

EXPLANATORY STATEMENT

Issued by authority of the Minister for Small Business and Assistant Treasurer

Corporations Act 2001

Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016

Section 1364(1) of the *Corporations Act 2001* (the Act) provides that the Governor General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016* (the Regulation) makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments compliment the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016* (the Life Act) to improve the permissible remuneration arrangements relating to life insurance.

Remuneration relating to life insurance advice provided outside of superannuation was excluded from the ban on conflicted remuneration (remuneration likely to influence advice) introduced under the Future of Financial Advice (FOFA) laws.

A series of reports, including a review the Australian Securities and Investments Commission (ASIC), the industry-commissioned Trowbridge Report and the Financial System Inquiry (FSI), identified the need to better align the interests of providers of financial advice in the life insurance sector with consumer outcomes. As part of its response to the FSI, the Government announced that it would support a reform package put forward by industry.

The reform package introduced by the Life Act removes the exemption from the ban on conflicted remuneration, and introduces caps under which commissions will be permitted to be paid, as well as arrangements to 'clawback' commissions where policies lapse in the first two years. The reforms will commence on 1 July 2016.

The Regulation supports the reform package introduced by the Life Act by:

- allowing the temporary inclusion of stamp duty relating to death benefits to be included in commission calculations while industry update its information technology systems;
- prescribing circumstances where 'clawback' does not apply, such as in situations where a policy is cancelled automatically due to the age of the insured or where a premium rebate is offered to encourage customers to take up a policy; and
- ensuring that existing life insurance remuneration arrangements are grandfathered in a manner broadly consistent with FOFA by ensuring that

remuneration arrangements not effectively grandfathered by the Life Act (i.e. employee-employer remuneration arrangements) are explicitly grandfathered in the Regulation. Grandfathering means that the existing rules continue to apply to existing arrangements, while new rules apply to new arrangements.

Details of the Regulation are set out in Attachment A.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation commences immediately after the commencement of Schedule 1 to the Life Act.

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Attachment A

Details of the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016 (the Regulation).

Section 2 – Commencement

This section provides that Regulation commences on the same date as the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016* (the Life Act).

Section 3 – Authority

This Regulation is made under the *Corporations Act 2001* (the Act).

Section 4 – Schedule(s)

This section provides that Schedule 1 amends the *Corporations Regulations 2001* (the Principal Regulations).

Schedule 1 - Amendments

Conflicted Remuneration

Item 1 – this amendment serves to repeal the existing regulation 7.7A.12A. This removes the existing provision that exempts life risk insurance products from being considered conflicted remuneration, which is no longer needed following the passing of the Life Act.

Item 2 – clarifies the treatment of monetary benefits relating to life insurance products.

Item 2 inserts the heading ‘Subdivision 1A—Monetary benefits that relate to life risk insurance products’ to clarify that regulations 7.7A.12EB through 7.7A.12ED are in respect of monetary benefits related to life risk insurance products.

Subsection 963B(3B)(d) of the Life Act specifies the particulars that must be included in the calculation of the *policy cost* for a life risk insurance product.

Item 2 inserts regulation 7.7A.12EB to allow stamp duties levied by the States and Territories in relation to death benefits to be included in the calculation of the *policy cost* for a temporary period of 12 months from commencement of the Regulation.

This is intended to provide additional time for industry to make the administrative and IT system changes needed to exclude this type of stamp duty from the calculation of commissions.

Clawback requirements

Item 2 also inserts regulations 7.7A.12EC and 7.7A.12ED to specify circumstances in which the cancellation (or non-continuance) of a life insurance policy or the reduction in policy premiums is not intended to trigger the clawback of a commission. These regulations are made for subsection 963BA(3) of the Life Act.

Regulation 7.7A.12EC prescribes particular circumstances where the cancellation of a product does not trigger the clawback provisions. Specifically, the regulation prescribes that clawback does not apply in situations of self-harm, suicide of the insured, or in circumstances where a policy is cancelled due to the insured reaching an age at which coverage is no longer provided or due to the insured being incorrectly described.

Regulation 7.7A.12ED clarifies circumstances where a reduction in the policy cost does not trigger clawback. Specifically, the regulation provides that clawback does not apply in circumstances where the policy cost is reduced as a result of a reduction to the health risk of the person insured.

This would mean that, for example, a reduction in premium as the result of a decision by the insured to quit smoking would not trigger clawback.

Regulation 7.7A.12ED also prescribes that reductions in the policy cost as a result of rebates or discounts intended to encourage the acquisition or continued holding of a life insurance product do not trigger clawback. This would mean that, for example, clawback would not be triggered where an insurer offered a loyalty-based premium reduction.

Grandfathering

Items 3 and 4 – relate to the grandfathering of certain existing benefits from the application of the reforms.

Item 3 inserts the heading ‘Subdivision 2A—Application of provisions relating to the Corporations Amendment (Further Future of Financial Advice Measures) Act 2012’ (the FOFA Act) after existing regulation 7.7A.15A to clarify that regulations 7.7A.15B through 7.7A.16E relate to the application of the FOFA Act.

Item 4 introduces arrangements to provide that benefits given under employee-employer remuneration arrangements entered into prior to the commencement of the reforms are grandfathered for certain periods.

The grandfathering of these types of remuneration arrangements is not affected through the drafting of the application provision of the Life Act (section 1549B). The Life Act grandfathers a range of other remuneration arrangements by ensuring the reforms only apply in relation to remuneration relating to a life insurance product issued before the commencement of the reforms (or to life insurance products issued within three months after the commencement date, where the application for the product was made before the commencement date).

Item 4 inserts the heading ‘Subdivision 2B—Application provisions relating to the Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016’ after existing regulation 7.7A.16F to clarify that regulations 7.7A.16F through 7.7A16J relate to the application of the Life Act.

Item 4 also inserts regulation 7.7A.16G which defines certain terms to support the operation of Subdivision 2. Specifically, the regulation clarifies that, for the purposes of Subdivision 2:

collective agreement-based transitional instrument has the meaning given by subitem 2(5) of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

commencement day means the day on which Schedule 1 to the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016* commences.

enterprise agreement has the same meaning as in the *Fair Work Act 2009*.

transition day means the day that is 12 months after the commencement day.

Item 4 also inserts regulation 7.7A16H to prescribe the circumstances under which grandfathering applies to employee-employer remuneration arrangements. These arrangements are intended to broadly mirror those provided under the FOFA laws.

Subregulation 7.7A.16H(1) clarifies that regulation 7.7A16H is made for the purposes of subsection 1549B(3) of the Life Act, which provides for regulations to prescribe circumstances under which the reforms do not apply to benefits given to financial services licensees or their representatives.

Subregulation 7.7A.16H(2) provides for the grandfathering of remuneration arrangements in relation to enterprise agreements and collective agreement-based transitional instruments.

Specifically, the subregulation provides that where benefits relating to a life insurance product are paid to a licensee (or a representative of a licensee) in accordance with an enterprise agreement (or a collective agreement-based transitional instrument) entered into and in force immediately before the commencement of the reforms:

- the benefits are grandfathered from the reforms for a period of six months after the expiry date of the agreement, as long as the agreement or did not expire before the commencement of the reforms; or
- the benefits are grandfathered from the reforms for a period of twelve months after the commencement, in circumstances where the agreement expired before the commencement of the reforms, but the remuneration was practically in force immediately prior the commencement of the reforms.

Subregulation 7.7A.16H(3) provides for the grandfathering of remuneration arrangements other than enterprise agreements and collective agreement-based transitional instruments.

Specifically, the subregulation provides that, where benefits relating to a life insurance product are paid to a licensee (or a representative of a licensee) in relation to an alternate remuneration arrangement between an employee and an employer in existence immediately before the commencement of the reforms, those benefits are grandfathered.

Subregulation 7.7A.16H(4) clarifies the use of the term *nominal expiry date* in relation to collective agreement-based transitional instruments.

Item 4 also inserts regulation 7.7A16J to prescribe the circumstances under which grandfathering applies to life insurance products that substantially relate to existing products.

The regulation is made for the purposes of subsection 1549B(3) of the Life Act and provides that benefits paid to a licensee (or a representative of a licensee) in relation to a life insurance product acquired post commencement of the reforms is grandfathered, as long as the product is the result of exercising an option provided by a life insurance product held immediately before the commencement of the reforms.

This would mean that, for example, where a customer elects to take up term life coverage after the commencement date, and the option for term life coverage was given to the customer as part of a life insurance product held immediately prior to the commencement date, the benefits paid in relation to the term life coverage would be grandfathered. This reflects that work relating to developing the option for additional coverage was undertaken before the commencement of the reforms.