

# EXPOSURE DRAFT

2019-2020-2021

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Financial Sector Reform (Hayne Royal Commission Response—A New Disciplinary System for Financial Advisers) Bill 2021**

**No.     , 2021**

*(Treasury)*

**A Bill for an Act to amend the law in relation to  
financial services, and for related purposes**

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1     **A Bill for an Act to amend the law in relation to**  
2     **financial services, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act is the *Financial Sector Reform (Hayne Royal Commission*  
6                     *Response—A New Disciplinary System for Financial Advisers) Act*  
7                     *2021*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with

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*No.           , 2021     Financial Sector Reform (Hayne Royal Commission Response—A New            1*  
*Disciplinary System for Financial Advisers) Bill 2021*

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

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## Commencement information

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Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	1 January 2022.	1 January 2022

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Amendments **Schedule 1**  
Main amendments **Part 1**

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1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Australian Securities and Investments Commission Act 2001*

4 **1 Subsection 5(1)**

5 Insert:

6 *Financial Services and Credit Panel* means a panel convened  
7 under subsection 139(1).

8 **2 Subsection 5(1) (paragraph (a) of the definition of *member*)**

9 After “the Panel,”, insert “a Financial Services and Credit Panel,”.

10 **3 Subsection 5(1) (after paragraph (a) of the definition of**  
11 ***member*)**

12 Insert:

13 (aa) in relation to a Financial Services and Credit Panel—a  
14 member of the panel appointed under subsection 140(1); and

15 **4 Subsection 5(1)**

16 Insert:

17 *proposed action notice* has the same meaning as in Part 7.6 of the  
18 Corporations Act.

19 *relevant provider* has the same meaning as in Part 7.6 of the  
20 Corporations Act.

21 *restricted civil penalty provision* has the same meaning as in  
22 Part 7.6 of the Corporations Act.

23 *Tax Practitioners Board* means the Tax Practitioners Board  
24 established by section 60-5 of the *Tax Agent Services Act 2009*.

25 **5 After paragraph 11(2)(a)**

26 Insert:

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## Schedule 1 Amendments

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1 (aa) to provide such staff and support facilities to Financial  
2 Services and Credit Panels as are necessary or desirable for  
3 the performance and exercise by the panels of their functions  
4 and powers;

#### 5 **6 Section 93AA (heading)**

6 After “undertakings”, insert “given to ASIC”.

#### 7 **7 At the end of subsection 102(2)**

8 Add:  
9 ; or (f) a Financial Services and Credit Panel.

#### 10 **8 After paragraph 127(2A)(c)**

11 Insert:  
12 (ca) a Financial Services and Credit Panel;  
13 (cb) the Tax Practitioners Board;

#### 14 **8A Paragraph 127(4)(e)**

15 Omit “legislation; or”, substitute “legislation;”.

#### 16 **9 Paragraph 127(4)(f)**

17 Repeal the paragraph.

#### 18 **10 After paragraph 136(1)(d)**

19 Insert:  
20 (da) information about the following:  
21 (i) the activities (if any) that have been undertaken by each  
22 Financial Services and Credit Panel during the period;  
23 (ii) the applications (if any) that have been made under  
24 subsection 921J(1) of the Corporations Act (approval of  
25 foreign qualifications) during the period;  
26 (iii) the exams (if any) that have been administered by ASIC  
27 under section 921K of the Corporations Act  
28 (administration of exam) during the period;  
29 (iv) if, during the period, ASIC decided not to follow a  
30 recommendation in a notice given to ASIC under  
31 subsection 921Q(1) of the Corporations Act



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Amendments **Schedule 1**  
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1 (recommendations to ASIC in relation to restricted civil  
2 penalty provisions)—the recommendation and the  
3 reasons why ASIC decided not to follow it;

## 4 **11 After Part 8**

5 Insert:

## 6 **Part 9—Financial Services and Credit Panels**

### 7 **Division 1—ASIC to convene panels**

#### 8 **139 ASIC to convene panels**

- 9 (1) ASIC may, in writing, convene one or more Financial Services and  
10 Credit Panels.
- 11 (2) ASIC must convene a panel under subsection (1) to perform  
12 functions or exercise powers under Division 8B of Part 7.6 of the  
13 Corporations Act in relation to a relevant provider if:  
14 (a) either:  
15 (i) ASIC reasonably believes that the relevant provider has  
16 contravened a restricted civil penalty provision; or  
17 (ii) ASIC reasonably believes that a circumstance  
18 mentioned in subsection 921L(1) of the Corporations  
19 Act (power of Financial Services and Credit Panels to  
20 take action against relevant providers) exists or has  
21 occurred in relation to the relevant provider; and  
22 (b) ASIC does not make, or propose to make, an order under  
23 subsection 920A(1) of the Corporations Act (ASIC’s power  
24 to make a banning order) against the relevant provider in  
25 relation to that contravention or circumstance (as the case  
26 may be).
- 27 (3) A panel convened under subsection (1) must consist of the  
28 following members appointed under subsection 140(1):  
29 (a) a Chair;  
30 (b) at least 2 other members.

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- 1 (4) The Chair must be a staff member.

## 2 **Division 2—Panel members**

### 3 **140 Appointment of panel members**

- 4 (1) A member of a Financial Services and Credit Panel is to be  
5 appointed by ASIC by written instrument.
- 6 (2) If a determination is in force under subsection 141(1), a person  
7 must not be appointed as a member of a Financial Services and  
8 Credit Panel unless the person is specified in the determination.
- 9 (3) However, subsection (2) does not apply in relation to the  
10 appointment of the Chair of a Financial Services and Credit Panel.

### 11 **141 Minister may specify persons who are eligible to be appointed to** 12 **panels**

- 13 (1) The Minister may make a written determination specifying persons  
14 who are eligible to be appointed to Financial Services and Credit  
15 Panels.
- 16 (2) The Minister must not specify a person for the purposes of  
17 subsection (1) unless:
- 18 (a) the person is not a member of ASIC; and
  - 19 (b) the person is not a staff member; and
  - 20 (c) the Minister is satisfied that the person has experience or  
21 knowledge in at least one of the following fields:
    - 22 (i) business;
    - 23 (ii) administration of companies;
    - 24 (iii) financial markets;
    - 25 (iv) financial products and financial services;
    - 26 (v) law;
    - 27 (vi) economics;
    - 28 (vii) accounting;
    - 29 (viii) taxation.

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1 (3) In specifying a person for the purposes of subsection (1), the  
2 Minister may consult the Tax Practitioners Board.

3 (4) A determination made under subsection (1) is not a legislative  
4 instrument.

## 5 **142 Disclosure of interests to ASIC**

6 A member of a Financial Services and Credit Panel must give  
7 written notice to ASIC of all interests, pecuniary or otherwise, that  
8 the member has or acquires and that conflict or could conflict with  
9 the proper performance of the member's duties.

## 10 **143 Allowances**

11 (1) A member of a Financial Services and Credit Panel is to be paid  
12 the allowances that are determined by the Remuneration Tribunal.  
13 If no determination of those allowances by the Tribunal is in  
14 operation, a member is to be paid the allowances that are  
15 prescribed under subsection (3).

16 (2) This section has effect subject to the *Remuneration Tribunal Act*  
17 *1973*.

18 (3) The Minister may, by legislative instrument, prescribe allowances  
19 for the purposes of subsection (1).

## 20 **144 Resignation**

21 (1) A member of a Financial Services and Credit Panel may resign the  
22 member's appointment by giving ASIC a written resignation.

23 (2) The resignation takes effect on the day it is received by ASIC or, if  
24 a later day is specified in the resignation, on that later day.

## 25 **145 Termination of appointment**

26 ASIC may at any time terminate the appointment of a member of a  
27 Financial Services and Credit Panel.

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1 **146 Other terms and conditions**

2 A member of a Financial Services and Credit Panel holds office on  
3 the terms and conditions (if any) in relation to matters not covered  
4 by this Act that are determined in writing by ASIC.

5 **147 Application of finance law**

6 A member of a Financial Services and Credit Panel (other than the  
7 Chair of the panel) is not an official of ASIC for the purposes of  
8 the finance law (within the meaning of the *Public Governance,*  
9 *Performance and Accountability Act 2013*).

10 **Division 3—Decisions of panels**

11 **Subdivision A—Decisions of panels at meetings**

12 **148 Convening meetings**

- 13 (1) The Chair of a Financial Services and Credit Panel must hold such  
14 meetings as are necessary for the panel to:
- 15 (a) perform its functions and exercise its powers under  
16 Division 8B of Part 7.6 of the Corporations Act (action  
17 against relevant providers); and
  - 18 (b) perform functions or exercise powers delegated to the panel  
19 by ASIC under section 102 of this Act.
- 20 (2) The Chair of a Financial Services and Credit Panel may convene a  
21 meeting at any time.
- 22 (3) However, the Chair of a Financial Services and Credit Panel must  
23 not convene a meeting if the Chair has or acquires any interest,  
24 pecuniary or otherwise, that conflicts or could conflict with the  
25 proper performance of the Chair's duties in a matter being  
26 considered or about to be considered by the panel.

27 **149 Presiding at meetings**

28 The Chair of a Financial Services and Credit Panel must preside at  
29 all meetings of the panel.

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1 **150 Disclosure of interests to panels**

- 2 (1) A member of a Financial Services and Credit Panel (other than the  
3 Chair of the panel) who has or acquires any interest, pecuniary or  
4 otherwise, that conflicts or could conflict with the proper  
5 performance of the member's duties in a matter being considered  
6 or about to be considered by the panel must disclose the nature of  
7 the interest to the Chair of the panel.
- 8 (2) The disclosure must be made as soon as possible after the relevant  
9 facts have come to the member's knowledge.
- 10 (3) The disclosure must be recorded:  
11 (a) if the disclosure is made at a meeting of the panel—in the  
12 minutes of that meeting; or  
13 (b) otherwise—in the minutes of the next meeting of the panel  
14 after the disclosure is made.
- 15 (4) At a meeting of the panel after the disclosure is made, the member:  
16 (a) must not be present during any deliberation by the panel on  
17 the matter; and  
18 (b) must not take part in any decision of the panel with respect to  
19 the matter.

20 **151 Quorum**

- 21 (1) At a meeting of a Financial Services and Credit Panel, a quorum is  
22 constituted by a majority of members of the panel.
- 23 (2) However, if:  
24 (a) a member of the panel is required under section 150 not to be  
25 present during the deliberations, or to take part in any  
26 decision, of the panel with respect to a particular matter; and  
27 (b) when the member leaves the meeting concerned there is no  
28 longer a quorum present;  
29 the remaining members of the panel at the meeting constitute a  
30 quorum for the purpose of any deliberation or decision at that  
31 meeting with respect to that matter.

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1 **152 Voting at meetings**

2 (1) A question arising at a meeting of a Financial Services and Credit  
3 Panel is to be determined by a majority of the votes of the  
4 members of the panel present and voting.

5 (2) The Chair of the panel has a deliberative vote and, if the votes are  
6 equal, a casting vote.

7 **152A Participation in meetings etc.**

8 (1) The Chair of a Financial Services and Credit Panel may decide to  
9 hold all or part of a meeting:

10 (a) at a particular place; or

11 (b) using any technology that allows an individual to participate  
12 in the meeting, or that part of the meeting, without being  
13 physically present at the meeting or that part of the meeting.

14 (2) If the Chair of the panel decides to hold all or part of a meeting  
15 using technology of a kind mentioned in paragraph (1)(b):

16 (a) each member of the panel may use that technology to  
17 participate in the meeting or that part of the meeting; and

18 (b) the meeting or that part of the meeting may be held at 2 or  
19 more places at the same time.

20 **153 Conduct of meetings**

21 A Financial Services and Credit Panel may, subject to this  
22 Division, regulate proceedings at its meetings as it considers  
23 appropriate.

24 **154 Minutes**

25 A Financial Services and Credit Panel must keep minutes of its  
26 meetings.

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1 **Subdivision B—Decisions of panels without meetings**

2 **155 Decisions without meetings**

- 3 (1) A Financial Services and Credit Panel is taken to have made a  
4 decision at a meeting if:
- 5 (a) the Chair of the panel informs the other members of the panel  
6 of the proposed decision, or makes reasonable efforts to do  
7 so; and
- 8 (b) without meeting, a majority of the members of the panel  
9 entitled to vote on the proposed decision indicate agreement  
10 with the decision; and
- 11 (c) that agreement is indicated in accordance with the method  
12 determined by the panel under subsection (2).
- 13 (2) Subsection (1) applies only if:
- 14 (a) the Chair of the panel is not prevented by subsection 148(3)  
15 from convening a meeting in relation to the proposed  
16 decision; and
- 17 (b) the panel:
- 18 (i) has determined that it may make decisions of that kind  
19 without meeting; and
- 20 (ii) has determined the method by which members of the  
21 panel are to indicate agreement with proposed decisions.
- 22 (3) For the purposes of paragraph (1)(b), a member of the panel (other  
23 than the Chair of the panel) is not entitled to vote on a proposed  
24 decision if the member would not have been entitled to vote on that  
25 proposal if the matter had been considered at a meeting of the  
26 panel.
- 27 (4) The panel must keep a record of decisions made in accordance  
28 with this section.

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1 **Division 4—Panel hearings**

2 **Subdivision A—General**

3 **156 When hearings are to be held**

4 (1) A Financial Services and Credit Panel may only hold a hearing as  
5 required or permitted by this section.

6 (2) A Financial Services and Credit Panel must hold a hearing if:

7 (a) the panel proposes to make:

8 (i) a decision to make an order, as an ASIC delegate,  
9 against a person under subsection 920A(1) of the  
10 Corporations Act (ASIC’s power to make a banning  
11 order); or

12 (ii) a decision to make an order, as an ASIC delegate,  
13 against a person under subsection 80(1) of the *National*  
14 *Consumer Credit Protection Act 2009* (ASIC’s power to  
15 make a banning order); or

16 (b) a relevant provider requests that the panel hold a hearing in  
17 response to a proposed action notice given to the relevant  
18 provider.

19 (3) A Financial Services and Credit Panel may hold a hearing if the  
20 panel proposes make a decision mentioned in subsection 921P(5)  
21 of the Corporations Act (variation or revocation of instruments  
22 affecting relevant providers).

23 **157 Panels to take account of evidence and submissions**

24 A Financial Services and Credit Panel must take into account:

25 (a) evidence given, or a submission made, to it at a hearing of  
26 the panel; or

27 (b) a submission lodged with it under subsection 161(2); or

28 (c) a submission made in response to a proposed action notice;  
29 in making a decision on a matter to which the evidence or  
30 submission relates.



1 **Subdivision B—Hearing procedures**

2 **158 Proceedings at hearings**

- 3 (1) A hearing of a Financial Services and Credit Panel must be  
4 conducted with as little formality and technicality, and with as  
5 much expedition, as a proper consideration of the matters before  
6 the panel permits.
- 7 (2) At a hearing of a Financial Services and Credit Panel, the panel:  
8 (a) is not bound by the rules of evidence; and  
9 (b) may, on such conditions as it thinks fit, permit a person to  
10 intervene; and  
11 (c) must observe the rules of natural justice.
- 12 (3) The Chair of a Financial Services and Credit Panel may decide to  
13 hold all or part of a hearing of the panel:  
14 (a) at a particular place; or  
15 (b) using any technology that allows an individual to participate  
16 in the hearing, or that part of the hearing, without being  
17 physically present at the hearing or that part of the hearing.
- 18 (4) If the Chair of a Financial Services and Credit Panel decides to  
19 hold all or part of a hearing using technology of a kind mentioned  
20 in paragraph (3)(b):  
21 (a) each participant in the hearing (including each member of the  
22 panel) may use that technology to participate in the hearing  
23 or that part of the hearing; and  
24 (b) the hearing or that part of the hearing may be held at 2 or  
25 more places at the same time.
- 26 (5) Subdivision A of Division 3 (decisions of panels at meetings)  
27 applies, so far as practicable, in relation to a hearing of a Financial  
28 Services and Credit Panel as if the hearing were a meeting of the  
29 panel.

30 **159 Notice of hearings**

31 If a Financial Services and Credit Panel holds a hearing in relation  
32 to a proposed decision affecting a person:

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- 1 (a) the Chair of the panel must appoint a time for the hearing and  
2 give written notice of that time to the person; and
- 3 (b) if the Chair of the panel decides under paragraph 158(3)(a) to  
4 hold the hearing, or part of the hearing, at a particular  
5 place—the Chair must give written notice of the place to the  
6 person; and
- 7 (c) if the Chair of the panel decides under paragraph 158(3)(b) to  
8 hold the hearing, or part of the hearing, using technology that  
9 allows an individual to participate in the hearing, or that part  
10 of the hearing, without being physically present at the  
11 hearing or that part of the hearing—the Chair must give  
12 notice of the technology to be used to the person.

### 13 **160 Who may be present at hearings etc.**

- 14 (1) A person must not be present at a hearing, or a part of a hearing, of  
15 a Financial Services and Credit Panel in relation to a proposed  
16 decision affecting a person (the *affected person*) unless:
- 17 (a) the panel has decided, under paragraph 162(2)(a), to hold the  
18 hearing or the part of the hearing, as the case may be, in  
19 public; or
- 20 (b) the person is required by a summons under subsection 164(1)  
21 to appear at the hearing; or
- 22 (c) the Chair of the panel gives a written direction naming the  
23 person; or
- 24 (d) both the following apply:
- 25 (i) the person is a staff member;
- 26 (ii) the Chair of the panel has not directed the person to  
27 leave the hearing or the part of the hearing, as the case  
28 may be; or
- 29 (e) the person is covered by subsection (2).
- 30 Note: Failure to comply with this subsection is an offence (see subsection  
31 170(1)).
- 32 (2) This subsection covers the following:
- 33 (a) the affected person;
- 34 (b) a person who is, under section 163, representing:
- 35 (i) the affected person; or

- 1 (ii) a person required by a summons under subsection  
2 164(1) to appear at the hearing.

## 3 **161 Appearance of affected persons at hearings**

- 4 (1) A person does not need to appear at a hearing of a Financial  
5 Services and Credit Panel in relation to a proposed decision  
6 affecting the person (even if the person requested the hearing in  
7 response to a proposed action notice given to the person).
- 8 (2) If the person chooses not to appear at the hearing, the person may,  
9 before the day of the hearing, lodge with the panel any written  
10 submissions that the person wishes the panel to take into account in  
11 relation to the proposed decision.

## 12 **162 Affected persons may request hearings to be held in public**

- 13 (1) A person may request that a hearing (or a part of a hearing) of a  
14 Financial Services and Credit Panel in relation to a proposed  
15 decision affecting the person be held in public.
- 16 (2) The panel must decide to:  
17 (a) hold the hearing (or that part of the hearing) in public; or  
18 (b) not hold the hearing (or that part of the hearing) in public.
- 19 (3) In making a decision under subsection (2), the panel must have  
20 regard to the following:  
21 (a) whether evidence that may be given, or a matter that may  
22 arise, during the hearing (or that part of the hearing) is of a  
23 confidential nature or relates to the commission, or to the  
24 alleged or suspected commission, of an offence;  
25 (b) any unfair prejudice to a person's reputation that would be  
26 likely to be caused if the hearing (or that part of the hearing)  
27 took place in public;  
28 (c) whether it is in the public interest that the hearing (or that  
29 part of the hearing) take place in public;  
30 (d) any other relevant matter.

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## Schedule 1 Amendments

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#### 1 163 Representation at hearings

- 2 (1) At a hearing of a Financial Services and Credit Panel, an individual  
3 may appear in person or be represented by an employee of the  
4 individual approved by the panel.
- 5 (2) A body corporate may be represented at a hearing of a Financial  
6 Services and Credit Panel by an officer or employee of the body  
7 corporate approved by the panel.
- 8 (3) An unincorporated association, or a person in the person's capacity  
9 as a member of an unincorporated association, may be represented  
10 at a hearing of a Financial Services and Credit Panel by a member,  
11 officer or employee of the association approved by the panel.
- 12 (4) Any person may be represented at a hearing of a Financial Services  
13 and Credit Panel by a barrister or solicitor of the Supreme Court of  
14 a State or Territory or of the High Court.

#### 15 164 Power to require persons to appear and give evidence etc.

- 16 (1) At or prior to a hearing of a Financial Services and Credit Panel in  
17 relation to a proposed decision affecting a person (the *affected*  
18 *person*), the Chair of the panel may, by written summons given to  
19 a person (other than the affected person):
- 20 (a) require the person to appear before the panel at the hearing to  
21 give evidence, to produce specified documents, or to do both;  
22 and
- 23 (b) require the person to attend from day to day unless excused,  
24 or released from further attendance, by the Chair.
- 25 Note 1: The affected person does not need to appear at the hearing (see  
26 subsection 161(1)).
- 27 Note 2: Failure to comply with a requirement made under this subsection is an  
28 offence (see subsection 169(1)).
- 29 (2) At a hearing of a Financial Services and Credit Panel, the panel  
30 may take evidence on oath or affirmation, and for that purpose the  
31 Chair of the panel may:
- 32 (a) require a person appearing at the hearing to either take an  
33 oath or make an affirmation; and

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1 (b) administer an oath or affirmation to a person appearing at the  
2 hearing.

3 Note: Failure to comply with a requirement made under this subsection is an  
4 offence (see subsection 169(2)).

5 (3) The oath or affirmation to be taken or made by a person for the  
6 purposes of subsection (2) is an oath or affirmation that the  
7 evidence the person will give will be true.

8 (4) The Chair of a Financial Services and Credit Panel presiding at a  
9 hearing of the panel:

10 (a) may require a person appearing at the hearing to answer a  
11 question put to the person; and

12 (b) may require a person appearing at the hearing pursuant to a  
13 summons issued under this section to produce a document  
14 specified in the summons.

15 Note: Failure to comply with a requirement made under this subsection is an  
16 offence (see subsection 169(3)).

17 (5) The Chair of a Financial Services and Credit Panel may permit a  
18 person appearing at a hearing of the panel to give evidence by  
19 tendering, and if the Chair so requires, verifying by oath or  
20 affirmation, a written statement.

## 21 **165 Allowances and expenses**

22 A person required by a summons under subsection 164(1) to  
23 appear at a hearing of a Financial Services and Credit Panel in  
24 relation to a proposed decision affecting a person (the *affected*  
25 *person*) is entitled to be paid the prescribed allowances and  
26 expenses (if any) by:

27 (a) if the summons was issued at the affected person's request—  
28 the affected person; or

29 (b) otherwise—ASIC.

## 30 **166 Panels may restrict publication of certain material**

31 (1) If, at a hearing of a Financial Services and Credit Panel, the panel  
32 is satisfied that it is desirable to restrict the publication of evidence  
33 given before the panel, or matters contained in documents lodged

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1 with the panel, the panel may give a written direction restricting  
2 the publication of that evidence or those matters.

3 Note: Failure to comply with a direction in force under this subsection is an  
4 offence (see subsection 171(1)).

5 (2) In determining whether it is desirable to restrict the publication of  
6 evidence given before the panel, or matters contained in documents  
7 lodged with the panel, the panel must have regard to:

8 (a) whether evidence that has been or may be given, or a matter  
9 that has arisen or may arise, during the hearing is:

10 (i) of a confidential nature; or

11 (ii) relates to the commission, or to the alleged or suspected  
12 commission, of an offence against an Australian law;  
13 and

14 (b) any unfair prejudice to a person's reputation that would be  
15 likely to be caused unless the panel gives a direction  
16 restricting the publication of that evidence or those matters;  
17 and

18 (c) whether it is in the public interest that the panel gives a  
19 direction restricting the publication of that evidence or those  
20 matters; and

21 (d) any other relevant matter.

## 22 Subdivision C—Offences

### 23 167 Contempt of panels

24 (1) A person commits an offence if:

25 (a) the person does an act or omits to do an act; and

26 (b) the act or omission results in the obstruction or hindering of a  
27 Financial Services and Credit Panel, or a member of the  
28 panel, in the performance or exercise of any of the panel's  
29 functions and powers.

30 Penalty: 2 years imprisonment.

31 (2) A person commits an offence if:

32 (a) the person does an act or omits to do an act; and

33 (b) the act or omission results in the disruption of a hearing.

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1 Penalty: 2 years imprisonment.

## 2 **168 Giving false evidence**

3 (1) A person commits an offence if:

- 4 (a) the person gives evidence at a hearing of a Financial Services  
5 and Credit Panel; and  
6 (b) the evidence is false or misleading in a material particular.

7 Penalty: 2 years imprisonment.

8 (2) Subsection (1) does not apply if the person, when giving the  
9 evidence, reasonably believed that it was true and not misleading.

10 Note: A defendant bears an evidential burden in relation to the matter in  
11 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## 12 **169 Failing to comply with certain requirements**

13 (1) A person commits an offence if:

- 14 (a) the person is required to do something in accordance with a  
15 summons given to the person under subsection 164(1); and  
16 (b) the person fails to comply with the requirement.

17 Penalty: 50 penalty units.

18 (2) A person commits an offence if:

- 19 (a) the person is required under paragraph 164(2)(a) to take an  
20 oath or make an affirmation; and  
21 (b) the person fails to comply with the requirement.

22 Penalty: 50 penalty units.

23 (3) A person commits an offence if:

- 24 (a) the person is required under subsection 164(4) to answer a  
25 question or produce a document; and  
26 (b) the person fails to comply with the requirement.

27 Penalty: 50 penalty units.

28 (4) An offence against subsection (1), (2) or (3) is an offence of strict  
29 liability.

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1 **170 Being present at hearings**

- 2 (1) A person commits an offence if:
- 3 (a) the person is present at a hearing, or a part of a hearing, of a  
4 Financial Services and Credit Panel; and
- 5 (b) the panel has not decided, under paragraph 162(2)(a), to hold  
6 the hearing or the part of the hearing, as the case may be, in  
7 public; and
- 8 (c) the person is not named in a direction of the Chair of the  
9 panel in force under paragraph 160(1)(c); and
- 10 (d) the person is not covered by subsection 160(2).

11 Penalty: 30 penalty units.

- 12 (2) An offence against subsection (1) is an offence of strict liability.

13 **171 Publication of restricted material**

- 14 (1) A person commits an offence if:
- 15 (a) the person publishes evidence given before, or matters  
16 contained in documents lodged with, a Financial Services  
17 and Credit Panel; and
- 18 (b) a direction restricting the publication of that evidence or  
19 those matters is in force under subsection 166(1).

20 Penalty: 120 penalty units.

- 21 (2) An offence against subsection (1) is an offence of strict liability.

22 **Subdivision D—Other matters**

23 **171A Reference to Court of question of law arising at hearing**

- 24 (1) ASIC may, at the request of the Chair of a Financial Services and  
25 Credit Panel, refer to the Court for decision a question of law  
26 arising at a hearing of the panel.
- 27 (2) Where a question is referred under subsection (1), the panel must  
28 not, in relation to a matter to which the hearing relates:



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- 1 (a) make, while the reference is pending, a decision to which the  
2 question is relevant; or  
3 (b) proceed in a manner, or make a decision, that is inconsistent  
4 with the Court’s opinion on the question.
- 5 (3) Where a question is referred under subsection (1):  
6 (a) ASIC must send to the Court all documents that were before  
7 the panel in connection with the hearing; and  
8 (b) at the end of the proceeding in the Court in relation to the  
9 reference, the Court must cause the documents to be returned  
10 to ASIC.

## 11 **171B Protection of panel members etc.**

- 12 (1) A member of a Financial Services and Credit Panel has, in the  
13 performance or exercise of any of the member’s functions and  
14 powers as a member in relation to a hearing of the panel, the same  
15 protection and immunity as a Justice of the High Court.
- 16 (2) A barrister, solicitor or other person representing a person at a  
17 hearing of a Financial Services and Credit Panel has the same  
18 protection and immunity as a barrister in appearing for a party in a  
19 proceeding in the High Court.
- 20 (3) Subject to this Act, a person who is required by a summons under  
21 subsection 164(1) to appear at a hearing of a Financial Services  
22 and Credit Panel, or a person appearing at a such a hearing, has the  
23 same protection as a witness in a proceeding in the High Court.

## 24 **Division 5—Information given to panel members**

### 25 **171C Use and disclosure of information**

- 26 (1) A person commits an offence if:  
27 (a) the person is or was a member of a Financial Services and  
28 Credit Panel; and  
29 (b) the person uses or discloses information; and

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1 (c) the information was obtained by the person in connection  
2 with the performance of the panel's functions or the exercise  
3 of the panel's powers.

4 Penalty: 2 years imprisonment.

5 (2) Subsection (1) does not apply if the use or disclosure:

6 (a) is required or permitted by a law of the Commonwealth or a  
7 prescribed law of a State or Territory; or

8 (b) is made to ASIC for the purposes of the performance of  
9 ASIC's functions, or the exercise of its powers, under the  
10 corporations legislation or the *National Consumer Credit  
11 Protection Act 2009*; or

12 (c) is made to the Tax Practitioners Board for the purposes of the  
13 performance of the Board's functions, or the exercise of its  
14 powers, under the *Tax Agent Services Act 2009*; or

15 (d) is made for the purposes of the performance of the panel's  
16 functions or the exercise of its powers; or

17 (e) is made to another Financial Services and Credit Panel for  
18 the purposes of the performance of the other panel's  
19 functions or the exercise of the other panel's powers.

20 Note: A defendant bears an evidential burden in relation to the matters in  
21 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## 22 **Division 6—Enforceable undertakings**

### 23 **171D Enforcement of undertakings given to Financial Services and 24 Credit Panels**

25 (1) A Financial Services and Credit Panel may accept a written  
26 undertaking given by a person in connection with a matter in  
27 relation to which the panel may make an instrument under  
28 subsection 921L(1) of the Corporations Act (power of Financial  
29 Services and Credit Panels to take action against relevant  
30 providers).

31 (2) The person may apply to ASIC to withdraw or vary the  
32 undertaking.

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- 1 (3) If the person makes an application under subsection (2), ASIC may  
2 ask a Financial Services and Credit Panel to decide whether to  
3 consent to the person withdrawing or varying the undertaking.
- 4 (4) The person may withdraw or vary the undertaking only if the  
5 Financial Services and Credit Panel mentioned in subsection (3)  
6 consents to the person doing so.
- 7 (5) If ASIC considers that the person who gave the undertaking has  
8 breached any of its terms, ASIC may apply to the Court for an  
9 order under subsection (6).
- 10 (6) If the Court is satisfied that the person has breached a term of the  
11 undertaking, the Court may make all or any of the following  
12 orders:
- 13 (a) an order directing the person to comply with that term of the  
14 undertaking;
- 15 (b) an order directing the person to pay to the Commonwealth an  
16 amount up to the amount of any financial benefit that the  
17 person has obtained directly or indirectly and that is  
18 reasonably attributable to the breach;
- 19 (c) any order that the Court considers appropriate directing the  
20 person to compensate any other person who has suffered loss  
21 or damage as a result of the breach;
- 22 (d) any other order that the Court considers appropriate.

## 23 *Corporations Act 2001*

### 24 **12 Section 9**

25 Insert:

26 *Financial Services and Credit Panel*, when used in a provision  
27 outside Chapter 7, has the same meaning as it has in Chapter 7.

28 *proposed action notice*, when used in a provision outside  
29 Chapter 7, has the same meaning as it has in Chapter 7.

30 *response period*, when used in a provision outside Chapter 7, has  
31 the same meaning as it has in Chapter 7.

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1                    *proposed action notice* has the meaning given by subsection  
2                    921PA(2).

3                    *registration prohibition order* has the meaning given by paragraph  
4                    921M(1)(d).

5                    *registration suspension order* has the meaning given by paragraph  
6                    921M(1)(c).

7                    *registration year* of a financial services licensee has the meaning  
8                    given by section 921ZA.

9                    *response period*, for a proposed action notice, has the meaning  
10                    given by paragraph 921PA(2)(c).

11                    *restricted civil penalty provision* has the meaning given by  
12                    subsection 921Q(3).

## 13                    **21 Section 910A (definition of *standards body*)**

14                    Repeal the definition.

## 15                    **22 Section 910A**

16                    Insert:

17                    *suspension period*, in relation to a registration suspension order,  
18                    has the meaning given by paragraph 921M(1)(c).

19                    *tax (financial) advice service* has the same meaning as in the *Tax*  
20                    *Agent Services Act 2009*.

## 21                    **23 After subsection 920A(1)**

22                    Insert:

23                    (1AA) Subsection (1) has effect subject to subsection (2).

## 24                    **24 Subsection 920A(2)**

25                    Omit “However, ASIC may only make a banning order against a  
26                    person”, substitute “Subject to subsection (3), if ASIC has not delegated  
27                    its power to make a banning order against a person to a Financial  
28                    Services and Credit Panel, ASIC may make the order only”.

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1 **25 At the end of subsection 920A(2)**

2 Add:

3 Note: If ASIC delegates its power to make a banning order against a person  
4 to a Financial Services and Credit Panel, the panel may make the  
5 order only after holding a hearing in relation to the proposed order  
6 (see section 156 of the ASIC Act).

7 **26 Subsection 920A(3)**

8 Repeal the subsection, substitute:

9 (3) ASIC may make a banning order against a person without giving  
10 the person the opportunities mentioned in subsection (2) if:

11 (a) either:

12 (i) ASIC has not delegated its power to make the banning  
13 order to a Financial Services and Credit Panel; or

14 (ii) ASIC exercises its power to make the banning order  
15 despite such a delegation; and

16 (b) ASIC's grounds for making the banning order are or include  
17 both of the following:

18 (i) that the suspension or cancellation of the relevant  
19 licence took place under section 915B;

20 (ii) that the person has been convicted of serious fraud.

21 Note: See section 34AB of the *Acts Interpretation Act 1901* (effect of  
22 delegation).

23 **27 Subsection 921B(2) (heading)**

24 After “for”, insert “all”.

25 **28 Paragraph 921B(2)(a)**

26 Omit “standards body under section 921U”, substitute “Minister under  
27 section 921G”.

28 **29 Subparagraph 921B(2)(b)(ii)**

29 Repeal the subparagraph, substitute:

30 (ii) ASIC has approved the foreign qualification under  
31 section 921J.

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1 **30 Subsections 921B(3) and (4)**

2 Omit “standards body”, substitute “Minister under section 921G”.

3 **31 Subsection 921B(5) (heading)**

4 After “for”, insert “all”.

5 **32 Subsection 921B(5)**

6 Omit “standards body”, substitute “Minister under section 921G”.

7 **33 Subsection 921B(5) (note)**

8 Omit “section 921D”, substitute “subsection 921D(6)”.

9 **34 At the end of section 921B**

10 Add:

11 *Additional conditions for relevant providers who provide tax*  
12 *(financial) advice services*

13 (6) The fifth standard is that if:

14 (a) the person provides, or is to provide, a tax (financial) advice  
15 service; and

16 (b) a determination is in force in relation to the person under  
17 section 921H; and

18 (c) the determination sets out a requirement mentioned in any of  
19 paragraphs 921H(a) to (d);

20 the person meets the requirement.

21 Note: A relevant provider who has met the education and training standard  
22 in this subsection is a qualified tax relevant provider for the purposes  
23 of the *Tax Agent Services Act 2009* (see subsection 90-1(1) of that  
24 Act).

25 *Additional continuing standard for relevant providers who provide*  
26 *tax (financial) advice services*

27 (7) The sixth standard is that if:

28 (a) the person provides a tax (financial) advice service; and

29 (b) a determination is in force in relation to the person under  
30 section 921H; and

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- 1 (c) the determination sets out a requirement mentioned in  
2 paragraph 921H(e);  
3 the person meets the requirement.

4 Note: A provisional relevant provider is not required to meet this standard  
5 (see subsection 921D(6)).

## 6 **35 Section 921D**

7 Repeal the section, substitute:

### 8 **921D Relevant providers to meet education and training standards**

#### 9 *Qualifications and exam*

- 10 (1) A relevant provider must meet the education and training standards  
11 in subsections 921B(2) and (3).

#### 12 *Work and training*

- 13 (2) A relevant provider must either:  
14 (a) meet the education and training standard in  
15 subsection 921B(4); or  
16 (b) be undertaking work and training in accordance with that  
17 subsection.

#### 18 *Continuing professional development for all relevant providers*

- 19 (3) A relevant provider must comply with subsection 921B(5):  
20 (a) in the case of a relevant provider who is a financial services  
21 licensee—during the licensee’s CPD year; or  
22 (b) in the case of a relevant provider who is authorised to  
23 provide personal advice to retail clients, on behalf of a  
24 financial services licensee, in relation to relevant financial  
25 products—during the licensee’s CPD year.

26 Note: Section 922HB requires a notice to be given at the end of a financial  
27 services licensee’s CPD year if a relevant provider has not complied  
28 with this section during that year.





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1 **37 Section 921E (note)**

2 Repeal the note.

3 **38 At the end of section 921E**

4 Add:

5 (2) A person contravenes this subsection if the person contravenes  
6 subsection (1).

7 Note 1: This subsection is a restricted civil penalty provision (see sections  
8 921Q and 1317E).

9 Note 2: A Financial Services and Credit Panel may also take certain action  
10 against a relevant provider who contravenes subsection (1) (see  
11 Division 8B).

12 **39 At the end of subsection 921F(1)**

13 Add:

14 Note: The Minister may provide further in relation to the requirements set  
15 out in this section (see paragraph 921G(4)(a)).

16 **40 Section 921F (note)**

17 Repeal the note.

18 **41 At the end of section 921F**

19 Add:

20 *Civil liability*

21 (8) A person contravenes this subsection if the person contravenes  
22 subsection (3), (4), (6) or (7).

23 Note 1: This subsection is a restricted civil penalty provision (see sections  
24 921Q and 1317E).

25 Note 2: A Financial Services and Credit Panel may also take certain action  
26 against a relevant provider who contravenes subsection (3), (4), (6) or  
27 (7) (see Division 8B).

28 **42 At the end of Division 8A of Part 7.6**

29 Add:

---

1 **Subdivision D—Other matters**

2 **921G Minister’s power to make certain legislative instruments—all**  
3 **relevant providers**

- 4 (1) The Minister may, by legislative instrument:  
5 (a) do any or all of the following in one or more determinations:  
6 (i) approve bachelor or higher degrees, or equivalent  
7 qualifications, for the purposes of  
8 paragraph 921B(2)(a);  
9 (ii) approve an exam for the purposes of  
10 subsection 921B(3);  
11 (iii) set requirements for work and training for the purposes  
12 of subsection 921B(4);  
13 (iv) set requirements for continuing professional  
14 development for the purposes of subsection 921B(5) in  
15 relation to the CPD year of a financial services licensee,  
16 the period mentioned in subsection 1546E(5), or any  
17 other period determined by the Minister;  
18 (v) specify a word or expression to refer to a provisional  
19 relevant provider; and  
20 (b) make a Code of Ethics for the purposes of  
21 subsection 921E(1).
- 22 (2) The Minister may, by legislative instrument, in one or more  
23 determinations, modify the operation of a provision in this Part in  
24 relation to a period determined by the Minister under  
25 subparagraph (1)(a)(iv).
- 26 (3) A determination made under subsection (2) has effect according to  
27 its terms, despite any other provision of this Act.
- 28 (4) The Minister may, by legislative instrument, do either or both of  
29 the following in one or more determinations:  
30 (a) provide further in relation to the requirements set out in  
31 section 921F (requirements relating to provisional relevant  
32 providers);  
33 (b) set other requirements in relation to a person who is a  
34 provisional relevant provider.

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1 **921H Minister's power to make certain legislative instruments—**  
2 **relevant providers who provide tax (financial) advice**  
3 **services**

4 The Minister may, by legislative instrument, determine any or all  
5 of the following requirements for a person who provides, or is to  
6 provide, a tax (financial) advice service:

- 7 (a) a requirement that the person has completed one or more  
8 specified bachelor or higher degrees;
- 9 (b) a requirement that the person has completed one or more  
10 specified qualifications;
- 11 (c) a requirement that the person has completed one or more  
12 specified courses;
- 13 (d) a requirement that the person has undertaken specified work  
14 and training;
- 15 (e) a requirement for continuing professional development for  
16 the purposes of subsection 921B(7) in relation to the CPD  
17 year of a financial services licensee or any other period  
18 determined by the Minister.

19 **921J Approval of foreign qualifications**

20 *Application for approval*

- 21 (1) A person who has completed a foreign qualification may apply to  
22 ASIC in the prescribed form for approval of the foreign  
23 qualification.

24 *Approval or refusal to approve*

- 25 (2) ASIC must either:
- 26 (a) approve the foreign qualification in accordance with  
27 subsection (3); or
- 28 (b) refuse to approve the foreign qualification.
- 29 (3) ASIC may approve the foreign qualification only if:
- 30 (a) ASIC is satisfied that the foreign qualification gives the  
31 person qualifications equivalent to a degree or qualification

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- 1 approved by the Minister for the purposes of  
2 paragraph 921B(2)(a); or  
3 (b) both of the following apply:  
4 (i) ASIC specifies one or more courses to be completed by  
5 the person under subsection (4) of this section;  
6 (ii) the person completes each of those courses.
- 7 (4) ASIC may specify one or more courses for the purposes of  
8 paragraph (3)(b) only if ASIC is satisfied that (together with the  
9 person's foreign qualification) the course or courses will give the  
10 person qualifications equivalent to a degree or qualification  
11 approved by the Minister for the purposes of paragraph 921B(2)(a).

12 *When approval comes into force*

- 13 (5) An approval under paragraph (2)(a) comes into force:  
14 (a) if ASIC specifies one or more courses to be completed by the  
15 person under subsection (4)—when the person has completed  
16 all of those courses; or  
17 (b) otherwise—when it is given.

## 18 **921K Administration of exam**

19 If an approval of an exam is in force under subparagraph  
20 921G(1)(a)(ii), ASIC must administer the exam.

## 21 **43 Divisions 8B and 8C of Part 7.6**

22 Repeal the Divisions, substitute:

### 23 **Division 8B—Action against relevant providers**

#### 24 **Subdivision A—Action by Financial Services and Credit Panels**

### 25 **921L Power of Financial Services and Credit Panels to take action** 26 **against relevant providers**

- 27 (1) Subject to subsection (2), a Financial Services and Credit Panel  
28 may make an instrument of a kind specified in subsection 921M(1)  
29 in relation to a relevant provider if:

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- 1 (a) the relevant provider becomes an insolvent under  
2 administration; or
- 3 (b) the relevant provider is convicted of fraud; or
- 4 (c) the panel reasonably believes, having regard to the matters  
5 specified in section 921R but subject to Part VIIC of the  
6 *Crimes Act 1914*, that the relevant provider is not a fit and  
7 proper person to provide personal advice to retail clients in  
8 relation to relevant financial products; or
- 9 (d) the panel reasonably believes that the relevant provider has  
10 contravened a financial services law (including a restricted  
11 civil penalty provision); or
- 12 (e) the relevant provider has been involved in the contravention  
13 of a financial services law (including a restricted civil penalty  
14 provision) by another person; or
- 15 (f) the relevant provider has, at least twice, been linked to a  
16 refusal or failure to give effect to a determination made by  
17 AFCA relating to a complaint that relates to:
- 18 (i) a financial services business; or
- 19 (ii) credit activities (within the meaning of the *National*  
20 *Consumer Credit Protection Act 2009*); or
- 21 (g) subsection 920A(1C) (when a person has been an officer of a  
22 corporation unable to pay its debts) applies to the relevant  
23 provider in relation to 2 or more corporations.
- 24 Note 1: See also sections 920A (ASIC's power to make a banning order) and  
25 921Q (recommendations to ASIC in relation to restricted civil penalty  
26 provisions) of this Act and section 171D of the ASIC Act  
27 (enforcement of undertakings given to Financial Services and Credit  
28 Panels).
- 29 Note 2: Section 921E (relevant providers to comply with the Code of Ethics)  
30 is a financial services law.
- 31 Note 3: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain  
32 circumstances, relieve persons from the requirement to disclose spent  
33 convictions and require persons aware of such convictions to  
34 disregard them.
- 35 Note 4: To work out whether a relevant provider has been linked as described  
36 in paragraph (f), see section 910C.

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1 *Proposed action notice given in relation to relevant circumstances*

- 2 (2) A Financial Services and Credit Panel must not make an  
3 instrument under subsection (1) in relation to a relevant provider  
4 because of circumstances (the *relevant circumstances*) mentioned  
5 in that subsection unless:  
6 (a) the panel gave the relevant provider a proposed action notice  
7 in relation to a proposal to make the instrument because of  
8 the relevant circumstances and either:  
9 (i) no submission or request for a hearing was made within  
10 the response period for the notice; or  
11 (ii) a submission or request for a hearing was made within  
12 the response period for the notice and the panel has  
13 taken into account the submission or held the hearing  
14 (as the case may be); or  
15 (b) all of the following apply:  
16 (i) the panel gave the relevant provider a proposed action  
17 notice in relation to a proposal to make a different  
18 instrument in relation to the relevant circumstances or to  
19 give the relevant provider an infringement notice in  
20 relation to the relevant circumstances;  
21 (ii) a submission or request for a hearing was made within  
22 the response period for the notice;  
23 (iii) the panel has taken into account the submission or held  
24 the hearing (as the case may be).

25 *When a person contravenes a financial services law*

- 26 (3) To avoid doubt, a person contravenes a financial services law if a  
27 person fails to comply with a duty imposed under that law, even if  
28 the provision imposing the duty is not an offence provision or a  
29 civil penalty provision.

30 *Instruments not legislative*

- 31 (4) A instrument made under subsection (1) is not a legislative  
32 instrument.

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1

#### *Interaction with ASIC Act*

2

- (5) Subsection (2) does not limit section 157 of the ASIC Act (panels to take account of evidence and submissions).

3

4

#### **921M Instruments that Financial Services and Credit Panels may make in relation to relevant providers**

5

6

- (1) For the purposes of subsection 921L(1), the following kinds of instrument are specified:

7

8

- (a) a written warning or reprimand of a relevant provider;

9

- (b) a written direction that a relevant provider:

10

- (i) undertake specified training; or

11

- (ii) receive specified counselling; or

12

- (iii) receive specified supervision; or

13

- (iv) report specified matters to ASIC;

14

- (c) a written order (a **registration suspension order**) suspending a relevant provider's registration under subsection 921X(1) for a period (the **suspension period**) specified in the order;

15

16

- (d) a written order (a **registration prohibition order**) that:

17

18

- (i) cancels the registration of a relevant provider under subsection 921X(1) at a time (the **cancellation time**) specified in the order; and

19

20

21

- (ii) provides that the relevant provider is not to be registered under that subsection until after a day (the **prohibition end day**) specified in the order.

22

23

24

Note: If a registration prohibition order is in force against a relevant provider:

25

26

- (a) the relevant provider's registration under subsection 921X(1) will cease to be in force at the cancellation time specified in the order (unless the registration has ceased to be in force at an earlier time) (see sections 921Y and 921Z); and

27

28

29

- (b) ASIC must refuse to register the relevant provider before the prohibition end day specified in the order (see subsection 921X(3)).

30

31

32

33

#### *Effect of paragraph (1)(b) direction*

34

- (2) A relevant provider must comply with a direction in relation to the relevant provider that is in force under paragraph (1)(b).

35



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1 Note: This subsection is a restricted civil penalty provision (see sections  
2 921Q and 1317E).

3 *Effect of registration suspension order*

4 (3) For the purposes of this Part, if a registration suspension order is in  
5 force against a relevant provider, the relevant provider's  
6 registration under subsection 921X(1) is taken not to be in force  
7 during the suspension period specified in the order.

8 *Suspension period and cancellation time*

9 (4) The suspension period specified in a registration suspension order  
10 that is made in relation to a relevant provider must begin at or after  
11 the time a copy of the order is given to the relevant provider.

12 (5) The cancellation time specified in a registration prohibition order  
13 that is made in relation to a relevant provider must be a time that is  
14 at or after a copy of the order is given to the relevant provider.

15 *When instruments come into force*

16 (6) An instrument of a kind specified in subsection (1) that is made in  
17 relation to a relevant provider comes into force when a copy of it is  
18 given to the relevant provider in accordance with subsection  
19 921N(1).

20 **921N Copy of instrument to be given to relevant provider etc.**

21 (1) If, under subsection 921L(1), a Financial Services and Credit Panel  
22 makes an instrument in relation to a relevant provider, the panel  
23 must:

24 (a) give a copy of the instrument to the relevant provider; and

25 (b) at the same time, give a copy of the instrument to:

26 (i) ASIC; and

27 (ii) if the relevant provider is authorised to provide personal  
28 advice to retail clients, on behalf of a financial services  
29 licensee, in relation to relevant financial products—the  
30 licensee; and

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1 (c) at the same time, give the relevant provider a written notice  
2 informing the relevant provider of their right to make an  
3 application under subsection 921P(3) in relation to the  
4 instrument.

5 (2) A copy of an instrument given to a person under paragraph (1)(a)  
6 or (b) must be accompanied by a statement of reasons for the  
7 decision to make the instrument.

8 (3) A failure to comply with subsection (1) or (2) in relation to an  
9 instrument does not affect the validity of the instrument.

#### 10 **921P Variation or revocation of instruments affecting relevant** 11 **providers**

12 (1) This section applies if an instrument of a kind specified in  
13 subsection 921M(1) is in force against a relevant provider.

##### 14 *Variation or revocation at ASIC's initiative*

15 (2) ASIC may request a Financial Services and Credit Panel to make a  
16 decision under subsection (5) in relation to the instrument if ASIC  
17 is satisfied that there has been a change in any of the circumstances  
18 on the basis of which the instrument was made.

##### 19 *Application by relevant provider for variation or revocation*

20 (3) The relevant provider may apply to ASIC in the approved form for:  
21 (a) the instrument to be revoked; or  
22 (b) a specified variation to be made to the instrument.

23 (4) If the relevant provider makes an application under subsection (3),  
24 ASIC must decide to:  
25 (a) request a Financial Services and Credit Panel to make a  
26 decision under subsection (5) in relation to the instrument; or  
27 (b) refuse to make such a request.

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1 *Decisions of Financial Services and Credit Panel about variations*  
2 *or revocations*

- 3 (5) If ASIC makes a request of a Financial Services and Credit Panel  
4 under subsection (2) or paragraph (4)(a), the panel must decide to:  
5 (a) revoke the instrument; or  
6 (b) in the case where the relevant provider made an application  
7 under subsection (3)—make the variation of the instrument  
8 specified in the application; or  
9 (c) make a variation of the instrument (even if the relevant  
10 provider made an application under subsection (3) and the  
11 application specified another variation); or  
12 (d) refuse to revoke the instrument; or  
13 (e) refuse to vary the instrument.
- 14 (6) The panel must give written notice of the panel’s decision to:  
15 (a) if the decision is mentioned in paragraph (5)(a), (b) or (c)—  
16 all of the following:  
17 (i) the relevant provider;  
18 (ii) ASIC;  
19 (iii) if the relevant provider is authorised to provide personal  
20 advice to retail clients, on behalf of a financial services  
21 licensee, in relation to relevant financial products—the  
22 licensee; or  
23 (b) otherwise—the relevant provider.
- 24 (7) A notice given under subsection (6) must be accompanied by a  
25 statement of reasons for the decision to which the notice relates.

## 26 **Subdivision B—Proposed action notices etc.**

### 27 **921PA Proposed action notice**

- 28 (1) The section applies if a Financial Services and Credit Panel  
29 proposes to take either or both of the following actions:  
30 (a) make an instrument under subsection 921L(1) in relation to a  
31 relevant provider because of circumstances (the *relevant*  
32 *circumstances*) mentioned in that subsection;

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- 1 (b) give a relevant provider an infringement notice for the  
2 alleged contravention by the relevant provider of a restricted  
3 civil penalty provision.
- 4 (2) The panel must give a written notice (a *proposed action notice*) to  
5 the relevant provider that:
- 6 (a) sets out details of the action proposed to be taken, including:  
7 (i) for an action mentioned in paragraph (1)(a)—the  
8 relevant circumstances; and  
9 (ii) for an action mentioned in paragraph (1)(b)—the  
10 alleged contravention and the amount to be stated in the  
11 infringement notice for the purposes of  
12 paragraph 1317DAP(1)(f); and
- 13 (b) states whether, if the panel were to take the action, the panel  
14 would also decide to give ASIC a notice under subsection  
15 921PB(2) in relation to the action; and
- 16 (c) invites the relevant provider to do either of the following  
17 within the period of 28 days beginning on the day the notice  
18 is given (or such longer period as is approved by the panel)  
19 (the *response period*):  
20 (i) make a submission, in writing, in relation to the action;  
21 (ii) make a request, in writing, that the panel hold a hearing  
22 under section 156 of the ASIC Act in relation to the  
23 action; and
- 24 (d) if the notice states that, if the panel were to take the action,  
25 the panel would also decide to give ASIC a notice under  
26 subsection 921PB(2) in relation to the action—invites the  
27 relevant provider to do either of the following within the  
28 response period:  
29 (i) make a submission, in writing, in relation to the  
30 proposed decision to give ASIC a notice;  
31 (ii) make a request, in writing, that the panel hold a hearing  
32 under section 156 of the ASIC Act in relation to the  
33 proposed decision to give ASIC a notice; and
- 34 (e) informs the relevant provider that if no submission or request  
35 for a hearing is made within the response period, the panel  
36 may:  
37 (i) take the action; and
-

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- 1 (ii) if the notice states that, if the panel were to take the  
2 action, the panel would also decide to give ASIC a  
3 notice under subsection 921PB(2) in relation to the  
4 action—decide to give ASIC a notice under subsection  
5 921PB(2) in relation to the action.

6 **921PB Notice to ASIC about including details of certain instruments**  
7 **or infringement notices in Register**

- 8 (1) This section applies if a Financial Services and Credit Panel:  
9 (a) makes an instrument under subsection 921L(1) in relation to  
10 a relevant provider because of circumstances (the *relevant*  
11 *circumstances*) mentioned in that subsection; or  
12 (b) gives a relevant provider an infringement notice for the  
13 alleged contravention by the relevant provider of a restricted  
14 civil penalty provision (the *relevant contravention*).

- 15 (2) Subject to subsection (3), the panel must decide to:  
16 (a) give ASIC a written notice under this subsection in relation  
17 to the instrument or infringement notice; or  
18 (b) not give ASIC such a notice.

19 Note: If a Financial Services and Credit Panel gives ASIC a notice under  
20 this subsection, ASIC must enter details of the relevant instrument or  
21 infringement notice in the Register of Relevant Providers (see  
22 paragraphs 922Q(2)(ue) and (uf)).

- 23 (3) The panel must not decide to give ASIC a notice under  
24 subsection (2) in relation to the instrument or infringement notice  
25 unless subsection (4) or (5) applies to the relevant provider.

- 26 (4) This section applies to the relevant provider if:  
27 (a) the panel gave the relevant provider a proposed action notice  
28 in relation to the relevant circumstances or the relevant  
29 contravention; and  
30 (b) the proposed action notice stated that, if the panel were to  
31 take the action covered by the notice, the panel would also  
32 decide to give ASIC a notice under subsection (2) in relation  
33 to the action; and  
34 (c) either:

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- 1 (i) no submission or request for a hearing was made within  
2 the response period for the proposed action notice; or  
3 (ii) a submission or request for a hearing was made within  
4 the response period for the proposed action notice and  
5 the panel has taken into account the submission or held  
6 the hearing (as the case may be).

- 7 (5) This section applies to the relevant provider if:  
8 (a) the panel gave the relevant provider a proposed action notice  
9 in relation to the relevant circumstances or the relevant  
10 contravention; and  
11 (b) the proposed action notice stated that, if the panel were to  
12 take the action covered by the notice, the panel would not  
13 also decide to give ASIC a notice under subsection (2) in  
14 relation to the action; and  
15 (c) a submission or request for a hearing was made within the  
16 response period for the proposed action notice; and  
17 (d) the panel has taken into account the submission or held the  
18 hearing (as the case may be).

#### 19 *Interaction with ASIC Act*

- 20 (6) Subsections (3), (4) and (5) do not limit section 157 of the ASIC  
21 Act (panels to take account of evidence and submissions).

#### 22 **921Q Recommendations to ASIC in relation to restricted civil** 23 **penalty provisions**

- 24 (1) If a Financial Services and Credit Panel reasonably believes that a  
25 relevant provider has contravened a restricted civil penalty  
26 provision, the panel may, by written notice given to ASIC,  
27 recommend that ASIC make an application under  
28 subsection 1317J(1) in relation to the alleged contravention.

29 Note: If ASIC decides to not follow the panel's recommendation, ASIC  
30 must report on the recommendation and ASIC's reasons for not  
31 following it (see subparagraph 136(1)(da)(iv) of the ASIC Act).

- 32 (2) Subsection (1) applies whether or not the panel also makes an  
33 instrument under subsection 921L(1) in relation to the alleged  
34 contravention by the relevant provider.

- 1 (3) Each of the following is a *restricted civil penalty provision*:  
2 (a) subsection 921D(7);  
3 (b) subsection 921E(2);  
4 (c) subsection 921F(8);  
5 (d) subsection 921M(2);  
6 (e) subsection 921S(1).

7 **Subdivision C—Fit and proper person test**

8 **921R Fit and proper person test for relevant providers**

9 The following matters are specified in relation to a relevant  
10 provider and a Financial Services and Credit Panel:

- 11 (a) whether any of the following of the relevant provider has  
12 ever been suspended or cancelled:  
13 (i) an Australian financial services licence;  
14 (ii) an Australian credit licence, or a registration under the  
15 Transitional Act, within the meaning of the *National*  
16 *Consumer Credit Protection Act 2009*;  
17 (b) whether any of the following has ever been made against the  
18 relevant provider:  
19 (i) a banning order, or a disqualification order under  
20 Subdivision B of Division 8 of this Part;  
21 (ii) a banning order, or a disqualification order, under  
22 Part 2-4 of the *National Consumer Credit Protection*  
23 *Act 2009*;  
24 (c) whether the relevant provider has ever been disqualified  
25 under this Act, or any other law of the Commonwealth or of  
26 a State or Territory, from managing corporations;  
27 (d) whether the relevant provider has ever been banned from  
28 engaging in a credit activity (within the meaning of the  
29 *National Consumer Credit Protection Act 2009*) under a law  
30 of a State or Territory;  
31 (e) whether the relevant provider has ever been linked to a  
32 refusal or failure to give effect to a determination made by  
33 AFCA;

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- 1 (f) whether the relevant provider has ever been an insolvent  
2 under administration;
- 3 (g) whether, in the last 10 years, the relevant provider has been  
4 convicted of an offence;
- 5 (h) any relevant information given to ASIC, or an authority of a  
6 State or Territory, in relation to the relevant provider;
- 7 (i) whether, in the last 10 years, a Financial Services and Credit  
8 Panel has made an instrument under subsection 921L(1) in  
9 relation to the relevant provider;
- 10 (j) any other matter prescribed by the regulations;
- 11 (k) any other matter the panel considers relevant.

12 **Subdivision D—Review of decisions made under this Division**  
13 **etc.**

14 **921RA Review of decisions etc.**

15 *Review of decisions*

- 16 (1) A person may apply to the Tribunal for review of any of the  
17 following:
- 18 (a) a decision by a Financial Services and Credit Panel to make  
19 an instrument under subsection 921L(1);
- 20 (b) a decision by a Financial Services and Credit Panel that is  
21 covered by paragraph 921P(5)(c), (d) or (e);
- 22 (c) a decision by a Financial Services and Credit Panel to give  
23 ASIC a notice under subsection 921PB(2).

24 *Notice of reviewable decisions and review rights*

- 25 (2) Section 1317D applies in relation to a decision by a Financial  
26 Services and Credit Panel that is covered by subsection (1) of this  
27 section as if:
- 28 (a) the panel were a decision maker for the purposes of  
29 section 1317D; and
- 30 (b) the decision were a decision to which section 1317B applied.



1 **Division 8C—Registration of relevant providers**

2 **Subdivision A—Requirement for relevant providers to be**  
3 **registered**

4 **921S Unregistered relevant providers not to give financial advice**

5 (1) A relevant provider must not provide personal advice to retail  
6 clients in relation to relevant financial products unless:

7 (a) a registration of the relevant provider under subsection  
8 921X(1) is in force; or

9 (b) subsection (2) or (3) of this section applies.

10 Note: This subsection is a restricted civil penalty provision (see sections  
11 921Q and 1317E).

12 *Pending applications for registration renewal by relevant*  
13 *providers*

14 (2) This subsection applies if:

15 (a) the relevant provider is a financial services licensee; and

16 (b) the relevant provider has made an application under  
17 subsection 921W(1) to renew the relevant provider's  
18 registration; and

19 (c) ASIC has not registered the relevant provider under  
20 subsection 921X(1) in response to the application; and

21 (d) ASIC has not given the relevant provider a notice under  
22 subsection 921X(6) in relation to the application.

23 *Pending applications for registration renewal by financial services*  
24 *licensees*

25 (3) This subsection applies if:

26 (a) a financial services licensee has made an application under  
27 subsection 921W(3) to renew the relevant provider's  
28 registration; and

29 (b) ASIC has not registered the relevant provider under  
30 subsection 921X(1) in response to the application; and

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- 1 (c) ASIC has not given the licensee a notice under subsection  
2 921X(6) in relation to the application.

3 **921T Financial services licensees not to continue to authorise**  
4 **unregistered relevant providers to give financial advice**

5 *Authorised representatives*

- 6 (1) A financial services licensee contravenes this subsection if:  
7 (a) the licensee has given a relevant provider a written notice  
8 under subsection 916A(1) authorising the relevant provider  
9 to provide personal advice to retail clients, on behalf of the  
10 licensee, in relation to relevant financial products; and  
11 (b) the relevant provider provides such advice; and  
12 (c) at the time when the relevant provider does so:  
13 (i) the licensee has not revoked the authorisation under  
14 subsection 916A(4); and  
15 (ii) the relevant provider is not registered under subsection  
16 921X(1); and  
17 (iii) subsection (5) of this section does not apply.

18 *Employees and directors*

- 19 (2) A financial services licensee contravenes this subsection if:  
20 (a) the licensee authorises a relevant provider who is an  
21 employee or director of the licensee, or of a related body  
22 corporate of the licensee, to provide personal advice to retail  
23 clients, on behalf of the licensee, in relation to relevant  
24 financial products; and  
25 (b) the relevant provider provides such advice; and  
26 (c) at the time when the relevant provider does so:  
27 (i) the licensee has not ceased to authorise the relevant  
28 provider as described in paragraph (a); and  
29 (ii) the relevant provider is not registered under subsection  
30 921X(1); and  
31 (iii) subsection (5) of this section does not apply.

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1 *Strict liability offence*

2 (3) A person commits an offence of strict liability if the person  
3 contravenes subsection (1) or (2).

4 *Civil liability*

5 (4) A person contravenes this subsection if the person contravenes  
6 subsection (1) or (2).

7 *Pending applications for registration renewal*

8 (5) This subsection applies if:

- 9 (a) the licensee has made an application under subsection  
10 921W(3) to renew the relevant provider's registration; and  
11 (b) ASIC has not renewed the relevant provider's registration  
12 under subsection 921X(1) in response to the application; and  
13 (c) ASIC has not given the licensee a notice under subsection  
14 921X(6) in relation to the application.

15 **Subdivision B—Applications for registration and registration**  
16 **renewal**

17 **921U Application for registration—relevant providers who are**  
18 **financial services licensees**

19 (1) A relevant provider who is a financial services licensee may apply  
20 to ASIC to be registered under subsection 921X(1).

21 Note: A notice must be lodged with ASIC under section 922D if a person  
22 becomes a relevant provider.

23 (2) The application must:

- 24 (a) be in the approved form; and  
25 (b) include a written declaration by the relevant provider that the  
26 relevant provider:  
27 (i) is a fit and proper person to provide personal advice to  
28 retail clients in relation to relevant financial products;  
29 and

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- 1 (ii) has met the education and training standards in  
2 subsections 921B(2) to (4); and  
3 (iii) if the relevant provider provides, or is to provide, a tax  
4 (financial) advice service—has met the education and  
5 training standard in subsection 921B(6).

6 Note: A person may commit an offence or contravene a civil penalty  
7 provision if the person gives false or misleading information (see  
8 section 1308 of this Act and section 137.1 of the *Criminal Code*).

- 9 (3) Subject to Part VIIC of the *Crimes Act 1914*, the relevant provider  
10 must have regard to the matters specified in section 921R (other  
11 than the matters specified in paragraphs (h) and (k) of that section)  
12 for the purposes of making a declaration under paragraph (2)(b) of  
13 this section.

14 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain  
15 circumstances, relieve persons from the requirement to disclose spent  
16 convictions and require persons aware of such convictions to  
17 disregard them.

#### 18 **921V Application for registration—relevant providers who are not** 19 **financial services licensees**

- 20 (1) A financial services licensee may apply to ASIC to register a  
21 relevant provider under subsection 921X(1).

22 Note: A notice must be lodged with ASIC under section 922D if a person  
23 becomes a relevant provider.

- 24 (2) The application must:  
25 (a) be in the approved form; and  
26 (b) include all of the following:  
27 (i) a written declaration by the relevant provider that the  
28 relevant provider is a fit and proper person to provide  
29 personal advice to retail clients in relation to relevant  
30 financial products;  
31 (ii) a written declaration by the licensee as to whether the  
32 licensee is aware of any reason why the relevant  
33 provider might not be a fit and proper person to provide  
34 personal advice to retail clients in relation to relevant  
35 financial products;

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- 1 (iii) a written declaration by the licensee that the relevant  
2 provider has met the education and training standards in  
3 subsections 921B(2) to (4); and  
4 (c) if the relevant provider provides, or is to provide, a tax  
5 (financial) advice service—include a written declaration by  
6 the licensee that the relevant provider has met the education  
7 and training standard in subsection 921B(6).

8 Note: A person may commit an offence or contravene a civil penalty  
9 provision if the person gives false or misleading information (see  
10 section 1308 of this Act and section 137.1 of the *Criminal Code*).

- 11 (3) Subject to Part VIIC of the *Crimes Act 1914*, the relevant provider  
12 and the licensee must have regard to the matters specified in  
13 section 921R (other than the matters specified in paragraphs (h)  
14 and (k) of that section) for the purposes of making a declaration  
15 under subparagraph (2)(b)(i) or (ii) of this section.

16 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain  
17 circumstances, relieve persons from the requirement to disclose spent  
18 convictions and require persons aware of such convictions to  
19 disregard them.

## 20 **921W Application for registration renewal**

### 21 *Relevant providers who are financial services licensees*

- 22 (1) If a relevant provider who is a financial services licensee is  
23 registered under subsection 921X(1), and the registration is in  
24 force, the relevant provider may apply to ASIC to renew (or further  
25 renew) that registration.
- 26 (2) Subsections 921U(2) and (3) apply in relation to an application  
27 under subsection (1) of this section in the same manner as they  
28 apply in relation to an application under subsection 921U(1).

### 29 *Relevant providers who are not financial services licensees*

- 30 (3) If a relevant provider is registered under subsection 921X(1)  
31 because of an application by a financial services licensee under  
32 subsection 921V(1) or this subsection, and the registration is in  
33 force, the financial services licensee may apply to ASIC to renew  
34 (or further renew) the registration.

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- 1 (4) Subsections 921V(2) and (3) apply in relation to an application  
2 under subsection (3) of this section in the same manner as they  
3 apply in relation to an application under subsection 921V(1).

#### 4 **Subdivision C—Registration and period of registration**

##### 5 **921X Registration of relevant providers**

- 6 (1) Subject to subsections (2) and (3), if an application is made under:  
7 (a) subsection 921U(1) or 921V(1) to register a relevant  
8 provider; or  
9 (b) subsection 921W(1) or (3) to renew the registration of the  
10 relevant provider;  
11 ASIC must register the relevant provider by recording in the  
12 Register of Relevant Providers that the relevant provider is  
13 registered under this subsection.

##### 14 *Refusal to register relevant provider*

- 15 (2) ASIC must refuse to register the relevant provider if one or more of  
16 the following paragraphs apply in relation to the relevant provider:  
17 (a) a banning order is in force against the relevant provider that  
18 has the effect that the relevant provider is prohibited from  
19 providing personal advice to retail clients in relation to  
20 relevant financial products;  
21 (b) a disqualification order under Division 8 is in force against  
22 the relevant provider that has the effect of disqualifying the  
23 relevant provider from providing personal advice to retail  
24 clients in relation to relevant financial products;  
25 (c) the relevant provider has not met the education and training  
26 standards in subsections 921B(2) and (3);  
27 (d) both of the following apply:  
28 (i) the relevant provider has not met the education and  
29 training standard in subsection 921B(4);  
30 (ii) the relevant provider is not undertaking work and  
31 training in accordance with that subsection;  
32 (e) both of the following apply:

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- 1 (i) the relevant provider provides, or is to provide, a tax  
2 (financial) advice service;  
3 (ii) the relevant provider has not met the education and  
4 training standard in subsection 921B(6).
- 5 (3) If a registration prohibition order is in force against the relevant  
6 provider, ASIC must refuse to register the relevant provider until  
7 after the prohibition end day specified in the order.

8 *Notice of new registrations*

- 9 (4) If:  
10 (a) the application is made under subsection 921U(1); and  
11 (b) ASIC registers the relevant provider under subsection (1) of  
12 this section;  
13 ASIC must, immediately after recording in the Register of  
14 Relevant Providers that the relevant provider is registered under  
15 subsection (1), give a written notice of the registration to the  
16 relevant provider.

- 17 (5) If:  
18 (a) the application is made under subsection 921V(1); and  
19 (b) ASIC registers the relevant provider under subsection (1) of  
20 this section;  
21 ASIC must, immediately after recording in the Register of  
22 Relevant Providers that the relevant provider is registered under  
23 subsection (1), give a written notice of the registration to:  
24 (c) the relevant provider; and  
25 (d) the applicant.

26 *Notice of refusal to register relevant provider*

- 27 (6) If ASIC refuses to register the relevant provider, ASIC must,  
28 within 5 days after the refusal, give a written notice of the refusal  
29 to:  
30 (a) the relevant provider; and  
31 (b) if the application is made under subsection 921V(1) or  
32 921W(3)—the applicant.

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- 1 (7) The notice must specify which of the following provisions apply in  
2 relation to the relevant provider:  
3 (a) paragraph (2)(a), (b), (c), (d) or (e);  
4 (b) subsection (3).

#### 5 **921Y Period of registration—relevant providers who are financial** 6 **services licensees**

##### 7 *New registrations*

- 8 (1) If a relevant provider who is a financial services licensee makes an  
9 application under subsection 921U(1), and ASIC registers the  
10 relevant provider under subsection 921X(1), the registration:  
11 (a) comes into force when ASIC records in the Register of  
12 Relevant Providers that the relevant provider is registered  
13 under subsection 921X(1); and  
14 (b) remains in force until the earliest of the following:  
15 (i) the end of the relevant provider's registration year in  
16 which the application was made;  
17 (ii) the cancellation time specified in a registration  
18 prohibition order in force against the relevant provider;  
19 (iii) the time when a banning order against the relevant  
20 provider takes effect.

##### 21 *Renewed registrations*

- 22 (2) If a relevant provider who is a financial services licensee makes an  
23 application under subsection 921W(1), and ASIC registers the  
24 relevant provider under subsection 921X(1), the registration:  
25 (a) comes into force immediately after the end of the relevant  
26 provider's registration year in which the application is made;  
27 and  
28 (b) remains in force until the earliest of the following:  
29 (i) the end of the relevant provider's next registration year;  
30 (ii) the cancellation time specified in a registration  
31 prohibition order in force against the relevant provider;  
32 (iii) the time when a banning order against the relevant  
33 provider takes effect.





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- 1 (iii) the time when a banning order against the relevant  
2 provider takes effect;  
3 (iv) the licensee ceases to authorise the relevant provider to  
4 provide personal advice to retail clients, on behalf of the  
5 licensee, in relation to relevant financial products.
- 6 Note: A notice must be lodged under section 922H when there is a change in  
7 a matter for a relevant provider.

#### 8 *Renewed registrations*

- 9 (2) If:  
10 (a) a financial services licensee makes an application under  
11 subsection 921W(3) in relation to a relevant provider; and  
12 (b) ASIC registers the relevant provider under subsection  
13 921X(1);  
14 the registration:  
15 (c) comes into force immediately after the end of the licensee's  
16 registration year in which the application is made; and  
17 (d) remains in force until the earliest of the following:  
18 (i) the end of the licensee's next registration year;  
19 (ii) the cancellation time specified in a registration  
20 prohibition order in force against the relevant provider;  
21 (iii) the time when a banning order against the relevant  
22 provider takes effect;  
23 (iv) the end of the day on which the licensee ceases to  
24 authorise the relevant provider to provide personal  
25 advice to retail clients, on behalf of the licensee, in  
26 relation to relevant financial products.
- 27 Note: A notice must be lodged under section 922H when there is a change in  
28 a matter for a relevant provider.

#### 29 *Registration following registration prohibition order*

- 30 (3) If:  
31 (a) a financial services licensee makes an application under  
32 subsection 921V(1) in relation to a relevant provider before  
33 or on the prohibition end day specified in a registration

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- 1 prohibition order that is in force against the relevant  
2 provider; and  
3 (b) after that day, ASIC registers the relevant provider under  
4 subsection 921X(1);  
5 the registration:  
6 (c) comes into force when ASIC records in the Register of  
7 Relevant Providers that the relevant provider is registered  
8 under subsection 921X(1); and  
9 (d) remains in force until the earliest of the following:  
10 (i) the end of the relevant provider's registration year in  
11 which ASIC registers the relevant provider;  
12 (ii) the cancellation time specified in a registration  
13 prohibition order in force against the relevant provider;  
14 (iii) the time when a banning order against the relevant  
15 provider takes effect;  
16 (iv) the end of the day on which the licensee ceases to  
17 authorise the relevant provider to provide personal  
18 advice to retail clients, on behalf of the licensee, in  
19 relation to relevant financial products.  
20 Note: A notice must be lodged under section 922H when there is a change in  
21 a matter for a relevant provider.

## 22 **921ZA Registration year of a financial services licensee**

- 23 ASIC may, by legislative instrument, determine the following to be  
24 a **registration year** for each financial services licensee included in  
25 a specified class of financial services licensees:  
26 (a) a 12 month period beginning on a specified day;  
27 (b) each subsequent 12 month period.

## 28 **44 Paragraphs 922E(1)(h) and (i)**

- 29 Repeal the paragraphs, substitute:  
30 (h) information about the educational qualifications of, and any  
31 training courses completed by, the relevant provider, to the  
32 extent that the qualifications and training courses are relevant  
33 to the provision of financial services.

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1 **45 Subsection 922E(2) (heading)**

2 Omit “*and memberships*”.

3 **46 Subsection 922E(2)**

4 Omit “subparagraph (1)(h)(i)”, substitute “paragraph (1)(h)”.

5 **47 Paragraphs 922F(1)(m) and (n)**

6 Repeal the paragraphs, substitute:

7 (m) information about the educational qualifications of, and any  
8 training courses completed by, the relevant provider, to the  
9 extent that the qualifications and training courses are relevant  
10 to the provision of financial services.

11 **48 Subsection 922F(2) (heading)**

12 Omit “*and memberships*”.

13 **49 Subsection 922F(2)**

14 Omit “subparagraph (1)(m)(i)”, substitute “paragraph (1)(m)”.

15 **50 Subsection 922H(1) (note)**

16 Omit “Another example would be a change in the compliance scheme  
17 that covers a relevant provider.”.

18 **51 Section 922HB (heading)**

19 Omit “**standard**”, substitute “**standards**”.

20 **52 Paragraph 922HB(1)(c)**

21 Omit “section 921D during the licensee’s CPD year.”, substitute  
22 “subsection 921D(3) during the licensee’s CPD year; and”.

23 **53 After paragraph 922HB(1)(c)**

24 Insert:

25 (d) if the relevant provider provided tax (financial) advice  
26 services during the licensee’s CPD year—the relevant  
27 provider has not complied with subsection 921D(4) during  
28 that CPD year.

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1 **54 Subsection 922HB(1) (note 2)**

2 Omit “921D(1)”, substitute “921D(3)”.

3 **55 At the end of subsection 922HB(1)**

4 Add:

5 Note 3: Subsection 921D(4) requires certain relevant providers who provide  
6 tax (financial) advice services to meet the continuing professional  
7 development standard in subsection 921B(7).

8 **56 Subsection 922HB(2)**

9 Repeal the subsection, substitute:

10 (2) The notice must state the following:

11 (a) if paragraph (1)(c) applies—that the relevant provider has not  
12 complied with subsection 921D(3) during the licensee’s CPD  
13 year;

14 (b) if paragraph (1)(d) applies—that the relevant provider has not  
15 complied with subsection 921D(4) during the licensee’s CPD  
16 year.

17 **57 Section 922HD**

18 Repeal the section.

19 **58 Paragraph 922L(2)(d)**

20 Repeal the paragraph.

21 **59 Subsection 922L(3)**

22 Omit “, (d)”.

23 **60 Subsection 922L(6)**

24 Repeal the subsection.

25 **61 Subparagraph 922N(1)(c)(ii)**

26 Repeal the subparagraph.

27 **62 Subsection 922P(1)**

28 Omit “, 922H and 922HD”, substitute “and 922H”.

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#### 63 Paragraph 922Q(2)(q)

Repeal the paragraph, substitute:

(q) information about any undertaking that the relevant provider has given under:

- (i) section 93AA or 171D of the ASIC Act; or
- (ii) section 322 of the *National Consumer Credit Protection Act 2009*;

#### 64 Paragraph 922Q(2)(r)

Repeal the paragraph.

#### 65 Paragraphs 922Q(2)(u) and (v)

Repeal the paragraphs, substitute:

(u) information about the educational qualifications of, and any training courses completed by, the relevant provider (but not courses completed for the purposes of subsection 921B(5)), to the extent that the qualifications and training courses are relevant to the provision of financial services;

(ua) whether a registration of the relevant provider is in force under subsection 921X(1);

(ub) if a registration of the relevant provider is in force under subsection 921X(1) because of an application by the relevant provider under subsection 921U(1) or 921W(1)—the last day of the registration year of the relevant provider in which the registration came into force;

(uc) if a registration of the relevant provider is in force under subsection 921X(1) because of an application by a financial services licensee under subsection 921V(1) or 921W(3)—the last day of the registration year of the licensee in which the registration came into force;

(ud) whether the relevant provider provides, or is to provide, a tax (financial) advice service;

(ue) if:

- (i) a Financial Services and Credit Panel makes an instrument under subsection 921L(1) in relation to the relevant provider; and

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- 1 (ii) the panel gives ASIC a notice under subsection  
2 921PB(2) in relation to the instrument;  
3 details of the instrument;  
4 (uf) if:  
5 (i) a Financial Services and Credit Panel gives the relevant  
6 provider an infringement notice; and  
7 (ii) the panel gives ASIC a notice under subsection  
8 921PB(2) in relation to the infringement notice;  
9 details of the infringement notice (unless the infringement  
10 notice is withdrawn);  
11 (ug) any declaration under section 1317E that the relevant  
12 provider has contravened a restricted civil penalty provision;

## 13 **66 Paragraph 923C(9)(b)**

14 Omit “standards body for the purposes of subparagraph 921U(2)(a)(v)”,  
15 substitute “Minister for the purposes of subparagraph 921G(1)(a)(v)”.

## 16 **67AA Before section 1317DAM**

17 Insert:

## 18 **Division 1—General**

### 19 **67A After subsection 1317DAM(1)**

20 Insert:

- 21 (1A) Subject to section 1317DATB, if a Financial Services and Credit  
22 Panel believes on reasonable grounds that a person has  
23 contravened a restricted civil penalty provision, the panel may give  
24 the person an infringement notice for the alleged contravention.

### 25 **67B Subsection 1317DAM(2)**

26 Omit “The”, substitute “An”.

### 27 **67C Subsection 1317DAM(4)**

28 After “ASIC”, insert “or a Financial Services and Credit Panel”.

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1 **67D Paragraph 1317DAP(1)(k)**

2 Repeal the paragraph, substitute:

3 (k) state that the person may apply to:

4 (i) if the notice was given to the person by a Financial  
5 Services and Credit Panel—the panel; or

6 (ii) otherwise—ASIC;

7 to have the period in which to pay the amount extended or for  
8 an arrangement to pay the amount by instalments; and

9 **70 Paragraph 1317DAP(2)(c)**

10 After “provision”, insert “that is not a restricted civil penalty  
11 provision”.

12 **71 Paragraph 1317DAP(2)(d)**

13 After “provision”, insert “that is not a restricted civil penalty  
14 provision”.

15 **72 At the end of subsection 1317DAP(2)**

16 Add:

17 ; and (e) for a single contravention of a restricted civil penalty  
18 provision—12 penalty units; and

19 (f) for multiple contraventions of a restricted civil penalty  
20 provision—12 penalty units multiplied by the number of  
21 contraventions.

22 **72A After section 1317DAP**

23 Insert:

24 **Division 2—Infringement notices given by ASIC**

25 **1317DAPA Application of Division**

26 This Division applies in relation to an infringement notice given to  
27 a person by ASIC.

28 **72B After section 1317DAT**

29 Insert:

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1 **Division 3—Infringement notices given by Financial**  
2 **Services and Credit Panels**

3 **1317DATA Application of Division**

4 This Division applies in relation to an infringement notice given to  
5 a person by a Financial Services and Credit Panel.

6 **1317DATB Giving an infringement notice following proposed action**  
7 **notice**

8 A Financial Services and Credit Panel must not give a person an  
9 infringement notice for the alleged contravention by the person of a  
10 restricted civil penalty provision (the *relevant contravention*)  
11 unless:

- 12 (a) the panel gave the person a proposed action notice in relation  
13 to a proposal to give the infringement notice to the person  
14 and either:
- 15 (i) no submission or request for a hearing was made within  
16 the response period for the notice; or
  - 17 (ii) a submission or request for a hearing was made within  
18 the response period for the notice and the panel has  
19 considered the submission or held the hearing (as the  
20 case may be); or
- 21 (b) all of the following apply:
- 22 (i) the panel gave the relevant provider a proposed action  
23 notice in relation to a proposed instrument under  
24 subsection 921L(1) in relation to the person and  
25 circumstances mentioned in that subsection;
  - 26 (ii) those circumstances consist of, or include, the relevant  
27 contravention;
  - 28 (iii) a submission or request for a hearing was made within  
29 the response period for the proposed action notice;
  - 30 (iv) the panel has considered the submission or held the  
31 hearing (as the case may be).

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1 **1317DATC Payment period, extension of time and payment by**  
2 **instalments**

- 3 (1) Sections 1317DAQ, 1317DAR and 1317DAS apply, in relation to  
4 an infringement notice given to a person by a Financial Services  
5 and Credit Panel, with the modifications provided for in  
6 subsections (2) to (6) of this section.
- 7 (2) The following provisions apply, in accordance with subsection (1),  
8 as if any reference in them to ASIC were a reference to the Chair  
9 of the panel:  
10 (a) subsections 1317DAQ(2) to (5);  
11 (b) subsections 1317DAR(2) to (5);  
12 (c) subsections 1317DAS(2) to (5).
- 13 (3) The following provisions apply, in accordance with subsection (1),  
14 as if any reference in them to ASIC were a reference to the panel:  
15 (a) subsection 1317DAR(1);  
16 (b) subsection 1317DAS(1).
- 17 (4) Section 1317DAQ applies, in accordance with subsection (1) of  
18 this section, as if subsection 1317DAQ(6) were omitted and the  
19 following subsection substituted:
- 20 “(6) If the panel under subsection 1317DATD(3) refuses, or under  
21 subsection 1317DATD(5) is taken to refuse, for the notice to be  
22 withdrawn, the *payment period* ends on the later of the following  
23 days:  
24 (a) the last day of the period that, without the withdrawal, would  
25 be the payment period for the notice;  
26 (b) the day that is 7 days after the day the person was given  
27 notice of the panel’s decision not to withdraw the notice;  
28 (c) the day that is 7 days after the day on which the panel is  
29 taken to have refused to withdraw the infringement notice.”.
- 30 (5) Section 1317DAR applies, in accordance with subsection (1) of  
31 this section, as if paragraph 1317DAR(2)(b) were omitted and the  
32 following paragraph substituted:  
33 “(b) if ASIC requests, in writing, that the Chair of the panel that  
34 gave the infringement notice extend the period.”

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1 (6) Section 1317DAS applies, in accordance with subsection (1) of this  
2 section, as if paragraph 1317DAS(2)(b) were omitted and the  
3 following paragraph substituted:

4 “(b) if ASIC requests, in writing, that the Chair of the panel that  
5 gave the infringement notice make such an arrangement.”

6 **1317DATD Withdrawal of an infringement notice given by a**  
7 **Financial Services and Credit Panel**

8 *Representations seeking withdrawal of notice*

9 (1) A person to whom an infringement notice has been given by a  
10 Financial Services and Credit Panel may, within 28 days after the  
11 infringement notice is given, make written representations to ASIC  
12 seeking the withdrawal of the notice.

13 *Withdrawal of notice*

14 (2) ASIC may request a Financial Services and Credit Panel (whether  
15 or not the panel gave the infringement notice to the person) to  
16 make a decision under subsection (3) in relation to the  
17 infringement notice if:

18 (a) a person makes representations in relation to the notice under  
19 subsection (1); or

20 (b) ASIC is satisfied that there has been a change in any of the  
21 circumstances on the basis of which the notice was given to  
22 the person.

23 (3) If ASIC makes a request under subsection (2), the panel must,  
24 within 14 days after it is made:

25 (a) decide to withdraw, or refuse to withdraw, the infringement  
26 notice; and

27 (b) give the person a written notice of its decision.

28 (4) When deciding whether to withdraw, or refuse to withdraw, the  
29 infringement notice, the panel:

30 (a) must take into account any written representations seeking  
31 the withdrawal that were given by the person to ASIC in  
32 accordance with subsection (1); and

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- 1 (b) may take into account the following:
- 2 (i) whether a court has previously imposed a penalty on the
- 3 person for a contravention of a provision of this Act;
- 4 (ii) the circumstances of the alleged contravention of the
- 5 restricted civil penalty provision to which the notice
- 6 relates;
- 7 (iii) whether the person has paid an amount, stated in an
- 8 earlier infringement notice, for a contravention of a
- 9 provision of this Act;
- 10 (iv) any other matter the panel considers relevant.

- 11 (5) If the panel does not comply with subsection (3):
- 12 (a) the panel is taken to have refused to withdraw the
- 13 infringement notice; and
- 14 (b) the refusal is taken to have occurred on the last day of the 14
- 15 day period.

#### 16 *Refund of amount if infringement notice withdrawn*

- 17 (6) If:
- 18 (a) the panel withdraws the infringement notice; and
- 19 (b) the person has already paid all or part of the amount stated in
- 20 the notice;
- 21 ASIC must refund to the person an amount equal to the amount
- 22 paid.

#### 23 **72C Before section 1317DAU**

24 Insert:

#### 25 **Division 4—Other matters**

#### 26 **72D Section 1317DAV**

27 Repeal the section, substitute:

#### 28 **1317DAV Effect of this Part**

29 This Part does not:

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- 1 (a) require an infringement notice to be given to a person for an  
2 alleged contravention of:  
3 (i) a provision subject to an infringement notice under this  
4 Part; or  
5 (ii) a restricted civil penalty provision; or  
6 (b) affect the liability of a person for an alleged contravention of  
7 a provision subject to an infringement notice under this Part,  
8 or a restricted civil penalty provision, if:  
9 (i) the person does not comply with an infringement notice  
10 given to the person for the contravention; or  
11 (ii) an infringement notice is not given to the person for the  
12 contravention; or  
13 (iii) an infringement notice is given to the person for the  
14 contravention and is subsequently withdrawn; or  
15 (c) prevent the giving of 2 or more infringement notices to a  
16 person for an alleged contravention of:  
17 (i) a provision subject to an infringement notice under this  
18 Part; or  
19 (ii) a restricted civil penalty provision; or  
20 (d) limit a court's discretion to determine the amount of a  
21 penalty to be imposed on a person who is found to have  
22 contravened:  
23 (i) a provision subject to an infringement notice under this  
24 Part; or  
25 (ii) a restricted civil penalty provision.

## 73 In the appropriate position in subsection 1317E(3)

26 Insert:  
27  
28

subsection 921D(7)	relevant providers to meet education and training standards	uncategorised
subsection 921E(2)	relevant providers to comply with Code of Ethics	uncategorised
subsection 921F(8)	requirements relating to provisional relevant providers	uncategorised
subsection 921M(2)	relevant providers to comply with	uncategorised

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	direction under paragraph 921M(1)(b)	
subsection 921S(1)	unregistered relevant providers not to give financial advice	uncategorised
subsection 921T(4)	financial services licensees not to continue to authorise unregistered relevant providers to give financial advice	uncategorised

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1

2 **74 After subsection 1317J(1)**

3       Insert:

4       (1A) However, ASIC must not make an application under subsection (1)  
5       in relation to an alleged contravention of a restricted civil penalty  
6       provision unless:

7           (a) a Financial Services and Credit Panel has given ASIC a  
8           notice under subsection 921Q(1) in relation to the alleged  
9           contravention; or

10          (b) both of the following apply:

11           (i) a Financial Services and Credit Panel has given a person  
12           an infringement notice for the alleged contravention;

13           (ii) the person has not paid the amount that is payable under  
14           the infringement notice within the payment period for  
15           the infringement notice.

16 **75 Paragraph 1546B(1)(b)**

17       Omit “standards body”, substitute “Minister”.

18 **76 Subsection 1546B(1) (note)**

19       Omit “standards body” (first occurring), substitute “Minister”.

20 **77 Subsection 1546B(1) (note)**

21       Omit “standards body” (second occurring), substitute “ASIC”.

22 **78 Subsection 1546B(3) (notes 1 and 3)**

23       Omit “standards body”, substitute “Minister”.

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1 **79 Subsection 1546B(7) (heading)**

2 Omit “*Standards body*”, substitute “*Minister*”.

3 **80 Subsection 1546B(7)**

4 Omit “standards body”, substitute “Minister”.

5 **81 Subsection 1546E(5) (note 2)**

6 Omit “standards body may, under subparagraph 921U(2)(a)(iv)”,  
7 substitute “Minister may, under subparagraph 921G(1)(a)(iv)”.

8 **82 Subsection 1546E(5) (note 2)**

9 Omit “921U(3)”, substitute “921G(2)”.

10 **83 Division 4 of Part 10.23A**

11 Repeal the Division.

12 **84 In the appropriate position in Chapter 10**

13 Insert:

14 **Part 10.57—Transitional provisions relating to the**  
15 **Financial Sector Reform (Hayne Royal**  
16 **Commission Response—A New**  
17 **Disciplinary System for Financial Advisers)**  
18 **Act 2021**  
19

20 **1684 Definitions**

21 In this Part:

22 *amending Act* means the *Financial Sector Reform (Hayne Royal*  
23 *Commission Response—A New Disciplinary System for Financial*  
24 *Advisers) Act 2021*.

25 *old Tax Agent Services Act* means the *Tax Agent Services Act*  
26 *2009* as in force immediately before 1 January 2022.





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Amendments **Schedule 1**  
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1 **1684F Saving—determinations made for provisional relevant**  
2 **providers**

3 A determination that:

4 (a) was made under subsection 921U(5), as in force immediately  
5 before 1 January 2022; and

6 (b) was in force immediately before that day;

7 continues in force (and may be dealt with) on and after that day as  
8 if it had been made under subsection 921G(4), as inserted by the  
9 amending Act.

10 **1684G Saving—approvals of foreign qualifications that are in force**

11 An approval of a foreign qualification that:

12 (a) was given under paragraph 921V(3)(a), as in force  
13 immediately before 1 January 2022; and

14 (b) was in force immediately before that day;

15 continues in force (and may be dealt with) on and after that day as  
16 if it had been given under paragraph 921J(2)(a), as inserted by the  
17 amending Act.

18 **1684H Transitional—approvals of foreign qualifications that are not**  
19 **yet in force**

20 If:

21 (a) for the purposes of approving a foreign qualification for a  
22 person, one or more courses were specified for the person  
23 under subsection 921V(5), as in force immediately before  
24 1 January 2022; and

25 (b) immediately before that day, the person had not completed  
26 all of those courses;

27 section 921J, as inserted by the amending Act, has effect on and  
28 after that day, as if the courses were specified for the person under  
29 subparagraph 921J(3)(b)(i).

30 **1684J Saving—approvals of courses for existing providers**

31 A determination that:

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- 1 (a) was made under subsection 1546B(7), as in force  
2 immediately before 1 January 2022; and  
3 (b) was in force immediately before that day;  
4 continues in force (and may be dealt with) on and after that day as  
5 if it had been made under that subsection as amended by the  
6 amending Act.

#### 7 **1684K Transitional—orders under section 30-20 of the old Tax** 8 **Agent Services Act**

- 9 (1) A Financial Services and Credit Panel may make an instrument of  
10 a kind specified in subsection 921M(1), as inserted by the  
11 amending Act, in relation to a relevant provider if the relevant  
12 provider does not comply with:  
13 (a) an order under section 30-20 of the old Tax Agent Services  
14 Act that is in force against the relevant provider immediately  
15 before 1 January 2022; or  
16 (b) an order made on or after that day against the relevant  
17 provider, in relation to an act or omission before that day,  
18 under section 30-20 of the old Tax Agent Services Act.
- 19 (2) This Act applies in relation to an instrument made, or proposed to  
20 be made, under subsection (1) of this section as if the instrument  
21 were made, or proposed to be made, under subsection 921L(1), as  
22 inserted by the amending Act.

#### 23 **1684L Transitional—deemed registration of certain relevant** 24 **providers**

- 25 (1) This section applies in relation to a person if:  
26 (a) the person is a relevant provider; and  
27 (b) immediately before 1 January 2022, the person was a  
28 registered tax (financial) adviser; and  
29 (c) the person's registration (the *old registration*) as a registered  
30 tax (financial) adviser continues, or is, in force on and after  
31 that day because of item 123 or 124 of Schedule 1 to the  
32 amending Act.

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- 1 (2) On and after the application day for the person, this Act applies in  
2 relation to the person as if:
- 3 (a) the person were registered under subsection 921X(1), as  
4 inserted by the amending Act, because of an application  
5 under:
- 6 (i) if the relevant provider is a financial services licensee—  
7 subsection 921U(1), as inserted by the amending Act; or  
8 (ii) if the relevant provider is not a financial services  
9 licensee—subsection 921V(1), as inserted by the  
10 amending Act; and
- 11 (b) the person’s registration under subsection 921X(1), as  
12 inserted by the amending Act:
- 13 (i) came into force on the application day for the person;  
14 and  
15 (ii) remains in force until the end of the period (the *old*  
16 *registration period*) for which the person’s old  
17 registration continues, or is, in force under item 123 or  
18 124 of Schedule 1 to the amending Act; and  
19 (iii) is not in force during any period when the person’s old  
20 registration is suspended under the old Tax Agent  
21 Services Act, as it continues to apply to the old  
22 registration under item 123 or 124 of Schedule 1 to the  
23 amending Act; and
- 24 (c) in the case of the person making an application under  
25 subsection 921W(1), as inserted by the amending Act—the  
26 reference in paragraph 921Y(2)(a), as inserted by the  
27 amending Act, to the person’s registration year were a  
28 reference to the old registration period; and
- 29 (d) in the case of a financial services licensee making an  
30 application under subsection 921W(3), as inserted by the  
31 amending Act, in relation to the person—the reference in  
32 paragraph 921Z(2)(c), as inserted by the amending Act, to  
33 the licensee’s registration year were a reference to the old  
34 registration period.
- 35 (3) For the purposes of this section, the *application day* for a person is:

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- 1 (a) if the person's old registration continues in force because of  
2 item 123 of Schedule 1 to the amending Act—1 January  
3 2022; or  
4 (b) if the person's old registration is in force because of item 124  
5 of Schedule 1 to the amending Act—the day the old  
6 registration comes into force under that item.

### 85 In the appropriate position in Schedule 3

8 Insert:

9 Subsection 921T(3)

20 penalty units

10

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---

1 **Part 2—Other amendments**

2 *National Consumer Credit Protection Act 2009*

3 **86 After subsection 80(1)**

4 Insert:

5 (1A) Subsection (1) has effect subject to subsection (4).

6 **87 Subsection 80(4)**

7 Omit “Despite subsection (1), ASIC may only make a banning order  
8 against a person”, substitute “Subject to subsection (5), if ASIC has not  
9 delegated its power to make a banning order against a person to a  
10 Financial Services and Credit Panel, ASIC may make the order only”.

11 **88 At the end of subsection 80(4)**

12 Add:

13 Note: If ASIC delegates its power to make a banning order against a person  
14 to a Financial Services and Credit Panel, the panel may make the  
15 order only after holding a hearing in relation to the proposed order  
16 (see section 156 of the ASIC Act).

17 **89 Subsections 80(5) and (6)**

18 Repeal the subsections, substitute:

19 (5) ASIC may make a banning order against a person without giving  
20 the person the opportunities mentioned in subsection (4) if:

21 (a) either:

22 (i) ASIC has not delegated its power to make the banning  
23 order to a Financial Services and Credit Panel; or

24 (ii) ASIC exercises its power to make the banning order  
25 despite such a delegation; and

26 (b) subsection (6) or (6A) applies.

27 Note: See section 34AB of the *Acts Interpretation Act 1901* (effect of  
28 delegation).

29 (6) This subsection applies if:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Other amendments

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1 (a) ASIC’s grounds for making a banning order against a person  
2 include that ASIC has suspended or cancelled a licence of the  
3 person (see paragraph (1)(a)); and

4 (b) the suspension or cancellation took place without a hearing  
5 under section 54.

6 (6A) This subsection applies if:

7 (a) ASIC’s grounds for making a banning order against a person  
8 include that the person has been convicted of fraud (see  
9 paragraph (1)(c)); and

10 (b) the person has been convicted of serious fraud.

## 11 *Tax Agent Services Act 2009*

### 12 **90 Paragraphs 2-5(a), (b) and (c)**

13 Omit “tax agents, BAS agents and tax (financial) advisers”, substitute  
14 “tax agents and BAS agents”.

### 15 **91 Section 20-5 (heading)**

16 Omit “tax agent, BAS agent or tax (financial) adviser”, substitute  
17 “tax agent or BAS agent”.

### 18 **92 Subparagraph 20-5(2)(c)(ii)**

19 Omit “arrangements; or”, substitute “arrangements; and”.

### 20 **93 Subparagraph 20-5(2)(c)(iii)**

21 Repeal the subparagraph.

### 22 **94 Subparagraph 20-5(3)(d)(ii)**

23 Omit “arrangements; or”, substitute “arrangements; and”.

### 24 **95 Subparagraph 20-5(3)(d)(iii)**

25 Repeal the subparagraph.

### 26 **96 Section 20-10**

27 Omit “tax agents, BAS agents and tax (financial) advisers”, substitute  
28 “tax agents and BAS agents”.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Other amendments **Part 2**

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1 **97 Subsection 20-30(2)**

2 Repeal the subsection, substitute:

3 (2) The Board must also notify the Commissioner of the Board's  
4 decision.

5 **98 Subsection 40-20(3)**

6 Repeal the subsection, substitute:

7 (3) The Board must also notify the Commissioner of the Board's  
8 decision and the reasons for the decision.

9 **99 Section 50-1**

10 Omit:

11 You contravene a civil penalty provision if you are unregistered  
12 and provide tax agent services for a fee, advertise that you can  
13 provide tax agent services or represent yourself as registered.

14 You also contravene a civil penalty provision if you are registered  
15 and you make a false or misleading statement, employ or use the  
16 services of an entity whose registration has been terminated, or  
17 sign a declaration or statement that was prepared by an  
18 unregistered entity who was not working under the supervision or  
19 control of a registered tax agent, BAS agent or tax (financial)  
20 adviser.

21 substitute:

22 You may contravene a civil penalty provision if you are  
23 unregistered and provide tax agent services for a fee, advertise that  
24 you can provide such services or represent yourself as registered.

25 You contravene a civil penalty provision if you are neither  
26 registered nor a qualified tax relevant provider and you provide tax  
27 (financial) advice services for a fee or advertise that you can  
28 provide such services.

# EXPOSURE DRAFT

Schedule 1 Amendments  
Part 2 Other amendments

1 You also contravene a civil penalty provision if you are registered  
2 and you make a false or misleading statement, employ or use the  
3 services of an entity whose registration has been terminated, or  
4 sign a declaration or statement that was prepared by an  
5 unregistered entity who was not working under the supervision or  
6 control of a registered tax agent or BAS agent.

7 **100 Subsections 50-5(2A) and 50-10(2A)**

8 Repeal the subsections.

9 **101 Section 50-15 (heading)**

10 Omit “tax agent, BAS agent or tax (financial) adviser”, substitute  
11 “tax agent or BAS agent”.

12 **102 After Subdivision 50-A**

13 Insert:

14 **Subdivision 50-AA—Conduct that relates to tax (financial)**  
15 **advice services**

16 **Table of sections**

17 50-17 Providing tax (financial) advice services if not registered or qualified  
18 50-18 Advertising tax (financial) advice services if not registered or qualified

19 **50-17 Providing tax (financial) advice services if not registered or**  
20 **qualified**

21 You contravene this section if:

22 (a) either:

23 (i) you provide a service that you know, or ought  
24 reasonably to know, is a \*tax (financial) advice service;  
25 or

26 (ii) a service that you know, or ought reasonably to know, is  
27 a tax (financial) advice service is provided on your  
28 behalf by another person; and

29 (b) the tax (financial) advice service is not a \*BAS service; and

30 (c) either:



# EXPOSURE DRAFT

Amendments **Schedule 1**  
Other amendments **Part 2**

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- 1 (i) you charge or receive a fee or other reward for  
2 providing the tax (financial) advice service; or  
3 (ii) the other person charges or receives a fee or other  
4 reward for providing the tax (financial) advice service  
5 on your behalf; and  
6 (d) you are not a \*registered tax agent or a \*qualified tax relevant  
7 provider; and  
8 (e) in the case of the tax (financial) advice service provided on  
9 your behalf by another person—that other person is not a  
10 registered tax agent or a qualified tax relevant provider; and  
11 (f) in the case of you providing the tax (financial) advice service  
12 as a legal service—you are prohibited, under a \*State law or  
13 \*Territory law that regulates legal practice and the provision  
14 of legal services, from providing that tax (financial) advice  
15 service.

16 Civil penalty:

- 17 (a) for an individual—250 penalty units; and  
18 (b) for a body corporate—1,250 penalty units.

19 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to  
20 the *Taxation Administration Act 1953* determine the procedure for  
21 obtaining a civil penalty order against you.

## 22 **50-18 Advertising tax (financial) advice services if not registered or** 23 **qualified**

24 You contravene this section if:

- 25 (a) you advertise that:  
26 (i) you will provide a \*tax (financial) advice service; or  
27 (ii) another person will provide a tax (financial) advice  
28 service on your behalf; and  
29 (b) the tax (financial) advice service is not a \*BAS service; and  
30 (c) you are not a \*registered tax agent or a \*qualified tax relevant  
31 provider; and  
32 (d) if the tax (financial) advice service would be provided on  
33 your behalf by another person—that other person is not a  
34 registered tax agent or a qualified tax relevant provider; and

EXPOSURE DRAFT

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Other amendments

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1 (e) if the tax (financial) advice service would be provided as a  
2 legal service—you are prohibited, under a \*State law or  
3 \*Territory law that regulates legal practice and the provision  
4 of legal services, from providing that tax (financial) advice  
5 service.

6 Civil penalty:

7 (a) for an individual—50 penalty units; and

8 (b) for a body corporate—250 penalty units.

9 Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to  
10 the *Taxation Administration Act 1953* determine the procedure for  
11 obtaining a civil penalty order against you.

### 12 **103 Subsection 50-25(1A)**

13 Repeal the subsection.

### 14 **104 Subsection 50-25(2)**

15 Omit “Subsections (1) and (1A) do”, substitute “Subsection (1) does”.

### 16 **105 Section 60-1**

17 Omit:

18 The Board must also report to the Minister on its operations each  
19 year, maintain a register of registered tax agents, BAS agents and  
20 tax (financial) advisers, and publish decisions to terminate or  
21 suspend the registration of a registered tax agent, BAS agent or tax  
22 (financial) adviser.

23 substitute:

24 The Board must also report to the Minister on its operations each  
25 year, maintain a register of registered tax agents and BAS agents,  
26 and publish decisions to terminate or suspend the registration of a  
27 registered tax agent or BAS agent.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Other amendments **Part 2**

---

1 **106 Paragraph 60-15(a)**

2 Omit “tax agents, BAS agents and tax (financial) advisers”, substitute  
3 “tax agents and BAS agents”.

4 **107 Subparagraph 60-125(8)(c)(iv)**

5 Repeal the subparagraph, substitute:

6 (iv) if the decision or finding concerns a \*registered tax  
7 agent in relation to providing a \*tax (financial) advice  
8 service—\*ASIC; and

9 **108 Subparagraph 60-125(8)(c)(v)**

10 Repeal the subparagraph.

11 **109 Subparagraph 60-125(8)(d)(iii)**

12 Omit “\*ASIC; and”, substitute “\*ASIC.”.

13 **110 Subparagraph 60-125(8)(d)(iv)**

14 Repeal the subparagraph.

15 **111 Paragraph 60-135(1)(a)**

16 Omit “tax agents, BAS agents and tax (financial) advisers”, substitute  
17 “tax agents and BAS agents”.

18 **112 Section 70-34**

19 Repeal the section.

20 **113 Subsection 70-40(3AA)**

21 Repeal the subsection, substitute:

22 *Disclosures to Financial Services and Credit Panels*

23 (3AA) Subsection 70-35(1) does not apply if the record or disclosure is to  
24 a \*Financial Services and Credit Panel for the purpose of the panel  
25 performing any of its functions or exercising any of its powers.

26 Note: A defendant bears an evidential burden in relation to the matters in  
27 subsection (3AA): see subsection 13.3(3) of the *Criminal Code*.

# EXPOSURE DRAFT

Schedule 1 Amendments  
Part 2 Other amendments

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1 **114 Subsection 90-1(1)**

2 Repeal the following definitions:

- 3 (a) definition of *Code of Ethics*;  
4 (b) definition of *compliance scheme*;  
5 (c) definition of *covers*.

6 **115 Subsection 90-1(1)**

7 Insert:

8 *education and training standards* has the same meaning as in  
9 Part 7.6 of the *Corporations Act 2001*.

10 *Financial Services and Credit Panel* has the same meaning as in  
11 the *Australian Securities and Investments Commission Act 2001*.

12 **116 Subsection 90-1(1) (definition of *monitoring body*)**

13 Repeal the definition.

14 **117 Subsection 90-1(1)**

15 Insert:

16 *qualified tax relevant provider* means a relevant provider who has  
17 met the education and training standard in subsection 921B(6) of  
18 the *Corporations Act 2001*.

19 **118 Subsection 90-1(1)**

20 Repeal the following definitions:

- 21 (a) definition of *registered tax agent, BAS agent or tax*  
22 *(financial) adviser*;  
23 (b) definition of *registered tax agents, BAS agents and tax*  
24 *(financial) advisers*;  
25 (c) definition of *registered tax (financial) adviser*.

26 **119 Subsection 90-1(1)**

27 Insert:

28 *relevant provider* has the same meaning as in Part 7.6 of the  
29 *Corporations Act 2001*.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Other amendments **Part 2**

---

1 **120 Amendments of listed provisions—tax agent or BAS**  
2 **agent**

3 Omit “tax agent, BAS agent or tax (financial) adviser” (wherever  
4 occurring) and substitute “tax agent or BAS agent” in the following  
5 provisions:

- 6 (a) section 20-1;  
7 (b) subsections 20-5(1), (2) and (3);  
8 (c) subsection 20-20(1);  
9 (d) paragraph 20-25(7)(a);  
10 (e) subsection 20-40(1);  
11 (f) section 20-45;  
12 (g) section 30-1;  
13 (h) section 30-5;  
14 (i) subsection 30-10(5);  
15 (j) paragraph 30-20(1)(b);  
16 (k) subsection 30-25(4);  
17 (l) subsections 30-35(1), (2) and (3);  
18 (m) subsection 40-5(1);  
19 (n) subsection 40-10(1);  
20 (o) subsection 40-15(1);  
21 (p) paragraph 50-15(a);  
22 (q) subparagraph 50-25(1)(c)(i);  
23 (r) paragraph 60-135(1)(b);  
24 (s) subsection 60-135(3);  
25 (t) section 60-140.

**EXPOSURE DRAFT**

# EXPOSURE DRAFT

Schedule 1 Amendments

Part 3 Application of Part 2 amendments

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1 **Part 3—Application of Part 2 amendments**

2 **121 Definitions**

3 In this Part:

4 *engage in conduct* means:

- 5 (a) do an act; or  
6 (b) omit to perform an act.

7 *old Act* means the *Tax Agent Services Act 2009* as in force immediately  
8 before 1 January 2022.

9 *relevant provider* has the same meaning as in Part 7.6 of the  
10 *Corporations Act 2001*.

11 **122 Application—providing or advertising tax (financial)  
12 advice services**

13 Sections 50-17 and 50-18 of the *Tax Agent Services Act 2009*, as  
14 inserted by Part 2 of this Schedule, apply in relation to conduct engaged  
15 in on or after 1 January 2022.

16 **123 Transitional—registration of registered tax (financial)  
17 advisers who are relevant providers**

18 (1) This item applies if:

- 19 (a) a person is a relevant provider; and  
20 (b) immediately before 1 January 2022:  
21 (i) the person was a registered tax (financial) adviser under  
22 the old Act; and  
23 (ii) the person's registration (the *old registration*) as a  
24 registered tax (financial) adviser was due to expire at  
25 the end of a period (the *old registration period*) that  
26 ends on or after that day; and  
27 (c) item 124 of this Schedule does not apply to the person.

28 (2) Despite the amendments of the old Act made by Part 2 of this Schedule:

- 29 (a) the old Act continues to apply in relation to the old  
30 registration on and after 1 January 2022 as if those  
31 amendments had not been made; and

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Application of Part 2 amendments **Part 3**

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- 1 (b) the old registration continues in force on and after 1 January  
2 2022 until the end of the old registration period, unless  
3 terminated before the end of that period.

4 **124 Transitional—pending applications for registration of**  
5 **registered tax (financial) advisers who are relevant**  
6 **providers**

- 7 (1) This item applies if:  
8 (a) a person is a relevant provider; and  
9 (b) before 1 January 2022, the person made an application:  
10 (i) under section 20-20 of the old Act for registration as a  
11 registered tax (financial) adviser; or  
12 (ii) under section 20-50 of the old Act for renewal of the  
13 person's registration as a registered tax (financial)  
14 adviser; and  
15 (c) immediately before 1 January 2022, the application had not  
16 been finally determined.
- 17 (2) Despite the amendments of the old Act made by Part 2 of this Schedule:  
18 (a) the old Act continues to apply, on and after 1 January 2022,  
19 in relation to the application, as if those amendments had not  
20 been made; and  
21 (b) if the application is granted:  
22 (i) the old Act continues to apply to the registration, or the  
23 renewed registration, on and after the application is  
24 granted as if those amendments had not been made; and  
25 (ii) the registration, or the renewed registration, is in force  
26 on and after 1 January 2022 for the period determined  
27 under subsection 20-25(4) of the old Act in relation to  
28 the application, unless terminated before the end of that  
29 period.

30 **125 Transitional—providing or advertising tax (financial)**  
31 **advice services**

- 32 (1) This item applies if:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 3 Application of Part 2 amendments

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- 1 (a) a person's registration as a registered tax (financial) adviser  
2 continues or is in force because of item 123 or 124 of this  
3 Schedule; and  
4 (b) that registration is suspended for a period (the *suspension*  
5 *period*) under subsection 30-25(1) of the old Act as it  
6 continues to apply to the registration under those items.
- 7 (2) During the suspension period, the person is taken to be neither a  
8 registered tax agent nor a qualified tax relevant provider for the  
9 purposes of paragraphs 50-17(d) and 50-18(c) of the *Tax Agent Services*  
10 *Act 2009*, as inserted by Part 2 of this Schedule.

11