

DRAFT EXPLANATORY STATEMENT

Corporations Act 2001

Corporations Amendment (Register of Relevant Providers) Regulation 2014

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 922A of the Act provides that the regulations may prescribe the establishment of and maintenance of registers relating to financial services.

Section 926B of the Act provides that the regulations may provide that Part 7.6 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

The Corporations Amendment (Register of Relevant Providers) Regulation 2014 makes a number of amendments to the *Corporations Regulations 2001* (the Principle Regulations) to establish an enhanced register of all financial advisers.

The purpose of the Regulation is to create a public register of all natural persons providing personal advice on more complex products to retail clients.

The existing law

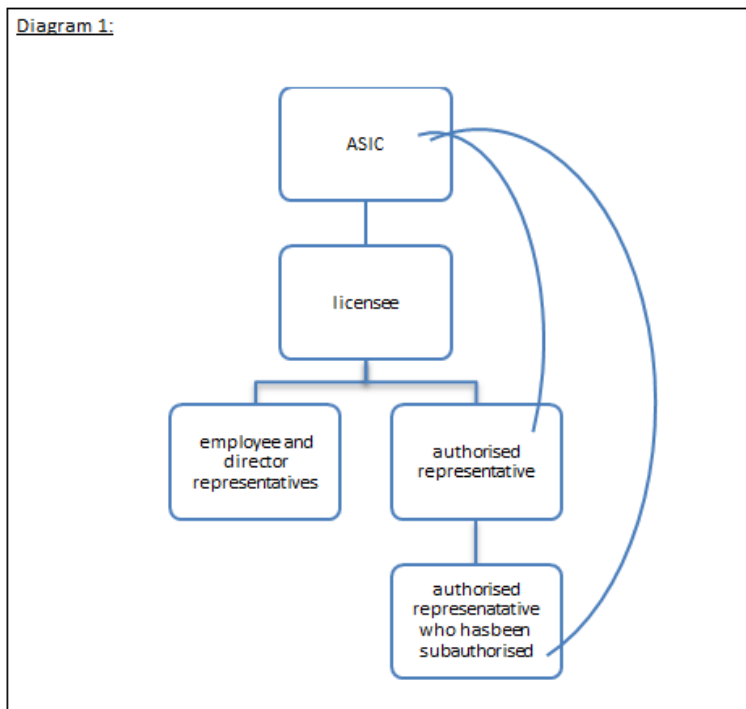
A person who carries on financial services businesses must obtain and maintain an Australian Financial Services Licence (licence) with the Australian Securities and Investments Commission (ASIC). This person is referred to as a financial services licensee (licensee).

Among other things, a person carries on a financial service business if they provide financial product advice.

Currently, financial advice is classified under two categories. 'Personal advice' is financial product advice which takes into account the personal financial circumstances of the client. Any other financial product advice that does not take into account the client's personal circumstances is termed 'general advice.'

Individuals may provide financial product advice in a range of circumstances. They may be licensees themselves; or directors or employees of licensees. They may be non-director/non-employee representatives of licensees – these individuals are referred to as 'authorised representatives'.

In certain circumstances, an authorised representative can 'sub-authorise' another authorised representative to act on behalf of the licensee (see Diagram 1 below).



‘Representative’ is the overarching term used to describe authorised representatives, director representatives and employee representatives (including those that operate under a related body corporate of the licensee) and any other person acting on behalf of the licensee, that provide financial services under a licence.

Responsibility for day-to-day supervision of representatives operating under a licence is devolved to licensees. Financial services licensees are not required to provide ASIC with certain information on director or employee representatives that operate under their licence. This may be contrasted with the requirements imposed on a licensee when it authorises a non-employee or non-director representative to act on its behalf. For these authorised representatives, licensees must lodge certain information with ASIC, and then ASIC must maintain a register of these individuals.

Consequently, there is no register that provides information to consumers, the financial advice industry, or ASIC regarding employee and director representatives of licensees.

ASIC is currently only required to maintain public registers of licensees and authorised representatives of licensees.

These registers provide information on a licensee or authorised representatives’:

- registration/licence number;
- licensee name/authorised representative name;
- address;
- start date of registration/licence;
- history of previous licensees (for authorised representatives only);
- status (whether the licensee/authorised representative is currently authorised); and
- details of any conditions or restrictions about the registration.

As ASIC currently maintains registers of licensees and authorised representatives, but not other representatives of licensees, the total number of financial advisers operating in Australia is not known. There is also limited information available about financial advisers who are director or employee representatives.

This transparency gap means consumers cannot easily check whether a particular individual is authorised to give them financial advice, or look up other information that would be valuable to them when verifying the credentials and status of an individual adviser.

This gap also means that ASIC has limited visibility of the natural persons providing personal advice on more complex products to retail clients, and is restricted in its ability to identify, track and monitor these individuals who move from licensee to licensee as employees or directors. As a result, this limits ASIC's ability to take action against individual advisers over and above action that relates to the relevant licensee.

The new law

A register of all individuals who provide personal advice on more complex products to retail clients under a financial services licence will enable consumers to verify that their individual adviser is appropriately authorised to provide advice and find out more information about the adviser before receiving financial advice.

A comprehensive register will also assist ASIC to regulate advisers who move between licensees as well as enabling the financial advice industry to better protect itself from rogue financial advisers.

The new register will be limited to those providing personal advice on more complex products to retail clients – focussing on the area where rogue advisers or 'bad apples' present the greatest risk to consumers.

The new register will build from the existing registers, and also contain information informing consumers of an adviser's experience, their recent work history, the eventual owner of licensee they work on behalf, as well as information about whether ASIC has banned, disqualified or obtained enforceable undertakings in relation to them.

It is intended that the register will, in time, also contain educational qualifications and professional association membership information. This would require further amendments to the Principal Regulations.

The benefits of the enhanced public register include:

- providing an easily accessible central record of the competency, employment history and misconduct of individual advisers;
- assisting ASIC in its compliance activities and ability to respond to problem advisers;
- assisting the industry itself to address risk where 'bad apples' are concerned; and
- providing broad support for industry efforts to improve professionalism of the industry.

Context

The establishment of a public register of financial advisers was a recommendation of the 2014 Senate Economic References Committee Report into the performance of ASIC.¹

The Government accepted this recommendation, and in July 2014, the Acting Assistant Treasurer, Senator the Hon. Mathias Cormann, established an industry Working Group (the Working Group) to advise the Government on a number of issues concerning the register, including: its scope and content; whether reporting obligations should be placed on licensees and/or financial advisers; and potential privacy issues.

The Working Group included representatives from the accounting, financial advising, financial services, funds management, insurance broking, banking, stockbroking and superannuation industries, as well as consumer and academic representatives, ASIC and Treasury.

The form of the new register largely reflects the recommendations of the Working Group.

Application

Details of the proposed Regulation are set out in Attachment A.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The *Corporations Act 2001* does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation commences the day after it is registered.

¹ The Report is available at:

http://www.aph.gov.au/parliamentary_business/committees/senate/economics/asic

Attachment A

Details of the Corporations Amendment (Register of Relevant Providers) Regulation 2014

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the Corporations Amendment (Register of Relevant Providers) Regulation 2014.

Section 2 – Commencement

This Regulation commences on the day after it is registered.

Section 3 – Authority

This Regulation is made under the *Corporations Act 2001* (the Act).

Section 4 – Schedule(s)

This section provides that the schedules amend the *Corporations Regulations 2001* (the Principal Regulations).

The Regulation is divided into two schedules.

Schedule 1 inserts Schedule 8D into the Principal Regulations. Schedule 8D inserts provisions into the Act to impose obligations on licensees and certain authorised representatives to lodge information about natural persons providing personal advice on more complex products to retail clients under a licence.

Schedule 2 imposes an obligation on ASIC to maintain a register of relevant providers and outlines the content of that register.

Schedule 1 – Modifications of the Act

Item 1

Item 1 inserts a new regulation 7.6.02AI which modifies Part 7.6 Division 9 of the Act, as set out in the new Schedule 8D. The item relies upon the power in section 926B to modify the operation of Part 7.6.

Item 2 - Modifications of Division 9 of Part 7.6 of the Act

Item 2 inserts a new Schedule 8D into part 7.6 of the Act.

Section @922C - Definitions

The new section @922C provides definitions for the purposes of the new provisions inserted into Division 9, Part 7.6 of the Act.

Basic banking product and consumer credit insurance

Section @922C defines basic banking product and consumer credit insurance by reference to the existing definitions in the Act and the *Insurance Contracts Act 1984*. These two concepts are utilised in the definition of ‘relevant financial products’.

Class of product advice

Section @922C defines class of product advice, as advice in relation to a class of products, but not a recommendation about a specific product in a class.

The definition picks up the existing definition of class of product advice in the Principal Regulations (see subregulation 7.6.04(3)).

Eventual owner

Section @922C defines the eventual owner of a licensee as the body corporate that directly or indirectly holds more than half the issued share capital (disregarding shares that hold no voting rights), and for which no other company owns more than half of it.

The definition can be viewed as having two elements – the *owner* (a) and the *eventual owner* (b).

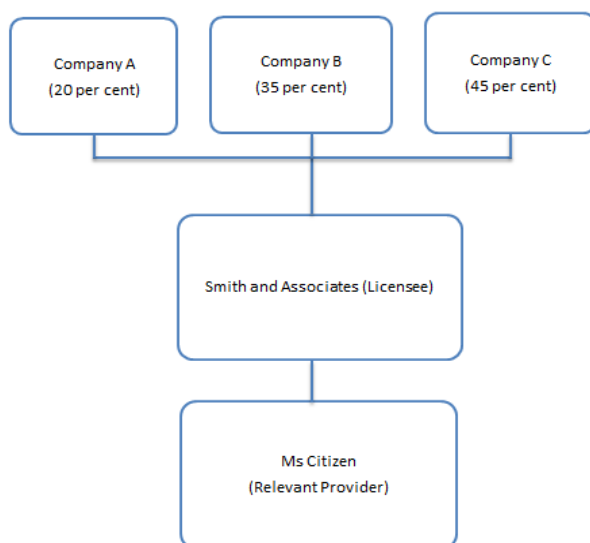
The *owner* is the company, or the various companies, that hold either directly or indirectly, a majority of the voting shares in the licensee.

The *eventual owner* however can only ever be one of the owner companies (if any). The eventual owner is one of the owner companies that itself does not have an owner.

As not all licensees will have a shareholder directly or indirectly holding more than half of the issued share capital, not all licensees will be required to lodge information regarding their eventual owner, or changes to their eventual owner (the obligations are discussed further below).

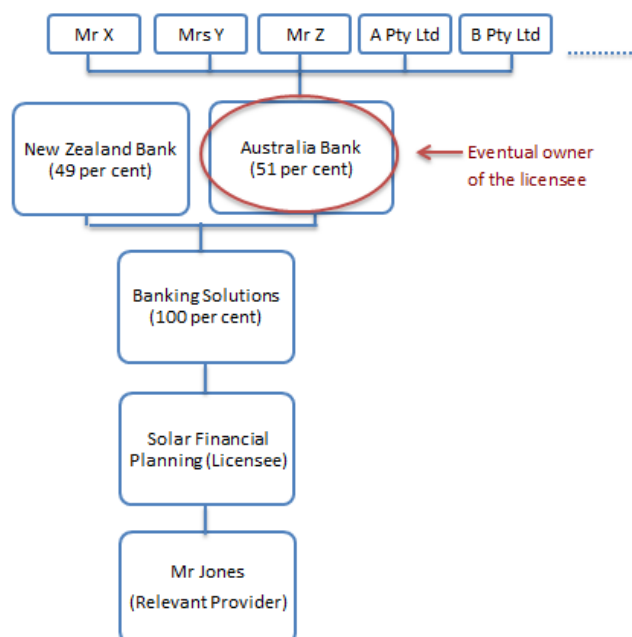
Example 1: Ms Citizen is a relevant provider who is authorised by Smith and Associates (the licensee). Three companies hold shares in Smith and Associates, and could be considered to be owners. Company A holds 20 per cent of the issued share capital, Company B holds 35 per cent of the issued share capital and Company C holds 45 per cent of the issued share capital.

Because no single body corporate holds more than half of the issued share capital of Smith Advising Solutions, Smith Advising Solutions will not have to notify ASIC of an eventual owner under section @922J.



Example 2: Mr Jones is a relevant provider who is authorised by Solar Financial Planning (the licensee). Banking Solutions holds all of the issued share capital of Solar Financial Planning. Two companies hold shares in Banking Solutions, New Zealand Bank holds 49 per cent of the issued share capital and Australia Bank holds 51 per cent of the issued share capital in Banking Solutions. New Zealand Bank and Australia Bank are therefore the owners of the licensee, Solar Financial Planning. No single shareholder owns more than 1 per cent of Australia Bank.

As Australia Bank indirectly holds more than half of the issued share capital of Solar Financial Planning (an owner), and is not majority owned by another company, Solar Financial Planning would be required to lodge with ASIC that Australia Bank is its eventual owner under section @922J.



Recent advising history

Section @922C provides that recent advising history is defined in section @922G.

Relevant financial products

Section @922C defines relevant financial products for the purposes of defining the scope of individuals to be included on the register.

Only natural persons who provide personal advice on 'relevant financial products' will be captured on the register. The definition seeks to capture those financial products which are generally considered to be 'more complex'.

Relevant financial products are defined in the Regulation by excluding those financial products which are 'less complex'. That is, those financial products which are basic banking products, general insurance products, consumer credit insurance, or a combination of any of these three categories.

The scope of relevant financial product is consistent with the Future of Financial Advice (FOFA) reforms in Part 7.7A of the Act, as the references to general insurance product in the FOFA legislation do not make any distinction between different types of general insurance products (such as accident and personal sickness insurance).

Relevant provider

Section @922C provides the definition of ‘relevant provider’, also for the purposes of defining the scope of the register.

The intent of the definition is to capture all natural persons who provide personal advice under an Australian financial services licence on relevant financial products to retail clients.

This scope captures individuals typically labelled ‘financial advisers or planners’, but also includes a wide range of advisers in related sectors, including stockbrokers, insurance brokers, accountants and some bank employees.

The register is designed as a tool for consumers and therefore it will only capture natural persons who provide personal advice to *retail clients* – these are consumers or small businesses. The scope does not capture individuals who advise wholesale clients exclusively.

In order to capture all natural people who can provide personal advice on relevant financial products to retail clients, the definition includes both natural person licensees and natural person representatives.

Paragraph (a) of the definition captures licensees who are natural persons. Whilst licensees are generally entities such as corporations, partnerships or trusts, they can be natural persons.

Paragraph (b) of the definition draws upon the definition of *representative* in section 910A of the Act, capturing authorised representatives of licensees, employee and director representatives of licensees as well as employee and directors of related body corporates of licensees.

Paragraph (c) of the definition narrows the scope of providers of financial advice by reference to two concepts, ‘personal advice’ and ‘relevant financial products’. This means that a natural person is only a relevant provider if they fall within one of the categories outlined in paragraphs (b) and they provide personal advice on relevant financial products.

Personal advice is defined in subsection 766B(3) of the Act.

Section @922D – Obligation to notify ASIC about a person who becomes a relevant provider

Section @922D outlines when a notice must be lodged with ASIC when a person becomes a relevant provider, and that when a notice is lodged, it must be lodged in accordance with section @922L.

Section @922L provides that a notice must be lodged in a prescribed form, who must lodge it, and when it must be lodged.

Section @922D also outlines that the contents of the notice must be in accordance with section @922E (for relevant providers who are licensees) or section @922F (for relevant providers who are representatives of licensees).

A relevant provider is defined in section @922C.

Section @922E – Information about a relevant provider who is a financial services licensee

Section @922E requires a natural person licensee who is a relevant provider to notify ASIC of certain details. This information will be used by ASIC to maintain the register.

Whilst there is an existing register of licensees, natural person licensees will also be included on the new register of financial advisers to ensure that the register is comprehensive and provides details of all natural persons providing personal advice on relevant financial products to retail clients. Furthermore, the new register of financial advisers will have more details about the natural person licensee than the current register of licensees.

Paragraphs @922E(a) and (b) – Name and numbers

Licensees who become relevant providers will be required to provide their name and their licence number, which will be provided by ASIC under section 931C(1) of the Act.

Paragraph @922E(c) – The year the person first began advising

Paragraph @922E(c) requires a licensee who becomes a relevant provider to notify ASIC of the year they began giving personal advice on relevant financial products to retail clients. Broadly, this year is intended to convey to users of the register, the year the natural person first began advising on more complex products.

The language is intended to be broad and include natural persons who began advising before the creation of the current financial services regime in 2002. Prior to this time, many relevant providers were regulated to some extent by state and territory law.

In instances where an individual has taken a break from the industry since first providing personal advice on relevant financial products to retail clients, this information on the register may give the impression that the licensee has more experience than they actually have. However, this approach will minimise compliance costs for licensees and advisors.

If a relevant provider began advising either: only on general advice; or only providing personal advice on financial products that are not relevant financial products; or the licensee did not advise retail clients; this would not be the relevant provider's starting year. It is only the year in which the relevant provider began providing personal advice on relevant financial products to retail clients.

Paragraphs @922E(d) and (e) – Registered Business Names and Australian Business Numbers

Paragraphs @922E(d) and (e) require relevant providers who are licensees to provide their business name(s) and associated ABN (Australian Business Numbers) to ASIC for the purposes of the register.

Under the *Business Names Registration Act 2011* an entity or person must register a business name with ASIC if the entity or person is carrying on a business (unless the business operates under the name of the entity or person). Under *A New Tax System (Australian Business Number) Act 1999* certain businesses may register for an ABN.

Under the *Business Name Registration Act 2011* information obtained by ASIC can only be used for the purpose of maintaining the Business Names Register, and

therefore ASIC must collect the information for the register of relevant providers separately.

Paragraph @922E(f) - Details of financial product authorisation and class of product advice

Paragraph @922E(f) requires the lodger to provide information on what financial products a relevant provider is authorised to provide advice on, and whether the relevant provider is only authorised to provide class of product advice on those products.

Under the licensing framework, ASIC specifies which financial products a licensee is licensed or authorised to provide advice on. A licensee can be licensed or authorised to provide advice on specific financial products or a broad class of products.

Class of product advice is a form of financial advice that does not make a recommendation (in form or in substance) about a specific financial product.

Under the existing regulation 7.6.04, ASIC may grant a licence which limits the licensee to only provide class of product advice on certain financial products. Under a limited licence, a licensee may be authorised to provide class of product advice about: superannuation products; securities; simple managed investment schemes as defined in the Regulations; general and life insurance; and basic deposit products.

Paragraph 922E(g) - Recent advising history

This paragraph provides that information regarding a relevant provider's recent advising history is required to be lodged with ASIC. Further detail on the definition of recent advising history is provided in section @922G.

This information refers to the past advising history for the provider; going forward, the ongoing notifications of changes for a provider will allow ASIC to develop a more detailed history of relevant providers on the register.

Section @922F – information about a relevant provider who is not a financial services licensee

Section @922F details the information that must be lodged when a person who is not a licensee becomes a relevant provider. It substantially mirrors section @922E, but also requires the lodger to provide additional information to ASIC.

The extra information largely concerns the relevant provider's licensee, and the authorised representative if the relevant provider has been sub-authorised under section 916B of the Act.

This section also includes more information about the relevant provider, as this may be the first time the relevant provider is known to ASIC. A relevant provider who is a licensee will have already gone through the licencing process and have provided information on the licensee register.

Paragraphs @922F(1)(a),(c),(d),(f) – Names and numbers

Under paragraphs @922F(1)(a) and (b), the lodger is required to lodge with ASIC a relevant provider's name, date of birth and place of birth. Date and place of birth information will enable ASIC to verify the identification of relevant providers and create a unique relevant provider number which ASIC can then use to track individuals against different licensees. The relevant provider number is discussed further in relation to regulation 7.6.06A.

Under paragraphs @922F(1)(c) and (d), the lodger is required to lodge with ASIC the name of the licensee that has authorised the relevant provider, and the licence number that ASIC has provided to that licensee in accordance with subsection 913C(1) of the Act.

Under paragraph @922F(1)(f), in the situation where a relevant provider has been subauthorised by an authorised representative under section 916B, the lodger is also required to provide the name and authorised representative number of that authorised representative. This will allow ASIC to display this information on the register. Further information on the rationale for ASIC displaying this information on the register is provided in this Explanatory Statement under regulation 7.6.06B.

Paragraph @922F(1)(e) – The year the person first began advising

Under paragraph @922F(1)(e), the lodger is required to provide the year in which the relevant provider first began providing personal advice on relevant financial products to retail clients.

Paragraphs @922F(1)(g) and (h) – Registered Business Names and Australian Business Numbers

Paragraphs @922F(1)(g) and (h) requires the lodger to provide, if applicable, the business name(s) and linked ABN of the relevant provider, the licensee and the authorised representative, if the relevant provider has been authorised by that authorised representative under section 916B.

Under the *Business Names Registration Act 2011* all business names which are not the natural person's name or the company name must be registered with ASIC.

More information on the intention of this requirement is discussed in relation to regulation 7.6.06B.

Paragraph @922F(1)(i) – Details of financial product authorisation and class of product advice

Paragraph @922F(1)(i) provides that a lodger must give ASIC information concerning the relevant financial products in relation to which a relevant provider is authorised to provide personal advice to retail clients.

A representative advising on behalf of a licensee can only provide advice on the financial products that the licensee is licensed to provide advice on.

Further, the representative may only be authorised by the licensee to provide advice on a subset of financial products on which the licensee is licensed to provide advice.

Subparagraph @922F(1)(ii) requires a lodger to notify ASIC of whether a relevant provider who is a representative is only authorised to give class of product advice or whether the representative is authorised to provide advice on specific financial products. Class of product advice is discussed in more detail in relation to paragraph @922E(g).

Paragraph @922F(1)(j) – Recent advising history

Paragraph @922F(1)(j) requires the lodger to provide the recent advising history of the relevant provider for the previous five years. The concept of recent advising history is explained further in relation to section @922G.

Subsection @922F(2) – Certain information already lodged not required to be lodged again

Subsection @922F(2) provides that, if a licensee (or an authorised representative as referred to in paragraph @922F(1)(f)) has a reasonable belief that another licensee or authorised representative has lodged information concerning a particular relevant provider in relation to their recent advising history or the year the relevant provider first began providing personal advice on relevant financial products to retail clients, the first-mentioned licensee does not have to lodge this information again.

This subsection is intended to take into account instances where a relevant provider is authorised by more than one licensee or authorised representative. It is not necessary for this detail about a relevant provider to be lodged more than once.

Reasonable belief is required. On many occasions, it will be evident that this information has been provided because it has been made public on the register. However, a licensee or authorised representative may also meet this subsection if it has communicated with other licensees or authorised representatives, and it has evidence to suggest that this information has been lodged (but has not yet currently been made publicly available by ASIC on the register).

Section @922G – Meaning of recent advising history

Section @922G defines recent advising history. This definition is used in sections @922E and @922F, where the notice must include a relevant provider's recent advising history for the five years prior to the date of lodgement.

Paragraphs @922G(a) and (b) are intended to capture different authorisation scenarios where a relevant provider may have been a relevant provider in the past.

For example, whilst a relevant provider at the time of form lodgement under section @922D may be a natural person financial services licensee, two years prior that relevant provider may have been an employee representative operating under a financial services licence. The intention of this section is to capture this history.

The lodger is required to provide various details relating to a relevant provider's history.

Whilst section @922G does not prescribe a time period, the definition works in operation with sections @922E and @922F to have the effect of requiring lodgers to provide a relevant provider's recent advising history of the last 5 year period.

Paragraph @922G(a) requires that, if a relevant provider was a financial services licensee, the period during which the relevant provider was operating under their own financial services licence (in their name) must be provided.

Paragraph @922G(b) outlines the categories of information that must be lodged if, in the relevant period (prescribed as 5 years under sections @922E and @922F), the relevant provider was a representative of a licensee. For these occasions, the lodger must:

- provide the name of each licensee the relevant provider was authorised by;
- if the relevant provider was operating under an authorised representative (subauthorisation), the name of that authorised representative; and

- the time period applicable to each of the different authorisations the relevant provider has had within the relevant period.

The note provided under section @922G explains the situation where a licensee has previously worked as a representative of another licensee, as well as the situation where relevant provider who is currently a representative used to be a licensee. In these situations, both licensee history and relevant provider history are required.

Example 1: Mr Andrew Smith graduated university in 2011 and began providing personal advice to retail clients in relation to relevant financial products as an authorised representative of Collins Advising Pty Ltd (the licensee) in May 2012. In September 2013, Mr Smith left Collins Advising Pty Ltd and became a licensee.

Mr Smith, as a relevant provider who is a financial services licensee, would be required to lodge under paragraph @922L(3)(a) the following recent advising history information under section @922E:

*May 2012 – September 2013: Collins Advising Pty Ltd.
September 2013 – present date: Andrew Smith.*

Example 2: Between January 2004 and December 2011, Ms White was a relevant provider under Financial Advising Pty Ltd, which was an authorised representative operating under a licensee. Between January 2012 and December 2012, Ms White took time off and did not satisfy the definition of relevant provider during this period. Ms White returned to the financial services industry as a relevant provider in January 2013, and is now a relevant provider as an employee representative of New Horizon Bank.

New Horizon Bank, as Ms White's current licensee, would be required to lodge under paragraph @922L(3)(a) the following recent advising history information under section @922F:

*Before 5 years before lodgement (for example March 2010) – December 2011: Financial Advising Pty Ltd
January 2013 – present date: New Horizon Bank.*

Using the recent advising history information lodged under sections @922E and @922F, ASIC will be required to list a relevant provider's recent advising history on the register. It is intended at the time of the register's launch, the register will display a relevant provider's recent advising history for the last five years (or less, if the relevant provider has been a relevant provider for less than five years). However, going forward, the history of an adviser will be built up on the register through the lodgement of updates of relevant provider's details. The 'recent advising history' field will become increasingly redundant, and lodgers will increasingly be able to rely upon subsection 922F(2) so that and will not be required to lodge this history as it will be already on the register.

Section @922H – Ongoing obligation to notify ASIC when details change

Section @922H requires information to be lodged with ASIC when details provided to ASIC under section @922D or section @922E change concerning a particular relevant provider.

This updated information is necessary for ASIC to update the corresponding information on the register.

A change of details of the relevant provider includes the situation where a relevant provider has ceased to be authorised by a licensee.

In the situation where a relevant provider is no longer authorised by a licensee but then becomes authorised by a new licensee, the first licensee would lodge a form with ASIC stating that the relevant provider is no longer authorised by the first licensee.

The new licensee would then lodge a form with ASIC, quoting the relevant provider number, stating that the relevant provider is now authorised by the new licensee, and providing the details of that authorisation.

For various reasons, a relevant provider may cease to be a relevant provider. A relevant provider may no longer be authorised to provide personal advice on the relevant financial products to retail clients under a license (and may instead may only provide advice on products which are not relevant financial products), or the relevant provider may leave the sector altogether.

Under section 922H, this information must be lodged with ASIC even if the relevant provider commences but then ceases to be a relevant provider with a particular licensee within the required 30 business day lodgement period (see @922L) for the initial notification arising from their commencement.

If details concerning a relevant provider change are a consequence of an act by ASIC, there is no obligation to lodge a notice with ASIC. This is on the basis that ASIC will already have this information available to it and is empowered to amend the register under proposed new regulation 7.6.06C. An example of a change made by ASIC is where ASIC has issued a banning order against the relevant provider.

Sections 922J and 922K – Obligation to notify ASIC about an eventual owner and a change of eventual owner

Section @922J requires licensees to lodge details of an eventual owner of the licensee when they become a licensed to provide personal advice on relevant financial products to retail clients. Section @922K requires a licensee, who is already licensed to provide personal advice on relevant financial products to retail clients, to notify ASIC upon any change in eventual owner. Eventual owner is defined in section @922C. From this definition, only a licensee who is a body corporate will have an eventual owner, and the licensee will only have one eventual owner.

The details of the notice under section @922J are the same as the details required under section @922K.

The details of the notice include the licence number, the name of the eventual owner, the business name of the eventual owner and the ABN of the eventual owner. This information will ensure that the eventual owner is properly identified.

Sections @922J and @922K are drafted separately to other notice provisions (sections @922E and @922F), so that licensees do not have to lodge a separate notice for every relevant provider every time the eventual owner of the licensee changes (see subsection @922L(4)).

Section @922L – Requirement for notice to be lodged

While section @922D creates the obligation for lodgers to provide information to ASIC concerning their relevant providers, and sections @922D and @922E outline the information that is required to be lodged, section @922L specifies the form, timing of this information and who these obligations are placed on.

In addition, a notifications lodged under sections relating to the details and change of a licensee's eventual owner (sections @922J and @922K), as well as any change in details of a relevant provider (section @922H), must also be in accordance with @922L.

Prescribed form

Subsection @922L(1) specifies that this information must be in the prescribed form.

A note has been inserted under section @922L to refer to section 350 of the Act, which provides that a prescribed form is one which is specified in the regulations, unless no form is prescribed under the regulations, in which case it refers to a form which ASIC has approved.

The Government does not currently intend to prescribe the form in the Principal Regulations pursuant to paragraph 350(a) of the Act and therefore, information covered by @922L will be required to be lodged in a form which ASIC has approved.

Timing of form lodgement

A form required to be lodged under these aforementioned sections is required to be lodged no later than 30 business days from the date of the event which resulted in the change in detail occurring.

This timing is intended to balance compliance costs for industry, and the value for users of the register having the information displayed up-to-date.

Who is required to lodge forms

Forms relating to a relevant provider's details under sections @922D, or a change of a relevant providers details under section @922H, depends on the authorisations arrangements for each relevant provider.

There are three possible arrangements which determine who the lodger of the information is:

- If a relevant provider is (or was) a financial services licensee, the relevant provider themselves is required to lodge the required information, in the form prescribed and within the time prescribed.
- If a relevant provider is (or was) directly authorised by the licensee under section 916A, or is an employee or director of the licensee, the licensee is required to lodge the required information, in the form prescribed and within the time prescribed.
- If a relevant provider is (or was) subauthorised under section 916B by an authorised representative operating under a financial services licensee, the authorised representative is required to lodge the required information, in the form prescribed and within the time prescribed.

Subsection @922L(3) takes into account the circumstance where a relevant provider becomes, but then ceases being a relevant provider within the 30 business day period.

Who is required to lodge forms relating to a licensee's eventual owner

Responsibility for lodgement of information relating to a licensee's eventual owner rests with licensees.

Subsection @922L(4) places the obligation relating to informing ASIC of a licensee's eventual owner, and any subsequent changes to the eventual owner with the licensee itself.

Section @922M – Offence for failing to comply with obligation to notify ASIC

Section @922M makes it an offence for a licensee or authorised representative that authorises a relevant provider not to comply with their obligation to notify ASIC about a relevant provider that they authorise, or in the case of a natural person licensee who is a relevant provider, themselves. That is, to not comply with section @922D.

The section also makes it an offence for the licensee or authorised representative not to update ASIC of any changes in the details of a relevant provider, that is, to fail to comply with section @922H.

It also makes it an offence not to comply with sections @922J or @922K, which require the licensee to notify ASIC of its eventual owner and a change in its eventual owner.

The offence is subject to 50 penalty units, which is currently \$8 500.

This is not a strict liability offence, in contrast to existing offences in relation to lodgements for licensee and authorised representative registers. This reflects the extent to which lodgements under the new regime may include information sourced from third parties. This section is not subject to subsection 4K(2) of the *Crimes Act 1914*. Subsection 4K(2) creates a separate offence for each day a person fails to comply with an obligation to do something in a particular time period.

A person may also commit a Criminal Code offence if the person knowingly gives false or misleading information to the Commonwealth.

Sections @922N and @922P – Obligation on a relevant provider to provide information to licensee or authorised representative

Sections @922N and @922P provide that if a relevant provider is not a financial services licensee (that is, they are a relevant provider because they are a representative of a financial services licensee), and the lodger (who is determined under subsection @922L(3)) requests information from the relevant provider in order to comply with their obligation set out in section @922D, the relevant provider is required to provide this information to the lodger.

These sections have been inserted given that licensees and authorised representatives (where relevant) will be reliant on their representatives to inform the licensee of certain information about themselves, required to be lodged under section @922D.

A request from a licensee to a representative who is a relevant provider under their licence is likely to include information about the relevant provider's recent advising history and the year the relevant provider first began providing personal advice on relevant financial products to retail clients, as this is information a licensee will not necessarily already have available to them.

Whilst there is an obligation on the representative to assist their licensee, no penalty is directly attached to this obligation within the Regulation. However, subparagraph 137.1(1)(c)(iii) of the *Criminal Code Act 1995* (the Criminal Code) provides that a person is guilty of an offence if a person gives false or misleading information to a person, and the information is given in compliance or purported compliance with a law of the Commonwealth.

This means that if a relevant provider provides false or misleading information about themselves to a licensee, in response to a request made by the licensee under section @922N or the authorised representative under section @922P, the relevant provider may be liable for a penalty of up to 12 months' imprisonment in accordance with section 137.1 of the Criminal Code.

Subsections @922N(3) and @922P(3) provide that a relevant provider must give the information to the lodger in a time which would allow the licensee to comply with the lodger's obligations. A specific time has not been provided in the regulation to allow for flexible arrangements between licensees and representatives to collect this information. However, in effect, as a lodger must provide the information within 30 business days, the outer limit on the representative providing the information as requested to the licensee or authorised representative is 30 business days.

Section @922Q – Relationship between provisions

Section @922Q sets out that a lodger must lodge information about a relevant provider, even if a relevant provider is no longer operating at the end of the 30 business day notification period.

The intention behind this provision is to ensure that all relevant providers are captured on the register, even if a relevant provider changes their licensee within the 30 business day period. This will assist the industry and ASIC to track advisers who are disreputable or lacking competence that operate under different licences within short periods of time.

Example 1: Ms Lim becomes a relevant provider on 20 September 2018 and ceases to be a relevant provider on 8 October 2018.

Information under section @922F on Ms Lim is required to be lodged under section @922D even though Ms Lim became, and ceased being a relevant provider within the 30 business day lodgement period under section @922L(2).

Schedule 2 – Amendments

Item 1

Item 1 inserts a number of regulations into the Principal Regulations which relate to ASIC establishing and maintaining the register for natural persons providing personal advice to retail clients in relation to relevant financial products.

7.6.06A – Relevant provider number

Regulation 7.6.06A enables ASIC to issue a unique number to each relevant provider. These numbers will enable ASIC and the industry to identify, track and monitor relevant providers in the industry.

Providing each financial adviser with a unique number also simplifies reporting and compliance obligations for the industry and ASIC.

Whilst licensees are already provided with a unique number under section 913C(1), and authorised representative are also provided a number by ASIC, a relevant provider number is necessary so that a relevant provider who change licensees (or from being a relevant provider as a natural person licensee to being a relevant provider as an employee representative under another licence) can be readily tracked.

Regulation 7.6.06B – Register of relevant providers

Subregulation 7.6.06B(1) – Register to include details of relevant providers

Section 922A requires ASIC to establish and maintain one or more registers relating to financial services. Paragraph 922A(2)(e) allows for the Regulations to prescribe any persons or bodies for the purposes of any additional register relating to financial services established under this section.

For the purpose of paragraph 922A(2)(a) of the Act, subregulation 7.6.06B(1) requires ASIC to establish and maintain a register concerning details relating to relevant providers as outlined in this Regulation.

ASIC is required to maintain a register of existing relevant providers (current), as well relevant providers who cease being relevant providers. However, under transitional arrangements, ASIC will not be required to maintain details relating to individuals who, prior to the establishment of the register of relevant providers, would have met the definition of relevant providers. That is, the register will only contain information on relevant providers who become ceased after the register's launch date.

The remainder of Regulation 7.6.06B outlines the contents of the register:

Paragraphs 7.6.06B(2)(a),(b),(d)(e) and (f) – Identification information

Various paragraphs in subregulation 7.6.06B(2) require ASIC to maintain in the register identification information such as the name of the relevant provider, the number given to the relevant provider by ASIC, the relevant provider's date of birth and place of birth and the name and number of the licensee of each relevant provider.

Whilst the date of birth and place of birth of the relevant provider will be part of the register, ASIC is expected to use its discretion in regulation 9.1.02 to not make this information publically available on the online register.

If the relevant provider has been subauthorised under section 916B of the Act, paragraph (f) provides that identification details of that authorised representative should be listed on the register.

Paragraph 7.6.06B(2)(c) – Eventual owner of the licensee

Paragraph (c) requires ASIC to list the eventual owner on the register.

The purpose of this provision is to make the context of the advice more transparent. Currently, many financial advice firms are owned by firms that issue financial products, and consumers are often not aware of a relationship between an advising firm and particular financial products. This lack of transparency about the context of the advice can contribute to a lack of trust in the financial advice industry.

Information concerning a licensee's eventual owner may also be useful where a consumer wishes to seek advice from a firm that is owned by an institution that is well known to consumers.

Paragraph 7.6.06B(2)(j) – Historical information

Regulation 7.6.06B(2)(j) requires ASIC to provide on the register whether the relevant provider is currently operating as a relevant provider, or if they have ceased to be a relevant provider.

This information will generally be obtained by ASIC from forms lodged under section @922H.

Paragraph 7.6.06B(2)(i) – The year the person began advising

The purpose of the section is to demonstrate the experience of the financial adviser.

Paragraphs 7.6.06B(2)(k),(l),(m) and (n) – Banned and disqualified relevant providers and enforceable undertakings

Paragraphs (k),(l),(m) and (n) of subregulation 7.6.06B(2) require ASIC to provide information on the register concerning any relevant bannings or disqualifications concerning the relevant provider (under the Act, *National Consumer Credit Protection Act 2009*, and *Superannuation Industry (Supervision) Act 1993*) as well as any enforceable undertakings given by the relevant provider (under section 93AA of the *Australian Securities and Investments Commission Act 2001*).

Under the Act, ASIC currently maintains a Banned and Disqualified register, which provides information on: individuals banned or disqualified or suspended from practising in the financial services or credit industry; the involvement in the management of a corporation; or auditing self-managed superannuation funds.

ASIC also currently maintains an Enforceable Undertakings register, which lists enforceable undertakings accepted by ASIC under section 93AA of the *Australian Securities and Investments Commission Act 2001*.

Enforceable undertakings are most often given by licensees rather than individual financial advisers. The register will assist ASIC to have clarity over individual advisers in future, and may assist ASIC to make enforceable undertakings with individual advisers.

Including all information about disciplinary action taken by ASIC, even if the disciplinary action was not taken in relation to the provision of financial advice, promotes transparency and allows consumers to place more confidence in their relevant provider.

This information is currently held by ASIC; therefore this information is not required by lodgers as part of the notification process as part of section @922D.

Paragraph 7.6.06B(2)(o) – Product authorisations

Regulation 7.6.06B(2)(o) provides that ASIC must list on the register the relevant financial products a relevant provider is authorised to provide personal advice on to retail clients.

This category of information is explained previously in relation to paragraphs @922E(f) and @922F(i).

Through licensees and other lodgers providing this information to ASIC, ASIC will be able to display this information on the register. Consumers will then be able to check that their relevant provider is authorised to provide the advice that they are giving. Consumers will also be able to check if their relevant provider is authorised to provide advice on a specific product.

Paragraphs 7.6.06B(2)(p) and (q) – Business name and numbers

Paragraphs 7.6.06B(2)(p) and (q) provide that ASIC must list on the register the registered business names and associated ABNs of the relevant provider, the licensee, and the authorised representative if the relevant provider has been sub-authorised.

The intention of this requirement is to avoid confusion where a financial advising firm is trading under a different name to the name a firm is incorporated under, or the name a partnership is licensed or authorised under. This will assist consumers to identify the financial planner they are dealing with, and the firm from which they are receiving advice.

Regulation 7.6.06B(2)(r) – Discretion for ASIC to list other information

Regulation 7.6.06B(2)(r) gives ASIC the discretion to record other information on the register as it considers necessary.

This gives ASIC the flexibility to add information about relevant providers on the register which ASIC considers may be useful to consumers, but may not have been conceived of at the time the Regulation is made. ASIC's flexibility to add information to the register will be limited to the information that it has available to it.

This discretion is intended to mirror the existing discretion that ASIC has in relation to the register of licenses and authorised representatives in paragraphs 1(g) and 2(i) of regulation 7.6.05.

Subregulation 7.6.06B(3) – Definitions

Subregulation 7.6.06B(3) defines eventual owner, recent advising history, relevant financial products and relevant provider for the purposes of the regulations in Schedule 2, item 1, by referring back to the definitions in section @922C of the Act, as modified by regulation 7.6.02AI.

Regulation 7.6.06C – Correcting the register

For the sake of certainty, Regulation 7.6.06C provides ASIC with an explicit power to make changes (including changes to the information and details) to three registers: the register of relevant providers (kept under regulation 7.6.06B); the register of authorised representatives (kept under regulation 7.6.05); the register of licensees (kept under regulation 7.6.05); and the banned and disqualified register (kept under regulation 7.6.06).

A note is included which references Australian Privacy Principle 13, which deals with the correction of personal information (Schedule 1, *Privacy Act 1988*).

The intention of Regulation 7.6.06C is to ensure that if ASIC has reason to believe that information on a register is incorrect, ASIC can make corrections to that register.

This will enable ASIC to comply with its obligation in the Australian Privacy Principles to take steps to ensure that personal information is accurate, up to date, complete, relevant and not misleading.

Item 2 – Prescribed register

Item 2 prescribes the register of relevant providers as a prescribed register for the purposes of section 1274A of the Act.

Prescribing a register for section 1274A permits ASIC to allow a register to be searched, including via a mechanical, electronic or other device for processing data (a ‘data processor’); and to provide prescribed information that it has obtained from the register using a data processor search.

This is consistent with current arrangements for the register of authorised representatives and the register of licensees.

Item 3 – Prescribed information

Item 3 inserts into regulation 9.1.02 a paragraph which allows ASIC to make available only such data as it considers appropriate from searches of the register utilising a data processor.

This is consistent with existing arrangements for the register of authorised representatives and the register of licensees.

Whilst the date of birth and place of birth information of relevant providers will be part of the register (pursuant to paragraph 7.6.06B(2)(d)), under subparagraph 9.1.02(q)(ii), it is expected that ASIC will consider it appropriate to not make this information publically available on the online register.