|  |
| --- |
| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1

Contents

Schedule 1—Quality of advice 3

Part 1—Superannuation 3

Division 1—Amendment of the Superannuation Industry (Supervision) Act 1993 3

Superannuation Industry (Supervision) Act 1993 3

Division 2—Amendment of the Income Tax Assessment Act 1997 6

Income Tax Assessment Act 1997 6

Part 2—Ongoing fee arrangements 8

Corporations Act 2001 8

Part 3—Financial Services Guide 17

Corporations Act 2001 17

Part 4—Conflicted Remuneration 21

Corporations Act 2001 21

Part 5—Insurance commissions 24

Corporations Act 2001 24

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule 1, Part 1, Division 1 | The day after this Act receives the Royal Assent. |  |
| 2. Schedule 1, Part 1, Division 2 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. |  |
| 3. Schedule 1, Part 2 | The day after this Act receives the Royal Assent. |  |
| 4. Schedule 1, Part 3 | Immediately after the commencement of the provisions covered by table item 3. |  |
| 5. Schedule 1, Part 4 | Immediately after the commencement of the provisions covered by table item 4. |  |
| 6. Schedule 1, Part 5 | The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent. |  |

Schedule 1—Quality of advice

Part 1—Superannuation

Division 1—Amendment of the Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Act 1993

1 Section 99FA

Repeal the section, substitute:

99FA Cost of financial product advice—fees charged to member concerned

 (1) The trustee or the trustees of a regulated superannuation fund must not charge against a member’s interest in the fund the cost of providing financial product advice, unless:

 (a) the financial product advice is personal advice and is wholly or partly about the member’s interest in the fund; and

 (b) the amount charged does not exceed the cost of providing financial product advice about the member’s interest in the fund; and

 (c) the trustee charges the cost in accordance with the terms of a written request or written consent of the member; and

 (d) if the arrangement under which the advice is provided is an ongoing fee arrangement—any applicable requirements of Division 3 of Part 7.7A of the *Corporations Act 2001* are met in relation to the arrangement and, if relevant, the deduction of ongoing fees; and

 (e) if the arrangement under which the advice is provided is not an ongoing fee arrangement—the request or consent satisfies the requirements in subsection (2); and

 (f) the trustee has the request or consent, or a copy of it.

Note 1: Trustees are not required to pay the cost of providing financial product advice in relation to a member under this subsection.

Note 2: See also Division 5 of Part 2C of this Act for fee rules for MySuper products.

Payment of advice fees under an arrangement other than an ongoing fee arrangement

 (2) For the purposes of paragraph (1)(e), the written request or written consent must include the following:

 (a) the name and contact details of the member;

 (b) the name and contact details of the provider of the financial product advice;

 (c) the name of the fund from which the cost of the advice is requested to be paid;

 (d) a brief description of the services the member is entitled to receive under the arrangement;

 (e) 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;

 (f) either:

 (i) the amount to be paid for providing the advice; or

 (ii) if the 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;

 (g) the member’s signature;

 (h) the date the request is made.

 (3) For the purposes of paragraph (2)(e), ASIC may, in writing, approve a form.

 (4) If ASIC has approved a form under subsection (3), a request or consent for the purposes of paragraph (2)(e) must be in the approved form.

Cost treated as direct cost of operating fund

 (5) For the purposes of this Act and the regulations, if the cost of providing financial product advice in relation to a member is charged in accordance with subsection (1), the cost is taken to be a direct cost of operating the fund.

Collectively charged fees not covered

 (6) Subsection (1) does not apply if the cost of providing financial product advice is shared between the member mentioned in subsection (1) and other members of the fund.

Note: For rules on collectively charged fees for the provision of financial product advice, see section 99F.

2 Application—financial product advice fees charged to a member

(1) In this item:

***new section 99FA*** means section 99FA of the Superannuation Industry (Supervision) Act 1993, as in force immediately after the commencement of this Division.

***old section 99FA*** means section 99FA of the Superannuation Industry (Supervision) Act 1993, as in force immediately before the commencement of this Division.

***Recommendation 7 amendments*** means the amendments made by this Division.

***start day*** means the day that is 6 months after the day this Division commences.

(2) The Recommendation 7 amendments apply to costs charged on and after the start day, regardless whether the arrangement under which the relevant financial product advice is provided is entered into before, on, or after the start day.

(3) Despite subitem (2), if, immediately before the start day:

 (a) an arrangement entered into by a member of a regulated superannuation fund under which financial product advice is provided in relation to the member is in force; and

 (b) a written consent of the member that meets the requirements of old section 99FA is in place;

 then that written consent is taken to satisfy the requirements of new section 99FA from the start day until the earlier of:

 (c) the end of the period of 12 months beginning on the start day; and

 (d) the day the arrangement is terminated, renewed, or varied.

Division 2—Amendment of the Income Tax Assessment Act 1997

Income Tax Assessment Act 1997

3 Section 12‑5 (at the end of the table item headed “superannuation and related business”)

Add:

|  |  |
| --- | --- |
| financial product advice  | 295‑490(1) (table item 5) |

4 Subsection 295‑490(1) (at the end of the table)

Add:

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | CSFN‑CSF | An amount paid by the \*superannuation provider of the CSF or N‑CSF to the extent:(a) the amount is for a cost incurred because of the provision of personal advice (within the meaning of Chapter 7 of the *Corporations Act 2001*) to a member of the fund about the member’s interest in the fund (regardless of whether that cost was incurred by the provider, the member or another entity); and(b) the amount is paid at the request, or with the consent, of the member; and(c) the provider has a copy of the written request or consent; and(d) the amount is not incurred in relation to gaining or producing the fund’s \*exempt income or \*non‑assessable non‑exempt income | The superannuation provider paid the amount |

5 At the end of section 307‑10

Add:

 ; (e) an amount paid by the \*superannuation provider of a \*superannuation fund and for which the fund can deduct an amount under item 5 of the table in subsection 295‑490(1).

6 Application

The amendments made by Division 2 of Part 1 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024* apply in relation to the 2019‑20 income year and later income years.

Part 2—Ongoing fee arrangements

Corporations Act 2001

7 Subdivision B of Division 3 of Part 7.7A

Repeal the Subdivision, substitute:

Subdivision B—Client consent required for ongoing fee arrangements

962D Consent for ongoing fee arrangement

 An ongoing fee arrangement must be covered by a written consent of the client.

Note 1: An ongoing fee arrangement terminates if it is not covered by a written consent (see section 962F).

Note 2: If an ongoing fee arrangement terminates, it is a contravention of a civil penalty provision for the fee recipient to continue to charge an ongoing fee (see section 962F).

962E When consent covers ongoing fee arrangement

 (1) For the purposes of section 962D, an ongoing fee arrangement is covered by a written consent of the client at a time if:

 (a) before obtaining the consent, the fee recipient disclosed to the client, in writing, the matters set out in subsection (3); and

 (b) the consent is for:

 (i) the ongoing fee arrangement to be entered into, or renewed (as the case requires); and

 (ii) the ongoing fees disclosed as required under paragraph (3)(e) to be charged to the client; and

 (c) the consent is signed by the client; and

 (d) the consent is dated; and

 (e) the fee recipient has the consent or a copy of the consent; and

 (f) the time is in the period specified in column 2 of the item of the following table applicable to when the consent is given.

| Item | Column 1If the consent is given: | Column 2The consent covers the period that: |
| --- | --- | --- |
| 1 | on or before the arrangement is entered into | (a) starts when the arrangement is entered into; and(b) ends at the earlier of:(i) the end of the first renewal period for the arrangement; and(ii) if the arrangement is terminated—the day the arrangement is terminated. |
| 2 | in a renewal period for an arrangement | (a) starts immediately after the end of that renewal period; and(b) ends at the earlier of:(i) the end of the following renewal period; and(ii) if the arrangement is terminated—the day the arrangement is terminated. |

Meaning of **renewal period**

 (2) A ***renewal period*** for an arrangement is each period of 150 days beginning on an anniversary of the day on which the arrangement was entered into.

 (3) The matters that must be disclosed are as follows:

 (a) the name and contact details of the person who is the fee recipient under the ongoing fee arrangement;

 (b) an explanation of why the fee recipient is seeking the consent;

 (c) the period the consent will cover;

 (d) information about the services that the client will be entitled to receive under the arrangement during the period covered by the consent;

 (e) the amount of each ongoing fee that the client will be required to pay under the arrangement during the period covered by the consent;

 (f) the frequency of the ongoing fees during the period;

 (g) a statement that the ongoing fee arrangement can be terminated by the client at any time;

 (h) 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;

 (i) the date on which the arrangement will terminate if the consent is not given;

 (j) information about any other matters determined under subsection (5).

 (4) If an amount of an ongoing fee that is required to be disclosed by paragraph (3)(e) cannot be determined at the time of disclosing the matters in subsection (3), a reasonable estimate of the amount of the ongoing fee and an explanation of the method used to work out the estimate may be disclosed instead.

 (5) The Minister may, by legislative instrument, determine matters for the purposes of paragraph (3)(j).

962F Ongoing fee arrangement terminates without consent

 (1) 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.

 (2) The client is not taken to have waived the client’s rights under the condition (subject to subsection (3)), or to have entered into a new ongoing fee arrangement, if the client makes a payment of an ongoing fee after the arrangement terminates under subsection (1).

 (3) However, if the client makes a payment of an ongoing fee after the arrangement terminates under subsection (1), the fee recipient is not obliged to refund the payment.

Note: A Court may order that the fee recipient refund the amount (see section 1317GA).

 (4) If an ongoing fee arrangement terminates under this section, the fee recipient must, within 10 business days of the termination, give written notice to the client that the arrangement has been terminated.

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

 (5) If an ongoing fee arrangement terminates under this section, the fee recipient must not continue to charge an ongoing fee.

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

962G Client may terminate ongoing fee arrangement at any time

 (1) It is a condition of the ongoing fee arrangement that the client may terminate the arrangement at any time.

 (2) A client may terminate the ongoing fee arrangement by giving notice to the fee recipient in relation to the ongoing fee arrangement, in writing, that the client wishes to terminate the arrangement.

 (3) If the client gives a notice under subsection (2) to terminate the ongoing fee arrangement, the arrangement terminates on the day on which the notice is given.

 (4) Any condition of the ongoing fee arrangement, or any other arrangement, that requires the client to pay an amount on terminating the ongoing fee arrangement is void to the extent that the amount exceeds the sum of:

 (a) any liability that the client has accrued but not satisfied under the ongoing fee arrangement before the termination; and

 (b) the costs of the current fee recipient incurred solely and directly because of the termination.

 (5) If an ongoing fee arrangement terminates under this section, the fee recipient must, within 10 business days of the termination, give written notice to the client that the arrangement has been terminated.

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

 (6) If an ongoing fee arrangement terminates under this section, the fee recipient must not continue to charge an ongoing fee.

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

962H Effect of termination of ongoing fee arrangement

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

8 Subdivision C of Division 3 of Part 7.7A (heading)

Repeal the heading, substitute:

Subdivision C—Account holder consent required for deducting ongoing fees from accounts

9 Paragraph 962R(2)(b)

Repeal the paragraph, substitute:

 (b) the consent complies with the requirements in section 962T;

10 Paragraph 962S(3)(b)

Repeal the paragraph, substitute:

 (b) the consent complies with the requirements in section 962T;

11 Section 962T

Repeal the section, substitute:

962T Requirements for consent—deduction of fees from accounts

 The requirements for the consent are:

 (a) before obtaining the consent, the fee recipient disclosed to the account holder, in writing, the matters set out in subsection 962E(3); and

 (b) the consent is given by the account holder for the ongoing fees disclosed under paragraph (a), to be deducted from the account; and

 (c) the consent specifies the name of the account holder and the other details of the account; and

 (d) the consent is signed by the account holder; and

 (e) the consent is dated.

Note: If the account is held jointly, these paragraphs must be satisfied in relation to each account holder: see subsections 962R(3) and 962S(4).

12 After paragraph 962U(2)(a)

Insert:

 (aa) if the account holder holds the account jointly with one or more other persons—give each other account holder a copy of the notice; and

13 After subsection 962V(1)

Insert:

 (1A) If a consent given in relation to an ongoing fee arrangement for the purposes of this Subdivision ceases to have effect under subsection (1), the fee recipient must, within 10 business days of the cessation, give written notice of the cessation to:

 (a) unless paragraph (b) applies—the account holder; or

 (b) if the account is held jointly with one or more other persons—all account holders.

14 Subsection 962V(3)

After “subsection”, insert “(1A) or”.

15 At the end of Subdivision C

Add:

962WA Ongoing fee arrangement terminates if fee deducted without consent

 (1) It is a condition of the ongoing fee arrangement that the arrangement terminates if any of the following provisions have not been complied with in relation to the arrangement, whether by the current or a previous fee recipient:

 (a) section 962R (fee recipient must not deduct ongoing fees without consent);

 (b) section 962S (fee recipient must not arrange for deduction of ongoing fees without consent or accept such deductions).

 (2) The client is not taken to have waived the client’s rights under the condition (subject to subsection (3)), or to have entered into a new ongoing fee arrangement, if the client gives consent that covers the deduction of ongoing fees from the account, after the arrangement terminates under subsection (1).

 (3) However, if the client gives consent for deduction of ongoing fees from the account after the arrangement terminates under subsection (1), 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.

Note: A Court may order that the fee recipient refund amounts deducted without consent (see section 1317GB).

 (4) If an ongoing fee arrangement terminates under this section, the fee recipient must, within 10 business days of the termination, give written notice to the client that the arrangement has been terminated.

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

 (5) If an ongoing fee arrangement terminates under this section, the fee recipient must not continue to charge an ongoing fee.

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

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

16 Subdivision D of Division 3 of Part 7.7A (heading)

Repeal the heading, substitute:

Subdivision D—Common rules for consents under this Division

17 At the end of Subdivision D

Add:

962Y Form for consents

 For the purposes of this Division, the Minister may approve one or more forms for giving consent in relation to one or more of the following:

 (a) entering into an ongoing fee arrangement;

 (b) renewing an ongoing fee arrangement;

 (c) deducting an amount in respect of ongoing fees from an account;

 (d) arranging to deduct an amount in respect of ongoing fees from an account.

Note: Despite consent being given in an approved form, an account provider (other than the fee recipient) may request additional information from the fee recipient before deducting ongoing fees from an account.

962Z Combining information in a single notice or form

 (1) If, under this Division, a person is required to give more than one notice or form to the same person, the information may be combined and given in a single notice or form.

 (2) If a single notice or form is given under subsection (1), the single notice or form must satisfy all of the requirements for giving each notice or form and clearly state the purposes for which it is being given.

18 Subsection 1317E(3) (table items dealing with subsection 962G(4) and section 962P)

Repeal the items, substitute:

|  |  |  |
| --- | --- | --- |
| subsection 962F(4) and (5) and 962G(4) and (5) | obligations on fee recipients when ongoing fee arrangements terminate | uncategorised |

19 Subsection 1317E(3) (table item dealing with subsection 962V(3))

After “account provider”, insert “and account holders”.

20 In the appropriate position in subsection 1317E(3)

Insert:

|  |  |  |
| --- | --- | --- |
| subsection 962WA(4) and (5) | obligations on fee recipients when ongoing fee arrangements terminate | uncategorised |

21 Subsection 1317G(1A) (table items 4 to 9)

Repeal the items.

22 Section 1317GA (heading)

Repeal the heading, substitute:

1317GA Refund orders—charging ongoing fee after termination of arrangement

23 Paragraph 1317GA(1)(a)

Omit “section 962P”, substitute “subsection 962F(5), 962G(5) or 962WA(5)”.

24 In the appropriate position in Chapter 10

Insert:

Part 10.76—Provisions relating to Schedule 1 to the Treasury Laws Amendment (2024 Measures No. 1) Act 2024

Division 1—Ongoing fee arrangements

1710 Definitions

 In this Part:

***start day*** means the day that is 6 months after the commencement of Part 2 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024*.

1711 Application—ongoing fee arrangements

 (1) The amendments made by Part 2 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024* apply in relation to an ongoing fee arrangement entered into on or after the start day.

 (2) If an ongoing fee arrangement is in force immediately before the start day, the amendments apply in relation to the arrangement on and after the first day on or after the start day that is an anniversary of the day on which the ongoing fee arrangement was entered into.

Part 3—Financial Services Guide

Corporations Act 2001

25 After subsection 941C(5)

Insert:

Personal advice—information is publicly available on providing entity’s website

 (5A) The providing entity does not have to give the client a Financial Services Guide if:

 (a) the financial service provided to the client is personal advice; and

 (b) at the time the financial service is provided to the client:

 (i) the client has not requested a copy of the Financial Services Guide; and

 (ii) the information that would be required to be in the Financial Services Guide by section 942B or 942C, as the case requires, is available on the providing entity’s website; and

 (c) at that time, each web page on which the information is available:

 (i) is readily accessible by the public; and

 (ii) is up to date and specifies the day on which it was prepared or last updated.

Note: A Financial Services Guide must be given on request by a client (see section 943G).

26 At the end of section 941D

Add:

Timing when information is publicly available on website

 (5) If, at the time the financial service is provided to the client:

 (a) the client has requested a copy of the Financial Services Guide; and

 (b) the information that would be required to be in the Financial Services Guide by section 942B or 942C, as the case requires, is available on the providing entity’s website; and

 (c) paragraph 941(5A)(c) is satisfied in relation to each webpage on which the information is available;

then the Financial Services Guide must be given to the client within 10 business days after the later of:

 (d) providing the advice; and

 (e) receiving the request for the copy of the Financial Services Guide.

27 At the end of Division 2 of Part 7.7

Add:

Subdivision D—Obligations relating to website information

943G Obligation to give a copy of Financial Services Guide

 (1) Subsection (2) applies if:

 (a) apart from subsection 941C(5A), a person (the ***providing entity***) would be required to give another person (the ***client***) a Financial Services Guide; and

 (b) subsection 941C(5A) applies and the client is not given a Financial Services Guide; and

 (c) after the financial service is provided to the client, the client requests a copy of the Financial Services Guide.

 (2) The providing entity must provide the client with a copy of the Financial Services Guide within 10 business days after receiving the request.

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

943H Obligation to keep website information up to date

 (1) Subsection (2) applies if:

 (a) apart from subsection 941C(5A), the providing entity would be required to give the client a Financial Services Guide; and

 (b) subsection 941C(5A) applies and the client is not given a Financial Services Guide.

 (2) The providing entity must ensure that each web page on which the information mentioned in subparagraph 941C(5A)(b)(ii) is available:

 (a) is kept readily accessible by the public; and

 (b) is kept up to date (including specifying the day on which it was prepared or last updated).

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

28 In the appropriate position in subsection 1317E(3)

Insert:

|  |  |  |
| --- | --- | --- |
| subsection 943G(2) | obligation to give Financial Services Guide on request by a client | uncategorised |
| subsection 943H(2) | obligation to keep website up to date | uncategorised |

29 At the end of Part 10.76

Add:

Division 2—Financial Services Guide

1712 Transitional—section 941F (updated Financial Services Guide)

 (1) Subsection (2) applies if:

 (a) a Financial Services Guide is given to a person (the ***client***) before the financial service is provided and before the commencement of Part 3 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024*; and

 (b) at or after that commencement, the providing entity:

 (i) provides personal advice to the client; and

 (ii) would be required to give the client another Financial Services Guide or Supplementary Financial Services Guide under section 941F.

 (2) The providing entity does not have to give the client another Financial Services Guide or Supplementary Financial Services Guide, if:

 (a) at the time the financial service is provided to the clientthe information that would be required to be in the Financial Services Guide by section 942B or 942C, as the case requires, is available on the providing entity’s website; and

 (b) at that time, each web page on which the information is available:

 (i) is readily accessible by the public; and

 (ii) is up to date and specifies the day on which it was prepared or last updated.

Note: A Financial Services Guide must be given on request by a client (see section 943G).

Part 4—Conflicted Remuneration

Corporations Act 2001

30 Section 960 (definition of *conflicted remuneration*)

Omit “, 963C and 963D”, substitute “and 963C”.

31 Section 963A

Repeal the section, substitute:

963A Meaning of conflicted remuneration—general

 (1) ***Conflicted remuneration*** means any benefit, whether monetary or non‑monetary, given to a financial services licensee, or a representative of a financial services licensee, who provides financial product advice to persons as retail clients that:

 (a) because of the nature of the benefit or the circumstances in which it is given:

 (i) could reasonably be expected to influence the choice of financial product recommended by the licensee or representative to retail clients; or

 (ii) could reasonably be expected to influence the financial product advice given to retail clients by the licensee or representative; and

 (b) is not given to the licensee or representative by a retail client in relation to financial product advice given by the licensee or representative to the client.

Note: A reference in this Subdivision (including sections 963A, 963AA, 963B and 963C) to giving a benefit includes a reference to causing or authorising it to be given (see section 52).

 (2) For the purposes of paragraph (1)(b), a benefit is given by a retail client only if the benefit is paid by the retail client, or on behalf of the client (including from one or more financial products in which the client has a beneficial interest).

32 After paragraph 963B(1)(ba)

Insert:

 (bb) each of the following is satisfied in relation to the benefit:

 (i) the benefit is given to the licensee or representative by a trustee or trustees of a regulated superannuation fund;

 (ii) the benefit 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;

 (iii) the benefit is charged against the client’s interest in the fund, or against the interests of other members of the fund;

33 Paragraph 963B(1)(c)

Repeal the paragraph.

34 Paragraph 963B(1)(d)

Repeal the paragraph.

35 Paragraph 963B(1)(e) (note)

Repeal the note.

36 Subsection 963B(5) (note)

Repeal the note.

37 Paragraph 963C(1)(e)

Repeal the paragraph.

38 Section 963D

Repeal the section.

39 At the end of Part 10.76

Add:

Division 3—Conflicted remuneration

1713 Benefits given by a retail client

 The amendments made by Part 4 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024* apply to benefits given on or after the commencement of that Part.

1714 Benefits for employees of ADIs

 The repeal of section 963D by Part 4 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024* applies to a benefit given to a financial services licensee, or a representative of a financial services licensee, under an arrangement entered into, or varied, on or after the commencement of that Part.

Part 5—Insurance commissions

Corporations Act 2001

40 Paragraph 963B(1)(a)

Before “the benefit”, insert “subject to section 963BB (which is about informed consent for commissions),”.

41 Paragraph 963B(1)(b)

Before “each of the following”, insert “subject to section 963BB (which is about informed consent for commissions),”.

42 Paragraph 963B(1)(ba)

Before “the benefit”, insert “subject to section 963BB (which is about informed consent for commissions),”.

43 After section 963BA

Insert:

963BB Informed consent for certain insurance commissions

 (1) Paragraphs 963B(1)(a), (b) and (ba) do not apply to a monetary benefit given in connection with the issue or sale to a retail client of a financial product (the ***relevant product***) that is a general insurance product, a life insurance product, or consumer credit insurance unless:

 (a) before the issue or sale of the relevant financial product, the client consented to the monetary benefit being given; and

 (b) before the consent was given, the following information was disclosed to the client:

 (i) the name of the insurer under the relevant product;

 (ii) an explanation of why consent is required;

 (iii) for a general insurance product—the rate of the monetary benefit, expressed as a percentage range of the policy cost for the product;

 (iv) for a life risk insurance product or consumer credit insurance—the rate of the monetary benefit, expressed as a percentage of the policy cost payable for the product;

 (v) 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; and

 (vi) the nature of any services that the financial services licensee or representative will provide the client (if any) in relation to the relevant product; and

 (vii) whether the consent is irrevocable; and

 (c) the licensee or representative has:

 (i) the client’s written consent or a copy of the client’s written consent; or

 (ii) if the consent was not obtained in writing—a written record of the client’s consent; and

 (d) the licensee or representative gives a copy of the written consent, or a copy of the record of the consent, to the client; and

 (e) if the consent is revocable—the consent has not been revoked.

Renewals of general insurance products

 (2) For the purposes of subsection (1), a consent (the ***original consent***) to a monetary benefit given in connection with the issue or sale to a retail client of a general insurance product is taken to also be a consent to a monetary benefit (a ***renewal benefit***) being given in connection with a renewal of that product if:

 (a) the information disclosed to the client before the original consent was given included the fact that the original consent would cover renewals of the general insurance product; and

 (b) the rate of the renewal benefit is consistent with the information disclosed to the client before the original consent was given, as mentioned in subparagraph (1)(b)(iii).

Transfer of financial product advice business

 (3) For the purposes of subsection (1), a consent to a monetary benefit being given to a financial services licensee (the ***original licensee***) or a representative of a financial services licensee (also the ***original licensee***) is taken to also be a consent to the monetary benefit being given to another person (the ***new recipient***) if:

 (a) the original licensee’s financial product advice business is sold or transferred to another financial services licensee; and

 (b) the new recipient is that other financial services licensee or a representative of that other financial services licensee.

Variation of consent

 (4) If a client has given a consent for the purposes of subsection (1), the financial services licensee or representative may:

 (a) disclose to the client proposed variations to one or more of the matters mentioned in paragraph (1)(b); and

 (b) request the client to consent to those variations.

 (5) If:

 (a) the client consents to those variations; and

 (b) paragraphs (1)(c) and (d) are satisfied in relation to that consent;

then the consent has effect as varied for the purposes of this section.

44 At the end of Part 10.76

Add:

Division 4—Insurance commissions

1715 Informed consent for certain insurance commissions

 (1) The amendments made by Part 5 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024* apply to benefits given on or after the commencement of that Part in relation to the issue or sale of general insurance products, life risk insurance products or consumer credit insurance on or after that commencement.

 (2) However, those amendments do not apply to benefits given in connection with the issue or sale of a general insurance product if:

 (a) the product is a renewal of another general insurance product; and

 (b) that other general insurance product was issued or sold before the commencement of Part 5 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024*.