

# EXPOSURE DRAFT



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## Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley  
Governor-General

By His Excellency's Command

Stephen Jones [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Assistant Treasurer  
Minister for Financial Services

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## 1 Name

This instrument is the *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The day after this instrument is registered.	
3. Schedule 2	1 January 2023.	1 January 2023

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

This instrument is made under the following:

- (a) the *Corporations Act 2001*;
- (b) the *National Consumer Credit Protection Act 2009*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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**Schedule 1** Licensing exemptions for financial counselling agencies and financial capability service providers

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## **Schedule 1—Licensing exemptions for financial counselling agencies and financial capability service providers**

### *Corporations Regulations 2001*

#### **1 At the end of subregulation 7.6.01(1)**

Add:

- (za) the provision of financial product advice to a client by a financial capability service provider as part of the provision of a financial capability service in the following circumstances:
  - (i) the advice relates to a basic deposit product;
  - (ii) no fees or charges (however described) are payable by or on behalf of the client in relation to the financial capability service;
  - (iii) no remuneration (whether by way of commission or otherwise) is payable to, or for the benefit of, the financial capability service provider, its representatives or its associates in relation to any action by or on behalf of the client arising from the financial capability service (including the advice);
  - (iv) the financial capability service provider does not carry on or otherwise participate in a financial services business involving the provision of a financial service, other than a financial service of the kind to which this paragraph applies;
  - (v) the financial capability service provider takes all reasonable steps to ensure that none of its representatives provides or participates in the provision of a financial service, other than a financial service of the kind to which this paragraph applies;
  - (vi) the financial capability service provider takes all reasonable steps to ensure that each person who provides the advice on its behalf is adequately trained and competent to provide the financial capability service (including the advice);
- (zb) the provision of financial product advice to a client by a financial counselling agency as part of the provision of a financial counselling service if the advice:
  - (i) relates to a deposit product, a facility for making non-cash payments (within the meaning of subsection 763D(1) of the Act), an insurance product, an RSA product or a superannuation product; or
  - (ii) is to the effect that the client should or may dispose of a security, a financial product referred to in paragraph 764A(1)(b) or (ba) of the Act, or a debenture, stock or bond issued by a government;and the following circumstances apply:
  - (iii) no fees or charges (however described) are payable by or on behalf of the client in relation to the financial counselling service, other than any fees or charges payable on behalf of the client by the Commonwealth, a State or a Territory;
  - (iv) no remuneration (whether by way of commission or otherwise) is payable to, or for the benefit of, the financial counselling agency, its

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representatives or its associates in relation to any action by or on behalf of the client arising from the financial counselling service (including the advice);

- (v) the financial counselling agency does not carry on or otherwise participate in a financial services business involving the provision of a financial service, other than a financial service of the kind to which this paragraph applies or a claims handling and settling service;
- (vi) the financial counselling agency takes all reasonable steps to ensure that none of its representatives provides or participates in the provision of a financial service, other than a financial service of the kind to which this paragraph applies or a claims handling and settling service;
- (vii) the financial counselling agency takes all reasonable steps to ensure that each person who provides the advice on its behalf is a member of, or is eligible to be a member of, a financial counselling association, and is adequately trained and competent to provide the financial counselling service (including the advice).

## 2 Subregulation 7.6.01(7)

Insert:

*financial capability service* means a financial literacy and capacity building service provided mainly to improve the financial knowledge and skills of persons.

*financial capability service provider* means a body that is funded wholly or partly by the Commonwealth to provide a financial capability service.

*financial counselling agency* means a person that provides a financial counselling service.

*financial counselling association* means each of the following:

- (a) Financial Counselling Australia Ltd;
- (b) Financial Counsellors Association of New South Wales Inc;
- (c) Financial Counselling Victoria Inc;
- (d) Financial Counsellors Association of Queensland Inc.;
- (e) Financial Counsellors Association of Western Australia Inc;
- (f) The South Australian Financial Counsellors' Association Incorporated;
- (g) Financial Counselling Tasmania Inc.;
- (h) Financial Counsellors ACT.

*financial counselling service* means a counselling and advocacy service provided mainly for the purposes of assisting individuals or small businesses who are in financial difficulty to resolve their problems.

*small business* means a business with less than 100 employees.

## *National Consumer Credit Protection Regulations 2010*

### 3 Subregulation 3(1) (definition of *financial counselling association*)

Repeal the definition, substitute:

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**Schedule 1** Licensing exemptions for financial counselling agencies and financial capability service providers

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*financial counselling association* has the same meaning as in regulation 7.6.01 of the *Corporations Regulations 2001*.

## 4 Subregulation 3(1)

Insert:

*rural financial counselling service* means a counselling and advocacy service provided mainly for the purpose of assisting primary producers and rural small businesses who are in financial difficulty.

*rural financial counselling service provider* means a body that is funded wholly or partly by the Commonwealth, a State or a Territory to provide a rural financial counselling service.

## 5 Subregulation 20(5)

Repeal the subregulation, substitute:

- (5) A person is exempted if:
- (a) the person (the *financial counselling agency*) engages in a credit activity as part of the provision of a financial counselling service to a client; and
  - (b) no benefit (including any indirect remuneration) is payable to, or for the benefit of, the financial counselling agency, its representatives or its associates by any person in relation to any action by or on behalf of the client arising from the financial counselling service (including the engaging in of the credit activity); and
  - (c) no fees or charges (however described) are payable by or on behalf of the client in relation to the financial counselling service other than any fees or charges payable on behalf of the client by the Commonwealth, a State or a Territory; and
  - (d) the financial counselling agency:
    - (i) does not engage in any other kind of credit activity; and
    - (ii) takes all reasonable steps to ensure that none of its representatives engages in any other kind of credit activity; and
  - (e) the financial counselling agency takes all reasonable steps to ensure that each person who engages in credit activities on its behalf:
    - (i) is a member of, or is eligible to be a member of, a financial counselling association; and
    - (ii) is adequately trained and competent to provide the financial counselling service (including engaging in the credit activity).
- (5A) A person is exempted if:
- (a) the person is a rural financial counselling service provider who provides credit assistance as part of the provision of a rural financial counselling service to a consumer; and
  - (b) no benefit (including any indirect remuneration) is payable to, or for the benefit of, the rural counselling service provider, its representatives or its associates by any person in relation to any action by or on behalf of the consumer arising from the rural financial counselling service (including the credit assistance); and



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Licensing exemptions for financial counselling agencies and financial capability service providers  
**Schedule 1**

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- (c) no fees or charges (however described) are payable by or on behalf of the consumer in relation to the rural financial counselling service other than any fees or charges payable on behalf of the client by the Commonwealth, a State or a Territory; and
- (d) the rural financial counselling service provider:
  - (i) does not provide any other kind of credit assistance; and
  - (ii) takes all reasonable steps to ensure that none of its representatives provides any other kind of credit assistance; and
- (e) the rural financial counselling service provider takes all reasonable steps to ensure that each person who provides credit assistance on its behalf:
  - (i) is a member of, or is eligible to be a member of, a financial counselling association; and
  - (ii) is adequately trained and competent to provide the rural financial counselling service (including the credit assistance).

## **6 Paragraph 20(12)(c)**

Omit “the only remuneration”, substitute “the only benefit”.

# EXPOSURE DRAFT

Schedule 2 Financial services exemptions for superannuation entities

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## Schedule 2—Financial services exemptions for superannuation entities

### *Corporations Regulations 2001*

#### 1 After paragraph 7.6.01(1)(da)

Insert:

- (db) dealing in a financial product by a person in the capacity of the trustee of a registrable superannuation entity in the ordinary course of operation of the registrable superannuation entity (other than a financial product that is an interest in the registrable superannuation entity);