



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2019/1145

This is the Explanatory Statement for ASIC Corporations (Amendment) Instrument 2019/1145 (the **amending instrument**).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. The amending instrument amends ASIC Corporations (Professional Standards—Transitional) Instrument 2018/894 (the **principal instrument**) to exempt Australian Financial Services (**AFS**) licensees from having to comply with:
 - (a) the obligation in section 921H of the *Corporations Act 2001* (the **Act**) to ensure that the relevant providers they authorise are covered by a compliance scheme; and
 - (b) related notice obligations in Part 7.6 of the Act. All references are to this act unless otherwise stated.
2. The purpose of the exemption is to provide clarity to AFS licensees that they are not in breach of the compliance scheme obligations and related notice obligations in the Act because they are unable to comply with these obligations.
3. The exemption applies until 31 October 2022.
4. The compliance scheme obligations require an AFS licensee to ensure that each relevant provider they have authorised is covered by a compliance scheme. The role of a monitoring body for a compliance scheme is to monitor and enforce compliance with the *Financial Planners and Advisers Code of Ethics 2019* (the **Code**) by any relevant provider covered by the compliance scheme. A compliance scheme must be approved by ASIC.

Purpose of the instrument

5. The purpose of the amending instrument is to provide comfort and clarity to AFS licensees that they will not be in breach of the compliance scheme

obligations and related notice obligations in the Act because they are unable to comply with these obligations.

6. The Act was amended by the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* to introduce several measures to raise the educational, training and ethical standards of financial advisers (the **Professional Standards Reforms**).
7. The Professional Standards Reforms contained in the Act apply to ‘relevant providers’. A relevant provider is an individual who is authorised to provide personal advice to retail clients on more complex financial products. Relevant providers are known as ‘financial advisers’.
8. Under the Professional Standards Reforms, from 1 January 2020, all relevant providers must:
 - (a) comply with the Code (section 921E of the Act); and
 - (b) be covered by a compliance scheme, under which their compliance with the Code will be monitored and enforced. (Section 921H of the Act requires AFS licensees to ensure that the relevant providers they authorise are covered by a compliance scheme.)
9. A compliance scheme will ‘cover’ a relevant provider if, relevantly:
 - (a) ASIC has approved the compliance scheme: ASIC has the power to do this under section 921K of the Act; and
 - (b) certain required notices are lodged with ASIC that notify ASIC of the compliance scheme that is to cover them: subsection 921J(1) of the Act.
10. Section 922D of the Act imposes an obligation on AFS licensees to notify ASIC about each of the relevant providers they authorise. AFS licensees are required to notify ASIC of the name of the compliance scheme that covers each of these relevant providers: subsection 922E(1)(i) of the Act.
11. On 11 October 2019, the Treasurer and the Assistant Minister for Superannuation, Financial Services and Financial Technology announced that the Government is accelerating the establishment of a new disciplinary system and single disciplinary body for financial advisers as recommended by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The Government announcement noted that this disciplinary body will replace the role of Code monitoring bodies which were due to be established by industry associations under the Professional Standards Reforms.
12. Following the Government announcement, all compliance scheme applicants have withdrawn their applications to ASIC for approval of their compliance schemes and there will be no approved compliance schemes by 1 January 2020. This means that AFS licensees will be unable to comply with the compliance scheme obligations and related notice obligations in the Act.

Consultation

13. A public consultation process was not undertaken for this instrument due to the machinery nature of the instrument which is being made.
14. Treasury undertook significant consultation about the Code and compliance scheme framework when the measures in the Act were developed. The full Regulatory Impact Statement (RIS) which accompanied the Explanatory Memorandum to the *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016* reflects extensive consultation and Government reviews.
15. The Office of Best Practice Regulation has assessed that a RIS is not required in relation to the making of the amending instrument.

Operation of the instrument

16. The amending instrument exempts AFS licensees from having to comply with the compliance scheme obligations and related notice obligations in:
 - (a) section 921H of the Act; and
 - (b) sections 922D, 922E, 922F, 922L and 1546W of the Act to the extent those sections impose an obligation on an AFS licensee to lodge a notice with ASIC in relation to a compliance scheme.
17. The exemption applies until 31 October 2022, which should be sufficient time for the single disciplinary body for financial advisers to be established.
18. The amending instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Legislative authority

19. The amending instrument amends the principal instrument. Where an Act confers a power to make an instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions to amend the instrument: see subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act).
20. ASIC makes this amending instrument under subsection 926A(2) of the Act.
21. Subsection 926A(2) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.6 of the Act (other than Divisions 4 and 8), or declare that Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.
22. The amending instrument is a disallowable legislative instrument.

23. ASIC considered the effects that the exercise of its powers in making the amending instrument will have on competition in the financial system, as required by section 1(2A) of the *Australian Securities and Investments Commission Act 2001*.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (Amendment) Instrument 2019/1145

Overview

1. The ***ASIC Corporations (Amendment) Instrument 2019/1145*** amends the ASIC Corporations (Professional Standards—Transitional) Instrument 2018/894 to exempt Australian financial services (AFS) licensees from having to comply with:
 - (a) the obligation in section 921H of the *Corporations Act 2001* (the **Act**) to ensure that the relevant providers they authorise are covered by a compliance scheme; and
 - (b) related notice obligations in Part 7.6 of the Act.
2. The purpose of the exemption is to provide comfort and clarity to AFS licensees that they are not in breach of the compliance scheme obligations and related notice obligations in the Act because they are unable to comply with these obligations.
3. The exemption applies until 31 October 2022.
4. The compliance scheme obligations require an AFS licensee to ensure that each relevant provider they have authorised is covered by a compliance scheme. The role of a monitoring body for a compliance scheme is to monitor and enforce compliance with the *Financial Planners and Advisers Code of Ethics 2019* by any relevant provider covered by the compliance scheme. A compliance scheme must be approved by ASIC.

Assessment of human rights implications

5. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

6. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.