



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Professional Standards— Transitional) Instrument 2018/894

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 9 October 2018

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Professional Standards—Transitional) Instrument 2018/894*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 926A(2) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Notifying ASIC about provisional relevant providers

The provisions of Part 10.23A of the Act that relate to Division 9 of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied by, after section 1546V, inserting the following section:

“1546VA Application of requirements relating to notices about provisional relevant providers

- (1) This section has effect despite anything else in this Part or Division 9 of Part 7.6, as inserted by the amending Act.
- (2) A requirement to lodge a notice in relation to a provisional relevant provider applies on and after 15 November 2019.”.

6 Notifying ASIC about continuing professional development

The provisions of Part 10.23A of the Act that relate to Division 9 of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied by, after section 1546VA, inserting the following section:

“1546VB Application of requirements relating to notices about continuing professional development

- (1) This section has effect despite anything else in this Part or Division 9 of Part 7.6, as inserted by the amending Act.
- (2) A requirement to lodge a notice about the education and training standard in subsection 921B(5) in relation to a relevant provider applies on and after 15 November 2019.”.

7 Notifying ASIC about the start date of a licensee’s CPD year

The provisions of Part 10.23A of the Act that relate to Division 9 of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied by, after section 1546VB, inserting the following section:

“1546VC Application of requirements relating to notices about financial services licensee’s CPD year

- (1) This section has effect despite anything else in this Part or Division 9 of Part 7.6, as inserted by the amending Act.
- (2) A requirement to lodge a notice about the day on which a financial services licensee’s CPD year is to begin applies on and after 15 November 2019.”.

8 Notifying ASIC about the passing of the exam by existing providers

The provisions of Part 10.23A of the Act that relate to Division 9 of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied by, after section 1546VC, inserting the following section:

“1546VD Application of requirements relating to notices about the passing of the exam by existing providers

- (1) This section has effect despite anything else in this Part or Division 9 of Part 7.6, as inserted by the amending Act.
- (2) A requirement to lodge a notice about the education and training standard in subsection 921B(3) in relation to an existing provider applies on and after 15 November 2019.”.

9 Notifying ASIC about principal place of business and compliance scheme

The provisions of Part 10.23A of the Act that relate to Division 9 of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied as follows:

- (a) after subsection 1546G(5) insert the following subsection:

“(6) Paragraphs 922E(1)(i) and 922F(1)(n), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922H between 15 November 2019 and 31 December 2019 as if section 922H required a notice lodged under that section to include the information specified in those paragraphs.”;

- (b) in section 1546K (excluding the note):

(i) before “Paragraphs” insert “(1)”;

(ii) at the end of the section insert the following subsection:

“(2) Paragraphs 922E(1)(b) and 922F(1)(b), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922H between 15 November 2019 and 31 December 2019 as if section 922H required a notice lodged under that section to include the information specified in those paragraphs.”;

- (c) omit subsection 1546T(1), substitute:

“(1) Paragraphs 922Q(2)(b) and (v), as inserted by the amending Act, apply on and after 15 November 2019.

(1A) Paragraph 922Q(2)(r), as inserted by the amending Act, applies on and after 1 January 2020.”;

- (d) at the end of section 1546W insert the following subsection:

“(5) A notice is not required to be lodged under this section if a notice was lodged under section 922H between 15 November 2019 and 31 December 2019 which includes the information required by subsections 1546G(6) and 1546K(2).”.

10 Application of professional standards to banned or prohibited advisers

The provisions of Part 10.23A of the Act that relate to Division 8A of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied as follows:

- (a) in section 1546A, in the the definition of *existing provider*, omit subparagraph (a)(ii), substitute:

“(ii) on 1 January 2019:

- (A) is not banned or disqualified under Division 8 of Part 7.6; and
- (B) is not subject to an enforceable undertaking under section 93AA of the ASIC Act under which the person undertook to not provide financial product advice or financial services generally; or”;

- (b) after section 1546D, insert:

“1546DA Previously banned or prohibited advisers

- (1) This section has effect for the purposes of sections 1546C and 1546D in relation to Division 8A of Part 7.6, as inserted by the amending Act.
- (2) A person covered by any of the following paragraphs is taken to be a person who is not a relevant provider before 1 January 2019:
 - (a) a person who, on 1 January 2019, was banned or disqualified under Division 8 of Part 7.6;
 - (b) a person who, on 1 January 2019, was subject to an enforceable undertaking under section 93AA of the ASIC Act under which the person undertook to not provide financial product advice or financial services generally; or
 - (c) a person who, on 1 January 2019, was prohibited under the law of a foreign country from providing

personal advice in the foreign country to retail clients in relation to relevant financial products.”.

11 Application of professional standards—other scenarios

The provisions of Part 10.23A of the Act that relate to Division 8A of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied as follows:

- (a) in subsection 1546B(1) omit “An existing provider must have done”, substitute “An existing provider that immediately before 1 January 2024 is a relevant provider, must have done”;
- (b) in subsection 1546B(3) omit “An existing provider must have met”, substitute “An existing provider that immediately before 1 January 2021 is a relevant provider, must have met”;
- (c) after subsection 1546C(3), insert the following subsections:
 - “(3A) Section 921C, as inserted by the amending Act and so far as the section relates to the education and training standard in subsection 921B(3), also applies, on and after 1 January 2021, in relation to a person who was an existing provider but, at any time between 1 January 2016 and 31 December 2020, has ceased to be a relevant provider.
 - (3B) Section 921C, as inserted by the amending Act and so far as the section relates to the education and training standard in subsection 921B(2), also applies, on and after 1 January 2024, in relation to a person who was an existing provider but, at any time between 1 January 2016 and 31 December 2023, has ceased to be a relevant provider.
 - (3C) Section 921C, as inserted by the amending Act, also applies, on and after 1 January 2019, in relation to a person who was a relevant provider at any time before 1 January 2016 but is not a relevant provider at any time between 1 January 2016 and 1 January 2019.”;
- (d) in section 1546D (excluding the note):
 - (i) before “Section” insert “(1)”;
 - (ii) at the end of the section insert the following subsection:
 - “(2) Section 921F, as inserted by the amending Act, also applies in relation to any authorisation given on or after 1 January 2019 to a person who is not a relevant provider at any time between 1 January 2016 and 1 January 2019 (irrespective of whether the person was a relevant provider before 1 January 2016).”.

12 Notifying ASIC of certain information after banning or prohibition

The provisions of Part 10.23A of the Act that relate to Division 9 of Part 7.6 apply in relation to financial services licensees as if Part 10.23A were modified or varied by omitting paragraph 1546Z(1)(a) and substituting:

- “(a) on 1 January 2019 a person was:
- (i) banned or disqualified under Division 8 of Part 7.6; or
 - (ii) subject to an enforceable undertaking under section 93AA of the ASIC Act, under which the person undertook to not provide financial product advice or financial services generally; or
 - (iii) prohibited under the law of a foreign country from providing personal advice in the foreign country to retail clients in relation to relevant financial products; and”.