

EXPOSURE DRAFT

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

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By Friday, 16 September 2011.

Corporations Amendment (Future of Financial Advice) Bill 2011

No. , 2011

(Treasury)

**A Bill for an Act to amend the law in relation to
financial advice, and for related purposes**

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1 **A Bill for an Act to amend the law in relation to**
2 **financial advice, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Corporations Amendment (Future of*
6 *Financial Advice) Act 2011*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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Commencement information

Column 1	Column 2	Column 3
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Provision(s)	Commencement	Date/Details
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1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedule 1	1 July 2012.	1 July 2012
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1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

Schedule 1—Amendments

Corporations Act 2001

1 Section 760B (after table item 7)

Insert:

- 7A 7.7A best interests obligations
 charging ongoing fees to clients

2 Paragraph 913B(1)(b)

Repeal the paragraph, substitute:

- (b) ASIC has no reason to believe that the applicant is likely to contravene the obligations that will apply under section 912A if the licence is granted; and

3 Paragraph 915C(1)(aa)

Repeal the paragraph, substitute:

- (aa) ASIC has reason to believe that the licensee is likely to contravene their obligations under section 912A;

4 Paragraph 920A(1)(ba)

Repeal the paragraph, substitute:

- (ba) ASIC has reason to believe that the person is likely to contravene their obligations under section 912A; or

5 After paragraph 920A(1)(c)

Insert:

- (d) ASIC has reason to believe that the person is not of good fame and character; or
(da) ASIC has reason to believe that the person is not adequately trained, or is not competent, to provide a financial service or financial services; or

6 Paragraph 920A(1)(f)

Repeal the paragraph, substitute:

- (f) ASIC has reason to believe that the person is likely to contravene a financial services law; or

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Schedule 1 Amendments

1 **7 At the end of subsection 920A(1)**

2 Add:

- 3 (g) the person has been involved in the contravention of a
4 financial services law by another person; or
5 (h) ASIC has reason to believe that the person is likely to
6 become involved in the contravention of a financial services
7 law by another person.

8 **8 After subsection 920A(1)**

9 Insert:

10 (1A) In considering whether, at a particular time, there is reason to
11 believe that a person is not of good fame or character, ASIC must
12 (subject to Part VIIC of the *Crimes Act 1914*) have regard to:

- 13 (a) any conviction of the person, within 10 years before that
14 time, for serious fraud; and
15 (b) whether the person has held an Australian financial services
16 licence that was suspended or cancelled; and
17 (c) whether a banning order or disqualification order under
18 Division 8 has previously been made against the person; and
19 (d) any other matter ASIC considers relevant.

20 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain
21 circumstances, relieve persons from the requirement to disclose spent
22 convictions and require persons aware of such convictions to disregard
23 them.

24 (1B) To avoid doubt, a person contravenes a financial services law if a
25 person fails to comply with a duty imposed under that law, even if
26 the provision imposing the duty is not an offence or a civil penalty
27 provision.

28 **9 Subdivision B of Division 3 of Part 7.7**

29 Repeal the Subdivision.

30 **10 Paragraph 947B(2)(f)**

31 Omit “section 945B”, substitute “section 961J”.

32 **11 Paragraph 947C(2)(g)**

33 Omit “section 945B”, substitute “section 961J”.

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1 **12 Paragraph 953B(1)(c)**

2 Omit “945A, 945B,”.

3 **13 After Part 7.7**

4 Insert:

5 **Part 7.7A—Best interests obligations and fees**

6 **Division 1—Preliminary**

7 **960 Definitions**

8 In this Part:

9 *basic banking product* has the meaning given by section 961F.

10 *disclosure day* has the meaning given by section 962F.

11 *fee disclosure statement* has the meaning given by subsection
12 962E(1).

13 *ongoing fee* has the meaning given by subsection 962A(2).

14 *ongoing fee arrangement* has the meaning given by subsection
15 962A(1).

16 *reasonable investigation* has the meaning given by section 961E,
17 as affected by subsection 961G(3).

18 *reasonably apparent* has the meaning given by section 961D.

19 *renewal notice* has the meaning given by subsection 962G(2).

20 *renewal notice day* has the meaning given by subsection 962H(1).

21 *renewal period* has the meaning given by subsection 962H(2).

22 *representative* of a financial services licensee has the same
23 meaning as in Part 7.6 (see section 910A).

24 *responsible licensee*, in relation to a contravention of a provision
25 of Division 2, has the meaning given by section 961R.

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Schedule 1 Amendments

1 **960A No contracting out**

2 A condition of a contract or other arrangement is void if it provides
3 that a party to the contract is required or bound to waive any right
4 under this Part, or waive the compliance with any requirement of
5 this Part.

6 **Division 2—Best interests obligations**

7 **Subdivision A—Preliminary**

8 **961 Application of this Division**

- 9 (1) This Division applies in relation to the provision of personal advice
10 (the *advice*) to a person (the *client*) as a retail client.
- 11 (2) The individual who provides the advice is referred to in this
12 Division as the *provider*.
- 13 (3) If 2 or more individuals provide the advice, each of those
14 individuals is referred to in this Division as the *provider*.
- 15 (4) An individual is a *provider* for the purposes of this Division even if
16 the individual is a representative of a financial services licensee
17 and provides the advice on behalf of that licensee.
- 18 (5) If it is not reasonably possible to identify the individual, or
19 individuals, who provide the advice, the person who provides the
20 advice is the *provider* for the purposes of this Division.
- 21 (6) A person who offers personal advice through a computer program
22 is taken to have provided the advice, and is the *provider* for the
23 purposes of this Division.

24 **961A Application to a financial services licensee acting as an**
25 **authorised representative**

26 If a financial services licensee is acting as an authorised
27 representative of another financial services licensee in relation to
28 the advice, this Part applies to the first licensee in relation to the
29 advice in that licensee's capacity as an authorised representative
30 (rather than in the capacity of licensee).

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1 **961B Obligations under this Division in addition to other obligations**

2 The obligations imposed on the provider under this Division are in
3 addition to any other obligations to which the provider is subject
4 under any other law.

5 **Subdivision B—Provider must act in the best interests of the**
6 **client**

7 **961C Provider must act in the best interests of the client**

8 (1) The provider must act in the best interests of the client when giving
9 the advice.

10 (2) The steps that the provider must take in acting in the best interests
11 of the client include, but are not limited to:

12 (a) identifying the objectives, financial situation and needs of the
13 client that are disclosed to the provider by the client through
14 instructions; and

15 (b) identifying the subject matter of the advice that has been
16 requested by the client; and

17 (c) where it is reasonably apparent that information relating to
18 the objectives, financial situation and needs of the client that
19 is given by the client in instructions is:

20 (i) incomplete for the purposes of providing the advice on
21 the subject matter requested; or

22 (ii) inaccurate;

23 make reasonable inquiries to obtain complete and accurate
24 information; and

25 (d) where it is reasonably apparent that the client's objectives
26 could be better achieved, or the client's needs better met, if
27 the client obtained advice on another subject matter, either in
28 addition to or in substitution for the advice requested,
29 advising the client in writing of that fact; and

30 (e) assessing whether the provider has the expertise required to
31 give the client advice on the subject matter requested and, if
32 not, declining to give advice; and

33 (f) assessing whether the client's objectives could be achieved,
34 and needs met, through means other than the acquisition of
35 financial products; and

36 (g) either:

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- 1 (i) conducting a reasonable investigation into the financial
2 products that might achieve the objectives and meet the
3 needs of the client of which the provider is aware and
4 assessing the information gathered in the investigation;
5 or
6 (ii) if another individual has made such an investigation and
7 the provider has access to the results of the
8 investigation—assessing the information gathered in the
9 investigation; and
10 (h) if the provider proposes to advise the client to acquire a
11 financial product in substitution for or in addition to another
12 financial product:
13 (i) assessing the disadvantages (including risk and
14 increased complexity) in acquiring the product; and
15 (ii) weighing them against the advantages of not acquiring
16 the product; and
17 (iii) advising the client to acquire the product only if, having
18 weighed those disadvantages against the advantages, it
19 is reasonable to conclude that the client's objectives
20 could be better achieved, and the client's needs better
21 met, if the client acquired the product; and
22 (i) basing all judgements in advising the client on the objectives,
23 financial situation and needs of the client.

24 (3) If:

- 25 (a) the subject matter of the advice requested by the client is
26 solely a basic banking product; and
27 (b) the provider is an agent or employee of an Australian ADI;
28 the provider satisfies the duty in subsection (1) if the provider takes
29 the steps mentioned in paragraphs (2)(a), (b) and (c).

30 Note: A responsible licensee or an authorised representative may contravene
31 a civil penalty provision if a provider fails to comply with this section
32 (see sections 961M and 961S). The provider may be subject to a
33 banning order (see section 920A).

34 **961D When is something *reasonably apparent*?**

35 Something is *reasonably apparent* if it would be apparent to a
36 person with a reasonable level of expertise in the subject matter of
37 the advice that has been requested by the client, were that person

1 exercising care and objectively assessing the information given to
2 the provider by the client.

3 **961E What is a *reasonable investigation*?**

- 4 (1) A *reasonable investigation* into the financial products that might
5 achieve the objectives and meet the needs of the client does not
6 require an investigation into every financial product available.
- 7 (2) However, if the client requests the provider to consider a specified
8 financial product, or financial products of a specified class, a
9 *reasonable investigation* into the financial products that might
10 achieve the objectives and meet the needs of the client includes an
11 investigation into that financial product, or financial products of
12 that class.

13 **961F What is a *basic banking product*?**

14 Each of the following is *basic banking product*:

- 15 (a) a basic deposit product;
- 16 (b) a facility for making non-cash payments (see section 763D)
17 that is related to a basic deposit product;
- 18 (c) an FHSA product of a kind mentioned in subparagraph (c)(i)
19 of the meaning of FHSA in section 8 of the *First Home Saver*
20 *Accounts Act 2008* (first home saver accounts);
- 21 (d) a facility for providing travellers' cheques;
- 22 (e) any other product prescribed by regulations for the purposes
23 of this paragraph.

24 **961G Approved product lists**

25 *Approved product list maintained by licensee*

- 26 (1) This section applies where:
- 27 (a) the provider is a financial services licensee or a
28 representative of a financial services licensee; and
- 29 (b) the licensee maintains a list of financial products that it
30 recommends, or authorises its representatives to recommend;
31 and

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- 1 (c) it is reasonably apparent that there is no product on that list
2 that would achieve the objectives and meet the needs of the
3 client.

4 *Approved product list maintained by authorised representative*

- 5 (2) This section also applies where:
6 (a) the provider is an authorised representative of a financial
7 services licensee, or an employee of an authorised
8 representative of a financial services licensee; and
9 (b) the authorised representative maintains a list of financial
10 products that it recommends, or authorises its employees to
11 recommend; and
12 (c) it is reasonably apparent that there is no product on that list
13 that would achieve the objectives and meet the needs of the
14 client.

15 *Reasonable investigation*

- 16 (3) The requirement that the provider conduct a *reasonable*
17 *investigation* into the financial products that might achieve the
18 objectives and meet the needs of the client does not require the
19 provider to investigate products that are not on the list.

20 *No recommendation to be made from list*

- 21 (4) However, to satisfy the duty under section 961C to act in the best
22 interests of the client the provider:
23 (a) must advise the client in writing that the provider cannot
24 recommend a product from the list that might achieve the
25 objectives and meet the needs of the client; and
26 (b) must not advise the client to acquire a product that is on the
27 list.

28 **Subdivision C—Resulting advice must be appropriate to the**
29 **client**

30 **961H Resulting advice must be appropriate to the client**

- 31 The provider must only provide the advice to the client if it would
32 be reasonable to conclude that the advice is appropriate to the

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1 client, had the provider satisfied the duty under section 961C to act
2 in the best interests of the client.

3 Note: A responsible licensee or an authorised representative may contravene
4 a civil penalty provision if a provider fails to comply with this section
5 (see sections 961M and 961S). The provider may be subject to a
6 banning order (see section 920A).

7 **Subdivision D—Where resulting advice still based on**
8 **incomplete or inaccurate information**

9 **961J Resulting advice still based on incomplete or inaccurate**
10 **information**

- 11 (1) If it is reasonably apparent that information relating to the
12 objectives, financial situation and needs of the client on which the
13 advice is based is incomplete or inaccurate, the provider must, in
14 accordance with subsections (2) and (3), warn the client that:
- 15 (a) the advice is, or may be, based on incomplete or inaccurate
16 information relating to the client's relevant personal
17 circumstances; and
- 18 (b) because of that, the client should, before acting on the advice,
19 consider the appropriateness of the advice, having regard to
20 the client's objectives, financial situation and needs.
- 21 (2) The warning must be given to the client at the same time as the
22 advice is provided and, subject to subsection (3), by the same
23 means as the advice is provided.
- 24 (3) If a Statement of Advice is the means by which the advice is
25 provided, or is given to the client at the same time as the advice is
26 provided, the warning may be given by including it in the
27 Statement of Advice.
- 28 Note: The Statement of Advice must at least contain a record of the warning
29 (see paragraphs 947B(2)(f) and 947C(2)(g)).
- 30 (4) If 2 or more individuals provide the advice and one of those
31 individuals provides a warning in accordance with this section, the
32 other individuals are taken to have complied with this section.
- 33 (5) Nothing in this section affects the duty of the provider under
34 section 961C to make reasonable inquiries to obtain complete and
35 accurate information (see paragraph 961C(2)(c)).

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- 1 (2) A financial services licensee contravenes this section if:
2 (a) a representative, other than an authorised representative, of
3 the licensee contravenes section 961C, 961H, 961J, 961K or
4 961L; and
5 (b) the licensee is the, or a, responsible licensee in relation to that
6 contravention (see section 961R).

7 Note: This subsection is a civil penalty provision (see section 1317E).

8 **961N Licensees must ensure compliance**

9 A financial services licensee must take reasonable steps to ensure
10 that representatives of the licensee comply with sections 961C,
11 961H, 961J, 961K and 961L.

12 Note: This subsection is a civil penalty provision (see section 1317E).

13 **961P Civil action for loss or damage**

14 (1) If the client suffers loss or damage because of a contravention of a
15 provision of this Division, the client may recover the amount of the
16 loss or damage by action against one or more of the following
17 persons, whether or not that person (or anyone else) has been
18 convicted of an offence in respect of the matter:

- 19 (a) if the person who contravenes the provision is a financial
20 services licensee—that licensee;
21 (b) if the person who contravenes the provision is a
22 representative of a financial services licensee, or 2 or more
23 financial services licensees—the, or a, responsible licensee in
24 relation to the contravention (see section 961R).

25 (2) An action under subsection (1) may be begun at any time within 6
26 years after the day on which the cause of action arose.

27 (3) This section does not affect any liability that a person has under
28 any other law.

29 **961Q Additional powers of court to make orders**

30 (1) The court dealing with an action under subsection 961P(1) may, in
31 addition to awarding loss or damage under that subsection and if it
32 thinks it necessary in order to do justice between the parties:

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- 1 (a) make an order declaring void a contract entered into by the
2 client for or relating to a financial product or a financial
3 service; and
4 (b) if it makes an order under paragraph (a)—make such other
5 order or orders as it thinks are necessary or desirable because
6 of that order.
- 7 (2) Without limiting paragraph (1)(b), an order under that paragraph
8 may include either or both of the following:
9 (a) an order for the return of money paid by a person;
10 (b) an order for the payment of an amount of interest specified
11 in, or calculated in accordance with, the order.

12 **961R *Responsible licensee***

- 13 For the purposes of this Part, the, or a, ***responsible licensee***, in
14 relation to a contravention of a provision of this Division, is:
15 (a) if the person who contravenes the provision is a
16 representative of only one financial services licensee—that
17 financial services licensee; or
18 (b) if the person who contravenes the provision is a
19 representative of more than one financial services licensee:
20 (i) if, under the rules in section 917C, one of those
21 licensees is responsible for the person's conduct—that
22 licensee; or
23 (ii) if, under the rules in section 917C, 2 or more of those
24 licensees are jointly and severally responsible for the
25 person's conduct—each of those licensees.

26 **Subdivision G—Responsibilities of authorised representatives**

27 **961S Civil penalty provision—sections 961C, 961H, 961J, 961K and** 28 **961L**

- 29 (1) An authorised representative of a financial services licensee
30 contravenes this section if the authorised representative
31 contravenes section 961C, 961H, 961J, 961K or 961L.
32 Note: This subsection is a civil penalty provision (see section 1317E).
33 (2) Subsection (1) does not apply if:

- 1 (a) the licensee had provided the authorised representative with
2 information or instructions about the requirements to be
3 complied with in relation to the giving of personal advice;
4 and
5 (b) the authorised representative's failure to comply with
6 section 961C, 961H, 961J, 961K or 961L occurred because
7 the representative was acting in reliance on that information
8 or those instructions; and
9 (c) the representative's reliance on that information or those
10 instructions was reasonable.

11 **Division 3—Charging ongoing fees to clients**

12 **962 Application of this Division**

- 13 (1) This Division applies in a case where:
14 (a) a financial services licensee, or an authorised representative
15 of a financial services licensee, enters into an ongoing fee
16 arrangement with another person (the *client*); and
17 (b) the arrangement has not been terminated for any reason.
- 18 (2) This Division also applies in a case where:
19 (a) the rights of a financial services licensee, or an authorised
20 representative, under an ongoing fee arrangement are
21 assigned to another person; and
22 (b) the arrangement has not been terminated for any reason.
- 23 (3) However, this Division only applies where:
24 (a) the client has not been provided with financial product advice
25 as a retail client by the financial services licensee or the
26 authorised representative before the commencing day; and
27 (b) the client enters into the ongoing fee arrangement on or after
28 the commencing day.
- 29 (4) In this section, the *commencing day* is the day on which this Part
30 commences.

31 **962A Ongoing fee arrangement, ongoing fee and fee recipient**

- 32 (1) An *ongoing fee arrangement* is an arrangement under which:
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- 1 (a) a person to whom a financial services licensee, or a
2 representative of a financial services licensee, provides
3 financial product advice as a retail client, agrees to pay a fee
4 (however described or structured); and
5 (b) the fee cannot reasonably be characterised as relating to
6 advice that, at the time the arrangement is entered into, has
7 already been given.
- 8 (2) The fee is referred to in this Division as an *ongoing fee*.
- 9 (3) The person to whom the client is liable to pay the ongoing fee
10 under the ongoing fee arrangement is referred to in this Division as
11 the *fee recipient*.

962B Client may terminate arrangement at any time

- 13 (1) It is a condition of the ongoing fee arrangement that the client may
14 terminate the arrangement at any time.
- 15 (2) Any condition of the ongoing fee arrangement, or any other
16 arrangement, that requires the client to pay an amount on
17 terminating the ongoing fee arrangement is void to the extent that
18 the amount exceeds the sum of:
- 19 (a) any liability that the client has accrued but not satisfied under
20 the ongoing fee arrangement before the termination; and
21 (b) the costs of the fee recipient incurred solely and directly
22 because of the termination.

962C Client not liable to pay fee if this Division not complied with

- 24 (1) It is a condition of the ongoing fee arrangement that the client is
25 not liable to pay the ongoing fee if section 962D (the disclosure
26 obligation) or section 962G (the renewal notice obligation) has not
27 been complied with in relation the ongoing fee arrangement,
28 whether by the current or a previous fee recipient.
- 29 (2) The client is not taken to have waived the client's rights under this
30 section, or entered into a new ongoing fee arrangement, if the
31 client makes a payment of an ongoing fee after a failure to comply
32 with section 962D or section 962G in relation to the ongoing fee
33 arrangement.

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- 1 (3) Any ongoing fee that the client has paid to a fee recipient after
2 there has been a failure to comply with section 962D or
3 section 962G (whether by that or another fee recipient) must be
4 refunded by that fee recipient to the client if the client requests the
5 fee recipient to do so.

6 **962D Fee recipient must give fee disclosure statement**

- 7 (1) The current fee recipient must, at least 30 days before the
8 disclosure day, give the client a fee disclosure statement.
- 9 (2) The regulations may provide that subsection (1) does not apply in a
10 particular situation.

11 **962E Fee disclosure statements**

- 12 (1) A *fee disclosure statement* is a statement in writing that includes
13 the information required under this section.
- 14 (2) The following information is required for a fee disclosure
15 statement, subject to subsection (3):
- 16 (a) the amount of the fee paid by the client in the 12 months
17 immediately preceding the disclosure day, expressed in
18 Australian dollars unless an alternative is provided in the
19 regulations;
- 20 (b) the amount of the fee that the current fee recipient anticipates
21 that the client will pay in the 12 months beginning on the
22 disclosure day, expressed in Australian dollars unless an
23 alternative is provided in the regulations;
- 24 (c) details of the services that the client was entitled to receive
25 from the current and any previous fee recipient under the
26 arrangements during the 12 months immediately preceding
27 the disclosure day;
- 28 (d) details of the services that the client received from the current
29 and any previous fee recipient during the 12 months
30 immediately preceding the disclosure day;
- 31 (e) details of the services that the client is entitled to receive
32 from the current fee recipient under the arrangement during
33 the 12 months beginning on the disclosure day;
- 34 (f) details of the services that the current fee recipient anticipates
35 that the client will receive from that fee recipient during the
36 12 months beginning on the disclosure day.

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- 1 (3) The regulations may provide either or both of the following:
2 (a) that particular information is not required for a fee disclosure
3 statement, either in a particular situation or generally;
4 (b) a more detailed statement of the information that is required
5 for a fee disclosure statement, either in a particular situation
6 or generally.

7 **962F Disclosure day**

8 The *disclosure day* is:

- 9 (a) if no fee disclosure statement has been given to the client in
10 relation to the ongoing fee arrangement since the
11 arrangement was entered into—the anniversary of the day on
12 which the arrangement was entered into; and
13 (b) if a fee disclosure statement in relation to the ongoing fee
14 arrangement has been given to the client since the
15 arrangement was entered into—the anniversary of the day on
16 which a disclosure statement in relation to the arrangement
17 was last given to the client.

18 **962G Fee recipient must give renewal notice**

- 19 (1) The current fee recipient must, at least 30 days before the renewal
20 notice day for an ongoing fee arrangement, send the client a
21 renewal notice and a fee disclosure statement in relation to the
22 arrangement.
- 23 (2) A *renewal notice* is a notice in writing that includes:
24 (a) a statement that the client may renew the ongoing fee
25 arrangement by giving the current fee recipient notice in
26 writing of the election; and
27 (b) a statement that the ongoing fee arrangement will terminate,
28 and no further advice will be provided or fee charged under
29 it, if the client does not elect to renew the arrangement; and
30 (c) a statement that the client will be taken to have elected not to
31 renew the arrangement if the client does not give the current
32 fee recipient notice in writing of an election to renew before
33 the end of the renewal period; and
34 (d) a statement that the renewal period is a period of 30 days
35 beginning on the day on which the renewal notice and fee
36 disclosure statement is given to the client.

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- 1 (3) The regulations may provide that subsection (1) does not apply in a
2 particular situation.

3 **962H *Renewal notice day and renewal period***

- 4 (1) The ***renewal notice day*** for an ongoing fee arrangement means:
5 (a) if the arrangement has not previously been renewed—the
6 second anniversary of the day on which the arrangement was
7 entered into; and
8 (b) if the arrangement has previously been renewed, the second
9 anniversary of the last day on which the arrangement was
10 renewed.
- 11 (2) The ***renewal period*** for an ongoing fee arrangement is a period of
12 30 days beginning on the day on which the current fee recipient
13 gives the client a renewal notice and a fee disclosure statement.

14 **962J If client notifies fee recipient that client does not wish to renew**

15 If the client notifies the current fee recipient in writing within the
16 renewal period for the ongoing fee arrangement that the client does
17 not wish to renew the arrangement, the arrangement terminates at
18 the end of a further period of 30 days after the end of the renewal
19 period.

20 **962K If client does not notify fee recipient that client wishes to**
21 **renew**

22 If the client does not notify the current fee recipient in writing
23 within the renewal period for the ongoing fee arrangement that the
24 client wishes to renew the arrangement, the arrangement terminates
25 at the end of a further period of 30 days after the end of the
26 renewal period.

27 **962L Civil penalty provision—charging ongoing fees after**
28 **termination under section 962J or 962K**

29 If an ongoing fee arrangement terminates under section 962J or
30 962K, the current fee recipient must not continue to charge the
31 ongoing fee.

32 Note: This subsection is a civil penalty provision (see section 1317E).

EXPOSURE DRAFT

Schedule 1 Amendments

1 **962M Effect of termination**

2 To avoid doubt, if, under an ongoing fee arrangement, the
3 continued provision of a service to the client by the fee recipient is
4 dependent on the continued payment of an ongoing fee, on
5 termination of the ongoing fee arrangement, the obligation to
6 continue to provide the service also terminates.

7 **14 Before paragraph 1317E(jaa)**

8 Insert:

- 9 (jaac) section 961M (financial services licensee responsible for
10 breach of certain best interests duties);
11 (jaad) section 961N (financial services licensee to ensure
12 compliance with certain best interests duties);
13 (jaae) section 961S (authorised representative responsible for
14 breach of certain best interests duties);
15 (jaaf) section 962L (charging ongoing fee after termination of
16 ongoing fee arrangement);

17 **15 After subsection 1317G(1D)**

18 Insert:

19 *Best interests obligations*

- 20 (1E) A Court may order a person to pay the Commonwealth a pecuniary
21 penalty if:
22 (a) a declaration of contravention by the person has been made
23 under section 1317E; and
24 (b) the contravention is of one of the following provisions:
25 (i) section 961M (financial services licensee responsible
26 for breach of certain best interests duties);
27 (ii) section 961N (financial services licensee to ensure
28 compliance with certain best interests duties);
29 (iii) section 961S (authorised representative responsible for
30 breach of certain best interests duties);
31 (iv) section 962L (charging ongoing fee after termination of
32 ongoing fee arrangement).
- 33 (1F) The maximum amount that the court may order the person to pay
34 for contravening a provision mentioned in subparagraph (1E)(b)(i),
35 (ii) or (iii) is:

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (a) \$200,000 for an individual; or
2 (b) \$1 million for a body corporate.

- 3 (1G) The maximum amount that the court may order the person to pay
4 for contravening a provision mentioned in
5 subparagraph (1E)(b)(iv) is:
6 (a) \$50,000 for an individual; or
7 (b) \$250,000 for a body corporate.

8 **16 Table items 270A, 270B and 270C of Schedule 3**

9 Repeal the items.

10 **17 At the end of Chapter 10**

11 Add:

12 **Part 10.18—Transitional provisions relating to the** 13 **Corporations Amendment (Future of** 14 **Financial Advice) Act 2011** 15

16 **1526 Definitions**

17 In this Part:

18 *amending Act* means the *Corporations Amendment (Future of*
19 *Financial Advice) Act 2011*.

20 *commencing day* means the day on which Schedule 1 to the
21 amending Act commences.

22 **1527 Application of best interests obligations**

23 Division 2 of Part 7.7A, as inserted by item 13 of Schedule 1 to the
24 amending Act, applies in relation to the provision of personal
25 advice to a person as a retail client on or after the commencing day
26 (whether or not the request for advice was made before the
27 commencing day).

28