.

A number of consequential amendments are also required to the TAS Regulations to remove redundant references to ‘tax (financial) adviser’ and ‘recognised tax (financial) adviser associations’, which were needed to support the regulation of tax (financial) advisers when they were regulated under the TAS Act.

Alternative pathways for registration as a tax agent

The Corporations Act sets out requirements for financial advisers who provide tax (financial) advice services (known as qualified tax relevant providers). The requirements to be a qualified tax relevant provider are separately set out in the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021*. Under the Better Advice Bill, qualified tax relevant providers must be financial advisers (i.e. authorised to provide personal advice to retail clients in relation to relevant financial products). A financial adviser must be a natural person and therefore cannot be a partnership or a company.

This differs from the TAS Act, which provide that partnerships and companies may be registered as tax agents and therefore provide tax (financial) advice services. Similarly, the TAS Act also provides for persons other than financial advisers (e.g. advisers who provide advice to wholesale clients) to provide tax (financial) advice services by being registered as tax agents.

These Regulations amend the TAS Regulations to enable tax (financial) advisers, who do not (or cannot) meet the requirements to be a financial adviser, to become registered tax agents via four new pathways

These new pathways ensure that non-financial advisers (including partnerships and companies) can provide, or continue to provide, tax (financial) advice services without being subject to additional qualification and experience requirements.

Items 33 and 34 – Eligibility criteria for registration as a tax agent and tax (financial) advice experience

Item 33 of the Regulations inserts new sections 207 to 210 in Division 1 of Part 2 of Schedule 2 to the TAS Regulations to make it easier for persons (other than financial advisers) to be registered as tax agents by introducing new eligibility criteria. These new eligibility requirements apply to natural persons who are not financial advisers, but do not apply to partnerships or companies. To be registered as a tax agent, partnerships and companies must meet the eligibility requirements in subsections 20-5(2) and (3) of the TAS Act.

Example 8

License ABC Ltd (a company) holds an Australian financial services licence and is planning to launch a new app which provides financial advice on relevant financial products, including advice on the tax implications of these investments. The company must register as a tax agent to provide these tax (financial) advice services.

To be eligible to be registered as a tax agent, the company needs to have a sufficient number of individuals (employees, directors or representatives) who are registered tax agents or a qualified tax relevant providers. In addition, and as is currently the case under the TAS Act for a company to register as a tax (financial) adviser, each of the company's directors would need to be a fit and proper person, the company must not be under external administration and could not have been convicted of a serious taxation offence or an offence involving fraud or dishonesty within the last five years. The company would also need to have professional indemnity insurance that meets the TPB's requirements.

- Sections 207 to 209 provide that, to be eligible to be registered as a tax agent, an individual must meet the same qualification and experience requirements as they would have met to be registered as a tax (financial) adviser before 1 January 2022. This will ensure that the same qualification and experience requirements for providing tax (financial) services continue to apply after 1 January 2022.
- Section 210 provides that an individual who was registered as a tax (financial) adviser immediately before 1 January 2022 is eligible to be registered as a tax agent (without having to meet any other qualification or experience requirements), as long as an application for registration is made before 1 January 2023.

New sections 207 to 210 of Division 1 of Part 2 of Schedule 2 to the TAS Regulations provide that, to be a registered tax agent, an individual must:

- be over 18 years of age and a fit and proper person;
- maintain, or are able to maintain, professional indemnity insurance; and
- be a licensee or a representative of a licensee (or have been within the preceding 90 days), have completed TPB-approved courses in commercial law and taxation law, and meet at least one of the following qualification and experience requirements:
 - hold a degree or post-graduate award in a relevant discipline from an Australian tertiary institution, or an equivalent institution approved by the TPB and have engaged in the equivalent of 12 months of full-time tax (financial) advice experience in the preceding five years (section 207 of the TAS Regulations); and
 - have completed a diploma or higher award from a registered training organisation, or an equivalent institution, in a relevant discipline and have engaged in the equivalent of 18 months of full-time tax (financial) advice

experience in the preceding five years (section 208 of the TAS Regulations);
or

- have engaged in the equivalent of three years full-time tax (financial) advice experience in the preceding five years (section 209 of the TAS Regulations).

Alternatively, if the person was registered as a tax (financial) adviser immediately before 1 January 2022, then they are eligible to be registered as a tax agent as long as they make an application for registration under subsection 20-20(1) of the TAS Act before 1 January 2023 (section 210 of the TAS Regulations).

If the TPB grants an individual's application for registration as a tax agent on the basis of these new eligibility pathways, the TPB may impose one or more conditions to which that registration is subject under subsections 20-25(5) to (7) of the TAS Act. A condition imposed by the Board must relate to the subject area about which the person may provide tax agent services. In this case, the TPB would impose a condition that the individual may only provide tax (financial) advice services, as defined in section 90-15 of the TAS Act.

Example 9

Immediately before 1 January 2022, Nigella was a registered tax (financial) adviser but was not a financial adviser as she is a wealth manager who only provides advice to wholesale clients:

- Between 1 January 2022 and 30 September 2022 - Nigella may continue providing tax (financial) advice services without being required to meet any additional requirements in accordance with paragraph 13(1)(m) of the TAS Regulations.
- From 1 October 2022 - to continue providing tax (financial) advice services, Nigella must have made an application for registration as a tax agent (and have been registered) under the TAS Act. As Nigella was registered as a tax (financial) adviser immediately before 1 January 2022, she is eligible to be registered in accordance with section 210 of Division 1, Part 2 of Schedule 2 to the TAS Regulations.

Example 10

In March 2023, Gordon decides to become a tax (financial) adviser for the first time – Gordon must meet one of the following requirements:

- be a qualified tax relevant provider under the Corporations Act - this involves:
 - o meeting the education and training requirements (sections 921B and 921BB of the Corporations Act);
 - o being authorised by a financial services licensee (section 921C of the Corporations Act); and
 - o being registered by ASIC as a financial adviser (section 921ZC of the Corporations Act).
- be a registered tax agent under the TAS Act – this involves:
 - o being over 18 years of age and a fit and proper person;
 - o maintaining (or being able to maintain) professional indemnity insurance that complies with the TPB requirements; and
 - o meeting one of the qualification and experience requirements in sections 201 or 203 to 209 in Division 1 of Part 2 of Schedule 2 to the TAS Regulations.

Item 34 of Schedule 1 to the Regulations repeals and replaces Division 2 of Part 2 of Schedule 2 to the TAS Regulations. The new Division includes a new definition of 'tax (financial) advice experience', which is part of the requirement to be eligible to

be registered under new sections 207 to 209 of Division 1 of Part 2 of Schedule 2 to the TAS Regulations.

The definition of ‘tax (financial) advice experience’ means:

- work by an individual:
 - as a registered tax (financial) adviser, or under the supervision and control of a registered tax (financial) adviser, as in force immediately before 1 January 2022; or
 - as a registered tax agent, or under the supervision and control of a registered tax agent; or
 - as a qualified tax relevant provider, or under the supervision and control of a qualified tax relevant provider; or
 - of another kind approved by the TPB; and
- that included substantial involvement in:
 - one or more of the types of tax (financial) advice services described in section 90-15 of the TAS Act; or
 - a particular area of taxation law to which one or more of those types of tax (financial) advice services relate.

This definition has a similar meaning as the definition of ‘relevant experience’ in section 305 of Division 2 of Part 3 of Schedule 2 to the TAS Regulations (as in force before 1 January 2022), which is repealed by these Regulations. The difference is that that the new definition of tax (financial) advice experience also includes work as a qualified tax relevant provider or work under the supervision or control of a qualified tax relevant provider, to take into account the changes made to the TAS Act by the Better Advice Bill.

A qualified tax relevant provider is defined in subsection 90-1(1) of the TAS Act as having the same meaning as in Part 7.6 of the Corporations Act. Section 910A of the Corporations Act provides that a ‘qualified tax relevant provider’ is a financial adviser who has met each of the requirements in a determination made by the Minister for the provision of tax (financial) advice services under subsection 921BB(1) of the Corporations Act (see Part 3 of the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021*).

Item 19 – Application fees for tax agent and BAS agent registration

Item 19 of the Regulations repeals and replaces the table in subsection 9(1) of the TAS Regulations setting out registration fees to take into account the creation of the new eligibility pathways.

These changes:

- make a consequential amendment to remove the fee for registration as a tax (financial) adviser;
- provide that the registration fee for registration as a tax agent under the eligibility pathways created by new sections 207, 208 and 209 is \$675, which is the same fee as for registration as a tax agent under one of the existing eligibility pathways in sections 201 to 206 of the TAS Regulations; and

- provide that there is no registration fee for registration as a tax agent under the eligibility pathway created by new section 210, which recognises that, at the time the new requirements came into force, these persons were already registered as tax (financial) advisers.

All of the registration fees prescribed in subsection 9(1) of the TAS Regulations are subject to indexation in accordance with subsection 9(2) of the TAS Regulations.

Transitional arrangements for registration as a tax agent

Items 28 and 29 – Services that are taken *not* to be tax agent services

From 1 January 2022, a person must either be a qualified tax relevant provider or a registered tax agent to provide tax (financial) advice services.

The requirements to be a qualified tax relevant provider are prescribed in Part 3 of the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021*.

This means that, from 1 January 2022, individuals (other than financial advisers), partnerships and companies must be registered as tax agents to continue providing tax (financial) advice services.

To ensure a smooth transition to the new requirements, transitional arrangements are needed to facilitate the registration of persons, partnerships and companies as tax agents who were registered as tax (financial) advisers before 1 January 2022.

Paragraph 13(1)(m) of the TAS Regulations provides that individuals (who are not financial advisers), partnerships and companies who were previously registered as tax (financial) advisers can continue to provide tax (financial) advice services between 1 January 2022 to 30 September 2022 without being a registered tax agent.

This enables individuals (other than financial advisers), partnerships and companies who were registered as tax (financial) advisers to continue providing tax (financial) advice services while waiting for their new registration as a tax agent to come into force. This temporary exemption is also intended to provide the TPB with sufficient time to put in place the necessary IT and associated systems and processes to effectively and efficiently manage these new applications for registration as a tax agent.

To achieve this, items 28 and 29 of the Regulations amend section 13 of the TAS Regulations to provide that a service is *not* a tax agent service if it is provided between 1 January 2022 and 30 September 2022 by a person, partnership or company that was a registered tax (financial) adviser immediately before 1 January 2022 and who is not authorised as a financial adviser. This amendment to section 13 of the TAS Regulations is made under subsection 90-5(2) of the TAS Act, which provides for regulations to be made specifying that a prescribed service is *not* a tax agent service.

This means that individuals (other than financial advisers), partnerships and companies who provide tax (financial) advice services between 1 January 2022 and 30 September 2022 without being a registered tax agent will not breach the TAS Act.

However, from 1 October 2022, an individual (other than a financial adviser), partnership or company must be registered as a tax agent in order to continue to provide tax (financial) advice services. A failure to comply with this requirement is a contravention of the civil penalty provision in section 50-17 of the TAS Act.

The exemption in paragraph 13(1)(m) of the TAS Regulations only applies to a service provided by an entity (i.e. person, partnership or company) who is not a relevant provider (financial adviser). Financial advisers who provide tax (financial) advice services must comply with the obligations under the Corporations Act.

Item 29 of the Regulations inserts a new definition of ‘relevant provider’ into subsection 13(3) of the TAS Regulations, which provides that ‘relevant provider’ is taken to have the same meaning as in Part 7.6 of the Corporations Act. ‘Relevant provider’ is defined in section 910A of the Corporations Act as an individual who is authorised to provide personal advice to retail clients, as the financial services licensee or on behalf of the licensee in relation to relevant financial products.

Example 11

Julie is not a financial adviser (as she only provides advice on basic banking and general insurance products) and was registered as a tax (financial) adviser at the time the new requirements came into force (1 January 2022). Julie may continue to provide tax (financial) advice services from 1 January 2022 and has until 1 October 2022 to apply and be registered as a tax agent under the TAS Act.

Example 12

Licensee 123 Ltd (a company) is a financial services licensee that was registered as a tax (financial) adviser before 1 January 2022. Licensee 123 Ltd may continue to provide tax (financial) advice services from 1 January 2022 and has until 1 October 2022 to either:

- apply and be registered as a tax agent – to be registered the company must comply with the eligibility requirements in subsection 20-5(3) of the TAS Act; or
- ensure that all of its employees/representatives who provide tax (financial) advice services are qualified tax relevant providers or are registered tax agents.

Consequential amendments

Items 8 to 18, 20 to 27 and 30 to 32 - Consequential amendments for tax (financial) advisers and recognised tax (financial) adviser associations

Items 8 to 18, 20 to 27 and 30 to 32 of Schedule 1 to the Regulations make consequential amendments to the TAS Regulations to support the changes made by the Better Advice Bill to implement recommendation 7.1 of the Independent Review of the TPB. These changes remove the following references in the TAS Regulations:

- registered tax (financial) advisers – including the eligibility criteria to be registered as a tax (financial) adviser, the fees to apply to be registered as a tax (financial) adviser and for details of registered and de-registered tax (financial) advisers to be included on a Register maintained by the TPB under section 60-125 of the TAS Act; and
- recognised tax (financial) adviser associations – the Better Advice Bill provides that tax (financial) adviser organisations will no longer be able to be recognised (or continue to be recognised) from 1 January 2022.

Details of the Corporations (Fees) Amendment (Relevant Providers) Regulations 2021

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is *the Corporations (Fees) Amendment (Relevant Providers) Regulations 2021* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on 1 January 2022.

Section 3 – Authority

The Regulations are made under the *Corporations (Fees) Act 2001* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Items 1 to 6 – Consequential amendments

As part of the Government’s response to recommendation 2.10 of the Financial Services Royal Commission, the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021* (the Better Advice Bill) removed section 922HD of the Corporations Act by replacing the requirement to establish code monitoring bodies with a single disciplinary body.

Items 1 to 6 of Schedule 1 to the Regulations make consequential amendments to support the amendments in the Better Advice Bill by removing references to section 922HD of the Corporations Act in the *Corporations (Fees) Regulations 2001* (Corporations (Fees) Regulations).

Item 7 – Fees for the financial adviser exam

Item 7 of Schedule 1 of the Regulations, which is made under section 5 of the Act, amends the Corporations (Fees) Regulations to prescribe fees for the financial adviser exam under subsection 921B(3) of the *Corporations Act 2001* (Corporations Act).

Item 8A of the table in clause 1 of Schedule 1 of the Corporations (Fees) Regulations provides that the fee on application to sit an exam administered by ASIC under subsection 921B(3) of the Corporations Act is \$948. This fee is applicable per person, per sitting. There is no maximum number of times that a person may apply to sit an exam. The fee amount is not subject to the goods and services tax (GST) or indexation.

Item 8B of the table in clause 1 of Schedule 1 of the Corporations (Fees) Regulations provides that the fee on application for ASIC to review the marking of one or more answers to the written-style responses (non-multiple-choice questions) in an exam administered by ASIC under subsection 921B(3) of the Corporations Act is \$218. Only one application may be made by a person per exam. The fee amount is not subject to the GST or indexation.

Item 8 – Fees for applications for registration of relevant providers

Item 8 of Schedule 1 to the Regulations, which is made under section 5 of the Act, amends the Corporations (Fees) Regulations to prescribe fees for an application for registration of relevant providers under subsections 921ZA(1) and 921ZB(1) of the Corporations Act.

Subsections 921ZA(1) and 921ZB(1) of the Corporations Act require financial services licensees to apply to ASIC for a relevant provider to be registered under subsection 921ZC(1) of the Corporations Act. Where a relevant provider is also the financial services licensee, the licensee may apply to ASIC to register themselves.

Item 12D of the table in clause 1 of Schedule 2 of the Corporations (Fees) Regulations provides that the fee on application, under subsection 921ZA(1) or 921ZB(1) of the Corporations Act, for ASIC to register a relevant provider under subsection 921ZC(1) of the Corporations Act is \$95. The fee is not subject to GST. In accordance with subsection 3(2A) of the Corporations (Fees) Regulations, which is applicable to the other ASIC Registry fees in Schedule 2 of the Corporations (Fees) Regulations, the fee for an application for registration is subject to indexation. This fee is payable per application (i.e. for each relevant provider) lodged with ASIC.