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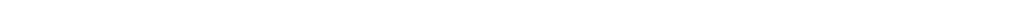
TREASURY LAWS AMENDMENT (2024 MEASURES NO. 1) BILL 2024

EXPOSURE DRAFT EXPLANATORY MATERIALS

(Circulated by authority of the Assistant Treasurer and Minister for Financial Services,
the Hon Stephen Jones MP)

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ADI	Authorised deposit-taking institution
ATO	Australian Taxation Office
Corporations Act	<i>Corporations Act 2001</i>
FSG	Financial Services Guide
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
Review	Quality of Advice Review (Dec 2022)
FSG	Financial Services Guide
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SIS Regulations	<i>Superannuation Industry (Supervision) Regulations 1994</i>

Chapter 1: Delivering Better Financial Outcomes – reducing red tape and other measures

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Outline of chapter

- 1.1 Schedule 1 makes various amendments to the Corporations Act, the SIS Act and other Acts to increase accessibility and affordability of personal financial advice by improving the experience for consumers and removing unnecessary regulatory red tape. It implements the Government’s response to the following recommendations of the Quality of Advice Review:
- recommendation 7: clarifying the legal basis in the SIS Act for superannuation trustees to charge individual members for financial advice from their superannuation account, and clarify associated tax consequences under the ITAA 1997;
 - recommendation 8: streamlining ongoing fee renewal and consent requirements, including removing the requirement to provide a fee disclosure statement, in the Corporations Act;

- recommendation 10: providing more flexibility on how FSG requirements can be met under the Corporations Act;
- simplifying and clarifying the provisions governing conflicted remuneration in the Corporations Act, including:
 - recommendations 13.1 and 13.3: clarifying that monetary or non-monetary benefits given by a client are not conflicted remuneration along with the removal of consequential exceptions;
 - recommendation 13.2: introducing a specific exception to the conflicted remuneration provisions that permits a superannuation fund trustee to pay a fee for personal advice where the member requests the trustee to pay the fee from their superannuation account;
 - recommendation 13.4: removing the exception to conflicted remuneration rules for the issue of financial products where advice has not been provided in the previous 12 months;
 - recommendation 13.5: removing the exception to conflicted remuneration rules for agents or employees of Australian Authorised Deposit-Taking Institutions (ADIs); and
- recommendations 13.7 to 13.9: introducing new standardised consent requirements for life risk insurance, general insurance and consumer credit insurance commissions.

1.2 These reforms form part of the Government’s Delivering Better Financial Outcomes reform package as announced in the Assistant Treasurer’s press release *Delivering better financial outcomes - roadmap for financial advice reform* of 13 June 2023.

Context of amendments

- 1.3 The 2019 *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* recommended that a review be undertaken of measures which have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice.
- 1.4 The Quality of Advice Review (the Review) considered how regulatory settings could better enable the provision of high quality, accessible and affordable financial advice to retail clients. The Review’s final report was provided to the Government on 16 December 2022 and made 22 specific recommendations.
- 1.5 This Bill implements 11 recommendations, delivering the first tranche of the Government’s Delivering Better Financial Outcomes package of reforms. The Bill includes amendments that will improve the process of providing financial advice by providing legal certainty for the payment of adviser fees from a member’s superannuation fund account, removing onerous red tape that adds

to the cost of providing advice without a concurrent consumer benefit, and improving consent requirements for certain insurance commissions.

- 1.6 Consultation has been ongoing on the other recommendations, including the recommendations which the Government has agreed in-principle.

Summary of new law

- 1.7 Schedule 1 amends the Corporations Act, the SIS Act and other Acts to increase accessibility and affordability of personal financial advice by removing regulatory red tape for financial advisers. It implements the Government's response to the following recommendations of the Review, including:
- recommendation 7: clarifying the legal basis in the SIS Act for superannuation trustees to charge individual members for financial advice from their superannuation account, and clarify associated tax consequences in the ITAA 1997;
 - recommendation 8: streamlining ongoing fee renewal and consent requirements and removing the requirement to provide a fee disclosure statement in the Corporations Act;
 - recommendation 10: providing more flexibility on how FSG requirements can be met under the Corporations Act, to allow providers of personal advice to make FSG information publicly available on their website;
 - simplifying and clarifying the provisions governing conflicted remuneration in the Corporations Act, including:
 - recommendations 13.1 and 13.3: clarifying that monetary or non-monetary benefits given by a client are not conflicted remuneration along with the removal of consequential exceptions;
 - recommendation 13.2: introducing a specific exception to the conflicted remuneration provisions that permits a superannuation fund trustee to pay a fee for personal advice where the member requests the trustee to pay the fee from their superannuation interest;
 - recommendation 13.4: removing the conflicted remuneration exception for the issue of financial products or advice where advice about the product has not been provided in the previous 12 months;
 - recommendation 13.5: removing the exception to conflicted remuneration rules for agents or employees of Australian ADIs; and

- recommendations 13.7 to 13.9: standardising consent requirements for life risk insurance, general insurance and consumer credit insurance commissions in the Corporations Act.

Detailed explanation of new law

Part 1 – Deduction of adviser fees from superannuation

1.8 Part 1 of this Schedule of the Bill:

- Implements recommendation 7 of the Review by amending section 99FA of the SIS Act to facilitate better access to superannuation and retirement advice by clarifying the legal basis of existing practices in which superannuation trustees pay advice fees from a member’s superannuation account at the request of the member; and
- Amends the ITAA 1997 to provide legal certainty that payments of certain personal advice fees by a superannuation trustee from the member’s interest in the fund are deductible from the superannuation fund’s assessable income (to the extent they are not incurred in gaining or producing the fund’s exempt or non-assessable non-exempt income), and are not a superannuation benefit for the relevant members.

Division 1: SIS Act amendments

Current law and Review

Recommendation 7 – Deduction of adviser fees from superannuation

Superannuation trustees should be able to pay a fee from a member’s superannuation account to an adviser for personal advice provided to the member about the member’s interest in the fund on the direction of the member.

The objective of this recommendation is to provide superannuation fund trustees with more certainty about paying advice fees agreed between a member and their financial adviser from the member’s superannuation account and ensure that adviser fees are not paid in breach of the SIS Act and are not taxable benefits for members.

- 1.9 The SIS Act provides for prudential management and supervision of certain superannuation funds. A trustee of a superannuation fund has obligations under
- 1.10 the SIS Act to maintain the fund for the benefit of members, which guide how the trustee manages assets and expenses of the fund. This includes how the

trustee charges or pays fees incurred in connection with the fund, such as for financial advice to members, on which the SIS Act contains detailed provisions.

- 1.11 A number of arrangements facilitate members of a superannuation fund obtaining advice from financial advisers about their superannuation interests. These can include:
- the trustee engaging an adviser to provide simple, non-ongoing advice to its members, with an administration fee collectively charged to all members consistent with section 99F of the SIS Act (also referred to as intra-fund advice);
 - an adviser providing advice to a member individually (having been engaged by the trustee or by the member), and the trustee pays the fee for the advice from the member's superannuation interest.
- 1.12 These amendments clarify the law in relation to the second arrangement, in particular section 99FA of the SIS Act.
- 1.13 Section 99FA of the SIS Act applies to financial advice fees charged directly to individual members.
- 1.14 Section 99FA was inserted by the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2020* with the intention of preventing a superannuation trustee from charging a member for the cost of financial product advice provided to the member unless the cost is to be paid in accordance with the terms of an arrangement entered into by the member, the member has expressly consented in writing to being charged for the cost of providing the financial advice, and the trustee has the written consent, or a copy of the written consent.
- 1.15 However, the Review found section 99FA does not provide a clear legal basis for a superannuation trustee to pay advice fees from a member's superannuation interest and recommended that it be replaced.
- 1.16 Recommendation 7 of the Review was that superannuation trustees should be able to pay a fee from a member's superannuation account to an adviser for personal advice provided to the member about the member's interest in the fund on the direction of the member. This would provide superannuation fund trustees with more legal certainty about paying advice fees agreed between a member and their financial adviser from the member's superannuation account and ensure that these fees are not taxable benefits for members.

New prohibition against charging certain costs against members' interests

- 1.17 Division 1 repeals and replaces section 99FA of the SIS Act to provide greater clarity about the basis and circumstances in which a trustee can charge a fee for financial product advice from a member's superannuation interest.
[Schedule 1, item 1, section 99FA of the SIS Act]

- 1.18 In particular, subsection 99FA(1) replaces the current language “must not directly or indirectly pass on the cost of providing financial product advice” with “must not charge against a member’s interest in the fund the cost of providing financial product advice”. The new language better targets the provision to prohibiting certain costs being charged against members’ interests, to improve understanding about the range of arrangements covered.
- 1.19 An explanatory note to subsection 99FA(1) also clarifies that a trustee is not required to agree to the member’s request to charge the relevant costs even when the requirements are satisfied. This discretion reflects the specific language of recommendation 7 in the Review, and ensures the trustee has flexibility to meet their other obligations under the SIS Act. For example, a trustee could decline the member’s request if in their view it does not relate to the member’s beneficial interest in the fund.
- 1.20 Subsection 99FA(1) sets out requirements to be satisfied before the trustee can charge the cost of advice against the member’s interest in the fund, which will be explored in more detail below:
- the financial product advice is personal advice and is wholly or partly about the member’s interest in the fund;
 - the fee is only paid to the extent the advice relates to the member’s interest;
 - the trustee charges the cost in accordance with the terms of a written request or written consent of the member;
 - the trustee has the member’s request or consent, or a copy of it; and
 - particular requirements for consent and related matters are met, depending whether the advice is provided under an ongoing fee arrangement or another arrangement.

[Schedule 1, item 1, subsection 99FA(1) of the SIS Act]

Advice requirements

- 1.21 The first requirement is that the financial product advice is personal advice and is wholly or partly about the member’s interest in the fund.
[Schedule 1, item 1, paragraph 99FA(1)(a) of the SIS Act]
- 1.22 This requirement continues the focus of the previous section on financial product advice, and adds clarity that it must be personal advice. “Personal advice” has the same meaning as in Chapter 7 of the Corporations Act, which means financial product advice that is given or directed to a person (including by electronic means) in circumstances where:
- the provider of the advice has considered one or more of the person’s objectives, financial situation and needs (with certain exemptions); or
 - a reasonable person might expect the provider to have considered one or more of those matters.

- 1.23 This requirement also focuses on the advice relating to the member’s interest in the fund. The new text replaces repealed text which required the advice be “in relation to a member of the fund”. The new approach is more targeted, and ensures the advice relates to the member’s interest in the fund specifically, rather than to the member or their other interests more broadly. An example of such advice is how the member’s superannuation is used to produce income in retirement.
- 1.24 The words “wholly or partly” are intended to clarify that the advice to the member need not only concern their superannuation interest, and may deal with other matters.
- 1.25 The second requirement is that the amount charged against the member’s interest does not exceed the cost of providing financial product advice about the member’s interest in the fund. This requirement complements the first to ensure that, where advice is about multiple matters, the trustee only pays the portion of the cost of the advice that is about the member’s interest.
[Schedule 1, item 1, paragraph 99FA(1)(b) of the SIS Act]

Written consent requirements

- 1.26 The third requirement is that the trustee charges the cost in accordance with the terms of a written request or written consent of the member. This reflects the current requirement in paragraph 99FA(1)(b), with two changes:
- The concept of “passing the cost on” is replaced with “charging the cost”, reflecting concerns about this language described above in paragraph 1.18 above; and
 - “Written request” of the member is included in addition to written consent to better reflect the policy intent that the payment should only be made from a member’s superannuation interest on their initiation (except in relation to intra-fund advice fees – see paragraph 0 above).

[Schedule 1, item 1, paragraph 99FA(1)(c)]

- 1.27 The fourth requirement is that the trustee must have the member’s written request for or consent to the payment of the advice fee, or a copy of it. This continues the equivalent requirement in the current law, and supports good practice and recordkeeping.
[Schedule 1, item 1, paragraph 99FA(1)(f) of the SIS Act]

Ongoing fee arrangements and other requirements

- 1.28 The final requirement, achieved by two alternate paragraphs, is that particular requirements for consent and related matters are met, depending on whether the advice is provided under an ongoing fee arrangement or another arrangement.
- 1.29 Paragraph 99FA(1)(d) applies where the arrangement under which the advice is provided is an ongoing fee arrangement. Any applicable requirements of Division 3 of Part 7.7 of the Corporations Act must be met in relation to the

arrangement and, if relevant, the deduction of ongoing fees.

[Schedule 1, item 1, paragraph 99FA(1)(d) of the SIS Act]

- 1.30 An ongoing fee arrangement has the same definition as in that Part 7.7 of the Corporations Act.
[Schedule 1, item 1, section 10 of the SIS Act; sections 962A and 962B of the Corporations Act]
- 1.31 Division 3 of Part 7.7A of the Corporations Act provides protection to consumers of financial product advice who agree to pay advice fees on an ongoing basis, including where those fees are deducted from certain accounts. Part 2 of this Bill also makes amendments to this Division.
- 1.32 Paragraph 99FA(1)(d) replicates the current requirement in paragraph 99FA(1)(c), and provides further protection for members by ensuring that funds can only charge ongoing advice fees to members' superannuation interests when the member is protected by the requirements of the Corporations Act that apply to arrangements for those types of ongoing fees.
- 1.33 The new paragraph (1)(d) references any applicable requirements under Division 3 of the Corporations Act, which regulates ongoing fee arrangements and related deduction arrangements, and includes consent requirements. This approach ensures consistency between the amendments made in the SIS Act and the Corporations Act for informed consent, as a consumer protection.
- 1.34 Paragraph 99FA(1)(e) applies where the arrangement under which the advice is provided is not an ongoing fee arrangement and imposes separate consent requirements for the written request or written consent. These separate consent requirements are set out in subsection (2).
- 1.35 The principal purpose of this requirement, which expands the current paragraph 99FA(1)(d), is to provide for the reimbursement of one-off advice for members, while ensuring informed consent of the member has been obtained in relation to the advice. New additional consent requirements are also imposed to better align these arrangements with the amendments made by Part 2 of the Bill.
[Schedule 1, item 11, paragraph 99FA(1)(d) of the SIS Act]
- 1.36 New subsection 99FA(2) requires that the written request or written consent must include:
- the name and contact details of the member;
 - the name and contact details of the provider of the financial product advice;
 - the name of the fund from which the cost of the advice is requested to be paid;
 - a brief description of the services the member is entitled to receive under the arrangement;

- a request from, or consent by, the member for the cost of providing the advice to be paid by the trustee and charged against the member's interest in the fund;
- either the amount to be paid for providing the advice or if that amount cannot be determined at the time the request is made or the consent is given, a reasonable estimate of the amount to be paid for providing the advice and an explanation of the method used to work out the estimate;
- the member's signature; and
- the date the request is made.

[Schedule 1, item 1, subsection 99FA(2) of the SIS Act]

1.37 These matters demonstrate informed consent. These matters have been drawn from ASIC instrument 2021/126, which currently provides requirements for written consent for the purpose of current section 99FA. They broadly align with the new consent requirements for ongoing fee arrangements in the Corporations Act (see Part 2 of this Bill), adjusted for the difference between ongoing and one-off arrangements and for processes initiated by the member.

1.38 ASIC may approve a form for this request or consent. If a form is approved, the request or consent must be in the approved form. It is important to provide this power to build consistency across industry, and to assist members in managing their superannuation affairs by standardising documentation.

[Schedule 1, item 1, subsections 99FA(3) and (4) of the SIS Act]

Other amendments

1.39 New subsection 99FA(5) clarifies that, for the purposes of the SIS Act and the SIS Regulations, the payment of the financial product advice by the fund in accordance with subsection (1) is taken to be a direct cost of operating the fund.

1.40 A new Note 2 under subsection (1) refers readers to Division 5 of Part 2C of the SIS Act, containing fee rules for MySuper products. This reflects that the amendments in this Part do not affect the MySuper regime, including its definition of "advice fee" and prohibition against charging ongoing advice fees to MySuper products.

[Schedule 1, item 1, note 2 to subsection 99FA(1); Subsection 29V(8) of the SIS Act]

1.41 Finally, under subsection 99FA(6), a cost of providing financial product advice shared between the relevant member and other members of the fund is taken not to be authorised by section 99FA. This replicates and clarifies the operation of the current subsection 99FA(3).

[Schedule 1, item 1, subsection 99FA(6)]

Commencement, application and transitional provisions

Commencement

- 1.42 The amendments to the SIS Act made by this Division commence the day after Royal Assent (“commencement day”).

Application

- 1.43 These amendments to the SIS Act apply to costs charged on or after the “start day”, which is defined as the day 6 months after the commencement day. Certain other definitions are provided to distinguish the current provision from its replacement.

[Schedule 1, item 2(1)]

- 1.44 This delayed application aligns with transitional arrangements for connected amendments which are made by Part 2 of this Schedule.

- 1.45 However, to minimise impacts for arrangements in force before the start day, transitional arrangements are made in relation to consent to an arrangement which is:

- entered into by a member of a regulated superannuation fund under which financial product advice is provided in relation to the member;
- in force immediately before the start day; and
- with a written consent that meets, or would meet, all requirements of section 99FA as it applies currently.

- 1.46 For such transitional arrangements, the written consent is taken to satisfy the new written consent requirements of new section 99FA until the earlier of:

- a day on which the arrangement is terminated (including by force of law), varied, or renewed; or
- the end of the period of 12 months beginning on the start day.

[Schedule 1, item 2(3)]

- 1.47 In practice, this means an arrangement entered into before the start day in accordance with the consent requirements of old section 99FA can continue to rely on that consent until the end of the period 12 months after the start day. At this later point in time, the arrangement needs to be covered by consent that meets the requirements of the new section 99FA. However, if the arrangement is varied or renewed within that transitional 12 months, the replacement arrangement needs to comply with the requirements of the new section 99FA.

- 1.48 This provision does not apply to new arrangements entered into for the first time after the start day. This includes where an arrangement in force before the start day terminates, and a new arrangement is put in place to replace it (whether a new, renewed, or varied arrangement).

- 1.49 The provision only makes allowances in relation to written consent in the transitional period. The other requirements of section 99FA not related to the written consent will apply in respect of costs charged after the start day.

Division 2: ITAA 1997 amendments

- 1.50 Division 2 makes amendments to the ITAA 1997 to ensure that financial advice fees charged under section 99FA of the SIS Act:
- are tax-deductible for the fund; and
 - are not treated as superannuation benefits of the member.
- 1.51 Where financial advice fees charged under section 99FA of the SIS Act are treated as tax-deductible expenses of the fund, section 8-1 of the ITAA 1997, which deals with general deductions, applies. This requires that such expenses have the essential character of an outgoing incurred in gaining or producing assessable income, or having the character of an operating or working expense of a business or is an essential part of the cost of the fund's business operations. This measure is intended to provide more certainty for industry and provide a specific deduction for such fees with clear criteria. Section 8-1 will continue to operate to provide a general deduction on its terms where relying on the specific deduction is not preferable.

Specific deduction for superannuation funds

- 1.52 Item 4 of this Part inserts a new item in the table in section 295-490(1) of the ITAA 1997 to provide a specific deduction which superannuation entities may claim for certain amounts paid.

Who can claim the deduction?

- 1.53 This specific deduction is only available to complying superannuation funds (CSF) and non-complying superannuation funds (N-CSF) entities. The deduction is not available to any other entity, including the fund member or the adviser.

[Schedule 1, item 4, item 5 of the table in subsection 295-490(1); section 295-35 of ITAA 1997]

- 1.54 A complying superannuation fund is defined by section 995-1 of the ITAA 1997 and section 45 of the SIS Act, as a fund that APRA has given a notice to under section 40 of the SIS Act in relation to the current or a previous income year.
- 1.55 A non-complying superannuation fund is in effect any other superannuation fund within the relevant definition in section 10 of the SIS Act.

What can be deducted?

- 1.56 Amounts can be deducted that meet the criteria discussed below.
- 1.57 First, the amount is paid by the superannuation provider of the fund. This means the trustee.
- 1.58 Second, the amount is for a cost incurred because of the provision of personal advice (as explained at paragraph 1.222) to a member of the fund about the

member's interest in the fund. The cost can be incurred by the fund, or, incurred by the member and subsequently paid by the fund.

- 1.59 Third, the amount must be paid at the request, or with the consent of, the member. A charge authorised by the new section 99FA of the SIS Act, which can only be made at the request or with the consent of the member, will meet this requirement, but it is not necessary for the other requirements of that section to be satisfied before the deduction is available, provided the criteria set out here is satisfied. This means, for example, a deduction under this new section could be for amounts charged against other members' interests ('intra-fund' advice).
- 1.60 Fourth, the trustee must have a copy of the written request or consent. The request or consent will constitute a record for tax purposes and must ordinarily be kept for 5 years.
- 1.61 Finally, the amount must not be incurred in relation to gaining or producing exempt income or non-assessable non-exempt income.
[Schedule 1, item 4, item 5 of the table in subsection 295 -490(1) 35 of ITAA 1997]
- 1.62 This criterion replicates the operation of section 8-1, which prevents deductions under that section to the extent that they are incurred in relation to gaining or producing exempt income or non-assessable exempt income. If, in specific circumstances, paying the amount is incurred partly in producing assessable income and partly in gaining non-assessable or exempt income, the amount must be apportioned between types of income and only amounts attributable to assessable income can be deducted (unless otherwise provided for under the Act).
- 1.63 As per section 6-20 of the ITAA 1997, exempt income means assessable income (ordinary income or statutory income) made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law. The most important type of income of superannuation funds that is exempt income is income from segregated current pension assets or income from other assets used to meet current pension liabilities (in brief, this is income in respect of retirement phase superannuation income stream benefits).
- 1.64 As per section 6-23 of the ITAA 1997, non-assessable non-exempt income is the same as exempt income except where a provision also makes it not assessable income.

For which income year?

- 1.65 This new deduction can only be claimed in the income year that the superannuation provider paid the amount.

Amendments to guidance provisions

- 1.66 Item 3 of this Part adds in a new item into the table in section 12-5. This table is simply a guide that gives taxpayers an overview of the types of deductions available to types of entities.

[Schedule 1, item 3 of the Bill, table in subsection section 12-5 of the ITAA 1997]

Clarification that an advice fee payment is not a superannuation benefit

- 1.67 The Review raised concerns that, if section 99FA is not complied with or an amount is paid out by a superannuation fund to pay an advice fee for advice to a member, the payment could be treated as a benefit paid to the member, and if the member had not satisfied a condition of release, that benefit would be taxable in the hands of the member.
- 1.68 Section 307-10 of the ITAA 1997 lists payments that are not superannuation benefits. This section is updated to cover the amount of an advice fee charged to a member by their superannuation fund. The amendment provides that such an amount paid by the superannuation fund is not a superannuation benefit if a deduction is available to the fund under the new specific deduction inserted into section 295-490.

[Schedule 1, item 5, paragraph 307-10(e) of the ITAA 1997]

- 1.69 As noted above, the new specific deduction in section 295-490(1) covers all of the fee arrangements explained above at paragraph 1.11 above (in brief, collectively charged fees as well as fees charged to individual members). It is intended that section 307-10 will apply such that payment of fees charged under these arrangements will not be considered to be payment of superannuation benefits.

Commencement, application and transitional provisions

Commencement

- 1.70 The amendments to the ITAA 1997 provided by this Division commence from the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives the Royal Assent.

Application

- 1.71 These amendments apply, and the deduction created by them will be available, in relation to the 2019-20 income year and later income years.
- 1.72 Retrospective application ensures that the tax law reflects and confirms settled industry understanding, including in respect of past income years. Dating application from the 2019-20 income period aligns with the ATO's power to amend the assessment of a superannuation entity within four years of notice of the original assessment, including in response to the taxpayer's request.

[Section 170 of the ITAA 1936]

- 1.73 This retrospective application is not expected to be disadvantageous to those affected by the changes, as in most cases it will preserve current arrangements and provides affected taxpayers with a specific deduction to reduce their taxable income. Those taxpayers who cannot take advantage of the new deduction will continue to be able to rely on existing law.

Part 2 – Ongoing fee arrangements

1.74 Part 2 of this Schedule of the Bill:

- Implements recommendation 8 of the Review by amending the Corporations Act to establish a consolidated and streamlined consent process for when a client enters or renews an ongoing fee arrangement and authorises ongoing advice fees to be deducted from a financial product. As part of these amendments, it removes the current requirement for advisers to provide a fee disclosure statement to their clients as part of an ongoing fee arrangement.

Current Law

1.75 Division 3 of Part 7.7A of the Corporations Act contains provisions relating to charging ongoing fees to retail clients. The purpose of this regime is to ensure that clients have agreed to pay ongoing fees for personal advice and understand the services they can expect to receive for that advice fee.

1.76 An ongoing fee is a fee that is payable under an ongoing fee arrangement. Section 962A of the Corporations Act provides that an ongoing fee arrangement exists if:

- An AFS licensee or a financial adviser gives personal advice to a retail client; and
- The client enters into an arrangement with the AFS licensee or financial adviser; and
- Under the terms of the arrangement, a fee is to be paid during a period of more than 12 months.

1.77 Subdivisions B and C of Division 3, Part 7.7A of the Corporations Act provide the disclosure and consent requirements for ongoing fee arrangements and deduction of fees for those arrangements. Broadly, the requirements for ongoing fee arrangements are:

- Sections 962G and 962H provide that a fee recipient is required to give their client a fee disclosure statement annually within 60 days of the anniversary day of entering into an ongoing fee arrangement. The anniversary day is the anniversary of the day on which the arrangement was entered into. The fee disclosure statement must provide information about the services provided by the adviser and fees paid by the client in the previous year, as well as about the following year.
- Section 962L provides that if the arrangement is to continue for a further year, the fee recipient must obtain the client's agreement to renew an ongoing fee arrangement within 120 days beginning on the anniversary day. Sections 962M and 962N provide that if consent is not obtained to

renew, the ongoing fee arrangement automatically terminates 30 days after the day the renewal was due.

- Sections 962R and 962S provide that if the advice fees are to be paid from a financial product, the client must sign a consent form agreeing to the advice fees being deducted from one or more financial products within 150 days of the anniversary day each year.

The Review

Recommendation 8 – Ongoing fee arrangements and consent requirements

The current provisions which require a provider of advice to give a fee disclosure statement to the client, to obtain the client's agreement to renew an ongoing fee arrangement and the client's consent to deduct advice fees should be replaced. Providers should still be required to obtain their client's consent on an annual basis to renew an ongoing fee arrangement, but they should be able to do so using a single 'consent form'. The consent form should explain the services that will be provided and the fee the adviser proposes to charge over the following 12 months. The consent form should also authorise the deduction of advice fees from the client's financial product and should be able to be relied on by the product issuer. The form should be prescribed.

The objective of this recommendation is to streamline the requirements for ongoing fee arrangement and fee consents, while ensuring that consumers see and agree the fees they are paying their financial adviser.

- 1.78 The Review found that financial advisers should continue to be required to obtain their clients' consent on an annual basis to renew an ongoing fee arrangement as this is an important consumer protection.
- 1.79 Recommendation 8 of the Review is that the ongoing fee arrangement and fee consent provisions be replaced and streamlined and the obligation for advisers to provide a fee disclosure statement to their clients should be removed. The client's annual written consent to renew an ongoing fee arrangement and authorisation to deduct advice fees from their financial products should be combined into a single form which can be relied on by all product issuers. However, while product issuers would be entitled to rely on the prescribed form, the law would not require a product issuer to accept the form.

Single consent form

- 1.80 Subdivision D of Division 3 of Part 7.7A of the Corporations Act currently provides for the appropriate records fee recipients must keep to show their compliance with Division 3. To give effect to recommendation 8 of the Review, Subdivision D is updated to include the provision of a single consent form.
- 1.81 The heading to Subdivision-D is repealed and replaced with a new heading to accurately reflect the updated law.

[Schedule 1, item 16, heading to Subdivision D of Division 3 of Part- 7.7A of the Corporations Act]

- 1.82 The law is updated to provide that the Minister may approve one or more forms for giving consent to enter into or renew an ongoing fee arrangement or authorise the deduction of ongoing fees. An approved form could be relied on by advisers and product issuers as evidence of a client's consent.

[Schedule 1, item 17, section 962Y of the Corporations Act]

- 1.83 If the Minister approves a consent form under new section 962Y, that form is not mandatory to use. Product issuers and advisers who chose to use a form would be able to rely on the form to meet their requirements in relation to consent. However, the form would not be required or mandatory so as not to restrict product issuers who want to apply different rules or practices (in addition to the legislative requirements) to the payment of ongoing fees. Giving product issuers discretion whether to use the form allows flexibility to meet a variety of industry needs. Different product issuers may apply different rules to the payment of ongoing fees, for instance some might apply caps on ongoing fees or permit ongoing fees for only certain advice.

[Schedule 1, item 17, section 962Y of the Corporations Act]

- 1.84 If a person is required to give more than one notice or forms under Division 3 of Part 7.7A of the Corporations Act, the information may be combined and given in a single notice or form. This reduces the complexity of multiple forms and allows for the requirements of various forms or notifications to be satisfied by either one form or notification. For example, if a fee recipient is required to provide written notice to a client that an ongoing fee arrangement and the authority for the deduction of an ongoing fee is terminated, the fee recipient can provide written notice of each termination together in a single notice. It also permits the consolidation of consents for ongoing fees which are deducted from multiple accounts, including across multiple account providers or product issuers.

[Schedule 1, item 17, subsection 962Z(1) of the Corporations Act]

- 1.85 If a single notice or form is provided to satisfy the requirements of more than one notice or form, the single notice or form must satisfy all of the requirements for each of those notices and forms as if they were being given individually. For example, the single notice would need to be provided on a date that satisfies the requirements for each individual notice. For example, if a fee recipient provides written notice to a client that an ongoing fee arrangement and the authority for the deduction of an ongoing fee is terminated, the fee recipient would need to ensure the single notice is provided within 10 business days of each event. The single notice or form must also clearly state the purposes for which it is being given.

[Schedule 1, item 17, subsection 962Z(2) of the Corporations Act]

New standard consent requirements

Repeal of existing requirements including the requirement to provide a Fee Disclosure Statement

- 1.86 To give effect to recommendation 8 of the Review, Subdivision B of Division 3 of Part 7.7A of the Corporations Act, which relates to the termination, disclosure and renewal of ongoing fee arrangements, is repealed. This is replaced by new Subdivision B which provides for a consolidated and streamlined consent process when a client enters or renews an ongoing fee arrangement.
- 1.87 The repealed subdivision includes provisions for fee disclosure statements relating to ongoing fee arrangements. The requirement to provide a fee disclosure statement has been removed to reduce the cost of preparing documents for advisers and the cost of advice for clients.
[Schedule 1, item 7, Subdivision B of Division 3 of Part 7.7A of the Corporations Act]

New requirements for consent

- 1.88 A client must provide written consent to an ongoing fee arrangement. The written consent must satisfy certain requirements set out in the Corporations Act and explained below, which are intended to ensure the client understands and agrees to the arrangement.
[Schedule 1, item 7, section 962D of the Corporations Act]
- 1.89 An ongoing fee arrangement will be covered by a written consent if the consent is for the ongoing fee arrangement to be entered into or renewed (as the case requires), and for the ongoing fees that the client will be required to pay under the arrangement during the period covered by the consent.
[Schedule 1, item 7, paragraph 962E(1)(b) of the Corporations Act]
- 1.90 The Bill provides for a number of basic requirements:
- before obtaining the consent of the client, the fee recipient has disclosed the information discussed below in paragraphs 1.95 to 1.98;
 - the consent is given by the account holder for the fees to be deducted from their account;
 - the consent specifies the account holder and the other details of the account;
 - the consent is signed and dated by the client;
 - the fee recipient must retain the consent or keep a copy.
[Schedule 1, items 7 and 11, subsection 962E(1) and paragraphs 962T(b) and (c) of the Corporations Act]
- 1.91 The consent must cover a particular period, depending on at what point in the lifecycle of the ongoing fee arrangement the consent was given. If the written consent is given on or before the ongoing fee arrangement is entered into, the

consent covers the period that starts when the arrangement is entered into and ends at the earlier of either the end of the first renewal period for the arrangement, or if the arrangement is terminated, the day the arrangement is terminated.

[Schedule 1, item 7, item 1 of the table in paragraph 962E(1)(f) of the Corporations Act]

- 1.92 If the written consent is given in a renewal period for an arrangement, the written consent covers the period that starts immediately after the end of that renewal period and ends at the earlier of either the end of the following renewal period, or if the arrangement is terminated, the day the arrangement is terminated.

[Schedule 1, item 7, item 1 of the table in paragraph 962E(1)(f) of the Corporations Act]

- 1.93 The **renewal period** for an ongoing fee arrangement is the period of 150 days beginning on an anniversary of the day on which the arrangement was entered into. For example, if an ongoing fee arrangement is entered into on 1 April 2025, the anniversary of the day on which the arrangement was entered into would be 1 April 2026. The renewal period would begin from 1 April 2026 for a period of 150 days, ending on 29 August 2026.

[Schedule 1, item 7, subsection 962E(2) of the Corporations Act]

- 1.94 In order for consent to be properly informed, the fee recipient must disclose a range of matters to the client. The legislation lists matters to disclose in relation to entering into or renewing an ongoing fee arrangement as well as a deduction arrangement, elevating requirements for industry practice currently set by the ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124 into primary law.

- 1.95 Before obtaining the client's written consent to enter into or renew an ongoing fee arrangement, the fee recipient must provide the following information to the client in writing:

- the name and contact details of the person who is the fee recipient under the ongoing fee arrangement;
- an explanation of why the recipient is seeking the consent;
- the period the consent will cover;
- information about the services that the client will be entitled to receive under the arrangement during the period covered by the consent;
- the frequency of the ongoing fees during the period;
- a statement that an ongoing fee arrangement can be terminated by the client at any time;
- a statement that the arrangement will terminate, and no further advice will be provided or fee charged under it, if the consent is not given; and
- the date on which the arrangement will terminate if the consent is not given; and

- the amount of each ongoing fee that the client will be required to pay under the arrangement during the period covered by the consent.
[Schedule 1, item 7, paragraph 962E(1)(a) and subsection 962E(3) the Corporations Act]

- 1.96 If an amount of an ongoing fee cannot be determined at the time it is provided to the client, a reasonable estimate of the amount of the ongoing fee and an explanation of the method used to work out the estimate may be provided to the client.
[Schedule 1, item 7, paragraphs 962E(1)(a) and 962E(3)(1)(e) and subsection 962E(4) of the Corporations Act]
- 1.97 The Minister will also have the power to prescribe, by legislative instrument, other matters which need to be included in the matters disclosed to the client before consent can be given.
- 1.98 Any such additional matters would supplement the core requirements set in the legislation. The diversity and complexity of the financial services industry, and evolving practices, make it necessary to provide for the Minister to be able to prescribe additional details which must be provided to the client in writing before the client's written consent is obtained. This instrument-making power therefore serves several functions, including keeping the legislation up to date and providing commercial certainty quickly and efficiently to industry participants.
[Schedule 1, item 7, paragraphs 962E(1)(a) and 962E(3)(1)(j) and subsection 962E(5) of the Corporations Act]

Termination

- 1.99 The provisions relating to termination of an ongoing fee arrangement substantively continue the approach of the repealed provisions. The provisions have been relocated and had minor related adjustments to streamline the legal regime.
- 1.100 It is a condition of the ongoing fee arrangement that the arrangement terminates if it is not covered by a written consent of the client which meets the requirements of new section 962E, described above. Examples of when this condition applies include where the fee recipient has not complied with the disclosure requirements under new section 962E, or where the client has not provided consent to renew the ongoing fee arrangement within 150 days of the day of anniversary.
[Schedule 1, item 7, subsection 962F(1) of the Corporations Act]
- 1.101 If an ongoing fee arrangement terminates because it is not covered by a written consent, the fee recipient must give written notice to the client that the arrangement has been terminated within 10 days of the termination. If the fee recipient fails to give written notice of the termination, the fee recipient is subject to a civil penalty provision. This approach is consistent with the law it replaces and reinforces the intent of these reforms to support consumer protection by ensuring clients are informed of key matters about ongoing fee

arrangements.

[Schedule 1, item 7, subsection 962F(4) of the Corporations Act]

- 1.102 If an ongoing fee arrangement terminates because it is not covered by a written consent, the fee recipient must not continue to charge an ongoing fee to the client. If the fee recipient continues to charge an ongoing fee to the client after termination, the fee recipient is subject to a civil penalty provision.

[Schedule 1, item 7, subsection 962F(5) of the Corporations Act]

- 1.103 The client is not taken to have waived their rights or to have entered into a new ongoing fee arrangement by merely continuing to pay an ongoing fee after an arrangement terminates where it was not covered by a written consent. This provision recognises that often the mechanism by which clients pay for ongoing advice services is through an automated process (for example, by a monthly direct debit from the client's investment), rather than being paid personally: it caters for situations where an arrangement terminates and the deduction of fees occurs before the client receives notification of termination.

[Schedule 1, item 7, subsection 962F(2) of the Corporations Act]

- 1.104 If a client makes a payment of an ongoing fee after the arrangement terminates where it was not covered by a written consent under the condition, the fee recipient is not obliged to refund the payment in full. This is consistent with the current law.

[Schedule 1, item 7, subsection 962F(3) of the Corporations Act]

- 1.105 However, the client has the right to apply to the Court for a refund where a fee recipient has knowingly or recklessly continued to charge a client ongoing fees after an arrangement has terminated as a result of breaching the requirements in new section 962E. This ensures the client has a right to redress.

[Schedule 1, item 7, note in subsection 962F(3) of the Corporations Act]

- 1.106 It is a condition of the ongoing fee arrangement that the client may terminate the arrangement at any time. This is intended to prevent clients being locked into ongoing fee arrangements that they do not want to continue.

[Schedule 1, item 7, subsection 962G(1) of the Corporations Act]

- 1.107 To terminate the arrangement the client must give a notice to the fee recipient in writing that the client wishes to terminate the arrangement. The arrangement will terminate on the day on which the client gives notice to the fee recipient.

[Schedule 1, item 7, subsections 962G(2) and (3) of the Corporations Act]

- 1.108 Any condition of an ongoing fee arrangement that requires the client to pay an amount if they terminate the arrangement is void if the amount required is larger than the sum of any liabilities accrued but not paid by the client before the arrangement was terminated and any costs the current fee recipient has incurred solely and directly because of the termination.

- 1.109 This provision continues the operation of the current law. It ensures that clients are not subject to a financial penalty if they choose to exercise their right to terminate an ongoing fee arrangement, but also allows fee recipients to recover any outstanding monies already owed by a client and any costs directly incurred by the fee recipient as a result of the termination. In most situations costs incurred by a fee recipient as a result of a termination are expected to

constitute only a modest sum.

[Schedule 1, item 7, subsection 962G(4) of the Corporations Act]

1.110 If a client exercises their right to terminate an ongoing fee arrangement by providing notice to the fee recipient, the fee recipient must give written notice to the client that the arrangement has been terminated. If the fee recipient fails to give written notice of the termination, the fee recipient is subject to a civil penalty provision. If the fee recipient continues to charge an ongoing fee to the client after termination, the fee recipient is subject to a civil penalty provision.

[Schedule 1, item 7, subsections 962G(5) and (6) of the Corporations Act]

1.111 To the extent the continued provision of a service by the fee recipient is dependent on the continued payment of an ongoing fee under the ongoing fee arrangement, the obligation to continue to provide the service also terminates. When an ongoing fee arrangement terminates, if the continued provision of a service by the fee recipient depends on the continued payment of an ongoing fee under the arrangement, the obligation to continue to provide the service also terminates. This provides certainty to the fee recipient that in most cases their obligation to provide continued advice services ceases after termination, as does their liability for the failure to provide continued advice services.

1.112 This clarification is particularly important in situations where the client does not directly terminate an ongoing fee arrangements, but instead the arrangement is terminated by the client's failure to renew the arrangement before the end of the renewal period. While a fee recipient remains liable for any advice they have provided prior to termination, they cannot be liable for client losses as a result of a failure to provide advice to a client after termination.

[Schedule 1, item 7, section 962H of the Corporations Act]

Additional requirements for deduction arrangements

1.113 Subdivision C of Division 3 of Part 7.7A of the Corporations Act provides requirements for authorising the deduction of ongoing fees from a financial product. In streamlining the regime for ongoing fee arrangements to give effect to recommendation 8, the consent requirements for deduction arrangements have been adjusted to consolidate the process.

1.114 The current heading for Subdivision C is repealed. It is replaced with a new heading to accurately reflect the new law of consent required for deduction of ongoing fees from accounts.

[Schedule 1, item 8, Subdivision C of Division 3 of Part 7.7A of the Corporations Act]

1.115 Section 962R provides a fee recipient must not deduct ongoing fees without consent, and section 962S provides a fee recipient must not arrange for deduction of ongoing fees without consent or accept such deductions. These sections provide that consent must comply with the consent requirements determined under 962T. Where 962T is referenced in these sections, the wording has been updated given the consent requirements are now included in 962T rather than determined in a legislative instrument, as discussed below.

[Schedule 1, items 9 to 10, paragraphs 962R(2)(b) and 962S(3)(b) of the Corporations Act]

- 1.116 The consent requirements are now separately listed in section 962T, rather than determined by legislative instrument. This change is to make these requirements clearer and more accessible. Formerly, section 962T gave ASIC the power to determine consent requirements for authorising deductions in a legislative instrument. ASIC has set out consent requirements in ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124. However, in order to align the consent requirements for ongoing fee arrangements and authorising deduction of ongoing fees, the ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124 will be repealed, and the consent requirements for authorising deductions are included in section 962T.

[Schedule 1, item 11, section 962T of the Corporations Act]

- 1.117 Before obtaining the account holder’s written consent to deduct ongoing fees, the fee recipient must provide the same information, in writing, that is required to be provided to the client when entering or renewing an ongoing fee arrangement, as provided by new subsection 962E(3) and mentioned in paragraphs 1.95 to 1.98 above.

[Schedule 1, item 11, subsection 962T(a) of the Corporations Act]

- 1.118 The written consent of the account holder must be consent for ongoing fees to be deducted from the account. The written consent must specify the name of the account holder and the other details of the account.

[Schedule 1, item 11, subsection 962T(b) to (c) of the Corporations Act]

- 1.119 The written consent of the account holder must be signed by the client and include the date the client provided consent.

- 1.120 Where the account is held jointly, the fee recipient must satisfy the consent requirements for all account holders. This requirement ensures that the amount and deduction of fees is visible to all account holders.

[Schedule 1, item 11, note to subsection 962T of the Corporations Act]

- 1.121 Subsection 962U provides that an account holder can vary or withdraw their consent at any time by providing a notice in writing to the fee recipient. Subsection 962U(2) of the Corporations Act provides that if the fee recipient receives a notice from the account holder that they are withdrawing or varying the consent provided under section 962R or 962S, the fee recipient must give written confirmation to the account holder that the notice was received. The law is updated to provide that if the account holder holds the account jointly with one or more other persons, the fee recipient must also give each account holder a copy of the notice, to ensure awareness of all relevant persons.

[Schedule 1, item 12, paragraph 962U(aa) of the Corporations Act]

- 1.122 Existing subsection 962V(1) of the Corporations Act provides that a client’s consent for the deduction of ongoing fees ceases to have effect either at the end of the period of 150 days after the anniversary date, when the ongoing fee arrangement is terminated or at the time new consent is given. Where the consent no longer has effect for a reason given in subsection 962V(1), the fee

recipient must give written notice to the account holder, or to all account holders if the account is held jointly, within 10 business days of the consent no longer having effect. The law is updated to provide that if the account is held jointly with one of or more persons, the fee recipient must give written notice of the cessation to all account holders.

[Schedule 1, item 13, subsection 962V(1A) of the Corporations Act]

- 1.123 As is currently the case, if the fee recipient fails to give written notice of the cessation of the consent to the account holder, or if the account is held jointly, to all account holders, the fee recipient is subject to a civil penalty provision.

[Schedule 1, item 14, subsection 962V(3) of the Corporations Act]

- 1.124 It is a condition of the ongoing fee arrangement that if the requirements under sections 962R and 962S are not complied with, the arrangement terminates. If the arrangement terminates in these circumstances, the fee recipient must give written notice to the client that the arrangement has been terminated within 10 days of the termination. If the fee recipient fails to give written notice of the termination, the fee recipient is subject to a civil penalty provision. The fee recipient must not continue to charge an ongoing fee to the client. If the fee recipient continues to charge an ongoing fee to the client after termination, the fee recipient is subject to a civil penalty provision.

[Schedule 1, item 15, subsections 962WA(1) and (4) to (5) of the Corporations Act]

- 1.125 The client is not taken to have waived their rights or to have entered into a new ongoing fee arrangement if the client has given consent that covers the deduction of ongoing fees from the account after the arrangement has terminated. This is because the client consents to deductions of ongoing fees in advance but should not continue to be liable for them if the arrangement is terminated as a result of the fee recipient not complying with the requirements under sections 962R and 962S.

[Schedule 1, item 15, subsection 962WA(2) of the Corporations Act]

- 1.126 If a client gives consent for the deduction of ongoing fees from the account after the arrangement terminates under the condition, the fee recipient is not obliged to refund an amount deducted, or received as a result of a deduction made in accordance with that consent. This is because the client is taken to have given new consent after the arrangement has terminated.

- 1.127 However, the client has the right to apply to the Court for a refund where a fee recipient has knowingly or recklessly continued to deduct ongoing fees from the account after the arrangement has terminated as a result of breaching the requirements under sections 962R and 962S. This ensures the client has a right to redress.

[Schedule 1, item 15, subsection 962WA(3) of the Corporations Act]

- 1.128 To the extent the continued provision of a service to the client by the fee recipient depends on the continued payment of an ongoing fee under the ongoing fee arrangement, the obligation to continue to provide the service also terminates. This provides certainty to the fee recipient that in most cases their obligation to provide continued services ceases after termination, as does their

liability for the failure to provide continued services.

[Schedule 1, item 15, subsection 962WA(6) of the Corporations Act]

Consequential amendments

- 1.129 The amendments update the table in subsection 1317E(3) of the Corporations Act, to add new provisions to the list of civil penalty provisions. The effect is that a fee recipient may be liable to a civil penalty if they fail to comply with requirements which apply when an ongoing fee arrangement terminates or when consent ceases to have effect. For example, a fee recipient may be subject to a civil penalty if they fail to give written notice of termination to the client under new section 962F(4), inserted by item 7.
[Schedule 1, items 18 to 19, subsection 1317E(3) of the Corporations Act]
- 1.130 The table in subsection 1317G(1A) of the Corporations Act lists certain civil penalty provisions of Part 7.7A of the Corporations Act which are excluded from pecuniary penalties. This means that contravention of one of the listed penalty provisions will not result in a pecuniary penalty. The amendments update the table to provide that civil penalty provisions in Division 3 of Part 7.7A of the Corporations Act are subject to pecuniary penalties.
[Schedule 1, item 21, subsection 1317G(1A) of the Corporations Act]
- 1.131 The amendments update section 1317GA of the Corporations Act for when a Court may order that a fee recipient refund a fee paid to the recipient by the client if the Court is satisfied that the fee recipient knowingly or recklessly charged the client the fee after the termination of the ongoing fee arrangement.
[Schedule 1, item 22 to 23, heading to section 1317GA and paragraph 1317GA(1)(a) of the Corporations Act]

Commencement, application and transitional provisions

- 1.132 The amendments made by Part 2 of Schedule 1 to this Bill commence after this Bill receives Royal Assent. The amendments will apply to an ongoing fee arrangement entered into on or after 6 months after the Bill receives royal assent. This transitional period will provide industry time to change their systems to accommodate the new consent process and removal of the fee disclosure statement.
[Schedule 1, item 24, section 1710 of the Corporations Act]
- 1.133 If an ongoing fee arrangement is in force immediately before the amendments made by Part 2 of Schedule 1 to this Bill apply, then the amendments apply to the arrangement on and after the anniversary of the day on which the ongoing fee arrangement was entered into. For example, if the amendments start to apply during the 120-day renewal period for an ongoing fee arrangement and a fee disclosure statement was given to the client before the amendments applied, the current ongoing fee arrangements should continue to apply until the next anniversary day. This is because an ongoing fee arrangement was already entered into validly under the existing law before the amendments applied.

1.134 Given the amendments made by Part 2 of Schedule 1 to this Bill will apply on and after the anniversary of the day on which the ongoing fee arrangement was entered into, an ongoing fee arrangement will need to comply with the new requirements made by the amendments from the anniversary of the day on which the ongoing fee arrangement was entered into otherwise it will terminate immediately by virtue of not complying with the requirements. For example, if the Bill receives royal assent on 1 July 2024, the amendments will apply to an ongoing fee arrangement entered into on or after 1 January 2025. If the first anniversary of the day an ongoing fee arrangement was entered into after the amendments apply is 1 April 2025, the fee recipient will need to ensure consent in accordance with the new requirements is in place by 1 April 2025 otherwise the arrangement will terminate immediately.

[Schedule 1, item 24, subsection 1711(2) of the Corporations Act]

1.135 Example 1.1 outlines the operation of the application and transitional provisions under numerous circumstances on the basis the Bill receives royal assent on 1 July 2024.

Example 1.1

<i>Ongoing fee arrangement event</i>	<i>Law which applies</i>
New ongoing fee arrangement – entered into or after 1 January 2025	The new amendments apply when this ongoing fee arrangement is created.
Existing ongoing fee arrangement – not yet reached anniversary of the day the arrangement was entered into on 1 January 2025 Example 1: The day of anniversary is 1 December 2025.	The current ongoing fee arrangements apply until the next anniversary of the day the arrangement was entered into. Once the next anniversary of the day the arrangement was entered is reached, the new amendments apply. Under the new law, an ongoing fee arrangement must be covered by a valid consent (962D). This means that on the anniversary date, the adviser must have a valid consent under the new law, or the ongoing fee arrangement will terminate immediately on the anniversary date.
Existing ongoing fee arrangement – the amendments start to apply during renewal period <u>and</u> the arrangement <u>has</u> already been renewed Example 2: The anniversary of the day the arrangement was entered into is 1 December 2024. The renewal period applies until 31 March	The fee recipient must provide written notice to the client that the arrangement has terminated within 10 business days (962F(4)).

<p>2025. The ongoing fee arrangement was renewed on 15 December 2024. The next anniversary of the day the arrangement was entered is 1 December 2025.</p>	
<p>Existing ongoing fee arrangement – the amendments start to apply during renewal period <u>and</u> the arrangement <u>has not</u> already been renewed</p> <p>Example 3: the anniversary of the day the arrangement was entered is 1 December 2024. The renewal period applies until 31 March 2025. The ongoing fee arrangement has not yet been renewed on 1 January 2025.</p>	<p>The current ongoing fee arrangements apply.</p> <p>If the fee recipient does not provide a fee disclosure statement within 60 days on the anniversary date, the ongoing fee arrangement terminates immediately.</p> <p>Example 3A: the arrangement terminates on 30 January 2025.</p> <p>If the fee recipient does provide a fee disclosure statement but the client does not renew the ongoing fee arrangement, the arrangement terminates 150 days after the day of anniversary (being the 120 days of the renewal period and a further 30 days).</p> <p>Example 3B: the arrangement terminates on 30 April 2025.</p> <p>Under both of the scenarios above, the fee recipient must give written notice to the client’s account provider within 10 business days of the arrangement ceasing.</p> <p>If the client renews their consent, the new amendments apply to the new ongoing fee arrangements. A valid consent under the new legislation is required.</p>

Part 3 – Flexibility for FSG requirements

1.136 Part 3 of Schedule 1 to the Bill:

- Implements recommendation 10 of the Review by amending the Corporations Act to allow providers of personal advice to either continue to give their clients a FSG or instead make the FSG information publicly available on their website.

Current law

- 1.137 Part 7.7 of the Corporations Act imposes a range of disclosure obligations on entities that provide financial services including on FSGs.
- 1.138 The purpose of an FSG is to provide clients with enough information to decide whether to obtain financial advice (or any other financial service) from a financial services licensee. Along with other financial services disclosure obligations, the FSG aims to ensure that clients are able to make informed decisions by providing key information about services provided and any arrangements, relationships or remuneration which might influence the service or advice a client receives. It also provides information about dispute resolution options.
- 1.139 Sections 941A and 941B provide that a person who provides a financial service to a retail client must give them a FSG. Section 941D provides that the FSG must be given as soon as it is apparent that a financial service will be provided or is likely to be provided. Under sections 941E and 941F, if there is a material change to information which is included in an FSG, an up to date or supplementary FSG must be given to a client before further financial services are provided.
- 1.140 Sections 942B and 942C cover the information that must be included in a FSG.

Review

Recommendation 10 – FSG

Providers of personal advice should either continue to give their clients a FSG or make information publicly available on their website about the remuneration and any other benefits the provider receives (if any) in connection with the financial services they provide and their internal and external dispute resolution procedures (and how to access them).

The objective of this recommendation is to increase the flexibility and efficiency of the regulatory framework, while ensuring that consumers retain access to important information relevant to the financial services they receive.

- 1.141 The Review found that the provision of a FSG contributes to the time, cost and volume of documents that are required to be prepared by financial advisers

without providing a significant benefit to clients. FSGs are not tailored for each client and the content does not change based on the content of the advice. Accordingly, the information does not necessarily have to be provided to the client and what is important is that the information is available and accessible to the client at the time personal advice is provided.

- 1.142 Recommendation 10 is that providers of personal advice should have the flexibility to decide how they disclose the information that is otherwise required to be in a FSG to their clients.

Flexibility in providing a FSG

Information is publicly available on provider's website

- 1.143 Division 2 of Part 7.7 of the Corporations Act is updated to deliver recommendation 10 of the Review.
- 1.144 A provider can choose whether to continue providing a FSG in accordance with the current law or alternatively provide the FSG on their website. To rely on the alternative option, where a provider does not give the client a FSG and instead includes the information on its website, certain requirements must be met:

- The financial service provided to the client is personal advice; and
- At the time the advice is provided, the client has not requested a copy of the FSG and the information that would have been in the FSG is available on the provider's website; and
- At the time the advice is provided, each web page displaying the information is readily accessible, up to date and records the date the page was prepared or last updated.

[Schedule 1, item 25, subsection 941C(5A) of the Corporations Act]

- 1.145 This approach gives providers of personal advice flexibility to decide how they disclose information that is otherwise required to be in an FSG to their clients, to both ensure the information is readily accessible by consumers when they need it and reduce regulatory burden on providers.
- 1.146 If a provider of personal advice chooses to make the information available on their website, the information required is the same information that is required to be in the FSG by sections 942B and 942C. This ensures that a client accessing the information through a provider's website has access to the same information as if they had been provided an FSG.
- [Schedule 1, item 25, subparagraph 941C(5A)(b)(ii) of the Corporations Act]*
- 1.147 The website on which the information is available must be readily accessible by the public at the time the personal advice is provided. The website must also be up to date and specify the day on which it was prepared or last updated. This provides visibility to clients about whether the information is up to date and ensures providers maintain and update the information.
- [Schedule 1, item 25, subparagraphs 941C(5A)(c)(i) to (ii) of the Corporations Act]*

A client who wants an FSG can still request one

- 1.148 A client who wants a FSG can still request one regardless of whether the information is on the provider's website or not. A client can request a FSG either before or after the service has been provided and the providing entity has 10 business days to provide a copy of the FSG after the request has been made. ***[Schedule 1, item 25, 26 and 27, subparagraph 941C(5A)(b)(i)), subsection 941D(5) and section 943G of the Corporations Act]***
- 1.149 If a client requests a copy of the FSG, even if a provider has made the information available on their website, the provider must still give the client a copy of the FSG within 10 days of receiving the request. This ensures the information is still available and accessible to the client in the format that suits their needs. Further, the 10-day period accounts for the fact that the information is already available on the website in the interim while reducing the burden on providers to give the FSG to the client as soon as possible. ***[Schedule 1, item 26 and 27, subsection 941D(5) and section 943G of the Corporations Act]***

Obligations relating to website information

- 1.150 If a provider chooses to make the information available on their website, the provider is subject to obligations relating to the website information.
- 1.151 If the provider chooses to make the relevant information available on their website, the information must be available on the provider's website at the time the financial service is provided to the client.
- 1.152 The provider must ensure that each web page on which the information is available is readily accessible by the public and up to date. The web page must specify the day on which it was prepared or last updated. This provides confidence to clients that they will be able to access the web page at any point in time and have access to up to date information. ***[Schedule 1, item 27, subsections 943H(1) to (2) of the Corporations Act]***
- 1.153 If the provider fails to ensure the web page on which the information is available is kept readily accessible by the public and is kept up to date, the provider is subject to a civil penalty provision. ***[Schedule 1, item 27, subsection 943H of the Corporations Act]***

Consequential amendments

- 1.154 The amendments update and provide new table items in subsection 1317E(3) of the Corporations Act so that the following provisions are civil penalty provisions:
- the obligation to give an FSG to a client at the client's request;
 - the obligation to keep the website up to date.
- [Schedule 1, item 28, subsection 1317E(3) of the Corporations Act]***

Commencement, application and transitional provisions

- 1.155 The amendments made by Part 3 of Schedule 1 to this Bill will commence the day after the Bill receives Royal Assent. If a provider chooses to make the relevant information available on their website, it is likely they will need time to change and update their website. However, given the option to make the relevant information available on a website is an alternative option to the current FSG requirements, the amendments can apply from commencement. This will have limited impact on industry given providers can transition to the website option when they are ready to do so.
- 1.156 Under section 941F, if a provider has already given a client a FSG, there are circumstances when the provider is required give the client an updated or supplementary FSG, such as where there is a change of circumstances or the initial FSG did not contain the up to date information. If these circumstances arise after the amendments made by Schedule 1, Part 3 to this Bill commence, the provider does not need to give a client an updated or supplementary FSG if the provider has made that information available on their website and it complies with the requirements made by these amendments.
[Schedule 1, item 29, section 1712 of the Corporations Act]

Part 4 – Conflicted remuneration

Recommendations 13.1, 13.2 and 13.3 – Monetary and non-monetary benefits from the client

- 1.157 Part 4 of Schedule 1 to the Bill:
- Implements recommendations 13.1 and 13.3 of the Review by amending the Corporations Act to clarify that monetary and non-monetary benefits given by a retail client are not conflicted remuneration and to remove associated exceptions to the ban on conflicted remuneration.
 - Implements recommendation 13.2 of the Review by amending the Corporations Act to provide that it is not conflicted remuneration for a superannuation trustee to pay an AFS licensee or its representative a fee for personal product advice that relates to a member's interest in the fund.

Review and current law

Recommendation 13.1 – Benefits given by clients

Recommendation 13.1 – Benefits given by a client

Amend the conflicted remuneration provisions in the Corporations Act to explicitly provide that both monetary and non-monetary benefits given by a client to an AFS licensee or a representative of a licensee are not conflicted remuneration.

This means that the prohibition on AFS licensees, or their representatives accepting monetary and non-monetary benefits would only apply to benefits given by a product issuer, not to benefits given by a client.

The objective of this recommendation is to clarify the law by giving effect to the intended outcome of the conflicted remuneration provisions (to ban benefits given by a product issuer), which would remove the need for unnecessary exceptions.

- 1.158 Division 4 of Part 7.7A of the Corporations Act relates to conflicted remuneration. Of particular note, Subdivision B of Division 4 contains provisions about the meaning of conflicted remuneration, and exceptions to this definition, while provisions in Subdivision C prohibit certain entities from giving or accepting conflicted remuneration.
- 1.159 Section 963A of the Corporations Act provides that conflicted remuneration is a benefit (monetary or non-monetary) that could reasonably be expected to influence the choice of financial product recommended, or the financial product advice given, by an AFS licensee or a representative of a licensee to a retail client.
- 1.160 Section 963K of the Corporations Act prohibits the issuer of a financial product from giving conflicted remuneration to an AFS licensee or a representative of a licensee. Subsection 963E(1), subsection 963G(1) and section 963H also prohibit an AFS licensee or a representative of a licensee accepting conflicted remuneration. Sections 963B and 963C set out monetary and non-monetary benefits that are excluded from the definition of conflicted remuneration.
- 1.161 One excluded circumstance, as provided by paragraph 963B(1)(d) of the Corporations Act, is where the benefit is given to an AFS licensee or its representative by a retail client in relation to the issue or sale of a financial product or financial product advice given by the licensee or a representative to the client.

Recommendation 13.2 – Client directed payments from superannuation funds

Recommendation 13.2: Client directed payments from superannuation funds

Remove the exception in section 963B(1)(d)(ii) and 963C(1)(e)(ii) of the Corporations Act and replace it with a specific exception that permits a superannuation fund trustee to pay an AFS licensee or its representative a fee for personal advice where the client directs the trustee to pay the advice fee from their superannuation account.

The objective of this recommendation is to enable clients to authorise the payment of an advice fee from their superannuation account, where it relates to their interest in the fund.

- 1.162 Recommendation 7 of the Review clarifies the legal basis for superannuation trustees to charge individual members for financial advice from their superannuation account. It is implemented in Part 1 of this Schedule.
- 1.163 The reforms to address recommendation 13.2 interact with those addressing recommendation 7. The reforms to address recommendation 13.2 revise existing exceptions to the ban on conflicted remuneration in the Corporations Act to enable clients to authorise the payment of an advice fee from their superannuation account, where it relates to their interest in the fund.

Recommendation 13.3 – Removing exceptions for benefits given by clients for issue, sales or dealings in financial products

Recommendation 13.3: Removing exceptions for benefits given by clients for issue, sales or dealings in financial products

If the recommendation that permits benefits (monetary and non-monetary) given by clients to an AFS licensee or a representative is accepted, the following exceptions to the conflicted remuneration provisions are no longer required and should be removed:

- section 963B(1)(d)(i) of the Corporations Act – monetary benefits given by the client for the issue or sale of a financial product;
- section 963C(1)(e)(i) of the Corporations Act – non-monetary benefits given by the client for the issue or sale of a financial product; and
- regulation 7.7A.12E of the Corporations Regulations – monetary benefits given to the provider by a retail client in relation to the provider dealing in a financial product on behalf of the client.

The objective of this recommendation is to remove what are likely now redundant exceptions and which will not be required if the conflicted remuneration provisions in the Corporations Act are amended as recommended to clarify that both monetary and non-monetary benefits given by a client to an AFS licensee or a representative of the licensee are not conflicted remuneration.

- 1.164 Recommendation 13.3 of the Review recommended that, provided recommendation 13.1 of the Review was implemented, then exceptions that

apply to benefits given by a client to an AFS licensee or a representative of the licensee can be repealed.

- 1.165 The Review concluded that these exceptions would be unnecessary once the definition of conflicted remuneration was amended.

Clarifying rules on conflicted remuneration

Definition of conflicted remuneration

- 1.166 Subdivision B of Division 4 of Part 7.7A of the Corporations Act is updated to address recommendation 13.1 of the Review. The definition of conflicted remuneration is repealed and replaced with a new definition, to ensure that monetary and non-monetary benefits given by a retail client are not conflicted remuneration.

- 1.167 The new definition builds on the former one, so that conflicted remuneration means:

- any benefit (monetary or not) that is given to a financial services licensee or representative of a financial services licensee, who provides financial product advice to retail clients; and
- that because of the benefit, could reasonably be expected to influence the recommendation or the advice given by the licensee or their representative to the retail client;
- but the benefit is not given or paid by a retail client (or on their behalf) to the licensee or their representative for financial product advice received by that client.

[Schedule 1, item 31, section 963A of the Corporations Act]

- 1.168 For example, a benefit given to a financial services provider will not be conflicted remuneration in the following circumstances:

- The benefit is given directly by a retail client or a retail client authorises another party to give the benefit on their behalf.
- The benefit is paid by the retail client, or on behalf of the client, including from one or more financial products in which the retail client has rights or benefits.
- The benefit is given in return for the provision of financial product advice that the retail client has requested or agreed to receive.

[Schedule 1, item 31, paragraph 963A(1)(b) and subsection 962A(2) of the Corporations Act]

- 1.169 This amendment seeks to achieve the intended outcome of the conflicted remuneration provisions, to ban benefits given by a product issuer rather than by a retail client. As discussed below, it also removes the need for unnecessary exemptions.

Exceptions to conflicted remuneration – repeal redundant exceptions

1.170 The new definition of conflicted remuneration results in consequential amendments and the repeal of provisions it replaces, which otherwise provided an exception to the ban on conflicted remuneration where a monetary benefit is given to an AFS licensee or its representative by a retail client for the issue or sale of a financial product or financial product advice.

[Schedule 1, items 34, 35 and 36, paragraph 963B(1)(d) and notes to paragraph 963B(1)(e) and subsection 963B(5)]

Exceptions to conflicted remuneration – new

1.171 Section 963B is updated to address recommendation 13.2 of the Review by providing that a benefit is exempted from being conflicted remuneration where it meets the following criteria:

- It is given to the licensee or representative by a trustee or trustees of a regulated superannuation fund;
- It is given in relation to financial product advice that is personal advice, which is provided by the licensee or representative to a retail client, about the client’s interest in the fund; and
- The benefit is charged against the client’s interest in the fund, or against the interests of other members of the fund.

[Schedule 1, item 32, paragraph 963B(1)(bb) of the Corporations Act]

1.172 This exemption complements the amendments to section 99FA of the SIS Act and the new deduction in section 295-490 of the ITAA 1997 made by Part 1 to Schedule 1 to the Bill. However, there are some differences between the amendments made by Part 1 and when the exemption can apply, most notably:

- The specific formal consent requirements under section 99FA of the SIS Act do not need to be satisfied for this exemption to apply;
- Unlike section 99FA of the SIS Act, but like the new deduction in section 290-490 of the ITAA, the benefit can be charged against the interests of other members of the fund (‘intra-fund advice’); and
- Unlike both the new section 99FA and the new deduction, the benefit need not be paid at the request of or with the express consent of the member, provided it is given to the member as client, and the fund is not required for the purposes of this new paragraph to have or retain a copy of any request or consent.

1.173 These differences reflect the more limited terms of recommendation 13.2 as well as the more limited focus of Division 4 of Part 7.7A on the effect of specific benefits given rather than the manner in which superannuation funds and advisers are to pay for and provide services respectively.

1.174 A “regulated superannuation fund” is one that complies with subsections (2) to (4) of section 19 of the SIS Act.

[Section 960 of the Corporations Act; sections 10 and 19 of the SIS Act]

Recommendation 13.4 and 13.5 – repeal of exceptions to conflicted remuneration

1.175 Part 4 of Schedule 1 to the Bill:

- Implements recommendation 13.4 of the Review by amending the Corporations Act to remove the conflicted remuneration exception for monetary benefits given for the issue or sale of a financial product where financial product advice about the product has not been provided in the previous 12 months.
- Implements recommendation 13.5 of the Review by amending the Corporations Act to remove the exceptions to conflicted remuneration for agents or employees of Australian ADIs.

Review and current law

Recommendation 13.4 – Removing the exception where advice has not been provided in 12 months

Recommendation 13.4: Removing the exception for the issue of financial products where advice has not been provided in the previous 12 months

Remove the exception in paragraph 963B(1)(c) of the Corporations Act, which provides for monetary benefits given for the issue or sale of a financial product where the AFS licensee or representative has not given financial product advice about the product (or class of product) for at least 12 months prior to the date the benefit is given.

The objective of this recommendation is to ensure the consistent operation of the conflicted remuneration provisions by providing that a benefit is conflicted remuneration (and therefore banned) if it could reasonably influence the financial product advice regardless of the length of time that has passed between when the financial product advice is provided and the benefit for the issue of a financial product is given.

1.176 Paragraph 963B(1)(c) of the Corporations Act provides an exception to conflicted remuneration for a benefit given for the issue or sale of a financial product to a person where the AFS licensee or representative has not provided financial product advice about the product (or that class of product) to the client in the 12 months before the benefit is given. The Review found that this exception should be removed.

Recommendation 13.5 – Exception for agents or employees of Australian authorised deposit-taking institutions

Recommendation 13.5: Exception for agents or employees of Australian authorised deposit-taking institutions

Remove the exceptions in section 963D of the Corporations Act and regulation 7.7A.12H of the Corporations Regulations for benefits given to an agent or employee of an Australian authorised deposit-taking institution for financial product advice about basic banking products, general insurance products or consumer credit insurance.

The objective of this recommendation is to ensure the consistent operation of the conflicted remuneration provisions by placing agents and employees of Australian ADIs in the same position as employees of other financial institutions.

- 1.177 Section 963J of the Corporations Act prohibits employers from giving conflicted remuneration to their employees. However, section 963D provides an exception to this prohibition for monetary and non-monetary benefits given to an agent or employee of an ADI if access to the benefit is in whole, or in part, dependent on the agent or employee recommending a basic banking product, general insurance or consumer credit insurance. The exception permits employees of an ADI to receive sales incentives from their ADI employer, including volume or sales-based incentives.
- 1.178 The Review found that the exception should be removed on the basis that employees of banks should not be treated differently to employees of other financial institutions. The removal of these exceptions is not intended to prevent ADIs providing their employees with performance related benefits and incentives under a balanced scorecard approach that includes a broad range of criteria.

Clarifying exceptions to conflicted remuneration

- 1.179 The exception at paragraph 963B(1)(c) of the Corporations Act is repealed. The exception is repealed consistent with the recommendation 13.4 of the Review, that the conflicted remuneration provisions should apply consistently where a benefit could reasonably influence the financial product advice regardless of the length of time that has passed since the advice was provided. *[Schedule 1, item 33, paragraph 963B(1)(c) of the Corporations Act]*
- 1.180 The exception at section 963D of the Corporations Act is repealed. This exception is repealed consistent with recommendation 13.5 of the Review, that the conflicted remuneration provisions should operate consistently by placing agents and employees of Australian ADIs in the same position as employees of other financial institutions. *[Schedule 1, item 38, section 963D of the Corporations Act]*

Commencement, application and transitional provisions

- 1.181 The amendments made by Part 4 of Schedule 1 to this Bill commence immediately after the commencement of the amendments in Part 3. This means immediately after the day after Royal Assent.
- 1.182 All amendments made by Part 4 of Schedule 1 to this Bill, except the repeal of section 963D (which repeals the exception for agents or employees of Australian authorised deposit-taking institutions) apply to a benefit given on or after commencement.
[Schedule 1, item 39, section 1713 of the Corporations Act]
- 1.183 The repeal of section 963D made by item 38 of this Schedule only applies to a benefit given to a financial services licensee, or a representative of a financial services licensee, under an arrangement either entered into, or varied, on or after commencement.
[Schedule 1, item 39, section 1714 of the Corporations Act]
- 1.184 This application provision reflects the possible existence of employment contracts with remuneration based on volume of sales bonuses that rely on the exemption currently in section 963D, or other existing contractual arrangements that relate to monetary or non-monetary benefits permitted under section 963D. It is not the intention of this measure to extinguish existing benefits, rights or entitlements on commencement; it will apply to arrangements entered into after commencement of these provisions.

Part 5 – Standard consent requirements for certain insurance commissions

Recommendation 13.7, 13.8 and 13.9 – consent for certain insurance commissions

- 1.185 Part 5 of this Schedule of the Bill:
- Implements recommendations 13.7, 13.8 and 13.9 of the Review by amending the Corporations Act to provide that a person who provides personal advice to a retail client about a life risk insurance product, general insurance product or consumer credit insurance and receives a commission in connection with the issue or sale of that product must obtain the client's informed consent before accepting the commission.

Current law

- 1.186 Paragraph 963B(1)(b) of the Corporations Act contains an exception from the conflicted remuneration provisions for monetary benefits given to a licensee or representative for certain life risk insurance products, general insurance products and consumer credit insurance. This means that advisers who provide financial product advice to retail clients can receive commissions from product

issuers for certain life risk insurance products, general insurance products and consumer credit insurance.

- 1.187 Life insurance cover is provided under a policy (a contract) issued by the life company to the policyholder for the provision of a benefit (the sum insured) on the death, total and permanent disablement, temporary disablement, or incidence of major illness of the life insured. General insurance covers a broad range of financial products, such as motor vehicle, home and contents and travel insurance. Consumer credit insurance provides insurance cover to consumers who have taken out a loan or hold a credit card. The insurance will generally meet minimum loan repayments if the consumer is unemployed, unable to work or dies. Consumer credit insurance covers the term of the product and is often financed by the loan or paid by the consumer.
- 1.188 For life insurance commissions, subsection 963BA(2) of the Corporations Act provides ASIC with the power to set maximum commission levels in a legislative instrument. Commissions are subject to a ‘clawback’ requirement which ASIC also determines by legislative instrument. These are currently prescribed in ASIC Corporations (Life Insurance Commissions) Instrument 2017/510.
- 1.189 Consumer credit insurance is usually sold through an intermediary as an add-on insurance product. Intermediaries typically receive a commission, which is capped at 20 per cent as per section 145 of the National Credit Code.

The Review

Recommendation 13.7 – Consent for life insurance commissions

Recommendation 13.7 — Life insurance

Retain the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a life risk insurance product. Commission and clawback rates should be maintained at the current levels (60 per cent upfront commissions and 20 per cent trailing commissions, with a 2-year clawback).

A person who provides personal advice to retail clients in relation to life risk insurance products, who receives a commission in connection with the issue or sale of the life risk insurance product, must obtain the client’s informed consent before accepting a commission. This consent should be recorded in writing and should be obtained prior to the issue or sale of the life risk insurance product.

In order for the client to make an informed decision, the advice provider must disclose:

- the commission the person will receive (upfront commission and trail commission) as a per cent of the premium; and
- the nature of any services the adviser will provide to the client (if any) in relation to the life risk insurance product (such as claims assistance).

Consent will be one-off and apply for the duration of the policy.

This requirement will only apply to life risk insurance products purchased after the commencement of this recommendation.

The objective of this recommendation is to assist consumer to access personal advice about life insurance in order to obtain the type and amount of cover that meets their objectives, needs and circumstances. The intention is that the other recommendations will encourage more providers to offer to provide life insurance advice for a fee paid by the client and that over time commissions will play a lesser role in the distribution of life insurance.

- 1.190 The Review found that the current commission arrangements for life risk insurance products should be maintained. This includes maintaining the current arrangements for clawbacks and commissions.
- 1.191 However, the Review found that, while a financial adviser has a duty to act in the best interests of the client about the advice provided, the prospect of receiving a commission creates a conflict for the adviser.
- 1.192 Recommendation 13.7 recommended the law should address this conflict by requiring that an adviser should obtain a client's consent before they accept the commission. The intention is that the consent requirement will support clients to understand how an adviser's personal interest might influence the advice they are receiving on life insurance products.

Recommendation 13.8 – Consent for general insurance commissions

Recommendation 13.8 — General insurance

Retain the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a general insurance product.

A person who provides personal advice to retail clients in relation to a general insurance product who receive a commission in connection with the issue or sale of the general insurance product, must obtain the client's informed consent before accepting a commission.

This consent should be recorded in writing and should be obtained prior to the issue or sale of the general insurance product. Consent is not required for any renewals of the same type of cover provided the client's original consent applied to the commission payable on any renewed cover.

The advice provider must disclose details of the commission the provider will receive for the issue or sale of the general insurance product (including for subsequent renewals) and any services the provider will provide to the client (if any). The disclosure of the commission amount can be set out in the form of a per cent range of the premium.

The objective of this recommendation is to assist consumers to continue to be able to access personal advice about general insurance products.

- 1.193 The Review recommended retaining the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a general insurance product.

- 1.194 However, similar to recommendation 13.7, recommendation 13.8 recommended that a person must obtain a client’s informed consent before accepting a commission. The client’s consent would apply to the commission paid when the product is first issued and the commission paid on each subsequent renewal. The intention is that the consent requirement will support clients to understand how a person’s personal interest might influence the advice they are receiving on consumer credit insurance.

Recommendation 13.9 – Consumer credit insurance commissions

Recommendation 13.9 – Consumer credit insurance

Retain the exception to the ban on conflicted remuneration for benefits given in relation to consumer credit insurance. The current cap on commissions in relation to consumer credit insurance (of 20 per cent) should continue to apply.

A person who provides personal advice to retail clients in relation to consumer credit insurance who receives a commission in relation to consumer credit insurance must obtain the client’s informed consent before accepting a commission.

The objective of this recommendation is to further improve the transparency of how consumer credit insurance is sold to consumers by requiring a person who provides personal advice about consumer credit insurance to obtain their client’s informed consent to receive a commission.

- 1.195 The Review recommended retaining the exception to the ban on conflicted remuneration for benefits given for consumer credit insurance. The Review also recommended the current cap of 20 per cent on commissions for consumer credit insurance should continue to apply.
- 1.196 However, similar to recommendations 13.7 and 13.8, the Review recommended that a relevant provider must obtain the client’s informed consent before accepting a commission for consumer credit insurance (recommendation 13.9).

Informed consent for life risk, general and consumer credit insurance commissions

- 1.197 New consent requirements are introduced to provide that a person who provides personal advice to a retail client about a life risk insurance, general insurance or consumer credit insurance product must obtain the client’s informed consent before accepting a monetary benefit such as a commission. If the client does not consent, then the person (or advice provider) can agree to provide the advice for a fee paid by the client, or they can decline to provide the advice.
- [Schedule 1, items 40 to 43, paragraphs 963B(1)(a), 962B(1)(b) and 963B(1)(ba) and section 963BB of the Corporations Act]*
- 1.198 The consent of the client must be obtained before the issue or sale of the certain insurance product. This provides a genuine and real opportunity for the

consumer to make an informed decision before deciding to be issued or sold a certain insurance product.

[Schedule 1, item 43, paragraph 963BB(1)(a) of the Corporations Act]

1.199 Before the client can consent, the following information must be disclosed to the client:

- The name of the insurer under the relevant product;
- An explanation of why consent is required;
- The rate of the monetary benefit, expressed according to the requirements for the type of product (explained further below);
- If more than one monetary benefit will be given in connection with the issue or sale of the relevant product, the frequency of giving those monetary benefits and the period over which monetary benefits covered by the consent could be given, including any renewals;
- The nature of any services that the financial services licensee or representative will provide the client for the relevant product; and
- Whether the consent is irrevocable.

[Schedule 1, item 43, subparagraph 963BB(1)(b) of the Corporations Act]

1.200 For a general insurance product, the rate of the monetary benefit disclosed must be expressed as a percentage range of the policy cost for the product, for example, 10 to 20 per cent of the premium.

[Schedule 1, item 43, subparagraph 963BB(1)(b)(iii) of the Corporations Act]

1.201 For a life risk insurance product or consumer credit insurance, the rate of the monetary benefit disclosed must be expressed as a percentage of the policy cost payable for the product.

[Schedule 1, item 43, subparagraph 963BB(1)(b)(iv) of the Corporations Act]

1.202 The consent is not required to specify the dollar amount of the commission the advice provider will receive.

1.203 A commission is a fee paid by the life insurance company for the sale of the life insurance. It is not a fee for services provided to the client. This means that if the services are promised but not provided, the client may be able to bring a complaint against the advice provider, but the life company will not have any obligation to turn off the commission or claim any part of it back from the advice provider.

1.204 The AFS licensee or representative must ensure that they have a written record of the client's consent. There is no requirement that consent be provided in writing, and there is no prescribed form for consent. The intention is that the consent requirement not be onerous but instead instigate a conversation between the advice provider and the client. A formal written agreement or an email that records a conversation where the consent was discussed would both be sufficient written records of the consent for this requirement.

[Schedule 1, item 43, subparagraph 963BB(1)(c)(i) and (ii) of the Corporations Act]

- 1.205 The AFS licensee or representative must also give a copy of the written consent, or record of the consent, to the client. This ensures there is transparency for both the AFS licensee or representative and the client that consent has been provided.

[Schedule 1, item 43, paragraph 963BB(1)(d) of the Corporations Act]

- 1.206 Depending on the nature of the agreement for consent between the provider and client, the provider must ensure that, if the consent is revocable, the consent has not been revoked by the client.

[Schedule 1, item 43, paragraph 963BB(1)(e) of the Corporations Act]

- 1.207 For general insurance products, an advice provider is not required to obtain the client's consent on an annual basis, provided that the provider has explained to the client before the original consent was given that the provider would be paid a commission on each occasion that the insurance is renewed. For general insurance products, it is common for providers to renew a client's cover on a yearly basis without necessarily meeting with the client before doing so. In these circumstances, it would be difficult to obtain the client's consent in advance of obtaining the renewal and there would be a real risk that the client could be left uninsured if the provider was in fact required to wait for that consent from the client.

- 1.208 The provider must ensure that the rate of the commission received on each occasion that the insurance is renewed is consistent with the information disclosed to the client before the original consent was given.

[Schedule 1, item 43, subsection 963BB(2) of the Corporations Act]

- 1.209 Additional consent is not required if the AFS licensee or a representative transfers the responsibility for managing a client's life insurance, general insurance or consumer credit insurance product as part of a sale of part or all of the advice business.

[Schedule 1, item 43, subsection 963BB(3) of the Corporations Act]

- 1.210 The AFS licensee or representative must also seek the consent of the client if any of the information that is required to be disclosed to the client before consent is given is proposed to be varied after consent has already been given. If the client consents to the variations, the AFS licensee or representative must ensure that they have the client's written consent or a copy of the client's written consent to the variations, or if the consent was not obtained in writing, a written record of the client's consent to the variations. The AFS licensee or representative must also give a copy or record of the consent to the variations to the client.

[Schedule 1, item 43, subsection 963BB(4) to (5) of the Corporations Act]

Commencement, application and transitional provisions

- 1.211 The amendments made by Part 5 of Schedule 1 to this Bill will apply to benefits given for the issue or sale of general insurance products, life risk insurance products or consumer credit insurance on or after the end of the

period of 3 months beginning on the day this Act receives the Royal Assent. This transition period will assist AFS licensees or representatives to develop a workable approach to obtaining consent.

[Schedule 1, item 43, subsection 1715(1) of the Corporations Act]

- 1.212 The amendments do not apply to benefits given in connection with the issue or sale of a general insurance product if the product is a renewal of a general insurance product, and that general insurance product was sold before the period of 3 months beginning on the day this Act receives the Royal Assent. This takes into account that for general insurance products, it is common for providers to renew a client's cover on a yearly basis without necessarily meeting with the client before doing so. This reduces the risk that a client could be left uninsured if the provider was in fact required to wait for that consent from the client prior upon the application of the amendments.

[Schedule 1, item 43, subsection 1715(2) of the Corporations Act]

Consequential amendments

- 1.213 None.