



Corporations Amendment (Statements of Advice) Regulation 2014

Select Legislative Instrument No. 134, 2014

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 4 September 2014

Peter Cosgrove
Governor-General

By His Excellency's Command

Mathias Cormann
Minister for Finance
for the Treasurer

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1 Name of regulation

This regulation is the *Corporations Amendment (Statements of Advice) Regulation 2014*.

2 Commencement

This regulation commences on 1 January 2015.

3 Authority

This regulation is made under the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Corporations Regulations 2001

1 Before regulation 7.7.09

Insert:

7.7.08D Obligation to give client a Statement of Advice

- (1) For paragraph 951C(1)(c) of the Act, section 946A of the Act is modified by inserting after subsection 946A(2) the following subsections:
- “(2A) The Statement of Advice must be signed by the providing entity, or an individual acting on behalf of the providing entity.
- (2B) The client must acknowledge receipt of the Statement of Advice by signing the Statement of Advice as soon as is practicable after it is given to the client.
- (2C) However:
 - (a) the client does not commit an offence if the client does not comply with subsection (2B); and
 - (b) the providing entity does not fail to give a Statement of Advice in accordance with this Subdivision, merely because receipt of the Statement of Advice by the client is not acknowledged as required under subsection (2B).
- (2D) To avoid doubt, a retail client who is given a Statement of Advice may seek further or varied advice from the providing entity.

Note: This may be necessary if, for example, the client’s relevant circumstances (within the meaning of section 961B) change.
- (2E) If the client seeks further or varied advice from the providing entity, the providing entity must ensure that the instructions for that further or varied advice are documented in writing signed by the client (either before or after the advice is given).
- (2F) However:
 - (a) the providing entity does not commit an offence if the client does not sign a written copy of the instructions for that further or varied advice; and

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- (b) the fact that the client does not sign a written copy of the instructions for that further or varied advice is not evidence that the instructions have not been given.
- (2G) The providing entity, or an individual acting on behalf of the providing entity, must acknowledge receipt of instructions for further or varied advice.”
- (2) The modification made by subregulation (1):
- (a) to the extent that it relates to Statements of Advice—applies in relation to Statements of Advice given on or after the commencement of this regulation; and
 - (b) to the extent that it relates to instructions for further or varied advice—applies in relation to instructions given on or after the commencement of this regulation.

2 After regulation 7.7.09A

Insert:

7.7.09AAA Statement of Advice from financial services licensee— main requirements

- (1) For paragraph 947B(2)(g) of the Act, a Statement of Advice given by a financial services licensee must include the following statements and information:
 - (a) a statement that the provider of the advice is required under section 961B of the Act to act in the best interests of the client in relation to the advice;
 - (b) a statement that the provider of the advice genuinely believes that the advice given is in the best interests of the client, given the client’s relevant circumstances (within the meaning of section 961B of the Act);
 - (c) a statement that the provider of the advice is required in circumstances specified under section 961J of the Act to give priority to the client’s interests when giving the advice;
 - (d) information about any fees that have been or may be charged to the client in relation to the advice by any of the following:
 - (i) the providing entity;
 - (ii) a related body corporate of the providing entity;
 - (iii) a director or employee of the providing entity or a related body corporate;

- (iv) an associate of any of the above;
 - (e) if the client enters into an ongoing fee arrangement to which Division 3 of Part 7.7A of the Act applies with the providing entity—a statement that the providing entity must give the client a fee disclosure statement each year in relation to the ongoing fee arrangement;
 - (f) if the providing entity recommends that the client acquire a financial product, and Division 5 of Part 7.9 of the Act would apply if the client acquired the financial product—a statement that the client may have the right to return the financial product under Division 5 of Part 7.9 of the Act within a cooling-off period;
 - (g) a statement that the client may seek further or varied advice from the providing entity at any time.
- (2) Unless in accordance with subregulation (3), (4), (5) or (6) and a determination by ASIC, information to be disclosed in accordance with paragraph (1)(d) must be stated as amounts in dollars.
- (3) If ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph (1)(d) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (4) If ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph (1)(d) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the fees (including worked dollar examples, unless that is inappropriate).
- (5) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:
 - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
 - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
 - (c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

- (6) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:
- (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
 - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
 - (c) would not be in the interests of a client, or a class of clients;
- the information may be set out as a description of the method of calculating the fees (including worked dollar examples, unless that is inappropriate).
- (7) A determination under subregulation (3), (4), (5) or (6) must be:
- (a) in writing; and
 - (b) published in the Gazette.
- (8) This regulation applies in relation to Statements of Advice given on or after the commencement of this regulation.

3 Regulation 7.7.09AA (heading)

Repeal the heading, substitute:

7.7.09AA Statement of Advice from financial services licensee— margin lending facilities

4 After regulation 7.7.09B

Insert:

7.7.09BAA Statement of Advice from authorised representative— main requirements

- (1) For paragraph 947C(2)(h) of the Act, a Statement of Advice given by an authorised representative must include the following statements and information:

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- (a) a statement that the provider of the advice is required under section 961B of the Act to act in the best interests of the client in relation to the advice;
 - (b) a statement that the provider of the advice genuinely believes that the advice given is in the best interests of the client, given the client's relevant circumstances (within the meaning of section 961B of the Act);
 - (c) a statement that the provider of the advice is required in circumstances specified under section 961J of the Act to give priority to the client's interests when giving the advice;
 - (d) information about any fees that have been or may be charged to the client in relation to the advice by any of the following:
 - (i) the providing entity;
 - (ii) an employer of the providing entity;
 - (iii) the authorising licensee, or any of the authorising licensees;
 - (iv) an employee or director of the authorising licensee, or of any of the authorising licensees;
 - (v) an associate of any of the above;
 - (e) if the client enters into an ongoing fee arrangement to which Division 3 of Part 7.7A of the Act applies with the providing entity—a statement that the providing entity must give the client a fee disclosure statement each year in relation to the ongoing fee arrangement;
 - (f) if the providing entity recommends that the client acquire a financial product, and Division 5 of Part 7.9 of the Act would apply if the client acquired the financial product—a statement that the client may have the right to return the financial product under Division 5 of Part 7.9 of the Act within a cooling-off period;
 - (g) a statement that the client may seek further or varied advice from the providing entity at any time.
- (2) Unless in accordance with subregulation (3), (4), (5) or (6) and a determination by ASIC, information to be disclosed in accordance with paragraph (1)(d) must be stated as amounts in dollars.
 - (3) If ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph (1)(d) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified
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matter (including worked dollar examples, unless that is inappropriate).

- (4) If ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph (1)(d) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the fees (including worked dollar examples, unless that is inappropriate).
- (5) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:
 - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
 - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
 - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (6) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:
 - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
 - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
 - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the method of calculating the fees (including worked dollar examples, unless that is inappropriate).
- (7) A determination under subregulation (3), (4), (5) or (6) must be:
 - (a) in writing; and
 - (b) published in the Gazette.
- (8) This regulation applies in relation to Statements of Advice given on or after the commencement of this regulation.

5 Regulation 7.7.09BA (heading)

Repeal the heading, substitute:

**7.7.09BA Statement of Advice from authorised representative—
margin lending facilities**