

Division 10—Restrictions on use of terminology

923A Restriction on use of certain words or expressions

- (1) A person contravenes this subsection if:
- (a) either:
 - (i) the person carries on a financial services business or provides a financial service (whether or not on behalf of another person); or
 - (ii) another person (the *provider*) provides a financial service on behalf of the first person; and
 - (b) the first person assumes or uses, in this jurisdiction, a restricted word or expression in relation to that business or service.

Note 1: For the meanings of *restricted word or expression* and *assume or use*, see subsection (5).

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

- (2) However, it is not a contravention of subsection (1) for a person to assume or use a restricted word or expression if:
- (a) the person does not receive any of the following:
 - (i) commissions (apart from commissions that are rebated in full to the person's clients);
 - (ii) forms of remuneration calculated on the basis of the volume of business placed by the person with an issuer of a financial product;
 - (iii) other gifts or benefits from an issuer of a financial product which may reasonably be expected to influence the person; and
 - (b) none of the following persons receives any of the things covered by paragraph (a):
 - (i) the person's employer (if any);
 - (ii) if the person provides the financial service on behalf of another person (as mentioned in subparagraph (1)(a)(i))—that other person;
 - (iii) any other person identified (whether by reference to a class of person or otherwise) in regulations made for the purposes of this subparagraph; and

- (c) if subparagraph (1)(a)(ii) applies in relation to a financial service—the provider mentioned in that subparagraph does not receive any of the things mentioned in paragraph (a) of this subsection in respect of the provision of that service; and
- (d) in carrying on a financial services business, or providing financial services, the person operates free from direct or indirect restrictions relating to the financial products in respect of which they provide financial services; and
- (e) in carrying on that business, or providing those services, the person operates without any conflicts of interest that might:
 - (i) arise from their associations or relationships with issuers of financial products; and
 - (ii) reasonably be expected to influence the person in carrying on the business or providing the services.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) The reference in paragraph (2)(d) to direct or indirect restrictions does not include a reference to restrictions imposed on a person by:
 - (a) the conditions on an Australian financial services licence; or
 - (b) this Chapter or regulations made for the purposes of this Chapter.
- (4) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence based on subsection (1) of this section, the person is guilty of such an offence in respect of:
 - (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).
- (5) In this section:
 - (a) a reference to a restricted word or expression is a reference to:
 - (i) the word *independent, impartial* or *unbiased*; or
 - (ii) any other word or expression specified in the regulations as a restricted word or expression for the purposes of this section; or

Section 923B

- (iii) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and
- (b) a reference to a word or expression being assumed or used includes a reference to the word or expression being assumed or used:
 - (i) as part of another word or expression; or
 - (ii) in combination with other words, letters or other symbols.

923B Restriction on use of certain words or expressions unless authorised in licence conditions

- (1) A person contravenes this subsection if:
- (a) the person carries on a financial services business or provides a financial service (whether or not on behalf of another person); and
 - (b) the person assumes or uses, in this jurisdiction, a restricted word or expression in relation to that business or service; and
 - (c) the person is not authorised, by the conditions on an Australian financial services licence held by the person, or by a person in relation to whom they are a representative, to assume or use that word or expression (see subsection (3)).

Note 1: For the meanings of *restricted word or expression* and *assume or use*, see subsection (4).

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

- (2) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence based on subsection (1), the person is guilty of such an offence in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).
- (3) ASIC can only impose a condition on an Australian financial services licence authorising a person to assume or use a restricted word or expression in these circumstances: