



Advisers Take Note – ASIC announces new record keeping obligations

By ,

ASIC has announced an amendment to Class Order CO14/923 which imposes new obligations upon authorised representatives (**Advisers**) to not only maintain records but to provide access to those records to licensees.

ASIC has modified section 912G(1) of the Corporations Act by introducing new sections **912G(3)-(7)**, which includes a direct obligation on Advisers to keep records and **give the records to the licensee if the licensee requests the records**.

Obligations on Advisers

Under section 912G(4), Advisers have a statutory obligation to, not only maintain records for a period of 7 years, but to also provide access to those records to a licensee, regardless of whether the Adviser is an authorised representative of the licensee at the time of request.

Importantly, these obligations are **in addition** to the record keeping obligations imposed on licensees and continue even after the Adviser ceases to be authorised by a licensee. These obligations remain unless the client records have already been given by the Adviser to the licensee.

If an Adviser fails or refuses to comply with a proper request from a licensee for access to client records, then such failure or refusal may constitute a breach of the Corporations Act, for which penalties may apply.

Obligations on licensees

The new section 912G(3) also clarifies the obligation upon the licensee which is, in addition to ensuring that records are kept for a period of 7 years, they must also ensure that the records are accessible by the licensee at all times during that period, in a way that enables the licensee to produce the records.

This obligation places the onus on the licensee to have systems in place which will enable the licensee to access the client records at all times. One method of complying with this requirement is to ensure that a centralised system of client management is in place across the licensee group, so that all client records are maintained by the Adviser on the centralised system at the same time as the Adviser's own records.

Another method may be to oblige the Adviser to provide the licensee all client records at the time the Adviser moves to another licensee, together with a written confirmation that all of the Adviser's client records have been provided to the licensee pursuant to section 912G(4)(b).

Background

Section 912G provides record keeping requirements for licensees when personal advice is given to retail clients by either the licensee or their Advisers. Licensees must ensure that records are kept that demonstrate compliance of the best interest duties and related obligations under the Act. The records must be retained for at least 7 years.

Under current arrangements some Advisers retain client records on behalf of the licensee. However, there are many instances where the Adviser has moved to a new a licensee and the former licensee is unable to review the advice as the licensee no longer has access to those records or the Adviser is unwilling to provide access to those documents. If a complaint is made in relation to advice provided by the AR under the former licensee, it is then difficult to determine whether the advice complies with the law or whether the client has suffered a loss.

The new sections 912G(3)-(7) seeks to alleviate these issues by ensuring that both the Adviser and the licensee have the obligations to retain records and that the Adviser must give access to those records to the licensee at all relevant times.

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1. Section 912G is inserted into the Corporations Act by ASIC through Class Order CO14/923.

Should you wish to discuss any matters arising out of this article, please contact the author:

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