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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CORPORATIONS AMENDMENT (PROFESSIONAL STANDARDS OF FINANCIAL ADVISERS) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	*Definition*
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
Bill	Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016
Body	Standards body declared under new section 921X
Code	Code of Ethics developed by the standards body
Corporations Act	*Corporations Act 2001*
Corporations Regulations	*Corporations Regulations 2001*
CPD	Continuous professional development
CPD year	Continuous professional development year
Criminal Code	*Criminal Code* contained in the *Criminal Code Act 1995*
education standards	Education and training standards
existing provider	A person who is a: • relevant provider or provides personal advice in a foreign country to retail clients at any time between 1 January 2016 and 1 January 2019; • is not banned, disqualified or suspended in Australia, or prohibited under the law of the foreign country from providing advice on 1 January 2019; and • who has passed the prescribed exam before 1 January 2021.
FOFA	Future of Financial Advice
FSI	Financial System Inquiry

Abbreviation	***Definition***
licensee	Australian Financial Services Licensee
limited-service time-sharing adviser	A relevant provider who does not provide personal advice on any relevant financial products apart from timeshare schemes and does not meet all of the education standards
PGPA	*Public Governance, Performance and Accountability Act 2013*
PJC	Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry	Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry
provisional relevant provider	A relevant provider who meets the degree requirement and has passed the exam but is still undertaking their professional year and is subject to additional supervision requirements
Register	Register of Relevant Providers established under new section 922Q of the Corporations Act
Register Regulations	Provisions relating to the Register of Relevant Providers in Schedule 8D of the *Corporations Regulations 2001*, inserted by the *Corporations Amendment (Register of Relevant Providers) Regulation 2015*
relevant financial product	A financial product other than a basic banking product, general insurance product, consumer credit insurance, or a combination of these products
relevant provider	A natural person who is authorised to provide personal advice to retail clients in relation to relevant financial products
RG 146	ASIC's Regulatory Guide 146 Licensing: Training of financial product advisers
RIS	Regulation Impact Statement
Scheme	Compliance scheme under which compliance with the Code is monitored and enforced
TASA	*Tax Agent Services Act 2009*
TPB	Tax Practitioners Board

General outline and financial impact

Overview

The Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 (Bill) makes amendments to the *Corporations Act 2001* (Corporations Act) to raise the education, training and ethical standards of financial advisers by requiring relevant providers (that is, financial advisers providing personal advice to retail clients on more complex financial products) to hold a degree (or higher or equivalent) qualification, undertake a professional year, pass an exam, undertake continuous professional development (CPD) and comply with a Code of Ethics (Code).

Transitional arrangements will apply to 'existing providers' (that is, those advisers who are relevant providers before the new requirements come into effect). A restriction on the use of the titles 'financial adviser' and 'financial planner' will also be introduced so that they can only be used by a person who is authorised to provide personal advice to retail clients on relevant financial products.

Date of effect: The substantive provisions in Schedule 1 commence on the earlier of a date set by proclamation or six months after the day the Bill receives Royal Assent. This is designed to ensure that the Bill commences at the same time as the Corporations Legislation Amendment (Professional Standards of Financial Advisers) Regulation 2017.

The preliminary sections commence from the date of Royal Assent.

Proposal announced: The proposal was announced by the Treasurer as part of the Government's response to the Financial System Inquiry (FSI) on 20 October 2015.

Financial impact:

2015-16	*2016-17*	*2017-18*	*2018-19*
0	0	0	0

Human rights implications: This Bill does not raise any human rights issues. See Chapter 8, *Statement of Compatibility with Human Rights*.

Compliance cost impact: The compliance costs associated with this Bill are $165.1 million.

Summary of regulation impact statement

Regulation impact on business

Impact: The reforms to raise the professional, ethical and education standards of financial advisers will have regulatory impacts on licensees, financial advisers and consumers.

Main points:

- The Government has been informed of the regulatory impacts of various reform options by the findings of two independent reviews – the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into proposals to lift the professional, ethical and education standards of financial advisers (PJC Inquiry) and the FSI – as well as through consultation with industry stakeholders.
- Recent examples of unethical behaviour and inappropriate financial advice have contributed to decreased trust and confidence in the financial services sector.
- A range of options for raising professional standards in the financial services industry were developed through the independent reviews and consultation in relation to the relevant educational and ethical standards, establishment of the standards body, and transitional arrangements for existing advisers.
- A review of the professional standards reforms will need to commence by 31 December 2026 and consider whether the new industry arrangements have provided better outcomes for consumers.

Chapter 1
Background

Outline of chapter

1.1 This chapter provides background to and an overview of the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 (Bill).

Context of amendments

1.2 The Bill makes amendments to the Corporations Act to raise the education, training and ethical standards of financial advisers by requiring relevant providers to hold a degree (or higher or equivalent) qualification, pass an exam, undertake a professional year, undertake continuous professional development and comply with a Code.

1.3 In recent years, numerous cases of inappropriate financial advice have had a negative impact on consumers' confidence in the financial services industry. This lack of trust has become a barrier to consumers seeking financial advice.

1.4 The financial services industry, consumer groups, the Government, and the Australian Securities and Investments Commission (ASIC) have raised concerns with the existing education and training requirements for financial advisers.

1.5 Currently, the Corporations Act imposes a general obligation on a licensee to ensure that its representatives are adequately trained and competent to provide financial services.

1.6 ASIC's Regulatory Guide 146 Licensing: Training of financial product advisers (RG 146) sets out the minimum knowledge, skill and education standards for financial advisers and provides information on how advisers can meet these standards.

1.7 The minimum standards required to provide personal advice on relevant financial products are:

- Australian Qualifications Framework level 5 ('Diploma' level) course units;

- specialist knowledge about the specific products an adviser provides advice on, and the markets in which they operate; and
- generic knowledge requirements, including training on the economic environment, the operation of financial markets and financial products.

1.8 Concerns have been raised that the current standards in RG 146 are not commensurate with the level required to ensure appropriate technical and professional competence. Further, in some instances, the existing minimum education and training standards have not been applied consistently across the industry, and the rigour and quality of some training courses is questionable.

1.9 In addition, the current educational framework for financial advisers does not include specific mandated requirements for:

- monitoring and supervising a new adviser to enable the adviser to develop the requisite minimum skills to provide sound financial advice;
- continuous professional development; or
- ethical and conduct standards.

1.10 Two reports have recently been completed that examined the professional standards in the financial services industry:

- on 19 December 2014, the Parliamentary Joint Committee on Corporations and Financial Services (PJC) reported on ways to lift the professional, ethical and education standards in the financial services industry; and
- the FSI released on 7 December 2014 made recommendations on lifting the competency of financial advisers to improve the quality of financial advice.

1.11 These reports found issues with the current education, ethical and professional standards of financial advisers, and recommended improvements.

1.12 On 25 March 2015, the Government released a consultation paper and called for submissions on ways to lift the professional standards of financial advisers. In releasing the paper, the then Assistant Treasurer noted that the PJC Inquiry and FSI 'make clear that the current regulatory arrangements are no longer sufficient to ensure high quality consumer outcomes and to maintain public confidence in the industry. It is now time

to put in place an enduring framework that raises the professional, ethical and education standards of advisers.'

1.13 Submissions closed on 7 May 2015, with the Government receiving over 50 submissions.

1.14 In its response to the FSI released on 20 October 2015, the Government agreed that the education, training and ethical standards for financial advisers needed to be raised in order to improve consumer outcomes and increase public confidence in the sector.

Summary of new law

1.15 The Bill includes the following amendments to the Corporations Act:

- new education and training standards (education standards) that must be met by individuals who provide personal advice on relevant financial products to retail clients (relevant providers);
- transitional arrangements that apply to existing advisers;
- a new requirement that relevant providers comply with a Code of Ethics (Code);
- an obligation on an Australian Financial Services Licensee (licensee) to ensure that its relevant providers comply with the new education standards, and are covered by a compliance scheme (Scheme);
- a restriction on the use of the titles 'financial adviser' and 'financial planner' so that they can only be used by persons who are relevant providers;
- amendments to the content requirements for the register of relevant providers (Register);
- the provision of appropriate sanctions where a relevant provider or licensee fails to comply with the new obligations; and
- recognition of a new standards body (Body) which will set the details of the new education standards and develop the Code.

Chapter 2
Education and training standards

Outline of chapter

2.1 Schedule 1 to the Bill amends the Corporations Act to require all relevant providers to comply with the education standards.

Summary of new law

2.2 An individual is prohibited from being authorised to provide personal advice to retail clients on relevant financial products if they do not satisfy three conditions, namely:

- complete a bachelor or higher or equivalent qualification (or satisfy the alternative arrangements for persons with degrees from overseas jurisdictions);
- pass an exam; and
- undertake at least one year of work and training (the professional year).

2.3 An individual who meets the qualification and exam conditions, but is still in the course of undertaking their professional year, may be authorised as a ***provisional relevant provider***. A provisional relevant provider is a relevant provider who is subject to additional requirements. The additional requirements include that they are supervised by a relevant provider, and that they do not use the terms 'financial adviser' or 'financial planner'.

2.4 Relevant providers also have an obligation to complete continuous professional development (CPD). Licensees have an ongoing obligation to ensure that their relevant providers comply with the CPD requirement.

2.5 The requirements for the degree, professional year, exam and CPD requirements are determined by the body.

2.6 Only an individual who is a relevant provider and has satisfied the three conditions (holds a degree, has passed the exam and has completed their professional year) can use the terms 'financial adviser' and 'financial planner'.

Comparison of key features of the new law and current law

New law	*Current law*
An individual must meet three conditions before they can be authorised to provide personal advice on relevant financial products to retail clients. The conditions are: • complete a bachelor or higher degree or equivalent qualification (or satisfy the alternative arrangement for persons with degrees from overseas jurisdictions); • pass an exam; and • undertake a professional year.	A licensee must ensure that its financial advisers are adequately trained and competent. The minimum standards required to provide personal advice on relevant financial products are: • Australian Qualifications Framework level 5 ('Diploma' level) course units; • specialist knowledge about the specific products an adviser provides advice on, and the markets in which they operate; and • generic knowledge requirements, including training on the economic environment, the operation of financial markets and financial products.
Provisional relevant providers: • An individual who meets the qualification and exam conditions, but is still is in the course of undertaking their professional year can only give advice to clients in accordance with the supervision arrangements.	No equivalent.
Relevant providers have an obligation to complete CPD.	No equivalent.
The requirements for the degree, professional year, exam and CPD are determined by the body.	ASIC sets the minimum standards (through ASIC guidance).
The use of the terms financial planner and financial adviser are restricted.	No equivalent.

Detailed explanation of new law

The concept of a relevant provider

2.7 The new standards apply to *relevant providers*. Relevant providers are natural persons who are authorised to provide personal advice to retail clients on relevant financial products. ***[Schedule 1, Part 1, item 1, section 910A]***

2.8 A relevant provider may be:

- a financial services licensee;
- an authorised representative of a financial services licensee;
- an employee of a financial services licensee;
- a director of a financial services licensee; or
- an employee or a director of a related body corporate of a financial services licensee.

[Schedule 1, Part 1, item 1, section 910A]

2.9 Relevant providers are listed on the Register.

2.10 A ***relevant financial product*** is a financial product other than a basic banking product, general insurance product, consumer credit insurance, or a combination of any of these products. ***[Schedule 1, Part 1, item 1, section 910A]***

2.11 The definition of relevant financial product in the new law replicates the definition in the provisions relating to the Register of Relevant Providers in Schedule 8D of the *Corporations Regulations 2001* (Corporations Regulations), inserted by the *Corporations Amendment (Register of Relevant Providers) Regulation 2015* (Register Regulations). The scope of relevant financial products is consistent with the definition in the Future of Financial Advice (FOFA) reforms in Part 7.7A of the Corporations Act.

2.12 The concept of a relevant financial product is broadly similar to ASIC's concept of a Tier 1 product. The main difference between the two concepts is that personal sickness and accident insurance are not relevant financial products (whereas ASIC considers them to be Tier 1 products).

Example 2.1: Persons who are not relevant providers

Dylan provides personal advice to wholesale clients on relevant financial products. He is not authorised to give advice to retail clients.

Effie is authorised to provide general advice to retail clients. She is not permitted to give personal advice which takes into account the client's objectives, financial situation or needs.

George works in a bank. He is only permitted to give advice on basic banking products.

Dylan, Effie and George are not relevant providers and they do not need to comply with the new standards.

Example 2.2: Persons who are relevant providers

Lucy is authorised to provide personal advice to retail clients on relevant financial products.

Lucy is a relevant provider and must comply with the new education standards and the ethical requirements.

The new education standards

2.13 The new law provides that all relevant providers must comply with four education and training standards. The relevant provisions are inserted in new Division 8A of Part 7.6 of the Corporations Act. ***[Schedule 1, Part 1, item 12, section 921B]***

First three education standards

2.14 The first three education standards are that the person must:

- complete a bachelor or higher degree, or equivalent qualification, approved by the body (which may include an international course or a course that is not delivered by a university provider);
- pass an exam approved by the body; and
- undertake at least a year of work and training (professional year) that meets the requirements set by the body.

[Schedule 1, Part 1, item 12, subsections 921B(2) to (4)]

2.15 The degree requirement operates differently for persons who have completed a foreign qualification. A person who has completed a foreign qualification may apply to the body for approval by lodging an

application in the form approved by the body. The body may then approve the foreign qualification as being in itself equivalent to the degree standard. Alternatively, if the body forms the view that the foreign qualification is not sufficient because it does not include a core subject, the body may require the person to complete one or more bridging courses. Once the person has completed the bridging course, they will be taken to have met the standard and do not need to reapply to the body. ***[Schedule 1, Part 1, item 12, paragraph 921B(2)(b) and section 921V]***

2.16 A person with a foreign qualification may apply to the Administrative Appeals Tribunal for merits review and the body must give the person written notice of this right. The review rights and notification rights are the same as those that apply to decisions made by ASIC in Part 9.4A of the existing law. ***[Schedule 1, Part 1, item 12, subsections 921V(7) and (8)]***

Example 2.3: Persons with Foreign Qualifications

Lucy completes a financial planning degree at a university in the United Kingdom and she studies a range of comparative law courses. In particular, Comparative Taxation and Superannuation Law analyses the taxation and superannuation systems in a range of Commonwealth countries, including Australia.

Harry completes a financial planning degree at a university in France. He does not select any comparative tax law courses.

Both Lucy and Harry have passed the exam and completed a professional year.

Lucy and Harry want to be authorised as relevant financial providers and apply to the body.

The body considers that Lucy's degree covers all required core subjects and approves the degree as being equivalent to the standard. Lucy has met all of the requirements to become authorised as a relevant provider and does not need to undertake any further study.

On the other hand, Harry did not study any superannuation or tax law course in his degree and the body does not consider his degree to be equivalent to the standard. The body advises Harry that he needs to complete a bridging course in Australian Superannuation and Tax Law.

Harry completes the bridging course in Australian Superannuation and Tax Law. He has now met the three preconditions for authorisation as a relevant provider.

Ongoing obligation

2.17 The fourth education standard is an obligation to meet the requirements for CPD set by the body ***[Schedule 1, Part 1, item 12, subsection 921B(5)].*** Relevant providers must ensure that they meet the CPD requirement ***[Schedule 1, Part 1, item 12, subsection 921D(1)]***.

2.18 Licensees are also required to ensure that their relevant providers meet the new CPD requirement. The new law achieves this by amending licensees' obligation to ensure that their financial advisers are 'adequately trained and competent' so that it includes an obligation to ensure that their relevant providers comply with the CPD requirements. ***[Schedule 1, Part 1, item 2, paragraph 912A(1)(f)]***

2.19 The CPD requirements will be determined by the body, but they will require the relevant provider to complete a certain number of hours of CPD in a year. A licensee's CPD year can start at any time during the calendar year. ***[Schedule 1, Part 1, items 1 and 12, section 910A, definition of 'CPD year', and subsection 921D(1)]***

2.20 The CPD standard does not apply to provisional relevant providers. However, provisional relevant providers are required to complete training during their professional year and the body, in setting the requirements for the professional year, may determine that this training should include undertaking CPD courses (see Chapter 5). ***[Schedule 1, Part 1, item 12, paragraph 921D(2)(a)]***

2.21 It may be the case that a provisional relevant provider completes their year of work and training part way through a CPD year, thereby meeting the requirements for becoming a relevant provider. The body may develop special CPD requirements for these circumstances.

2.22 A licensee must lodge a notice with ASIC if a relevant provider fails to comply with the CPD requirements. The notice must be provided within 30 business days after the end of each licensee's CPD year. ***[Schedule 1, Part 1, item 16, sections 922HB and 922L]***

2.23 ASIC's existing power allows it to ban a person if the person has not complied with the law by failing to complete their mandated CPD requirements. The limitations on ASIC's banning powers explained in paragraph 2.30 apply in this context as well, including that ASIC must form the view that it is in the public interest to exercise the banning power and weigh the public interest against the detriment to the individual.

Example 2.4: CPD Years

The body determines that all relevant providers must complete 10 hours of CPD a year. The body also determines that if a relevant provider starts work as a relevant provider part way through the year, their CPD requirements are pro-rated. For example, if a person starts halfway through the CPD year, they only need to complete 5 hours of CPD a year.

Licensee A's CPD year starts on 1 January and Licensee B's CPD year starts on 1 July.

Alex and Bob are relevant providers who work for Licensee A and Licensee B respectively. They both start work on 1 January 2020.

Alex and Bob complete the following number of hours of CPD:

- 1 February 2020 - 1 hour
- 1 August 2020 - 9 hours

Alex's CPD year runs from 1 January to 31 December. As he completed 10 hours of CPD in this period, he has met the CPD requirement.

Bob's CPD year runs from 1 July to 30 June. As his first CPD year is only six months (1 January to 30 June), he is only required to complete 5 CPD units in this time. As Bob only completes 1 CPD unit in his first six months, he has failed to meet the CPD requirement.

Licensee B must lodge a notice with ASIC advising it that Bob has failed to meet his CPD requirement.

Requirements for authorisation

2.24 A person may either be authorised as a:

- relevant provider who is permitted to give advice unsupervised; or
- provisional relevant provider who is subject to the supervision and other requirements discussed below at paragraph 2.31.

2.25 A licensee can only authorise a person as a relevant provider who is permitted to give advice unsupervised if the person has satisfied the first three education standards; that is, obtained a degree or higher or equivalent qualification, passed the exam and completed the professional year. A person can only be authorised to give advice as a ***provisional relevant provider*** if they have completed the first two education standards

(degree and exam requirements) and they are currently completing their professional year. These requirements apply to both individuals who are appointed as a representative and those hired as an employee or a director. ***[Schedule 1, Part 1, items 5 and 12, note at the end of subsection 916A(1), subsections 921C(2) and (4)]***

2.26 An authorisation is void if the relevant provider did not meet the preconditions at the time that they were authorised to provide personal advice on relevant financial products. ***[Schedule 1, Part 1, item 6, subsection 916A(3)]***

2.27 Similar prohibitions apply to sub-authorisations of individuals to provide financial services on behalf of licensees. Sub-authorisations that are contrary to this prohibition are void. ***[Schedule 1, Part 1, items 7-9 and 12, subsection 916B(2), subsection 916B(2A), note at the end of subsection 916B(3) and subsection 921C(3)]***

2.28 There are two options for persons completing their professional year. First, they may undertake work and training for the purposes of the professional year when they do not hold any authorisation to provide advice. For example, the person may perform appropriate paraplanning or research work as determined by the body. Second, if the person undertaking their professional year has obtained a degree or higher qualification and passed the exam, they may be authorised as a provisional relevant provider.

Example 2.5: Conditions for authorisation as a relevant provider and a provisional relevant provider

Donna and Zena both complete a degree that meets the standard set by the body. Donna also passes the exam but Zena only intends to attempt the exam next month. Both Donna and Zena want to commence their professional year and ask their licensee to authorise them as a provisional relevant provider.

Ben completes a degree and the professional year, but does not sit the exam. Ben also asks his licensee to authorise him to provide personal advice to retail clients.

The licensee may authorise Donna as a provisional relevant provider so that she is able to give advice on a supervised basis during her professional year.

The licensee must not authorise Zena until she has passed the exam. Zena may commence her professional year before passing the exam, but she is not permitted to give advice (even on a supervised basis) until she has passed the exam and been authorised as a provisional relevant provider.

The licensee must not authorise Ben as a relevant provider who is permitted to give advice unsupervised or as a provisional relevant provider who is permitted to give advice subject to the supervision requirement. This is because Ben has not met the exam precondition.

2.29 A licensee cannot be a provisional relevant provider and they cannot be authorised by ASIC until they have completed their professional year. This is because sole person licensees cannot set up the systems and arrangements to ensure that they are supervised by a more senior person within their own firm, and conflicts of interest may arise if they are supervised by a person who has been authorised by another licensee. ***[Schedule 1, Part 1, items 4 and 12, section 910A, note at the end of subsection 913B(1) and subsection 921C(1)]***

2.30 ASIC has the power to ban a person if it has reason to believe that the person was authorised when they had not met the three conditions ***[Schedule 1, Part 1, item 10, paragraph 920A(1)(de)]***. Section 920 of the Corporations Act already gives ASIC the power to ban a person who fails to comply with the financial services law and this power could be used to ban a person who authorised somebody who had not met the preconditions. The usual limitations on ASIC's power to take administrative action apply, including that ASIC must form the view that it is in the public interest to exercise the banning power and weigh the public interest against the detriment to the individual.

Example 2.6: ASIC's banning powers

Jerry advises Millie, who is a sole person licensee, that he has been awarded a degree, completed the professional year and passed the exam. Jerry provides supporting documentation to Millie and Millie inspects the documents closely to ensure that they are genuine.

Based on her inspections, Millie is satisfied that Jerry meets the three preconditions. She authorises him to provide personal advice to retail clients on relevant financial products.

Jerry's university subsequently advises Millie that Jerry does not hold a degree. Shortly after Jerry's degree was awarded, he was found guilty of academic misconduct and his degree qualification was removed.

ASIC has the power to ban Jerry because he did not meet the three preconditions. ASIC also has the power to cancel Millie's licence because she improperly authorised Jerry. ASIC's banning powers are subject to the usual limitations, including that ASIC must form the view that it is in the public interest to exercise the banning power.

ASIC decides to ban Jerry. It forms the view that allowing Jerry to remain in the industry poses a significant risk to retail clients because

Jerry has a history of acting dishonestly and does not hold the required qualifications.

However, ASIC forms the view that cancelling Millie's licence would not be in the public interest and would cause significant detriment to Millie. Accordingly, ASIC allows Millie to continue to work as a financial adviser.

Provisional relevant providers – additional requirements

Meaning of provisional relevant providers and supervisors

2.31 A ***provisional relevant provider*** is a special type of relevant provider who can only provide personal advice to retail clients on a supervised basis during their professional year. ***[Schedule 1, Part 1, items 1 and 12, sections 910A and 921F]***

2.32 The supervisor must be a person who is a relevant provider but is not a provisional relevant provider or a limited-service time-sharing adviser. Further information on limited-service time-sharing advisers is provided later in this chapter. ***[Schedule 1, Part 1, item 12, subsection 921F(2)]***

2.33 Existing providers are relevant providers and may supervise provisional relevant providers during the transition period. ***[Schedule 1, Part 2, item 27, section 1546A]***

2.34 A provisional relevant provider may have multiple supervisors, either in succession or at the same time. A relevant provider is only responsible for a provisional relevant provider's engagement with a client if they were the supervisor for that particular engagement. ***[Schedule 1, Part 1, item 12, subsection 921F(6)]***

Example 2.7: Provisional relevant providers – successive supervisors

Amanda has been authorised as a provisional relevant provider.

Amanda is first told to assist Bob, a relevant provider who is preparing advice for Yolanda.

Amanda and Bob finalise the statement of advice for Yolanda. Bob then takes annual leave and Amanda is assigned to work with Cathie, another relevant provider who is preparing advice for Zak.

Bob is responsible for supervising Amanda in relation to the advice prepared for Yolanda. Cathie is responsible for supervising Amanda in relation to the advice given to Zak.

Example 2.8: Provisional relevant providers – joint supervisors

Large Licensees authorises Danna as a provisional relevant provider. Max and Jane are relevant providers at Large Licensees. Max specialises in superannuation and Jane's speciality is managed investment schemes.

A client (client X) rings Max to seek superannuation advice and Max tells Danna to prepare the advice for client X.

Jane is drafting a statement of advice for another client (client Y) and asks Danna to finish the advice.

A third client (client Z) seeks a particularly complex piece of advice that covers both superannuation and managed investment schemes. Max and Jane agree to work together to provide the advice. Again, Max and Jane ask Danna to help.

Max is Danna's supervisor in relation to the advice given to client X. Jane is responsible for supervising Danna in relation to the advice given to client Y. With respect to the advice given to client Z, both Max and Jane are the relevant supervisors.

Supervisors' responsibilities

2.35 The supervision requirements are that a supervisor:

- must ensure that the provisional relevant provider is appropriately supervised;
- must approve, in writing, the statement of advice provided to the client;
- is taken to have provided the advice; and
- must ensure that the client is provided with certain disclosures about the provisional relevant provider's role and expertise.

[Schedule 1, Part 1, item 12, subsections 921F(3) to (6)]

2.36 These requirements are designed to ensure that there is a direct relationship between a supervisor and the provisional relevant provider. While licensees' back-office vetting processes are important safeguards, they cannot substitute for a direct supervision and mentoring relationship between two individuals (the supervisor and the provisional relevant provider).

2.37 There is little detail about the first requirement (the requirement for appropriate supervision) in the Corporations Act. Instead, the Corporations Act merely sets out the general principle and the body will

be responsible for 'unfolding' the general principle and providing further details or guidance about what amounts to appropriate supervision. This approach ensures that specific technical requirements are set by the body with specialist knowledge and the requirements can be more easily updated when practices change. ***[Schedule 1, Part 1, item 12, subsections 921F(3) and 921U(5)]***

2.38 The second requirement is that the supervisor must approve, in writing, any statement of advice provided by the provisional relevant provider to the client. The supervisor does not need to approve oral advice, but oral advice is generally followed by a written statement of advice and this statement of advice must be approved. ***[Schedule 1, Part 1, item 12, subsection 921F(4)]***

2.39 The third supervision rule states that the supervisor is taken to have provided all advice (written and oral) given by the provisional relevant provider. The supervisor will be taken to have provided the advice even if he was not aware that the advice had been given or of the content of the advice. The only exception is if a person can establish that he or she was not in fact the supervisor at the relevant point in time, for example, if the person was on leave and another person had been appointed to supervise the provisional relevant provider. ***[Schedule 1, Part 1, item 12, subsection 921F(5)]***

2.40 The fact that the supervisor is deemed to have given the advice does not affect, or in any way diminish, the responsibility of the licensee under existing provisions in the Corporations Act, such as Division 6 (liability of licensees for representatives) or section 961L (licensees required to take reasonable steps to ensure that its representatives comply with the best interests duty).

Example 2.9: Supervision requirements – supervisor taken to have provided advice

Ahmed is an experienced adviser at Excellent Licensee. Beatrice, a provisional relevant provider who has just completed a financial planning degree and passed the exam, starts work at Excellent Licensees. Ahmed is assigned as her supervisor.

Excellent Licensees does not have any systems in place to ensure that supervisors adequately monitor their provisional relevant providers. Some supervisors, including Ahmed, allow their provisional relevant providers to work unsupervised, and do not attend any meetings with them or read their statements of advice. The more diligent advisers have raised their concerns with Excellent Licensees' management but Excellent Licensees has disregarded their concerns.

Beatrice prepares a statement of advice and asks Ahmed to review it. Ahmed states that he is busy and tells Beatrice to just send the advice

to the client. The advice recommends that the client make certain investments which are not in the client's best interests.

Ahmed did not 'provide' any of Beatrice's advice, but he is taken to have provided Beatrice's advice under the new law because he was her supervisor. As a result, Ahmed is in breach of the duty to act in the client's best interests under section 961B. He is also in breach of the supervision requirements under the new law.

Excellent Licensees is also in breach of its obligation to take reasonable steps to ensure that its relevant providers comply with the best interests duty and the supervision requirements in the new law.

2.41 The final supervision requirement is that the supervisor must ensure that certain disclosures are provided to a client who is being advised by a provisional relevant provider. The information that must be provided is:

- the name of the person(s) supervising the provisional relevant provider;
- that the provisional relevant provider is currently undertaking their professional year, and
- that the supervisor, or supervisors, are taken to have provided advice given by the provisional relevant provider.

[Schedule 1, Part 1, item 12, subsection 921F(6)]

2.42 Similar disclosures in other regimes, such as the disclosures in the *Tax Agent Services Act 2009* (TASA), are provided with standard disclaimers in Statements of Advice. The new law does not, however, mandate this approach.

2.43 If one supervisor is replaced by another supervisor, the new supervisor will be responsible for advising the client. It is not necessary for the supervisor to personally provide the above disclosures and it is sufficient if the supervisor knows that another person has provided the disclosures.

Example 2.10: Supervision requirements – disclosure requirements

Alex is a provisional relevant provider who is assisting Carolyn (a qualified relevant provider) to provide advice to client X.

Carolyn emails client X to notify the client that Alex will be assisting. The email states that Alex is a provisional relevant provider undertaking his professional year. It also states that Carolyn is

supervising Alex and that she will be responsible for the statement of advice.

Carolyn goes on maternity leave and Danny becomes Alex's new supervisor and takes over the work for client X. Before leaving, Carolyn provides Danny with all of the documents for client X's files, including her email about Alex.

Danny sees Carolyn's email about Alex and does not provide any further disclosures to client X.

Danny does not need to advise client X that Alex, who is a provisional relevant provider undertaking his professional year, is assisting because he can rely on Carolyn's email. However, Danny must ensure that client X is informed that he is replacing Carolyn as the new supervisor and that he will now be responsible for the statement of advice.

Provisional relevant providers' responsibilities

2.44 A provisional relevant provider must not obstruct or hinder a supervisor from providing appropriate supervision. ***[Schedule 1, Part 1, item 12, subsection 921F(7)]***

Example 2.11: Supervision requirements – Appropriate supervision

Amy is a provisional relevant provider who is supervised by Bob.

Bob diligently supervises Amy, in accordance with the requirements set by the body. He attends all meetings with her, checks her drafts and signs off on all advice that Amy prepares.

Amy becomes frustrated with Bob's close supervision and feels that she should be allowed to give advice without any supervision. When a new client contacts Amy, Amy pretends that she has completed her professional year. She does not tell Bob about the telephone call and secretly prepares the advice without telling anyone else at the organisation. She then provides the advice to the client without first giving it to Bob to review.

Amy has breached her obligation as she has obstructed or hindered her supervisor from ensuring she is appropriately supervised.

Penalties for non-compliance

2.45 ASIC may ban a supervisor or a provisional relevant provider who fails to comply with the supervision requirements ***[Schedule 1, Part 1, item 10, paragraph 920A(1)(db))]***. ASIC may also ban a natural person licensee if one of its provisional relevant providers or supervisors fails to comply with the supervision requirements ***[Schedule 1, Part 1, item 10,***

paragraphs 920A(1)(dc) and (dd))]. The usual limitations on ASIC's power to take administrative action apply, including that ASIC must form the view that it is in the public interest to exercise the banning power and weigh the public interest against the detriment to the individual.

Role of the body

2.46 The body may provide further detail on how the supervision requirements should work in practice or set additional requirements. ***[Schedule 1, Part 1, item 12, note under subsection 921F(6) and subsection 921U(5)]***

2.47 The body must also develop a common term for provisional relevant providers. The term should be meaningful to consumers and industry. It may include the protected words ('financial adviser' or 'financial planner'), provided the protected words are appropriately qualified. Examples of possible terms are 'provisional financial adviser', 'conditional financial adviser' and 'restricted financial adviser'. ***[Schedule 1, Part 1, items 12 and 17, subparagraph 921U(2)(a)(v) and subsection 923C(9)]***

Exemption for timeshare schemes

2.48 The new law exempts relevant providers who only provide advice on timeshare schemes (and any financial products that are not classified as relevant financial products) from the education standards. These persons only need to meet the education standards that apply to financial products that are not relevant financial products. ***[Schedule 1, Part 1, item 12, subsection 921C(5) and paragraph 921D(2)(b)]***

2.49 The exemption reflects the fact that timeshare arrangements are inherently different to other relevant financial products. Timeshare interests are not sold as financial investments that generate a return, but as lifestyle products or prepayments for holidays.

2.50 The exemption does not apply to the ethical requirements in new Subdivision B of Division 8A which apply to all relevant providers. This means that persons who are authorised to provide personal advice on timeshare schemes to retail clients must comply with the Code developed by the body and subscribe to a scheme. ***[Schedule 1, Part 1, item 12, section 921E]***

2.51 A timeshare provider that does not meet all of the standards is a *limited-service time-sharing adviser*. Limited-service time-sharing advisers are prohibited from using the terms 'financial adviser' and 'financial planner' or supervising provisional relevant providers. ***[Schedule 1, Part 1, items 1, 12 and 17, section 910A, paragraph 921F(2)(d) and subparagraphs 923C(1)(c)(iii) and(2)(d)(iii)]***

Example 2.12: Exemption for limited-service time-sharing advisers

Assume that Wayne, Xanthe, Yaakov and Zan all provide personal advice to retail clients.

Wayne and Xanthe only provide advice on timeshare schemes.

Yaakov provides advice on timeshare schemes and general insurance products. (General insurance products are not relevant financial products.)

Zan provides advice on timeshare schemes and relevant financial products.

Wayne, Xanthe and Yaakov are not required to meet the new education standards as they do not provide advice on any relevant financial products apart from timeshare schemes. Nevertheless, Xanthe decides to meet the new education requirements – she obtains a degree, passes the exam and completes the professional year.

Zan is required to meet the new education requirement and has done so.

Wayne and Yaakov are limited-service time-sharing advisers. They cannot use a protected title or supervise a provisional relevant provider.

Xanthe and Zan are not limited-service time-sharing advisers. They may use a protected title or supervise a provisional relevant provider.

Wayne, Xanthe, Yaakov and Zan must all comply with the Code and subscribe to a scheme. The ethical requirements apply to all relevant providers, including limited-service time-sharing advisers.

ASIC's exemption and modification powers

2.52 Section 926A of the existing law gives ASIC the power to exempt:

- a person or class of persons; or
- a financial product or class of financial products

from any provision in Part 7.6 of the Corporations Act except those in Divisions 4 and 8. This power applies to the new standards which are inserted into Divisions 8A, 8B, 8C, 9 and 10.

2.53 ASIC's exemption and modification power also extends to the transitional arrangements for existing providers in Part 10.23A. ***[Schedule 1, Part 1, item 18, paragraph 926A(6)(b)]***

2.54 Exemptions and declarations which apply to a class of persons or financial products are legislative instruments and accordingly, they are disallowable and sunset. Exemptions and declarations which do not relate to a class are notifiable instruments, that is, they must be published but they are not disallowable and do not sunset.

2.55 ASIC has used its exemption and modification power to provide administrative relief in circumstances where the strict operation of the Corporations Act produces unintended or unreasonable outcomes. As the financial services sector is undergoing innovation and change, it is appropriate that ASIC's exemption and modifications power applies to the new standards.

2.56 ASIC's power is subject to a number of safeguards, including administrative review by the Administrative Appeals Tribunal, judicial review and consideration in appropriate circumstances by the Commonwealth Ombudsman.

Restriction on use of terms 'financial adviser' and 'financial planner'

2.57 The new law restricts the use of the titles 'financial adviser' and 'financial planner', terms of like import and combinations of words which include these terms, to individuals who are relevant providers. ***[Schedule 1, Part 1, item 17, subsections 923C(1), (2) and (8)]***

2.58 Individuals who are relevant providers may choose to use either the title 'financial adviser' or 'financial planner', or both.

2.59 Limited-service time-sharing advisers, who have not met the degree, professional year and exam requirements, are not permitted to use a protected term. ***[Schedule 1, Part 1, item 17, subparagraphs 923C(1)(c)(iii) and (2)(d)(iii)]***

2.60 Provisional relevant providers, who have not completed their professional year, are not permitted to use the protected terms. They may use the term developed by the standards body, even if it includes the words 'financial adviser' or 'financial planner'. ***[Schedule 1, Part 1, item 17, subparagraphs 923C(1)(c)(ii) and (2)(d)(ii), and subsection 923C(9)]***

2.61 Protecting the titles 'financial adviser' and 'financial planner', and like terms, will allow retail clients to quickly distinguish the individuals who satisfy the new standards and are authorised to provide personal advice on relevant financial products to retail clients.

2.62 The new law exempts persons who provide advice to wholesale clients or provide in-house advice to their employer. These persons will be permitted to use a restricted term in the ordinary course of activities associated with providing such advice. Showing that advice was provided to wholesale or in-house clients is accordingly a defence against an allegation of a breach of the prohibition on using the protected terms. Under the Criminal Code a defendant wishing to rely on the exemptions bears an evidential burden in relation to proving that the exemption applies. The standard of proof is only to provide evidence that 'suggests a reasonable possibility' that the exemption applies (Criminal Code subsections 13.3(3) and (6)). ***[Schedule 1, Part 1, item 17, subsections 923C(3) to (6)]***

2.63 Persons who provide advice to wholesale clients or in-house clients are not permitted to use a protected title in the course of giving advice to retail clients. ***[Schedule 1, Part 1, item 17, subsections 923C(3) to (6)]***

2.64 The rationale for allowing persons who provide advice to wholesale and in-house clients to use the protected terms in the course of activities associated with providing the in-house or wholesale advice is that these reforms are designed to protect retail clients. Wholesale and in-house clients do not require the same level of protection as retail clients because they are considered to be better informed, more sophisticated and better able to assess the risks involved in financial transactions.

2.65 The penalty for contravention of this section is 10 penalty units for each day a restricted term is unlawfully used. ***[Schedule 1, Part 1, items 17 and 20, subsection 923C(7) and sections 269AAA and 269AAB of the table in Schedule 3]***

Example 2.13: Restriction on the use of the terms 'financial adviser' and 'financial planner'

Raj is only authorised to give advice on basic banking products.

Raj calls himself a 'financial advice expert'. He prints business cards with this title.

Raj has used a term of like import to 'financial adviser' when he is not authorised to provide personal advice to retail clients on relevant financial products. He has committed an offence and is liable to pay a penalty of 10 penalty units per day that he uses the restricted title.

Example 2.14: Use of protected terms by provisional relevant providers

Assume that the body decides that provisional relevant providers are to use the term 'conditional financial adviser'.

Amanda, Bob and Cathie are provisional relevant providers. Amanda, Bob and Cathie all have business cards which they provide to clients.

Amanda's business card states that she is a 'conditional financial adviser'.

Amanda is not in breach of the new restrictions on the use of protected terms because she has used the term developed by the standards body.

Bob's business card states that he is a 'new financial adviser' and Cathie's business card states that she is a 'financial adviser in training'.

Bob and Cathie are in breach of the new law because they have used the restricted words when they had not completed their professional year and they did not use the term set by the new body.

Example 2.15: Exemption for persons providing advice to wholesale clients

Charlie is authorised to provide advice to wholesale clients. He is not authorised to provide personal advice to retail clients on relevant financial products and he has not passed the exam.

Charlie may use the titles 'financial adviser' and/or 'financial planner' in relation to providing advice to wholesale clients. However, Charlie must not use a protected title when talking to retail clients.

2.66 The restrictions on the use of the terms 'financial adviser' and 'financial planner' do not affect a licensee's obligation to have compensation arrangements in place under section 912B. Section 912B states that the licensee will only be required to compensate a customer if the customer suffers loss or damage because of a breach of the law. ***[Schedule 1, Part 1, item 17, subsection 923C(10)]***

Example 2.16: Compensation arrangements not affected by restriction of title

Raj calls himself a 'financial advice expert' when he is not authorised to give advice on relevant financial products. This is a breach of the new law.

Mandy sees that Raj is a 'financial advice expert' and decides to obtain financial advice about her basic banking product from him. Raj gives advice and it is sound.

Mandy later becomes aware that Raj improperly used a restricted title and seeks compensation from Raj's licensee.

Raj's licensee is not required to pay any compensation because Mandy did not suffer any loss or damage because of Raj's improper use of a restricted title.

Application and transitional provisions

2.67 The amendments in this Chapter will apply from 1 January 2019. ***[Schedule 1, Part 2, item 27, sections 1546C, 1546D and 1546E]***

2.68 Different requirements apply to individuals who were financial advisers listed on the Register between 1 January 2016 and 1 January 2019. These are set out in Chapter 6.

Chapter 3
Ethical standards

Outline of chapter

3.1 Schedule 1 to the Bill amends the Corporations Act to set out the ethical standards for relevant providers.

Summary of new law

3.2 The new law requires all relevant providers to comply with the Code made by the body and to be covered by a scheme which monitors and enforces the relevant provider's compliance with the Code.

3.3 Schemes are developed by monitoring bodies and approved by ASIC. Schemes must be independently reviewed at least every five years.

Comparison of key features of the new law and current law

New law	*Current law*
Relevant providers are required to comply with the Code made by the body.	No equivalent.
Compliance with the Code is monitored and enforced under schemes approved by ASIC.	No equivalent.
Licensees must ensure that their relevant providers are covered by a scheme.	No equivalent.
Monitoring bodies must monitor and enforce compliance with the Code. They have the power to carry out investigations and obligations to notify the licensee and ASIC of any failures to comply with the Code.	No equivalent.
A scheme must be reviewed by an independent person at least every five years and made publicly available.	No equivalent.

Detailed explanation of new law

The Code

3.4 A relevant provider must comply with the Code. The same Code applies to all relevant providers. ***[Schedule 1, Part 1, item 12, section 921E]***

3.5 The Code sets out the ethical obligations that apply to relevant providers. These ethical obligations go above the legal requirements in the law and are designed to encourage higher standards of behaviour and professionalism in the financial services industry.

3.6 A function of the body is to develop the Code ***[Schedule 1, Part 1, item 12, paragraph 921U(2)(b)]***. The Code will commence at the time determined by the body, but it must not commence earlier than 30 days after it is registered on the Federal Register of Legislation. ***[Schedule 1, Part 1, item 12, subsection 921W(1)]***

3.7 The body must review the Code regularly and revise it where necessary. ***[Schedule 1, Part 1, item 12, subsection 921U(1)]***

3.8 When setting and reviewing the Code, the body must undertake consultation ***[Schedule 1, Part 1, item 12, subsections 921U(6) to (8)]***. Further information about the body's consultation requirements are set out in Chapter 5.

3.9 As the Code is a legislative instrument, it will sunset after 10 years under the *Legislation Act 2003*. This may mean that the body chooses to remake the Code when it undertakes its regular reviews.

3.10 If the body changes the Code, the body may determine the appropriate transition period that would apply to the changes. However, any change may not take effect earlier than 30 days after it is registered. ***[Schedule 1, Part 1, item 12, subsection 921W(2)]***

Schemes

Definition of a scheme and monitoring body

3.11 Compliance with the Code is monitored and enforced by monitoring bodies in accordance with schemes that are approved by ASIC. A scheme has a name and includes information about the process for resolving disputes between the monitoring body and a relevant provider, and the process for customers to make complaints. ***[Schedule 1, Part 1, item 12, section 921G]***

3.12 A scheme must also name the monitoring body for the scheme. The monitoring body is responsible for seeking ASIC's approval of the scheme, and monitoring and enforcing compliance with the Code in accordance with the scheme. ***[Schedule 1, Part 1, item 12, subsection 921G(1) and section 921K]***

3.13 A monitoring body may be any entity, apart from a licensee or an associate of a licensee. The reason that licensees are prohibited from being monitoring bodies is that licensees already have an obligation to ensure that their financial advisers act honestly and fairly under the general licensing conditions in current paragraph 912A(1)(a) of the Corporations Act and the aim of the new framework is to ensure that there is an additional body that monitors compliance with the Code. ***[Schedule 1, Part 1, item 12, subsection 921G(3)]***

3.14 One example of a person that may develop a scheme is a professional association. Several professional associations already administer ethical codes and professional associations have an important role to play in raising ethical standards across the industry.

3.15 Other independent third parties may also wish to develop schemes. The power for persons other than professional associations to offer schemes preserves relevant providers' freedom to choose whether to join a professional association. If all relevant providers were required to be covered by a professional association's scheme, the relevant provider would effectively be forced to join a professional association. This would reduce efficiency and competition.

Requirement for relevant providers to be covered by a scheme

3.16 Licensees must ensure that relevant providers authorised on their behalf are covered by a scheme. Licensees that are relevant providers (for example sole operators) must also ensure that they are covered by a scheme. A licensee that fails to meet this obligation is in breach of its licensing conditions. ***[Schedule 1, Part 1, item 12, subsection 921H(1)]***

3.17 It is not necessary for all of a licensee's relevant providers to be covered by the same scheme.

Example 3.1: One scheme covers all of the licensee's advisers

> Remote Australia Financial Advice is a small licensee with 20 employees, all of whom are members of the Ethical Financial Advisers Association. Some of the employees are also members of the 123 Professional Association.

The Ethical Financial Advisers Association and the 123 Professional Association both have schemes approved by ASIC. After internal discussion, all of Remote Australia Financial Advice's employees agree to be covered by the Ethical Financial Advisers Association's scheme.

Remote Australia Financial Advice notifies ASIC that its financial advisers are covered by the Ethical Financial Advisers Association's scheme.

Remote Australia Financial Advice has complied with its obligation to ensure that all of its financial advisers are covered by a scheme.

Example 3.2: Multiple schemes cover the licensee's advisers

Amazing Fin Advice has 50 financial advisers. Twenty advisers are members of 123 Professional Association. Thirty advisers are members of MYW Professional Association. Both these associations have schemes approved by ASIC.

Amazing Fin Advice notifies ASIC that its financial advisers are covered by 123 Professional Association and MYW Professional Association's schemes.

Amazing Fin Advice has complied with its obligation to subscribe its financial advisers to a scheme. It is not necessary for all of its financial advisers to be covered by the same scheme.

3.18 A licensee has 30 business days from the date of authorisation to ensure that a new relevant provider, or itself when it is a relevant provider, is covered by a scheme. ***[Schedule 1, Part 1, item 12, paragraph 921H(2)(a)]***

3.19 If a relevant provider ceases to be covered by a scheme, the licensee has 30 business days to ensure that the relevant provider subscribes to another scheme ***[Schedule 1, Part 1, item 12, paragraph 921H(2)(b)]***. A relevant provider may cease to be covered by a scheme because:

- a relevant provider who is covered by a professional association's scheme does not renew their membership of the professional association; or
- ASIC revokes its approval of the scheme.

3.20 A scheme ***covers*** a relevant provider if:

- ASIC has approved the scheme;
- the licensee has notified ASIC that the relevant provider is covered by the scheme; and

- if the monitoring body is a professional association, the relevant provider is a member of the professional association.

[Schedule 1, Part 1, item 12, section 921J]

3.21 The licensee must meet the requirement to notify ASIC about the scheme that covers the relevant provider by providing a notice in accordance with new section 922D (for a new relevant provider) or new section 922H (for a change in the name of the scheme for a relevant provider who is already authorised). Please see Chapter 4 of this explanatory memorandum for further information about the notice provisions. ***[Schedule 1, Part 1, item 12, subsection 921J(2)]***

3.22 A relevant provider continues to be covered by a scheme even if he or she starts working for a different licensee.

Example 3.3: Grace period for subscribing a relevant provider to a scheme

DEF Licensees authorises a new relevant provider, Mark, on 1 January 2025.

DEF Licensees has a grace period of 30 business days to subscribe Mark to a scheme.

DEF Licensees must also notify ASIC that it has authorised a new relevant provider within 30 business days of 1 January 2025 under new section 922D.

Mark is a member of the Great Financial Advisers Association. Great Financial Advisers Association has a scheme which has been approved by ASIC. Mark tells DEF Licensees that he wishes to be covered by Great Financial Advisers Association's scheme.

Within 30 business days of 1 January 2025, DEF Licensees lodges a notice under new section 922D to advise ASIC that it has authorised Mark. It includes the name of Mark's scheme in the notice.

ASIC's approval of schemes

Applications for approval

3.23 A monitoring body may apply to ASIC for approval of its scheme ***[Schedule 1, Part 1, item 12, subsection 921K(1)]***. The application to ASIC must set out:

- the name of the monitoring body for the scheme;

- the arrangements for monitoring compliance with the Code by relevant providers covered by the scheme, including details about the monitoring body;
- the sanctions for failing to comply with the Code;
- the arrangements for resolving disputes between the monitoring body for the scheme and relevant providers covered by the scheme;
- the arrangements for making a complaint to the monitoring body for the scheme; and
- evidence that the monitoring body has sufficient resources and expertise to appropriately monitor and enforce compliance with the Code.

[Schedule 1, Part 1, item 12, subsections 921K(2) and (3)]

3.24 ASIC may only approve a scheme if it is satisfied that compliance with the Code will be 'appropriately monitored and enforced' under the scheme ***[Schedule 1, Part 1, item 12, subsection 921K(4)]***. One of the factors that ASIC must consider is whether the monitoring body has sufficient resources and expertise to appropriately monitor and enforce compliance ***[Schedule 1, Part 1, item 12, subsection 921K(4)]***. Other factors that ASIC may need to consider include:

- the financial, technological and human resources of the monitoring body and where those resources are situated;
- the number of advisers that the scheme is designed to cover;
- whether the location of the advisers that are designed to be covered by the scheme matches the location of the monitoring body's resources;
- the consultation procedures that the monitoring body intends to use before making any changes to the scheme;
- the processes and resources that the monitoring body intends to use for administration, data management and reporting (including its capacity to appropriately handle personal information), and to fairly and effectively monitor compliance with the Code and the scheme's rules and decisions;
- whether the monitoring body outsources any of its functions and how responsibility for these functions is maintained; and

- the competence of the monitoring body's existing staff and its intended training procedures.

3.25 ASIC may impose conditions on its approval of a scheme. For example, ASIC may state that a scheme cannot cover more than a certain number of relevant providers or can only cover relevant providers whose principal place of business is within a certain number of kilometres from the monitoring body. ***[Schedule 1, Part 1, item 12, subsection 921K(5)]***

3.26 ASIC is required to review applications and notify the applicant of its decision to approve, or refuse to approve, a scheme (and any conditions imposed) within a reasonable period of time. Once all of the initial schemes have been approved and implemented, a reasonable period of time will generally be three months. ***[Schedule 1, Part 1, item 12, subsection 921K(6)]***

ASIC's power to review schemes

3.27 ASIC may review schemes after it has approved them. Monitoring bodies have an obligation to provide ASIC with any information or documents that ASIC requests within the time period specified by ASIC. The time period specified by ASIC must be reasonable in the circumstances. ASIC may consider the amount and ease of accessing the information, the potential consequences of a delay and any other relevant factors when determining an appropriate time period. ***[Schedule 1, Part 1, item 12, section 921Q]***

3.28 ASIC's review power is limited to reviewing the enforcement and operation of schemes, and determining whether the scheme is effective to ensure that compliance with the Code is appropriately monitored and enforced. If the monitoring body is a professional association, ASIC does not have a general power to review the wider operations of a monitoring body in its capacity as a professional association.

Example 3.4: ASIC's power to request information

Fantastic Professional Association has a scheme approved by ASIC. ASIC is informed that Fantastic Professional Association is experiencing financial difficulties, has made over half of its staff redundant and does not have sufficient money to service its IT systems.

ASIC may request information from Fantastic Professional Association about its financial resources and capacity to appropriately monitor and enforce the Code.

ASIC would not be permitted to request information relating to the content of the technical CPD courses that Fantastic Professional

Association runs for its members. This information is not relevant to Fantastic Professional Association's capacity to appropriately monitor and enforce the Code under its scheme.

3.29 ASIC may revoke its approval of the scheme, vary a condition to make it more onerous, or impose a new condition if it is satisfied that compliance with the scheme is not being 'appropriately monitored and enforced' or that the monitoring body does not have sufficient resources or expertise to appropriately monitor and enforce compliance. ***[Schedule 1, Part 1, item 12, paragraphs 921K(7)(a) and (c), and subsection 921K(9)]***

3.30 ASIC may also revoke its approval of the scheme, vary a condition or impose a new condition if the monitoring body:

- does not comply with a request from ASIC to provide it with information;
- fails to notify ASIC of a significant change to the monitoring body's resources or expertise; or
- fails to notify ASIC or the licensee of a relevant provider's failure to comply with the Code.

[Schedule 1, Part 1, item 12, paragraph 921K(7)(b) and subsection 921K(9)]

3.31 ASIC can only revoke its approval, vary a condition or impose a new condition once it has:

- provided written notice setting out its reasons for considering revoking the approval, varying the condition or imposing a new condition;
- provided the monitoring body with 90 business days to make submissions to ASIC about the possible revocation, variation or new condition; and
- considered any submissions made.

[Schedule 1, Part 1, item 12, subsection 921K(8)]

3.32 ASIC may also remove or vary a condition that it has already imposed to make it less onerous if it satisfied that the condition is no longer necessary to ensure that compliance with the Code is effectively monitored and enforced. ASIC must notify the monitoring body within a reasonable period of time if it removes or varies a condition in these circumstances. ***[Schedule 1, Part 1, item 12, subsections 921K(10) and (11)]***

Modification of the Code or a scheme

3.33 From time to time, the standards body may update the Code. Changes to the Code do not require monitoring bodies to seek re-approval for their scheme.

3.34 Monitoring bodies may also wish to modify their schemes. In this case, monitoring bodies must notify ASIC of the proposed change. A change to a scheme could include a change in the sanctions for non-compliance, a change to the name of the monitoring body or a minor change (such as a typographical correction). ***[Schedule 1, Part 1, item 12, subsection 921R(1)]***

3.35 The notification to ASIC must set out the text of the proposed modification and contain an explanation of the purpose of the proposed modification. ***[Schedule 1, Part 1, item 12, subsection 921R(2)]***

3.36 ASIC is not required to approve the changes but it has 28 days to disallow all or part of the proposed change. ASIC may disallow a change if it is not satisfied that compliance with the Code will be appropriately monitored and enforced under the modified scheme. If the proposal is to change the monitoring body, ASIC may also disallow the change if it is satisfied that the monitoring body does not have sufficient resources or expertise to appropriately monitor or enforce compliance with the Code. ***[Schedule 1, Part 1, item 12, subsection 921R(3)]***

3.37 If ASIC disallows all or part of the change, the disallowed part will not take effect. If ASIC does not take any action within the 28 day period, the proposed change will take effect at the end of the period. ***[Schedule 1, Part 1, item 12, subsections 921R(4) to (6)]***

3.38 ASIC's decision to disallow a change is subject to merits review under existing section 1317D of the Corporations Act.

3.39 The notification requirement ensures that ASIC has oversight of changes to schemes. It is broadly modelled on sections 793D and 793E of the Corporations Act, but unlike those sections the change will only take effect at the end of the 28-day disallowance period. This ensures that persons are not adversely affected by an improper change in the 28 day period before the change is disallowed by ASIC, and that the effect of inappropriate changes does not need to be 'undone' when ASIC invalidates the change.

Changes to the resources or expertise of a monitoring body

3.40 A monitoring body must also notify ASIC if there is a significant reduction in the resources or expertise that the monitoring body

has available to monitor and enforce compliance with the Code. In general, a monitoring body should notify ASIC if there is a significant change in any of the factors that ASIC considered at the time of approving the scheme (see the list of factors in paragraph 3.24). The question whether a particular reduction is significant is a question of fact and it will depend on various factors, such as:

- the monitoring body's existing level of resources and expertise;
- the monitoring body's workload and any changes in its workload; and
- the size of the reduction in the monitoring body's resources.

[Schedule 1, Part 1, item 12, section 921T]

3.41 If a monitoring body fails to notify ASIC, ASIC may revoke its approval of the scheme. ***[Schedule 1, Part 1, item 12, section 921K]***

3.42 ASIC may also revoke its approval, after receiving information about a change in the resources or expertise of a monitoring body, if ASIC forms the view that the monitoring body is no longer able to appropriately monitor and enforce compliance with the Code. Alternatively ASIC may place additional conditions on the monitoring body. ***[Schedule 1, Part 1, item 12, section 921K]***

Example 3.5: Changes to a monitoring body's resources

Alpha and Beta are both monitoring bodies.

Alpha employs 200 staff. Alpha decides that it has surplus resources and makes 5 of its more junior staff redundant. Alpha is not required to notify ASIC of the change because it is not significant.

Beta employs 7 staff. It also decides to reduce its staffing level by 5 employs. Beta must notify ASIC of the change as it is significant for Beta, given that Beta has a smaller number of staff.

Failure to comply with the Code

3.43 Monitoring bodies must monitor and enforce compliance with the Code. They are responsible for investigating possible failures to comply with the Code and determining whether a failure to comply with the Code has occurred. ***[Schedule 1, Part 1, item 12, subsections 921G(2) and 921L(1)]***

3.44 The monitoring body must notify a relevant provider if it becomes aware that the relevant provider has or may have breached the Code. Failure to do so is an offence with a penalty of 10 penalty units. ***[Schedule 1, Part 1, item 12, subsections 921L(2) and 921M(1)]***

3.45 To assist monitoring bodies to investigate failures to comply with the Code, there is an obligation on licensees and relevant providers to provide the monitoring body with information, documents or other reasonable assistance. The penalty for failing to comply with the monitoring body's request for assistance is 10 penalty units. ***[Schedule 1, Part 1, item 12, subsections 921L(3) and 921M(2)]***

3.46 Monitoring bodies must conclude an investigation within a reasonable period after becoming aware of the failure or possible failure to comply with the Code. A monitoring body will generally become aware of a possible failure to comply when a customer makes a complaint or the monitoring body makes its own enquiries. An investigation is taken to have been concluded when the monitoring body determines, in writing, that there has or has not been a failure to comply. The investigation period does not include the period when the monitoring body deliberates on the appropriate sanction, or an appeal is heard. The penalty for a monitoring body failing to complete an investigation within a reasonable period is 10 penalty units. ***[Schedule 1, Part 1, item 12, subsection 921L(1), paragraph 921L(5)(b) and subsection 921M(1)]***

3.47 In the financial services sector, there has been a history of financial advisers moving from one licensee to another licensee when potential wrongdoing has been uncovered in order to escape investigation. To prevent this from occurring, relevant providers are prohibited from changing schemes while they are under investigation. The new law states that a relevant provider must not cause a notice to be lodged with ASIC relating to a relevant provider's scheme when the relevant provider is under investigation. Notifying ASIC is one of the preconditions for a relevant provider to be covered by a scheme. ***[Schedule 1, Part 1, item 12, section 921J and subsection 921L(4)]***

3.48 The penalty for a relevant provider who changes schemes while under investigation is 10 penalty units. ***[Schedule 1, Part 1, item 12, subsection 921M(3)]***

3.49 If a relevant provider who is under investigation wishes to change schemes, the relevant provider may notify the monitoring body of its intention. Once the monitoring body has received such a notice, the monitoring body must conclude its investigation within 160 days and failing to do so is an offence with a penalty of 10 penalty units. This ensures that relevant providers' freedom to change schemes (which is restricted during an investigation) is not limited for an unnecessary period of time. ***[Schedule 1, Part 1, item 12, paragraph 921L(5)(a) and subsection 921M(1)]***

Example 3.6: Timeframe for completing investigations

Mark is a relevant provider authorised by GHI Licensees. He is a member of the Perfect Financial Advice Association's approved scheme.

Following a number of disagreements with his licensee Mark decides on 1 January 2024 to move to JKL Licensees. He informs GHI Licensees of his decision and comes to an agreement that he will cease his employment with GHI Licensees on 31 March 2024. He also agrees with JKL Licensees that he will as part of the move become a member of the Ethical Financial Advice Association and be covered by their approved scheme.

On 15 January 2024, Mark is informed by his existing monitoring body, the Perfect Financial Advice Association, that a complaint has been received and that he is being investigated for a possible breach of the Code. Mark immediately informs the Perfect Financial Advice Association that he wishes to change schemes, and the notice is received by the Perfect Financial Advice Association on the same day, that is, 15 January 2024.

Perfect Financial Advice Association now has 160 days, counting from 15 January 2024, to complete their investigation and issue a written determination to Mark.

Mark receives the written determination on 13 April, and is then free to change schemes.

3.50 The new law states that a monitoring body's finding that a relevant provider has complied or failed to comply with the Code is not a legislative instrument under section 8 of the *Legislation Act 2003*. This subsection is merely included to assist readers. It is not an actual exemption from that provision. ***[Schedule 1, Part 1, item 12, subsection 921L(6)]***

Consequences of failing to comply with the Code

3.51 The sanctions for a relevant provider who fails to comply with the Code will be set out in the Code and/or the scheme. The sanctions may involve soft sanctions, such as a warning, additional training, additional supervision, or revoking the relevant provider's membership of the professional association and/or compliance scheme.

3.52 ASIC does not have the power to ban a person for failing to comply with the Code in circumstances where the failure to comply does not also amount to a breach of another legal requirement. Nevertheless, ASIC may take compliance with the Code into account when determining whether it is in the public interest to ban a relevant provider for a breach of another legal requirement. ***[Schedule 1, Part 1, item 11, paragraph 920A(1)(e)]***

3.53 ASIC may choose to investigate a failure to comply with the Code further if it believes that the conduct also amounted to a breach of another obligation in the Corporations Act. To assist ASIC to investigate a breach, the monitoring body must provide ASIC with any information or documents about the scheme that ASIC requests. ***[Schedule 1, Part 1, item 12, section 921Q]***

Notifications of failures to comply with the Code

3.54 Monitoring bodies must notify ASIC of details of failures to comply with the Code and the sanctions imposed. The notice must be provided within 30 business days of the monitoring body determining that a failure to comply has occurred and within 30 business days of the sanction being imposed. If a breach and the related sanction are within 30 business days of each other, a single notice may be provided within 30 business days of the later of the two events. This means that monitoring bodies may choose to combine both notices into a single form and thereby reduce their lodgement fees. ***[Schedule 1, Part 1, item 16, section 922HD]***

3.55 The penalty for a monitoring body that fails to notify ASIC within the specified period is 50 penalty units. ***[Schedule 1, Part 1, item 16, section 922M]***

3.56 Monitoring bodies must also notify the licensee of the details of relevant failures to comply with the Code and the sanctions imposed. This notification must be provided within 30 business days of the monitoring body determining that the licensee has failed to comply or imposing the sanction. There are no further formal conditions imposed on this notification requirement, and monitoring bodies are accordingly free to select the most convenient and cost-effective method of notifying licensees. It is therefore also unnecessary to include a provision allowing notices to be combined, as is the case for the notification provided to ASIC (see subsection 922HD(3)). ***[Schedule 1, Part 1, item 12, section 921N]***

3.57 Information about an adviser's failure to comply with the Code and the sanctions imposed will be noted on the Register. Further information about the Register is in Chapter 4 of this explanatory memorandum. ***[Schedule 1, Part 1, item 16, subsection 922Q(1) and paragraph 922Q(2)(r)]***

Example 3.7: Failure to comply with the Code

Bob is a financial adviser at Remote Australia Financial Advice. Bob is a member of Ethical Financial Advisers Association and is covered by its scheme.

One of Bob's customers contacts Ethical Financial Advisers Association on 1 July and alleges that Bob has failed to comply with the Code.

Ethical Financial Advisers Association makes its own inquiries. On 6 July, Ethical Financial Advisers Association forms the view that Bob has failed to comply with the Code. While the failure to comply is concerning, Ethical Financial Advisers Association is confident that Bob has not breached any other obligations in the Corporations Act.

Ethical Financial Advisers Association decides that Bob's failure to comply with the Code is not sufficiently serious to remove him from the association. Instead it issues Bob with a formal warning on 25 July.

Ethical Financial Advisers Association is required to notify Remote Australia Financial Advice of:

- Bob's failure to comply with the Code within 30 business days of 6 July; and
- the sanction imposed within 30 business day of 25 July.

Ethical Financial Advisers Association must notify ASIC of the finding that there was a failure to comply with the Code and the sanction imposed. As the sanction was imposed within 30 business days of the finding that there was a breach, the notices may be combined into a single notice. This notice must be provided within 30 business days of 25 July.

Effect of legal proceedings on a related matter

3.58 The same course of conduct may amount to a failure to comply with the Code and a breach of another substantive requirement in the Corporations Act or the criminal law. In these situations, the monitoring body may only make findings about the failure to comply with the ethical aspects in the Code and apply 'soft sanctions'. Monitoring bodies are not courts, nor vested with judicial power. They cannot determine whether there has been a breach of any of the requirements in the Corporations Act (apart from the obligation to comply with the Code), cancel or suspend licences, or impose any civil or criminal sanctions. If the monitoring body suspects that there may be a breach of any obligations other than the ethical aspects in the Code, the monitoring body should refer the matter, for investigation, to ASIC or the appropriate investigative authorities.

3.59 The monitoring body is not required to delay its findings until any related court proceedings have concluded. Findings made by a monitoring body do not determine the matter before the court and the court must make its own decision on the issue before it, after considering

admissible evidence and applying the relevant standard of proof. Potential reasons why a court cannot rely on the monitoring body's findings are:

- the court is considering whether a different obligation has been breached;
- a higher standard of proof applies to the court proceedings;
- evidence considered by the monitoring body may be inadmissible in court because the rules of evidence apply; and
- evidence that was not available to the monitoring body may be produced in court, for example (but not limited to), the availability of discovery procedures in civil proceedings or the execution of a search warrant in criminal proceedings.

Publication of the Code and scheme

3.60 The monitoring body must ensure that the scheme is publicly available. This requirement ensures that relevant providers covered by the scheme are aware of the monitoring and enforcement procedures and consumers can access information about the process for lodging complaints. ***[Schedule 1, Part 1, item 12, section 921P]***

3.61 The penalty for failing to publish a scheme is 10 penalty units. ***[Schedule 1, Part 1, item 12, subsection 921P(2)]***

3.62 It is intended that a professional association or third party can publish the Code along with any additional ethical obligations it has developed for its members if applicable. The monitoring body or third party is able to brand the Code with its logo, but it must not amend any of the provisions in the Code.

Example 3.8: Publication of the Code

The Ethical Advisers Association has developed its own code of ethics which contains additional ethical obligations for its members. The Ethical Advisers Association wishes to publish its code and the Code developed by the body in the same document.

The Ethical Advisers Association may publish the body's Code in section 1 of the document and its code in section 2 of the document.

However, the Ethical Advisers Association may not publish one provision of its code, followed by one provision of the body's Code, followed by another provision of its code etc. This is because the body's Code must be published in its entirety and provisions of the body's Code cannot be separated.

Independent reviews

3.63 The monitoring body must cause the scheme to be reviewed by an independent person at least every five years. The independent person cannot be an associate of the monitoring body, a person covered by a scheme, a licensee whose advisers are covered by the scheme, or a professional association whose members are covered by the scheme. ***[Schedule 1, Part 1, item 12, section 921S]***

3.64 The monitoring body must arrange for a review even if ASIC completes a review within the five year period. This is because ASIC's reviews are undertaken at ASIC's own instigation, and are not directly caused to occur by the monitoring body.

3.65 The monitoring body must also ensure that the review is made publicly available as soon as reasonably practical after it is completed. It must also provide a copy of the review to ASIC. ***[Schedule 1, Part 1, item 12, subsection 921S(3)]***

Information sharing with the Tax Practitioners Board

3.66 The new law amends the TASA to ensure that the Tax Practitioners Board (TPB) and monitoring bodies are able to share information.

3.67 The TPB is responsible for enforcing compliance with the Code of Professional Conduct in Part 3 of the TASA. The Code of Professional Conduct in the TASA applies to tax agents, BAS agents and tax financial advisers. Many of the approximately 20,000 tax financial advisers are also relevant providers, and as such they will be bound by both the new body's Code and the Code of Professional Conduct in the TASA.

3.68 The TPB will be required to notify the relevant monitoring body of the outcome of all investigations which relate to persons who are also relevant providers. ***[Schedule 1, Part 1, items 21 to 23, subparagraphs 60-125(8)(c)(iv), (c)(v) and (d)(iv)]***

3.69 The TPB also has the power to share any information, including official information, with monitoring bodies if the information is provided to monitoring bodies for the purposes of monitoring or enforcing compliance with the new Code. This is achieved by creating an exemption from the general prohibition on the TPB disclosing official information in existing section 70-35 of the TASA. The general prohibition on 'on-disclosing' official TPB information to another party in existing section 70-45 of the TASA applies to monitoring bodies. Further, the monitoring body must only use or disclose information from the TPB for

the purposes of monitoring and enforcing compliance with the Code. Improper use or disclosure of the information is an offence which carries a penalty of 10 penalty units. ***[Schedule 1, Part 1, item 12, subsection 921L(7) and item 25, subsection 70-40(3AA)]***

3.70 Monitoring bodies are not required to notify the TPB of the outcome of their investigations, but if the monitoring body finds that there was a failure to comply with the Code, the information must be provided to ASIC and made available on the Register.

3.71 The TPB has the power to request additional information from monitoring bodies about the:

- monitoring body's compliance scheme; or
- the compliance of a relevant provider with the Code or the Code of Professional Conduct in the TASA.

[Schedule 1, Part 1, item 24, section 70-34]

3.72 The TPB must provide the request in writing and specify the period within which the monitoring body must comply with the request. The period must be at least 14 days. Monitoring bodies are required to provide the information within the timeframe requested by the TPB and a note under new section 70-34 makes it clear that the provision of this information is authorised under the Australian Privacy Principles. ***[Schedule 1, Part 1, item 24, note 2 under subsection 70-34(2) and subsection 70-34(3)]***

3.73 The existing law already gives the TPB the power to request information from private persons when it is undertaking a formal investigation in section 60-100. The new law extends this power by removing the requirement for the TPB to be undertaking a formal investigation. In this way, the new law is designed to allow for more expedient information sharing between monitoring bodies and the TPB.

3.74 The penalties for failing to provide the information requested by the TPB under the new law are the same as the administrative penalties that currently apply to breaches of section 60-100 of the TASA.

3.75 Amendments have also been made to the dictionary in subsection 90-1(1) of the TASA to ensure that all terms have the same meaning as in the Corporations Act. ***[Schedule 1, Part 1, item 26, subsection 90-1(1)]***

Application and transitional provisions

3.76 The obligations to comply with the Code and report failures to comply apply from 1 January 2020. ***[Schedule 1, Part 2, item 27, section 1546F]***

3.77 Relevant providers must subscribe to a scheme by 15 November 2019, which is 30 business days before 1 January 2020. Once the 30 business day grace period is taken into account, this means that all relevant providers should be covered by a scheme from 1 January 2020. ***[Schedule 1, Part 2, item 27, subsections 1546G(1), (2) and (5)]***

3.78 The provisions relating to ASIC's approvals of schemes, power to disallow proposed modifications to schemes and information gathering powers apply from commencement. This ensures that monitoring bodies may develop their schemes and seek ASIC's approval before the requirement for relevant providers to be covered by a scheme applies. ***[Schedule 1, Part 2, item 27, subsection 1546G(3)]***

3.79 Schemes must be made publicly available by 1 January 2020. The provisions relating to investigations of a possible failure to comply with the Code also apply from 1 January 2020. ***[Schedule 1, Part 2, item 27, subsection 1546G(4)]***

Chapter 4
Register of relevant providers

Outline of chapter

4.1 Schedule 1 to the Bill moves the Register Regulations to the Corporations Act. It also makes several amendments to ensure that the Register displays information about relevant providers' compliance with the new standards.

Comparison of key features of the new law and current law

New law	*Current law*
Licensees must notify ASIC when a person becomes a relevant provider. The notice must state: • the relevant provider's name and date of birth; • the relevant provider's principal place of business; • the licensee and its license number; • whether the person is a provisional relevant provider, and if so, the day they commenced their professional year; • the year the relevant provider started giving personal advice, their product classes and recent advising history (except for provisional relevant providers); • for sub-authorisation, the authorised representative's name and number; • the relevant provider's education qualifications and membership of professional associations with approved schemes; and • the name of the scheme that covers the relevant provider. Licensees must also notify ASIC if any of this information changes.	Licensees must notify ASIC when a person becomes a relevant provider. The notice must state: • the relevant provider's name and date of birth; • the licensee and its license number; • the year the relevant provider started giving personal advice, their product classes and recent advising history; • for sub-authorisation, the authorised representative's name and number; and • the relevant provider's education qualifications and membership of professional associations. Licensees must also notify ASIC if any of this information changes.

New law	*Current law*
ASIC must be notified if a relevant provider fails to comply with the CPD requirements or the Code.	No equivalent.
ASIC must maintain the Register and include a range of prescribed information.	ASIC must maintain the Register and include a range of prescribed information.

Summary of new law

4.2 The Bill moves the provisions relating to the Register from the Corporations Regulations to the Corporations Act.

4.3 It also amends the provisions that were in the Corporations Regulations so that the Register displays the following additional information:

- the relevant provider's principal place of business;
- whether the relevant provider is a provisional relevant provider who is subject to additional supervision requirements;
- the name of the scheme which monitors and enforces the relevant provider's compliance with the Code;
- breaches of the Code and the sanctions imposed;
- whether a relevant provider has failed to comply with the CPD requirement; and
- only those professional associations which have schemes approved by ASIC.

4.4 Most of the additional information will be included on the Register by 1 January 2020.

Detailed explanation of new law

Restructure of Division 9 (relating to registers)

4.5 Existing Division 9 of Part 7.6 of the Corporations Act contains a number of general provisions concerning registers kept by ASIC that relate to financial services. Division 9 is currently modified by regulations 7.6.06A, 7.6.06B and 7.6.06C and Schedule 8D of the Corporations

Regulations. These parts of the Corporations Regulations insert a number of provisions relating to a register of relevant providers kept by ASIC.

4.6 The general provisions in existing Division 9 are moved into new Subdivision A of Division 9. ***[Schedule 1, Part 1, item 13, before section 922A]***

4.7 The provisions relating specifically to the Register of Relevant Providers are moved into new Subdivisions B and C ***[Schedule 1, Part 1, item 16, sections 922D to 922S]***. New Subdivision B contains licensees' obligation to notify ASIC about:

- a person who becomes a relevant provider; and
- changes in a matter, that is, changes in the details of persons who already are relevant providers.

[Schedule 1, Part 1, items 1 and 16, sections 910A and 922D to 922P]

4.8 New Subdivision C sets out the information that ASIC must display on the Register ***[Schedule 1, Part 1, item 16, sections 922Q to 922S].*** The cross-reference to ASIC maintaining a Register in the note has also been updated ***[Schedule 1, Part 1, item 14, note after subsection 922A(2)]***.

Amendments to the General Provisions Concerning Registers

4.9 Several amendments have been made to the general provisions relating to registers in new Subdivision A.

4.10 Current section 922B allows a person to search registers established under this division and states that the regulations may prescribe fees that the person must pay to ASIC in connection with such searches. This section is simplified and a reference to section 1274A is included which provides more detail about how such searches may be made. ***[Schedule 1, Part 1, item 15, section 922B]***

4.11 A further amendment is made to subsection 1274A(2) which prevents a person searching a hard copy of the register, for example, in order to obtain a person's birth date and place of birth. This amendment protects the privacy rights of persons whose information is on the Register. ***[Schedule 1, Part 1, item 19, subsection 1274A(2)]***

The Register of Relevant Providers

Reporting requirements for new authorisations

4.12 Licensees must notify ASIC of the following when they become a relevant provider or authorise a person who is not a licensee to become a relevant provider:

- the relevant provider's name, principal place of business and date of birth;
- the licensee and its license number;
- the year the relevant provider started giving personal advice, their product classes and recent advising history;
- relevant ABNs;
- for sub-authorisation, the authorised representative's name and number;
- the relevant provider's education qualifications and membership of professional associations; and
- the name of the scheme that covers the relevant provider.

[Schedule 1, Part 1, item 16, sections 922D to 922G]

4.13 ASIC must also be notified if one of the above details changes or if a body starts or ceases to control a licensee. ***[Schedule 1, Part 1, item 16, sections 922H, 922J and 922K]***

4.14 These requirements are largely the same as in the old law in the Corporations Regulations. The only changes are:

- ASIC must be notified of the relevant provider's principal place of business ***[Schedule 1, Part 1, item 16, paragraphs 922E(1)(b) and 922F(1)(b)]***. This will make it easier for customers to identify all of the relevant providers within a specific area.
- ASIC must be notified of the relevant provider's compliance scheme ***[Schedule 1, Part 1, item 16, paragraphs 922E(1)(i) and 922F(1)(n)]***. This will allow consumers to verify that a particular relevant provider has signed up to a scheme and easily check where to make complaints.

- The notice requirements relating to membership of professional associations have been enhanced so that only professional associations with approved schemes are recorded on the Register. ***[Schedule 1, Part 1, item 16, subparagraphs 922E(1)(h)(ii) and 922F(1)(m)(ii)]***

- Minor amendments have been made to the sections relating to notifications about a person who starts or ceases to control a body corporate licensee to ensure that the sections draw on the definition of 'control' in section 50AA of the Corporations Act. As the Corporations Act only defines the noun 'control' (not the verb 'control'), the sections have been amended to use 'control' as a noun (rather than as a verb). ***[Schedule 1, Part 1, item 16, sections 922J and 922K]***

4.15 A licensee does not need to notify ASIC of any information that has already been provided to ASIC by another licensee. It is sufficient if the first licensee (A) believes on reasonable grounds that another licensee (B) has notified ASIC. As this information is peculiarly within licensee A's knowledge, licensee A bears an evidential burden of proof. This exemption currently exists in the Corporations Regulations and the new law does not change the party who bears the evidential burden of proof. ***[Schedule 1, Part 1, item 16, subsections 922F(3) and 922M(2)]***

Example 4.1: Information provided by another licensee

Anna is a relevant provider who is authorised to provide advice for both BigBank Licensee and LittleBank Licensee. Anna is listed on the Register.

Anna completes a further degree and BigBank Licensee lodges a notice advising ASIC of the change in a matter. BigBank Licensee emails LittleBank Licensee to advise LittleBank Licensee that the required notice has been lodged.

LittleBank Licensee is not required to also lodge a notice with ASIC.

4.16 A licensee is not required to provide any information to ASIC about whether a relevant provider has passed the exam. This is because a person cannot be authorised as a relevant provider unless they have passed the exam. It therefore follows that every relevant provider on the Register will have passed the exam.

4.17 The notification requirements are modified in several respects for provisional relevant providers.

- Licensees must notify ASIC that the person is a provisional relevant provider and the year that the individual commenced the professional year.

- Licensees are not required to provide the year that supervised advice was first given (because the person is not yet permitted to give unsupervised advice).
- Licensees may choose not to notify ASIC of the provisional relevant provider's specific product authorisations. This reflects the fact that provisional relevant providers may not be authorised to provide personal advice with respect to specific products, and they may not have decided which financial products they wish to focus on.

[Schedule 1, Part 1, item 16, paragraphs 922F(1)(f) to (h) and subsection 922F(4)]

4.18 Licensees must notify ASIC when a provisional relevant provider completes their professional year and becomes authorised to give advice unsupervised. The notification will need to state the year that the person becomes so authorised and their product classes. Clarification is provided that such amendments constitute a change in a matter that must be notified to ASIC. ***[Schedule 1, Part 1, item 16, section 922H]***

Reporting obligations for the CPD requirement

4.19 The new law inserts additional notification provisions relating to the CPD requirements. Licensees must notify ASIC of the start date of their CPD year. A notice must also be given when licensees change the start date of their CPD year. Licensees may not change the start date of their CPD year more than once every 12 months. ***[Schedule 1, Part 1, item 16, section 922HA]***

4.20 A licensee must lodge a notice with ASIC if a relevant provider fails to complete their CPD during a particular CPD year. The notice must state that the relevant provider has not complied with the requirements in section 921D during that CPD year, and must be provided within 30 business days after the end of the CPD year. ***[Schedule 1, Part 1, item 16, sections 922HB and 922L]***

4.21 The legislation only requires licensees to report failures to comply with respect to time periods during which the relevant provider was authorised by the licensee. Where a relevant provider becomes authorised at some point during the licensee's CPD year, the licensee is not required to report non-compliance with regard to periods before it authorised the relevant provider. Nevertheless, the body has a broad power to determine the requirements which relate to relevant providers whose CPD year changes, and the body's power extends to making a requirement which modifies the operation of the Corporations Act. For further information about this power, please see Chapter 5 of the

explanatory memorandum. ***[Schedule 1, Part 1, item 12, subsections 921U(3) and (4)]***

4.22 There is no requirement to lodge a notice with ASIC if the relevant provider has met the CPD requirement.

4.23 The licensee must retain evidence of the CPD undertaken for a year after the relevant CPD year ends. The penalty for failing to retain evidence is 50 penalty units ***[Schedule 1, Part 1, item 16, section 922HC].*** The licensee does not need to provide the evidence to ASIC, unless ASIC uses its existing power to seek it.

Reporting obligations relating to failures to comply with the Code

4.24 If a relevant provider fails to comply with the Code or is sanctioned for failing to comply with the Code, the monitoring body must notify ASIC. The notice must include the name of the relevant provider and the licensee, details of the failure to comply and details of any sanction imposed. ***[Schedule 1, Part 1, item 16, section 922HD]***

4.25 The monitoring body must also notify the licensee of a relevant provider's failure to comply with the Code. ***[Schedule 1, Part 1, item 12, section 921N]***

4.26 Notices must be provided within 30 business days of the monitoring body becoming satisfied that a failure to comply has occurred or imposing the sanction. If a breach and the related sanction are determined within 30 business days of each other, a single notice may be provided within 30 business days of the later of the two events. ***[Schedule 1, Part 1, item 16, subsections 922HD(1) and (3), and section 922L]***

Example 4.2: Notifications for failures to comply with the Code

Margot is a member of the Financial Advisers Professional Association (FAPA) and subscribes to FAPA's scheme.

Margot fails to comply with the Code on 7 August. FAPA becomes aware that Margot may have failed to comply with the Code on 11 August. FAPA commences an investigation into Margot's conduct and concludes that Margot has failed to comply with the Code on 13 August.

FAPA has 30 business days from 13 August to notify ASIC and Margot's licensee about Margot's failure to comply with the Code. If FAPA imposes a sanction for the failure to comply within the 30 business days, it may submit a combined notice for the breach and the sanction. If a sanction is imposed later than 30 business days after 13 August, FAPA will have to submit a separate sanction notification.

Forms of notices, penalties and miscellaneous provisions

4.27 The requirements concerning the form and when and by whom a notice must be lodged largely replicate the former requirements for notices provided under the Register Regulations. Notices must still be in the prescribed form, lodged within 30 business days of the prescribed event and lodged by the licensee ***[Schedule 1, Part 1, item 16, sections 922L and 922P].*** The only exception is notices relating to failures to comply with the Code which are lodged by the monitoring body ***[Schedule 1, Part 1, item 16, subsection 922L(6)].***

4.28 The penalty for failing to notify ASIC is 50 penalty units ***[Schedule 1, Part 1, item 16, section 922M]***. A licensee may also commit an offence under section 1308 of the Corporations Act and section 137.1 of the Criminal Code if they knowingly give false or misleading information to ASIC.

4.29 Failure to lodge a notice is not deemed to be a continuing offence. In other words, the penalty of 50 penalty units is only applied once and is not applied on each day that the person fails to comply with the lodgement requirement. ***[Schedule 1, Part 1, item 16, subsection 922M(3)]***

4.30 Licensees may ask their relevant providers for information so that the licensee can comply with its notice requirements. The relevant provider is required to provide the information to the licensee within a period that will allow the licensee to comply with its notice obligations. ***[Schedule 1, Part 1, item 16, section 922N]***

New content included on the Register

4.31 Changes are made to the prescribed content of the Register to ensure that it includes information about relevant providers' qualifications, scheme, and any failures to comply with the CPD requirement or the Code. ***[Schedule 1, Part 1, item 16, subsection 922Q(2)]***

4.32 Importantly, the Register must also state whether a relevant provider is a provisional relevant provider and, if so, include a statement that the relevant provider is only allowed to provide advice subject to the supervision requirements set out in Subdivision C of Division 8A of Part 7.6 (see Chapter 2 for details). The Register will also include the date a provisional relevant provider starts the professional year. ***[Schedule 1, Part 1, item 16, paragraph 922Q(2)(j)]***

4.33 ASIC continues to have the power to allocate a unique number to a relevant provider and to correct an error in or omission from the Register. ***[Schedule 1, Part 1, item 16, sections 922R and 922S]***

Application and transitional provisions

Continuation of existing reporting obligations

4.34 The application provisions for the Register ensure the continuation of the Register maintained under the Register Regulations ***[Schedule 1, Part 1, item 27, subsection 1546T(4) and section 1546V]***. Any relevant provider numbers given before commencement under the Register Regulations are also taken to have been given under the new law ***[Schedule 1, Part 2, item 27, section 1546U]***. This ensures that licensees do not need to re-lodge information that is already recorded on the Register and ASIC does not need to reissue relevant provider numbers.

4.35 The notice obligations generally apply to authorisations or changes that occur:

- after commencement ***[Schedule 1, Part 2, item 27, paragraphs 1546J(a), 1546P(a), 1546Q(a) and 1546R(a)]***; and

- before commencement, where a notice had not been lodged before commencement. ***[Schedule 1, Part 2, item 27, paragraphs 1546J(b), 1546P(b), 1546Q(b) and 1546R(b)]***.

4.36 Similarly, relevant providers' obligation to comply with their licensees' requests for information under new section 922N applies to requests made after commencement and requests made before commencement where the information had not been provided immediately before commencement. ***[Schedule 1, Part 2, item 27, section 1546S]***

4.37 The retrospective operation of the new law with respect to authorisations, changes and requests for information made before commencement does not have an adverse effect on the rights or liabilities of any person. This is because there was already a similar obligation to provide information under the Register Regulations.

New reporting obligations

4.38 The Bill introduces additional reporting obligations to ensure that the Register displays information about whether the relevant provider has satisfied the new requirements. These new reporting obligations have different application dates which are summarised in the table and discussed in more detail in the following paragraphs.

Table 4.1: Summary of application dates for additional reporting obligations

*Date**	*Reporting Obligation*	*Applies to:*	*Section*
1 Jan 2019	Notify ASIC if a relevant provider has not complied with the CPD requirement	New and existing advisers	1546E
1 Jan 2019	Notify ASIC of the CPD year start date, and any changes to that date	N/A	1546E(1), 1546X
1 Jan 2019	Notify ASIC within 30 business days of becoming aware that the relevant provider has passed the exam	Existing advisers	1546Y
1 Jan 2019	Notify ASIC if a person is a provisional relevant provider and, if so, the date that they started their professional year	New advisers, and advisers who were banned, disqualified or suspended on 1 January 2019	1546N, 1546Z
15 Nov 2019	Notify ASIC of the scheme that covers the relevant provider	New and existing advisers	1546G, 1546W
15 Nov 2019	Notices are only to include professional associations with approved schemes	New advisers	1546L, 1546M
1 Jan 2020	Notify ASIC of breaches of the Code (there is also an obligation to notify the licensee)	New and existing advisers	1546F
15 Nov 2019	Notify ASIC of the relevant provider's principal place of business	New and existing advisers	1546K, 1546W

* ASIC is required to update the Register from roughly the same date as the corresponding obligation on the licensee commences, with the exception of information about whether the adviser has passed the exam. ASIC is not required to include any information on the Register about whether an adviser has passed the exam. ***[Schedule 1, Part 2, item 27, section 1546T]***

CPD

4.39 The licensees' obligation to notify ASIC about the licensee's CPD year and whether any of their relevant providers have failed to comply with the CPD requirement applies from 1 January 2019. The licensee's obligation to retain evidence about compliance with the CPD requirement, and the relevant provider's obligation to provide the licensee

with information about CPD completed during the CPD year also apply from 1 January 2019. ***[Schedule 1, Part 2, item 27, subsections 1546E(2) to (5)]***

4.40 With regard to the first year to which the CPD reporting requirement applies, many licensees will have CPD years that do not begin on 1 January 2019. It is intended that their relevant providers should be required to complete an appropriate amount of CPD to cover the period from 1 January 2019 to the start of the licensee's CPD year. The standards body is given the power to set requirements with respect to the amount and nature of CPD that has to be done during this period. ***[Schedule 1, Part 1, item 12, section 921U]***

4.41 The obligation to notify ASIC about the start date of the licensee's CPD year applies from 1 January 2019, as does the obligation to inform ASIC if the licensee changes its CPD year start date. Notification of a licensee's CPD year start date must also be provided with respect to licences granted before 1 January 2019. A licensee who lodges a notice with their CPD year start date under the transitional arrangement must also notify ASIC of any changes to their start date in the usual way. ***[Schedule 1, Part 2, item 27, subsection 1546E(1) and section 1546X]***

Exam

4.42 Licensees need to lodge information about whether existing advisers have passed the exam within 30 business days of becoming aware that the adviser has passed the exam. ***[Schedule 1, Part 2, item 27, section 1546Y]***

4.43 There is no equivalent reporting obligation or application provision for new advisers because they cannot be listed on the Register until they have passed the exam.

Professional year

4.44 For new advisers, licensees must notify ASIC whether a person is a provisional relevant provider and the date they started the professional year from 1 January 2019. This application date is aligned with the start date for both the professional year requirement and the provisions relating to authorising provisional relevant providers in new section 921C. ***[Schedule 1, Part 2, item 27, section 1546N]***

4.45 Most persons who are relevant providers before 1 January 2019 meet the definition of an 'existing provider' and do not need to complete a professional year. Accordingly there is no requirement to lodge a notice about the date that existing providers started their professional year.

4.46 There are a small subset of persons who were relevant providers before 1 January 2019 but who do not fall under the transitional arrangements for existing providers. An existing provider includes a person who was a relevant provider at any time between 1 January 2016 and 1 January 2019 and who is not banned, disqualified or suspended on 1 January 2019 ***[Schedule 1, Part 2, item 27, section 1546A]***. Accordingly, the following relevant providers are not existing providers:

- persons who were authorised as relevant providers before 1 January 2016 but cease to be relevant providers before 1 January 2016;
- persons who fail to pass the exam by 1 January 2021 and accordingly cease to be a relevant provider on 1 January 2021 under new subsection 1546B(5);
- persons who fail to meet the qualification requirements by 1 January 2024 and accordingly cease to be a relevant provider on 1 January 2024 under new subsection 1546B(4); and
- persons who are banned, disqualified or suspended on 1 January 2019.

4.47 The first three groups of people listed above cease to be relevant providers and need to be re-authorised. Notices for these people must be lodged under new section 922D and from 1 January 2019, these notices need to include information about the date that the person commenced the professional year. ***[Schedule 1, Part 2, item 27, section 1546N]***

4.48 If a person was banned, disqualified or suspended on 1 January 2019, the person remains on the Register as a relevant provider (who is not permitted to give advice) during the period of their banning, disqualification or suspension. Hence, any further notifications about the person would not be lodged under section 922D (which only applies to people who become relevant providers). Instead, there is a separate transitional requirement which applies to these individuals and requires the licensee to notify ASIC of the date that the provisional relevant provider commences the professional year. The licensee must lodge the notice within 30 business days of the person commencing their professional year. ***[Schedule 1, Part 2, item 27, section 1546Z]***

4.49 ASIC is required to update the Register to include the date from which a provisional relevant provider starts undertaking the professional year from 1 January 2019. ***[Schedule 1, Part 2, item 27, subsection 1546T(2)]***

Ethical requirements

4.50 The notice obligations relating to a relevant provider's scheme apply from 15 November 2019, which is 30 business days before 1 January 2020. For earlier notices lodged under section 922D (that is, notices notifying ASIC when a person becomes a relevant provider) which do not contain the name of the scheme, a further notice setting out the information must be lodged with ASIC before 1 January 2020. ***[Schedule 1, Part 2, item 27, subsection 1546G(1) and section 1546W]***

4.51 Monitoring bodies must notify ASIC of any breaches of the Code from 1 January 2020. ***[Schedule 1, Part 2, item 27, section 1546F]***

4.52 ASIC is required to update the Register to include details about a relevant provider's scheme and any non-compliance with the Code from 1 January 2020. ***[Schedule 1, Part 2, item 27, subsection 1546T(1)]***

4.53 The Register will only record professional associations that have a scheme approved by ASIC from 1 January 2020. Prior to this date, the Register will continue to list any professional association that is relevant to the provision of financial advice. The notification obligation in relation to membership of professional associations applies correspondingly so that any notices provided after 15 November 2019 (which is 30 business days before 1 January 2020) will only include professional associations with a scheme approved by ASIC. ***[Schedule 1, Part 2, item 27, sections 1546L and 1546M and subsection 1546T(3)]***

Principal place of business

4.54 The obligation to notify ASIC of the relevant provider's principal place of business applies on or after 15 November 2019, which is 30 business days before 1 January 2020. For earlier notices that do not contain this information, a further notice setting out the information must be lodged before 1 January 2020. ***[Schedule 1, Part 2, item 27, sections 1546K and 1546W]***

4.55 The details about a relevant provider's principal place of business must be entered on the Register from 1 January 2020. ***[Schedule 1, Part 2, item 27, subsection 1546T(1)]***

Penalty for non-compliance

4.56 All notification requirements, including those in the transitional arrangements set out in Part 2 of the Bill, are subject to the penalty provision in section 922M, which imposes a penalty of 50 penalty units for non-compliance. ***[Schedule 1, Part 1, item 16, section 922M and Schedule 1, Part 2, item 27, section 1546ZA]***

Example 4.3: Reporting obligations relating to new relevant providers

Excellent Licensees authorises Anna as a provisional relevant provider on 1 January 2019. Excellent Licensees also authorises Bill as a provisional relevant provider on 1 January 2020.

Excellent Licensees must lodge a notice notifying ASIC of Anna's authorisation within 30 business days of authorising her under new section 922D (that is, within 30 business days of 1 January 2019). The notice must include the following information:

- Anna's name and date and place of birth;
- Excellent Licensees' name and licence number;
- the fact that Anna is a provisional relevant provider and the day that she began her professional year;
- Anna and Excellent Licensee's ABN (if applicable);
- Anna's product classes (if known, otherwise this information can be provided at a later date);
- Anna's advising history (if applicable); and
- Anna's qualifications and membership of professional associations.

The notice does not need to include information about Anna's scheme or her principal place of business because these requirements do not apply until 15 November 2019. Excellent Licensees must lodge a subsequent notice, within 30 business days of 15 November 2019, with Anna's scheme and principal place of business.

Excellent Licensees must also lodge a notice within 30 business days of authorising Bill (that is, within 30 business days of 1 January 2020). This notice must include all of the information that was included in Anna's notice as well as information about Bill's scheme and his principal place of business.

The monitoring body must notify ASIC of any breaches of the Code by Anna or Bill and the sanctions imposed after 1 January 2020.

Example 4.4: Reporting obligations relating to existing providers

Adam is an existing provider and he works for Excellent Licensees.

Assume that Adam and Excellent Licensees are advised that Adam passed the exam on 31 December 2020. Also assume that Adam and Excellent Licensees are advised that Adam has passed his bridging

course on 31 December 2023. Adam does not need to complete the professional year as he is an existing provider.

Excellent Licensees must comply with the following reporting requirements:

- notify ASIC that Adam has passed the exam within 30 business days of 31 December 2020;
- notify ASIC that Adam now holds a higher qualification within 30 business days of 31 December 2023;
- notify ASIC of Adam's principal place of business within 30 business days of 15 November 2019; and
- notify ASIC of Adam's scheme within 30 business days of 15 November 2019.

From 1 January 2019, Excellent Licensees must also notify ASIC if Adam does not comply with the CPD requirement within 30 business days of the end of its CPD year.

The monitoring body will also be required to notify ASIC of any breaches of the Code and the sanctions imposed after 1 January 2020.

Chapter 5
The standards body

Outline of chapter

5.1 Schedule 1 to the Bill amends the Corporations Act to allow the Minister to declare a Commonwealth company limited by guarantee to be the body in relation to the education standards and the Code. It also sets out the powers, duties and obligations of the body.

Comparison of key features of the new law and current law

New law	*Current law*
A standards body will make legislative instruments which set out the education standards and the Code. It will also approve foreign qualifications.	No equivalent.
The Minister may declare a Commonwealth company limited by guarantee to be the standards body. The Minister may also revoke the declaration.	No equivalent.

Summary of new law

5.2 The Bill provides for a new body to approve foreign qualifications and develop the education standards described in Chapter 2. The new body will also set the Code discussed in Chapter 3.

5.3 The Minister may declare a Commonwealth company limited by guarantee to be the body.

5.4 The Minister must be notified of any significant changes to the body's constitution. The Minister can disallow any modifications to the body's constitution.

5.5 If the Minister considers that the body is not complying with its obligations the Minister may give the body a written direction. The Minister may also declare in writing that the nominated company ceases to be the body.

5.6 There is a statutory review of the framework which must be commenced by 31 December 2026.

Detailed explanation of new law

Functions and powers of the body

5.7 The body is required to be a Commonwealth company incorporated under the Corporations Act and it is to be limited by guarantee. ***[Schedule 1, Part 1, item 12, subsection 921X(2)]***

5.8 The body has all of the powers of a natural person under common law and Chapter 2B of the Corporations Act, including the power to enter into contracts. The directors of the company also need to act in accordance with the company's constitution. As the body is a Commonwealth entity, it is subject to Chapter 3 of the *Public Governance, Performance and Accountability Act 2013* (PGPA). There are also additional functions and powers set out in the Bill.

5.9 The Bill provides that the body must develop and set the education and ethical standards described in Chapters 2 and 3 of this explanatory memorandum. This includes:

- approving degrees or higher or equivalent qualifications;
- approving foreign qualifications;
- approving and/or administering the exam;
- determining the requirements for the professional year;
- setting supervision or other requirements for provisional relevant providers;
- selecting an appropriate common term for provisional relevant providers;
- determining the CPD requirements in relation to licensees' CPD years;
- determining the requirements for financial advisers whose CPD year changes and whether to modify the operation of the Corporations Act for these individuals, for example, by requiring licensees to report non-compliance with the CPD requirement at a time other than at the end of their new CPD year;
- determining the bridging course requirements for existing providers; and
- setting the Code.

[Schedule 1, Part 1, items 12, sections 921B, 921U and 921V, and Schedule 1, Part 2, item 27, subsection 1546B(7)]

5.10 The body has a broad discretion when setting these standards. Some of the issues that it may need to consider are shown in the table below.

Table 5.1: Issues for the body to consider

Education Requirement	***Issues***
Degree	• which courses are relevant to the provision of financial advice and should be approved • which foreign degrees (if any) should be approved • whether to approve some or all of the courses offered by providers other than universities
Exam	• length, format and assessable content for the exam • whether to include different modules for different product classes
Professional year	• length (noting that it must be at least one year) • amount and type of work and training that new advisers should be required to complete • whether the professional year should include a requirement to complete CPD courses • the disclosure and other supervision requirements that should apply to provisional relevant providers
CPD	• required number of hours of CPD • the courses that meet the CPD requirement • whether special rules should apply to individuals who work part-time or take extended leave during the CPD year • rules for individuals who become a relevant provider part way through a CPD year • rules for individuals whose CPD year changes because: – the individual change licensees and the new licensee has a different CPD year to their previous licensee; or – the licensee changes the start date of their CPD year
General considerations	• how to appropriately take into account product specialisations • how to reduce misalignment with the regime for tax financial advisers in the TASA

5.11 The standards set by the body which are of general application must be made by legislative instrument. They are subject to parliamentary scrutiny and may be disallowed. Approvals relating to a particular financial adviser who completed a foreign qualification do not need to be made by legislative instrument but they are subject to merits review in the same way as decisions made by ASIC. ***[Schedule 1, item 12, sections 921U and 921V]***

5.12 The body must review the standards and the Code regularly, and they will sunset after 10 years if they are not remade (see the *Legislation Act 2003*). ***[Schedule 1, Part 1, item 12, paragraph 921U(1)(b)]***

5.13 When setting and reviewing standards, the body must consult financial services licensees and practitioners, consumer organisations, professional associations, industry associations, ASIC, the Treasury and any other stakeholders that it considers appropriate, such as the Tax Practitioners Board. The body is not required to consult every individual within that group or ensure that every individual actually provides input. Rather, it is sufficient if the body gives the group as a whole reasonable opportunity to comment. ***[Schedule 1, Part 1, item 12, subsection 921U(6)]***

5.14 It is expected that, in many cases, the body will satisfy the consultation requirement by making the proposed legislative instrument available on its website and inviting persons to comment on it. If the body fails to comply with the consultation requirement, the legislative instrument remains valid. ***[Schedule 1, Part 1, item 12, subsections 921U(7) to (8)]***

5.15 The Code must not commence earlier than 30 days after it is registered on the Federal Register of Legislation established under the *Legislation Act 2003*. A similar rule applies to any future amendment to the Code. ***[Schedule 1, Part 1, item 12, section 921W]***

5.16 The body may charge fees for its services. For example, it may choose to charge a fee for individuals to sit the exam. The body is not required, or expected, to recover all of its costs by charging a fee for service. ***[Schedule 1, Part 1, item 12, subsection 921U(9)]***

Board of directors

5.17 The directors of the body are appointed by the Minister ***[Schedule 1, Part 1, item 12, paragraph 921X(2)(x)]***. When deciding on the appointments, the Minister may wish to consider candidates nominated by stakeholders.

5.18 The Minister also has the power to remove or suspend a director under subsection 33(4) of the *Acts Interpretation Act 1901*.

5.19 The Minister's power to appoint all of the directors will give the Commonwealth control of the company for the purposes of the PGPA. This means that the body will be classified as a 'Commonwealth company' under section 89 of the PGPA and will be subject to the requirements in Chapter 3 of that Act.

5.20 The body must have nine directors, including the chair. The board must comprise of at least:

- three directors with experience in operating a financial services business or providing a financial service;
- three directors with experience in representing consumers in relation to financial services;
- one director with practical experience in designing, or the requirements of, educational courses or degrees; and
- one ethicist.

[Schedule 1, Part 1, item 12, paragraph 921X(2)(c)]

5.21 A single director may satisfy two or more of the criteria as to experience, for example, the same person may be the expert in setting education standards and the ethicist. Nevertheless, the body must have nine directors, even though it could meet the criteria as to experience with a lesser number of directors.

5.22 To reduce the risk of conflicts of interests and protect the independence of the board, there is a prohibition on directors holding a managerial or executive position in an industry association or a consumer association ***[Schedule 1, Part 1, item 12, subparagraph 921X(2)(c)(viii)]***. A person who held a managerial or executive position in an industry or consumer association in the past may become a director, provided that they do not hold that managerial or executive position during the period of their directorship. There is no prohibition on a director being a member of an industry or consumer association, however, the director will sit on the board in a personal capacity and not as a representative of the association. In other words, the director is not simply a spokesperson for the industry or consumer association and must make his or her own decision. ***[Schedule 1, Part 1, item 12, subparagraph 921X(2)(c)(ix)***]

5.23 There is no prohibition on directors holding a senior position at an education provider which delivers courses for relevant providers. This reflects the fact there is a relatively small pool of persons who have practical experience in designing education courses and degrees.

5.24 As the new body will be a company, the directors must also comply with the rules relating to conflicts of interest in existing sections 191 and 192 of the Corporations Act.

Example 5.1: Persons prohibited from being directors

Maxwell is a relevant provider employed by a small licensee. He has a position in middle management at that licensee and he is a member of a professional association called Amazing Advisers Association.

Nancy is the head of Amazing Advisers Association.

Olivia is on the board of a body which resolves disputes between consumers and financial services providers. She was previously on the board of a consumer association but she no longer holds that position.

Professor Smith is the Dean at Leading Australia University. Leading Australia University offers over 100 degrees and some of those degrees relate to financial planning.

The Minister may appoint Maxwell, Olivia and Professor Smith as three of the body's directors. Maxwell, Olivia and Professor Smith do not currently hold a managerial or executive office in a professional association or an association which represents consumers.

With respect to Maxwell, a licensee is not a professional association. There is no prohibition on a person being a member of a professional association, provided that they do not hold a managerial or executive position in that professional association.

In the case of Olivia, the dispute-resolution body does not 'represent' consumers. Olivia is no longer on the board of a consumer association and the new law only prohibits a person from being a director of a consumer association and the new body at the same time.

On the other hand, Nancy cannot be appointed as a director unless she resigns from her position as the head of Amazing Advisers Association.

5.25 Directors may resign from their positions on the body by writing to the Minister and the body. The resignation will take effect on the day that it is received by both the Minister and the body, or a later day specified in the resignation. If a director resigns, the Minister will need to appoint an additional director to ensure that the requirements set out in paragraph 5.14 are satisfied. ***[Schedule 1, Part 1, item 12, subparagraphs 921X(2)(c)(xi) and (xii)]***

Declaration of the body by the Minister

5.26 The Bill provides for the Minister to declare, in writing, a company limited by guarantee to be the body. The declaration must specify the date from which the company is to act as the body. The declaration must be tabled in Parliament and registered on the Federal Register of Legislation as a notifiable instrument. ***[Schedule 1, Part 1, item 12, section 921X]***

5.27 The Minister may only declare a body if the following prerequisites are met:

- the body is a company limited by guarantee;
- the Minister is satisfied that the body will comply with its obligations under the Corporations Act and other relevant laws;
- the company's constitution states that the company must exercise the functions set out in section 921U and contains details about the composition of the board, and the appointment and resignation processes.

[Schedule 1, Part 1, item 12, section 921X]

5.28 The Minister may at any time declare that the company ceases to be the body. The declaration must state the date from which it takes effect. Any revocation by the Minister must be tabled in Parliament as soon as practicable. ***[Schedule 1, Part 1, item 12, section 921Y]***

5.29 The Minister may specify in the declaration revoking the body's approval whether the standards, the Code and the approvals relating to foreign qualifications will continue in force, or whether they will be replaced by other requirements specified by the Minister. Once a new body is nominated, it may develop new standards and a Code. ***[Schedule 1, Part 1, item 12, subsections 921Y(2), (5) and (6)]***

5.30 The body must notify the Minister of significant changes to its constitution. The notice must set out the text of the change, specify the date on which it is to take effect, and explain the purpose of the change. If no notice is provided within 21 days after the change is made the change ceases to have effect. In order to assist readers, the Bill clarifies that any such notice made under this section is not a legislative instrument within the meaning of section 8 of the *Legislation Act 2003*. It does not provide an actual exemption from the *Legislation Act 2003*. ***[Schedule 1, Part 1, item 12, section 921Z]***

5.31 The body does needs to notify the Minister of changes to the constitution that are not significant. For example, no notice is needed for amendments which are technical or minor, or relate to small administrative matters. ***[Schedule 1, Part 1, item 12, subsection 921Z(1)]***

5.32 The Minister may disallow all or part of the change within 28 days of receiving a notice. The Minister must notify the body as soon as practicable of the Minister's disallowance. The change ceases to have effect from the day the body receives the Minister's notification. ***[Schedule 1, Part 1, item 12, section 921ZA]***

5.33 If the Minister considers that the body is not complying with its obligations under the Corporations Act or an arrangement it has with the Government, the Minister may give the body a written direction. The body must comply with such a direction. The Minister may at any time vary or revoke such a direction. ***[Schedule 1, Part 1, item 12, subsections 921ZB(1) to (3)]***

5.34 The directions power provides a mechanism for the Minister to intervene if he or she has a significant concern. It is not designed to allow the director to become the controlling mind of the body or a de facto director and the new law explicitly states that it does not render the Minister a shadow director of the body. ***[Schedule 1, Part 1, item 12, subsection 921ZB(4)]***

5.35 There is an established practice of Ministers only using their directions powers in very exceptional circumstances. For example, the Minister has had the power to direct ASIC and the Australian Prudential Regulatory Authority for over 15 years,[1] but the power to direct ASIC has only been used once and the power to direct the Australian Prudential Regulatory Authority has never been used.

[1] See section 12 of the *Australian Securities and Investments Commission Act 2001* (formerly section 12 of the *Australian Securities Commission Act 1989)* and section 12 of the *Australian Prudential Regulation Authority Act 1998*.

5.36 Every year, the body must prepare an annual report in accordance with Chapter 2M of the Corporations Act. The report must be given to the Minister and published on the body's website as soon as practicable after the end of each financial year. If the body is appointed during the course of a financial year it must delay its first annual report until the conclusion of the following financial year. This report must cover the whole period from the body's appointment until the end of the following financial year. ***[Schedule 1, Part 1, item 12, section 921ZC and Schedule 1, Part 2, item 27, section 1546H]***

Statutory review

5.37 A review of the new framework must be commenced before 31 December 2026. By this time, all elements of the new framework should have been in place for at least two years. ***[Schedule 1, Part 2, item 27, section 1546ZB]***

5.38 The legislation does not specify the length of the review or the person who will conduct the review. However, the reviewer and the length of the review should be appropriate to ensure that the review is able to consider the suitability of the new framework.

5.39 The statutory review is in addition to the regular reviews of the body's standards, the Code and compliance schemes (see paragraphs 5.6 and 5.7 above).

Application and transitional provisions

5.40 The amendments in this Chapter, with the exception of the provision in section 921W requiring the body to prepare an annual report, commence on the day after the Bill receives Royal Assent. The annual report provision in section 921W commences on 1 July 2017. ***[Schedule 1, Part 2, item 27, section 1546H]***

Chapter 6
Transitional provisions for existing providers

Outline of chapter

6.1 Part 2 of Schedule 1 amends the Corporations Act to insert a new Part 10.23A which includes transitional provisions for persons who were relevant providers before 1 January 2019.

Summary of new law

6.2 Transitional arrangements apply to a person who provides personal advice to retail clients (in Australia or a foreign country) at any time between 1 January 2016 and 1 January 2019, and is not prohibited from providing advice on 1 January 2019. These persons are referred to as 'existing providers'.

6.3 By 1 January 2021, existing providers are required to have passed an exam approved by the body. By 1 January 2024 they must have completed the appropriate bridging course(s) to raise their qualifications to a bachelor degree level, or higher or equivalent qualification.

Comparison of key features of the new law and current law

New law	*Current law*
Special transitional arrangements apply to existing providers, that is, persons who provide personal advice to retail clients at any time between 1 January 2016 and 1 January 2019, and are not prohibited from providing advice on 1 January 2019. These advisers: • have until 1 January 2024 to meet the first education requirement (obtain a degree, or higher or equivalent qualification); • may meet the first education requirement by completing bridging courses approved by the body; • have until 1 January 2021 to meet the second education requirement (pass the exam); and • do not need to complete a professional year.	No equivalent.

New law	*Current law*
An existing adviser who does not pass the exam by 1 January 2021 or meet the degree requirement by 1 January 2024 ceases to be a relevant provider on that date.	No equivalent.
An existing provider is, like new relevant providers, required to meet the CPD requirements from 1 January 2019.	No equivalent.
An existing provider is, like new relevant providers, required to comply with the Code from 1 January 2020.	No equivalent.

Detailed explanation of new law

6.4 An ***existing provider*** is a person who is:

- a relevant provider at any time between 1 January 2016 and 1 January 2019 and who is not banned, disqualified or suspended on 1 January 2019; or
- provides personal advice in a foreign country to retail clients at any time between 1 January 2016 and 1 January 2019 and is not prohibited under that country's law from providing advice on 1 January 2019.

[Schedule 1, Part 2, item 27, section 1546A]

6.5 A person who does not pass the prescribed exam by 1 January 2021, or does not meet the education requirement by 1 January 2024, ceases to be an existing provider from those dates. Such persons also cease to be relevant providers as of those dates and cannot take advantage of the transitional arrangements for existing providers (such as, the option of satisfying the new degree requirement by completing bridging courses). ***[Schedule 1, Part 2, item 27, section 1546A and subsections 1546B(3) to (5)]***

Example 6.1: Definition of an existing provider: advisers working in Australia

Mary is a financial adviser but on 1 July 2016, she takes extended leave to complete further study. Her status on the Register is amended to show that she is not currently authorised to provide advice.

As Mary was on the Register after 1 January 2016 and is not banned, disqualified or suspended on 1 January 2019, she is an existing provider.

Example 6.2: Definition of an existing provider: advisers working overseas

Mandy works as a financial adviser in France at all times between 1 January 2016 and 1 January 2019.

Mandy is authorised to provide advice to retail clients under French law. France does not have a concept of 'personal advice', but the advice that Mandy is permitted to provide includes advice which takes into account her client's objectives, financial situation and needs. Mandy is not prohibited under French law from providing advice on 1 January 2019.

Mandy is an existing provider.

6.6 Existing providers have a five year transition period from 1 January 2019 to 1 January 2024 to meet the new standards. This transition period is designed to give existing providers sufficient time to comply, and to ensure that prompt action is taken to raise the minimum standards and improve consumer confidence. ***[Schedule 1, Part 2, item 27, section 1546B]***

6.7 Existing providers can comply with the first education standard in subsection 921B(2) (that is, completing a bachelor or higher degree or equivalent), in two ways:

- if the existing adviser holds a relevant bachelor degree or higher or equivalent qualification (as approved by the body), the adviser does not need to undertake any further education ***[Schedule 1, Part 2, item 27, paragraph 1546B(1)(a)]***;
- if the existing adviser does not have an approved bachelor degree or higher or equivalent qualification, then the adviser can complete bridging courses approved by the body ***[Schedule 1, Part 2, item 27, paragraph 1546B(1)(b)]***.

6.8 These provisions are designed to allow flexibility for existing providers, ensuring that they only need to undertake adequate study to bring their qualifications in line with the new standard. It is not expected that existing providers will be required to complete a three year degree.

6.9 For the avoidance of doubt, the new law explicitly states that courses undertaken before the new law commences must be taken into consideration. The body may take into account diploma or degree courses, licensee training courses or CPD. ***[Schedule 1, Part 2, item 27, subsection 1546B(2)]***

6.10 An existing adviser who currently holds a diploma (AQF level 5) could, as an interim step, attempt to upgrade their qualifications to

an advanced diploma or associate degree (AQF level 6) within three years of commencement of the education standards and then undertake further study to upskill to a degree (AQF level 7). Alternatively, an adviser may wish to advance their qualifications directly to a degree level (AQF level 7), without first obtaining an advanced diploma.

6.11 The length of time that the adviser has been in the industry is not itself a relevant consideration. The body may, however, take into account the fact that an adviser who has been in the industry for a longer period of time has completed more CPD courses.

6.12 Similarly, the designation that an adviser holds is not relevant. Instead, the body must consider the courses that the adviser completed to qualify for the designation.

6.13 As the education standard is a separate requirement to the exam, an existing provider who does not hold a degree will not be able to raise their education qualifications to the equivalent of a degree merely by sitting the exam. However, the body may decide that any courses undertaken to prepare for the exam can be taken into account.

Example 6.3: Appropriate bridging courses

Anastasia has been working as a relevant provider for over 20 years. Anastasia is a member of the Excellent Advisers Association and she holds the Excellent Advisers Designation. She has a bachelor degree in engineering and an advanced diploma in Financial Planning. She has also completed several CPD courses throughout her career.

The body decides that an engineering degree does not meet the degree standard set for new financial advisers in new section 921B.

When determining whether Anastasia needs to undertake a bridging course, the body may take into account all of the courses that she has already completed (that is, her bachelor degree in engineering, her advanced diploma and the CPD courses).

The body may not take into account the fact that Anastasia has been in the industry for 20 years. Similarly, the mere fact that Anastasia holds the Excellent Advisers Designation is not in itself relevant. Instead, the body must consider the courses that Anastasia undertook to qualify for the designation.

The body may decide that the mathematics units in Anastasia's bachelor degree, together with her advanced diploma and CPD courses, give her knowledge and skills equivalent to the standard. In this case, Anastasia would not need to undertake any further study. Alternatively, the body may decide that Anastasia needs to complete bridging courses before she meets the new requirements.

6.14 Existing providers are required to have passed an exam approved by the body before 1 January 2021. ***[Schedule 1, Part 2, item 27, subsection 1546B(3)]***

6.15 An existing provider will be able to attempt the exam at any time before 1 January 2021 and may attempt the exam multiple times if required. The Register will not show failed attempts to pass the exam.

6.16 If an existing provider has not passed an approved exam by 1 January 2021, he or she will cease to be a relevant provider and an existing provider after that time. The same consequence will apply to an existing provider who fails to complete a bridging course or courses as required by 1 January 2024. ***[Schedule 1, Part 2, item 27, subsections 1546B(4) and (5)]***

6.17 The consequence of existing providers ceasing to be existing and relevant providers because they did not pass an exam or complete a bridging course is that the provider:

- will be shown as non-compliant on the Register; and
- will not be permitted to give personal advice on relevant financial products to retail clients; but
- may continue to give general advice or advice on products other than relevant financial products.

[Schedule 1, Part 2, item 27, subsections 1546C(2) and (3)]

6.18 An existing provider who does not meet the transitional arrangements and ceases to be a relevant provider on 1 January 2021 or 1 January 2024 may become authorised as a relevant provider at a later point in time. Before becoming authorised again, an existing provider would need to satisfy the degree, exam and professional year requirements in section 921B. It will not be sufficient for such a person to merely meet the transitional arrangements. ***[Schedule 1, Part 2, item 27, subsection 1546B(6)]***

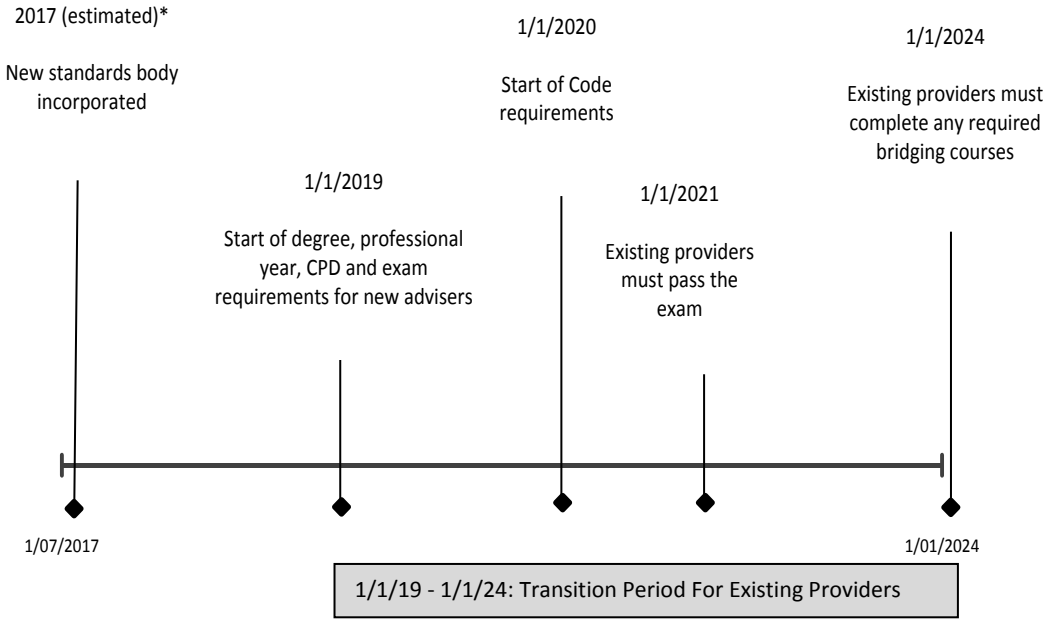
6.19 Existing providers are subject to the same requirements in relation to CPD and the Code as new relevant providers. That is, an existing provider is required to:

- meet the requirements for CPD set by the body from 1 January 2019 ***[Schedule 1, Part 2, item 27, section 1546E]***; and
- comply with the Code from 1 January 2020 ***[Schedule 1, Part 2, item 27, section 1546F].***

6.20 However, existing providers are not required to undertake a professional year as it is considered that such persons have already

accrued practical experience working in the financial services industry. By the time the transition period ends, all existing advisers will have been in the industry for at least five years. ***[Schedule 1, Part 2, item 27, note 3 for subsection 1546B(3)]***

Figure 6.2: Summary of transition arrangements for existing providers



* The Bill does not specify the date when the new body will be incorporated.

Example 6.4: Relevant providers with a diploma

John, Laura, Mitch, Nicola and Sara are existing financial advisers who only have a diploma.

John, Laura, Mitch, Nicola and Sara can continue to give financial advice on relevant financial products to retail clients until 1 January 2021.

If John, Laura, Mitch, Nicola and Sara wish to continue to give advice after 1 January 2021, they will need to pass the exam. They then need to complete a bridging course (not a three year degree) to raise their qualifications to those equivalent to a degree or higher before 1 January 2024 if they wish to continue giving advice after that date. They do not need to undertake a professional year.

Sara wants to remain in the industry post 1 January 2021. She sits the exam on 13 April 2019 and passes. She can therefore continue working after 1 January 2021. In December 2022 she also completes a bridging

course approved by the body which increases her education level to a degree equivalent.

Sara's licensee advises ASIC that she has passed the exam and completed the bridging course. ASIC updates the Register.

Sara can now continue to give personal advice to retail clients on relevant financial products.

Laura plans to retire soon. Laura does not sit the exam or complete a bridging course. On 1 January 2021, Laura retires and the Register is updated to indicate that Laura is no longer authorised to give personal advice to retail clients on relevant financial products.

Mitch wants to remain in the industry. He completes a bridging course but he does not pass the exam. After 1 January 2021, he cannot give personal advice to retail clients on relevant financial products. Mitch chooses to remain in the industry and only gives advice on basic banking products, general insurance products and consumer credit insurance products.

Nicola passes the exam in March 2019 but fails to complete the required bridging course by 1 January 2024. She wants to continue her career as a financial adviser and decides to take leave to study for a degree approved by the body. Once she has obtained her degree Nicola must also undertake a professional year (albeit that the body may determine that the time Nicola previously spent in the industry satisfied the professional year requirement). Once all education requirements have been satisfied Nicola can return to work and provide personal advice on relevant financial products to retail clients.

John fails to pass the exam by 1 January 2021. If he wishes to continue in the industry he will have to satisfy all the education standards, including completing a three year degree. He will not be able to take a bridging course as he did not pass the exam, and may also (like Nicola) be required to undertake a professional year.

Example 6.5: Relevant providers with a degree

Hamish is an existing provider with a relevant degree. Hamish wants to continue to give personal advice on relevant financial products to retail clients after 1 January 2024.

Hamish sits the exam in December 2019 but does not pass. His failed attempt to pass the exam is not displayed on the Register.

Hamish reattempts the exam in March 2020 and passes. His licensee advises ASIC.

Hamish may now continue to give personal advice to retail clients on relevant financial products after 1 January 2021. As he has a degree, he can also continue to give advice after 1 January 2024.

Chapter 7
Regulation impact statement

7.1 On 20 October 2015, the Government announced as part of its response to the Financial System Inquiry that it would develop legislative amendments to raise the professional, ethical and educational standards of financial advisers. In committing to this objective and subsequent decisions on the details of the legislative amendment package, the Government was informed of the regulatory impacts of various reform options by the findings of two independent reviews and targeted consultations with industry stakeholders.

7.2 The independent reviews of the arrangements around professional, ethical and education standards of financial advisers are the:

- Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry (PJC Inquiry); and
- Financial System Inquiry Final Report, November 2014 (FSI).

7.3 The reform package has been constructed in close consultation with industry and consumer groups.

7.4 Treasury has certified that the independent reviews constitute a process and analysis equivalent to a Regulation Impact Statement (RIS).

7.5 The Australian Government Guide to Regulation identifies seven questions that a RIS should address. Following is a summary of the analysis of these questions that occurred as part of the independent reviews and stakeholder consultation process.

Problem

7.6 Over time, repeated instances of inappropriate financial advice have decreased consumers' confidence in the financial services industry. This reduction in trust acts as a barrier to consumers seeking financial advice.

7.7 The recent examples of unethical behaviour and inappropriate financial advice have contributed to the decreased trust in the financial services sector.

7.8 The Corporations Act imposes a general obligation on licensees to ensure that their financial advisers are 'adequately, trained and competent' and the Australian Securities and Investments Commission (ASIC) has issued guidance on the minimum training standards. However these standards are low, insufficiently comprehensive and out-of-date. They do not specify the duration or standard of training that advisers must undertake and advisers are currently able to satisfy the requirements by completing a short course with only a few hours of study.

7.9 Various inquiries, including the FSI and the PJC Inquiry have identified that the existing standards for financial advisers (which are set by Government) are too low and do not ensure that all financial advisers have the necessary skills to provide high quality advice to consumers.

7.10 In June 2014, the Senate Economics References Committee tabled a report on its inquiry into the performance of ASIC. The inquiry recommended that the PJC look into the various proposals calling for the lifting of professional, ethical and educational standards in the financial services industry.

7.11 In December 2014, the PJC reported on the inquiry into proposals to lift the professional, ethical and education standards in the financial services industry. The Committee considered the interim report of the Financial System Inquiry which noted that there were significant issues with the quality of financial advice, due in part to varying standards of adviser competence.

7.12 The FSI highlighted consumer outcomes as an important area for reform and focused on fair treatment of consumers. The report noted that the issues related to the competence of financial advisers are unresolved with the most significant problems relating to shortcomings in disclosure and financial advice, and an over-reliance on financial literacy.

7.13 The Committee's recommended approach included:

- clarifying who can provide financial advice by protecting the title and function;
- improving the qualifications and competence of financial advisers;
- enhancing professional standards and ethics; and
- implementing transitional arrangements.

Need for government action

7.14 There have been many regulatory interventions by the Australian Government in recent years to help improve trust and confidence in the financial services industry and the quality of information that consumers of financial services have access to . Government intervention is justified because of the significant costs to individuals, the community and/or taxpayers that can result from poor information on the benefits and risks of financial services, including complex financial advice provided to retail clients.

7.15 There are a few main sources of market failure which explain why government involvement is required. These sources of market failure are:

- licensees underinvest in education and training as the benefits only accrue in the long-term;
- it is difficult for industry to agree on minimum standards and coordinate action; and
- consumers lack information about the skills and competency of their financial adviser.

7.16 The FSI and PJC report highlighted five main deficiencies in the current education and training requirements which include:

- the current education and training requirements prescribed in the Corporations Act are low;
- the standards are vague;
- the standards are not holistic – they do not require all financial advisers to undertake ethical courses and there is only a cursory reference to continuous professional development;
- stakeholders have raised concerns that the training requirements are not in keeping with changing market conditions; and
- there is no central database with information about the quality of various education and training courses.

7.17 Furthermore, currently financial advisers are not required to adopt or comply with an overarching ethical Code. The PJC Inquiry outlines ASIC and industry concerns about the undesirable subcultures developing in many financial advice firms.

Policy options and net benefits

7.18 The PJC Inquiry and FSI consider and discuss a range of policy options to raise the standards of financial advisers in Australia.

7.19 The current system of professional standards for financial advisers, as outlined in the PJC Inquiry, provides minimum standards for financial advisers to meet. However, licensees and professional associations retain discretion to set higher education standards for their advisers.

7.20 An option considered was to retain the status quo. This would not impose additional costs on financial advisers or licensees. However, consumers would be unlikely to receive the benefits of higher quality financial advice.

7.21 The FSI recommended that the minimum standards for financial advisers providing advice to retail clients on relevant financial products should include: a relevant tertiary degree; competence in specialised areas, where relevant; ongoing professional development, including technical skills, relationship skills, compliance and ethical requirements; and relevant transitional arrangements to allow existing financial advisers to upskill, including recognition of professional experience. The FSI also noted that a national exam for advisers could be considered if issues with adviser competency persist and indicated enhancements to the register of financial advisers (the register) were needed.

7.22 The intention of these recommendations was to increase the likelihood of consumers receiving customer-focused quality advice, promote confident and informed consumer use of financial advisory services, and facilitate consumer access to information about financial advisers' experience and qualifications to improve transparency and competition.

7.23 The FSI recommendations looked to reduce the levels of poor advice being given to retail clients. The requirement to hold a tertiary degree or equivalent would impose costs on financial advisers and licensees, some of which may be passed onto consumers. Licensees would also face costs in ensuring their financial advisers have met the relevant standards, including having undertaken a professional year. These costs could be mitigated to some extent by the various cost effective market developments that are emerging, such as scaled or limited advice and using technology to deliver advice.

7.24 In assessing the current system of professional standards, the PJC Inquiry recommended that industry establish an independent, professional standards body that would be controlled and funded by professional associations. The PJC Inquiry recommended a model consisting of six core elements:

- financial advisers would be required to complete a degree at Australian Qualification (AQF) Level 7 and a structured professional year;
- financial advisers would be required to pass an exam before they are authorised to provide advice;
- financial advisers would be required to complete ongoing professional development;
- financial advisers would be required to become a member of a professional association approved by the Professional Standards Council and subscribe to a comprehensive Code of ethics;
- a new standards body would be established to set the education and training standards for financial advisers; and
- enhancements would be made to the register, established by the Government in March 2015, including that the register would list any breaches of the Code of ethics and any subsequent sanctions imposed by the monitoring body.

7.25 The PJC recommendations would assist in preventing the provision of poor advice to retail consumers. The new standards would also provide the opportunity for professional associations to build up the skills of their members. Stakeholders unanimously agreed that the professional standards of financial advisers needed to be lifted and supported the core elements of the PJC's model.

7.26 However, concerns were raised during consultation about the PJC's recommendation that all financial advisers would be required to be a member of a professional association as it guarantees professional associations an inflow of members and has the potential to restrict competition by creating a barrier to entry for new financial advisers.

7.27 As indicated in relation to the FSI, the requirement to hold a degree and pass a professional year would impose costs on both financial advisers and licensees, some of which may be passed onto consumers.

7.28 The PJC recommendation of the establishment and role of an independent body has been adopted with some modifications. The Government's response to the FSI indicated that the independent body will also be responsible for developing a model Code of Ethics. The independent body will have a board comprising of: an independent chair; three directors with experience carrying on a financial services business or providing a financial services; three directors with experience in representing consumers of financial services; one director with experience in the field of ethics; and, one director with experience designing educational courses or qualifications.

7.29 During consultation, industry supported the PJC recommendation for the establishment of the independent body, indicating that the Independent Council should be responsible for setting curriculum guidelines and requirements for new advisers at AQF level 7, developing a registration exam, developing a standardised framework for the supervised professional year including ethics competencies, establishing criteria and maintaining the recognised prior learning pathway for all existing financial advisers, and developing minimum standardised framework criteria for continuing professional development requirements.

7.30 Options for industry to provide initial seed funding for the Independent Council, with ongoing funding to be provided through a sustainable funding model, were also raised during the consultation period.

7.31 In the Government's response to the FSI on 20 October 2015, the Government announced that it was committed to ensuring that consumers receive professional and fair treatment from advisers and financial product and service providers. The Government's proposed standards, subject to transitional arrangements, require:

- new advisers, from the 1 January 2019, to hold a degree (at AQF level 7), undertake a professional year and pass an exam;
- existing advisers, from 1 January 2024, to have completed an appropriate AQF level 7 bridging course (or have completed a recognised transitional pathway determined by the standards body) and have passed an exam by 1 January 2021;
- all advisers, both new and existing, from 1 January 2020, to comply with the Code of Ethics; and
- the Government to establish a new standards body to set the curriculum and training requirements and approve the exam.

Consultation

7.32 The FSI received over 180 submissions, complemented by extensive stakeholder engagement through meetings and roundtables.

7.33 The Parliamentary Joint Committee on Corporations and Financial Services (the Committee) received 39 submissions from a range of relevant stakeholders. Public hearings were held on three occasions at which stakeholders appeared before the Committee.

7.34 The Government consulted on a regular basis with industry stakeholders throughout the policy development process. This included five industry roundtables on the development of policy options and the exposure draft legislation.

7.35 During consultation, stakeholders presented views on the educational qualifications and Code of ethics standards that were integrated into the Government's framework to raise professional, ethical and education standards in the financial services industry (as indicated in the Government's response to the FSI).

Agreed Option

7.36 On 20 October 2015, as part of its response to the FSI, the Government announced it would commit to reforms to raise the education, training and ethical standards of financial advisers.

7.37 A regulatory costing for the reform package has been prepared, consistent with the Government's Regulatory Burden Measurement Framework. These costs are summarised in Table 1, noting that the 2016 offsets for the chosen option will be found from within the Treasury portfolio.

7.38 For licensees, implementation and ongoing costs are associated with developing policies and procedures to ensure their advisers are complying with the new professional standards and ethical Codes. This will include updating their IT systems to track adviser education and ongoing professional development and ethical training.

7.39 New financial advisers will incur costs associated with gaining the relevant educational and ethical qualifications. These educational qualifications, in requiring a three to four year Bachelor degree which many individuals seek to gain of their own volition, may impose significant costs from both the course fees and the hours of study accumulated.

7.40 Individual existing financial advisers will incur costs associated with updating their educational and ethical qualifications.

7.41 It is estimated that the increase in annual compliance costs for the industry as a whole will amount to $165.1 million.

Table 7.1: Regulatory burden and cost offset estimate table

Change in costs ($ million)	*Business*	*Community organisations*	*Individuals*	*Total change in costs*
Total, by sector	*$77.3*	*$0*	*$87.8*	*$165.1*

Note: Offsets will be found for 2016 from the Treasury portfolio

Implementation and Evaluation

7.42 The implementation of these reforms will begin as soon as practicable following Royal Assent.

7.43 The Government will incorporate the new standards body that will be responsible for implementing and monitoring the educational standards for financial advisers.

7.44 The new standards body will develop a model Code of Ethics. Professional associations and other independent third party monitoring bodies will develop compliance schemes to monitor and enforce advisers' adherence to the Code. These compliance schemes will be approved by ASIC.

7.45 Existing advisers will have until 1 January 2021 to pass the exam and until 1 January 2024 to complete the required bridging courses determined by the body. If they do not satisfy these transitional requirements, they cannot continue to practice as a financial adviser giving personal advice to retail clients on relevant financial products.

7.46 A review of the professional standards reforms will be commenced before the end of 2026 to consider whether the new industry arrangements for raising professional standards of financial advisers have provided better outcomes for consumers.

Chapter 8
Statement of Compatibility with Human Rights

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

Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016

8.1 This Bill 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

8.2 The Bill amends the Corporations Act to raise the education, training and ethical standards of financial advisers by requiring relevant providers to hold a degree, undertake a professional year, pass an exam, undertake continuous professional development and comply with a Code of Ethics.

Human rights implications

8.3 The Bill engages the right to freely choose and accept work under Article 6(1) of the International Convention on Economic, Social and Cultural Rights.

8.4 The Bill provides that an individual will not be able to work as a financial adviser unless she / he holds a degree, has undertaken a professional year, passes an exam, undertakes continuous professional development and complies with a Code of Ethics.

8.5 These restrictions apply to any new advisers commencing from 1 January 2019. Existing financial advisers will have until 1 January 2024 to meet the requirements and have access to transitional arrangements.

8.6 The provisions in the Bill will therefore restrict individuals from working as financial advisers unless they comply with the new requirements. The restrictions are however justified as they create a minimum standard for financial advice which will give consumers a better service standard and instil confidence in the industry.

8.7 The transitional arrangements provide existing providers with additional time to meet the requirements and provide alternative arrangements such as bridging courses to minimise the impact while also ensuring that consumers benefit from a standard minimum level of service from the industry.

8.8 As such, the new requirements for financial advisers are consistent with the International Convention on Economic, Social and Cultural Rights.

Conclusion

8.9 The Bill is compatible with human rights as the requirements to work as a financial planner ensure that consumers get better service standards and instil confidence in the industry. The transitional arrangements ensure that the impact on existing financial advisers is minimised without compromising the new industry standard.

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