

DRAFT EXPLANATORY STATEMENT

Issued by authority of the Minister for Financial Services and Superannuation

Corporations Act 2001

Corporations Amendment Regulation 2013 (No. L)

The *Corporations Act 2001* (the Act) provides for the regulation of corporations, financial markets, products and services, including in relation to licensing, conduct, financial product advice and disclosure.

Subsection 1364(1) of 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 Regulation 2013 (No. L)* makes several amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments are in respect of the provisions relating to financial services licensees and representatives charging ongoing fees to clients as introduced by the *Corporations Amendment (Future of Financial Advice) Act 2012*.

Specifically, the amendments to the Principal Regulations rearrange existing Regulations that exempt 'product fees' from the definition of an 'ongoing fee arrangement', and further define a 'product fee' to include a fee for personal advice that may be collectively charged to members of a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993*.

Details of the Regulation are set out in Attachment A. A statement of the Regulation's compatibility with human rights is set out in Attachment B.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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 on the day after it is registered.

ATTACHMENT A

Details of the Corporations Amendment Regulation 2013 (No. L)

Section 1 – Name of Regulation

This section specifies the name of the Regulation as the *Corporations Amendment Regulation 2013 (No. L)* (the Regulation).

Section 2 – Commencement

This section specifies that the Regulation commences the day after registration.

Section 3 – Authority

This section provides that the authority for making the Regulation is 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 of the Corporations Regulations 2001

Item 1 prescribes the kinds of arrangements that are not ‘ongoing fee arrangements’ for the purposes of subsection 962A(5) of the Act. Existing subregulation 7.7A.10(2) provides that an arrangement is not an ‘ongoing fee arrangement’ to the extent the fee payable under the arrangement is a ‘product fee’ (as defined in subregulation 7.7A.10(3)). For the purposes of rearranging the subregulations and further defining a ‘product fee’, existing subregulations 7.7A.10(2) and (3) are repealed and replaced with new subregulations 7.7A.10(2) and (3).

Subregulation 7.7A.10(2) specifies that an arrangement that is described in subsection 962A(1) or (2) of the Act is not an ‘ongoing fee arrangement’ to the extent that the fee under the arrangement is a ‘product fee’.

Subregulation 7.7A.10(3) defines a ‘product fee’ as:

- a fee charged by a product issuer to a retail client for the management and operation of a financial product, for example, a monthly account keeping fee charged by the provider of a basic deposit product. Other examples may include product fees charged by a managed investment scheme or a superannuation fund; and
- a fee for providing personal advice in relation to a member of a regulated superannuation fund and where the fee is a cost that may be passed onto another member of the fund under section 99F of the *Superannuation Industry (Supervision) Act 1993*.

As these fees are not ongoing fee arrangements, they are exempt from the requirements in Division 3 of Part 7.7A of the Act (which relates to charging ongoing fees to retail clients).

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations Amendment Regulation 2013 (No. L)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulation rearranges existing Regulations that exempt ‘product fees’ from the definition of an ‘ongoing fee arrangement’, and further defines a ‘product fee’ to include a fee for personal advice that may be collectively charged to members of a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.