



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Registration of Relevant Providers) Instrument 2023/490

This is the Explanatory Statement for the *ASIC Corporations (Registration of Relevant Providers) Instrument 2023/490* (the **Instrument**).

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

Summary

1. The Instrument puts in place interim measures to delay the requirement (the **Registration Requirement**) for relevant providers¹ to be registered with ASIC as a precondition for providing personal advice (**Financial Advice**) to retail clients about relevant financial products. The delay extends an initial delay to the Registration Requirement that was implemented by the *Corporations Amendment (Registration of Relevant Providers) Regulation 2022* (the **Initial Delay Regulation**). The initial delay, which postponed the Registration Requirement from 1 January 2023 to 1 July 2023, was to ‘allow extra time for amendments to be made that will improve the operation of the stage one registration process with benefits for [AFS] licensees and financial advisers.’² The Instrument seeks to achieve the same outcome as the Initial Delay Regulation.

Purpose of the Instrument

2. The requirement for relevant providers to be registered was introduced by the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* (**Better Advice Act**). The Better Advice Act, in part, implemented recommendation 2.10 of the Final Report of the Financial Services Royal Commission. A component of recommendation 2.10 was that relevant providers, much like other professions, should have a system of registration in place that acts as a check and balance on the suitability of relevant providers to provide Financial Advice.
3. The registration provisions, as inserted by the Better Advice Act, are set out in Division 8C of Part 7.6 of the *Corporations Act 2001* (the **Act**). Subdivision B of Division 8C facilitates AFS licensees applying to ASIC to register their relevant providers. Subdivision C of Division 8C sets out the circumstances in which ASIC is required to either approve or refuse registration applications. Subdivision A of Division 8C puts in

¹ A relevant provider is a person authorised to provide person advice to retail clients about specified financial products. See s 910A of the Act.

² Explanatory Statement to *Corporations Amendment (Registration of Relevant Providers) Regulations 2022*

place prohibitions on AFS licensees and relevant providers from providing Financial Advice whilst not registered.

4. Subdivisions B and C of Division 8C commenced on 1 January 2022. Subdivision A of Division 8C was originally set to commence on 1 January 2023. The effect of the staggered commencement dates was that AFS licensees and relevant providers could continue providing Financial Advice without being registered up to 1 January 2023.
5. On 16 December 2022 the Initial Delay Regulation commenced. The purpose of the Initial Delay Regulation was set out in its Explanatory Statement:

The Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021 introduced a central registration requirement for financial advisers, in line with Recommendation 2.10 of the Financial Services Royal Commission. Registration was proposed to occur in two stages – stage one being a one-off registration process administered by the Australian Securities and Investments Commission (ASIC) using the Financial Advisers Register (FAR).

The purpose of the Corporations Amendment (Registration of Relevant Providers) Regulations 2022 (the Regulations) is to amend the Corporations Regulations 2001 to delay the requirement for financial services licensees to register financial advisers on the FAR for six months to 1 July 2023. The delay will allow extra time for amendments to be made that will improve the operation of the stage one registration process with benefits for licensees and financial advisers.

Public consultation on the Regulations was not undertaken as the amendments are minor or machinery in nature. However, confidential consultation was undertaken with ASIC.

6. The amendments foreshadowed in the Explanatory Statement are contained in Schedule 1 to *Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (TLAB 1)*. The amendments, inter alia, give ASIC the power to use assisted decision-making systems when processing registration applications and facilitate multiple registration of relevant providers. TLAB 1 was introduced into the House of Representatives on 16 February 2023. On 9 March 2023 TLAB 1 was referred to the Senate Economics Legislation Committee for inquiry and report. The Committee's report was handed down on 2 June 2023. The Committee recommended that Schedule 1 to TLAB 1 be passed unamended.
7. The Instrument delays the Registration Requirement to 1 October 2023. It does this by exempting AFS licensees and relevant providers (unless they are subject to a registration suspension or a registration prohibition order made by a Financial Services and Credit Panel - see Division 8B of Part 7.6 of the Act) from the prohibitions contained in Subdivision A of Division 8C until 1 October 2023. The effect of this exemption is that relevant providers and AFS licensees can continue providing Financial Advice until 1 October 2023 without being registered, whilst ensuring that the registration suspension and registration prohibition provisions operate as intended. This additional delay provides time for:
 - (i) TLAB 1 to be further considered by Parliament;
 - (ii) ASIC to implement TLAB 1 if TLAB 1 is enacted;

(iii) industry to understand its rights and obligations concerning the Registration Requirement; and

(iv) AFS licensees to register their relevant providers with ASIC prior to the Registration Requirement commencing.

Consultation

8. ASIC has consulted with Treasury and Government on a confidential basis. Both Treasury and Government support the Instrument.
9. ASIC has also engaged with the Office of Impact Analysis (ref OIA23-05078). It considers that the Instrument is unlikely to have a more than minor impact and that the delay will not impose any adverse impact on relevant providers.
10. Given the timing and temporary nature of the relief, no further consultation has been undertaken by ASIC.

Operation of the Instrument

Commencement

11. Section 2 of the Instrument provides that the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation.

Authority

12. Section 3 of the Instrument provides that the Instrument is made under paragraph 926A(2)(a) of the Act. This subsection confers power on ASIC to exempt a person or a class of persons from all or specified provisions to which the provision applies, being all provisions in Part 7.6 of the Act other than Divisions 4 and 8.
13. In particular, paragraph 926A(2)(a) enables ASIC to exempt relevant providers and financial services licensees from the requirements of Subdivision A of Division 8C of Part 7.6 of the Act.
14. Section 5 of the Instrument provides for the deferral of the requirement for relevant providers to be registered until 1 October 2023. Specifically, subsection 5(1) provides that a relevant provider does not have to comply with section 921Y of the Act until 1 October 2023. Subsection 5(2) provides that a financial services licensee does not have to comply with section 921Z of the Act in relation to a relevant provider until 1 October 2023.
15. Section 6 of the Instrument provides for two scenarios where the exemption is not available. First, subsection 6(1) provides that subsection 5(1) does not apply to a relevant provider if an order of a kind specified in paragraph 921L(1)(b) or (c) of the Act is in force against a relevant provider. Second, subsection 6(2) of the Instrument provides that subsection 5(2) does not apply to a financial services licensee in relation to a relevant provider if an order of a kind specified in paragraph 921L(1)(b) or (c) of the Act is in force against the relevant provider.
16. Section 7 of the Instrument provides that the Instrument is to be repealed at the start of 1 October 2023.

Incorporation by Reference

17. The Instrument does not incorporate any matter by reference for the purposes of section 14 of the *Legislation Act 2003*.

Legislative instrument and primary legislation

18. ASIC considers that a delay to the Registration Requirement is necessary, and that making a legislative instrument is an appropriate mechanism to implement the delay, because:

- (i) this a temporary interim measure; and
- (ii) absent the making of the Instrument, there will be insufficient time for:
 - (a) TLAB 1 to be considered by Parliament and, if enacted, implemented by ASIC;
 - (b) affected relevant providers and their AFS licensees to understand and take steps to comply with the Registration Requirement (including any amendments made to the Registration Requirement by TLAB 1) prior to 1 July 2023; and
 - (c) AFS licensees to register their relevant providers³ prior to 1 July 2023; and
- (iii) absent the making of the Instrument, there will be fewer relevant providers who are able to provide personal advice in the short-term and likely a high rate of inadvertent non-compliance. This will have a negative impact on consumers and industry.

Legislative Authority and duration

19. This Instrument is made under paragraph 926A(2)(a) and is a disallowable instrument under the *Legislation Act 2003*. The Instrument continues in force until 1 October 2023. ASIC considers that this duration provides sufficient time for TLAB 1 to take effect (if enacted), and for relevant providers and AFS licensees to take the necessary steps to ensure all relevant providers⁴ are registered prior to the commencement of the Registration Requirement. ASIC will monitor the progress of TLAB 1 and may seek to modify the Instrument if it appears its purpose will not be achieved.

Statement of Compatibility with Human Rights

20. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

³ Except provisional relevant providers, see s921ZB(1) of the Act.

⁴ Except provisional relevant providers, see s921ZB(1) of the Act.

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 (Registration of Relevant Providers) Instrument 2023/490

Overview

1. The *ASIC Corporations (Registration of Relevant Providers) Instrument 2023/490* (the **Instrument**) modifies the operation of sections 921Y and 921Z of the *Corporations Act 2001*.
2. The modifications delay the date by which the requirement for Australian financial services (**AFS**) licensees to register their relevant providers commences (currently 1 July 2023).
3. The Instrument provides exemptions from subsections 921Y and 921Z of the Act so that AFS licensees and relevant providers will not breach the law if an unregistered relevant provider provides personal advice to a retail client in relation to a relevant financial product between 1 July 2023 and the date the Instrument expires.
4. The Instrument puts in place interim measures which delay the commencement of Division 8C of Part 7.6 of the Act to allow time for the *Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (TLAB 1)* to be considered by Parliament.
5. ASIC will monitor the progress of TLAB 1 and may seek to modify the Instrument if it appears its purpose will not be achieved.

Assessment of human rights implications

6. The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

5. The 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*.