



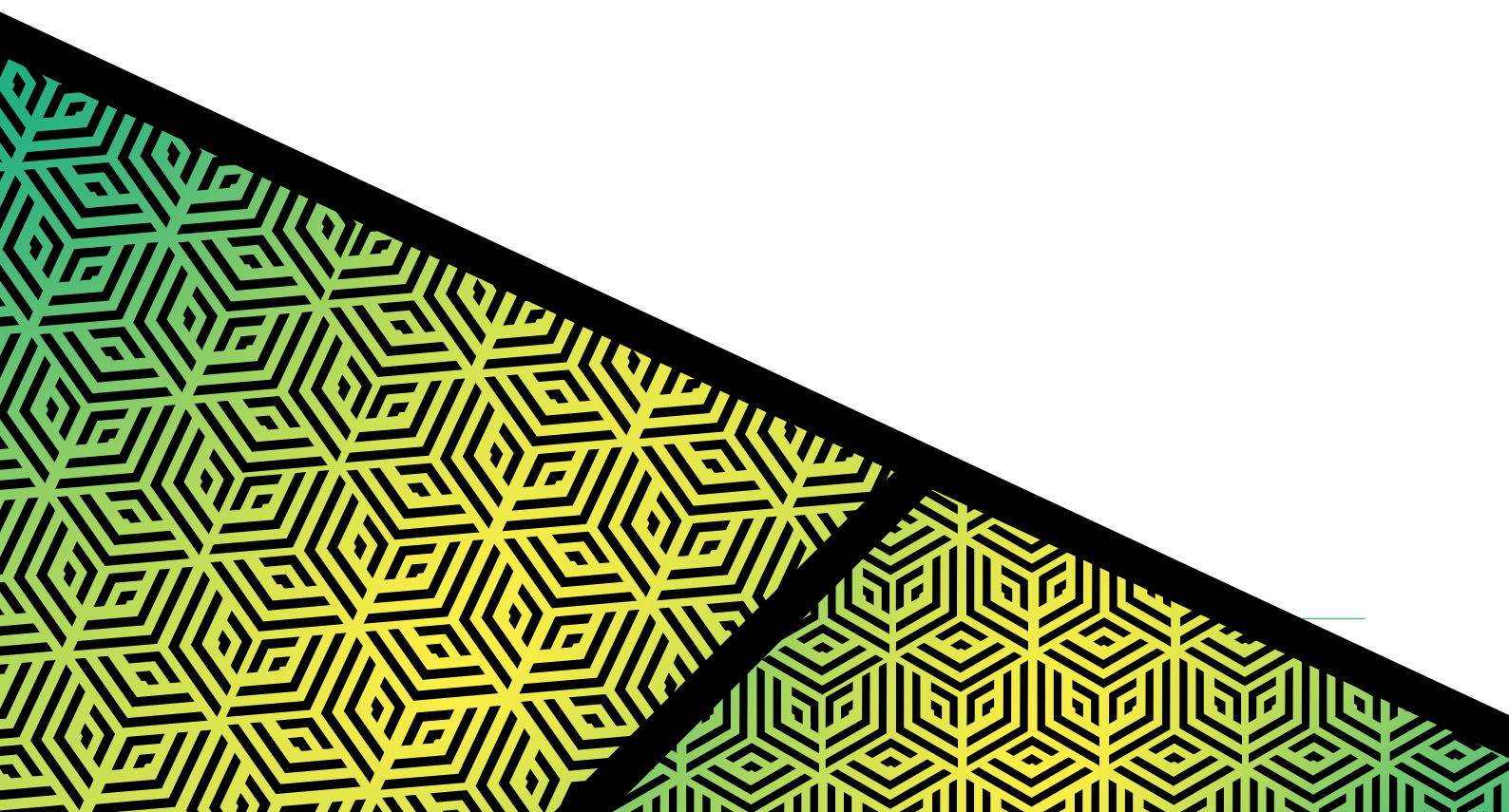
Australian Government

Australian Law Reform Commission

LEGISLATIVE FRAMEWORK FOR CORPORATIONS AND **FINANCIAL SERVICES REGULATION**

Prototype Legislation A

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The Australian Law Reform Commission (ALRC) was established on 1 January 1975 and operates in accordance with the *Australian Law Reform Commission Act 1996* (Cth).

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Explanatory notes

1. This document contains a sample of prototype legislation that illustrates how several proposals and questions discussed in Interim Report A could be implemented. The prototype legislation here replicates and expands upon the version contained in Appendix E to Interim Report A. Recommendations, proposals, and questions below refer to those contained in Interim Report A.
2. The prototype legislation contains illustrative provisions of the *Corporations Act 2001* (Cth) ('*Corporations Act*') and two hypothetical legislative instruments:
 - the *Corporations (Exclusions and Exemptions from Chapter 7) Implementation Order 2021* ('*Implementation Order*'); and
 - the *Financial Services Rules (Financial Product Disclosure) 2021* ('*Disclosure Rules*').
3. The prototype legislation is indicative only and is not intended to be a complete representation of existing law on the topics covered. Instead, it contains a selection of provisions to illustrate the potential for simplification of existing legislation. Several provisions (for example, ss 766B–766H of the *Corporations Act* relating to the definition of 'financial service') have been excluded solely to reduce the length of the prototype legislation for illustrative purposes.
4. The substance of the prototype legislation is intended to closely reproduce the current law within its existing policy settings (unless otherwise acknowledged here or in Interim Report A). In terms of the form of expression, some changes have been made where necessary to illustrate the proposed legislative architecture, to accord with modern drafting practices, or where it may be possible to simplify the current law's expression.
5. To the extent possible, the prototype provisions adopt the existing numbering of provisions in the *Corporations Act* (for example, s 911A). In other places (such as the prototype Part 7.8B) new numbers have been selected for purely illustrative purposes. The numbering system adopted for the *Implementation Order* and the *Disclosure Rules* incorporates dashes within section numbers, and gaps between numbers (for example, s 6-1 is followed by s 6-5). This system allows for flexibility and future amendments, consistent with a similar numbering style adopted in the *Income Tax Assessment Act 1997* (Cth).
6. In some places in the prototype legislation, square brackets have been used to indicate:
 - provisions that are subject to other proposals in Interim Report A (for example, the defined term 'financial product advice' discussed in Chapter 11 of Interim Report A); and
 - cross-references to provisions of the current legislation that have not been incorporated into the prototype legislation.
7. A concordance table is at pages 73–81 below. The purpose of the concordance table is to aid readers in identifying provisions currently contained in the *Corporations Act*, the *Corporations Regulations 2001* (Cth) ('*Corporations Regulations*'), or other legislative instruments, to which provisions in the prototype legislation correspond. The concordance table identifies where there is no current equivalent to a prototype provision, as well as situations where there is no equivalent but the prototype provision incorporates some aspects of the current law (see, for example, the table entry for prototype s 765A of the *Corporations Act*). The concordance table also identifies provisions of the prototype that reflect notional amendments currently contained in delegated legislation.

The location of definitions (Question A2 and Recommendation 7)

8. Consistent with the discussion in Chapter 6 of Interim Report A, the definitions in prototype s 9 of the *Corporations Act* are contained within a single dictionary (or glossary), rather than spread throughout the *Corporations Act*, to improve navigability.

9. Re-locating the definition of ‘arrangement’ to s 9 would open up the possibility of rationalising the similarly defined terms ‘agreement’, ‘relevant agreement’, and ‘arrangement’ so as to adopt a single expression and meaning that could apply Act-wide (discussed in Chapter 6 of Interim Report A).

10. Locating the definition of ‘facility’ in prototype s 9 is illustrative only. As discussed in Chapter 4 of Interim Report A, ‘facility’ is currently used in its ordinary (undefined) sense in provisions outside Part 7.9 Div 3 of the *Corporations Act*. Applying the definition Act-wide may therefore have implications which, for present purposes, have not been fully explored.

A uniform definition of ‘financial product’ and ‘financial service’ (Proposals A3, A4, and A5)

11. Prototype ss 763A and 766A of the *Corporations Act* illustrate the proposed uniform definitions of ‘financial product’ and ‘financial service’ discussed in Chapter 7 of Interim Report A.

Application provisions, exclusions, and exemptions (Proposals A4 and A10)

12. The prototype legislation illustrates how, in a revised legislative architecture, application provisions (rather than repeatedly adapted definitions) could be used to establish the scope of specific provisions and fields of regulation. For example, prototype ss 765A and 766J of the *Corporations Act* enable delegated legislation to specify that particular provisions of the Act do not apply to particular financial products or services. Sample exclusions and exemptions from particular disclosure and licensing obligations are contained in the *Implementation Order*.

Incorporating ‘credit’ within the uniform definition of ‘financial product’ (Proposal A6)

13. Prototype s 763A(1)(iv) of the *Corporations Act* demonstrates how ‘credit’ might be incorporated within a uniform definition of ‘financial product’. Section 2-5 of the *Implementation Order* illustrates how the current policy of excluding ‘credit’ from parts of Chapter 7 of the *Corporations Act* might be maintained. Prototype s 2-5 does not replicate regs 7.1.06(2) and (2A) of the *Corporations Regulations*, which effectively create exceptions to the more general exclusion of ‘credit’. These will be considered in more detail in subsequent Interim Reports, including Interim Report C.

Managing complexity through rules (Question A11)

14. Prototype s 1098 of the *Corporations Act* and the *Disclosure Rules* illustrate how the model described by Question A11 could be implemented in relation to financial product disclosure.

15. As discussed in Chapter 10 of Interim Report A, the following elements of the prototype legislation illustrate one way of locating material in a principled manner across the legislative hierarchy: sections of the *Corporations Act* relating to disclosure (Part 7.8B), corresponding implementation orders (Part 8B of the *Implementation Order*), and the *Disclosure Rules*.

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Corporations Act 2001

Chapter 1—Introductory

Part 1.2—Interpretation

Division 1—General

9 Dictionary

In this Act:

arrangement means a contract, agreement, understanding, scheme or other arrangement (as existing from time to time):

- (a) whether formal or informal, or partly formal and partly informal; and
- (b) whether written or oral, or partly written and partly oral; and
- (c) whether or not enforceable, or intended to be enforceable, by legal proceedings and whether or not based on legal or equitable rights.

Australian financial services licence means a licence under section 913B that authorises a person who carries on a financial services business to provide financial services.

carry on has a meaning affected by Division 3 of Part 1.2 and section 761C.

carried on in this jurisdiction, in relation to a financial services business, has a meaning affected by section 911D.

credit is provided by one person (the **credit provider**) to another (the **debtor**), and is obtained by the debtor from the credit provider, if under an arrangement:

- (a) payment of a debt owed by the debtor to the credit provider is deferred; or
- (b) the debtor incurs a deferred debt to the credit provider.

dealing in a financial product has the meaning given by section 766C.

facility includes:

- (a) intangible property; or
- (b) an arrangement or a term of an arrangement (including a term that is implied by law or that is required by law to be included); or
- (c) a combination of 2 or more things each of which is covered by paragraph (a) or (b).

Note: For cases where 2 or more arrangements may be taken to constitute a single arrangement, see subsection 763A(2).

financial product has the meaning given by section 763A.

financial service has the meaning given by section 766A.

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financial services licensee means a person who holds an Australian financial services licence.

financial services business means a business of providing financial services.

financial services rules means rules made under section 1098.

implementation order means an order made under section 1097 or a provision of such an order.

Product Disclosure Statement means a Product Disclosure Statement required by Division 2 of Part 7.8B.

scoped provisions has the meaning given by sections 765A and 766J.

Short-Form Product Disclosure Statement, or ***Short-Form PDS***, means a Short-form Product Disclosure Statement that section 1002A permits to be given instead of a Product Disclosure Statement.

Supplementary Product Disclosure Statement has the meaning given by section 1004.

Chapter 7—Financial services and markets

Part 7.1—Preliminary

Division 3—Scope of this Chapter: financial products

763A Definition of *financial product*

- (1) In this Act, ***financial product*** means a facility by means of which, or by the acquisition of which:
- (a) a person does one or more of the following:
 - (i) makes a financial investment;
 - (ii) manages financial risk;
 - (iii) makes non-cash payments;
 - (iv) obtains credit; or
 - (b) people commonly do one or more of the things mentioned in paragraph (a), even if a particular person acquires the facility for some other purpose.

Note 1: Examples of making a financial investment are:

- (a) a person paying money to a company for the issue to the person of shares in the company (the company uses the money to generate dividends for the person and the shares are a financial product); or
- (b) a person contributing money to acquire interests in a registered scheme from the responsible entity of the scheme (the scheme uses the money to generate financial or other benefits for the person and the interests in the scheme are a financial product).

Note 2: Examples of actions that do *not* constitute making a financial investment are:

- (a) a person purchasing real property or bullion (while the property or bullion may generate a return for the person, it is not a return generated by the use of the purchase money by another person); or
- (b) a person giving money to a financial services licensee who is to use it to purchase shares for the person (while the purchase of the shares will be a financial investment made by the person, the mere act of giving the money to the licensee will not of itself constitute making a financial investment).

Note 3: Examples of managing financial risk are:

- (a) taking out insurance; or
- (b) hedging a liability by acquiring a futures contract or entering into a currency swap.

Note 4: An example of an action that does *not* constitute managing a financial risk is employing a security firm (while that is a way of managing the risk that thefts will happen, it is not a way of managing the financial consequences if thefts do occur).

Note 5: Examples of making non-cash payments are:

- (a) making payments by means of a facility for direct debit of a deposit account; or
- (b) making payments by means of a facility for the use of cheques; or
- (c) making payments by means of a smart card or other purchased payment facility within the meaning of the *Payment Systems (Regulation) Act 1998*; or
- (d) making payments by means of traveller's cheques (whether denominated in Australian or foreign currency).

- (2) In determining what does or does not constitute a financial product, 2 or more arrangements may be treated as together constituting a single arrangement if it is

Section 763B

reasonable to assume that the parties to the arrangements regard them as constituting a single scheme.

- (3) A financial product does not cease to be a financial product merely because:
- (a) it is acquired by a person other than the one to whom it was originally issued; and
 - (b) that person, in acquiring it, is not making a financial investment or managing a financial risk.

763B How this Act applies to composite products

If a facility (the *composite product*) has 2 or more components that, considered separately, include:

- (a) at least one financial product; and
- (b) at least one component that is not a financial product;

then this Act, in applying to a component that is a financial product, applies to the composite product only to the extent that it consists of such a component.

Note: So, for example, Part 7.8B does not require disclosures to be made in relation to a component that is not a financial product.

765A Narrowing the scope of provisions applying to financial products

- (1) Implementation orders may, to the extent they specify, exclude the application of provisions of this Chapter:
 - (a) to financial products; or
 - (b) to persons making non-cash payments.
- (2) Provisions whose application is affected by an implementation order in force under subsection (1) are *scoped provisions*.
- (3) Implementation orders may amend scoped provisions to include or amend notes referring to, and describing the effect of, implementation orders that affect the application of those scoped provisions.
- (4) In so far as the operation of scoped provisions is affected by, or affects, the operation of other provisions of this Act, an implementation order in force under subsection (1) in relation to those scoped provisions has a corresponding effect on those other provisions.
- (5) Subsection (4) affects the application of an instrument made under or for the purposes of a provision of this Act to the same extent, and in the same way, as that subsection affects the application of the provision itself.
- (6) This section has effect despite anything else in this Act.

Division 4—Scope of this Chapter: financial services

766A Definition of *financial service*

- (1) For the purposes of this Act, a person provides **a financial service** if the person:
- (a) [provides financial product advice] (see section 766B); or
 - (b) deals in a financial product (see section 766C); or
 - (c) makes a market for a financial product (see section 766D); or
 - (d) operates a registered scheme; or
 - (e) provides a custodial or depository service (see section 766E); or
 - (f) provides a crowd-funding service (see section 766F); or
 - (g) provides a claims handling and settlement service (see section 766G); or
 - (h) provides a superannuation trustee service (see section 766H); or
 - (j) is a trustee company and provides a traditional trustee company service.

Note: See also subsection (4). Trustee companies may also provide other kinds of service mentioned in this subsection.

- (2) However, to avoid doubt, conduct done in the course of work of a kind ordinarily done by clerks or cashiers is not providing a financial service.
- (3) The same conduct may constitute providing 2 or more different financial services.

Note: For example, conduct may constitute providing a superannuation trustee service and also dealing in a financial product that is a superannuation product.

- (4) Implementation orders may, in relation to a traditional trustee company service of a particular class, specify the person or persons to whom a service of that class is taken for the purposes of this Act to be provided. This subsection does not limit (and is not limited by) subsection 766J(2).

Note: A traditional trustee company service is provided to a person as a retail client unless an implementation order provides otherwise (see subsection 761G(6A)).

766J Narrowing the scope of provisions applying to financial services

- (1) Implementation orders may, to the extent they specify, exclude the application of provisions of this Chapter:
- (a) to financial services; or
 - (b) in so far as the provisions refer to a particular kind of financial service—to financial services of that kind.

Note: The following are examples of specific kinds of financial services to which provisions refer:

- (a) financial product advice;
- (b) persons dealing in financial products;
- (c) persons making a market for financial products;
- (d) persons providing custodial or depository services;
- (e) persons providing superannuation trustee services.

- (2) Implementation orders may set out, for the purposes of specified provisions of this Chapter:

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- (a) circumstances in which persons facilitating provision of a financial service (for example, by publishing information) are taken also to provide that service; or
 - (b) circumstances in which persons are taken to provide a financial service instead of the persons who would otherwise be taken to provide it.
- (3) Provisions whose application is affected by implementation orders in force under subsection (1) or (2) are *scoped provisions*.
- (4) Implementation orders may amend scoped provisions to include or amend notes referring to, and describing the effect of, implementation orders that affect the application of those scoped provisions.
- (5) In so far as the operation of scoped provisions is affected by, or affects, the operation of other provisions of this Act, an implementation order in force under subsection (1) or (2) in relation to those scoped provisions has a corresponding effect on those other provisions.
- (6) Subsection (5) affects the application of an instrument made under or for the purposes of a provision of this Act to the same extent, and in the same way, as that subsection affects the application of the provision itself.
- (7) This section has effect despite anything else in this Act.

Part 7.6—Licensing of providers of financial services

Division 2—Requirement to be licensed or authorised

911A Requirement to hold an Australian financial services licence

- (1) A person who carries on a financial services business in this jurisdiction must hold an Australian financial services licence covering provision of the financial services.

Note 1: Also, a person must not provide a financial service contrary to a banning order or disqualification order under Division 8.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (2) However, a person is exempt from the requirement to hold an Australian financial services licence for a financial service the person provides if:
- (a) the person provides the service as representative of a second person, and the second person:
 - (i) carries on a financial services business; and
 - (ii) holds an Australian financial services licence that covers provision of the service, or is exempt under paragraph (b) from the requirement to hold an Australian financial services licence for the service; or

Note: A representative must still comply with section 911B.

- (b) the person is exempt from the requirement to hold an Australian financial services licence for the financial service because of an implementation order made for the purposes of this paragraph.

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

- (3) Subsection (2) does not exempt a person for:
- (a) the operation of a registered scheme; or
 - (b) a traditional trustee company service.
- (4) An implementation order made for the purposes of paragraph (2)(b) may exempt a person subject to specified conditions.
- (5) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

911B Providing financial services on behalf of a person who carries on a financial services business

- (1) A person (the *provider*) must not provide a financial service in this jurisdiction on behalf of another person (the *principal*) who carries on a financial services business unless:
- (a) the conditions in at least one of subsections (2), (3) and (4) are satisfied; or
 - (b) an exemption prescribed by an implementation order made for the purposes of this paragraph applies to the provider providing the service on behalf of the principal; or

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- (c) the principal would have been exempt from the requirement to hold an Australian financial services licence for the financial service if the principal (rather than the provider) had provided the service.

Note 1: Also, a person must not provide a financial service on behalf of another person contrary to a banning order or disqualification order under Division 8.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 3: For exemptions from the requirement to hold an Australian financial services licence, see subsection 911A(2).

- (2) The principal must hold an Australian financial services licence covering provision of the service. The provider:
 - (a) must be an employee or director of the principal, or of a related body corporate of the principal; and
 - (b) must *not* be an employee or director, or an authorised representative, of:
 - (i) any other person who carries on a financial services business and is not a related body corporate of the principal; or
 - (ii) a related body corporate of a person covered by subparagraph (i); and
 - (c) unless the principal is an insurer, and the provider is acting under a binder given by the principal—must not hold an Australian financial services licence.
- (3) The principal must hold an Australian financial services licence covering provision of the service. The provider:
 - (a) must be an authorised representative of the principal under an authorisation that covers provision of the service by the provider; and
 - (b) if the provider is an employee or director of:
 - (i) any other person (a *second principal*) who carries on a financial services business; or
 - (ii) a related body corporate of a second principal;
and provides financial services in this jurisdiction on behalf of the second principal—must do so as an authorised representative of the second principal under an authorisation that covers provision of those services by the provider; and
 - (c) unless the principal is an insurer, and the provider is acting under a binder given by the principal—must not hold an Australian financial services licence.
- (4) The provider must hold an Australian financial services licence covering provision of the service.

Note: However, in general a financial services licensee cannot be the authorised representative of another financial services licensee: see sections 916D and 916E.

- (5) If the condition in subsection (4) is satisfied, the other provisions of this Chapter apply as if the provider had provided the service on the provider's own account, and not on behalf of the principal, except so far as an implementation order made for the purposes of this subsection provides otherwise.
- (6) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

Part 7.8B—Product disclosure for financial products other than securities

Division 1—Application of this Part

995A Application to financial products

- (1) This Part applies to all financial products, except as provided in this section or in implementation orders in force for the purposes of subsection 765A(1) in relation to provisions of this Part.

Note: There are currently no implementation orders containing further exclusions from this Part.

- (2) This Part does *not* apply to:

- (a) securities; or

Note: Chapters 6CA and 6D provide for disclosure in relation to securities.

- (b) debentures, stocks or bonds issued or proposed to be issued by a government; or

Note: These financial products are not *securities* within the meaning of section 761A.

- (c) a financial product offered for issue or sale under a contribution plan.

- (3) This Part does *not* apply to a financial product unless:

- (a) it is or was issued, or will be issued, in the course of a business of issuing financial products; or

- (b) paragraph (a) is not satisfied but the financial product is:

- (i) a managed investment product; or
(ii) a foreign passport fund product; or
(iii) a superannuation product.

- (4) Despite subsections (2) and (3), this Part applies to a financial product if it is transferable and:

- (a) it is a derivative; or

- (b) it would be a derivative but for the effect of paragraph 761D(3)(c), and that paragraph excludes it from being a derivative only because it is a legal or equitable right or interest in:

- (i) a share in, or a debenture of, a body; or
(ii) an interest in a registered scheme; or
(iii) an interest in a managed investment scheme that is neither a registered scheme, nor a scheme (whether or not operated in this jurisdiction) that does not need to be registered because subsection 601ED(1) is not satisfied; or
(iv) an interest in a notified foreign passport fund.

996 Application to invitations and offers

This Part applies as set out in the table.

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Application to invitations and offers		
Item	This Part applies in relation to:	in the same way as it applies to
1	inviting an application for the issue of a financial product	offering to issue the financial product
2	inviting an offer to issue a financial product	offering to acquire the financial product by way of issue of the product
3	inviting an offer to purchase a financial product	offering to sell the financial product
4	inviting an offer to sell a financial product	offering to purchase the financial product

997 Treatment of offers of options over financial products

For the purposes of this Part:

- (a) an offer of an option over a financial product is not to be taken to be an offer of the underlying financial product; and
- (b) the grant of an option without an offer of the option is taken to be an offer of the option; and
- (c) an offer to grant an option is taken to be an offer to issue the financial product constituted by the option.

Division 2—Product Disclosure Statements

998 Product Disclosure Statement relating to issue of financial product

- (1) A person (the **PDS provider**) must give another person a Product Disclosure Statement for a financial product if:
 - (a) the PDS provider offers to issue the financial product to the other person; and
 - (b) the issue would be to the other person as a retail client; and
 - (c) the offer is received in this jurisdiction.
- (2) A person (the **PDS provider**) must give another person a Product Disclosure Statement for a financial product if:
 - (a) the PDS provider offers to arrange for the issue of the financial product to the other person; and
 - (b) the PDS provider is covered by subsection (6); and
 - (c) the issue would be to the other person as a retail client; and
 - (d) the offer is received in this jurisdiction.
- (3) A person (the **PDS provider**) must give another person a Product Disclosure Statement for a financial product if:
 - (a) the PDS provider issues the financial product to the other person; and
 - (b) the issue is to the other person as a retail client; and
 - (c) there are reasonable grounds to believe that the other person has not already been given a Product Disclosure Statement for the product; and
 - (d) the issue is made in this jurisdiction.

- (4) A Product Disclosure Statement required by subsection (1), (2) or (3) must be given at or before the time when the PDS provider makes the offer, or issues the financial product, to the other person.

Note: If a Product Disclosure Statement is given when the offer is made, it will not need to be given again when the product is issued to the person (see subsection 1008(2)) unless the Product Disclosure Statement that was given is no longer up to date.

- (5) A person (the **PDS provider**) must give another person a Product Disclosure Statement for a financial product if:
- (a) the other person makes an offer to the PDS provider to acquire the financial product; and
 - (b) the other person would acquire the financial product by way of issue of the product (rather than transfer of the product to the person); and
 - (c) the financial product would be issued to the other person as a retail client; and
 - (d) the offer is received in this jurisdiction.

The Product Disclosure Statement must be given before the other person becomes bound by a legal obligation to acquire the financial product pursuant to the offer.

- (6) This subsection covers the following:
- (a) a financial services licensee;
 - (b) an authorised representative of a financial services licensee;
 - (c) a person who:
 - (i) is exempt from the requirement to hold an Australian financial services licence because of an implementation order made for the purposes of paragraph 911A(2)(b); and
 - (ii) is specified in an implementation order made for the purposes of this subparagraph;
 - (d) a person who is required to hold an Australian financial services licence but who does not hold such a licence.

999 Product Disclosure Statement relating to sale transaction analogous to issuing financial product

- (1) A person (the **PDS provider**) must give another person a Product Disclosure Statement for a financial product if:
- (a) the PDS provider offers to sell the financial product to the other person; and
 - (b) the financial product would be sold to the other person as a retail client; and
 - (c) the offer is received in this jurisdiction; and
 - (d) subsection (3), (4) or (5) applies.

The Product Disclosure Statement must be given at or before the time when the PDS provider makes the offer.

- (2) A person (the **PDS provider**) must give another person a Product Disclosure Statement for a financial product if:

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- (a) the other person makes an offer to the PDS provider to acquire the financial product by way of transfer of the product to the person; and
- (b) a sale of the product to the other person pursuant to the offer would be a sale to the other person as a retail client; and
- (c) the offer is received in this jurisdiction; and
- (d) subsection (3), (4) or (5) applies.

The Product Disclosure Statement must be given before the other person becomes bound by a legal obligation to acquire the financial product pursuant to the offer.

Sale amounting to indirect issue

- (3) This subsection applies if:
- (a) the offer is made within 12 months after the issue of the financial product; and
 - (b) the product was issued to a person (the **first holder**) without a Product Disclosure Statement for the product being prepared; and
 - (c) at least one of the following applies:
 - (i) the issuer issued the product, or the first holder acquired the product, with the purpose of the first holder selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product;
 - (ii) there are reasonable grounds for concluding that the product was issued or acquired with that purpose (whether or not there were or may have been other purposes for the issue or acquisition);
 - (iii) the financial product, or any financial product of the same kind that was issued at the same time, is subsequently sold, or offered for sale, within 12 months after issue, unless it is proved that the circumstances of the issue and the subsequent sale or offer are not such as to give rise to reasonable grounds for concluding that the product was issued or acquired with that purpose.

Off-market sale by controller

- (4) This subsection applies if the proposed seller controls the issuer of the financial product and:
- (a) the product is not able to be traded on any licensed market; or
 - (b) the product is able to be traded on a licensed market but the offer is not made in the ordinary course of trading on a licensed market.

Note: See section 50AA for when a person controls a body.

Sale amounting to indirect off-market sale by controller

- (5) This subsection applies if:
- (a) the offer is made within 12 months after the sale (the **earlier sale**) of the financial product by a person (the **controller**) who controlled the issuer of the product at the time of the earlier sale; and

Note: See section 50AA for when a person controls a body.

- (b) either:

- (i) at the time of the earlier sale, the product was not able to be traded on any licensed market; or
- (ii) the product was able to be traded on a licensed market at that time, but the earlier sale did not occur in the ordinary course of trading on a licensed market; and
- (c) a Product Disclosure Statement was not prepared by, or on behalf of, the controller before the earlier sale; and
- (d) at least one of the following applies:
 - (i) the controller, or the person (the *earlier buyer*) to whom the product was sold, entered into the earlier sale with the purpose of the earlier buyer selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product;
 - (ii) there are reasonable grounds for concluding that the controller or the earlier buyer entered into the earlier sale with that purpose (whether or not there were or may have been other purposes for the sale or acquisition);
 - (iii) the financial product, or any financial product of the same kind that was sold by the controller at the same time as the earlier sale, is subsequently sold, or offered for sale, within 12 months after issue, unless it is proved that the circumstances of the earlier sale and the subsequent sale or offer are not such as to give rise to reasonable grounds for concluding as mentioned in subparagraph (ii).

1000 Product Disclosure Statement relating to personal advice recommending a particular financial product

- (1) A person (the *PDS provider*) must give another person a Product Disclosure Statement for a financial product if:
 - (a) the PDS provider provides financial product advice to the other person that consists of, or includes, a recommendation that the person acquire the financial product; and
 - (b) the other person would acquire the financial product by way of:
 - (i) issue of the product to the person (rather than transfer of the product to the person); or
 - (ii) transfer of the product to the person pursuant to a sale resulting from an offer that gives rise to a requirement under section 999; and
 - (c) the financial product advice is provided to the other person as a retail client; and
 - (d) the financial product advice is personal advice to the other person; and
 - (e) the PDS provider is:
 - (i) the issuer of the financial product; or
 - (ii) if subparagraph (b)(ii) of this subsection applies—the seller; or
 - (iii) a person covered by subsection 998(6); and
 - (f) the recommendation referred to in paragraph (a) of this subsection is received in this jurisdiction.
- (2) The Product Disclosure Statement must be given at or before the time when the PDS provider provides the advice.

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1001 Civil penalty for contravening section 998, 999 or 1000

A person contravenes this section if the person contravenes section 998, 999 or 1000.

Note: This subsection is a civil penalty provision (see section 1317E).

1002 Product Disclosure Statement before person elects to be covered by group financial product

- (1) If a financial product:
- (a) is issued to a person; and
 - (b) covers, or is designed to cover, a group of persons; and
 - (c) may cover a particular person (the ***new group member***) if the person elects to be covered by the financial product;

the issuer must take reasonable steps to ensure that a Product Disclosure Statement for the financial product is given to the new group member before the new group member makes an election to be covered by the financial product.

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

- (2) For the purposes of this section, a financial product covers a person if benefits are, or may be, provided under the financial product directly to:
- (a) the person; or
 - (b) a relative of the person; or
 - (c) a person nominated by the person.

1002A Short-Form Product Disclosure Statement

- (1) If section 998, 999, 1000 or 1002 requires a Product Disclosure Statement for a financial product to be given to a person (the ***client***), a Short-Form PDS for the product may be given instead, unless the financial product is:
- (a) a general insurance product; or
 - (b) a managed investment product in relation to an Australian passport fund; or
 - (c) a foreign passport fund product.
- (2) However, if the client asks for the Product Disclosure Statement for the product, then:
- (a) the person required by section 998, 999 or 1000 to give one; or
 - (b) the issuer referred to in section 1002;
- as the case may be, must give the Product Disclosure Statement to the client.

1003 Information must be up to date

The information in a Product Disclosure Statement or Short-Form Product Disclosure Statement must be up to date as at the time when it is given.

Note: A Supplementary Product Disclosure Statement containing updated information may be given with a Product Disclosure Statement that has become out of date. The updated information is taken to be included in the Product Disclosure Statement (see subsection 1004(2)).

1004 Supplementary Product Disclosure Statements

- (1) A **Supplementary Product Disclosure Statement** is a document by which a person who has prepared a Product Disclosure Statement (the **PDS**) can:
- (a) correct a misleading or deceptive statement in the PDS; or
 - (b) correct an omission of information the PDS is required to contain; or
 - (c) update or add to the information contained in the PDS; or
 - (d) change a statement of a kind prescribed by financial services rules for the purposes of this paragraph.

Note: Financial services rules may provide for a Replacement Product Disclosure Statement to be prepared instead of a Supplementary Product Disclosure Statement.

- (2) If:
- (a) a Product Disclosure Statement (the **PDS**) is given to a person; and
 - (b) at the same time, or later, a Supplementary Product Disclosure Statement (the **SPDS**) that supplements the PDS is given to the person;
- the PDS is taken, from when the SPDS is given to the person, to include the information and statements contained in the SPDS.

- (3) 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 Product Disclosure Statement (the **earlier PDS**) relating to the financial product; and
 - (c) the earlier PDS contains some, but not all, of the information that the new PDS is required to contain;
- the person may, instead of giving the client the new PDS, give the client a Supplementary Product Disclosure Statement that contains the additional information.

1007 Financial services rules to prescribe form, content and other matters relating to Product Disclosure Statements

- (1) Financial services rules are to prescribe, in relation to:
- (a) Product Disclosure Statements; and
 - (b) Supplementary Product Disclosure Statements; and
 - (c) Replacement Product Disclosure Statements; and
 - (d) Short-Form Product Disclosure Statements; and
 - (e) Supplementary Short-Form Product Disclosure Statements;
- the following matters:
- (f) who must prepare them;
 - (g) the manner and form in which they must be prepared;
 - (h) their content;
 - (i) without limiting paragraph (h), guidelines that must be complied with when any of those Statements makes a claim that labour standards or

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environmental, social or ethical considerations are taken into account in the selection, retention or realisation of an investment;

- (j) whether, when, and with whose consent, they must be lodged with ASIC;
 - (k) how they are to be given;
 - (l) what information about events relating to them must be given to ASIC, and how that information is to be given;
 - (m) what documents relating to them must be kept, who must keep those documents and for how long, and what access to those documents must be given;
 - (n) when Replacement Product Disclosure Statements may or must be used instead of Supplementary Product Disclosure Statements;
 - (o) any other matters that are necessary or convenient to ensure compliance with this Part and with implementation orders made for the purposes of this Part.
- (2) A person must comply with financial services rules in force for the purposes of this section.

1007A Statement must be given in accordance with this Act and financial services rules

A Product Disclosure Statement, Supplementary Product Disclosure Statement, Replacement Product Disclosure Statement, Short-Form Product Disclosure Statement or Supplementary Short-Form Product Disclosure Statement must be given in accordance with this Act and the financial services rules.

1008 Exemptions

- (1) This section has effect despite sections 998, 999 and 1000.

Up to date Product Disclosure Statement already received

- (2) The PDS provider need not give the other person a Product Disclosure Statement for the financial product if:
- (a) the other person has already received a Product Disclosure Statement containing all the information that the first-mentioned Product Disclosure Statement would be required to contain; or
 - (b) the PDS provider believes on reasonable grounds that paragraph (a) applies.

Exemptions in implementation orders

- (3) The PDS provider need not give the other person a Product Disclosure Statement for the financial product if the PDS provider is exempt from doing so because of an implementation order made for the purposes of this subsection.
- (4) An implementation order made for the purposes of subsection (3) may exempt the PDS provider subject to specified conditions, which may include conditions to be fulfilled after the time at or before which, but for the exemption, the Product Disclosure Statement would be required to be given.

- (5) If:
- (a) an implementation order made for the purposes of subsection (3) exempts the PDS provider subject to a condition to be fulfilled after the time at or before which, but for the exemption, the Product Disclosure Statement would be required to be given; and
 - (b) the condition is not fulfilled by the time, or within the period, specified in the condition;
- the exemption is taken never to have applied to the giving of that Product Disclosure Statement.

Part 7.11A—Implementation orders and financial services rules

Division 1—Implementation orders

1097 Power to make

[The rule-maker] may, by legislative instrument, make orders prescribing matters required or permitted by a provision of this Chapter (or of regulations made for the purposes of a provision of this Chapter) to be prescribed by implementation orders.

Division 2—Financial services rules

1098 Power to make

- (1) ASIC may, by legislative instrument, make rules prescribing matters required or permitted by a provision of this Chapter (or of regulations made for the purposes of a provision of this Chapter) to be prescribed by financial services rules.
- (2) Without limiting subsection (1), the financial services rules may prescribe penalties, not exceeding 50 penalty units for an individual or 500 penalty units for a body corporate, for contraventions of the rules.

Note: See also sections 1311B and 1311C in relation to the penalty applicable to an offence.

- (3) Before making financial services rules, ASIC must have regard to the following matters:
 - (a) the complexity of the financial products and financial services to which the proposed rules relate;
 - (b) the risk of consumer detriment to be addressed;
 - (c) which participants in the financial services industry will be affected;
 - (d) the need for competitive neutrality;
 - (e) existing laws, implementation orders and financial services rules affecting those or similar financial products and financial services;
 - (f) the likely regulatory impact of making the proposed rules;and may have regard to any other matters that ASIC considers relevant.

1099 Minister's consent

- (1) ASIC must not make financial services rules except:
 - (a) with the consent in writing of the Minister; or
 - (b) in accordance with this section.

Emergency rules without consent of the Minister

- (2) ASIC may make financial services rules without the Minister's consent if ASIC is of the opinion that it is necessary to do so in the public interest:
 - (a) to protect against a substantial risk of consumer detriment that cannot otherwise be addressed in a timely manner; or

- (b) to respond in a timely manner to unforeseen events so as to support the functioning of financial markets and the provision of financial products and financial services.
- (3) If ASIC makes financial services rules under subsection (2) without the Minister's consent:
 - (a) ASIC must as soon as practicable, and in any event within 24 hours, give the Minister a notice in writing setting out the content of the rules and the reasons for making the rules without the Minister's consent; and
 - (b) the Minister may by writing direct ASIC to repeal or amend the rules as set out in the direction; and
 - (c) ASIC must comply with a direction by the Minister under paragraph (b) of this subsection; and
 - (d) the rules cease to have effect at the end of 12 months starting on the day they commence, unless earlier repealed.
- (4) ASIC may make financial services rules without the Minister's consent if the rules are necessary to comply with a direction by the Minister under paragraph (3)(b).
- (5) A consent or direction by the Minister under this section is not a legislative instrument.

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Corporations (Exclusions and Exemptions from Chapter 7) Implementation Order 2021

Part 1—Introduction

Division 1—Preliminary

1-1 Name

This instrument is the *Corporations (Exclusions and Exemptions from Chapter 7) Implementation Order 2021*.

1-2 Authority

This instrument is made under section 1097 of the *Corporations Act 2001*.

Division 2—Definitions

1-5 Dictionary

Note: A number of expressions used in this instrument are defined in section 9 of the Act.

In this instrument:

Act means the *Corporations Act 2001*.

credit facility means a facility by means of which, or by the acquisition of which:

- (a) a person obtains credit; or
- (b) people commonly obtain credit, even if a particular person acquires the facility for some other purpose.

funeral services entity means an entity of one of the following kinds:

- (a) a body corporate;
- (b) a partnership;
- (c) an unincorporated body;
- (d) an individual;
- (e) for a trust that has only one trustee—a trustee;
- (f) for a trust that has more than one trustee—the trustees together;

that carries on in this jurisdiction a business of supplying:

- (g) services for the care and preparation of human bodies for burial or cremation; and
- (h) services for the arrangement, supervision or conduct of a funeral, burial or cremation; and
- (i) products in connection with the services mentioned in paragraphs (g) and (h).

information service means:

- (a) a broadcasting service; or

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- (b) an interactive or broadcast videotext or teletext service or a similar service;
or
- (c) an online database service or a similar service; or
- (d) a broadcasting service within the meaning of the *Broadcasting Services Act 1992*;
- (e) a datacasting service within the meaning of the *Broadcasting Services Act 1992*;
- (f) a service provided by the Internet.

non-cash payment facility means a facility through which, or through the acquisition of which:

- (a) a person makes non-cash payments; or
- (b) people commonly make non-cash payments, even if a particular person acquires the facility for some other purpose.

self managed superannuation fund has the meaning given by section 17A of the *Superannuation Industry (Supervision) Act 1993*.

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Part 2—Exclusions from Chapter 7 of the Act

Division 1—Financial products

2-1 Enabling provision

This Division is made for the purposes of subsection 765A(1) of the Act.

2-5 Financial products to which Chapter 7 (except Parts 7.8A and 7.9A) does not apply

Note 1: See Part 8A of this instrument for exclusions from Part 7.8A (Design and distribution requirements relating to financial products for retail clients) of the Act.

Note 2: See Part 9A of this instrument for exclusions from Part 7.9A (Product intervention orders) of the Act.

- (1) Chapter 7 (except Parts 7.8A and 7.9A) of the Act does not apply to a financial product to the extent that it is any of the following:
- (a) an excluded security;
 - (b) an undertaking by a body corporate to pay money to a related body corporate;
 - (c) health insurance provided as part of a health insurance business (as defined in Division 121 of the *Private Health Insurance Act 2007*);
 - (ca) insurance provided as part of a health-related business (as defined by section 131-15 of the *Private Health Insurance Act 2007*) that is conducted through a health benefits fund (as defined by section 131-10 of that Act);
 - (d) insurance provided by the Commonwealth;
 - (e) State insurance, Northern Territory insurance or Australian Capital Territory insurance, including insurance entered into by:
 - (i) a State, the Northern Territory or the Australian Capital Territory; and
 - (ii) some other insurer;as joint insurers;
 - (f) insurance entered into by the Export Finance and Insurance Corporation, other than a short-term insurance contract within the meaning of the *Export Finance and Insurance Corporation Act 1991*;
 - (g) reinsurance;
 - (ha) a credit facility (other than a margin lending facility);
 - (hb) any form of financial accommodation that is neither a credit facility nor a margin lending facility;
 - (hc) a hire purchase agreement;
 - (hd) a contract, arrangement or understanding for the hire, lease or rental of goods or services, other than one under which:
 - (i) full payment is made before or when the goods or services are provided; and
 - (ii) in the case of the hire, lease or rental of goods—an amount at least equal to the value of the goods is paid as a deposit in relation to the return of the goods;
 - (he) a facility under which any of the following is provided:

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- (i) an article known as a credit card or charge card;
 - (ii) an article, other than a credit card or a charge card, intended to be used to obtain cash, goods or services;
 - (iii) an article, other than a credit card or a charge card, commonly issued to customers or prospective customers for the purpose of their obtaining goods or services;
- (hf) a facility (other than a margin lending facility) under which a person incurs a liability in respect of redeemable preference shares;
- (hg) a facility under which:
 - (i) assistance in obtaining credit is provided; or
 - (ii) a person draws, accepts, indorses or otherwise deals in a negotiable instrument (including a bill of exchange or a promissory note); or
 - (iii) the trustee of the estate of a deceased person makes an advance to a beneficiary or prospective beneficiary of the estate;
- (hh) a lease over real or personal property;
- (hi) a letter of credit;
- (hj) a non-cash payment facility, if payments made using the facility will all be debited to a facility covered by any of paragraphs (ha) to (hi);
- (hk) a mortgage that is not a financial product covered by paragraph 763A(1)(a) of the Act;
- (hl) a guarantee;
- (i) a facility:
 - (i) that is an approved RTGS system within the meaning of the *Payment Systems and Netting Act 1998*; or
 - (ii) that is for the transmission and reconciliation of non-cash payments, and the establishment of final positions, for settlement through an approved RTGS system within the meaning of the *Payment Systems and Netting Act 1998*;
- (j) a facility that is a designated payment system for the purposes of the *Payment Systems (Regulation) Act 1998*;
- (k) a facility for the exchange and settlement of non-cash payments between providers of non-cash payment facilities;
- (la) a financial market;
- (lb) a clearing and settlement facility;
- (lc) a facility that is a payment system operated as part of a clearing and settlement facility;
- (ld) a facility that is a derivative trade repository;
- (m) a contract to exchange one currency (whether Australian or not) for another that is to be settled immediately;
- (n) so much of an arrangement as is not a derivative because of paragraph 761D(3)(a) of the Act;
- (p) an arrangement that is not a derivative because of subsection 761D(4) of the Act;
- (q) an interest in an exempt public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- (r) any of the following:

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- (i) an interest in something that is *not* a managed investment scheme because of paragraph (c), (e), (f), (k), (l) or (m) of the definition of ***managed investment scheme*** in section 9 of the Act;
 - (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
 - (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);
 - (s) any of the following:
 - (i) an interest in a managed investment scheme (whether or not operated in this jurisdiction) for which none of paragraphs 601ED(1)(a), (b) and (c) of the Act is satisfied and that is neither a registered scheme nor a notified foreign passport fund;
 - (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
 - (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);
 - (t) a deposit-taking facility that is, or is used for, State banking;
 - (u) a benefit provided, by an association of employees that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*, for a member of the association or a dependant of a member;
 - (va) a contract of insurance issued by an employer to an employee of the employer;
 - (vb) a life policy or a sinking fund policy, within the meaning of the *Life Insurance Act 1995*, that is not a contract of insurance and is issued by an employer to an employee of the employer;
 - (w) a funeral benefit;
 - (x) physical equipment, or physical infrastructure, by which something else is provided that is a financial product to which Chapter 7 (except Parts 7.8A and 7.9A) of the Act applies.
- (2) Chapter 7 of the Act (except Parts 7.8A and 7.9A) does not apply to a financial product to the extent that it is:
- (a) an arrangement (a ***surety bond***):
 - (i) that a person (***person 1***) enters into with another person (***person 2***) in order to meet a requirement of another arrangement between person 1 and a person (***person 3***) other than person 2; and
 - (ii) under which person 2 undertakes to make a payment to, or perform an obligation for the benefit of, person 3 in specified circumstances; and
 - (iii) under which person 1 is liable to person 2 for any payments made, or liabilities, costs or expenses incurred, by person 2 in making the payment, or performing the obligation, referred to subparagraph (ii);
or
 - (b) an arrangement between 2 persons (***person 1*** and ***person 2***) made in these circumstances:
 - (i) person 1 leases or rents something from person 2;

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- (ii) under the arrangement, person 1 makes a payment to person 2 to reduce the amount that person 1 would otherwise have to pay to person 2 under the leasing or rental agreement;
- (iii) the payment relates to the event of an accident or other eventuality affecting the thing that is being leased or rented; or

Example: Collision damage waiver insurance for a rental car.

- (c) a cheque drawn by a financial institution on itself or on another financial institution; or
- (e) insurance under an overseas student health insurance contract within the meaning of regulation 48 of the *National Health Regulations 1954*; or
- (f) a facility that consists of the rights of the holder of a debenture against a trustee under a trust deed entered into under:
 - (i) section 283AA of the Act; or
 - (ii) Chapter 2L or Division 4 of Part 7.12 of the old Corporations Law; or
- (g) a money order issued as such by or for Australia Post; or
- (h) a non-cash payment facility:
 - (i) for which the issuer is both a body corporate and an ADI (within the meaning of the *Banking Act 1959*), or is an operator of a payment system; and
 - (ii) under which, as instructed by the client, the issuer makes money available (or causes it to be made available) to a person nominated by the client, and does so within 2 business days after receiving the client's instruction, or within the time reasonably required to complete the transaction subject to any constraints imposed by law; and
 - (iii) under which the funds are transferred by electronic means for collection by, or for the credit of, the payer or another person; and
 - (iv) in relation to which the issuer and the payer do not have a standing arrangement to transfer funds as mentioned in subparagraph (iii); or

Note: Examples are telegraphic transfers and international money transfers offered by banks and remittance dealers.

- (j) a carbon abatement contract within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
- (k) a non-cash payment facility that meets the following conditions:
 - (i) the facility is issued as part of a scheme (a **loyalty program**) whose sole or dominant purpose is to promote the purchase of goods from, or the use of services of, the issuer of the facility or another person;
 - (ii) a person who uses or holds the facility is allocated credits (however described) as a result of the purchase of goods from, or the use of services of, the issuer or other person;
 - (iii) the credits allocated under the facility can be used to make payment or part payment for goods or services or to obtain some other benefit;
 - (iv) the facility is not a component of another financial product; or
- (l) a facility through which, or through the acquisition of which, a person can make a non-cash payment of a toll for the use of a road, but no other kind of non-cash payment.

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2-25 Making non-cash payments

- (1) Chapter 7 (except Parts 7.8A and 7.9A) of the Act does not apply to a financial product to the extent that it is a facility by means of which, or by the acquisition of which:
 - (a) a person makes non-cash payments as mentioned in subsection (2); or
 - (b) people commonly make non-cash payments as mentioned in subsection (2), even if a particular person acquires the facility for some other purpose.
- (2) Chapter 7 (except Parts 7.8A and 7.9A) of the Act does not apply to a person making non-cash payments by means of:
 - (a) a facility by means of which payments can be made to only one person; or
 - (b) a letter of credit from a financial institution; or
 - (c) a cheque drawn by a financial institution on itself; or
 - (d) a guarantee given by a financial institution.

Division 2—Financial services

2-50 Enabling provision

This Division is made for the purposes of subsection 766J(1) of the Act.

2-55 Financial services to which Chapter 7 does not apply

- (1) Chapter 7 of the Act does not apply to a financial service that consists of:
 - (a) a person operating a registered scheme, if the person is taken to operate the scheme only because of either or both of the following:
 - (i) the person acting as an agent or employee of another person;
 - (ii) the person taking steps to wind up the scheme; or
 - (b) a person providing:
 - (i) in the course of conducting a service (the *exempt service*) covered by subsection (2), (3), (4) or (5) of this section; and
 - (ii) as an integral part of the exempt service;a financial service that is reasonably necessary to provide in order to conduct the exempt service; or
 - (c) a person providing a financial service that consists only of advising another person in relation to the manner in which:
 - (i) voting rights attaching to securities; or
 - (ii) voting rights attaching to interests in managed investment schemes; may or should be exercised, if the advice:
 - (iii) is not intended to influence, and could not reasonably be regarded as intended to influence, any decision in relation to financial products other than a decision about voting; and
 - (iv) does not relate to a vote that relates to a dealing in financial products.

Note: A service that includes advice which is intended to influence the decision to acquire securities in another company would not be covered by this paragraph.

- (2) For subparagraph (1)(b)(i), a person conducts a service covered by this subsection if the person:

- (a) provides advice in relation to the preparation or auditing of financial reports or audit reports; or
 - (b) provides advice on a risk that another person might be subject to and identifies (without reference to a particular brand or product issuer) financial products, or classes of financial product, that will mitigate that risk, other than advice for inclusion in an exempt document or statement; or
 - (c) provides advice on the acquisition or disposal, administration, due diligence, establishment, structuring or valuation of an incorporated or unincorporated entity, if the advice:
 - (i) is given to a person who is, or is likely to become, an officer or manager of the entity, a trustee of the entity, a director of a trustee of the entity, or an associate of the entity as defined by Division 2 of Part 1.2 of the Act; and
 - (ii) to the extent that it is financial product advice—is confined to advice on a decision about:
 - (A) securities of a body corporate, or related body corporate, that carries on or may carry on the business of the entity; or
 - (B) interests in a trust (other than a superannuation fund, a managed investment scheme that is registered or required to be registered under Part 5C.1 of the Act, or a notified foreign passport fund), the trustee of which carries on or may carry on the business of the entity in the capacity of trustee; and
 - (iii) does not relate to other financial products that the body corporate or the trustee of the trust may acquire or dispose of; and
 - (iv) is not advice for inclusion in anything covered by paragraph 2-75(1)(a) or (b) of this instrument; or
 - (d) provides advice on financial products that are:
 - (i) securities in a company (other than securities that are to be offered under a disclosure document under Chapter 6D of the Act); or
 - (ii) interests in a trust (other than a superannuation fund, a managed investment scheme that is registered or required to be registered under Part 5C.1 of the Act, or a notified foreign passport fund);if the company or trust is not carrying on a business and has not, at any time, carried on a business; or
 - (e) provides advice in relation to the transfer of financial products between associates; or
 - (f) arranges for another person to deal in interests in a self managed superannuation fund in the circumstances referred to in paragraphs (5)(b) and (c) of this section; or
 - (g) arranges for another person to deal in a financial product, by preparing a document of registration or transfer in order to complete administrative tasks on instructions from the person; or
 - (h) provides advice about the provision of financial products as security, other than where the security is provided for the acquisition of other financial products.
- (3) For subparagraph (1)(b)(i), a person conducts a service covered by this subsection if the person:

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- (a) is registered as an auditor under Part 9.2 of the Act; and
 - (b) performs any of the functions of a cover pool monitor mentioned in subsection 30(4) of the *Banking Act 1959*.
- (4) For subparagraph (1)(b)(i), a person conducts a service covered by this subsection if:
 - (a) the person provides advice to another person on taxation issues including advice in relation to the taxation implications of financial products; and
 - (b) the person will not receive a benefit (other than from the person advised or an associate of the person advised) as a result of the person advised acquiring a financial product mentioned in the advice, or a financial product that falls within a class of financial products mentioned in the advice; and
 - (c) either the advice does not constitute financial product advice to a retail client, or the advice includes, or is accompanied by, a written statement that:
 - (i) the person providing the advice is not licensed to provide financial product advice under the Act; and
 - (ii) taxation is only one of the matters that must be considered when making a decision on a financial product; and
 - (iii) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.
- (5) For subparagraph (1)(b)(i), a person conducts a service covered by this subsection if:
 - (a) the person provides advice in relation to the establishment, operation, structuring or valuation of a superannuation fund, other than advice for inclusion in anything covered by paragraph 2-75(1)(a) or (b); and
 - (b) the person advised is, or is likely to become:
 - (i) a trustee; or
 - (ii) a director of a trustee; or
 - (iii) an employer sponsor as defined by subsection 16(1) the *Superannuation Industry (Supervision) Act 1993*; or
 - (iv) a person who controls the management; of the superannuation fund; and
 - (c) except to the extent referred to in subsection (6), the advice:
 - (i) does not relate to the acquisition or disposal by the superannuation fund of specific financial products or classes of financial products; and
 - (ii) does not include a recommendation that a person acquire or dispose of a superannuation product; and
 - (iii) does not include a recommendation in relation to a person's existing holding in a superannuation product to modify an investment strategy or a contribution level; and
 - (d) if the advice constitutes financial product advice provided to a retail client—the advice includes, or is accompanied by, a written statement that:

- (i) the person providing the advice is not licensed to provide financial product advice under the Act; and
 - (ii) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.
- (6) Advice does not need to meet the condition in paragraph (5)(c) to the extent that it is given for the sole purpose, and only so far as reasonably necessary for the purpose, of ensuring compliance by the person advised with:
 - (a) the *Superannuation Industry (Supervision) Act 1993*, except paragraph 52(2)(f) of that Act; or
 - (b) the *Superannuation Industry (Supervision) Regulations 1994*, except regulation 4.09 of those Regulations; or
 - (c) the *Superannuation Guarantee (Administration) Act 1992*.

2-75 Financial product advice: documents, information and statements required by law

- (1) Chapter 7 of the Act does not apply to a financial service consisting of a person providing financial product advice by providing or giving:
 - (a) a document prepared, or a statement given, in accordance with requirements of that Chapter (except a document or statement covered by subsection (4) of this section); or
 - (b) a document, information, or a statement, covered by subsection (6) of this section.
- (2) In so far as provisions of Chapter 7 of the Act are expressed to apply to financial product advice, they do not apply to financial product advice that a person provides as mentioned in subsection (1) of this section.
- (3) However, to the extent that a document, information or a statement includes financial product advice provided by an expert who is neither:
 - (a) the person (the *originator*) by whom, or on whose behalf, the document, information or statement was prepared or given; nor
 - (b) an employee or director of the originator;subsections (1) and (2) do not apply to the expert providing that advice.
- (4) For the purposes of paragraph (1)(a) of this section, this subsection covers the following:
 - (a) a Statement of Advice;
 - (b) a Product Disclosure Statement that either contains personal advice, or contains general advice about a financial product (other than one to which the Statement relates or is taken to relate because of subsection (5) of this section);
 - (c) a Financial Services Guide that contains personal advice;
 - (d) a document or statement that, but for this paragraph, would be covered by this subsection only because it is prepared or given in accordance with [equivalent of section 1018A of the Act];
 - (e) a record of advice mentioned in subsection 946B(3A) of the Act.

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- (5) For the purposes of paragraph (4)(b) of this section, if a person:
- (a) acquires a financial product (**product 1**); and
 - (b) will be able, by acquiring product 1, to give the product issuer an instruction to acquire a particular financial product, or a financial product of a particular kind (within the meaning of [equivalent of section 1012IA of the Act]), under a custodial arrangement (within the meaning of [equivalent of section 1012IA of the Act]);
- the Product Disclosure Statement for product 1 is taken also to relate to the other financial product.
- (6) For the purposes of paragraph (1)(b) of this section, this subsection covers the following:
- (aa) a document, information, or a statement that:
 - (i) does not contain personal advice; and
 - (ii) is required by, and prepared as a result of, a requirement under an Australian law; and
 - (iii) is included in a class of documents, information or statements specified by ASIC in a notifiable instrument for the purposes of this paragraph;
 - (a) a CSF offer document that does not contain personal advice;
 - (b) a document or statement to the extent that it contains or draws information from a CSF offer document and attributes that information to the CSF offer document, if:
 - (i) the information is published on the platform on which the CSF offer document is published, and does not contain personal advice; or
 - (ii) the information is a statement made on the communication facility for the CSF offer, and does not contain personal advice;
 - (c) an advertisement or publication to the extent that the advertisement or publication:
 - (i) contains or draws information from a CSF offer document and attributes that information to the CSF offer document; and
 - (ii) does not contravene subsection 738ZG(1) of the Act; and
 - (iii) does not contain personal advice;
 - (d) an assessment under subsection 985E(1) of the Act that a margin lending facility will not be unsuitable for the person to whom the margin lending facility is to be issued;
 - (e) an assessment under subsection 985E(1) of the Act that a margin lending facility whose limit is proposed to be increased will not be unsuitable for the person for whom the limit of the margin lending facility is to be increased.

2-80 Financial product advice: other exclusions

- (1) Chapter 7 of the Act does not apply to a financial service consisting of financial product advice to the extent that it consists of anything covered by subsection (3) of this section.

- (2) In so far as provisions of Chapter 7 of the Act are expressed to apply to financial product advice, they do not apply to anything covered by subsection (3) of this section.
- (3) This subsection covers the following:
- (a) advice given by a lawyer in his or her professional capacity about matters of law, legal interpretation or the application of the law to any facts;
 - (b) any other advice that is given by a lawyer in the ordinary course of activities as a lawyer and is reasonably regarded as a necessary part of those activities;
 - (c) advice that is given by a registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*), in the ordinary course of activities as such an agent, and is reasonably regarded as a necessary part of those activities;
 - (d) a person (the **adviser**), in response to a request made by another person (the **inquirer**):
 - (i) telling the inquirer the cost, or an estimate of the likely cost, of a financial product whose cost or estimated likely cost is worked out, or is said by the adviser to be worked out, by reference to a valuation of an item; and
 - (ii) suggesting or recommending the valuation to the inquirer;

Note: For example, the adviser tells the inquirer that the cost of an insurance policy is worked out by reference to a valuation of a house or car to which the policy would relate.
 - (e) a person (the **adviser**), in response to a request made by another person (the **inquirer**), telling the inquirer information about:
 - (i) the cost of a financial product; or
 - (ii) the rate of return on a financial product; orin circumstances where the adviser could have complied (but did not comply) with the request by telling the inquirer corresponding information about one or more other financial products;
 - (f) giving a recommendation, a statement of opinion, or a report of either of those things, in circumstances where:
 - (i) giving it could reasonably be regarded as a necessary part of providing a claims handling and settling service; and
 - (ii) the opinion, statement or report is not covered by subsection (4).
- (4) For the purposes of subparagraph (3)(f)(ii), the opinion, statement or report is covered by this subsection if:
- (a) it relates to how an amount to be paid to a person in settlement of a claim under an insurance product should be structured; or
 - (b) it relates to the management or use of an amount paid, or to be paid, to a person in settlement of a claim under an insurance product; or
 - (c) it is given in response to a claim, or potential claim, made under an insurance product and relates to other insurance products not held by the person making the claim or financial products.

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2-85 Dealing in a financial product

- (1) Chapter 7 of the Act does not apply to a financial service consisting of a person dealing in a financial product if the dealing is covered by subsection (3) of this section.
- (2) In so far as provisions of Chapter 7 of the Act are expressed to apply to dealing in a financial product, they do not apply to a person dealing in a financial product if the dealing is covered by subsection (3) of this section.
- (3) This subsection covers the dealing if:
 - (a) it consists of the person providing a crowd-funding service; or
 - (b) the person deals in the financial product on the person's own behalf (whether directly or through an agent or other representative), unless the person is the issuer of the product or subsection (4) of this section applies; or
 - (c) the dealing relates only to any of the following:
 - (i) securities of a government or local government authority;
 - (ii) debentures, stocks or bonds issued or proposed to be issued by a government;
 - (iii) securities of a public authority or instrumentality or agency of the Crown;
 - (iv) securities of a body corporate or an unincorporated body (except as provided by subsection (5) of this section);and the person is, or encompasses or constitutes in whole or in part, that government, local government authority, public authority, instrumentality, agency of body, as the case may be; or
 - (d) the dealing is entered into by the person as a sub-underwriter of an issue of securities and relates only to the sub-underwriting; or
 - (e) the person deals in the financial product (including under a power of attorney) in the course of enforcing rights under:
 - (i) a credit facility (except a margin lending facility); or
 - (ii) anything covered by any of paragraphs 2-5(1)(hb) to (hl); orNote: For example, a mortgagee exercising a power of sale.
 - (f) if the financial product is subject to a mortgage—the dealing consists of the person disposing of the financial product, or transferring it to the mortgagor, either:
 - (i) at the direction of the mortgagor; or
 - (ii) as a result of the mortgagor fulfilling all obligations under the mortgage; or
 - (g) the person (*person 1*) deals in the financial product and the following conditions are satisfied:
 - (i) person 1 holds the financial product on trust for, or on behalf of, another person (*person 2*);
 - (ii) the holding on trust constitutes providing a custodial or depository service to which Chapter 7 of the Act does not apply because of paragraph 2-95(6)(a), (b), (c), (d), (da), (g) or (i);

- (iii) if the dealing is issuing a beneficial interest in a financial product—it arises from providing a custodial or depository service to which that Chapter would apply but for subsection 2-95(6);
 - (iv) if person 1 holds the financial product under a custodial arrangement as defined in [equivalent of section 1012IA of the Act]—either person 2 is an associate of person 1, or the financial product is held as mentioned in paragraph 2-95(3)(d) or (da); or
 - (h) the dealing consists of issuing a carbon unit, an Australian carbon credit unit or an eligible international emissions unit, and the person is:
 - (i) the Clean Energy Regulator; or
 - (ii) the Clean Development Mechanism Executive Board; or
 - (iii) the government of a country other than Australia; or
 - (iv) an authority acting on behalf of the government of a country other than Australia; or
 - (j) the financial product is a carbon unit, an Australian carbon credit unit or an eligible international emissions unit, and the person deals in it on behalf of:
 - (i) a related body corporate of the person; or
 - (ii) an associated entity of the person;that is a liable entity entered in the information database under section 183 of the *Clean Energy Act 2011*.
- (4) Paragraph (3)(b) does not apply if the person (the **agent**) deals in the financial product as an agent or representative of another person (the **principal**), even if the dealing, when considered as a dealing by the principal, is a dealing by the principal on the principal's own behalf.
- (5) Subparagraph (3)(c)(iv) does not apply if the body:
- (a) carries on a business of investment in securities, interests in land or other investments; and
 - (b) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Act) made on terms that the funds subscribed would be invested.

2-87 Dealing in a financial product: lawyer acting on instructions

- (1) Chapter 7 of the Act does not apply to a financial service consisting of a lawyer dealing in a financial product if the dealing is covered by subsection (3) of this section.
- (2) In so far as provisions of Chapter 7 of the Act are expressed to apply to dealing in a financial product, they do not apply to a lawyer dealing in a financial product if the dealing is covered by subsection (3) of this section.
- (3) This subsection covers the dealing if:
 - (a) it consists of:
 - (i) arranging for a person to deal in the financial product; or
 - (ii) dealing as an agent or otherwise on behalf of a client, an associate of a client or a relative of a client; and
 - (b) the lawyer is acting:

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- (i) on the instructions of the client, an associate of the client or a relative of the client; and
 - (ii) in his or her professional capacity; and
 - (iii) in the ordinary course of his or her activities as a lawyer; and
- (c) the financial service can reasonably be regarded as a necessary part of those activities; and
- (d) the lawyer has not received, and will not receive, from the client or another person on behalf of the client, a benefit in connection with those activities other than:
 - (i) the payment of professional charges in relation to those activities; and
 - (ii) reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client.

2-90 Making a market for a financial product

- (1) Chapter 7 of the Act does not apply to a financial service consisting of a person making a market for financial products of a particular kind if subsection (3) of this section is satisfied.
- (2) In so far as provisions of Chapter 7 of the Act are expressed to apply to making a market for a financial product, they do not apply to a person making a market for financial products of a particular kind if subsection (3) of this section is satisfied.
- (3) This subsection is satisfied if:
 - (a) the person is the issuer of that kind of financial products; and
 - (b) the products are:
 - (i) superannuation products; or
 - (ii) managed investment products; or
 - (iii) financial products covered by paragraph 2-5(1)(s) (which relates to certain managed investment schemes that are not registered schemes); or
 - (iv) foreign passport fund products.

2-95 Providing a custodial or depository service

- (1) Chapter 7 of the Act does not apply to a financial service consisting of providing a custodial or depository service to the extent that it consists of anything covered by subsection (3) of this section.
- (2) In so far as provisions of Chapter 7 of the Act are expressed to apply to providing a custodial or depository service, they do not apply to anything covered by subsection (3) of this section.
- (3) This subsection covers the following:
 - (a) operating a clearing and settlement facility;
 - (b) operating a registered scheme, or the holding of the assets of a registered scheme;
 - (ba) operating a notified foreign passport fund;
 - (bb) holding the assets of a notified foreign passport fund;

- (c) the trustees of a regulated superannuation fund, approved deposit fund or pooled superannuation trust (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) operating the fund or trust;
 - (ca) a life company (within the meaning of the *Life Insurance Act 1995*) operating a statutory fund;
 - (d) services provided to a related body corporate of the person.
- (4) Chapter 7 of the Act does not apply to a financial service consisting of a person (the **provider**) providing a custodial or depository service to another person (the **client**) if subsection (6) of this section applies.
- (5) In so far as provisions of Chapter 7 of the Act are expressed to apply to providing a custodial or depository service, they do not apply to a person (the **provider**) providing a custodial or depository service to another person (the **client**) if subsection (6) of this section applies.
- (6) This subsection applies if:
 - (a) the financial product held by the provider is a basic deposit product (as defined by section 761A of the Act) or is an account mentioned in subsection 981B(1) of the Act; or
 - (b) the client is an associate (within the meaning of Division 2 of Part 1.2 of the Act) of the provider; or
 - (c) the provider and its associates have no more than 20 clients in aggregate for all custodial or depository services that they provide; or
 - (d) the financial product is held as part of the arrangements for securing obligations under a credit facility; or
 - (da) the financial product is held as part of the arrangements for securing obligations under a debenture that is held as trustee under a trust deed:
 - (i) entered into under section 283AA of the Act or former section 260FA of the Corporations Law of a State or Territory; or
 - (ii) mentioned in former section 1052 of the Corporations Law of a State or Territory; or
 - (e) the provider is a participant in a licensed market, and the financial product held by the provider is a derivative acquired on the licensed market by the provider on behalf of the client; or
 - (f) the provider is a participant in a licensed clearing and settlement facility and the financial product held by the provider is a derivative registered on the licensed clearing and settlement facility by the provider on behalf of the client; or
 - (g) the financial product is held under:
 - (i) an order of a court; or
 - (ii) an order of a board or tribunal established under a law of a State or Territory; or
 - (iii) a direction by the holder of a statutory office established under a law of a State or Territory; or
 - (i) the financial product is held by a trustee appointed under:
 - (i) a law of a State or Territory to administer monies awarded to a person as compensation; or
 - (ii) a trust formed for a charitable purpose; or

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- (j) the financial product is an Australian carbon credit unit that has been issued to:
 - (i) a special native title account in accordance with section 49 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
 - (ii) a nominee account in accordance with section 141 of that Act.
- (7) Chapter 7 of the Act does not apply to a financial service consisting of a lawyer providing a custodial or depository service to another person (the *client*) if subsection (9) of this section applies.
- (8) In so far as provisions of Chapter 7 of the Act are expressed to apply to providing a custodial or depository service, they do not apply to a lawyer providing a custodial or depository service to another person (the *client*) if subsection (9) of this section applies.
- (9) This subsection applies if:
 - (a) the lawyer is acting:
 - (i) on instructions from the client, an associate of the client or a relative of the client; and
 - (ii) in his or her professional capacity; and
 - (iii) in the ordinary course of his or her activities as a lawyer; and
 - (b) the custodial or depository service:
 - (i) can reasonably be regarded as a necessary part of those activities; and
 - (ii) is provided in the course of the lawyer providing financial services consisting of acquiring, holding or disposing of a cash management trust interest to which a law of a State or Territory relating to the audit of trust or controlled monies applies; and
 - (c) the lawyer has not received, and will not receive, a benefit in connection with the activities other than:
 - (i) the payment of professional charges related to those activities; and
 - (ii) reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client;from the client or from another person on behalf of the client.

2-100 Providing a superannuation trustee service

- (1) Chapter 7 of the Act does not apply to a financial service consisting of providing a superannuation trustee service to the extent that the service consists of operating an exempt public sector superannuation scheme.
- (2) In so far as provisions of Chapter 7 of the Act are expressed to apply to providing a superannuation trustee service, they do not apply to the extent that the service consists of operating an exempt public sector superannuation scheme.

Part 6—Exemptions from Part 7.6 of the Act

Division 1—Exemptions from requirement to hold Australian financial services licence

6-1 General

For paragraph 911A(2)(b) of the Act, a person is exempt from the requirement to hold an Australian financial services licence for a financial service that:

- (a) the person provides; and
- (b) is described by an item in the table; and
- (c) if that item specifies circumstances—is provided in those circumstances; and
- (d) is not a superannuation trustee service.

Note: Section 6-5 sets out some exemptions for superannuation trustee services.

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
5	issuing, varying or disposing of a financial product (except a margin lending facility), pursuant to an arrangement between the person and a financial services licensee under which: <ul style="list-style-type: none"> (a) the financial services licensee, or their authorised representatives, may make offers to people to arrange for the issue, variation or disposal of financial products by the person; and (b) the person is to issue, vary or dispose of financial products in accordance with such offers, if they are accepted 	the offers are covered by the financial services licensee's Australian financial services licence
10	entering into an arrangement covered by item 5	the offers will be covered by the financial services licensee's Australian financial services licence
15	varying or disposing of a financial product	the person issued the original product and provides the service: <ul style="list-style-type: none"> (a) under the terms of the financial product; or (b) at the direct request of the person to whom it is provided (rather than through an intermediary)
20	operating a licensed market or licensed CS facility	the licensed market or licensed CS facility is operated by the person
25	any financial service	the service is provided incidentally to the person operating a licensed market or licensed CS facility

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A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
30	providing general advice in connection with an offer of financial products under an eligible employee share scheme	the person is: (a) the corporation whose financial products are being issued or sold under the scheme; or (b) an entity controlled by that corporation
35	dealing in a financial product in connection with an offer of the financial product under an eligible employee share scheme	these conditions are satisfied: (a) the scheme requires that any purchase or disposal of the financial product under the scheme occurs through a person who: (i) holds an Australian financial services licence to deal in financial products; or (ii) is in a jurisdiction outside this jurisdiction and is licensed or otherwise authorised to deal in financial products in that jurisdiction; (b) the person is: (i) the corporation whose financial products are being issued or sold under the scheme; or (ii) an entity controlled by that corporation
40	a custodial or depository service in connection with an eligible employee share scheme	the person is: (a) the corporation whose financial products are being issued or sold under the scheme; or (b) an entity controlled by that corporation
45	a service incidental to a service covered by item 40	the person is: (a) the corporation whose financial products are being issued or sold under the scheme; or (b) an entity controlled by that corporation
50	dealing in an interest in a contribution plan operated by the person in relation to an eligible employee share scheme	the person is: (a) the corporation whose financial products are being issued or sold under the scheme; or (b) an entity controlled by that corporation
55	acquiring a financial product as an investment of the assets of a notified foreign passport fund	the person: (a) is the operator of the fund; or (b) is acting at the direction of the operator of the fund, or at the direction of an agent of the operator of the fund
60	disposing of a financial product that was acquired as an investment of the assets of a notified foreign passport fund	the person: (a) is the operator of the fund; or (b) is acting at the direction of the operator of the fund, or at the direction of an agent of the operator of the fund

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A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
65	issuing, acquiring or disposing of a derivative or foreign exchange contract: (a) in order to manage the financial consequences for a notified foreign passport fund of particular circumstances happening; or (b) in order to avoid or limit the financial consequences for a notified foreign passport fund of fluctuations in receipts or costs (including prices or interest rates) or in the value of such receipts or costs	the person: (c) is the operator of the fund; or (d) is acting at the direction of the operator of the fund, or at the direction of an agent of the operator of the fund
90	any financial service	the person provides the service while performing functions, or exercising powers, as an official receiver or trustee within the meaning of the <i>Bankruptcy Act 1966</i>
95	any financial service	the person provides the service while performing functions, or exercising powers, as a receiver, as a receiver and manager, as a liquidator (whether appointed by a court or otherwise) or as a person appointed by a court to carry on a financial services business
100	any financial service	the person provides the service while performing functions, or exercising powers, as the Public Trustee acting under a law of a State or Territory
105	any financial service	the person provides the service while performing functions, or exercising powers, as an administrator of a body corporate
110	any financial service	the person provides the service while performing functions, or exercising powers, as an administrator of a deed of company arrangement executed by a body corporate
115	any financial service	the person provides the service while performing functions, or exercising powers, as a restructuring practitioner for a body corporate
120	any financial service	the person provides the service while performing functions, or exercising powers, as a restructuring practitioner for a restructuring plan made by a body corporate
125	any financial service	the person provides the service while performing functions, or exercising powers, as a trustee or person administering a compromise or arrangement between a body corporate and another person or persons

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
130	any financial service	the person provides the service while performing functions, or exercising powers, as a personal representative of a deceased person other than a deceased financial services licensee
135	any financial service	<p>the person provides the service while performing functions, or exercising powers, as a personal representative of a deceased financial services licensee, and before whichever of these happens first:</p> <p>(a) the end of 6 months after the death of the licensee;</p> <p>(b) removal or discharge of the personal representative;</p> <p>(c) final distribution of the licensee's estate</p>
140	any financial service	the person provides the service while performing functions, or exercising powers, in the administration of a bankrupt estate or in the winding up of a body corporate or partnership
145	a financial service provided only to wholesale clients	the person is a body regulated by APRA, and the service is one in relation to which APRA has regulatory or supervisory responsibilities
150	a financial service provided only to wholesale clients	the person is regulated by an overseas regulatory authority, and provision of the service by the person is specified in a notifiable instrument made by ASIC for the purposes of this item
155	any financial service	the person provides the service only to related bodies corporate of the person
160	any financial service	provision of the service by the person is specified in a notifiable instrument made by ASIC for the purposes of this item
165	any financial service the person (<i>person 1</i>) provides to another person (<i>person 2</i>)	<p>these conditions are satisfied:</p> <p>(a) person 1 is not in this jurisdiction;</p> <p>(b) person 2 is an Australian citizen or is resident in Australia;</p> <p>(c) the service is provided from outside this jurisdiction;</p> <p>(d) person 1 does not engage in conduct that is:</p> <p>(i) intended to induce people in this jurisdiction to use the service; or</p> <p>(ii) likely to have that effect</p>

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
170	any financial service the person (<i>person 1</i>) provides to another person (<i>person 2</i>)	these conditions are satisfied: (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 financial market in this jurisdiction that is licensed under subsection 795B(2); (d) the service relates to a financial product traded on the licensed market
175	any financial service the person (<i>person 1</i>) provides to another person (<i>person 2</i>)	these conditions are satisfied: (a) person 1 is not in this jurisdiction; (b) person 2 holds an Australian financial services licence, or is exempt because of item 150 from the requirement to hold such a licence for services covered by that item; (c) person 2 is not, in relation to the service: (i) acting as a trustee; or (ii) acting as a responsible entity of a registered scheme; or (iii) otherwise acting on someone else's behalf
180	a financial service that the person (<i>person 1</i>) provides to another person (<i>person 2</i>) and relates to: (a) a financial product issued by person 1 following an application by, or inquiry from, person 2; or (b) a financial product issued by person 1 and acquired by person 2 when person 2 was not in this jurisdiction; or (c) a financial product that supplements a financial product covered by paragraph (a) or (b) (see Note 1 for examples); or (d) a financial product that is of the same kind as, and is issued in substitution for, a financial product covered by paragraph (a) or (b) (see Note 2 for examples)	these conditions are satisfied: (e) person 1 is not in this jurisdiction; (f) person 1 is neither a notified foreign passport fund nor the operator of one; (g) person 2 is in this jurisdiction; (h) person 1 does not actively solicit persons in this jurisdiction in relation to any of the financial products covered by paragraphs (a) to (d), except by way of contacting person 2 in relation to such products after person 2 has acquired them.

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
185	a financial service that the person (<i>person 1</i>) provides to another person (<i>person 2</i>) and consists of one or more of the following: (a) dealing in; (b) providing advice on; (c) making a market in; derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units	person 1 is not in this jurisdiction, and person 2 is a professional investor
190	a financial service that the person provides by bidding at an auction conducted in accordance with a legislative instrument made for the purposes of subsection 113(1) of the <i>Clean Energy Act 2011</i>	the bidding is on the person's own behalf, or on behalf of a related body corporate or an associated entity of the person
195	a financial service that consists only of: (a) the person (<i>person 1</i>) informing a person (<i>person 2</i>) that a financial services licensee, or a representative of a financial services licensee, is able to provide a particular financial service, or a class of financial services; and (b) giving person 2 information about how person 2 may contact the financial services licensee or representative	person 1: (c) is a representative of the financial services licensee, or of a related body corporate of the financial services licensee; or (d) discloses to person 2, when the service is provided and in the same form as the information referred to paragraphs (a) and (b): (i) any benefits (including commission) that person 1, or an associate of person 1, may receive in respect of the service; and (ii) any other benefits (including commission) that person 1, or an associate of person 1, may receive that are attributable to the service
200	a financial service that consists only of the person (<i>person 1</i>) arranging, on behalf of another person (<i>person 2</i>), for a holder of an Australian financial services licence to deal in a financial product	person 1 is not in this jurisdiction and believes on reasonable grounds that person 2 is not in this jurisdiction
205	a financial service that consists only of the person (<i>person 1</i>) entering into an arrangement with the holder of an Australian financial services licence under which a financial product, or a beneficial interest in a financial product, is to be held on trust for, or on behalf of, another person (<i>person 2</i>)	person 1 is not in this jurisdiction, and believes on reasonable grounds that person 2 is not in this jurisdiction

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
210	a financial service that consists only of the person (<i>person 1</i>) dealing on behalf of another person (<i>person 2</i>) in a financial product that cannot be traded on a licensed market	person 1 is not in this jurisdiction, and believes on reasonable grounds that none of the following is in this jurisdiction: (a) person 2; (b) each party to the dealing, or to any transaction to which the dealing relates
215	a dealing in a financial product that consists only of the person paying, as an employer sponsor, contributions on behalf of an employee into a superannuation product or RSA product	
225	a dealing in a financial product that consists only of the person, as an RSA provider, paying the benefits of an RSA product holder into a superannuation product or RSA product	
230	a dealing in a financial product that consists only of the person, as an employer sponsor, arranging for the issue of a superannuation product to an employee	
235	a financial service that the person provides, in respect of a financial product, under an arrangement with the holder of an Australian financial services licence who, as part of providing a custodial or depository service covered by the licence, holds a beneficial interest in the financial product on trust for or on behalf of a client	
240	a financial service that the person (<i>person 1</i>) provides to another person (<i>person 2</i>) and consists only of one or both of the following: (a) advising person 2 in relation to a non-cash payments facility that person 2 may use or has used to pay person 1 for goods or services; (b) arranging to deal in a non-cash payments facility that person 2 will use to pay person 1 for goods or services (See Note 3 for examples)	these conditions are satisfied: (c) the service is provided in the ordinary course of person 1's business; (d) providing financial services is not a significant part of person 1's business; (e) the goods and services include neither financial products nor financial services

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
245	a financial service (the <i>exempt service</i>) that the person (<i>person 1</i>) provides to another person (<i>person 2</i>) and consists only of one or both of the following: (a) advising person 2 in relation to a non-cash payments facility that person 2 may use or has used to pay person 1 for a financial product or financial service; (b) arranging to deal in a non-cash payments facility that person 2 will use to pay person 1 for a financial product or financial service	the exempt service is provided in the ordinary course of person 1's business
250	issuing a non-cash payment facility	under the facility, payments may be made only to the issuer of the facility or a related body corporate of the issuer
255	an Australia Post presentment and payment processing facility known as POSTbillpay or billmanager	
260	a financial service that consists only of dealing in derivatives, foreign exchange contracts or both, but does not involve the making of a market for derivatives or foreign exchange contracts (See Note 4 for examples)	these conditions are satisfied: (a) the dealing is entered into on the person's own behalf for the purpose of managing a financial risk that arises in the ordinary course of a business; (b) the person does not deal in derivatives or foreign exchange contracts as a significant part of the person's business
265	a financial service that consists only of one or more of the following: (a) dealing in a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; (b) dealing in a derivative over a unit covered by paragraph (a); (c) dealing in a foreign exchange contract for such a unit; but does not involve the making of a market for such units, derivatives or foreign exchange contracts	these conditions are satisfied: (d) the dealing is entered into for the purpose of managing financial risk in relation to the surrender, cancellation or relinquishment of such units (see Note 5) by the person or a related body corporate or associated entity of the person; (e) the dealing is entered into on the person's own behalf, or on behalf of a related body corporate or associated entity of the person; (f) the person does not deal in such units, derivatives or foreign exchange contracts as the principal activity of the person's business

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
270	<p>a financial service that:</p> <p>(a) the person is engaged by the Clean Energy Regulator to provide to the Clean Energy Regulator, or on behalf of the Clean Energy Regulator; and</p> <p>(b) relates to the conduct of an auction of carbon units under the <i>Clean Energy Act 2011</i>;</p> <p>but that does not arise in the course of the following activities:</p> <p>(c) management of a deposit lodged to participate in an auction under the <i>Clean Energy Act 2011</i>;</p> <p>(d) direct participation in such an auction on the person's own behalf or on behalf of anyone except the Clean Energy Regulator</p>	
275	<p>a financial service that the person (<i>person 1</i>) provides to another person (<i>person 2</i>) and consists only of dealing in a financial product or class of financial products</p>	<p>these conditions are satisfied:</p> <p>(a) person 1 is not in this jurisdiction;</p> <p>(b) person 2 is in this jurisdiction;</p> <p>(c) the holder of an Australian financial services licence arranges for person 1 to provide the service to person 2;</p> <p>(d) the licence covers the service</p>
280	<p>a financial service (the <i>exempt service</i>) that the person (<i>person 1</i>) provides to another person (<i>person 2</i>) and consists only of one or more of the following:</p> <p>(a) providing financial product advice to person 2;</p> <p>(b) person 1 making a market;</p> <p>(c) providing a custodial or depositary service to person 2</p>	<p>these conditions are satisfied:</p> <p>(d) person 1 is not in this jurisdiction;</p> <p>(e) person 2 is in this jurisdiction;</p> <p>(f) the holder of an Australian financial services licence arranges for person 1 to provide the exempt service to person 2;</p> <p>(g) the licence covers the exempt service and is subject to a condition requiring the holder to assume responsibility for the conduct of person 1 in providing the exempt service;</p> <p>(h) person 1 is a related body corporate of the holder, or is a party to a contractual agreement with the holder for the purpose of carrying on a business undertaking</p>

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
285	<p>providing in:</p> <p>(a) a newspaper, magazine, journal or other periodical; or</p> <p>(b) a radio or television broadcasting service; or</p> <p>(c) an electronic service (including a service provided by the Internet) that is operated on a commercial basis and is similar to a newspaper, a magazine, a radio broadcast or a television broadcast;</p> <p>financial product advice that is only general advice in relation to a financial product or class of financial products</p>	<p>the person is the issuer of the financial product or class of financial products, and the advice includes the following information:</p> <p>(a) the advice has been prepared without taking account of the client's objectives, financial situation or needs;</p> <p>(b) for that reason, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client's objectives, financial situation and needs;</p> <p>(c) if the advice relates to the acquisition, or possible acquisition, of a particular financial product, the client should obtain a Product Disclosure Statement relating to the product and consider the Statement before making any decision about whether to acquire the product</p>
290	financial product advice that the person provides as an actuary in the ordinary course of providing actuarial services	<p>the advice is provided to:</p> <p>(a) a wholesale client; or</p> <p>(b) the Commonwealth, a State or a Territory; or</p> <p>(c) an exempt public authority;</p> <p>and could not reasonably be expected to be included in a document that is to be given to a retail client</p>
295	a financial service relating to insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to workers compensation	the person is licensed to provide the financial service under the law of the State or Territory in which the service is provided (see Note 6 for an example)
300	a financial service the person provides to a wholesale client	<p>the person:</p> <p>(a) is a body (other than a company) established or constituted under a law of the Commonwealth or a State or Territory; and</p> <p>(b) is required under such a law to carry on the business of insurance or to undertake liability under a contract of insurance; and</p> <p>(d) is regulated for the provision of insurance under such a law</p>
305	providing, to the holder of an Australian financial services licence, financial product advice that is only general advice in relation to a financial product or a class of financial products	<p>the person:</p> <p>(a) issued the financial product or class of financial products; or</p> <p>(b) is a related body corporate of the issuer; and the licence covers providing that advice</p>

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
310	<p>a financial service consisting only of the person providing financial product advice in relation to, or dealing in, a financial product that is an account (however described):</p> <p>(a) whose sole purpose is to save money for the purpose of meeting all or part of the expenses of and incidental to a person's funeral, burial or cremation; and</p> <p>(b) that is provided by a body that:</p> <p>(i) is a friendly society for the purposes of the <i>Life Insurance Act 1995</i>; or</p> <p>(ii) is registered or incorporated as a friendly society under a law of a State or Territory; or</p> <p>(iii) is permitted, by a law of a State or Territory, to assume or use the expression friendly society; or</p> <p>(iv) immediately before the date that is the transfer date for the purposes of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>, was registered or incorporated as a friendly society under a law of a State or Territory</p>	<p>the person is a funeral services entity, or an employee, director or other officer of a funeral services entity, and provides the financial service in the ordinary course of the entity's business as a funeral services entity</p>
315	<p>providing advice that:</p> <p>(a) is included in a document issued in connection with a takeover bid or an offer of a financial product; and</p> <p>(b) is an opinion on matters other than financial products; and</p> <p>(c) does not include advice on a financial product</p> <p>(see Note 7 for an example)</p>	<p>the document includes:</p> <p>(d) a statement that the person is not operating under an Australian financial services licence when giving the advice; and</p> <p>(e) the information that paragraphs 947B(2)(d) and (e) of the Act would require to be included if the document were a Statement of Advice and the person were the providing entity</p>

Section 6-1

A person is exempt for a financial service if:		
Item	the service is:	and is provided in these circumstances:
320	the person (the <i>nominee</i>) holding a financial product, or a beneficial interest in a financial product, on trust for or on behalf of a client of financial services licensee	these conditions are satisfied: (a) the licensee is a participant in a licensed market; (b) the licensee acquired the financial product, or is to dispose of it, on behalf of the client, on the licensed market; (c) the licensee's Australian financial services licence covers a custodial or depository service, and is subject to a condition requiring the licensee to assume responsibility for the conduct of the nominee in relation to providing a financial service for which the nominee is exempt under this item; (d) the nominee is a wholly-owned subsidiary of the licensee
325	a financial service the person provides only to a wholesale client	the person is the Export Finance and Insurance Corporation established by the <i>Export Finance and Insurance Corporation Act 1991</i>
330	a financial service the person provides in relation to a qualifying gas exchange product traded on a qualifying gas trading exchange	the person is: (a) the operator of the qualifying gas trading exchange; or (b) a participant in relation to the qualifying gas trading exchange
335	a financial service in relation to a financial product that is: (a) a scheme for participating in and conducting legal proceedings; or (b) a scheme for proving claims against a company under Division 6 of Part 5.6 of the Act (including the preparation and lodgement of the proofs); or that is an interest in such a scheme	the members of the scheme: (c) are or may be entitled to a remedy arising out of the same or similar circumstances; and (d) wholly or substantially fund their legal costs under an agreement of the kind defined as a conditional costs agreement in section 181 of Schedule 1 (Legal Profession Uniform Law) to the <i>Legal Profession Uniform Law Application Act 2014</i> of Victoria, as in force on 17 January 2020, even if the agreement is not made in Victoria or for the purposes of that Act
340	a financial service in relation to a financial product that is: (a) an arrangement for participating in and conducting legal proceedings; or (b) an arrangement for proving claims against a company under Division 6 of Part 5.6 of the Act (including the preparation and lodgement of the proofs); or is an interest in such an arrangement	the legal costs of the person: (c) by or on whose behalf the proceedings are brought; or (d) by whom the claims against the company are made; as the case may be, are wholly or substantially funded under an agreement of the kind referred to in paragraph (d) of item 335

Section 6-5

- Note 1: For paragraph (c) of item 180, an example is a non-cash payment facility (such as a cheque facility) that is added to an existing transaction or investment account.
- Note 2: For paragraph (d) of item 180, examples are:
- (a) a transaction or investment account that is replaced by another transaction or investment account; or
 - (b) the renewal of an insurance policy.
- Note 3: For item 240, an example is a retailer:
- (a) offering its customers a variety of methods to pay for goods and services, such as a credit card, Bpay, or direct debit; and
 - (b) recommending a particular payment method, or expressing an opinion about the payment methods available to the customer.
- Note 4: For item 260:
- (a) a series of forward foreign exchange contracts entered into by a gold mining company to hedge against the risk of a fall in the price of gold is an example of financial services that would be exempt under the item; and
 - (b) issue and disposal of derivatives relating to the wholesale price of electricity are examples of financial services that would not be exempt under the item.
- Note 5: For paragraph (d) of item 265: section 175 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* deals with the relinquishment of Australian carbon credit units. Section 210 of the *Clean Energy Act 2011* deals with the relinquishment of carbon units.
- Note 6: For item 295, an example is the activities of a licensed insurer under the *Workers Compensation Act 1987* of New South Wales. However, the insurer would require an Australian financial services licence to the extent that the licensed insurer provides a financial service in respect of a non-workers compensation product or a non-workers compensation component of a product.
- Note 7: For item 315, an example is a geologist's report on a mining lease included in a Product Disclosure Statement.

6-5 Trustee of a superannuation entity

- (1) For the purposes of paragraph 911A(2)(b) of the Act, a person is exempt from the requirement to hold an Australian financial services licence for a financial service that the person provides in the capacity of trustee of a superannuation entity if the conditions set out in at least one item of the table are satisfied.

A trustee of a superannuation entity is exempt for a financial service if:			
Item	the superannuation entity is:	the financial service is:	and these further conditions are satisfied:
1	any superannuation entity	a superannuation trustee service	the person provides the service only to wholesale clients
5	a self managed superannuation fund	any financial service	none
15	a pooled superannuation trust that is used for investment of the assets of one or more regulated superannuation funds	a superannuation trustee service, or dealing in a financial product	each of the funds satisfies subsection (2) or (3) (see also subsection (4))

Section 6-10

A trustee of a superannuation entity is exempt for a financial service if:

Item	the superannuation entity is:	the financial service is:	and these further conditions are satisfied:
20	a pooled superannuation trust that is not used for investment of the assets of a regulated superannuation fund	a superannuation trustee service, or dealing in a financial product	none

- (2) For item 15 in the table in subsection (1), a regulated superannuation fund satisfies this subsection if it has net assets of at least \$10 million on the day when it first invests in the pooled superannuation trust.
- (3) For item 15 in the table in subsection (1), a regulated superannuation fund satisfies this subsection if:
- (a) the fund has net assets of at least \$5 million on the day when it first invests in the pooled superannuation trust; and
 - (b) at some time on or after that day, the trustee of the pooled superannuation trust has a reasonable expectation that the net assets of the fund will be at least \$10 million by the end of 3 months from that day.
- (4) For the purposes of subsection 911A(4) of the Act, item 15 of the table in subsection (1) of this section exempts a person subject to these conditions:
- (a) if, at the end of 3 months from the day when a regulated superannuation fund that satisfies subsection (3) of this section first invests in the pooled superannuation trust, the net assets of the fund are less than \$10 million, the trustee of the pooled superannuation trust must offer to redeem the fund's investment in the trust as soon as practicable after the end of the 3 months;
 - (b) the fund ceases to satisfy subsection (3) of this section at the end of 3 months after the offer to redeem is made, unless:
 - (i) the offer is accepted during those 3 months; or
 - (ii) at the end of those 3 months the fund has net assets of at least \$10 million.

Note: If the exemption ceases to apply, the trustee must apply for an Australian financial services licence if it continues to provide financial services previously covered by the exemption.

6-10 General financial product advice provided by the media

- (1) For paragraph 911A(2)(b) of the Act, a person is exempt from the requirement to hold an Australian financial services licence for a financial service that consists of the person providing financial product advice that is general advice:
- (a) in a newspaper or periodical:
 - (i) that is generally available to the public otherwise than only on subscription; and
 - (ii) whose sole or principal purpose is not to provide financial product advice; and
 - (iii) of which the person is the proprietor; or

- (b) in the course of, or by means of, transmissions:
 - (i) that the person makes by means of an information service, or that are made by means of an information service that the person owns or operates; and
 - (ii) that are generally available to the public (including available as part of as part of a subscription broadcasting service within the meaning of the *Broadcasting Services Act 1992*); and
 - (iii) whose sole or principal purpose is not to provide financial product advice; or
 - (c) in sound recordings:
 - (i) that the person makes available to the public by supplying copies of them to the public or causing them to be heard by the public; and
 - (ii) whose sole or principal purpose is not to provide financial product advice; or
 - (d) in video recordings:
 - (i) that the person makes available to the public by supplying copies of them to the public or causing them to be seen and heard by the public; and
 - (ii) whose sole or principal purpose is not to provide financial product advice; or
 - (e) in data recordings:
 - (i) that the person makes available to the public by supplying copies of them to the public or causing their contents to be displayed or reproduced for the public; and
 - (ii) whose sole or principal purpose is not to provide financial product advice.
- (2) However, for the purposes of subsection 911A(4) of the Act, this section exempts the person (the ***exempted person***) subject to the condition that, when the person or a representative of the person provides general advice as mentioned in subsection (1) of this section, the person or representative (the ***provider***) complies with subsection (3), with subsections (4), (5) and (6), or with subsections (7) and (8), of this section.
- (3) The provider complies with this subsection if:
- (a) the principal purpose of the newspaper, periodical, transmission, sound recording, video recording or data recording, as the case may be, is to report and provide comment on news; or
 - (b) the advice is contained in paid advertising that a reasonable person would be able to distinguish from material in the newspaper, periodical, transmission, sound recording, video recording or data recording, as the case may be, that is not paid advertising.
- (4) Alternatively, the provider must specify:
- (a) any remuneration the exempted person or a representative of the exempted person is to receive for providing the advice; and
 - (b) if the provider, or a person covered by subsection (6), is likely to obtain a financial benefit exceeding \$10,000 in value, or to avoid a financial loss exceeding \$10,000 in value, if the advice is acted upon—any pecuniary or

Section 6-15

other interest that the provider or such a person has in relation to the advice;

in so far as those matters would reasonably be expected to influence, or be capable of influencing, provision of the advice.

- (5) The matters required by subsection (4) must be presented in a way that:
 - (a) will adequately bring them to the attention of a reasonable person who may read or hear the advice; and
 - (b) is easy for a reasonable person to understand.
- (6) This subsection covers:
 - (a) if the provider is a body corporate—a related body corporate; or
 - (b) if the provider is an individual—a spouse, child, step-child, parent, step-parent, brother, half-brother, sister or half-sister of the provider.
- (7) The provider complies with this subsection if:
 - (a) the advice is provided at a time when:
 - (i) an industry code of practice; or
 - (ii) a Statement of Principles laid down by the Australian Press Council; or
 - (iii) an internal policy that is approved by the board or governing body of the exempted person;is in force and contains requirements relating to:
 - (iv) how financial conflicts of interest are to be dealt with; or
 - (v) prevention of financial conflicts of interest; and
 - (b) both the exempt person and the provider:
 - (i) comply with the code of practice or Statement of Principles; or
 - (ii) are subject to the internal policy;as the case may be, in relation to providing the advice.
- (8) In subsection (7):

internal policy includes a code of ethics or editorial guidelines.

6-15 Claims handling and settling service in relation to an insurance product

- (1) For paragraph 911A(2)(b) of the Act, a person is exempt from the requirement to hold an Australian financial services licence for a financial service that consists of the person providing a claims handling and settling service in relation to an insurance product if subsection (2), (3), (4) or (5) of this section applies.
- (2) This subsection applies if the person is none of the following:
 - (a) the insurer;
 - (b) an insurance fulfilment provider who has authority from the insurer to reject all or part of a claim under the insurance product;
 - (c) an insurance claims manager;
 - (d) an insurance broker (within the meaning of the *Insurance Contracts Act 1984*) who provides the service on behalf of the insurer;
 - (e) a person who:

- (i) has provided, or has entered into an arrangement to provide, financial product advice to a person insured under the insurance product (including a person insured as a third party beneficiary under the contract of insurance that constitutes the insurance product, within the meaning of the *Insurance Contracts Act 1984*); and
 - (ii) also provides the claims handling and settling service on behalf of the insurer;
 - (f) if the insurance product is a general insurance product—a claimant intermediary representing a person insured under the product in pursuing a claim under the product.
- (3) This subsection applies if:
- (a) the claims handling and settling service is provided under an arrangement between the issuer of the insurance product and a financial services licensee; and
 - (b) the issuer of the insurance product is:
 - (i) a Lloyd's underwriter (within the meaning of the *Insurance Act 1973*); or
 - (ii) an unauthorised foreign insurer (within the meaning of the *Insurance Regulations 2002*); and
 - (c) under the arrangement, the financial services licensee, or their authorised representatives, may provide the claims handling and settling service in relation to the insurance product; and
 - (d) the provision of the claims handling and settling service is covered by the financial services licensee's Australian financial services licence; and
 - (e) the claims handling and settling service is provided to the insured as a retail client.
- (4) This subsection applies if the claims handling and settling service is provided to a wholesale client under an arrangement between the issuer of the insurance product and a financial services licensee.
- (5) This subsection applies if the person provides the claims handling and settling service as a lawyer, in their professional capacity as a lawyer, and the service is one or more of these:
- (a) advice about matters of law, legal interpretation or the application of the law to facts;
 - (b) other advice that is given in the ordinary course of the person's activities as a lawyer, and is reasonably regarded as a necessary part of those activities;
 - (c) action taken to determine whether an insurer is liable to another person under an insurance product, or to quantify the extent of the insurer's liability;
 - (d) negotiation of the settlement of a claim under an insurance product;
 - (e) other conduct on behalf of another person that could reasonably be regarded as a necessary part of acting on instruction, and for which the lawyer has not received and is not entitled to receive a benefit other than:
 - (i) payment of professional charges; or
 - (ii) reimbursement of expenses incurred on behalf of the other person; or
 - (iii) payment on account of expenses to be so incurred.

Section 8B-1

Part 8B—Exclusions and exemptions from Part 7.8B of the Act

Note: Part 7.8B of the Act deals with product disclosure for financial products (other than securities and some others).

Division 1—Exclusions from Part 7.8B

Note: Section 995A of the Act sets out the financial products to which Part 7.8B of the Act applies. That section has effect subject to implementation orders made for the purposes of subsection 765A(1) of the Act. However, there are currently no further exclusions from Part 7.8B.

Division 2—Exemptions from giving Product Disclosure Statement

8B-1 Exemptions

This Division is made for the purposes of subsection 1008(3) of the Act.

8B-3 Condition for determining when financial products are of the same kind

For the purposes of this Division, a financial product is of the same kind as another financial product only if:

- (a) in the case of a managed investment product or a foreign passport fund product—the other product is an interest in the same scheme or fund; or
- (b) in the case of a superannuation product—the other product is:
 - (i) an interest in the same sub-plan; or
 - (ii) if there is no sub-plan—an interest in the same fund; or
- (c) otherwise—they are both issued:
 - (i) by the same issuer; and
 - (ii) on the same terms and conditions (other than price).

8B-5 Client has, or has access to, up to date information

The PDS provider is exempt from giving the other person a Product Disclosure Statement for the financial product if:

- (a) the other person already holds a financial product of the same kind (see section 8B-3); and
- (b) the PDS provider believes on reasonable grounds that the other person has received, or has (and knows that they have) access to:
 - (i) a Product Disclosure Statement; and
 - (ii) information provided to the other person under [equivalent of section 1017B, 1017C or 1017D], or through continuous disclosure under Chapter 6CA, of the Act;

that together set out all the information that the first-mentioned Product Disclosure Statement would be required to contain.

8B-10 Interests in self managed superannuation funds

The PDS provider is exempt from giving the other person a Product Disclosure Statement if:

- (a) section 998 (issue) or 1000 (recommendation) of the Act applies; and
- (b) the financial product is an interest in a self managed superannuation fund; and
- (c) the PDS provider believes on reasonable grounds that the client has received, or has (and knows that they have) access to, all the information that the Product Disclosure Statement would be required to contain.

8B-50 Offers of bundled contracts of insurance

The PDS provider is exempt from giving the other person a Product Disclosure Statement if:

- (a) section 998 (issue) or 999 (sale) of the Act applies; and
- (b) the financial product is a general insurance product; and
- (c) the product would be provided to the other person as a retail client; and
- (d) the financial product would be provided as part of a contract of insurance that offers more than one kind of insurance cover; and
- (e) the PDS provider reasonably believes that the other person does not intend to acquire the product.

8B-65 Other person not in this jurisdiction

The PDS provider is exempt from giving the other person a Product Disclosure Statement for the financial product if the other person is not in this jurisdiction.

8B-73 Recognised offers

- (1) The PDS provider is exempt from giving the other person a Product Disclosure Statement if:
 - (a) subsections 999(1) and (3) (offer of a financial product for sale that would amount to indirect issue) of the Act apply; and
 - (b) the issuer issued the financial product as part of a recognised offer under Chapter 8 of the Act.
- (2) The PDS provider is exempt from giving the other person a Product Disclosure Statement if:
 - (a) subsections 999(1) and (3) (offer of a financial product for sale that would amount to indirect issue) of the Act apply; and
 - (b) the financial product was issued because of the exercise of an option or the conversion of another convertible or converting security; and
 - (c) the option or convertible or converting security was issued as part of a recognised offer under Chapter 8 of the Act; and
 - (d) the exercise of the option, or the conversion of the security, did not involve a further offer.
- (3) The PDS provider is exempt from giving the other person a Product Disclosure Statement if:

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- (a) subsections 999(1) and (5) (offer of a financial product for sale that would amount to indirect off market sale by controller) of the Act apply; and
- (b) the controller sold the financial product as part of a recognised offer under Chapter 8 of the Act.

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Section 1-1

Financial Services Rules (Financial Product Disclosure) 2021

Part 1—Introduction

Division 1—Preliminary

1-1 Name

This instrument is the *Financial Services Rules (Financial Product Disclosure) 2021*.

1-10 Authority

This instrument is made under section 1098 of the *Corporations Act 2001*, and for the purposes of section 1007 of that Act.

Division 5—Definitions

5-5 Dictionary

Note: A number of expressions used in this instrument are defined in section 9 of the Act.

In this instrument:

Act means the *Corporations Act 2001*.

Issue Statement has the meaning given by subsection 10-10(1).

PDS preparer has the meaning given by subsections 10-10(3) and (4).

Sale Statement has the meaning given by subsection 10-10(2).

Part 5—Rules for financial products generally

Division 10—Product Disclosure Statement

10-10 Who must prepare the Statement

- (1) A Product Disclosure Statement is an *Issue Statement*, and must be prepared by the issuer of the financial product, unless it is a Sale Statement (see subsection (2)).
- (2) A Product Disclosure Statement that:
 - (a) is required by section 999 (sale transaction analogous to issuing financial product) of the Act; or
 - (b) is required by section 1000 (recommendation) of the Act because the relevant recommendation is to acquire the financial product by way of transfer pursuant to a sale (rather than by way of issue);

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is a ***Sale Statement***, and must be prepared by the person making the offer to sell, or receiving the offer to acquire, the financial product.

- (3) The person by whom a Product Disclosure Statement for a financial product is required to be prepared is the ***PDS preparer*** for the financial product.
- (4) For the purposes of this instrument, a Product Disclosure Statement prepared on behalf of a person is taken to be prepared by the person.
- (5) A Product Disclosure Statement for a product that is not a jointly issued product may be prepared by, or on behalf of, a single PDS preparer.

10-15 Title to be used

- (1) The title “Product Disclosure Statement” must be used on the cover of, or at or near the front of, a Product Disclosure Statement.
- (2) In any other part of the Statement, “Product Disclosure Statement” may be abbreviated to “PDS”.
- (3) If the Statement is made up of 2 or more separate documents as provided in section 10-45, subsection (1) of this section may be complied with by using the title “Product Disclosure Statement” on the cover of, or at or near the front of, at least one of those documents.

10-20 Statement must be dated

- (1) A Product Disclosure Statement must be dated. The date must be:
 - (a) if a copy the Statement has been lodged with ASIC (see [equivalent of section 1015B of the Act])—the date on which it was so lodged; or
 - (b) otherwise—the date on which the Product Disclosure Statement was prepared, or its preparation was completed, as the case requires.
- (2) If the Statement is made up of 2 or more separate documents as provided in section 10-45, then:
 - (a) this section must be complied with for each of the documents; and
 - (b) if not all of the documents are dated with the same date, the date of the Product Disclosure Statement as a whole is taken to be the most recent of the dates of those documents.

10-25 Content: general principles

- (1) A Product Disclosure Statement must include the name and contact details of:
 - (a) the issuer of the financial product; and
 - (b) in the case of a Sale Statement—the seller.
- (2) The Statement must include the statements and information required by this Division. It may also include other information and may refer to information contained in another document.

Note: A Supplementary Product Disclosure Statement containing additional information may be given with a Product Disclosure Statement that does not contain all the required

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information. The additional information is taken to be included in the Product Disclosure Statement (see subsection 1004(2) of the Act).

- (3) The information included in the Statement must be worded and presented in a clear, concise and effective manner.

Information to support decision by retail client to acquire the financial product

- (4) The Statement must include:
- (a) such information about the matters set out in subsection 10-30(1) as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product; and
 - (b) any other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.

However, information about a matter is required to be included only to the extent that the requirement is applicable to the financial product, and the Statement need not indicate that a particular requirement is not applicable to the financial product.

- (5) The Statement need not include material if it would not be reasonable for a person (who is considering, as a retail client, whether to acquire the product) to expect to find the material in the Statement. In applying this test, the matters that may be taken into account include, but are not limited to:
- (a) the nature of the product (including its risk profile); and
 - (b) the extent to which the product is well understood by the kinds of person who commonly acquire products of that kind as retail clients; and
 - (c) the kinds of things such persons may reasonably be expected to know; and
 - (d) if the product is an ED security that is not a continuously quoted security—the effect of the following provisions of the Act:
 - (i) Chapter 2M as it applies to disclosing entities;
 - (ii) sections 674 and 675; and
 - (e) how the product is promoted, sold or distributed.

Sources of required information

- (6) Information is required to be included only to the extent to which it is actually known to at least one of the following:
- (a) the PDS preparer;
 - (b) in the case of a Sale Statement—the issuer of the financial product;
 - (c) any person named in the Statement as an underwriter of the issue or sale of the financial product;
 - (d) any person who:
 - (i) is named in the Statement as a financial services licensee providing services in relation to the issue or sale of the financial product; and
 - (ii) participated in any way in the preparation of the Statement;
 - (e) any person who has given a consent referred to in [equivalent of section 1013K] in relation to a statement included in the Statement;
 - (f) any person named in the Statement, with the person's consent, as having performed a particular professional or advisory function;

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- (g) if any of the above persons is a body corporate—any director of that body corporate.

Information about relationship between financial product and other persons

- (7) The PDS preparer may include in the Statement a statement about the association between the financial product and another person, but must not include a statement creating the impression that:
 - (a) the financial product is issued or sold by that other person; or
 - (b) that the financial product is guaranteed or underwritten by that other person;if that is not the case.
- (8) If the Statement states that a person provides, or is to provide, services in relation to the financial product, the Statement must clearly distinguish between the respective roles of that person and the issuer or seller of the financial product.

10-30 Content: specific matters

- (1) For the purposes of subsection 10-20(4), the matters are the following:
 - (b) significant benefits to which a holder of the product will or may become entitled, including the circumstances in which, the times when, and the way in which, those benefits will or may be provided, and the dollar amounts of those benefits;
 - (c) significant risks associated with holding the product;
 - (d) the cost of the product, stated in dollar amounts;
 - (da) amounts (stated in dollars) that will or may be payable by a holder of the product, in respect of the product, after its acquisition, including in any of the following ways:
 - (i) by direct payment by the holder;
 - (ii) by deducting an amount from a payment by or to the holder, or from money held on the holder's behalf under the terms of the financial product;
 - (iii) by debiting an account representing the holder's interest in the financial product;and whether as a fee, expense or charge relating to a particular transaction connected with the financial product, or otherwise;
 - (db) when and how the amounts referred to in paragraph (da) will or may be payable;
 - (dc) if amounts paid in respect of the financial product are paid into a common fund with amounts paid in respect of other financial products—amounts (stated in dollars) that will or may be deducted from the fund by way of fees, expenses or charges;
 - (e) if the product will or may generate a return to a holder of the product—any commission, or other similar payments, that will or may affect the amount of the return, including the dollar amounts of the commission or payments;
 - (f) any other significant characteristics or features of the product, or of the rights, terms, conditions and obligations attaching to the product;

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- (g) the dispute resolution system that covers complaints by holders of the product, including how that system may be accessed;
 - (h) any significant taxation implications of financial products of that kind (subject to subsection (2) of this section);
 - (i) any cooling-off regime for acquisitions of the product (whether the regime is provided for by a law or otherwise);
 - (j) the matters set out in section 10-33, if the product has an investment component, or is one of the following:
 - (i) a superannuation product;
 - (ii) a managed investment product;
 - (iii) a foreign passport fund product;
 - (iv) an investment life insurance product.
- (2) Information about the matter referred to in paragraph (1)(h) (significant taxation implications) need only be general information.
- (3) If the product issuer (in the case of an Issue Statement) or the seller (in the case of a Sale Statement) makes other information relating to the financial product available to holders or prospective holders of the product, or to people more generally, the Statement must state how that information may be accessed.

10-33 Content: labour standards and environmental, social and ethical considerations

For the purposes of paragraph 10-30(1)(j), the matters are:

- (aa) the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of investments made for the purposes of the product; and
- (a) whether the product issuer does, or does not, take into account labour standards for the purpose of selecting, retaining or realising such investments; and
- (b) whether the product issuer does, or does not, take into account environmental, social or ethical considerations for that purpose; and
- (c) if the Product Disclosure Statement states that the product issuer does take into account labour standards for that purpose:
 - (i) what standards the product issuer considers to be labour standards for that purpose; and
 - (ii) to what extent the product issuer takes those standards into account in selecting, retaining or realising such investments; and
- (d) if the Product Disclosure Statement states that the product issuer does take into account environmental, social or ethical considerations for that purpose:
 - (i) what considerations the product issuer regards as environmental, social or ethical considerations for that purpose; and
 - (ii) to what extent the product issuer takes those considerations into account in selecting, retaining or realising such investments.

10-55 Notice, retention and access requirements for Statement

Note: This section does not apply to a Product Disclosure Statement if section 30-1 requires a copy of it to be lodged with ASIC.

- (1) The PDS preparer for a Product Disclosure Statement for a financial product must lodge a notice with ASIC, in electronic form, each time any of the following events happens:
 - (a) the Statement is first given as required by a provision of Part 7.8B of the Act;
 - (b) a change is made to fees and charges set out in the Statement;
 - (c) the financial product ceases to be available to be recommended or offered to new clients in circumstances where the Statement is so required to be given.
- Note: The fees and charges set out in a Product Disclosure Statement may be changed by a Supplementary Product Disclosure Statement (see section 1004 of the Act).
- (2) The notice must be lodged as soon as practicable, and in any event within 5 business days, after the event.
- (3) The PDS preparer for a Product Disclosure Statement must keep a copy of the Statement for the period of 7 years after the date of the Statement.
- (4) During that period, the PDS preparer:
 - (a) must make a copy of the Statement available to ASIC if asked to do so by ASIC; and
 - (b) must comply with any reasonable request from any other person for a copy of the Statement.

Division 15—Supplementary Product Disclosure Statement

15-1 Title to be used

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

15-5 Form

A Supplementary Product Disclosure Statement must begin with:

- (a) a statement that it is a Supplementary Product Disclosure Statement; and
- (b) an identification of the Product Disclosure Statement that it supplements; and
- (c) a statement that it is to be read together with that Product Disclosure Statement and any other specified Supplementary Disclosure Statements.

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15-10 Other requirements

Division 10 applies to a Supplementary Product Disclosure Statement in the same way as it applies to a Product Disclosure Statement, except as provided in this Division.

Division 20—Short-Form Product Disclosure Statement

20-1 Title to be used

- (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”.

20-5 Contents

- (1) The Short-Form PDS for a financial product must contain:
 - (a) a summary of the statements and information that were included in the Product Disclosure Statement for the product because of:
 - (i) subsection 10-25(1); and
 - (ii) paragraphs 10-30(1)(a), (b), (c), (d) to (dc), (e), (g) and (i); and
 - (b) a statement:
 - (i) notifying the recipient that the recipient may ask for the Product Disclosure Statement for the product; and
 - (ii) setting out how the recipient may ask for the Product Disclosure Statement.
- (2) The Short-Form PDS may also:
 - (a) include other information that is permitted to be included in the Product Disclosure Statement for the product; and
 - (b) refer to other information set out in the Product Disclosure Statement or Financial Services Guide for the product, in a way that identifies the document or the part of the document that contains the information; and
 - (c) without limiting paragraph (a), may include a statement that section 10-40 permits to be included in the Product Disclosure Statement.
- (3) The document or part identified under paragraph (2)(b) is taken for the purposes of this instrument to be included in the Short-Form PDS.

20-10 Other requirements

Division 10 applies to a Short-Form Product Disclosure Statement in the same way as it applies to a Product Disclosure Statement, except as provided in this Division.

Division 25—Supplementary Short-Form Product Disclosure Statement

25-1 Title to be used

- (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”.

25-5 Form of Supplementary Short-Form Product Disclosure Statement

A Supplementary Short-Form PDS must begin with:

- (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.

25-10 Other requirements

Division 10 applies to a Supplementary Short-Form Product Disclosure Statement in the same way as it applies to a Product Disclosure Statement, except as provided in this Division.

Part 10—Rules for particular kinds of financial product

Division 30—Lodgment with ASIC

30-1 Some Statements must be lodged with ASIC before being given

- (1) Before a Product Disclosure Statement or Supplementary Product Disclosure Statement is given to a person for the purposes of a provision of Part 7.8B of the Act, a copy of the Statement must be lodged with ASIC if:
 - (a) the following subparagraphs apply:
 - (i) the financial product is a managed investment product; and
 - (ii) the Statement states or implies that the product will be able to be traded on a financial market; and
 - (iii) the Statement meets the requirements set out in section 35-5 of this instrument; or
 - (b) the financial product is a managed investment product that can be traded on a financial market; or
 - (c) the financial product is:
 - (i) a managed investment product of an Australian passport fund; or
 - (ii) a foreign passport fund product.

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- (2) If the financial product is a managed investment product, then before the Statement is lodged with ASIC, the following persons must have consented to it being lodged:
 - (a) in any case:
 - (i) if the PDS preparer is a body corporate—every director of the PDS preparer; or
 - (ii) otherwise—the PDS preparer; and
 - (b) in the case of a sale Statement:
 - (i) if the issuer of the financial product is a body corporate—every director of the issuer; or
 - (ii) otherwise—the issuer of the financial product.
- (3) If the financial product is a foreign passport fund product, then before the Statement is lodged with ASIC, the following persons must have consented to it being lodged:
 - (a) if the operator of the fund is a body corporate—every director of the operator; or
 - (b) otherwise—the PDS preparer.
- (4) Section 10-55 (Notice, retention and access requirements for Statement) does not apply to the Statement.

30-5 Statement must mention that it has been lodged with ASIC

If section 30-1 requires a copy of a Product Disclosure Statement or Supplementary Product Disclosure Statement to be lodged with ASIC, the Statement must include a statement that:

- (a) a copy of it has been lodged with ASIC; and
- (b) ASIC takes no responsibility for its content.

30-10 Requirement to lodge documents mentioned in Statement

- (1) If section 30-1 requires a copy of a Product Disclosure Statement or Supplementary Product Disclosure Statement to be lodged with ASIC, then that section applies to each document, or part of a document, mentioned in the Statement as if it were part of the Statement.
- (2) This section does not apply if the financial product is:
 - (a) a margin loan; or
 - (b) a superannuation product to which [equivalent of Subdivision 4.2B of Division 4 of Part 7.9 of the regulations] applies; or
 - (c) a simple managed investment scheme to which [equivalent of Subdivision 4.2C of Division 4 of Part 7.9 of the regulations] applies.

Division 35—Financial products traded on a financial market

35-1 Information that need not be included in PDS for continuously quoted securities

- (1) This section applies to a Product Disclosure Statement that relates to a continuously quoted security, subject to subsection (3).
- (2) Despite anything in Division 10, information is not required to be included in the Statement if:
 - (a) in the case of a continuously quoted security that is not a security of a notified foreign passport fund—the information is included in any of the following documents:
 - (i) the annual financial report most recently lodged with ASIC by the issuer of the product;
 - (ii) any half-year financial report lodged with ASIC by the issuer of the product after the lodgment of that annual financial report and before the date of the Statement;
 - (iii) any continuous disclosure notices given by the issuer of the product after the lodgment of that annual financial report and before the date of the Statement; and
 - (aa) for a continuously quoted security of a notified foreign passport fund—the information is included in any of the following documents:
 - (i) a copy of a report for the fund for the most recent financial year for the fund, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;
 - (ii) a copy of an auditor's report that relates to the report mentioned in subparagraph (i);
 - (iii) any continuous disclosure notices given by the issuer of the product after the lodgment of the report mentioned in subparagraph (i) and before the date of the Product Disclosure Statement; and
 - (b) the Product Disclosure Statement:
 - (i) states that, the issuer of the product, as a disclosing entity, is subject to regular reporting and disclosure obligations; and
 - (ii) informs people of their right to obtain a copy of any of the documents referred to in paragraph (a) or (aa), as the case may be.

If the Statement informs people of their right to obtain a copy of the document, the issuer of the product must give a copy of the document free of charge to anyone who asks for it.

- (3) ASIC may determine by notifiable instrument that this section does not apply to Product Disclosure Statements for continuously quoted securities if ASIC is satisfied that in the previous 12 months:
 - (a) the issuer of the continuously quoted securities contravened any of the following provisions of the Act:
 - (i) Chapter 2M;
 - (ii) subsection 674(2) or 675(2);
 - (iii) [equivalent of subsection 1012DAA(10) or 1012DA(9)];

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- (iv) [equivalent of section 1308 as it applies to a notice under equivalent of subsection 1012DAA(2) or 1012DA(5)]; or
- (b) the PDS preparer for the Product Disclosure Statement contravened [equivalent of section 1016E, 1021D, 1021E or 1021J of the Act].

35-5 Requirements if Product Disclosure Statement states or implies that financial product will be able to be traded

If a Product Disclosure Statement states or implies that the financial product will be able to be traded on one or more financial markets (whether in Australia or elsewhere), the Statement must state, for each market, that:

- (a) the product is able to be traded on that market; or
- (b) an application has been made to the operator of that market to enable the product to be traded on that market; or
- (c) such an application will be made to the operator of that market within 7 days after the date of the Statement.

Concordance table

Prototype legislation	Current legislation equivalent
<i>Corporations Act 2001 (Cth)</i>	
Chapter 1—Introductory	
Part 1.2—Interpretation	
Division 1—General	
9 Dictionary	
‘arrangement’	s 761A <i>Corporations Act</i>
‘Australian financial services licence’	s 9 <i>Corporations Act</i>
‘carry on’	s 9 <i>Corporations Act</i>
‘carried on in this jurisdiction’	s 761A <i>Corporations Act</i>
‘credit’	reg 7.1.06(3)(a) <i>Corporations Regulations</i>
‘dealing’	s 9 <i>Corporations Act</i>
‘facility’	s 762C <i>Corporations Act</i>
‘financial product’	s 9 <i>Corporations Act</i>
‘financial service’	s 9 <i>Corporations Act</i>
‘financial services licensee’	s 9 <i>Corporations Act</i>
‘financial services business’	s 9 <i>Corporations Act</i>
‘financial services rules’	No equivalent
‘implementation order’	No equivalent
‘Product Disclosure Statement’	s 9 <i>Corporations Act</i>
‘scoped provisions’	No equivalent
‘Short-Form Product Disclosure Statement’	reg 7.9.61AA <i>Corporations Regulations</i>
‘Supplementary Product Disclosure Statement’	s 9 <i>Corporations Act</i>
Chapter 7—Financial services and markets	
Part 7.1—Preliminary	
Division 3—Scope of this Chapter: financial products	
763A Definition of financial product	s 763A <i>Corporations Act</i>
763A(2)	s 761B <i>Corporations Act</i>
763B How this Act applies to composite products	s 762B <i>Corporations Act</i>
765A Narrowing the scope of provisions applying to financial products	No equivalent provision
765A(1)(b)	763D(2) <i>Corporations Act</i>
Division 4—Scope of this Chapter: financial services	
766A Definition of financial service	s 766A <i>Corporations Act</i>
766J Narrowing the scope of provisions applying to financial services	No equivalent provision
766J(1)(a)	s 766A(2)(b) <i>Corporations Act</i>
766J(2)(a)	s 766A(2)(a) <i>Corporations Act</i>
766J(2)(b)	s 766A(2)(b) <i>Corporations Act</i>

Prototype legislation	Current legislation equivalent
Part 7.6—Licensing of providers of financial services Division 2—Requirement to be licensed or authorised	
911A Need for an Australian financial services licence	s 911A <i>Corporations Act</i>
911B Providing financial services on behalf of a person who carries on a financial services business	s 911B <i>Corporations Act</i>
Part 7.8B—Product disclosure for financial products other than securities Division 1—Application of this Part	
995A Application to financial products 995A(4)	ss 1010A, 1010B, 1010BA <i>Corporations Act</i> reg 7.9.07A <i>Corporations Regulations</i> (including notional s 1010A(1A) <i>Corporations Act</i>)
996 Application to invitations and offers	s 1010C(2) <i>Corporations Act</i>
997 Treatment of offers of options over financial products	s 1011C <i>Corporations Act</i>
Division 2—Product Disclosure Statements	
998 Product Disclosure Statement relating to issue of financial product	s 1012B <i>Corporations Act</i>
999 Product Disclosure Statement relating to sale transaction analogous to issuing financial product	s 1012C <i>Corporations Act</i>
1000 Product Disclosure Statement relating to personal advice recommending a particular financial product	s 1012A <i>Corporations Act</i>
1001 Civil penalty for contravening section 998, 999 or 1000	ss 1012A(5), 1012B(6), 1012C(11) <i>Corporations Act</i>
1002 Product Disclosure Statement before person elects to be covered by group financial product	s 1012H <i>Corporations Act</i>
1002A Short Form Product Disclosure Statement	reg 7.9.61AA and sch 10BA item 3.1 <i>Corporations Regulations</i> (notional s 1017H <i>Corporations Act</i>)
1003 Information must be up to date	s 1012J <i>Corporations Act</i>
1004 Supplementary Product Disclosure Statements 1004A(1) 1004A(2) 1004A(3) s 1014A <i>Corporations Act</i> s 1014D <i>Corporations Act</i> s 1014E <i>Corporations Act</i>
1007 Financial services rules to prescribe form, content and other matters relating to Product Disclosure Statements 1007(1)(i)	No equivalent provision s 1013DA <i>Corporations Act</i>
1007A Statement must be given in accordance with this Act and financial services rules	No equivalent
1008 Exemptions 1008(2)	No equivalent provision s 1012D(1) <i>Corporations Act</i>

Prototype legislation	Current legislation equivalent
Part 7.11A—Implementation orders and financial services rules	
Division 1—Implementation orders	
1097 Power to make	No equivalent provision
Division 2—Financial services rules	
1098 Power to make	No equivalent provision
1099 Minister's consent	No equivalent provision
<i>Corporations (Exclusions and Exemptions from Chapter 7) Implementation Order 2021</i>	
Part 1—Introduction	
Division 1—Preliminary	
1-1 Name	No equivalent provision
1-2 Authority	No equivalent provision
Division 2—Definitions	
1-5 Dictionary	
..... 'credit facility'	reg 7.1.06(1) <i>Corporations Regulations</i>
..... 'funeral services entity'	reg 7.6.01(7) <i>Corporations Regulations</i>
..... 'information service'	s 911A(6) <i>Corporations Act</i> reg 7.6.01B(6) <i>Corporations Regulations</i>
..... 'non-cash payment facility'	No equivalent provision, though see s 5 ('non-cash payment facility') <i>ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211</i>
Part 2—Exclusions from Chapter 7 of the Act	
Division 1—Financial products	
2-1 Enabling provision	No equivalent provision
2-5 Financial products to which Chapter 7 (except Parts 7.8A and 7.9A) does not apply	
..... 2-5(1)(a)	s 765A(1)(a) <i>Corporations Act</i>
..... 2-5(1)(b)	s 765A(1)(b) <i>Corporations Act</i>
..... 2-5(1)(c)	s 765A(1)(c) <i>Corporations Act</i>
..... 2-5(1)(ca)	s 765A(1)(ca) <i>Corporations Act</i>
..... 2-5(1)(d)	s 765A(1)(d) <i>Corporations Act</i>
..... 2-5(1)(e)	s 765A(1)(e) <i>Corporations Act</i>
..... 2-5(1)(f)	s 765A(1)(f) <i>Corporations Act</i>
..... 2-5(1)(g)	s 765A(1)(g) <i>Corporations Act</i>
..... 2-5(1)(ha)	regs 7.1.06(1)(a) <i>Corporations Regulations</i>
..... 2-5(1)(hb)	regs 7.1.06(1)(a), (3)(b)(i) <i>Corporations Regulations</i>
..... 2-5(1)(hc)	regs 7.1.06(1)(a), (3)(b)(ii) <i>Corporations Regulations</i>
..... 2-5(1)(hd)	regs 7.1.06(1)(a), (3)(b)(iv) <i>Corporations Regulations</i>
..... 2-5(1)(he)	regs 7.1.06(1)(a), (3)(b)(v)–(vii) <i>Corporations Regulations</i>
..... 2-5(1)(hf)	regs 7.1.06(1)(a), (3)(b)(viii) <i>Corporations Regulations</i>

Prototype legislation	Current legislation equivalent
2-5(1)(hg)(i)	No equivalent, but incorporates reg 7.1.06(3)(b)(x) <i>Corporations Regulations</i>
2-5(1)(hg)(ii)	regs 7.1.06(1)(a), (3)(b)(xi), (xii) <i>Corporations Regulations</i>
2-5(1)(hg)(iii)	regs 7.1.06(1)(d) <i>Corporations Regulations</i>
2-5(1)(hh)	regs 7.1.06(1)(a), (3)(b)(xiii) <i>Corporations Regulations</i>
2-5(1)(hi)	regs 7.1.06(1)(a), (3)(b)(xiv) <i>Corporations Regulations</i>
2-5(1)(hj)	s 765A(1)(h)(ii) <i>Corporations Act</i>
2-5(1)(hk)	reg 7.1.06(1)(a)(f) <i>Corporations Regulations</i>
2-5(1)(hl)	regs 7.1.06(1)(g), (h) <i>Corporations Regulations</i>
2-5(1)(i)	s 765A(1)(i) <i>Corporations Act</i>
2-5(1)(j)	s 765A(1)(j) <i>Corporations Act</i>
2-5(1)(k)	s 765A(1)(k) <i>Corporations Act</i>
2-5(1)(la)	s 765A(1)(l)(i) <i>Corporations Act</i>
2-5(1)(lb)	s 765A(1)(l)(ii) <i>Corporations Act</i>
2-5(1)(lc)	s 765A(1)(l)(iii) <i>Corporations Act</i>
2-5(1)(ld)	s 765A(1)(l)(iv) <i>Corporations Act</i>
2-5(1)(m)	s 765A(1)(m) <i>Corporations Act</i>
2-5(1)(n)	s 765A(1)(n) <i>Corporations Act</i>
2-5(1)(p)	s 765A(1)(p) <i>Corporations Act</i>
2-5(1)(q)	s 765A(1)(q) <i>Corporations Act</i>
2-5(1)(r)	s 765A(1)(r) <i>Corporations Act</i>
2-5(1)(s)	s 765A(1)(s) <i>Corporations Act</i>
2-5(1)(t)	s 765A(1)(t) <i>Corporations Act</i>
2-5(1)(va)	s 763A(1)(v)(i) <i>Corporations Act</i>
2-5(1)(vb)	s 763A(1)(v)(ii) <i>Corporations Act</i>
2-5(1)(w)	s 765A(1)(w) <i>Corporations Act</i>
2-5(1)(x)	s 765A(1)(x) <i>Corporations Act</i>
2-5(2)(a)	reg 7.1.07 <i>Corporations Regulations</i>
2-5(2)(b)	reg 7.1.07A <i>Corporations Regulations</i>
2-5(2)(c)	reg 7.1.07B <i>Corporations Regulations</i>
2-5(2)(e)	reg 7.1.07C <i>Corporations Regulations</i>
2-5(2)(f)	reg 7.1.07E <i>Corporations Regulations</i>
2-5(2)(g)	reg 7.1.07F <i>Corporations Regulations</i>
2-5(2)(h)	reg 7.1.07G <i>Corporations Regulations</i>
2-5(2)(j)	reg 7.1.07J <i>Corporations Regulations</i>
2-5(2)(k)	s 6 ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211
2-5(2)(l)	s 7 ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211
2-25 Making non-cash payments	s 763D(2) <i>Corporations Act</i>
Division 2—Financial services	
2-50 Enabling provision	No equivalent

Prototype legislation	Current legislation equivalent
2-55 Financial services to which Chapter 7 does not apply	
2-55(1)(a)	s 766A(4) <i>Corporations Act</i>
2-55(1)(b)	reg 7.1.29 <i>Corporations Regulations</i>
2-55(1)(c)	reg 7.1.30 <i>Corporations Regulations</i>
2-55(2)	reg 7.1.29(3) <i>Corporations Regulations</i>
2-55(3)	reg 7.1.29(3A) <i>Corporations Regulations</i>
2-55(4)	reg 7.1.29(4) <i>Corporations Regulations</i>
2-55(5)	reg 7.1.29(5) <i>Corporations Regulations</i>
2-55(6)	reg 7.1.29(5)(c) <i>Corporations Regulations</i>
2-75 Financial product advice: documents, information and statements required by law	ss 766B(1A), (1B), (9) reg 7.1.08 <i>Corporations Regulations</i>
2-80 Financial product advice: other exclusions	ss 766B(5)–(7B) <i>Corporations Act</i>
2-80(4)	reg 7.1.08AA <i>Corporations Regulations</i>
2-85 Dealing in a financial product	ss 766C(2A)–(7)
2-85(3)(e)	reg 7.1.34(2)(a) <i>Corporations Regulations</i>
2-85(3)(f)	reg 7.1.34(2)(b) <i>Corporations Regulations</i>
2-85(3)(g)	reg 7.1.35 <i>Corporations Regulations</i>
2-85(3)(h)	reg 7.1.35B <i>Corporations Regulations</i>
2-85(3)(j)	reg 7.1.35C <i>Corporations Regulations</i>
2-87 Dealing in a financial product: lawyer acting on instructions	reg 7.1.35A <i>Corporations Regulations</i>
2-90 Making a market for a financial product	s 766D(2) <i>Corporations Act</i>
2-95 Providing a custodial or depository service	s 766E(3) <i>Corporations Act</i>
2-95(6)	reg 7.1.40 <i>Corporations Regulations</i>
2-95(9)	reg 7.1.40(1)(h) <i>Corporations Regulations</i>
2-100 Providing a superannuation trustee service	s 766H(2) <i>Corporations Act</i>
Part 6—Exemptions from Part 7.6 of the Act	
Division 1—Exemptions from requirement to hold Australian financial services licence	
6-1 General	
<i>Item</i>	
5	s 911A(2)(b) <i>Corporations Act</i>
10	s 911A(2)(ba) <i>Corporations Act</i>
15	s 911A(2)(c) <i>Corporations Act</i> reg 7.6.01(1)(q) <i>Corporations Regulations</i>
20	s 911A(2)(d) <i>Corporations Act</i>
25	s 911A(2)(d) <i>Corporations Act</i>
30	s 911A(2)(ed) <i>Corporations Act</i>
35	s 911A(2)(ee) <i>Corporations Act</i>
40	s 911A(2)(ef) <i>Corporations Act</i>
45	s 911A(2)(ef) <i>Corporations Act</i>

Prototype legislation	Current legislation equivalent
50	s 911A(2)(eg) <i>Corporations Act</i>
55	s 911A(2)(eh) <i>Corporations Act</i>
60	s 911A(2)(ei) <i>Corporations Act</i>
65	s 911A(2)(ej) <i>Corporations Act</i>
90	s 911A(2)(f)(i) <i>Corporations Act</i>
95	ss 911A(2)(f)(ii), (iii) <i>Corporations Act</i>
100	s 911A(2)(f)(iv) <i>Corporations Act</i>
105	s 911A(2)(f)(v) <i>Corporations Act</i>
110	s 911A(2)(f)(vi) <i>Corporations Act</i>
115	s 911A(2)(f)(via) <i>Corporations Act</i>
120	s 911A(2)(f)(vib) <i>Corporations Act</i>
125	s 911A(2)(f)(vii) <i>Corporations Act</i>
130	s 911A(2)(f)(viii) <i>Corporations Act</i>
135	s 911A(2)(f)(ix) <i>Corporations Act</i>
140	s 911A(2)(f)(x) <i>Corporations Act</i>
145	s 911A(2)(g) <i>Corporations Act</i>
150	s 911A(2)(h) <i>Corporations Act</i>
155	s 911A(2)(i) <i>Corporations Act</i>
160	s 911A(2)(l) <i>Corporations Act</i>
165	reg 7.6.02AG <i>Corporations Regulations</i> (notional s 911A(2A) <i>Corporations Act</i>)
170	reg 7.6.02AG <i>Corporations Regulations</i> (notional s 911A(2B) <i>Corporations Act</i>)
175	reg 7.6.02AG <i>Corporations Regulations</i> (notional s 911A(2C) <i>Corporations Act</i>)
180	reg 7.6.02AG <i>Corporations Regulations</i> (notional s 911A(2D) <i>Corporations Act</i>)
185	reg 7.6.02AG <i>Corporations Regulations</i> (notional s 911A(2E) <i>Corporations Act</i>)
190	reg 7.6.02AG <i>Corporations Regulations</i> (notional s 911A(2F) <i>Corporations Act</i>)
195	regs 7.6.01(1)(e), (ea) <i>Corporations Regulations</i>
200	reg 7.6.01(1)(f) <i>Corporations Regulations</i>
205	reg 7.6.01(1)(fa) <i>Corporations Regulations</i>
210	reg 7.6.01(1)(g) <i>Corporations Regulations</i>
215	reg 7.6.01(1)(h) <i>Corporations Regulations</i>
225	reg 7.6.01(1)(hb) <i>Corporations Regulations</i>
230	reg 7.6.01(1)(hc) <i>Corporations Regulations</i>
235	reg 7.6.01(1)(k) <i>Corporations Regulations</i>
240	reg 7.6.01(1)(l) <i>Corporations Regulations</i>
245	reg 7.6.01(1)(la) <i>Corporations Regulations</i>
250	reg 7.6.01(1)(lb) <i>Corporations Regulations</i>
255	reg 7.6.01(1)(lc) <i>Corporations Regulations</i>
260	reg 7.6.01(1)(m) <i>Corporations Regulations</i>
265	reg 7.6.01(1)(ma) <i>Corporations Regulations</i>

Prototype legislation	Current legislation equivalent
270	reg 7.6.01(1)(mb) <i>Corporations Regulations</i>
275	reg 7.6.01(1)(n) <i>Corporations Regulations</i>
280	reg 7.6.01(1)(na) <i>Corporations Regulations</i>
285	reg 7.6.01(1)(o) <i>Corporations Regulations</i>
290	reg 7.6.01(1)(oa) <i>Corporations Regulations</i>
295	reg 7.6.01(1)(p) <i>Corporations Regulations</i>
300	reg 7.6.01(1)(pa) <i>Corporations Regulations</i>
305	reg 7.6.01(1)(s) <i>Corporations Regulations</i>
310	reg 7.6.01(1)(ta) <i>Corporations Regulations</i>
315	reg 7.6.01(1)(u) <i>Corporations Regulations</i>
320	reg 7.6.01(1)(v) <i>Corporations Regulations</i>
325	reg 7.6.01(1)(w) <i>Corporations Regulations</i>
330	reg 7.6.01(1)(z) <i>Corporations Regulations</i>
335	s 6 ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38
340	s 6 ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38
6-5 Trustee of a superannuation entity	
<i>Item</i>	
1	s 911A(2)(ga) <i>Corporations Act</i>
5	s 911A(2)(j) <i>Corporations Act</i>
15	regs 7.6.01(1)(b), (ba), (c), (ca) <i>Corporations Regulations</i>
20	regs 7.6.01(1)(d), (da) <i>Corporations Regulations</i>
6-10 General financial product advice provided by the media	s 911A(2)(ea)–(ec) <i>Corporations Act</i> reg 7.6.01B <i>Corporations Regulations</i>
6-15 Claims handling and settling service in relation to an insurance product	
6-15(2)(a)–(e)	s 911A(2)(ek)(i)–(v) <i>Corporations Act</i>
6-15(2)(f)	s 911A(2)(ek)(vi) <i>Corporations Act</i> reg 7.6.01AAAA <i>Corporations Regulations</i>
6-15(3)	s 911A(2)(el)(ii) <i>Corporations Act</i> reg 7.6.01AAAB <i>Corporations Regulations</i>
6-15(4)	s 911A(2)(em) <i>Corporations Act</i>
6-15(5)	s 911A(2)(en) <i>Corporations Act</i>
Part 8B—Exclusions and exemptions from Part 7.8B of the Act	
Division 1—Exclusions from Part 7.8B	
Division 2—Exemptions from giving Product Disclosure Statement	
8B-1 Exemptions	No equivalent provision

Prototype legislation	Current legislation equivalent
8B-3 Condition for determining when financial products are of the same kind	
..... s 8B-3(a) s 1012D(10)(b) <i>Corporations Act</i>
..... s 8B-3(b) sch 10A item 1.1 <i>Corporations Regulations</i> (notional s 1012D(10)(b) <i>Corporations Act</i>)
..... s 8B-3(c) s 1012D(10)(a) <i>Corporations Act</i>
8B-5 Client has, or has access to, up to date information	s 1012D(2) <i>Corporations Act</i>
8B-10 Interests in self managed superannuation funds	s 1012D(2A) <i>Corporations Act</i>
8B-50 Offers of bundled contracts of insurance	reg 7.9.07D <i>Corporations Regulations</i> (notional s 1012D(9G) <i>Corporations Act</i>)
8B-65 Other person not in this jurisdiction	reg 7.9.07FB <i>Corporations Regulations</i> (notional s 1012D(8A) <i>Corporations Act</i>)
8B-73 Recognised offers	sch 10AA items 2.1, 2.2 <i>Corporations Regulations</i> (notional ss 1012C(6A), (6B), (8A) <i>Corporations Act</i>)
Financial Services Rules (Financial Product Disclosure) 2021	
Part 1—Introduction	
Division 1—Preliminary	
1-1 Name	No equivalent provision
1-10 Authority	No equivalent provision
Division 5—Definitions	
5-5 Dictionary	No equivalent provision
Part 5—Rules for financial products generally	
Division 10—Product Disclosure Statement	
10-10 Who must prepare the Statement	s 1013A <i>Corporations Act</i>
..... s 10-10(5) reg 7.9.07J <i>Corporations Regulations</i> (notional s 1013A(3A) <i>Corporations Act</i>)
10-15 Title to be used	s 1013B <i>Corporations Act</i>
10-20 Statement must be dated	s 1013G <i>Corporations Act</i>
10-25 Content: general principles	ss 1013C, 1013D, 1013E, 1013F <i>Corporations Act</i>
10-30 Content: specific matters	ss 1013D(1)(b)–(j), (2), (2A) <i>Corporations Act</i>
10-33 Content: labour standards and environmental, social and ethical considerations	s1013D(1)(l) <i>Corporations Act</i> reg 7.9.14C <i>Corporations Regulations</i>
10-55 Notice, retention and access requirements for Statement	s 1015D <i>Corporations Act</i>
Division 15—Supplementary Product Disclosure Statement	
15-1 Title to be used	s 1014B <i>Corporations Act</i>
15-5 Form	s 1014C <i>Corporations Act</i>
15-10 Other requirements	s 1014F <i>Corporations Act</i>
Division 20—Short-Form Product Disclosure Statement	
20-1 Title to be used	sch 10BA item 3.1 <i>Corporations Regulations</i> (notional s 1017J <i>Corporations Act</i>)

Prototype legislation	Current legislation equivalent
20-5 Contents	sch 10BA item 3.1 <i>Corporations Regulations</i> (notional s 1017I <i>Corporations Act</i>)
20-10 Other requirements	sch 10BA item 3.1 <i>Corporations Regulations</i> (notional s 1017K <i>Corporations Act</i>)
Division 25—Supplementary Short-Form Product Disclosure Statement	
25-1 Title to be used	sch 10BA item 3.1 <i>Corporations Regulations</i> (notional s 1017M <i>Corporations Act</i>)
25-5 Form of Supplementary Short-Form Product Disclosure Statement	sch 10BA item 3.1 <i>Corporations Regulations</i> (notional s 1017N <i>Corporations Act</i>)
25-10 Other requirements	sch 10BA item 3.1 <i>Corporations Regulations</i> (notional s 1017Q <i>Corporations Act</i>)
Part 10—Rules for particular kinds of financial product Division 30—Lodgment with ASIC	
30-1 Some Statements must be lodged with ASIC before being given	s 1015B <i>Corporations Act</i>
30-5 Statement must mention that it has been lodged with ASIC	s 1013J <i>Corporations Act</i>
30-10 Requirements to lodge documents mentioned in Statement	reg 7.9.15DC <i>Corporations Regulations</i>
Division 35—Financial products traded on a financial market	
35-1 Information not required to be included in PDS for continuously quoted securities	s 1013FA <i>Corporations Act</i>
35-5 Requirements if Product Disclosure Statement states or implies that financial product will be able to be traded	s 1013H <i>Corporations Act</i>