



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/730

This is the Explanatory Statement for the *ASIC Corporations (Amendment) Instrument 2023/730* (the *Amending Instrument*).

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

Summary

1. The Amending Instrument puts in place further 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.
2. The further delay extends two initial delays to the Registration Requirement that were implemented by the *Corporations Amendment (Registration of Relevant Providers) Regulation 2022* (the **Initial Delay Regulation**) and the *ASIC Corporations (Registration of Relevant Providers) Instrument 2023/490* (the **Initial Delay Instrument**). The Initial Delay Regulation postponed the Registration Requirement from 1 January 2023 to 1 July 2023, 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 Initial Delay Instrument postponed the Registration Requirement from 1 July 2023 to 1 October 2023 to achieve the same outcome as the Initial Delay Regulation. The Amending Instrument seeks to postpone the Registration Requirement from 1 October 2023 to 1 February 2024, to achieve the same outcome.

Purpose of the Instrument

3. 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.

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*

4. 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 place prohibitions on AFS licensees and relevant providers from providing Financial Advice whilst not registered.
5. 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.
6. 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.

7. 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.
8. The Initial Delay 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 order or a registration prohibition order made by a sitting panel of the 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 was intended to provide 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.
9. As at the conclusion of Parliament's spring sittings on 14 September 2023, TLAB 1 had not been further considered or enacted by Parliament. As such, a further delay to the Registration Requirement is required to achieve the same outcome as the Initial Delay Regulation and the Initial Delay Instrument. The Amending Instrument provides for a further delay to 1 February 2024.

Consultation

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

Operation of the Instrument

Commencement

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

Authority

14. Section 3 of the Amending Instrument provides that the Amending 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.
15. 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.
16. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant power because of section 5C of the *Corporations*

Act 2001), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

17. Schedule 1 of the Amending Instrument omits the date “1 October 2023” from sections 5 and 7 of the Initial Delay Instrument and substitutes it with the date “1 February 2024”. This provides for the deferral of the requirement for relevant providers to be registered until 1 February 2024. That is, a relevant provider does not have to comply with section 921Y of the Act until 1 February 2024 and a financial services licensee does not have to comply with section 921Z of the Act in relation to a relevant provider until 1 February 2024.
18. The scenarios set out in section 6 of the Initial Delay Instrument are not impacted by the Amending Instrument and will continue in effect. Subsection 6(1) of the Initial Delay Instrument 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. Subsection 6(2) of the Initial Delay 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.
19. Under the Amending Instrument, the Initial Delay Instrument is to be repealed at the start of 1 February 2024.

Incorporation by Reference

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

Legislative instrument and primary legislation

21. ASIC considers that a further delay to the Registration Requirement is necessary, and that amending the Initial Delay Instrument is an appropriate mechanism to implement such a delay. This is because:
 - (i) this a temporary interim measure; and
 - (ii) absent the making of the Amending 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 October 2023; and
 - (c) AFS licensees to register their relevant providers³ prior to 1 October 2023; and

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

- (iii) absent the making of the Amending 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

- 22. This Amending 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 February 2024. 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 Initial Delay Instrument again if it appears its purpose will not be achieved.

Statement of Compatibility with Human Rights

- 23. 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.

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 (Amendment) Instrument 2023/730

Overview

1. The *ASIC Corporations (Amendment) Instrument 2023/730* (the **Amending 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 October 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 October 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*.