

EXPLANATORY STATEMENT

Issued by authority of the Minister for Financial Services and Superannuation

Corporations Act 2001

Corporations Regulations 2001

The *Corporations Act 2001* (the Act) provides for the regulation of corporations, financial markets, products and services including in relation to licensing, conduct and disclosure.

Section 1364(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Corporations Amendment Regulation 2012 (No)* makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments remove the current exemption which allows accountants to provide financial advice on self-managed superannuation funds (SMSFs) without an Australian Financial Services Licence (AFSL) from 2016 and provides alternative licensing arrangements.

Specifically, the amendments to the Principal Regulations:

- remove the accountants' licensing exemption in regulation 7.1.29A of the Principal Regulations from 1 July 2016;
- provide that recognised accountants, partnerships or corporations who apply for an AFSL between 1 July 2013 and 1 July 2016 and only provide particular advice services do not have to have experience for the purposes of the organisational competence requirement in section 912A(1)(e);
- provide that licensees who receive an AFSL under this streamlined process must complete a knowledge update review within three years of the date on which the license is granted; and
- provide that any licensee who only provides particular advice services and does not handle client-money can lodge an annual compliance certificate instead of an audit report.

Details of the proposed Regulation are set out in Attachment A.

A statement of the Regulations compatibility with human rights is set out in Attachment B.

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

Sections 1 to 3 and Schedule 1 of the Regulations commence on 1 July 2013. Schedule 2 commences on 1 July 2016 and Schedule 3 commences on 1 July 2019.

Details of the proposed Corporations Amendment Regulation 2012 (No.)

Section 1- Name of Regulation

This section specifies the name of the Regulation as the *Corporations Amendment Regulation 2012 (No.)*.

Section 2 – Commencement

This section provides that sections 1 to 3 and Schedule 1 of the Regulations commence on 1 July 2013, that Schedule 2 commences on 1 July 2016 and that Schedule 3 commences on 1 July 2019.

Section 3 – Amendment of the Corporations Regulations 2001

This section provides that Schedules 1, 2 and 3 amend the *Corporations Regulations 2001* (the Principal Regulations).

Schedule 1 – Amendment that commence on 1 July 2013

Item 1 inserts new regulation 7.6.01BA. Subregulation 7.6.01BA(1) provides that for a financial services licensee who is an exempt licensee the obligation to maintain competency in paragraph 912A(1)(e) of the *Corporations Act 2001* (the Act) is replaced with an obligation to maintain knowledge of the financial services covered by the license. The purpose of this regulation is to provide that exempt licensees do not have to have experience for the purposes of meeting the organisational competence requirement in paragraph 912A(1)(e).

Subregulation 7.6.01BA(2) modifies section 912A by inserting a new subsection 912A(4), which sets out the definition of exempt licensee. Exempt licensee means a financial services licensee that:

- is:
 - a recognised accountant; or
 - if the licensee is a body corporate or partnership – a licensee that has a recognised accountant or accountants who are responsible for, and supervise, the provision of the financial services cover by its license; and
- applied for the financial services licence between 1 July 2013 and 30 June 2016; and
- is only licensed to provide one or more of the following financial services:
 - financial product advice on self-managed superannuation funds;
 - financial product advice on superannuation products in relation to a person’s existing holding in a superannuation product but only to the extent required for:

- : making a recommendation that the person establish a self-managed superannuation fund; or
 - : providing advice to the person on contributions or pensions under a superannuation product;
- class of product advice on the following:
 - : superannuation products;
 - : securities;
 - : simple managed investment schemes;
 - : general insurance products;
 - : life risk insurance products;
 - : basic deposit products;
- arrange to deal in a self-managed superannuation fund.

The definitions of class of product advice and recognised accountant are set out in the same subregulation.

Class of product advice means financial product advice about a class of products but does not include a recommendation about a specific product in the class. For example, a financial services licensee may give a general recommendation about term deposit products but must not make a specific recommendation that a person deposit their money into a term deposit product offered by a particular bank or building society.

Recognised accountant means a person who holds a Certificate of Public Practice issued by The Institute of Chartered Accountants in Australia or holds a Public Practice Certificate issued by CPA Australia Ltd or the Institute of Public Accountants.

Items 2 and 3 amend the statutory license conditions in regulation 7.6.04 by adding a new condition for exempt licensees. Item 3 inserts paragraph 7.6.04(1)(k) which provides that if the financial services licensee is an exempt licensee it is a condition of the license that, within three years from the date on which the licence is granted, particular persons associated with the licence must demonstrate to ASIC, to the satisfaction of ASIC, they have knowledge and experience providing financial services.

Specifically if the licensee is an individual, that individual must demonstrate they have:

- knowledge of the licensee’s obligations under the Act and the Principal Regulations; and
- the competence to provide the financial services covered by the license.

If the licensee is a partnership or corporation, it is each recognised accountant who is responsible for, and supervises, the provision of the financial services by the licensee who have to demonstrate those things.

Item 4 inserts new subregulation 7.6.04(3) which restates the definitions of ‘class of product advice’, ‘exempt licensee’ and ‘recognised accountant’ as set out above.

Item 5 inserts new regulation 7.8.12A which modifies the obligation on financial services licensee to lodge an auditor’s report under section 989B of the Act. Subsection 989(3) of the Act requires that all licensees must lodge with ASIC an auditor’s report. Subregulation 7.8.12A(1) modifies this requirement to provide that exempt licensees must lodge a compliance certificate that is in the prescribed form, instead of an auditor’s report.

Subregulation 7.8.12A(2) modifies section 989B by introducing a new subsection 989B(4) which sets out definitions for class of product advice and exempt licensee. The definition of class of product advice is the same as provided for in new subregulation 7.6.04(3). The definition of exempt licensee is different from that provided for in new subregulation 7.6.04(3). Here exempt licensee means a financial service licensee:

- does not deal with money to which Division 2 of Part 7.8 of the Act applies; and
- is only licensed to provide one or more of the following financial services:
 - financial product advice on self-managed superannuation funds;
 - financial product advice on superannuation products in relation to a person’s existing holding in a superannuation product but only to the extent required for:
 - : making a recommendation that the person establish a self-managed superannuation fund; or
 - : providing advice to the person on contributions or pensions under a superannuation product;
- class of product advice on the following:
 - superannuation products;
 - securities;
 - simple managed investment schemes;
 - general insurance products;
 - life risk insurance products;
 - basic deposit products;
- arrange to deal in a self-managed superannuation fund.

Hence any licence who does not handle client money in the course of providing financial services and only provides the limited advice services listed above can qualify to lodge a compliance certificate instead of an audit.

Item 6 replaces paragraph 7.8.14(b) with new paragraphs 7.8.14(b) and (c) to reflect the modified audit report requirements introduced by item 5. Paragraph 7.8.14 now provides that a true and fair profit and loss statement and balance sheet in respect of a financial year must contain a declaration by the financial services licensee that:

- the profit and loss statement and balance sheet give a true and fair view of the matters stated in it;
- if the licensee is required to lodge an auditor's report under subsection 989B (3) of the Act—the auditor's report lodged with the profit and loss statement and balance sheet is a true copy of the report on the profit and loss statement and balance sheet of the financial services licensee;
- if the licensee is required to lodge a compliance certificate under subsection 989B (3) of the Act—the information in the compliance certificate lodged with the profit and loss statement and balance sheet is complete and accurate.

Item 7 inserts new regulation 7.8.14B which provides that section 990B (the obligation to appoint an auditor) does not apply to an exempt licensee. The definition of exempt licensee is the same as introduced by subregulation 7.8.12A(2).

Schedule 2 – Amendment that commence on 1 July 2016

Item 1 repeals regulation 7.1.29A. Regulation 7.1.29A provided an exemption from the obligation to hold a financial services licence for members of particular accounting bodies who provided advice about the establishment, operation, structuring and valuation of SMSF, including recommendations that a person acquire an interest in an SMSF.

Schedule 3 – Amendment that commence on 1 July 2019

Item 1 repeals regulation 7.6.01BA, removing the reduced organisation competence requirement for exempt licensees. After 1 July 2019, the full obligation in section 912(1)(e) of the Act will apply to all licensees.

Statement of Compatibility with Human Rights

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

Corporations Amendment Regulation 2012 (No)

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

Overview of the Legislative Instrument

The *Corporations Amendment Regulation 2012 (No)* makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments remove the current exemption which allows accountants to provide financial advice on self-managed superannuation funds (SMSFs) without an Australian Financial Services Licence (AFSL) from 2016 and provides alternative licensing arrangements.

Specifically, the amendments to the Principal Regulations:

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- provide that licensees who receive an AFSL under this streamlined process must complete a knowledge update review within three years of the date on which the license is granted; and
- provide that any licensee who only provides particular advice services and does not handle client-money can lodge an annual compliance certificate instead of an audit report.

Human rights implications

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

Conclusion

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