



Corporations Amendment Regulations 2005 (No.)¹

Select Legislative Instrument 2005 No.

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 2005

Governor-General

By His Excellency's Command

CHRIS PEARCE
Parliamentary Secretary to the Treasurer

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1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2005 (No.)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Corporations Regulations 2001*

Schedules 1 to 11 amend the *Corporations Regulations 2001*.

Schedule 1 Proposals 1

(regulation 3)

Part 1 Proposal 1.1

[1] **After regulation 7.7.10AB**

insert

7.7.10AC Obligation on authorised representative to give a financial services guide

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if subsection 941B (2) were omitted and the following subsection were substituted:

“(2) A Financial Services Guide must not be given to the person by the providing entity unless the authorising licensee, or each of the authorising licensees, on whose behalf the providing entity provides the financial services, has authorised its distribution by the providing entity.”

7.7.10AD Financial services guide given by financial services licensee — contents of guide

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if paragraph 942B (2) (c) of the Act were omitted and the following paragraph were substituted:

“(c) information about the financial services (the *authorised services*) that the providing entity will be, or is likely to be, providing to the client, and the kinds of financial products to which those services relate; and”

7.7.10AE Financial services guide given by authorised representative — contents of guide

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if paragraphs 942C (2) (c), (d) and (e) of the Act were omitted and the following paragraphs were substituted:

- “(c) information about the financial services (the *authorised services*) that the providing entity will be, or is likely to be, providing to the client, and the kinds of financial products to which those services relate; and
- (d) information about who the authorising licensee, or each of the authorising licensees, acts for when the authorised services are provided on their behalf by the providing entity; and
- (e) a statement:
 - (i) setting out the name and contact details of the authorising licensee, or of each of the authorising licensees, mentioned in paragraph (d); and
 - (ii) stating that the providing entity is the authorised representative of that licensee or those licensees; and”

Part 2 Proposal 1.2

[2] After regulation 7.7.02

insert

7.7.02A Situations when Financial Services Guide is not required

For paragraph 951C (1) (c) of the Act, section 941C of the Act is modified by inserting after subsection 941C (7) the following subsection:

- “(7A) The providing entity does not have to give the client a Financial Services Guide in the following circumstances:
 - (a) if the providing entity will or is likely to provide a financial service to the client;
 - (b) the financial service is one of the following:
 - (i) personal advice recommending a particular financial product (see section 1012A);

- (ii) the issue of a particular financial product (see section 1012B);
- (iii) the sale of a particular financial product (see section 1012C);
- (c) the providing entity gives to the client the following statements:
 - (i) a Product Disclosure Statement;
 - (ii) a statement that contains so much of the information listed in section 942B or 942C (as the case may be) as is not already set out in the Product Disclosure Statement;
- (d) the statements mentioned in paragraph (c) are given at the same time.”

[3] After regulation 7.7.10AJ

insert

7.7.10AK Various consequential amendments to Division 7 of Part 7.7

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if the provision set out in column 2 of the following table were modified as set out in columns 3 and 4:

Column 1	Column 2	Column 3	Column 4
Item	provision of Act	is modified by...	and...
1	paragraph (a) of the definition of <i>defective</i> in subsection 952B (1)	omitting “941C (7) or”	substituting “941C (7), 941C (7A) or”
2	subparagraph (a) (iv) of the definition of <i>defective</i> in subsection 952B (1)	omitting “941C (7) or”	substituting “941C (7), 941C (7A) or”

Column 1	Column 2	Column 3	Column 4
Item	provision of Act	is modified by...	and...
3	paragraph (d) of the definition of <i>disclosure document or statement</i> in subsection 952B (1)	omitting “941C (7),”	substituting “941C (7), 941C (7A),”
4	paragraph (a) of the definition of <i>defective</i> in subsection 953A (1)	omitting “941C (7) or”	substituting “941C (7), 941C (7A) or”
5	subparagraph (a) (iv) of the definition of <i>defective</i> in subsection 953A (1)	omitting “941C (7) or”	“941C (7), 941C (7A) or”
6	paragraph (d) of the definition of <i>disclosure document or statement</i> in subsection 953A (1)	omitting “941C (7),”	substituting “941C (7), 941C (7A),”
7	paragraph 952E (3) (a)	omitting “941C (7),”	substituting “941C (7), 941C (7A),”
8	paragraph 952F (1) (b)	omitting “941C (7),”	substituting “941C (7), 941C (7A),”
9	subparagraph 952F (1) (c) (i)	omitting “941C (7),”	substituting “941C (7), 941C (7A),”
10	paragraph 952G (1) (b)	omitting “941C (7),”	substituting “941C (7), 941C (7A),”

[6] After regulation 7.7.04

insert

7.7.04A Financial services guide given by financial services licensee: more detailed information about remuneration etc.

- (1) For subsection 942B (7) of the Act, if:
 - (a) the amount of remuneration (including commission) or other benefits that a person mentioned in paragraph 942B (2) (e) has received, or is to receive, is not able to be ascertained at the time the Financial Services Guide is given to the client; and
 - (b) personal advice is not given to the client;
the client may request, from the financial services licensee, particulars of the remuneration (including commission) or other benefits.
- (2) For subregulation (1), the particulars must, to the extent relevant, include a statement of the range of amounts or rates of remuneration (including commission) or other benefits.

Examples

- 1 Remuneration is paid within the range of \$X to \$Y.
- 2 Commission is paid at rates between X% and Y%.

- (3) The statements must be presented in a manner that is easy for the client to understand.

[7] After paragraph 7.7.07 (2) (c)

insert

- (ca) if:
 - (i) the person has received, or is to receive, remuneration, commission or other benefits; and
 - (ii) the amount of the remuneration, commission or other benefits is not able to be ascertained at the time the Financial Services Guide is given to the client; and

(iii) personal advice is not given;
a statement that the client may request, from the authorised representative, particulars of any remuneration, commission or other benefits that the person is to receive that is attributable to the authorised services;

[8] Subregulations 7.7.07 (3) and (4)

omit

[9] After regulation 7.7.07

insert

7.7.07A Financial services guide given by authorised representative: more detailed information about remuneration etc.

- (1) For subsection 942C (7) of the Act, if:
- (a) the amount of remuneration (including commission) or other benefits that a person mentioned in paragraph 942C (2) (f) has received, or is to receive, is not able to be ascertained at the time the Financial Services Guide is given to the client; and
 - (b) personal advice is not given to the client;
the client may request, from the authorised representative, particulars of the remuneration (including commission) or other benefits.
- (2) For subregulation (1), the particulars must, to the extent relevant, include a statement of the range of amounts or rates of remuneration (including commission) or other benefits.

Examples

- 1 Remuneration is paid within the range of \$X to \$Y.
- 2 Commission is paid at rates between X% and Y%.

- (3) The statements must be presented in a manner that is easy for the client to understand.

Schedule 2 **Proposals 2**
(regulation 3)

Part 1 **Proposal 2.1**

[1] Regulation 7.7.05

omit

90 days

insert

7 years

[2] Regulation 7.7.08

omit

90 days

insert

7 years

[3] Regulation 7.7.09, heading

omit

market-related

[4] Subregulation 7.7.09 (1)

omit

market-related

[5] Subregulation 7.7.09 (3)

substitute

- (3) The providing entity must keep the record for 7 years after the day on which the further advice is provided.

[6] After regulation 7.7.10AE

insert

7.7.10AF Financial services guide given by financial services licensee — contents of guide

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if paragraph 942B (2) (g) were omitted and the following paragraph were substituted:

- “(g) if the providing entity provides further advice — a statement in relation to which the following requirements are satisfied:
- (i) the statement must indicate that the client may request a record of further advice that is provided to them, if they have not already been provided with a record of that advice;
 - (ii) the statement must set out particulars of how the client may request such a record;
 - (iii) any limitation in those particulars on the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and”

7.7.10AG Financial services guide given by financial services licensee — compliance with statement

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if subsection 942B (8) were omitted and the following subsection were substituted:

- “(8) If:
- (a) the Financial Services Guide includes a statement to the effect that a client may request a record of further advice; and
 - (b) the client is provided with further advice to which that statement applies; and
 - (c) the client has not already been provided with a record of that advice;
- the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”

7.7.10AH Financial services guide given by authorised representative — contents of guide

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if paragraph 942C (2) (h) were omitted and the following paragraph were substituted:

- “(h) if the providing entity, when acting as representative of the authorising licensee or any of the authorising licensees, provides further advice — a statement in relation to which the following requirements are satisfied:
- (i) the statement must indicate that the client may request a record of further advice that is provided to them, if they have not already been provided with a record of that advice;
 - (ii) the statement must set out particulars of how the client may request such a record;
 - (iii) any limitation in those particulars on the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and”

7.7.10AI Financial services guide given by authorised representative — compliance with statement

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if subsection 942C (8) were omitted and the following subsection were substituted:

- “(8) If:
- (a) the Financial Services Guide includes a statement to the effect that a client may request a record of further advice; and
 - (b) the client is provided with further advice to which that statement applies; and

(c) the client has not already been provided with a record of that advice;

the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”

7.7.10AJ Situations in which Statement of Advice not required

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if section 946B of the Act were omitted and the following section were substituted:

“946B Situations in which a Statement of Advice is not required

First situation: further advice

- (1) The providing entity does not have to give the client a Statement of Advice for particular advice (the **further advice**) if subsection (2) or (2A) applies.
- (2) This subsection applies if:
 - (a) the providing entity has previously given the client a Statement of Advice that set out the client’s relevant personal circumstances in relation to the advice (the **previous advice**) set out in that Statement; and
 - (b) the client’s relevant personal circumstances in relation to the further advice (determined having regard to the client’s objectives, financial situation and needs as currently known to the providing entity) are not significantly different from the client’s relevant personal circumstances in relation to the previous advice; and
 - (c) so far as the basis on which advice is given relates to other matters — the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given.

Note: Paragraphs 947B (2) (b) and 947C (2) (b) require a Statement of Advice to include information about the basis on which the advice is or was given, which may include the client’s relevant personal circumstances, in which case paragraph (a) of this subsection would be satisfied.

- (2A) This subsection applies if:
- (a) the client had a relationship with the providing entity before:
 - (i) if the providing entity is a licensee — the day on which the providing entity obtained its Australian Financial Services Licence; or
 - (ii) if the providing entity is an authorised representative — the day on which the licensee on whose behalf the advice is provided obtained its Australian Financial Services Licence; and
 - (b) the providing entity gave the client advice (the *earlier advice*) of a kind that if it were given after the day the Australian Financial Services Licence was obtained would be considered to be personal advice and the advice was given after the commencement of item 1 of Schedule 1 of the *Financial Services Reform Act 2001*; and
 - (c) the client's relevant personal circumstances in relation to the further advice are not significantly different from the client's investment objectives, financial situation and particular needs that were determined for the earlier advice; and
 - (d) so far as the basis on which advice is given relates to other matters — the basis on which the further advice is given is not significantly different from the basis on which the earlier advice was given.
- (3) At the same time or as soon as practicable after the further advice is given to the client, the client must be given a statement that contains the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B (2) (d) and (e), or 947C (2) (e) and (f), as the case requires, and by section 947D, if applicable.
- (3A) The providing entity must keep a record of the further advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: For the client's right to a record of the advice, see subsections 942B (8) and 942C (8).

Note 3: Subsections 947D (2) and (3) required additional information to be included in the record in certain circumstances.

Second situation: certain basic deposit and other products

- (4) The providing entity does not have to give the client a Statement of Advice if the advice relates to any or all of the following:
- (a) a basic deposit product;
 - (b) a facility for making non-cash payments (see section 763D) that is related to a basic deposit product;
 - (c) a financial product of a kind prescribed by regulations made for the purposes of this paragraph.
- (5) However, if subsection (4) applies and the client is not given a Statement of Advice, the client must instead, when, or as soon as practicable after, the advice is provided, be given the information that would be required to be in the Statement of Advice by paragraphs 947B (2) (d) and (e), or 947C (2) (e) and (f), as the case requires.”

[7] Savings

Despite the modification to Part 7.7 of the Act made by regulation 7.710AJ, on the commencement of this item, regulation 7.7.10 is taken to have been made for paragraph 946B (5) (c), as substituted by the subregulation.

[8] After regulation 7.7.10AK

insert

7.7.10AL Various consequential amendments to Division 7 of Part 7.7

- (1) For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if the provisions set out in column 2 of the following table were modified as set out in columns 3 and 4:

Column 1	Column 2	Column 3	Column 4
Item	provision of Act	is modified by...	and...
1	paragraph (b) of the definition of <i>defective</i> in subsection 952B (1)	omitting "Statement of Advice"	substituting "Statement of Advice, a record of advice required by subsection 946B (3A),"
2	paragraph (b) of the definition of <i>defective</i> in subsection 953A (1)	omitting "Statement of Advice"	substituting "Statement of Advice, a record of advice required by subsection 946B (3A),"
3	paragraph 952E (3) (a)	omitting "Statement of Advice"	substituting "Statement of Advice, a record of advice required by subsection 946B (3A),"
4	paragraph 952F (1) (b)	omitting "Statement of Advice"	substituting "Statement of Advice, a record of advice required by subsection 946B (3A),"
5	subparagraph 952F (1) (c) (i)	omitting "Statement of Advice"	substituting "Statement of Advice, a record of advice required by subsection 946B (3A),"
6	paragraph 952G (1) (b)	omitting "Statement of Advice"	substituting "Statement of Advice, a record of advice required by subsection 946B (3A),"
7	subparagraph 952G (1) (c) (i)	omitting "Statement of Advice"	substituting "Statement of Advice, a record of advice required by subsection 946B (3A),"

(2) For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if the provisions set out in column 2 of the following table were modified as set out in column 3:

Column 1 Item	Column 2 provision of Act	Column 3 is modified by...
1	the definition of <i>defective</i> in subsection 952B (1)	inserting after subparagraph 952B (1) (b) (ii): (iiA) if it is a record of advice required by subsection 946B (3A)— there is an omission from the record of advice of material required by subsection 946B (3A) or section 947D; or
2	the definition of <i>disclosure document or statement</i> in subsection 952B (1)	inserting after paragraph (c) of the definition the following paragraph: (ca) a record of advice required by subsection 946B (3A); or
3	the definition of <i>defective</i> in subsection 953A (1)	inserting after subparagraph 952B (1) (b) (ii) the following paragraph: (iiA) if it is a record of advice required by subsection 946B (3A)— there is an omission from the record of advice of material required by subsection 946B (3A) or section 947D; or
4	the definition of <i>disclosure document or statement</i> in subsection 953A (1)	inserting after paragraph (c) of the definition the following paragraph: (ca) a record of advice required by subsection 946B (3A); or

[9] After regulation 7.7.10A

insert

7.7.10B Insertion of definition — further advice

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if the following definition were inserted in section 761A:

“further advice means advice to which subsection 946B (2) or (2A) applies.”

7.7.10C Omission of definition — further market-related advice

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if the definition of “further market-related advice” were omitted from section 761A.

7.7.10D Additional information in Statement of Advice

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if subsection 947D (2) of the Act were modified by omitting “Statement of Advice” and substituting “Statement of Advice or the record of advice under subsection 946B (3A), as the case requires,”.

7.7.10E Additional information in Statement of Advice

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if subsection 947D (3) of the Act were modified by omitting “Statement of Advice” and substituting “Statement of Advice or the record of advice under subsection 946B (3A), as the case requires”.

[10] Division 51 of Part 10.2

omit

Part 2 Proposal 2.2

[11] After regulation 7.7.10

insert

7.7.10AA Statement of advice given by financial services licensee

For paragraph 947B (4) (b) of the Act, information required by paragraph 947B (2) (b) need not include information (*alternate product information*) about financial products or financial services considered, but not recommended by the providing entity if:

- (a) the alternate production information is retained by the providing entity for the period (*retention period*) of 7 years beginning on the date that the Statement of Advice is given to the client; and
- (b) the Statement of Advice contains a statement that:
 - (i) the providing entity has the alternate product information; and
 - (ii) generally explains what the alternate product information is; and
 - (iii) the client may request the alternate product information at any time within the retention period; and
- (c) the alternate product information is made available to the client in writing on request from the client.

7.7.10AB Statement of advice given by authorised representative

For paragraph 947C (4) (b) of the Act, information required by paragraph 947C (2) (b) need not include information (*alternate product information*) about financial products or financial services considered, but not recommended by the providing entity if:

- (a) the alternate production information is retained by the providing entity for the period (*retention period*) of

7 years beginning on the date that the Statement of Advice is given to the client; and

- (b) the Statement of Advice contains a statement that:
 - (i) the providing entity has the alternate product information; and
 - (ii) generally explains what the alternate product information is; and
 - (iii) the client may request the alternate product information at any time within the retention period; and
- (c) the alternate product information is made available to the client in writing on request from the client.

Schedule 3 Proposal 3

(regulation 3)

[1] After Division 5AA of Part 7.9

insert

Division 5AB Short-Form Product Disclosure Statements

7.9.61AA Modification of the Act: Short-Form Product Disclosure Statements

Definition of Short-Form Product Disclosure Statement

- (1) For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761A of the Act were modified by inserting after the definition of *self-managed superannuation fund* the following definition:

“Short-Form Product Disclosure Statement, or Short-Form PDS, means a short-form Product Disclosure Statement that complies with the requirements of Division 3A of Part 7.9.”

Column 1 Item	Column 2 Provisions of Act	Column 3
1	paragraph 951C (1) (c)	Part 7.7
2	paragraph 992C (1) (c)	Part 7.8
3	paragraph 1020G (1) (c)	Part 7.9

Definition of Supplementary Short-Form Product Disclosure Statement

- (2) For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761A of the Act were modified by inserting after the definition of *Supplementary Product Disclosure Statement* the following definition:

“Supplementary Short-Form Product Disclosure Statement, or Supplementary Short-Form PDS, has the meaning given by section 1017L.”

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 951C (1) (c)	Part 7.7
2	paragraph 992C (1) (c)	Part 7.8
3	paragraph 1020G (1) (c)	Part 7.9

Further modifications in Schedule 10BA

- (3) For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act is modified in its application in relation to Short-Form Product Disclosure Statements as set out in Schedule 10BA.
- (4) For paragraph 992C (1) (c) of the Act, Part 7.8 of the Act is modified in its application to Short-Form Product Disclosure Statements as set out in Schedule 10BA.
- (5) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application to Short-Form Product Disclosure Statements as set out in Schedule 10BA.

[2] After Schedule 10B*insert***Schedule 10BA Modifications of the Act
relating to Short-Form Product
Disclosure Statements**

(regulation 7.9.61AA)

Part 1 Modifications of Part 7.7 of the Act**1.1 Paragraph 949A (2) (c)***after*

Part 7.9)

insert

or a Short-Form PDS (see Division 3A of Part 7.9)

Part 2 Modifications of Part 7.8 of the Act**2.1 Paragraphs 992A (3) (c), (d) and (e)***after*

Statement

insert

or a Short-Form PDS

Part 3 Modifications of Part 7.9 of the Act

3.1 After Division 3 of Part 7.9

insert

Division 3A — Short-Form Product Disclosure Statements

1017H Short-Form PDS

Short-Form PDS may be given instead of a Product Disclosure Statement in most cases

- (1) If a regulated person is required or obliged by this Act to give a Product Disclosure Statement for a financial product (but see subsection (4)) to another person, the regulated person may instead provide a Short-Form PDS for the product.

Product Disclosure Statement must be given in certain circumstances

- (2) However, if the regulated person is requested by the other person to provide the Product Disclosure Statement the regulated person must provide the Product Disclosure Statement.

Responsible person

- (3) The ***responsible person*** for a Short-Form PDS for a financial product is the person who is the responsible person for the Product Disclosure Statement for the product.

Application of subsection (1)

- (4) Subsection (1) does not apply to a general insurance product.

1017I Contents of a Short-Form PDS*Contents*

- (1) The Short-Form PDS for a financial product must contain the following:
 - (a) a summary of the statements and information referred to in paragraph 1013C (1) (a) that are required to be included in the Product Disclosure Statement for the product;
 - (b) a summary of any other information that is included in the Product Disclosure Statement for the product under paragraph 1013C (1) (b);
 - (c) a statement:
 - (i) notifying the retail client in relation to the product that the client may ask for the Product Disclosure Statement for the product; and
 - (ii) setting out the means by which the client may ask for the Product Disclosure Statement.

Extra contents for certain products

- (2) If the Short-Form PDS is for a superannuation product or a managed investment product the Short-Form PDS must also set out in full the information in:
 - (a) any regulations made for the purposes of paragraph 1013D (4) (c) relating to the details of fees and costs; and
 - (b) any regulations made for the purposes of paragraph 1015C (5) (b) that relate to the presentation, structure and format of information required by paragraphs 1013D (1) (d) and (e).

Other information may be included in Short-Form PDS

- (3) The Short-Form PDS may also:
 - (a) include other information; and
 - (b) refer to other information that is set out in the Product Disclosure Statement or Financial Services Guide for the product.

Reference to identify incorporated information

- (4) If under paragraph (2) (b) information is referred to in the Short-Form PDS, the reference must identify the document or the part of the document that contains the information.

Incorporated document forms part of Short-Form PDS

- (5) The document or part referred to in subsection (4) is taken to be included in the Short-Form PDS.

Rule as to statements in a Short-Form PDS

- (6) If a Product Disclosure Statement for a financial product may include a statement made by a person (see section 1013K), the statement may also be included in the Short-Form PDS for the product.

1017J Title of Short-Form Product Disclosure Statement

- (1) The title “Short-Form Product Disclosure Statement” must be used on the cover of, or at or near the front of, a Short-Form PDS.
- (2) In any other part of a Short-Form PDS, “Short-Form Product Disclosure Statement” may be abbreviated to “Short-Form PDS”.

1017K References in sections to Product Disclosure Statement to include references to Short-Form PDS

The following provisions apply to a Short-Form PDS and so apply as if a reference to a Product Disclosure Statement in the provisions included a reference to a Short-Form PDS:

- (a) sections 942DA, 947E, 1012F, 1012G, 1012H, 1012J, 1013A, 1013G, 1013J, 1013L 1013M, 1016A, 1016B, 1016C, 1016D, 1016E and 1017A and subsections 1013C (3) and 1013C (5) to (7);
- (b) any regulations made under those sections or subsections;
- (c) any regulations that modify those sections or subsections.

Division 3B — Supplementary Short-Form Product Disclosure Statements

1017L What a Supplementary Short-Form Product Disclosure Statement is

A *Supplementary Short-Form PDS* is a document by which a person who has prepared a Short-Form PDS can:

- (a) correct a misleading or deceptive statement in the Short-Form PDS; or
- (b) correct an omission from the Short-Form PDS of information it is required to contain; or
- (c) update, or add to, the information contained in the Short-Form PDS; or
- (d) change a statement of a kind referred to in paragraph 1016E (1) (a) or (b) (as applied by section 1017K).

1017M Title of Supplementary Short-Form Product Disclosure Statement

- (1) The title “Supplementary Short-Form Product Disclosure Statement” must be used on the cover of, or at or near the front of, a Supplementary Short-Form PDS.
- (2) In any other part of a Supplementary Short-Form PDS, “Supplementary Short-Form Product Disclosure Statement” may be abbreviated to “Supplementary Short-Form PDS”.

1017N Form of Supplementary Short-Form Product Disclosure Statement

At the beginning of a Supplementary Short-Form PDS there must be:

- (a) a statement that it is a Supplementary Short-Form PDS; and
- (b) an identification of the Short-Form PDS that it supplements; and
- (c) a statement that it is to be read together with that Short-Form PDS and any other specified Supplementary Short-Form PDS.

1017O Effect of giving person a Supplementary Short-Form Product Disclosure Statement

If:

- (a) a person is given a Short-Form PDS; and
- (b) at the same time, or later, they are given a Supplementary Short-Form PDS that supplements the Short-Form PDS;

the Short-Form PDS is taken, from when the Supplementary Short-Form PDS is given to the person, to include the information and statements contained in the Supplementary Short-Form PDS.

1017P Situation in which only a Supplementary Short-Form Product Disclosure Statement need be given

If:

- (a) apart from this section, a person would be required to give another person (the *client*) a Product Disclosure Statement (the *new PDS*) relating to a financial product; and
- (b) the client has, because of some previous conduct, already received a Short-Form PDS (the *earlier Short-Form PDS*) relating to the financial product; and
- (c) the earlier Short-Form PDS contains summaries of some, but not all, of the information that the new PDS is required to contain (see paragraphs 1017I (1) (a) and (b));

the person may, instead of giving the client the new PDS, give the client a Supplementary Short-Form PDS that contains summaries of the additional information.

1017Q Application of other provisions in relation to Supplementary Short-Form Product Disclosure Statements

The following provisions apply in relation to a Supplementary Short-Form PDS in the same way as those provisions apply to a Product Disclosure Statement:

- (a) sections 1013A, 1013G, 1013H, 1013J, 1013K and subsections 1013C (3) and 1013C (5) to (7);
- (b) any regulations made under those sections or subsections;

(c) any regulations that modify those sections or subsections.

3.2 Section 1015A

substitute

1015A Subdivision applies to Disclosure Statements

This Subdivision applies to a Product Disclosure Statement, a Short-Form PDS, a Supplementary PDS and a Supplementary Short-Form PDS. Each of those kinds of documents are referred to in this Subdivision as a *Statement*.

3.3 Paragraph 1018A (1) (e)

after

Statement

insert

or Short-Form PDS, if available,

3.4 Paragraph 1018A (2) (f)

after

Statement

insert

or Short-Form PDS, if available,

3.5 Subsection 1018A (3)

after

Statement

insert

or Short-Form PDS

3.6 Subparagraph 1018A (4) (d) (i)*after*

Statement

insert

or Short-Form PDS

3.7 Paragraph 1020D (b)*omit*

or Supplementary Product Disclosure Statement

insert

, Supplementary Product Disclosure Statement, Short-Form PDS or Supplementary Short-Form PDS

3.8 Subsection 1021B (1), definition of *disclosure document or statement*, after paragraph (b)*insert*

(ba) a Short-Form PDS; or

(bb) a Supplementary Short-Form PDS; or

3.9 After subsection 1021C (5)*insert*

- (6) If a person does not give a Product Disclosure Statement for a financial product because the person has given a Short-Form PDS for the product, the person is taken not to contravene this section.

3.10 Paragraph 1021H (1) (a)*omit*

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement, a Short-Form PDS or a Supplementary Short-Form PDS

3.11 Subparagraph 1021H (1) (b) (i)*after*

Product Disclosure Statement

insert

or Short-Form PDS

3.12 Subparagraph 1021H (1) (b) (ii)*omit*

; and

insert

; or

3.13 After subparagraph 1021H (1) (b) (ii)*insert*

(iii) if it is a Supplementary Short-Form PDS — section 1013G, 1017M or 1017N; and

3.14 After subparagraph 1021J (1) (c) (ii)*insert*

(iiA) if it is a Short-Form PDS—a direction not to distribute the Short-Form PDS unless it is accompanied by a Supplementary Short-Form PDS that corrects the deficiency;

3.15 After subparagraph 1021J (1) (c) (iii)*insert*

(iiiA) if it is a Short-Form PDS or a Supplementary Short-Form PDS—a direction not to distribute the Short-Form PDS or Supplementary Short-Form PDS without first altering it in a way that is specified in the direction, being a way that corrects the deficiency and that complies with section 1015E.

3.16 Paragraph 1021K (1) (a)

omit

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement, a Short-Form PDS or a Supplementary Short-Form PDS (the *disclosure statement*)

3.17 Paragraph 1021K (1) (b)

omit

Product Disclosure Statement or Supplementary Product Disclosure Statement

insert

disclosure statement

3.18 Subparagraphs 1021K (1) (d) (i), (ii) and (iii)

omit

Product Disclosure Statement or Supplementary Product Disclosure Statement

insert

disclosure statement

3.19 Paragraph 1021L (1) (a)

omit

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement, a Short-Form PDS or a Supplementary Short-Form PDS

3.20 Paragraph 1021L (2) (a)*omit*

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement, a Short-Form PDS or a Supplementary Short-Form PDS (the *disclosure statement*)

3.21 Subparagraph 1021L (2) (b) (iv)*omit*

Product Disclosure Statement or Supplementary Product Disclosure Statement

insert

disclosure statement

3.22 Subparagraphs 1021M (1) (a) (i), (ii), (iii) and (iv)*omit*

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement, a Short-Form PDS or a Supplementary Short-Form PDS

3.23 Subparagraphs 1021M (3) (a) (i), (ii), (iii) and (iv)*omit*

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement, a Short-Form PDS or a Supplementary Short-Form PDS

3.24 Subsection 1022A (1), definition of *disclosure document or statement*, after paragraph (b)

insert

- (ba) a Short-Form PDS; or
- (bb) a Supplementary Short-Form PDS; or

3.25 Subparagraph 1022B (1) (a) (i)

omit

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement,
a Short-Form PDS or a Supplementary Short-Form PDS

3.26 Subparagraph 1022B (1) (c) (ii)

omit

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement,
a Short-Form PDS or a Supplementary Short-Form PDS

3.27 Subparagraph 1022B (1) (d) (i)

omit

or a Supplementary Product Disclosure Statement

insert

, a Supplementary Product Disclosure Statement,
a Short-Form PDS or a Supplementary Short-Form PDS

Schedule 4 Proposals 4 and 6

(regulation 3)

Part 1 Proposal 4

[1] After regulation 7.9.15G

insert

7.9.15H New section 1012G: product disclosure statement may sometimes be provided later

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if section 1012G were omitted and the following section were substituted:

“1012G Product disclosure statement may sometimes be provided later: financial products subject to a cooling off period

Application of section

- (1) The regulated person may deal with a financial product under this section only if the financial product is one for which an application form is not required under section 1016A and section 1019B (cooling off period) will apply if the client enters into a legal obligation to acquire the product pursuant to the recommendation or offer that constitutes the relevant conduct.

No need to give Product Disclosure Statement in certain circumstances

- (2) In a recommendation situation or an issue situation, the regulated person need not give the client a Product Disclosure Statement for the financial product at or before the time when it would otherwise be required to be given if:
 - (a) the client expressly instructs the regulated person that they require:

- (i) in a recommendation situation — the advice constituting the recommendation; or
- (ii) in an issue situation — the financial product; to be provided or issued immediately, or by a specified time; and
- (b) it is not reasonably practicable, while complying with the client's instructions, to give the client the Product Disclosure Statement at or before the time when it would otherwise be required to be given.

The regulated person must comply instead with subsection (3).

Requirements to be complied with to be able to give Product Disclosure statement later

- (3) The regulated person must:
 - (a) at or before the time referred to in paragraph (2) (b), orally communicate the following information to the client:
 - (i) the name and contact details of the issuer of the financial product;
 - (ii) information about the cooling off regime that applies in respect of the acquisition of the product (whether this regime is provided for by law or otherwise);
 - (iii) that the client should consider the information in the Product Disclosure Statement that will be provided to the client;
 - (iv) the further information (if any) requested by the client in response to a question under paragraph (b); and
 - (b) at or before the time referred to in paragraph (2) (b), ask the client whether the client would like further information about the financial product; and
 - (c) give the client the Product Disclosure Statement as soon as practicable after that time, and in any event not later than:
 - (i) the time when the confirmation requirement (if applicable) is complied with; or
 - (ii) the end of the fifth business day after the day on which the financial product was issued or sold to the client.

How information to be communicated

- (4) The information referred to in subsection (3) must be communicated in a clear, concise and effective manner.

How confirmation requirement to be complied with

- (5) For the purposes of paragraph (3) (c), the confirmation requirement is complied with when:
- (a) the client receives confirmation, as mentioned in paragraph 1017F (5) (a), of the transaction by which they acquired the financial product; or
 - (b) confirmation of that transaction is available to the client by a facility as mentioned in paragraph 1017F (5) (b).”

7.9.15I Modification of section 1012IA

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if subparagraph 1012IA (4) (b) (ii) were omitted and the following subparagraph was inserted:

“(ii) subsection 1012G (3) applies in relation to the provider, the client and the regulated acquisition as if the reference to the regulated person were instead a reference to the provider, as if subparagraph 1012G (3) (c) (i) were omitted and as if the reference in subparagraph 1012G (3) (c) (ii) to the day on which the financial product was issued or sold to the client were instead a reference to the day on which the regulated acquisition occurs.”

[2] Regulation 7.9.80

omit

[3] Regulations 7.9.80C and 7.9.80D

omit

Part 2 Proposal 6

[4] Paragraph 7.7.02 (1) (b)

omit

cheques.

insert

cheques;

[5] After paragraph 7.7.02 (1) (b)

insert

(c) a cash management trust interest;

[6] Paragraph 7.7.10 (b)

omit

cheques.

insert

cheques;

[7] After paragraph 7.7.10 (b)

insert

(c) a cash management trust interest.

[8] After subregulation 7.9.07F

insert

7.9.07FA Product Disclosure Statement not required for certain specified products

For paragraph 1020G (1) (c) of the Act, section 1012D of the Act is modified by inserting before subsection 1012D (10):

- “(9N) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:
- (a) the product is either:
 - (i) a basic deposit product; or
 - (ii) a facility for making non-cash payments (see section 763D) that is related to a basic deposit product; or
 - (iii) a travellers’ cheque; and
 - (b) the regulated person has provided the following information to the client:
 - (i) the cost of the product;
 - (ii) any amounts that will or may be payable by the holder of the product in respect of the product after its acquisition, and the times at which those amounts will or may be payable.”

Schedule 5 Proposals 7

(regulation 3)

Part 1 Proposal 7.1

[1] **After regulation 7.9.15C**

insert

**7.9.15D Less information in product disclosure statement:
general insurance product**

For paragraph 1013 (4) (a) of the Act, the following provisions do not apply to a Product Disclosure Statement that relates to a general insurance product:

- (a) paragraph 1013D (1) (c);
- (b) subparagraph 1013D (1) (d) (iii);
- (c) paragraph 1013D (1) (e);
- (d) paragraph 1013D (1) (h);
- (e) paragraph 1013D (1) (j);
- (f) paragraph 1019D (1) (l).

**7.9.15E More detailed information in product disclosure
statement: general insurance product**

For paragraph 1013D (4) (c) of the Act, the more detailed statement of the information, for paragraph 1013D (1) (f), that must be included in a Product Disclosure Statement that relates to a general insurance product is:

- (a) the terms and conditions of the policy document (within the meaning of the *Insurance Contracts Act 1984*); and
- (b) information that, if the issuer were seeking to rely on subsection 35 (2) and section 37 of the *Insurance Contracts Act 1984*, the issuer would have had to provide to the insured before the contract of insurance was entered into.

-
- (a) a person (the *client*) acquires a general insurance product (the *original product*) from another person (the *regulated person*); and
 - (b) the client received a Product Disclosure Statement (the *original PDS*) relating to the product as required by the Act; and
 - (c) the contract of insurance provides a renewable insurance cover (within the meaning of subsection 58(1) of the *Insurance Contracts Act 1984*); and
 - (d) the regulated person offers to renew the client's contract of insurance (the *new product*); and
 - (e) the regulated person is required to give the client a Product Disclosure Statement (the *new PDS*) relating to the new product; and
 - (f) the original PDS contains some but not all of the information that the new PDS is required to contain.
- (2) Unless the regulated person gives the client a new product disclosure statement, the original PDS:
- (a) is taken to be the new PDS; and
 - (b) the PDS is taken to have been given to the client as required by this Act; and
 - (c) the regulated person may, instead of giving the client the new PDS, give the client a supplementary Product Disclosure Statement that contains the additional information.”

[3] After paragraph 7.7.10 (c)

insert

- (d) a general insurance product.

Schedule 6 Proposals 8
(regulation 3)

Part 1 Proposal 8.1

[1] After regulation 7.6.02AA

insert

**7.6.02AB Modification of section 761G of the Act: meaning
of *retail client* and *wholesale client***

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by inserting after paragraph 761G (7) (c), the following paragraph:

“(ca) the financial product, or the financial service, is acquired by a company or trust controlled by a person who meets the requirements of subparagraph (c) (i) or (ii);”

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 926B (1) (c)	Part 7.6
2	paragraph 951C (1) (c)	Part 7.7
3	paragraph 992C (1) (c)	Part 7.8
4	paragraph 1020G (1) (c)	Part 7.9

7.6.02AC Modification of section 761G of the Act: meaning of *retail client* and *wholesale client*

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by inserting after subsection 761G (7), the following subsections:

“(7A) In determining the net assets of a person under subparagraph (7) (c) (i), the net assets of a company or trust controlled by the person may be included.

Note: *Control* is defined in section 50AA.

(7B) In determining the gross income of a person under subparagraph (7) (c) (ii), the gross income of a company or trust controlled by the person may be included.

Note: *Control* is defined in section 50AA.”

Column 1 Item	Column 2 Provisions of Act	Column 3
1	paragraph 926B (1) (c)	Part 7.6
2	paragraph 951C (1) (c)	Part 7.7
3	paragraph 992C (1) (c)	Part 7.8
4	paragraph 1020G (1) (c)	Part 7.9

7.6.02AD Modification of section 761G of the Act: meaning of *retail client* and *wholesale client*

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by inserting after subsection 761G (4), the following subsection:

“(4A) For the purposes of this Chapter, if a financial product, or a financial service, is provided to, or acquired by, a body corporate as a wholesale client, related bodies corporate of the client are taken to be wholesale clients in respect of the provision or acquisition of that financial product or financial service.”

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 926B (1) (c)	Part 7.6
2	paragraph 951C (1) (c)	Part 7.7
3	paragraph 992C (1) (c)	Part 7.8
4	paragraph 1020G (1) (c)	Part 7.9

Part 2 Proposal 8.2

[2] After regulation 7.6.02AD

insert

7.6.02AE Modification of section 9 of the Act: Definition of *professional investor*

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 9 of the Act were modified by omitting paragraph (e) of the definition of *professional investor* and substituting the following paragraph:

“(e) the person has or controls gross assets of at least \$10 million (including any assets held by an associate or under a trust that the person manages);”

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 926B (1) (c)	Part 7.6
2	paragraph 951C (1) (c)	Part 7.7
3	paragraph 992C (1) (c)	Part 7.8
4	paragraph 1020G (1) (c)	Part 7.9

Part 3 Proposal 8.3

[3] After regulation 6D.5.01

insert

6D.5.02 **Modification of paragraph 708 (8) (c) of the Act: renewal period for accountants' certificates**

For paragraph 742 (1) (c) of the Act, section 708 of the Act applies as if paragraph 708 (8) (c) of the Act were modified by omitting "6 months" and substituting "2 years".

[4] After regulation 7.6.02AE

insert

7.6.02AF **Modification of section 761G of the Act: renewal period for accountants' certificates**

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by omitting from paragraph 761G (7) (c) "6 months" and substituting "2 years".

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 926B (1) (c)	Part 7.6
2	paragraph 951C (1) (c)	Part 7.7
3	paragraph 992C (1) (c)	Part 7.8
4	paragraph 1020G (1) (c)	Part 7.9

Schedule 7 Proposals 9

(regulation 3)

Part 1 Proposal 9.1

[1] After subregulation 7.7.02 (6)

insert

(7) If:

- (a) a financial service is provided by a person (the ***secondary service provider***) to a client by causing or authorising another person (the ***intermediary***) to provide the service; and
- (b) but for the operation of section 52, the secondary service provider would not be taken to be providing the financial service to the client; and
- (c) the intermediary does not act on behalf of the secondary service provider in providing the service for the secondary service provider (see section 911B of the Act); and
- (d) the intermediary is:
 - (i) an authorised representative whose authorisation authorises the representative to provide the financial service; or
 - (ii) a financial services licensee whose licence covers the provision of the financial service;

then, for subsection 941C (8) of the Act, the secondary service provider does not have to give the client a Financial Services Guide for the financial service.

Part 2 Proposal 9.2

[2] After subregulation 7.7.02 (7)

insert

- (8) If:
- (a) a financial service is provided by a person (the ***secondary service provider***) to a client by causing or authorising another person (the ***intermediary***) to provide the service; and
 - (b) but for the operation of section 52, the secondary service provider would not be taken to be providing the financial service to the client; and
 - (c) the intermediary does not act on behalf of the secondary service provider in providing the service for the secondary service provider (see section 911B of the Act); and
 - (d) the intermediary is:
 - (i) an authorised representative whose authorisation does not authorise the representative to provide the financial service; or
 - (ii) a financial services licensee whose licence does not cover the provision of the financial service; and
 - (e) the secondary service provider has a written agreement with the intermediary under which the intermediary agrees to either:
 - (i) give the secondary service provider's Financial Services Guide to the client; or
 - (ii) tell the client how to obtain the secondary service provider's Financial Services Guide;

then, for subsection 941C (8) of the Act, the secondary service provider does not have to give the client a Financial Services Guide for the financial service.

Schedule 8 Proposal 10.1

(regulation 3)

[1] After regulation 7.1.33F

insert

7.1.33G Certain general advice that does not attract remuneration etc.

For subsection 766A (2) of the Act, a person (the *advisor*) is taken not to provide a financial service if:

- (a) the advisor gives advice to another person; and
- (b) the advice:
 - (i) is not about a particular financial product or an interest in a particular financial product; and
 - (ii) is not personal advice; and
- (c) the advice:
 - (i) is not intended to influence the other person in making a decision in relation to a particular financial product or an interest in a particular financial product; or
 - (ii) could not reasonably be regarded as being intended to have such an influence; and
- (d) by giving the advice neither the advisor, nor an associate of the advisor, receives any remuneration (including commission) or other benefit that is related to the advice given apart from remuneration (including commission) or other benefit that the advisor or the associate would have received if the advice was not given.

7.1.33H Certain general advice given by a financial product issuer

For subsection 766A (2) of the Act, a financial product issuer is not taken to provide a financial service if:

- (a) the issuer gives advice to another person about:
 - (i) a particular financial product or class of financial products issued by the issuer; or
 - (ii) an interest in a particular financial product or a class of financial products issued by the issuer; and
- (b) the advice is not personal advice; and
- (c) the advice is given to the person at the same time as the issuer:
 - (i) advises the person that the issuer is not licensed to provide financial product advice in relation to the product, class or interest, as the case may be; and
 - (ii) recommends to the person that the person obtain a Product Disclosure Statement, if appropriate, and read it before making a decision to acquire the product or a product from the class of products, as the case may be; and
 - (iii) if it is advice about the offer, issue or sale of a financial product — notifies the person about the availability or otherwise of a cooling-off regime that applies in respect of the acquisition of the product, a product from the class of products or an interest in a product as the case may be (whether the regime is provided for by law or otherwise).

Schedule 9 Proposal 11

(regulation 3)

[1] After regulation 7.6.02AF

insert

7.6.02AG Modification of section 911A of the Act

For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if section 911A of the Act were modified by inserting after subsection 911A (2) the following subsections:

“(2A) Also, a person (*person 1*) is exempt from the requirement to hold an Australian Financial Services licence for a service they provide to a person (*person 2*) in the following circumstances:

- (a) person 1 is not in this jurisdiction;
- (b) person 2 is an Australian citizen or is resident in Australia;
- (c) the service is provided outside this jurisdiction;
- (d) person 1 does not engage in conduct that is:
 - (i) intended to induce people in the jurisdiction to use the service; or
 - (ii) likely to have that effect.

(2B) Also, a person (*person 1*) is exempt from the requirement to hold an Australian Financial Services licence for a service they provide to a person (*person 2*) in the following circumstances:

- (a) person 1 is not in this jurisdiction;
- (b) person 1 believes on reasonable grounds that person 2 is not in this jurisdiction;
- (c) person 1 is a participant in a licensed market in this jurisdiction;
- (d) the service relates to a financial product traded on the licensed market.

(2C) Also, a person (*person 1*) is exempt from the requirement to hold an Australian Financial Services licence for a service they provide to a person (*person 2*) in the following circumstances:

- (a) person 1 is not in this jurisdiction;
- (b) person 2 is:
 - (i) the holder of an Australian financial services licence; or
 - (ii) exempt from the requirement to hold an Australian financial services licence under paragraph 911A (2) (h);
- (c) person 2 is not, in relation to the service:
 - (i) acting as a trustee; or
 - (ii) acting as a responsible entity of a managed investment scheme; or
 - (iii) otherwise acting on someone else's behalf.

(2D) Also, a person (*person 1*) is exempt from the requirement to hold an Australian Financial Services licence for a service they provide to a person (*person 2*) in the following circumstances:

- (a) person 1 is not in this jurisdiction;
- (b) person 2 is in this jurisdiction;
- (c) in relation to the provision of the service, person 1 is regulated by an overseas regulatory authority that is specified in writing by ASIC for the purposes of this paragraph;
- (d) the service consists of either or both of the following:
 - (i) providing financial product advice;
 - (ii) dealing in a financial product;
- (e) the service relates to a financial product:
 - (i) issued by person 1 following an application by, or inquiry from, person 2; or
 - (ii) issued by person 1 and acquired by person 2 when person 2 was not in this jurisdiction; or
 - (iii) that supplements a financial product mentioned in subparagraphs (i) or (ii); or
 - (iv) that is of the same kind as, and is issued in substitution for, a financial product mentioned in subparagraphs (i) or (ii);
- (f) person 1 does not actively solicit persons in this jurisdiction in relation to the financial products mentioned in subparagraphs (e) (i) to (iv);

(g) but for section 911D, person 1 does not carry on a financial services business in this jurisdiction in respect of the service.

Note 1: For subparagraph (e)(iii), an example of this kind of financial product includes a non-cash payment facility (such as a cheque facility) that is added to an existing transaction or investment account.

Note 2: For subparagraph (e)(iv), examples of this kind of financial product include:

- (a) a transaction or investment account that is replaced by another transaction or investment account; or
- (b) the renewal of an insurance policy.

(2E) Despite subsection (1), if a person is not in this jurisdiction:

- (a) the person may provide a financial service consisting of dealing in derivatives or foreign exchange contracts to a person who is a wholesale client without having to get an Australian financial services licence for the provision of the service; and
- (b) the total number of financial services of that kind that the person may provide to all persons in a calendar year is 20 financial services.”

7.6.02AH Modification of section paragraph 911B (1) (e) of the Act

For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if paragraph 911B (1) (e) of the Act were modified by omitting “911A (2)” and substituting “911A (2), (2A), (2B), (2C), (2D) or (2E)”.

[2] Paragraph 7.5.07 (4) (d)

after

911A (2)

insert

, (2A), (2B), (2C), (2D) or (2E)

[3] After Division 13 of Part 7.9

insert

7.9.98 Certain providers of financial services exempted from the requirements of Parts 7.7, 7.8 and 7.9 of the Act

For the provisions of the Act set out in column 2 of the following table, a person who is providing a financial service in the circumstances set out subsections 911A (2A) to (2E) is exempt from the operation of the Parts of the Act specified in column 3 in relation to the provision of that service.

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 951C (1) (a)	Part 7.7
2	paragraph 992C (1) (a)	Part 7.8
3	paragraph 1020G (1) (a)	Part 7.9

Schedule 10 Proposal 12.1

(regulation 3)

[1] After Part 7.6

insert

Part 7.6A Authorised representatives

7.6.08 Authorised representatives

- (1) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if the provisions of section 916B set out in column 2 of the following table were modified as set out in columns 3 and 4:

Column 1 Item	Column 2 provision of Act	Column 3 is modified by...	Column 4 and...
1	subsection 916B (3)	omitting “A body corporate that is an authorised representative”	substituting “An authorised representative (<i>authoriser</i>)”
2	subsection 916B (3)	omitting “the body corporate”	substituting “the authoriser”
3	subsection 916B (5A)	omitting “a body corporate”	substituting “an authoriser”
4	paragraph 916B (7) (b)	omitting “the body corporate”	substituting “the authoriser”
5	subsection 916B (9)	omitting “the body corporate”	substituting “the authoriser”

- (2) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if the following subsection were inserted after subsection 916B (3):

“(3A) An individual who is authorised as mentioned in subsection (3) cannot, in that capacity, authorise another person under subsection (3).”

- (3) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if subsection 916F (1AA) were omitted and the following subsection were substituted:

“(1AA) Subsection (1) does not apply to an authorisation of a representative by an authorised representative (the *authoriser*) if:

- (a) the authorisation is given as mentioned in section 916B; and
- (b) the relevant consent under subsection 916B (5) was given in respect of a specified class of individuals of which the representative is a member; and
- (c) the representative is an employee of the authoriser; and
- (d) the only financial services that the representative is authorised to provide are one or more of the following:
 - (i) general advice that relates to financial products covered by regulations made for the purposes of this paragraph;
 - (ii) dealing in financial products covered by regulations made for the purposes of this paragraph;
 - (iii) personal advice about a basic deposit product or a facility for making non-cash payments that relates to a basic deposit product; and
- (e) the authoriser maintains a register of representatives as required by subsection (5); and
- (f) the authoriser complies with subsections (6), (7) and (8) in respect of the register and access to information on it.”

Note 1: Regulations made for the purposes of paragraph (d) may be expressed to cover all financial products, or only 1 or more specified kinds of financial products.

Note 2: A defendant bears an evidential burden in relation to the matters in subsection (1AA). See subsection 13.3 (3) of the *Criminal Code*.”

- (4) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if section 916F of the Act were modified by adding at the end of the section the following subsections:

“(5) The register referred in paragraph (1AA) (e) must contain the following information about each representative whose authorisation is not one to which subsection (1) applies:

- (a) the representative’s name;

- (b) the types of financial services that the representative is authorised to provide;
 - (c) the date that the representative became a member of the class referred to in paragraph (1AA) (b);
 - (d) if applicable — the date that the representative’s authorisation is revoked by the authoriser.
- (6) Information on the register about a former representative must be kept by the authoriser for a period of 7 years from the date the former representative’s authorisation was revoked.
- (7) The authoriser must allow anyone to inspect the register without charge during normal business hours.
- (8) The authoriser must give a person a copy of the register (or a part of the register) within 7 days if the person:
- (a) asks for the copy; and
 - (b) pays the authoriser any reasonable fee required by the authoriser for the copy.
- (9) Part 9.3 does not apply to a register under this section.”

[2] Regulation 7.6.04B

omit

[3] Subregulation 7.7.05B (1)

substitute

- (1) This regulation applies if:
- (a) a financial services licensee; or
 - (b) an authorised representative (the *authoriser*) of a financial services licensee;
- authorises an individual to provide financial services on behalf of the licensee.

[4] Subregulation 7.7.05B (3)

omit

a body corporate that is an authorised representative

substitute

an authoriser

[5] Paragraph 7.7.05B (3) (b)

omit

the body corporate authorised representative

substitute

the authoriser

[6] Paragraph 7.7.05B (3) (c)

omit

the body corporate authorised representative

substitute

the authoriser

[7] Subparagraph 7.7.05B (3) (d) (ii)

omit

the body corporate authorised representative's

substitute

the authoriser's

[8] Savings

Despite the modification to Part 7.6 of the Act made by subregulation 7.6.08 (2), on the commencement of this item, regulation 7.6.04A is taken to have been made for paragraph 916F (1AA) (d), as substituted by the subregulation.

Schedule 11 Miscellaneous amendments

(regulation 3)

[1] Paragraph 7.6.04A (c)

omit

product.

insert

product;

[2] After paragraph 7.6.04A (c)

insert

(d) a consumer credit insurance product.

[4] After regulation 7.9.07J

insert

7.9.07K Stop orders for defective joint disclosure documents or statements

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if section 1022A of the Act were modified by omitting paragraph (b) of the definition of *defective* in subsection (1) and inserting the following paragraph:

“(b) if it is a Product Disclosure Statement — either:

(i) it is not prepared in accordance with section 1013A;
or

(ii) there is an omission from the Product Disclosure Statement of material required by section 1013C, other than material required by section 1013B or 1013G; or”.

[5] After regulation 7.9.15F

insert

7.9.15G Business days

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if paragraph 1019B (3) (b) were modified by omitting “5th day” and substituting “fifth business day”.

[6] After regulation 7.7.10AL

insert

7.7.10AM Business days

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies as if subsection 941D (4) and paragraph 946C (3) (c) were modified by omitting “5 days” and substituting “5 business days”.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.