

# EXPOSURE DRAFT



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## Corporations Amendment (Register of Relevant Providers) Regulation 2014

Select Legislative Instrument No. , 2014

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),  
Governor-General of the Commonwealth of Australia, acting with the  
advice of the Federal Executive Council, make the following regulation.

Dated 2014

Peter Cosgrove  
Governor-General

By His Excellency's Command

Mathias Cormann [DRAFT ONLY—NOT FOR SIGNATURE]  
Minister for Finance  
for the Treasurer

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## 1 Name

This is the *Corporations Amendment (Register of Relevant Providers) Regulation 2014*.

## 2 Commencement

This instrument commences on the day after it is registered.

## 3 Authority

This instrument is made under the *Corporations Act 2001*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

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## Schedule 1—Modifications of the Act

### *Corporations Regulations 2001*

#### 1 After regulation 7.6.02AH

Insert:

#### **7.6.02AI Obligations to provide information about relevant providers and eventual owners**

For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if Division 9 of that Part were modified as set out in Schedule 8D.

#### 2 After Schedule 8C

Insert:

### **Schedule 8D—Modifications of Division 9 of Part 7.6 of the Act**

Note: See regulation 7.6.02AI.

### *Corporations Act 2001*

#### 1 At the end of Division 9 of Part 7.6

Add:

#### **922C Definitions**

In this Division:

*basic banking product* has the meaning given by section 961F.

*class of product advice* means financial product advice about a class of products but does not include a recommendation about a specific product in the class.

*consumer credit insurance* has the meaning given by section 11 of the *Insurance Contracts Act 1984*.

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Modifications of the Act **Schedule 1**

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**eventual owner** of a financial services licensee means the body corporate:

- (a) that directly or indirectly holds more than half the issued share capital of the licensee; and
- (b) in which no other body corporate directly or indirectly holds more than half the issued share capital of that body corporate;

disregarding any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital.

**recent advising history** has the meaning given by section 922G.

**relevant financial products** means financial products other than:

- (a) basic banking products; or
- (b) general insurance products; or
- (c) consumer credit insurance; or
- (d) a combination of any of those products.

**relevant provider**: a person is a **relevant provider** if the person:

- (a) is a natural person; and
- (b) is:
  - (i) a financial services licensee; or
  - (ii) an authorised representative of a financial services licensee; or
  - (iii) an employee or director of a financial services licensee; or
  - (iv) an employee or director of a related body corporate of a financial services licensee; and
- (c) is authorised to provide, as the licensee or on behalf of the licensee, personal advice in relation to relevant financial products to retail clients.

## **922D Obligation to notify ASIC about a person who becomes a relevant provider**

*Notice to include details about relevant provider*

- (1) A notice must be lodged under this section and in accordance with section 922L if a person becomes a relevant provider.

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## Schedule 1 Modifications of the Act

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### *Content of notice*

- (2) The notice must include:
- (a) for a relevant provider who is a financial services licensee—the information in section 922E; or
  - (b) for a relevant provider who is not a financial services licensee—the information in section 922F.

### **922E Information about a relevant provider who is a financial services licensee**

For the purposes of paragraph 922D(2)(a), the notice must include the following:

- (a) the relevant provider's name;
- (b) the licence number given to the relevant provider under subsection 913C(1);
- (c) the year in which the relevant provider first provided personal advice in relation to relevant financial products to retail clients in accordance with the law (including the law of a State or Territory);
- (d) any business name registered to the relevant provider on the Business Names Register;
- (e) any ABN of the relevant provider;
- (f) information about each of the following:
  - (i) the financial products in relation to which the relevant provider is authorised to provide personal advice to retail clients;
  - (ii) whether the relevant provider is authorised to provide class of product advice in relation to some or all of those products;
- (g) the recent advising history of the relevant provider for the 5 years ending immediately before the time the notice is lodged.

Note: For the meaning of *recent advising history*, see section 922G.



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Modifications of the Act **Schedule 1**

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## **922F Information about a relevant provider who is not a financial services licensee**

- (1) For the purposes of paragraph 922D(2)(b), the notice must include the following:
  - (a) the relevant provider's name;
  - (b) the relevant provider's date and place of birth;
  - (c) the name of the licensee on whose behalf the relevant provider is authorised to provide personal advice in relation to relevant financial products to retail clients;
  - (d) the licence number given to that licensee under subsection 913C(1);
  - (e) the year in which the relevant provider first provided personal advice in relation to relevant financial products to retail clients in accordance with the law (including the law of a State or Territory);
  - (f) if the relevant provider is a relevant provider as a result of section 916B—each of the following:
    - (i) the name of the authorised representative who authorised the relevant provider under that section;
    - (ii) the number allocated to the authorised representative by ASIC;
  - (g) any business name registered to any of the following on the Business Names Register:
    - (i) the relevant provider;
    - (ii) the licensee referred to in paragraph (c);
    - (iii) if applicable, the authorised representative referred to in paragraph (f);
  - (h) any ABN of any of the following:
    - (i) the relevant provider;
    - (ii) the licensee referred to in paragraph (c);
    - (iii) if applicable, the authorised representative referred to in paragraph (f);
  - (i) details of each of the following:
    - (i) the financial products in relation to which the relevant provider is authorised to provide personal advice to retail clients;

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## Schedule 1 Modifications of the Act

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- (ii) whether the relevant provider is authorised to provide class of product advice in relation to some or all of those products;
- (j) the recent advising history of the relevant provider for the 5 years ending immediately before the time the notice is lodged.

Note: For the meaning of *recent advising history*, see section 922G.

- (2) However, the notice does not need to include the information referred to in paragraph (1)(e) or (1)(j) if:
  - (a) the person required to lodge the notice in accordance with subsection 922L(3) believes on reasonable grounds that the information has previously been lodged; or
  - (b) the information is already entered on a register of relevant providers under regulation 7.6.06B of the *Corporations Regulations 2001*.

### 922G Meaning of *recent advising history*

The *recent advising history* of a relevant provider is the following information:

- (a) for a relevant provider who is or was a financial services licensee authorised to provide personal advice in relation to relevant financial products to retail clients—each period during which the relevant provider was such a licensee;
- (b) for a relevant provider who is or was authorised to provide personal advice in relation to relevant financial products to retail clients on behalf of one or more financial services licensees—the following information:
  - (i) the name of each licensee;
  - (ii) if the relevant provider is or was a relevant provider as a result of section 916B—the name of each authorised representative who authorised the relevant provider under that section;
  - (iii) each period during which the relevant provider was authorised by the licensee or the authorised representative to provide such advice (including the name of the licensee or authorised representative concerned).

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Note: If a relevant provider is covered by paragraphs (a) and (b), the relevant provider's recent advising history includes all the information required under those paragraphs.

## **922H Ongoing obligation to notify ASIC when change in a matter for a relevant provider**

- (1) A notice must be lodged under this section and in accordance with section 922L if:
  - (a) there is a change in a matter, particulars of which are entered, for a relevant provider, in a register of relevant providers; and
  - (b) the change is not a direct consequence of an act by ASIC.
- (2) The notice must include the following information:
  - (a) the new particulars to be entered in the register;
  - (b) the relevant provider's name;
  - (c) if applicable, the relevant provider number given to the relevant provider under regulation 7.6.06A of the *Corporations Regulations 2001*.

## **922J Obligation to notify ASIC about eventual owner**

- (1) A notice must be lodged under this section and in accordance with section 922L if:
  - (a) a body corporate becomes a financial services licensee; and
  - (b) the body corporate is authorised to provide personal advice in relation to relevant financial products to retail clients.
- (2) The notice must include the following information:
  - (a) the name of the financial services licensee;
  - (b) the licence number given to the licensee under subsection 913C(1);
  - (c) the name of the eventual owner of the licensee;
  - (d) any business name registered to the eventual owner on the Business Names Register;
  - (e) any ABN of the eventual owner.

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### **922K Obligation to notify ASIC when there is a change of eventual owner**

- (1) A notice must be lodged under this section and in accordance with section 922L if:
  - (a) a financial services licensee is a body corporate; and
  - (b) the eventual owner of the licensee changes.
- (2) The notice must include the following information:
  - (a) the name of the financial services licensee;
  - (b) the licence number given to the licensee under subsection 913C(1);
  - (c) the name of the new eventual owner of the licensee;
  - (d) any business name registered to the new eventual owner on the Business Names Register;
  - (e) any ABN of the new eventual owner.

### **922L Requirement for notice to be lodged**

#### *Notice in prescribed form*

- (1) A notice under section 922D, 922H, 922J or 922K must be in the prescribed form.

Note: Under section 350, a document that this Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in the regulations—be in that prescribed form; and
- (b) if a form for the document is not prescribed in the regulations but ASIC has approved a form for the document—be in that approved form.

#### *When notice must be lodged*

- (2) A notice under section 922D, 922H, 922J or 922K must be lodged within 30 business days of the day the event mentioned in subsection 922D(1), 922H(1), 922J(1) or 922K(1) occurs.

#### *Who must lodge notice*

- (3) A notice under section 922D or 922H relating to a person who is or was a relevant provider must be lodged by:

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- (a) if the person is or was a relevant provider because he or she is or was a financial services licensee—the person; or
- (b) if the person is or was authorised by a financial services licensee to provide personal advice in relation to relevant financial products to retail clients—the licensee who gave the authorisation; or
- (c) if the person is or was a relevant provider as a result of section 916B—the authorised representative who authorised the person under that section.

## *Notice of change of eventual owner*

- (4) A notice under section 922J or 922K relating to the eventual owner of a financial services licensee must be lodged by the licensee.

## **922M Offence for failing to comply with obligation to notify ASIC**

- (1) A person commits an offence if:
  - (a) the person is required to lodge a notice under section 922D, 922H, 922J or 922K in accordance with section 922L; and
  - (b) the person fails to lodge the notice under section 922D, 922H, 922J or 922K in accordance with section 922L.

Penalty: 50 penalty units.

- (2) Subsection 4K(2) of the *Crimes Act 1914* does not apply to subsection (1) of this section.

Note: A person may commit an offence if the person knowingly gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

## **922N Obligation for relevant providers to provide information to financial services licensees**

### *Information about relevant provider*

- (1) A person must provide information to a financial services licensee in accordance with this section if:
  - (a) the person has become a relevant provider; and

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- (b) the person has been authorised by the licensee to provide personal advice in relation to relevant financial products to retail clients; and
  - (c) the licensee has asked the person to provide certain information so that the licensee can comply with its obligation to lodge a notice under section 922D relating to the person in accordance with section 922L.
- (2) The person must provide the licensee with the information referred to in paragraph (1)(c).

Note: A person may commit an offence if the person knowingly gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

### *When information must be given*

- (3) The information must be given to the licensee within a period that allows the licensee to comply with its obligation to lodge a notice under section 922D relating to the person in accordance with section 922L.

## **922P Obligation for certain relevant providers to provide information to authorised representatives**

### *Information about relevant provider*

- (1) A person must provide information to an authorised representative in accordance with this section if:
- (a) the person has become a relevant provider because the authorised representative has authorised the person, under section 916B, to provide personal advice in relation to relevant financial products to retail clients; and
  - (b) the authorised representative has asked the person to provide certain information so that the authorised representative can comply with its obligation to lodge a notice under section 922D relating to the person in accordance with section 922L.
- (2) The person must provide the authorised representative with the information referred to in paragraph (1)(b).

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Note: A person may commit an offence if the person knowingly gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

## *When information must be given*

- (3) The information must be given to the authorised representative within a period that allows the authorised representative to comply with its obligation to lodge a notice under section 922D relating to the person in accordance with section 922L.

## **922Q Relationship between provisions**

To avoid doubt, notices must be given under both sections 922D and 922H in relation to a person who was a relevant provider even if the person ceases to be a relevant provider before a notice has been lodged under section 922D.

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Schedule 2 Amendments

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## Schedule 2—Amendments

### *Corporations Regulations 2001*

#### **1 After regulation 7.6.06**

Insert:

##### **7.6.06A Relevant provider number**

For the purposes of subregulation 7.6.06B(1) and paragraph 922E(c) of the Act (as modified by regulation 7.6.02AI), ASIC may give a unique number (or any unique combination of numbers, characters, symbols and letters) to a person who is a relevant provider.

##### **7.6.06B Register of relevant providers**

*Register to include details of relevant providers*

- (1) For paragraph 922A(2)(e) of the Act, ASIC must enter details on a register of relevant providers (within the meaning of section 922C of the Act as modified by regulation 7.6.02AI) in respect of each person who is or was a relevant provider.

*Contents of register*

- (2) The details that must be entered on the register include the following:
  - (a) the relevant provider's name;
  - (b) the name of each financial services licensee on whose behalf the relevant provider is or was authorised to provide personal advice in relation to relevant financial products to retail clients;
  - (c) if applicable, the eventual owner of the licensee;
  - (d) the relevant provider's date and place of birth;
  - (e) the licence number given under subsection 913C(1) of the Act to the relevant provider and each licensee referred to in paragraph (b);



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- (f) if the relevant provider has been given a number under regulation 7.6.06A—that number;
  - (g) if the relevant provider is a relevant provider as a result of section 916B of the Act—the name of the authorised representative who authorised the relevant provider under that section;
  - (h) the recent advising history of the relevant provider;
  - (i) the year in which the relevant provider first provided personal advice in relation to relevant financial products to retail clients in accordance with the law (including the law of a State or Territory);
  - (j) whether the person is currently, or has ceased to be, a relevant provider;
  - (k) if the relevant provider has been disqualified from managing corporations—information contained on the register under section 1274AA of the Act;
  - (l) if the relevant provider has been banned or disqualified under section 80 or 86 of the *National Consumer Credit Protection Act 2009*—information about that banning or disqualification;
  - (m) if the relevant provider has been banned, disqualified or suspended under Division 8 of Part 7.6 of the Act, or under section 130F of the *Superannuation Industry (Supervision) Act 1993*—information about that banning, disqualification or suspension;
  - (n) if the relevant provider has given an enforceable undertaking under section 93AA of the ASIC Act—information about that undertaking;
  - (o) information about each of the following:
    - (i) the financial products in relation to which the relevant provider is authorised to provide personal advice to retail clients;
    - (ii) whether the relevant provider is authorised to provide class of product advice in relation to some or all of those products;
  - (p) any business name registered to any of the following on the Business Names Register:
    - (i) the relevant provider;
    - (ii) each licensee referred to in paragraph (b);
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## Schedule 2 Amendments

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- (iii) if applicable, the authorised representative referred to in paragraph (g);
- (q) any ABN of any of the following:
  - (i) the relevant provider;
  - (ii) each licensee referred to in paragraph (b);
  - (iii) if applicable, the authorised representative referred to in paragraph (g);
- (r) any other information that ASIC believes should be included in the register.

### *Definitions*

- (3) In this regulation:

***eventual owner*** has the meaning given by section 922C of the Act (as modified by regulation 7.6.02AI).

***recent advising history*** has the meaning given by section 922G of the Act (as modified by regulation 7.6.02AI).

***relevant financial products*** has the meaning given by section 922C of the Act (as modified by regulation 7.6.02AI).

***relevant provider*** has the meaning given by section 922C of the Act (as modified by regulation 7.6.02AI).

### **7.6.06C Correcting registers**

ASIC may correct any error in or omission from a register maintained under regulation 7.6.05, 7.6.06 or 7.6.06B.

Note: Australian Privacy Principle 13 applies to ASIC and requires it to take reasonable steps to correct personal information that is wrong or misleading so that the information is accurate, up to date, complete, relevant and not misleading (see Schedule 1 to the *Privacy Act 1988*).

### **2 At the end of regulation 9.1.01**

Add:

- ; (q) the register of relevant providers mentioned in regulation 7.6.06B.

### 3 At the end of regulation 9.1.02

Add:

- ; (q) in relation to the register in respect of relevant providers (within the meaning of section 922C of the Act as modified by regulation 7.6.02AD):
  - (i) all of the information in the register which ASIC considers appropriate for a person to search in accordance with subsection 1274A(3) of the Act; or
  - (ii) all of the information in the register which ASIC considers appropriate to make available in accordance with subsection 1274A(4) of the Act.

*[This Exposure Draft does not include any transitional provisions.]*

*Transitional provisions will be necessary to ensure that individuals who currently meet the definition of **relevant provider** in section 922C are listed on the register from the commencement date of this regulation.*

*The transitional provisions will include the timeframes for lodgement of initial information with the Australian Securities and Investments Commission (ASIC).*

*Further information about transitional issues is included in the Consultation Note that accompanies this Exposure Draft.*

*Treasury welcome submissions about transitional issues.]*