

**Australian Securities and Investments Commission
Corporations Act 2001—Paragraph 926A(2)(c)—Declaration**

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraph 926A(2)(c) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 14/923].

Commencement

3. This instrument commences on the day it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (**FRLI**) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of **register**). The FRLI may be accessed at <http://www.fili.gov.au/>.

Declaration

4. Part 7.6 of the Act (except Divisions 4 and 8) applies in relation to all financial services licensees as if Division 3 of that Part were modified or varied by, after section 912F, inserting the following section:

“912G Record-keeping: personal advice

- (1) This section applies in relation to the provision of personal advice to a person (the **client**) as a retail client by a financial services licensee (the **provider**) or a representative (the **provider**) of a financial services licensee.
- (2) The financial services licensee must ensure that records of the following matters are kept in relation to the provision of the personal advice:
 - (a) the information relied on and the action taken by the provider that indicates the provider has, in accordance with subsection 961B(1), acted in the best interests (the **best interests duty**) of the client in relation to the advice;
 - (b) if subsection 961B(2) is being relied on to prove that the best interests duty has been satisfied—the information relied on and the action taken by the provider that satisfies the steps in that subsection;

Note: The keeping of records that satisfy the record-keeping obligation in paragraph (b) will satisfy the record-keeping obligation in paragraph (a).

- (c) the advice given, including the reasons why, under section 961G, it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the best interests duty;
 - (d) where the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of a person mentioned in any of the paragraphs in subsection 961J(1)—the information relied on and the action taken by the provider to indicate that the provider has given priority to the client’s interests when giving the advice.
- (3) The financial services licensee must keep the records required by this section for 7 years after the day the personal advice was provided to the client.
- (4) This section does not apply to the provision of personal advice:
- (a) in the circumstances covered by subsection 961B(3) or (4); or
 - (b) in the circumstances prescribed by the regulations in which the provider is not required to prove that the provider has taken the steps mentioned in paragraphs 961B(2)(d), (e) and (f) to satisfy the best interests duty.
- (5) This section (other than paragraph (2)(d) and subsection (3) as it relates to that paragraph) does not apply to the provision of personal advice covered by either of the following circumstances:
- (a) the provision of personal advice for which a Statement of Advice is not required to be given to the client;
 - (b) the provision of personal advice for which a record of the advice is kept in accordance with subsection 946B(3A).”.

Note: Subsection 946B(3A) of the Act is affected by regulation 7.7.09 and 7.7.10AE of the *Corporations Regulations 2001*.

5. The declaration in paragraph 4 of this instrument applies in relation to the provision of personal advice on or after 23 March 2015.

Interpretation

6. In this instrument:

personal advice has the meaning given by subsection 766B(3) of the Act.

Dated this 12th day of September 2014

Signed by Grant Moodie
as a delegate of the Australian Securities and Investments Commission