

A new disciplinary system for financial advisers: Exposure draft law and explanatory materials

To assist in identifying key areas, this table sets out the key elements of the single disciplinary system, registration requirements and the transfer of the standard setting functions with reference to the relevant section in the Bill.

Issue	Bill ref.	Brief explanation
Single disciplinary system		
What matters are referred to the single disciplinary body?		ASIC must convene a Financial Services and Credit Panel if ASIC is not intending to make a banning order and ASIC reasonably believes that a financial adviser has breached a 'restricted civil penalty provision' or certain circumstances exist.
When ASIC must convene a single disciplinary body	139 of the ASIC Act	
Restricted civil penalty provisions	921Q	A restricted civil penalty provision refers to:
Other specified circumstances	921L	<ul style="list-style-type: none"> - 921D: the Education and training standards; - 921E: the Code of the Ethics; - 921F: the requirements for provisional relevant providers; - 921M: a direction or order given by the Financial Services and Credit Panel; and - 921S: giving financial advice while unregistered.
Definition of a fit and proper person	921R	<p>The other circumstances go to the suitability of the person to provide financial advice. The adviser:</p> <ul style="list-style-type: none"> - is insolvent; - is under administration; - is convicted of fraud; - is considered to not be a fit and proper person; - has breached a financial services law or been involved in another person's contravention of a financial services law;

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		<ul style="list-style-type: none"> - has at least twice been linked to a failure to give effect to an AFCA determination; or - has been an officer of two or more corporations that have been unable to pay their debts.
What sanctions can the single disciplinary body impose?		The Financial Services and Credit Panel has a range of actions available to it where a financial adviser has contravened the law.
Administrative sanctions	921M	
Infringement notices	1317DATB	The Financial Services and Credit Panel can give a financial adviser a warning or reprimand; a direction to undertake training, counselling, supervision or report certain matters to ASIC; suspend an adviser's registration; cancel and prohibit the adviser's registration for a period of time.
Civil penalties	921Q	
Enforceable undertakings	171D of the ASIC Act	<p>For an alleged contravention of a 'restricted civil penalty provision' the Financial Services and Credit Panel may issue an infringement notice of 12 penalty units; or if the Financial Services and Credit Panel thinks it is appropriate, it may recommend to ASIC that it apply to the court for a civil penalty.</p> <p>The Financial Services and Credit Panel may also enter into an enforceable undertaking with the adviser.</p>
Does a financial adviser have a right to appeal a decision of the single disciplinary body?		Once a Financial Services and Credit Panel has made an order or a direction against a financial adviser, the adviser can apply to the Financial Services and Credit Panel to have that order or decision varied or revoked, or apply to the Administrative Appeals Tribunal for a review of the decision.
Variation and revocation	921P	
Administrative Appeals Tribunal	921RA	
Withdrawal of infringement notice	1317DATD	<p>A person can subsequently apply to the Administrative Appeals Tribunal for review of a decision not to vary or revoke the decision, or to vary it in a way different to the request.</p> <p>The Administrative Appeals Tribunal cannot review the issuing of infringement notices.</p> <p>Within the first 28 days after an infringement notice is issued, a person may apply to ASIC to have the notice withdrawn. A Financial Services and Credit Panel decides whether to withdraw the notice.</p> <p>Otherwise, where a person disagrees with an infringement notice that has been issued, the person can refuse to pay the notice and ASIC</p>

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		may decide whether to apply to the court for a decision.
How does the single disciplinary body make a decision?		
Decisions at meetings	148 152, 152A 155 of the ASIC Act	The chair of a panel must convene a meeting of the panel in order for the panel to consider a matter put to it and make a decision about the action to take.
Hearings	156 158 159 160 162 163 of the ASIC Act 921L(2) 921PA 921PB(4) & (5) 1317DATB	<p>Before a Financial Services and Credit Panel can take action against an adviser, the panel must notify the adviser of the proposed action and give the adviser the opportunity to request a hearing or make a submission.</p> <p>If the provider does not request a hearing or make a submission the Financial Services and Credit Panel may take the action included in the notice.</p> <p>If the adviser requests a hearing or makes a submission, the Financial Services and Credit Panel must consider any evidence given at the hearing, or included in the submission before finalising its decision.</p>
Submissions	157 161 of the ASIC Act 921L(2) 921PA 921PB(4) & (5) 1317DATB	
Who makes up the single disciplinary body?		
Eligible persons	141 of the ASIC Act	A Financial Services Credit Panel will consist of an ASIC staff member as chair and at least two industry representatives. All members have equal voting rights. The industry representatives must be selected from a list of persons appointed by the Minister.
Appointing members	140 of the ASIC Act	
Registration of financial advisers		
Who needs to be registered?		Financial advisers need to be registered on the Register of Relevant Providers (the Financial Advisers Register) in order to give financial advice.
Requirement to register	921U 921V	
Annual renewal	921W	

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Period of registration	921Y 921Z	The financial services licensee who authorised the financial adviser is required to register the adviser. If the adviser is also the licensee, the licensee will register themselves.
Information kept on the register	921PB 922Q	Existing advisers as at 1 January 2022 must be registered by 1 January 2023.
When ASIC must refuse to register	921X	<p>A new registration takes effect once ASIC has recorded the registration on the Register of Relevant Providers.</p> <p>A financial adviser's registration needs to be renewed annually.</p> <p>Sanctions imposed by the single disciplinary body may be included on the register.</p> <p>ASIC must refuse to register a financial adviser if the financial adviser has been banned, is disqualified, has not met the education and training standard or a registration prohibition order is in place.</p>
What penalties apply if someone is not registered?	921S 921T	<p>If a licensee has not registered an adviser but the adviser's authorisation is in place, the licensee may be subject to a civil penalty.</p> <p>If the adviser gives advice while not registered the adviser may be subject to disciplinary action by the Financial Services and Credit Panel.</p>
Wind-up of FASEA and transfer of functions to the Minister and ASIC		
What standard setting functions will the Minister perform?	921G 921H	<p>The Minister will be able to:</p> <ul style="list-style-type: none"> - approve bachelor degrees or higher degrees or equivalent qualifications, required for a person to be a financial adviser; - approve an exam, that a person must pass in order to be a financial adviser; - set continuing professional development requirements (CPD) to be completed in a financial services licensee's CPD year; - set requirements for work and training requirements; - set requirements for provisional financial advisers and their supervisors; and - make a Code of Ethics.

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		<p>The Minister will also set the education and training standards for financial advisers who want to provide tax (financial) advice services.</p> <p>The standards and Code of Ethics made by FASEA remain in place unless the Minister makes new standards.</p>
What FASEA functions will ASIC perform?	921J 921K	<p>ASIC may approve foreign qualifications where these are equivalent to the domestic qualifications approved by the Minister.</p> <p>ASIC must administer the financial advisers' exam approved by the Minister.</p>
Requirements for Tax (financial) advisers		
What registration requirements apply to tax (financial) advisers	<p>Item 123 of the <i>Tax Agent Services Act 2009</i></p> <p>921U 921V 921W 921X</p>	<p>A tax (financial) adviser will not need to be registered with both the Tax Practitioners Board and ASIC.</p> <p>From 1 January 2022 a tax (financial) adviser will only need to be registered with ASIC.</p> <p>However, if a financial adviser's registration as a tax (financial) adviser under <i>the Tax Agent Services Act 2009</i> continues beyond 1 January 2022, the adviser will automatically be registered with ASIC until the existing registration ends.</p>
What additional requirements does a person need to meet to be a tax (financial) adviser?	921H 921B(6)	The Minister may set education, training and continuing professional development requirements specifically for advisers who provide tax (financial) advice services.
Commencement date and transitional provisions		
<p>The changes commence on 1 January 2022.</p> <p>An adviser has until 1 January 2023 to be registered</p> <p>The existing standards made by FASEA and the Code of Ethics remain in place unless the Minister makes new instruments.</p>		