# EXPLANATORY STATEMENT

**Select Legislative Instrument No. 3, 2015**

## Issued by authority of the Assistant Treasurer

*Corporations Act 2001*

*Corporations Amendment (Register of Relevant Providers) Regulation 2015*

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor‑General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 922A of the Act provides that the regulations may prescribe the establishment of and maintenance of registers relating to financial services.

Section 926B of the Act provides that the regulations may provide that Part 7.6 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

The *Corporations Amendment (Register of Relevant Providers) Regulation 2015* (the Regulation) makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations) to establish a register of all financial advisers.

The purpose of the Regulation is to create a public register of all natural persons providing personal advice on more complex products to retail clients.

A person who carries on a financial services business must obtain and maintain an Australian Financial Services Licence (licence) with the Australian Securities and Investments Commission (ASIC). This person is referred to as a financial services licensee (licensee). Among other things, a person carries on a financial service business if they provide financial product advice.

Individuals may provide financial product advice in a range of circumstances. They may be licensees themselves; directors or employees of licensees; or director/non‑employee representatives of licensees (these individuals are referred to as ‘authorised representatives’). In certain circumstances, an authorised representative can ‘sub-authorise’ another authorised representative to act on behalf of the licensee.

ASIC uses the information collected by licensees on authorised representatives to maintain a register of these individuals. ASIC also maintains a register of licensees. However, there is no register that provides information to consumers, the financial advice industry, or ASIC regarding employee and director representatives of licensees.

The purpose of the Regulation is to create a register of all natural persons who provide personal advice on more complex products to retail clients under a licence. This would enable consumers to verify that their individual financial adviser is appropriately authorised to provide advice and find out more information about the financial adviser before receiving financial advice.

The benefits of the new public register include:

* providing an easily accessible central record of the competency, employment history and misconduct of individual financial advisers;
* assisting ASIC in its compliance activities and ability to respond to problem advisers; and
* providing broad support for industry efforts to improve professionalism of the industry.

The establishment of a public register of financial advisers was a recommendation of the 2014 Senate Economic References Committee Report into the performance of ASIC.[[1]](#footnote-1)

The Government accepted this recommendation, and in July 2014, the Acting Assistant Treasurer, Senator the Hon Mathias Cormann, established an industry Working Group (the Working Group) to advise the Government on a number of issues concerning the register, including: its scope and content; whether reporting obligations should be placed on licensees and/or individual financial advisers; and potential privacy issues. The form of the new register largely reflects the recommendations of the Working Group.

The Financial System Inquiry, which was released in December 2014, also recommended that an enhanced register of advisers be introduced.[[2]](#footnote-2)

Consultation with a range of stakeholders was undertaken on the Exposure Draft in December 2014. Following stakeholder feedback, a number of changes were made to the Regulation.

### Details of the Regulation are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

Under the *Corporations Agreement 2002*, the Commonwealth must consult with the Legislative and Governance Forum for Corporations before making amendments to certain provisions of the Principal Regulations. The Council has been consulted.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

The Regulation commenced on the day after it was registered.

**ATTACHMENT**

## Details of the *Corporations Amendment (Register of Relevant Providers) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the name of the Regulation is *the Corporations Amendment (Register of Relevant Providers) Regulation 2015* (the Regulation).

Section 2 – Commencement

The Regulation commenced on the day after it was registered.

Section 3 – Authority

The Regulation was made under the *Corporations Act 2001* (the Act).

Section 4 – Schedule(s)

This section provides that the schedules amend the *Corporations Regulations 2001* (the Principal Regulations).

The Regulation is divided into three schedules.

Schedule 1 inserts Schedule 8D into the Principal Regulations. Schedule 8D inserts provisions into the Act to impose obligations on licensees to lodge information about natural persons providing personal advice on more complex products to retail clients under a licence (referred to as ‘relevant providers’).

Schedule 2 imposes an obligation on ASIC to maintain a register of relevant providers and outlines the content of that register.

Schedule 3 provides transitional and application provisions that apply from the day the instrument is registered to 30 September 2015.

## Schedule 1 – Amendments relating to modifications of the Act

## Item 1

Item 1 inserts a new regulation 7.6.02AI which modifies Part 7.6 Division 9 of the Act, as set out in the new Schedule 8D. The item relies upon the power in section 926B to modify the operation of Part 7.6.

## Item 2 - Modifications of Division 9 of Part 7.6 of the Act

Item 2 inserts a new Schedule 8D into Part 7.6 of the Act.

Section 922C - Definitions

The new section 922C provides definitions for the purposes of the new provisions inserted into Division 9, Part 7.6 of the Act.

#### Basic banking product and consumer credit insurance

Section 922C defines *basic banking product* and *consumer credit insurance* by reference to the existing definitions in the Act and the *Insurance Contracts Act 1984*. These two concepts are utilised in the definition of ‘relevant financial products’.

#### Body corporate licensee

Section 922C defines a *body corporate licensee* as a body corporate that holds an Australian Financial Services Licence (licence) and is authorised by ASIC to provide personal advice in relation to relevant financial products to retail clients.

#### Body corporate licensee is defined for the purposes of sections 922J and 922K which require body corporate licensees to provide the name of any persons who control it.

#### Class of product advice

Section 922C defines *class of product advice*, as advice in relation to a class of products, but not a recommendation about a specific product in a class.

The definition picks up the existing definition of class of product advice in the Principal Regulations (see subregulation 7.6.04(3)).

#### Control

The Principal Regulations define the meaning of *control* in relation to licensees. This existing definition is used in the Regulation to require body corporate licensees to notify ASIC about a person who starts to control it or ceases to control it (see sections 922J and 922K).

ASIC is required to display a body corporate licensee’s controlling person(s) on the register (see regulation 7.6.06B).

Use of the term person in subregulation 7.6.04(2) does not preclude body corporates being listed given section 2C of the *Acts Interpretation Act 1901*.

#### Recent advising history

Section 922Cprovides that *recent advising history* is defined in section 922G.

#### Relevant financial products

#### Section 922C defines *relevant financial products* for the purposes of defining the scope the register.

#### Only natural persons who are authorised to provide personal advice on relevant financial products will be captured on the register. The definition seeks to capture those financial products which are generally considered to be ‘more complex’.

#### Relevant financial products are defined in the Regulation by excluding financial products which are ‘less complex’. That is, those financial products which are basic banking products, general insurance products, consumer credit insurance, or a combination of any of these three categories.

The scope of relevant financial product is consistent with the Future of Financial Advice (FOFA) reforms in Part 7.7A of the Act, as the references to general insurance product in the FOFA legislation do not make any distinction between different types of general insurance products (such as accident and personal sickness insurance).

#### Relevant provider

Section 922C provides the definition of *relevant provider*, also for the purposes of defining the scope of the register.

The intent of the definition is to capture all natural persons who provide personal advice under a licence on relevant financial products to retail clients.

This scope captures individuals typically labelled ‘financial advisers or planners’, but also includes a wide range of advisers in related sectors, including stockbrokers, insurance brokers, accountants and some bank employees.

The register is designed as a tool for consumers and therefore it will only capture natural persons who provide personal advice to *retail clients* – these are consumers or small businesses. The scope does not capture individuals who advise wholesale clients exclusively.

In order to capture all natural people who can provide personal advice on relevant financial products to retail clients,the definition includes both natural person licensees and natural person representatives.

Paragraph (a) of the definition specifies that only natural persons can be relevant providers. A relevant provider cannot be a corporation, partnership or a trust. This is because the intention of the register is to provide information on individual financial advisers operating within the industry.

Paragraph (b) of the definition specifies that a relevant provider must either be a financial services licensee themselves, an authorised representative of a licensee, an employee or director representative of a licensee or an employee or director of a related body corporate of a licensee.

Paragraph (c) of the definition narrows the scope by reference to two concepts, personal advice and relevant financial products. This means that a natural person is only a relevant provider if they fall within one of the categories outlined in paragraph (b) and they are authorised by a licensee (or as a licensee themselves) to provide personal advice on relevant financial products.

Personal advice is defined in subsection 766B(3) of the Act.

The definition *relevant provider* is intended to capture all those natural persons who are currently authorised to provide personal advice on relevant financial products to retail clients, regardless of whether they actually provide such advice on a frequent basis.

### Section 922D – Obligation to notify ASIC about a person who becomes a relevant provider

Section 922D outlines that a notice must be lodged with ASIC when a person becomes a relevant provider, and that when a notice is lodged, it must be lodged in accordance with section 922L.

Section 922L provides that a notice must be lodged in a prescribed form, it specifies who must lodge the notice, and when the notice must be lodged.

Section 922D also outlines that the contents of the notice must be in accordance with section 922E (for relevant providers who are licensees) or section 922F (for relevant providers who are representatives of licensees).

### Section 922E – Information about a relevant provider who is a financial services licensee

Section 922E requires a natural person licensee who is a relevant provider to notify ASIC of certain details. This information will be used by ASIC to maintain the register.

#### Paragraphs 922E(1)(a) and (1)(b) – Name and numbers

Licensees who become relevant providers will be required to provide their name and their licence number, which is provided by ASIC under section 931C(1) of the Act.

A relevant provider’s licence number will be different to their relevant provider number provided by ASIC.

#### Paragraph 922E(1)(c) – The year the person first began advising

Paragraph 922E(1)(c) requires a licensee who becomes a relevant provider to notify ASIC of the year they began giving personal advice on relevant financial products to retail clients.

The language is intended to be broad and include natural persons who began advising before the creation of the current financial services regime in 2002. Prior to this time, many relevant providers were regulated to some extent by state and territory law.

As paragraph 922E(1)(c) requires the licensee to provide the first year they began, rather than specifying a time period, users of the register should note that a licensee may have taken a break since that year, or not always have provided personal advice on more complex financial products to retail clients over the entire period.

If a relevant provider began advising either: only on general advice; or only providing personal advice on financial products that are not relevant financial products; or the licensee did not advise retail clients; this would not be the relevant provider’s starting year. It is only the year in which the relevant provider began providing personal advice on relevant financial products to retail clients.

#### Paragraph 922E(1)(d)– Australian Business Number

Under *A New Tax System (Australian Business Number) Act 1999* certain businesses may register for an Australian Business Number (ABN).

Paragraph 922E(1)(d) requires relevant providers who are licensees to provide their ABN to ASIC for the purposes of the register.

It is intended that this information will be used by ASIC to allow users of the register the ability to directly see the businesses names associated with this ABN on the Australian Business Register.

#### Paragraph 922E(1)(e) - Details of financial product authorisation and class of product advice

Paragraph 922E(1)(e) requires licensees to provide information on what financial products they are authorised to provide advice on, and whether they are only authorised to provide class of product advice on those products.

Under the licensing framework, ASIC specifies which financial products a licensee is licensed or authorised to provide advice on. A licensee can be licensed or authorised to provide advice on specific financial products or a broad class of products.

Class of product advice is a form of financial advice that does not make a recommendation (in form or in substance) about a specific financial product.

Under the existing regulation 7.6.04, ASIC may grant a licence which limits the licensee to only provide class of product advice on certain financial products. Under a limited licence, a licensee may be authorised to provide class of product advice about: superannuation products; securities; simple managed investment schemes as defined in the Regulations; general and life insurance; and basic deposit products.

#### Paragraph 922E(1)(f) – Recent advising history

This paragraph provides that information regarding the relevant provider’s recent advising history is required to be lodged with ASIC. Further detail on the definition of recent advising history is provided in section 922G.

This information refers to the past advising history for the relevant provider; going forward, the ongoing notifications of changes for a provider will allow ASIC to develop a more detailed history of relevant providers on the register.

#### Paragraph 922E(1)(g) – Education, qualifications and membership of professional bodies

#### Paragraph 922E(1)(g) requires licensees to provide information about their qualifications, training and memberships of professional bodies that are relevant to the provision of financial services. This information could include the name of the qualification or training course, but also the date of completion and the name of the training provider. Subsections 922E(2) and 922E(3) clarify which information should be provided under this paragraph.

This obligation is consistent with a licensee’s existing obligations in Regulation 7.6.04, which specifies that a licensee must maintain a record of the training (relevant to the provision of financial services) that each of its representatives has undertaken.

**Subsection 922E(2)**

Paragraph 922E(2) specifies that if a relevant provider has more than five qualifications or has completed more than five training courses, the notice must include the five qualifications or training courses that the person lodging the notice considers most relevant to the provision of financial services.

In effect this paragraph requires licensees to make a judgement as to which qualifications and training should be displayed on the register.

**Subsection 922E(3)**

This paragraph specifies that if a relevant provider has more than five professional association memberships, the lodger must include the five memberships that are most relevant to the provision of financial services.

### Section 922F – information about a relevant provider who is not a financial services licensee

Section 922F details the information that must be lodged when a person who is not a licensee becomes a relevant provider. It substantially mirrors section 922E, but also requires the lodger to provide additional information to ASIC.

The extra information largely concerns the relevant provider’s licensee, and the authorised representative if the relevant provider has been subauthorised under section 916B of the Act.

This section also includes more information about the relevant provider, as this may be the first time the relevant provider is known to ASIC. A relevant provider who is a licensee will have already gone through the licencing process and will have provided information for the existing licensee register.

#### Paragraphs 922F(1)(a),(c),(d),(f) – Identification details

Under paragraphs 922F(1)(a) and (b), the licensee is required to lodge with ASIC the relevant provider’s name, date of birth and place of birth. Date and place of birth information will enable ASIC to verify the identification of relevant providers and create a unique relevant provider number which ASIC can then use to track individuals. The relevant provider number is discussed further in relation to regulation 7.6.06A.

In Schedule 2 of the Regulation, under paragraph 9.1.02(q), ASIC is explicitly prohibited from displaying a relevant provider’s date and place of birth on the public register.

Under paragraphs 922F(1)(c) and (d), the lodger is required to lodge with ASIC the name of the licensee that has authorised the relevant provider, and the licence number that ASIC has provided to that licensee in accordance with subsection 913C(1) of the Act.

Under paragraph 922F(1)(f), in the situation where a relevant provider has been subauthorised by an authorised representative under section 916B, the licensee is also required to provide the name and authorised representative number of that authorised representative. This will allow ASIC to display this information on the register. Further information on the rationale for ASIC displaying this information on the register is provided under regulation 7.6.06B in Schedule 2 of the Regulation.

**Paragraph 922F(1)(e) – The year the person first began advising**

Under paragraph 922F(1)(e), the licensee is required to provide the year in which the relevant provider first began providing personal advice on relevant financial products to retail clients.

#### Paragraph 922F(1)(g) – Australian Business Numbers

Paragraph 922F(1)(g) requires the licensee to provide, if applicable, the ABN of the relevant provider, the licensee and the authorised representative (if the relevant provider has been subauthorised by that authorised representative under section 916B).

It is intended that this information will be used by ASIC to allow users of the register the ability to directly see the businesses names associated with these ABNs on the Australian Business Register.

#### Paragraph 922F(1)(h) – Details of financial product authorisation and class of product advice

Paragraph 922F(1)(h) provides that a lodger must give ASIC information concerning the relevant financial products which a relevant provider is authorised to provide personal advice to retail clients.

A representative advising on behalf of a licensee can only provide advice on the financial products that the licensee is licensed to provide advice on.

Further, a representative may only be authorised by the licensee to provide advice on a subset of financial products on which the licensee is licensed to provide advice.

Subparagraph 922F(1)(h)(ii) requires a lodger to notify ASIC of whether a relevant provider is only authorised to give class of product advice or whether the relevant provider is authorised to provide advice on specific financial products. Class of product advice is discussed in more detail in relation to paragraph 922E(1)(g).

#### Paragraph 922F(1)(i) – Recent advising history

Paragraph 922F(1)(j) requires the lodger to provide the recent advising history of the relevant provider for the previous five years. The concept of recent advising history is explained further in relation to section 922G.

#### Paragraph 922F(1)(j) - Education, qualifications and membership of professional bodies

#### Paragraph 922F(1)(j) requires licensees to provide information about a relevant provider’s qualifications, training and memberships of professional bodies that are relevant to the provision of financial services. This information could include the name of the qualification or training course, but also the date of completion and the name of the training provider. Paragraphs 922F(2) and 922F(3) clarify which information should be provided under this paragraph.

The obligation in this paragraph is consistent with a licensee’s existing obligations in Regulation 7.6.04, which specifies that a licensee must maintain a record of the training (relevant to the provision of financial services) that each of its representatives has undertaken.

**Subsection 922F(4) – Certain information already registered not required to be lodged again**

Paragraph 922F(4)(a) provides that, if a licensee believes on reasonable grounds that another licensee has lodged information concerning a particular relevant provider in relation to their: recent advising history; the year the relevant provider first began providing personal advice on relevant financial products to retail clients; relevant educational qualifications and training; and/or professional body membership of the relevant provider, the first-mentioned licensee does not have to lodge this information again.

Belief on reasonable grounds by the first-mentioned licensee is required to satisfy paragraph 922F(4)(a). A licensee may have belief on reasonable grounds if they have communicated with other licensees the relevant provider is also authorised by, and it has information to suggest that this information has been lodged (but may not yet have been currently made available by ASIC on the register).

For example, if a relevant provider operates under two licensees concurrently, the two licensees may have an arrangement whereby one of the licensees agrees to always lodge information regarding the relevant providers’ professional association memberships. Therefore, the licensee would have reasonable grounds to believe that this information will already have been lodged.

Furthermore, on many occasions, it will be evident that the information referred to in paragraphs 922F(1)(e), (i) and (j) has already been provided to ASIC because it is already public on the register. For example, information concerning the year a relevant provider first began advising will not change once this information has been initially placed on the register. On these occasions, future licensees of the relevant provider would not be required to lodge this information again. Paragraph 922F(4)(b) is intended to cover these instances.

This subsection seeks to remove duplication of certain information being lodged where a relevant provider is authorised by more than one licensee at the one time, and instances where a relevant provider changes licensees over time.

### Section 922G – Meaning of recent advising history

Section 922G defines recent advising history. This definition is used in subsections 922E(f) and 922F(1), where the notice must include a relevant provider’s recent advising history for the five years prior to the date of lodgement.

Paragraphs 922G(a) and (b) are intended to capture different authorisation scenarios where a relevant provider may have met the requirements to be considered a relevant provider in the past.

For example, whilst a relevant provider at the time of lodgement under section 922D may be a natural person financial services licensee, two years prior, that relevant provider may have been an employee representative operating under another licence. The intention of this section is to capture both history sets.

Whilst section 922G does not prescribe a time period, the definition works in operation with sections 922E and 922F to have the effect of requiring lodgers to provide a relevant provider’s recent advising history of the last 5 year period.

Paragraph 922G(a) requires that, if a relevant provider was a financial services licensee, the period during which the relevant provider was operating under their own financial services licence (in their name) must be provided.

Paragraph 922G(b) outlines the categories of information that must be lodged if, in the relevant period (prescribed as 5 years under sections 922E and 922F), the relevant provider was a representative of a licensee. For these occasions, the licensee must:

* provide the name of each licensee the relevant provider was authorised by;
* if the relevant provider was operating under an authorised representative (subauthorisation), the name of that authorised representative; and
* the time period applicable to each of the different authorisations the relevant provider has had within the relevant period.

The note provided under section 922G clarifies that, in a situation where a licensee has previously worked as a representative of another licensee, both licensee history and representative history are required.

Example 1: Mr Andrew Smith graduated university in 2011 and began providing personal advice to retail clients in relation to relevant financial products as an authorised representative of Collins Advising Pty Ltd (the licensee) in May 2012. In September 2013, Mr Smith left Collins Advising Pty Ltd and became a licensee.

Mr Smith, as a relevant provider who is a financial services licensee, would be required to the following recent advising history information under section 922E:

*May 2012 – September 2013: Collins Advising Pty Ltd.*

*September 2013 – present date: Andrew Smith.*

As Mr Smith was an authorised representative between May 2012 and September 2013, Mr Smith would currently appear on the Authorised Representatives Register as being ceased. Mr Smith’s history on the Authorised Representatives Register would relate to his history as an authorised representative rather than his history as a relevant provider.

Example 2: Between January 2004 and December 2011, Ms Lauren White was a relevant provider under the business, Financial Advizing Pty Ltd, which was an authorised representative operating under the licensee Financial Form Pty Ltd. Between January 2012 and December 2012, Ms White took time off and did not meet the definition of relevant provider during this period. Ms White returned to the financial services industry as a relevant provider in January 2013, and is now an employee representative of the licensee, New Horizon Bank.

New Horizon Bank, as Ms White’s current licensee, would be required to lodge the following recent advising history information under section 922F:

*5 years before lodgement (for example March 2010) – December 2011: Financial Advizing Pty Ltd (licensee), Financial Form Pty Ltd (authorised representative).*

*January 2013 – present date: New Horizon Bank.*

Using the recent advising history information lodged by licensees, ASIC is required to list a relevant provider’s recent advising history on the register (see Schedule 2, regulation 7.6.06B). It is intended at the time of the register’s launch, the register will display a relevant provider’s recent advising history for the last five years (or less, if the relevant provider has been a relevant provider for less than five years). However, going forward, the history of an adviser will be built up on the register through the lodgement of updates of relevant provider’s details. The ‘recent advising history’ lodgement requirement will become increasingly redundant, and lodgers will increasingly be able to rely upon subsection 922F(4) and will not be required to lodge this history as it will already appear on the register.

The recent advising history displayed on the register of relevant providers differs from the historical information contained on the authorised representatives register, as the authorised representatives register makes no distinction between different financial services, as well as in relation to financial advice – personal and general advice. As such, information from the authorised representatives register cannot be transferred to the new register of relevant providers, which focuses solely on natural persons who provide personal advice on relevant products.

### Section 922H – Ongoing obligation to notify ASIC when there is a change in a matter for a relevant provider

Section 922H requires information to be lodged with ASIC when details required to be provided to ASIC under section 922D change concerning a particular relevant provider.

This updated information is necessary for ASIC to update the corresponding information on the register.

As the note outlines, a change of details of the relevant provider includes the situation where a relevant provider has ceased to be authorised by a licensee.

In the situation where a relevant provider is no longer authorised by a licensee but then becomes authorised by a new licensee, the first licensee would lodge a form with ASIC stating that the relevant provider is no longer authorised by it.

The new licensee would then lodge a form with ASIC, quoting the relevant provider’s number, that the relevant provider is now authorised by the new licensee, and further details of that authorisation.

For various reasons, a relevant provider may cease to be a relevant provider. A relevant provider may no longer be authorised to provide personal advice on the relevant financial products to retail clients under a license (and may instead may only provide advice on products which are not relevant financial products), or the relevant provider may leave the sector altogether.

Under section 922H, this information must be lodged with ASIC even if the relevant provider commences but then ceases to be a relevant provider with a particular licensee within the required 30 business day lodgement period (see section 922L) for the initial notification arising from their commencement.

If details concerning a relevant provider change are a consequence of an act by ASIC, there is no obligation to lodge a notice outlining those changes with ASIC. This is on the basis that ASIC will already have this information available to it and it can amend the register under regulation 7.6.06C in Schedule 2 of the Regulation. An example of a change made by ASIC is where ASIC has issued a banning order against the relevant provider.

### Sections 922J and 922K – Obligation to notify ASIC about a person that starts to control a body corporate licensee or who ceases to control a body corporate licensee

Sections 922J and 922K requires body corporate licensees to notify ASIC when a person begins or ceases to control it.

Body corporate licensees and control are defined in Section 922C.

A licensee will be required to lodge the name of the person who starts/ceases to control the licensee, and the first day of that control, or the day of ceasing that control.

Sections 922J and 922K are drafted separately to other notice provisions (sections 922E and 922F), so that licensees do not have to lodge a separate notice concerning every relevant provider each time there is a change in the person who controls the body corporate licensee (see subsection 922L(5)).

### Section 922L – Requirement for notice to be lodged

While section 922D creates the obligation for lodgers to provide information to ASIC concerning their relevant providers, and sections 922D and 922E outline the information that is required to be lodged, section 922L specifies: the form; timing of this information; who these obligations are placed on; and the point in time in which the information in the notice needs to be correct.

In addition, notifications lodged under sections relating to the details and change of a body corporate licensee’s controlling persons (sections 922J and 922K), as well as any change in details of a relevant provider (section 922H), must also be in accordance with section 922L.

#### Subsection 922L(1) Prescribed form

Subsection 922L(1) specifies that information lodged concerning the register must be in the prescribed form.

Note 1 under section 922L refers to section 350 of the Act, which provides that a prescribed form is one which is specified in the regulations, unless no form is prescribed under the regulations, in which case it refers to a form which ASIC has approved.

The Government does not currently intend to prescribe the form in the Principal Regulations pursuant to paragraph 350(a) of the Act and therefore, information covered by 922L will be required to be lodged in a form which ASIC has approved.

#### Note 2 clarifies that a prescribed form may deal with more than one section of this Act or the Principal Regulations. Thus, information that is required to be lodged for the purposes of the both the Authorised Representatives Register and the Register of Relevant Providers can be included on a single prescribed form.

#### Subsection 922L(2) Timing of form lodgement

A form required to be lodged under these aforementioned sections is required to be lodged no later than 30 business days from the date of the event which resulted in the change in detail occurring.

This timing is intended to balance compliance costs for industry, and the value for users of the register having the information displayed up-to-date.

**Subsection 922L(3) Day on which information must be correct**

This subsection specifies that information about a new relevant provider or new body corporate licensee controlling person must contain information that is correct on the day the relevant provider became a relevant provider or began controlling the body corporate licensee. Similarly, a notice about a change in information must contain information that is correct on the day the change occurred.

#### Subsection 922L(4) Who must cause notice to be lodged

This subsection specifies that if the relevant provider is a licensee, they are responsible for the lodgement of information under sections 922D and 922H.

In all other instances, the licensee on whose behalf the relevant provider is authorised to provide advice is responsible for lodging the forms under sections 922D and 922H relating to that relevant provider. This does not preclude an arrangement where another entity, such as a corporate authorised representative, lodges on behalf of a licensee. However, in this instance, the licensee retains responsibility for ensuring that a lodgement is made.

**Subsection 922L(5) Notice about control of a body corporate licensee**

Subsection 922L(5) specifies that the body corporate licensee is responsible for lodging a notice under section 922J or 922K relating to a person who starts or ceases to control it.

### Section 922M – Offence for failing to comply with obligation to notify ASIC

Section 922M makes it an offence for a licensee not to comply with their obligation to notify ASIC about a relevant provider that they authorise, or in the case of a natural person licensee who is a relevant provider, themselves. That is, to not comply with section 922D.

The section also makes it an offence for a licensee to not update ASIC of any changes concerning a relevant provider, that is, to fail to comply with section 922H.

It also makes it an offence for body corporate licensees to not comply with sections 922J or 922K, which require the licensee to notify ASIC if a person starts to control it, or ceases to control it.

The offence is subject to 50 penalty units, which is currently $8,500.

This is not a strict liability offence, in contrast to existing offences in relation to lodgements for licensee and authorised representative registers. This reflects the extent to which lodgements under the new regime may include information sourced from third parties.

This section is not subject to subsection 4K(2) of the *Crimes Act 1914*. Subsection 4K(2) creates a separate offence for each day a person fails to comply with an obligation to do something in a particular time period.

A person may also commit a Criminal Code offence if the person knowingly gives false or misleading information to the Commonwealth.

Subsection 922M(2) specifies that it is not an offence to not lodge information which is not required to be lodged because of subsection 922F(4).

### Sections 922N – Obligation on a relevant provider to provide information to licensee

Section 922N provides that if a relevant provider is not a financial services licensee (that is, they are a relevant provider because they are a representative of a financial services licensee), and the licensee requests information from the relevant provider in order to comply with their obligation set out in section 922D, the relevant provider is required to provide this information to their licensee.

This section has been inserted as licensees will be reliant on their representatives to inform them of certain information about themselves, required to be lodged under section 922F.

A request from a licensee to a representative who is a relevant provider under their licence is likely to include information about the relevant provider’s recent advising history and the year the relevant provider first began providing personal advice on relevant financial products to retail clients, as this is information a licensee will not necessarily have available to them.

Whilst there is an obligation on the representative to assist their licensee, no penalty is directly attached to this obligation within the Regulation. However, subparagraph 137.1(1)(c)(iii) of the *Criminal Code Act 1995* (the Criminal Code) provides that a person is guilty of an offence if a person gives false or misleading information to a person, and the information is given in compliance or purported compliance with a law of the Commonwealth.

This means that if a relevant provider provides false or misleading information about themselves to a licensee, in response to a request made by the licensee under section 922N, the relevant provider may be liable for a penalty of up to 12 months’ imprisonment in accordance with section 137.1 of the Criminal Code.

Subsection 922N(2) provides that a relevant provider must give the information to the lodger in a time which would allow the licensee to comply with their obligations. A specific time has not been provided in the regulation to allow for flexible arrangements between licensees and representatives to collect this information. However, in effect, as a licensee must provide the information within 30 business days, the outer limit on the representative providing the information as requested to the licensee is 30 business days.

### Section 922P – Change in matters within 30 business days

Subsection 922P(1) clarifies that a lodger must lodge information about a relevant provider, even if a relevant provider is no longer operating at the end of the 30 business day notification period.

The intention behind this provision is to ensure that all relevant providers are captured on the register, even if a relevant provider changes their licensee within the 30 business day period. This will assist the industry and ASIC to track advisers who are disreputable or lacking competence that operate under different licences within short periods of time.

Example 1: Ms Jayne Lim becomes a relevant provider on 20 September 2018 and ceases to be a relevant provider on 8 October 2018.

Information under section 922F on Ms Lim is required to be lodged under section 922D even though Ms Lim became, and ceased being a relevant provider, within the 30 business day lodgement period under section 922L(2).

Subsection 922P(2) specifies that a notice is not required to be lodged if a person starts to control a body corporate licensee and ceases controlling the body corporate licensee within 30 business days. This is so that relatively short periods of control do not need to be reported, reducing the reporting burden on body corporate licensees.

## Schedule 2 – Other Amendments

## Item 1

Item 1 inserts a number of regulations into the Principal Regulations which relate to ASIC establishing and maintaining the register for natural persons providing personal advice to retail clients in relation to relevant financial products.

### 7.6.06A – Relevant provider number

Regulation 7.6.06A enables ASIC to issue a unique number to each relevant provider. These numbers will enable ASIC and the industry to identify, track and monitor relevant providers in the industry.

Providing each financial adviser with a unique number also simplifies reporting and compliance obligations for the industry and ASIC.

Whilst licensees are already provided with a unique number under subsection 913C(1), and authorised representatives are also provided a number by ASIC, a relevant provider number is necessary so that a relevant provider who changes licensees (or from being a relevant provider as a natural person licensee to being a relevant provider as an employee representative under another licence) can be readily tracked.

### Regulation 7.6.06B – Register of relevant providers

#### Subregulation 7.6.06B(1) – Register to include details of relevant providers

### Section 922A of the Act requires ASIC to establish and maintain one or more registers relating to financial services. Paragraph 922A(2)(e) allows for the Principal Regulations to prescribe any persons or bodies for the purposes of any additional register relating to financial services established under this section.

### For the purpose of paragraph 922A(2)(a) of the Act, subregulation 7.6.06B(1) requires ASIC to establish and maintain a register concerning details relating to relevant providers as outlined in this Regulation.

### ASIC is required to maintain a register of existing relevant providers (current), as well relevant providers who cease being relevant providers. However, ASIC will not be required to maintain details relating to individuals who, prior to the establishment of the register of relevant providers, would have met the definition of relevant providers. That is, the register will only contain information on relevant providers who become ceased after the register’s launch date.

### The remainder of Regulation 7.6.06B outlines the contents of the register:

#### Paragraphs 7.6.06B(2)(a),(b),(d),(e),(f) and (g) – Identification information

Various paragraphs in subregulation 7.6.06B(2) require ASIC to maintain on the register identification information such as the name of the relevant provider, the number given to the relevant provider by ASIC, the relevant provider’s date of birth and place of birth and the name and number of the licensee of each relevant provider.

Whilst the date of birth and place of birth of the relevant provider will be part of the register, under regulation 9.1.02, ASIC will be unable to make this information publically available on the online register.

If the relevant provider has been subauthorised under section 916B of the Act, paragraph (g) provides that identification details of that authorised representative should be listed on the register.

#### Paragraph 7.6.06B(2)(c) – Persons who control the body corporate licensee

Paragraph (c) requires ASIC to list the persons who control the body corporate licensee who authorises the relevant provider.

The purpose of this provision is to make the context of the advice more transparent. Currently, many financial advice firms are controlled by firms that issue financial products, and consumers are often not aware of a relationship between an advising firm and particular financial products. This lack of transparency about the context of the advice can contribute to a lack of trust in the financial advice industry.

#### Paragraph 7.6.06B(2)(h) – Recent advising history

This paragraph requires ASIC to display information about a relevant providers’ recent advising history, which is defined in section 922G of Schedule 1 of the Regulation.

#### Paragraph 7.6.06B(2)(i) – The year the person began advising

The purpose of the section is to demonstrate the experience of the financial adviser.

#### Paragraph 7.6.06B(2)(j) – Status

Regulation 7.6.06B(2)(j) requires ASIC to provide on the register whether the relevant provider is currently operating as a relevant provider, or if they have ceased to be a relevant provider.

This information will be obtained by ASIC from forms lodged under section 922H.

**Paragraphs 7.6.06B(2)(k),(l),(m) and (n) – Banned and disqualified relevant providers and undertakings**

Paragraphs (k),(l),(m) and (n) of subregulation 7.6.06B(2) require ASIC to provide information on the register concerning any relevant bannings or disqualifications concerning the relevant provider (under the Act, the *National Consumer Credit Protection Act 2009*, and *Superannuation Industry (Supervision) Act 1993*) as well as any undertakings given by the relevant provider (under section 93AA of the *Australian Securities and Investments Commission Act 2001* and section 322 of the *National Consumer Credit Protection Act 2009*).

Under the Act, ASIC currently maintains a Banned and Disqualified register, which provides information on individuals banned or disqualified or suspended from: practising in the financial services or credit industry; the involvement in the management of a corporation; or auditing self-managed superannuation funds.

ASIC also currently maintains a record of enforceable undertakings, which lists the undertakings which have been accepted by ASIC under section 93AA of the *Australian Securities and Investments Commission Act 2001* and section 322 of the *National Consumer Credit Protection Act 2009*.

Enforceable undertakings are most often given by licensees rather than individual financial advisers. The register will assist ASIC to have clarity over individual advisers in future, and may assist ASIC to make enforceable undertakings with individual advisers.

Including all information about disciplinary action taken by ASIC, even if the disciplinary action was not taken in relation to the provision of financial advice, promotes transparency and allows consumers to place more confidence in their relevant provider.

#### This information is currently held by ASIC; therefore this information is not required by lodgers as part of the notification process as part of section 922D.

#### Paragraph 7.6.06B(2)(o) – Product authorisations

Regulation 7.6.06B(2)(o) provides that ASIC must list on the register the relevant financial products (or categories of relevant financial products) a relevant provider is authorised to provide personal advice on to retail clients.

This category of information is explained previously in relation to paragraphs 922E(1)(e) and 922F(1)(h).

This information will enable consumers to check that their relevant provider is authorised to provide the advice that they are giving. Consumers will also be able to check if their relevant provider is authorised to provide advice on a specific product.

#### Paragraphs 7.6.06B(2)(p) – Australian Business Numbers

Paragraph 7.6.06B(2)(p) provides that ASIC must list on the register the ABNs of the relevant provider, the licensee, and the authorised representative if the relevant provider has been subauthorised.

#### Paragraph 7.6.06B(2)(q) – Education and membership information

Paragraph 7.6.06B(2)(q) requires ASIC to display information about relevant providers’ qualifications, training and professional association membership to the extent that they are relevant to the provision of financial services.

What information is relevant will be determined by the lodger of this information.

**Regulation 7.6.06B(2)(r) – Discretion for ASIC to list other information**

Regulation 7.6.06B(2)(r) gives ASIC the discretion to record other information on the register as it considers necessary.

For example, ASIC may provide further information relating to relevant ABNs of a relevant provider on the register.

This gives ASIC the flexibility to add information about relevant providers on the register which ASIC considers may be useful to consumers. ASIC’s flexibility to add information to the register will be limited to the information that ASIC has available to it.

This discretion is intended to mirror the existing discretion that ASIC has in relation to the register of licensees and authorised representatives in paragraphs 1(g) and 2(i) of regulation 7.6.05.

#### Subregulation 7.6.06B(3) – Definitions

Subregulation 7.6.06B(3) defines control, recent advising history, relevant financial products and relevant provider for the purposes of the regulations in Schedule 2, item 1, by referring back to the definitions in section 922C of the Act, as modified by regulation 7.6.02AI.

### Regulation 7.6.06C – Correcting registers

Regulation 7.6.06C provides ASIC with an explicit power to make changes (including changes to the information and details) to four registers: the register of relevant providers (kept under regulation 7.6.06B); the register of authorised representatives (kept under regulation 7.6.05); the register of licensees (kept under regulation 7.6.05); and the banned and disqualified register (kept under regulation 7.6.06).

A note is included which references Australian Privacy Principle 13, which deals with the correction of personal information (Schedule 1, *Privacy Act 1988*).

The intention of Regulation 7.6.06C is to ensure that if ASIC has reason to believe that information on a register is incorrect, ASIC can make corrections to that register.

This will enable ASIC to comply with its obligation in the Australian Privacy Principles to take steps to ensure that personal information is accurate, up to date, complete, relevant and not misleading.

### Item 2 – Prescribed register

Item 2 prescribes the register of relevant providers as a prescribed register for the purposes of section 1274A of the Act.

Prescribing a register for section 1274A permits ASIC to allow a register to be searched, including via a mechanical, electronic or other device for processing data (a ‘data processor’); and to provide prescribed information that it has obtained from the register using a data processor search.

This is consistent with current arrangements for the register of authorised representatives and the register of licensees.

### Item 3 – Prescribed information

Item 3 inserts into regulation 9.1.02 a paragraph which allows ASIC to make available only such data as it considers appropriate from searches of the register utilising a data processor.

This is consistent with existing arrangements for the register of authorised representatives and the register of licensees.

ASIC is explicitly prohibited from displaying information regarding a relevant provider’s date and place of birth.

**Schedule 3 – Transitional and application provisions**

## Item 1

Item 1 inserts a new Part at the end of Chapter 10 of the Principal Regulations.

**Division 1 – Introduction**

**Regulation 10.20.01 – Simplified outline of this part**

This regulation provides high-level information concerning the intent of Schedule 3.

**Regulation 10.20.02 – Object of this part**

This Regulation notes that this Part provides transitional and application provisions to establish the register.

**Regulation 10.20.03 – Definitions**

This regulation provides two definitions that are used in this Part of the Regulation.

Subregulation 10.20.03(1) notes that any reference in this Part to any section 922C through to 922P (or a provision of that section) is a reference to that provision of the Act as notionally inserted by Schedule 8 of the Regulation.

Subregulation 10.20.03(1) notes that in this part, *start day* is defined in subsection 10.20.05(1). In that subsection, the start day is a day chosen by a licensee between 1 January 2015 and 30 March 2015.

**Division 2 – General application provision for Schedule 8D**

**Regulation 10.20.04 – General application provisions for Schedule 8D**

Regulation 10.20.04 specifies that the modifications made to the Act in this Part apply on and after 9 March 2015 for all relevant providers and body corporate licensees, both new and existing immediately prior to this date.

*Relevant providers* and *body corporate licensees* are defined in Schedule 1 of the Regulations.

**Division 3 – Pre‑existing and new relevant providers and controllers during the transitional period**

**Regulation 10.20.05 – Application of this Division**

A licensee that is authorised to provide personal advice in relation to relevant financial products to retail clients (that is, they are a relevant provider, and/or they are able to authorise relevant providers), must choose a date between 1 January 2015 and 30 March 2015.

This date will be the date which the licensee collects data on themselves and/or their existing relevant providers to establish the register in March 2015.

This regulation also defines various groups of relevant providers and controllers with reference to a start day.

Paragraph 10.20.05(2)(a) outlines pre-existing relevant providers – this category includes persons who are relevant providers immediately before the start day.

Paragraph 10.20.05(2)(b) outlines pre-existing controllers – this category includes persons who control a body corporate licensee (as defined in 922C, Schedule 1) immediately before the start day.

Paragraph 10.20.05(3)(a) outlines new relevant providers – this category includes persons who become relevant providers after 30 March 2015 and before September 2015, as well as persons who become a relevant provider after the start day and before September 2015 (where a start date has been chosen).

Paragraph 10.20.05(3)(b) outlines new controllers – this category includes persons who begin to control a body corporate licensee after 30 March 2015 and before September 2015, as well as persons who begin to control a body corporate licensee after the start day and before September 2015 (where a start date has been chosen).

**Regulation 10.20.06 – Notices under section 922D – initial lodgement of information**

Subregulation 10.20.06(1) specifies that existing relevant providers (as defined in paragraph 10.20.05(2)(a)) must lodge under section 922D between 9 March and 30 March 2015 as if they became a relevant provider on the start date.

For example, if a licensee chooses 1 January 2015 as their start date, they must lodge information on their existing relevant providers under subsection 922D between 9 March and 30 March 2015.

This regulation also specifies that a notice that is lodged between 9 March and 30 March 2015 should not include information on educational qualifications, training and professional association memberships. That is, information listed in paragraphs 922E(1)(g) and 922F(1)(j) should not be included in the notice lodged between 9 March and 30 March 2015.

Subregulation 10.20.06(2) specifies that for individuals that become relevant providers after their licensee’s start date, this information must be lodged by the licensee under the usual arrangements under section 922D. However, if lodged before 23 May 2015, this notice should not include information on educational qualifications, training and professional association memberships (that is, information listed in paragraph 922E(1)(g) and 922F(1)(j)).

**Regulation 10.20.07 – Notices under section 922D – later notice about educational qualifications and professional memberships**

Regulation 10.20.07 specifies that existing relevant providers (as defined in paragraph 10.20.05(2)(a)) and persons who become relevant providers prior to 23 May 2015 providers (as defined in paragraph 10.20.05(3)(a)) are required to lodge information on their qualifications, training and professional association memberships between 23 May and 30 May 2015.

Consistent with sections 922E(1)(g) and 922F(1)(j), the notice should include information about:

* up to five qualifications or training courses that the lodger believes, on reasonable grounds, are most relevant to the provision of financial services; and
* up to the five professional association memberships that the lodger believes, on reasonable grounds, are most relevant to the provision of financial services.

Consistent with section 922L(4), the information in the notice must be correct at either the start date for existing relevant providers or the date the person became a relevant provider for relevant providers that become relevant providers after the start date and before 23 May (as this is when the person was required to lodge under section 922D).

**Regulation 10.20.08 – Notices under section 922H – important changes before 30 April 2015**

Regulation 10.20.08 specifies that, if a notice has been lodged to add a relevant provider on the register before 30 April 2015 (these are paragraph 10.20.05(2)(a) and 10.20.05(3)(b) existing and new relevant providers), then important changes – changes to status of the relevant provider and product authorisations – that occur prior to 30 April 2015 need to be lodged within 30 business days of 1 May 2015.

Important changes that occur after 30 April 2015 can be lodged as per the standard procedures under section 922H (within 30 business days of the change) and hence there are no transitional provisions for these changes.

**Regulation 10.20.09 – Notices under section 922H – other changes before 30 September 2015**

Regulation 10.20.09 specifies that if the details of a relevant provider on the register change prior to 30 September 2015, and the change is not in relation to the relevant provider’s status or product authorisation (i.e. matters listed in paragraph 10.20.08(1)(c)), a notice needs to be lodged within 30 business days of 1 October 2015.

**Regulation 10.20.10 – Notices under section 922J – pre-existing body corporate licensees**

Regulation 10.20.11 specifies that pre-existing body corporate licensees (as defined in paragraph 10.20.05(1)(b)) are required to notify ASIC of the following information between 9 March 2015 and 30 March 2015:

* the name of the licensee;
* the licence number given to the licensee under section 913C(1); and
* the name of the person who controls the body corporate licensee.

Paragraph 10.20.11(c) specifies that the notice does not require information regarding the day the person began controlling the body corporate licensee.

A note is provided to indicate that after 30 March 2015, notices relating to a person beginning to control a body corporate licensee can be lodged normally under section 922J.

**Regulation 10.20.11 – Notices under section 922J – controllers during the transition period**

Regulation 10.20.11 specifies that if a person begins to control a body corporate licensee after the start date but before 30 September 2015, the notice under section 922J is required to be lodged within 30 business days of 1 October 2015.

**Regulation 10.20.12 – Notices under section 922K – ceasing to control a pre‑existing body corporate licensee**

This Regulation specifies that if a person ceases to control a body corporate licensee at any time before 30 September 2015, they are required to notify ASIC of this change within 30 business days of 1 October 2015.

**Regulation 10.20.13 – Change in matter within 30 business days**

This Regulation specifies that if a person starts to control a body corporate licensee during between the start date and 30 September and subsequently ceases to control the licensee within 30 business days, this information will need to be lodged within 30 business days of 1 October 2015.

**Regulation 10.20.14 – Application of regulations 10.20.06 to 10.20.12**

Regulation 10.20.13 notes that it is an offence to fail to comply with the obligations contained in regulations 10.20.06 through to 10.20.12 and that fees apply for lodging the information required in those regulations.

**Division 4 – Other application provisions**

This division contains application provisions not specified elsewhere.

**Regulation 10.20.15 – Application – relevant provider numbers**

Regulation 10.20.14 specifies that from 31 March 2015, ASIC may assign a person a relevant provider number.

**Regulation 10.20.16 – Application – register of relevant providers**

Subregulation 1 specifies that from 31 March 2015, ASIC is to maintain the register of relevant providers, excluding information on qualifications, training and association membership.

Subregulation 2 specifies that from 31 May 2015, ASIC is to include information on qualifications, training and association membership on the register.

**Regulation 10.20.17 – Application – prescribed registers**

This Regulation specifies that from 31 March 2015, the Register of Relevant Providers is a prescribed register and the information to be displayed on the register is prescribed information.

### Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Corporations Amendment (Register of Relevant Providers) Regulation 2015**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Legislative Instrument

The Regulation makes a number of amendments to the *Corporations Regulations 2001* to establish a public register of all financial advisers.

#### Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

1. The 2014 Senate Economic References Committee Report into the performance of ASIC is available at: <http://www.aph.gov.au/parliamentary_business/committees/senate/economics/asic>. [↑](#footnote-ref-1)
2. The 2014 Financial System Inquiry Report is available at: <http://fsi.gov.au/>. [↑](#footnote-ref-2)