FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Ms Anna Schneider Rumble
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Email: financialadvice@treasury.gov.au

6 December 2023

Dear Ms Schneider Rumble,

Delivering Better Financial Outcomes – reducing red tape and other measures

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to provide feedback on the draft legislation and Explanatory Memorandum to implement the first batch of recommendations of the Quality of Advice Review (QAR).

The QAR is the most important reform to impact financial advice in many years, and an important opportunity to address a range of problems in the financial advice profession. Particularly in recent years, one reform on top of the next has fundamentally changed financial advice. Whilst one important positive has been the significant increase in professionalism and professional standards, the broader negative impact is a significant increase in the cost and complexity of providing financial advice.

Along with the substantial decline in the number of financial advisers operating in Australia, this has resulted in a very material decline in access to and affordability of financial advice for consumers. The substantial increase in bureaucratic red tape and additional compliance obligations has also had a huge impact on those who provide this most important service. Many report declining efficiencies and a loss of commitment and positivity about a profession that they see as critical to the welfare of Australians, as advisers are now spending more time generating paperwork than helping clients. Now is our chance to turn this around.

The exclusion of the Best Interests Duty safe harbour repeal and rationalisation of advice documentation recommendations from this first batch of reforms has significantly impacted the response, with many of our

[1] The Financial Advice Association of Australia (FAAA) was formed in April 2023, out of a merger of the Financial Planning Association of Australia Limited (FPA) and the Association of Financial Advisers Limited (AFA), two of Australia's largest and longest-standing associations of financial planners and advisers. The FPA was a professional association formed in 1992 as a merger between The Australian Society of Investment and Financial Advisers and the International Association of Financial Planning. In 1999 the CFP Professional Education Program was launched. As Australia's largest professional association for financial planners, the FPA represented the interests of the public and (leading into the merger) over 10,000 members. Since its formation, the FPA worked towards changing the face of financial planning, from an industry to a profession that earned consumer confidence and trust, and advocated that better financial advice would positively influence the financial wellbeing of all Australians. The AFA was a professional association for financial advisers that dated back to 1946 (existing in various forms and under various names). The AFA was a national membership entity that operated in each state of Australia and across the full spectrum of advice types. The AFA had a long history of advocating for the best interests of financial advisers and their clients, through working with the government, regulators and other stakeholders. The AFA had a long legacy of operating in the life insurance sector, however substantially broadened its member base over a number of decades. The AFA had a strong focus on promoting the value of advice and recognising award winning advisers over many years. The AFA had strong foundations in believing in advocacy for members and creating events and other opportunities to enable members to grow and share best practice.

members expressing disappointment that this first tranche of reforms will not deliver the productivity benefits they hoped for and need.

Our key concerns with the proposed legislation are:

- The decision not to mandate a fee consent form. A standardised fee consent form will only deliver productivity benefits if product issuers are required to accept it. As they have already invested in systems and processes to meet this requirement, it is unlikely that product providers will change their approach without a legislative requirement for them to do so.

  This issue is very challenging to fix, given the fundamental complexity in a process that covers so many stakeholders, and when each client and product is different. In our submission we have suggested two practical alternatives that we believe would achieve the government's intent of reducing the cost of providing advice:

  1. Remove the requirement for product issuers to verify client consent for every account, or

  2. Require product issuers to accept the standard form as evidence of client consent.

- Continuing with the concept of a fixed anniversary date for fee consent, which prevents advisers from bringing forward the renewal process, and not allowing advisers to sensibly rationalise the key dates for client groups (husband and wife, SMSF, family trust etc).

- Mandating the option of clients being able to ask for a Financial Services Guide (FSG), which will require advisers to build new processes to overcome additional risks with important consequences in the event of any breakdown in the process.

For the reasons stated above, and set out in detail below, we now believe that the only sensible way to move forward is to remove the requirement for the fee consent form to be provided to product providers and allowing them instead to operate a sample based audit regime. This will remove the requirement to achieve standardisation across all facets of the fee consent process, and ensure that the fee consent engagement between the adviser and the client is client centric, rather than driven by the compliance obligations and different requirement of the various relevant product providers.

We would welcome the opportunity to discuss the matters raised in our submission with you in more detail. Please contact me on [redacted] or at [redacted].

Yours sincerely,

[redacted]

Sarah Abood
Chief Executive Officer
Financial Advice Association of Australia

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Delivering Better Financial Outcomes – reducing red tape and other measures

Effective date: 6/12/2023

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PART 1 – SUPERANNUATION

The FAAA welcomes the draft legislative amendments to provide certainty that superannuation trustees can pay financial advice fees from a member's superannuation account when directed by the member, and not be in breach of the SIS Act. It should be noted that this reflects current arrangements and thus this is a measure to provide greater confidence to trustees.

The proposed changes are largely consistent with the QAR recommendations. However, we provide the following feedback.

- Note 1 of s99FA(1) states that "*trustees are not required to pay the cost of providing financial product advice in relation to a member under this subsection*". Based on Recommendation 7, it is assumed that the intended meaning of this Note is to clarify that while the provisions in the *new section 99FA* give trustees permission to pay an advice fee if they choose to provide the facility to their members, trustees are not required to do so. The caveat that it is not mandatory for super funds to allow their members to charge advice fees to their account is a significant element of this provision and must be clearly stated and visible to members in advance of them seeking advice. This is not something that trustees should be able to do after the adviser has provided advice to the client. Trustees should be required to state their position on charging advice fees and made this publicly available on their website.

- Section 99FA(2) provides a list of the information required to be included in the client written consent/request to the trustee for the payment of fees under non ongoing fee arrangements. Noting that this list differs to that required under s962E of the Corporations Act, it includes a need to provide the member's name and contact details. We are concerned that inconsistencies between the information provided in the written consent versus details held about the client by the trustee, could result in the trustee rejecting the client directed request to pay advice fees from the client's account. The purpose for requiring the client's contact details needs to be clarified - for example, is it to be used for privacy purposes to confirm the identity of the person; or is it to allow the fund to contact the client directly? If it is the latter, funds already collect contact details of members so the requirement for such information to be included in the client consent form is not necessary Depending on the purpose, we seek clarity on the type and number of client's contact details that would be required in the written consent to minimise the grounds for the trustee to decline the request based on an administrative misunderstanding of the requirements. This clarity could be included in the Explanatory Memorandum.

- The Explanatory Memorandum states that the requirements in s99FA are drawn from ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2021/126. Section 5(2) of this Instrument clarifies that "*A written consent may only be given by a member by signing, or otherwise agreeing in writing (**including electronically**) to the terms of, a written consent which complies with this section…..*". However, neither the draft legislation nor the Explanatory Memorandum provide the ability for a member to 'agree in writing including electronically'. Amendments should be made to the draft legislation to make clear the ability to rely upon electronic signatures for fee consent, as well as to permit the use of technology for straight-through digital processing of client consent. The use of technology for client consent is discussed further below.

- The form specified in Section 99FA(2) can be approved by ASIC, however the form subject to ongoing fee arrangements in Section 962E is set by the Minister. Why are these like forms subject to different approval procedures? If ASIC approves a form under 99FA(2) then the approved form must be used, yet seemingly under Section 962E, the form is not mandatory.

The FAAA recommends client consent form requirements should be consistent and include one mandatory form approved by the Minister.

- While QAR recommendation 7 proposed that the ability for superannuation funds to pay for advice should be limited to personal advice, the client fees paid to a financial adviser for agreed services might also include some services under general advice and administration services. The ability of Australians to access good quality general advice that is cost effective and suitable based on the client's circumstances is an important consideration. Many clients do not have the means to pay for this outside of their superannuation arrangements, due to cashflow constraints. Clients can be provided with personal advice or general advice on matters about the member's interest in the fund: for example, advice on contribution strategies, or issues with updating details with the superannuation fund. The ability to pay for general advice from a member's account requires further consideration to ensure that the payment for the overall package of services can be covered through this provision.

- The FAAA welcomes clarification in paragraph 1.23 of the Explanatory Memorandum that "*An example of such advice is how the member's superannuation is used to produce income in retirement*".

- While we support the proposed commencement for Part 1 Division 1 of six months after the legislation receives Royal Assent, we are concerned by the transition arrangement including in s2(3)(c) that suggests that, if immediately before the start date a complying arrangement and written consent exists, then it remains in force for 12 months from the start date. This could mean that the option of 150 days after the anniversary date for renewal may not apply. This is inconsistent with the obligations under fee consent in Part 2.

- We are concerned about the complexity in the legislation impacting the tax treatment of advice fees paid by superannuation funds. For example, we are uncertain as to the potential additional implications under Part 2, Division 2 of any fees incurred in relation to gaining or producing the fund's exempt income or non-assessable non-exempt income. This highlights the excessive level of complexity in the tax arrangements for superannuation funds. We would argue that greater simplicity is in the interest of all.

- The second division of Part 1 applies at the start of the first quarter after Royal Assent, which seems reasonable.

PART 2 – ONGOING FEE ARRANGEMENTS

FAAA primary recommendation

Ongoing fee arrangements (OFAs) are a legally endorsed way for clients to pay for financial advice services. As acknowledged in the Quality of Advice Review Final Report, the current requirement for financial advisers to give an annual Fee Disclosure Statement (FDS), a renewal notice, as well as a client fee consent form to the product provider in order for the payment of client agreed ongoing advice fees to be paid via a client's product account, creates significant inefficiencies and costs.

As previously noted, we are supportive of the intent of going from three notices to one form, focusing on specific client consent for ongoing fees to be paid from their financial product. While many advisers have moved to annual agreements and hence are not required to produce FDSs, we welcome the

repeal of the FDS regime as a significant step forward in simplifying the process for clients and removing expensive duplication of requirements.

The requirements for ‘charging ongoing fees’ in s962S and associated provisions were framed around issues identified by the Hayne Royal Commission five years ago, for issues dating all the way back to 2008. Since this time, there has been significant market and regulatory change, most notably the introduction of the single disciplinary body for financial advisers and the introduction of professional standards for financial advisers including an exam, education standard and the legislated Financial Adviser Code of Ethics (the Code).

The Code requires evidence of the client’s free, prior and informed consent to all benefits the adviser/licensee will receive, including any fees for services that may be charged irrespective of their method of payment; and, any fees and charges the client must pay must be fair and reasonable and represent value for money for the client.

The obligations to give the product provider a copy of the annual client consent does not apply in other commercial settings. By way of contrast, if a consumer takes out a gym membership and gives consent for an ongoing membership fee to be deducted from their bank account, the gym business does not have to go to the bank with an annual consumer consent to show the bank that it has permission to get paid, the services the gym provides and the member’s usage of those services, so that the bank can pay the money from the consumer’s account for that product. Rather, the bank’s focus is on whether the consumer has sufficient funds in their account to pay the membership fee.

Particularly since the new ‘charging ongoing fees’ requirements commenced in 2021, significant complications, inefficiencies and unintended consequences have been identified, and have been acknowledged by ASIC and the QAR. In particular, each product issuer has sought individual advice on the consent requirements, and developed separate forms and processes to meet the obligations in a way that are unique to their views, technology, product structures and service models. Financial advisers must deal with all of these separate approaches in their business, as the client best interests duty prevents them from moving clients to products that provide the best and most efficient services to advisers. The costs of working with so many different approaches are very high and have contributed to recent jumps in the cost of advice to consumers.

The purpose of the fee consent regime is to demonstrate that the client has made an informed decision and agrees to the ongoing advice arrangement and payment of the associated fees from the client’s product account. Consumer outcomes must sit at the centre of any changes to the regime. A standardised single form will not meet the needs of clients and is particularly challenging to implement as the following examples demonstrate:

- The provision of ongoing personal financial advice usually includes multiple strategies and recommendations covering more than one of the client’s advice needs. The implementation of such advice will likely involve multiple product providers, all requiring a client consent form based on their own systems and internal procedures. A single form will not cover all these differences.
- It is common practice for one OFA to include multiple parties (such as a husband and wife or other relationship), where individuals hold joint accounts, or arrangements involving companies and trusts.

Our strong recommendation is that financial advisers should still be required to have clients sign a standard fee consent form; however they should not be required to provide the fee consent forms to product providers. Rather, product providers should be permitted to rely on financial advisers meeting their fee consent obligations under the Code and Corporations Act. These obligations on financial

advisers provide strong consumer protections and a clear mechanism for detecting inappropriate advice charging practices with significant penalties for non-compliance.

Product providers could operate a sample based audit regime to confirm financial adviser compliance with the client consent requirements. However, the product provider audit requirements should not be onerous. The obligations on advisers and AFSLs should be the primary check for client consent.

The FAAA strongly recommends the removal of s962S(3)(c) and the requirement for financial advisers to provide client fee consent forms to product providers.

FAAA secondary recommendation

If the government is determined to proceed with the requirement of a standard client consent form to be provided to product providers for the payment of adviser fees from a client's product, the FAAA provides the following feedback on the draft legislation.

The proposal that acceptance of the proposed standardised form would be voluntary for product providers will result in minimal if any efficiency gains from the proposed legislation. As product providers have already developed their individual systems and processes to meet the fee consent requirement, it is extremely unlikely they will choose to make further expensive changes to support standardisation unless those changes are required by law. There will be no cost reduction for consumers, this law will rather serve to entrench inefficiencies.

The concept of a voluntary standardised consent form as currently proposed is inappropriately designed.

The Note to s962Y in the draft legislation states:

> *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.*

This Note is expanded upon in the draft Explanatory Memorandum:

> *1.79 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.*
>
> *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.*

The FAAA opposes the proposal that the standardised consent form will not be mandatory for product providers. This is counter to the intent of achieving standardisation and will not reduce red

tape. It will not relieve consumers from having to provide consent on multiple forms, where the client has more than one product holding.

The primary legislation should include a mandate that all product providers must accept the standardised consent form for the deduction of personal advice fees whether it is one-off, fixed term or under an ongoing fee arrangement.

The lack of obligation on product providers to accept the proposed form and the permission given to product providers to apply their own rules to the payment of ongoing advice fees, makes the suggested changes redundant and completely undermines the Minister's stated intent of this measure - *"Consolidating different ongoing fee consent documents into one simplified document"*[2]. The draft legislation does not achieve the intent of the QAR recommendation to address the inefficiency and time wasting experienced by clients and planners under the existing client consent requirements.

Advisers will still need to meet the requirements of multiple forms and processes for each product provider, incurring substantial costs with no benefit to the client. No efficiencies and no reduction of costs to the consumer will eventuate as a result of a voluntary form.

Should the government decide to maintain the requirement for advisers to provide annual consent forms to product providers, consideration must be given to the information product providers actually need in a standardised form, versus what they might want, in order to confirm consent to the payment of the adviser's fee. This is critical to ensure one standardised form can cover client consent involving multiple parties to an OFA, and other circumstances as discussed above.

A prescribed standard mandatory form must be high-level and limited to the information that is absolutely required. The FAAA supports most of the information for inclusion in a standardised form as proposed in s962E(3) (and (4) as relevant). However, details on the frequency of payment should not be required. Given the form is only used when the client agrees to the fee, s962E(3) should also not need to include:

> *(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;*

These proposed provisions are redundant and will over-complicate the form for clients and should be removed. If the client does not wish to continue with the arrangement, then they are unlikely to have a consent form presented to them for signing.

Any information sought by the product provider, in addition to what is in the standard form, must be by request only, sit outside the mandatory form and requirements, and not be subject to client signature.

The proposed s962Y sets out four separate types of forms that the Minister could approve:

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;

[2] *Cutting red tape from financial advice,* cited https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/cutting-red-tape-financial-advice

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

The proposal of four separate types of forms is excessive, and unnecessarily adds complexity, inefficiency and costs for all parties. There is no identifiable difference between the service and arrangement the client is consenting to. The four proposed types of forms represent important elements of an OFA, however should be captured in one standardised form.

The proposal to have four types of forms moves away from clear rationalised fee consent for clients.

A vital consideration of the success of the proposed change is the utilisation of technology to facilitate client consent. For example, a digital app that permits a client to securely upload consent which is sent directly to the product provider. Technology-based solutions offer a seamless process for all parties, reducing time and costs involved in the existing regime. The draft legislation must enable client consent to be given electronically, and allow for the use of digital processing that facilitates client consent directly to the product provider via a secure app.

FAAA recommends the primary legislation explicitly state that:

- **one standard form should be used for client consent for the payment of financial adviser fees from a client's product account**
- **the client consent form should be standardised and be able to be electronically or digitally provided**
- **product provider acceptance of the form must be mandated**

This approach will deliver significant improvements for clients and is in line with the government's acknowledgement of the professionalisation of financial advice.

The FAAA would welcome the opportunity to work with Treasury to develop one standard form enabled by technology-based solutions for client consent.

ANNIVERSARY DAY AND TRANSITION ARRANGEMENTS

The 'anniversary day' concept in the OFA regime has always been a point of significant confusion for clients and advisers. The original FoFA reforms allowed the anniversary day to be brought forward, providing some flexibility. That changed with the 2021 Royal Commission legislation, which prevented advisers from aligning the clients' anniversary day to the time when they wanted to complete their annual review. This could only be resolved by starting a new client arrangement.

The commencement of the OFA regime resulted in the FAAA predecessor associations (both FPA and AFA) receiving hundreds of member requests for assistance from all sized licensees to explain the 'anniversary day' requirements – both following the original FoFA requirements, but particularly after the 2021 changes, which made it significantly more difficult to understand and implement. Over the years, the FAAA issued numerous member communications and guidance to assist members with this issue.

The FAAA recommends the focus on the 'anniversary day' should cease, and the renewal period should be changed to commence on the anniversary of the date the client signed the OFA. Flexibility should continue with the requirement to renew the arrangement at any stage before 150 days after the point 12 months after the client last consented to the arrangement.

Aligning the renewal period with the date of client consent (signing) provides a practical client-focused solution that reflects the timing of client reviews and meetings. It will also assist in addressing complications with OFAs involving multiple parties (such as couples with different anniversary dates; or where the client has an arrangement in their own name or through a company that are on different days). It would allow the commencement of a renewed consent (anniversary day) to be brought forward, should a client review/meeting be required at an earlier point in time. This is an important change to address client concerns with the current regime.

The complexity of the 'anniversary day' concept is demonstrated in Example 1.1 of the Explanatory Memorandum and the proposed transition arrangements for the new client consent regime. This is unnecessarily and overly complicated for clients and advisers, which will increase the risk of unintended consequences.

<table>
<tr><th>Ongoing fee arrangement event</th><th>Law which applies</th></tr>
<tr><td>New ongoing fee arrangement – entered into or after 1 January 2025</td><td>The new amendments apply when this ongoing fee arrangement is created.</td></tr>
<tr><td>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.</td><td rowspan="2">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.

The fee recipient must provide written notice to the client that the arrangement has terminated within 10 business days (962F(4)).</td></tr>
<tr><td>Existing ongoing fee arrangement – the amendments start to apply during renewal period and the arrangement has 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 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.</td></tr>
<tr><td>Existing ongoing fee arrangement – the amendments start to apply during renewal period and the arrangement has not already been renewed

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.</td><td>The current ongoing fee arrangements apply.

If the fee recipient does not provide a fee disclosure statement within 60 days on the anniversary date, the ongoing fee arrangement terminates immediately.

Example 3A: the arrangement terminates on 30 January 2025.

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).

Example 3B: the arrangement terminates on 30 April 2025.

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.

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.</td></tr>
</table>

We would further highlight that the transition requirements set out in Section 1711(b) are almost impossible to make sense of. This section is unreasonably complex and confusing.

The FAAA recommends the following transition arrangements:

- **An FDS and renewal notice does not need to be provided if the 60 day deadline has not expired by the commencement date.**
- **Where the anniversary day (client signing) occurs before the commencement date, the fee consent form needs to be completed within the existing 120 day requirement - i.e. it operates under the existing rules.**
- **The new requirements apply for any ongoing fee arrangement that arises after the commencement date.**

In our view these changes will substantially simplify the transition arrangements.

Additional comments on the draft legislation

The FAAA provides the following additional points on the draft legislation:

- Unnecessary definitions - The proposed amendments do not remove the definitions from s960 for disclosure day, fee disclosure statement, renewal notice, renewal notice day and renewal period, which will no longer be necessary.
- Standardised explanation for client consent – Clients are frustrated by the constant need to sign multiple forms for product providers to re-confirm their consent to adviser fees to be paid. Section 962E(3)(b) requires the inclusion of "*an explanation of why the fee recipient is seeking the consent*". A standard mandatory sentence providing an explanation of why the fee recipient is seeking the client's consent, may assist client understanding of this requirement. As drafted it presents vague open-ended requirements. An example of a simple statement for clients is:

  > *It is a requirement of the law that client consent must be obtained prior to the payment of an advice fee from a client's account.*

- Termination of arrangement – Section 962F(4) requires a fee recipient to give a notice to the client within 10 business days of the termination of the arrangement. This would be particularly difficult during holidays and busy times of the year. Failure to do so is a civil penalty provision under the draft legislation. This is excessive and it is not focused on the core risk of client detriment. The focus must be on the termination of fees with the product provider. There is a separate penalty for continuing to take fees after termination, which is appropriate and critical to protect the client. The FAAA recommends the 10 business day timeframe in s962F(4) be extended to 30 days. We also suggest that it should not be a civil penalty provision.
- Termination of fees – While it is critical for the adviser to notify the product provider that an OFA has been terminated, equally there needs to be some flexibility in relation to penalties for delays in advising the provider to turn off a fee. For example, if the client emails the adviser on 24 December and the adviser is on leave until 3 January when the next fee is charged. It is not unreasonable to allow for office closures, public holidays, adviser leave and similar circumstances. Should such circumstances arise, within 5 days of returning to the office the adviser should be required to notify the product provider to cease the payment of fees under

the OFA and arrange for the refund of any fees paid since the termination notification was sent by the client.

- Duplication of requirements - Sections 962F, 962G and 962WA repeat the same civil penalty provisions requirement - "*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*". Removing this duplication would simplify the law and improve understanding of the requirements.

- Record keeping - Proposed legislative changes do not appear to include specific record keeping requirements for the new client consent requirements. To provide certainty, we suggest, the Explanatory Memorandum (at a minimum) should reference the application of existing record keeping provisions in the Corporations Act to the client consent requirements.

- Commencement and transition arrangements - We note the commencement date for the proposed client consent and FDS amendments is six months after Royal Assent. While we understand that industry may require a short period of time to adjust to the proposed client consent changes, the FAAA encourages the government to identify appropriate legal parameters to permit the FDS amendments to be 'effective immediately' following Royal Assent, while preserving existing client consent arrangement until the new consent regime commences.

PART 3 – FINANCIAL SERVICES GUIDE

The FAAA provides the following points on the proposed changes to the requirement to provide a FSG in Part 3 of the draft legislation:

- Application of FSG exemption - The FSG exemption only applies in the case of personal advice, however it should be noted that financial advisers might provide their clients with a combination of personal advice, general advice and administrative services. The FSG exemption should apply to relevant providers and not be limited to the type of services that they provide.

- Requirements for website publication - The EM states: "*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*" (1.144). It is important that these obligations are clearly defined under s941C(5A) in the draft legislation and the EM and are not subject to a requirement to be proven retrospectively.

- Compliance assessment - The ongoing obligation to keep the website up to date (Section 943H) do not take into account potential issues if the website is down for a period of time such as because of a cyber attack, a systems update to the website, or in the case of a transition of business and a move to a new website. There must be flexibility to allow for such issues. We recommend more clarity is needed as to how compliance with the webpage publication requirements will be assessed.

- Providing an FSG on request – The FAAA does not support the requirement that clients would be able to request a copy of the FSG if it is on the website, either at the time the advice is provided (s941D(5) or later (s943G). We accept that there will be limited circumstances where the client may not have access to the internet, however we suggest that this is

something that can readily be resolved between the adviser and the client, without the need to set this out in the law. It is an added complexity that was not envisaged in the QAR final report and will undermine the benefits of this reform. We are particularly concerned that this proposed requirement is a civil penalty provision in the draft legislation.

The proposed obligation to provide an FSG on request creates a range of new obligations for the adviser that undermine the value of this reform, including:

- Proving that the client did not request a copy of the FSG (both at the time of the advice and then on an ongoing basis).
- Maintaining a constant scan of potential sources of requests from clients for a copy of the FSG, including all email accounts, all staff mobile phone calls and text messages (including those on leave and possibly overseas), office voicemail, social media account messages, physical mail, faxes etc
- Demonstrating that the website meets the requirements on an ongoing basis.
- Demonstrating that the FSG was provided within the 10 business day requirement whenever it was requested.

- 10 business days to provide the FSG on request - If this obligation to provide a copy of the FSG is maintained, the requirement to provide a FSG within 10 business days of a client requesting it, should include greater flexibility. The proposed timeframe does not consider the complexity of the different channels for receipt of a client request for the FSG, and the prospect that it may arrive during a holiday period. We would also suggest that this should not be a civil penalty provision.

  Given the variety of channels for the delivery of a client request for an FSG, this is a new additional obligation and business risk that will necessitate new processes and checks to ensure such requests are flagged in a timely manner. These new obligations alone might be enough for licensees to avoid using this option.

  The FAAA recommends that if the information is available and up to date on the website, the timeframe to provide the client with a FSG on request should be extended and this should not be a civil penalty provision.

- Commencement - The opportunity to make the FSG available via the website commences immediately. Businesses can choose when they commence this measure which we think is reasonable.

Unfortunately, our conclusion is that as proposed in the draft legislation, this measure includes significant risks and will result in additional expenditure, making the value of it very limited. Ultimately it may not be widely adopted due to the requirement to provide a copy when requested and the consequences of this obligation.

PART 4 – CONFLICTED REMUNERATION

The FAAA is broadly supportive of Part 4 of the draft legislation on Conflicted Remuneration. These changes are consistent with the QAR recommendations and will achieve the intended purpose. We specifically support the exclusion of client directed benefits in the definition of conflicted remuneration,

which avoids the need to treat them as exemptions. We also support the removal of the other exemptions that will eventuate.

We nonetheless provide the following feedback:

- Advice services - There is an inconsistency in s963A(1)(b) that specifically excludes a benefit given by the client for the provision of ***financial product advice*** from the definition of conflicted remuneration. The new s963B(1)(bb)(ii) limits the exemption as it applies to benefits provided by superannuation fund trustees to ***personal advice***. There will be a range of implications that arise as a result of this difference. We seek clarification as to the reason(s) for this difference.

  We are conscious that QAR recommendation 13.2 proposed limiting this ability for superannuation funds to pay for advice to personal advice, however it is important to note that the fees paid to a financial adviser for agreed services might also include some services that are of a general advice nature. This requires further consideration to ensure that the payment for the overall package of services can be covered through this provision.

  The current exemption in Section 963B(1)(d)(i) incorporates general advice and dealing with respect to a financial product, however seemingly dealing will no longer be allowed and general advice with respect to a superannuation fund will also be excluded. We have received feedback from members and licensees that it is not uncommon to charge a fee for general advice that is processed against a superannuation fund. We request that this be further considered.

- Inclusion of intra-fund advice - We note the inclusion in Section 963B(1)(bb)(iii) that the benefit could be charged against the interests of other members of the fund. Whilst this might have been intended to address the situation of intra-fund advice, we question the appropriateness of this, as intra-fund advice is not charged directly to the accounts of other members, but instead covered from within the management fee. This is seemingly quite different. If the intent is to specifically state that fees paid to advisers for intra-fund advice are not conflicted remuneration, then this should be stated explicitly.

- Execution only services - We support recommendations 13.4 and 13.5. We further note that the existing exemption that was addressed under recommendation 13.4 was for 'execution only' transactions. The limitation on this only applying to situations where personal advice had not been provided in the last 12 months, was to avoid this measure being inappropriately used. The products that might have enabled such payments to be made, no longer exist.

- Transition arrangements - To the extent that some advisers are charging members of super funds for the provision of general advice, which will not be possible under the draft legislation, we question whether an immediate commencement is appropriate. We suggest a transition period of 6 months is appropriate.

- Benefits for employees of ADIs' - We think the transition arrangements in s1714 for 'Benefits for employees of ADIs' are not appropriate. These draft provisions offer an open-ended position that remains available whilst existing arrangements continue with no end date and could allow these arrangements to continue for many years. In contrast, the 2019 legislation to end grandfathered commissions, which for a reasonable number of financial advisers comprised the termination of a material component of their income, commenced just 14 months after the Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019 received Royal Assent. The Parliament was prepared to overwrite existing contractual arrangements in that case, and thus we would argue that the draft

legislation should be amended to include a similar deadline on these benefits paid by ADIs. Whereas there was no simple alternative for advisers remunerated by grandfathered commissions, in the case of employees of ADIs, there is still the option for payments under a balanced scorecard model.

PART 5 – LIFE INSURANCE CONSENT

The FAAA is broadly supportive of the draft legislation on informed consent for insurance commissions in Part 5. These changes are consistent with the QAR recommendations, and to a large extent provide a practical means of implementing the policy intent. They deliver a sensible balance in terms of the achievement of client consent, without adding excessively to the administrative workload in putting such arrangements in place. However, we believe that in some cases the specifics of what is being proposed needs further refinement to ensure that they are implemented as intended.

Our members, to the extent that they provide insurance advice, are predominantly focused on life insurance, so we will not respond to the draft legislation (except in a very limited sense) with respect to general insurance or Consumer Credit Insurance.

We provide the following feedback:

- In terms of the information that needs to be provided to clients under s963BB(1)(b)(ii), rather than "*an explanation of why consent is required*", we suggest the following simple statement: '*It is a requirement of the law that client consent must be obtained before the payment of an insurance commission'*. This would provide greater certainty.

- In terms of the requirement to advise "*whether the consent is irrevocable*", we seek clarity on if this is a reference to whether the consent is revocable, versus the payment of the commission is revocable? We are not sure what it might mean in practice if the consent is classified as revocable.

- In terms of this question of "whether the consent is irrevocable", we believe that it is important to set out some key factors with how life insurance commissions currently operate:

  - Commissions are not revocable, however they can be transferred to a different adviser, should the client choose a new adviser.

  - A client can also request to remove their current adviser from their life insurance policy, however in practice this does not result in the commission being reimbursed to the client. It is instead retained by the life insurer.

  - In the case of ongoing life insurance commissions (renewal or servicing commission), it is important to appreciate that they are in part a deferred payment for the initial advice provided, given that the Life Insurance Framework caps are set at a point below the cost to deliver the advice in many cases. These commissions also enable payment with respect to undertaking reviews and to cover the cost of supporting clients when they are seeking to make a claim. Most advisers do not charge any additional fee for the management of a claim, unless it is a particularly complex one.

- We believe that in the vast majority of cases, the adviser will simply state that the commission is irrevocable. This reflects the current situation.

- Whilst we support the ability to obtain the client's consent in a form other than as a written record, we need to highlight that this could include an audio recording of a phone call or face-to-face meeting, the videoing of a face-to-face or on-line meeting or simply an email to provide a record of the conversation. Putting in place business arrangements with respect to the recording of phone calls or creation of videos may take some investment in technology and process change. This might necessitate more time to prepare for the commencement of this regime (please see further comment below on the transition timeframe).

- We appreciate the inclusion of specific provisions with respect to the transfer/sale of a financial advice business, however we are concerned that this does not cover the following situations:

  - The sale of a book of clients, as opposed to the sale of an entire financial advice business. Paragraph 1.209 of the Explanatory Memorandum refers to the transfer as "part of a sale of part or all of the advice business". However, Section 963BB(3)(a) only refers to the sale or transfer of a financial product advice business. Expanding this to specifically include the sale of part of a business or a book of clients is important.

  - Section 963BB(3)(a) does not seem to allow for the sale of an advice business (or a book of clients) from one Authorised Representative (or Corporate Authorised Representative) to another within the same licensee. It seems to be dependent on a sale or transfer from one licensee, or a business within a licensee, to a completely different licensee. A sale within a licensee is a common occurrence and needs to be provided for.

- With respect to transition arrangements, we do not believe that three months from Royal Assent is sufficient. Whilst many of the requirements of this regime are already in place, some changes will need to be made and three months is not enough time to make these changes. We are conscious that a greater degree of change will be required for general insurance brokers, who operate under a different model, and certainly in that context, would recommend a six month transition period.