EXPOSURE-DRAFT

Inserts for

Corporations and Consumer Legislation Amendment (Consumer Financial Protection) Bill 2012: Amendments relating to the use of the expressions *financial planner* and *financial adviser*

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Schedule 2	The day after this Act receives the Royal Assent.	

Schedule 2—Amendments relating to the use of the expressions financial planner and financial adviser

Corporations Act 2001

1 At the end of Division 10 of Part 7.6

　　　Add:

923C Restriction on use of the expressions *financial planner* and *financial adviser* etc.

　　　(1) A person (the ***first person***) contravenes this subsection if:

　　　　　(a) either:

　　　　　　　(i) the first person carries on a financial services business or provides a financial service (whether or not on behalf of another person); or

        (ii) another person provides a financial service on behalf of the first person; and

(b) the first person assumes or uses, in this jurisdiction, a restricted word or expression in relation to that business or service.

Note 1:   For the meanings of *restricted word or expression* and *assume or use*, see subsection (4).

Note 2:   A contravention of this subsection is an offence (see subsection 1311(1)).

(2) However, it is not a contravention of subsection (1) for the first person to assume or use a restricted word or expression if:

  (a) both:

      (i) the first person holds an Australian financial services licence; and

      (ii) the first person can, under the licence, provide personal advice to retail clients in relation to designated financial products; or

  (b) both:

      (i) the first person provides personal advice to retail clients, in relation to designated financial products, on behalf of another person who holds an Australian financial services licence; and

      (ii) the other person can, under the licence, provide personal advice to retail clients in relation to designated financial products.

(3) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence based on subsection (1) of this section, the person commits such an offence in respect of:

  (a) the first day on which the offence is committed; and

  (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

(4) In this section:

  (a) a reference to a *restricted word or expression* is a reference to:

      (i) the expression *financial planner* or *financial adviser*; or

    (ii) any other word or expression specified in the regulations as a restricted word or expression for the purposes of this section; or

    (iii) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and

  (b) a reference to a ***word or expression being assumed or used*** includes a reference to the word or expression being assumed or used:

    (i) as part of another word or expression; or

    (ii) in combination with other words, letters or other symbols.

 (5) In this section:

consumer credit insurance product has the meaning given by regulations made for the purposes of subparagraph 761G(5)(b)(v).

designated financial product means a financial product other than:

  (a) a general insurance product (other than a sickness and accident insurance product); or

  (b) a consumer credit insurance product; or

  (c) a basic deposit product; or

  (d) a non-cash payment product; or

  (e) a FHSA product.

non-cash payment product means a facility:

  (a) through which; or

  (b) through the acquisition of which;

a person makes non-cash payments.

sickness and accident insurance product has the meaning given by regulations made for the purposes of subparagraph 761G(5)(b)(iv).

2 Schedule 3 (after table item 269A)

Insert:

269AAA	Subsection 923C(1)	10 penalty units for each day, or part of a day, in respect of which the offence is committed.