

2013-2014-2015

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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CORPORATIONS AMENDMENT (LIFE INSURANCE REMUNERATION  
ARRANGEMENTS) BILL 2015

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EXPLANATORY MEMORANDUM

(Circulated by the authority of the  
Assistant Treasurer, the Hon Kelly O'Dwyer MP)



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## ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ASIC	Australian Securities and Investments Commission
Bill	Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2015
Commonwealth	Commonwealth of Australia
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
FOFA	Future of Financial Advice
FOFA Legislation	Part 7.7A of the <i>Corporations Act 2001</i> , as introduced by the <i>Corporations Amendment (Future of Financial Advice) Act 2012</i> and the <i>Corporations Amendment (Further Future of Financial Advice Measures) Act 2012</i>
FSI	Financial System Inquiry
Licence	Australian financial services license
Licensee	Holder of an Australian Financial Services License
RIS	Regulation Impact Statement

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## ***General outline and financial impact***

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### **Overview**

The Bill makes amendments to the *Corporations Act 2001* (Corporations Act) to give effect to industry's life insurance reform package; the final details of which were announced by the Minister for Small Business and Assistant Treasurer on 6 November 2015.

The purpose of these reforms is to better align the interests of consumers and those providing advice.

The Bill removes the current exemption in the Corporations Act from the ban on conflicted remuneration for benefits paid in relation to certain life risk insurance products. The scope of the amendments contemplated by this legislation covers personal and general advice, including direct sales channels where there is a general advice element.

The Bill enables the Australian Securities and Investments Commission (ASIC) to make a legislative instrument to permit benefits in relation to life risk insurance products to be paid, provided certain requirements are met. These requirements relate to the quantum of allowable commissions and to 'clawback' arrangements, where a certain portion of the upfront commission is paid back to the life insurer by the financial adviser in the event that the life insurance policy is cancelled or the premium is reduced.

The Bill introduces a ban on volume based payments in life risk products and includes transitional (grandfathering) arrangements in the Corporations Act.

An existing provision in the Corporations Act will be used to facilitate ongoing reporting to ASIC on policy replacement data. This data will assist ASIC in its scheduled 2018 Review of the new arrangements.

***Date of effect:*** The amendments will take effect from 1 July 2016 or the day after Royal Assent, whichever is the later.

***Proposal announced:*** The measures were announced by the Minister for Small Business and Assistant Treasurer on 6 November 2015.

***Financial impact:*** Nil.

***Human rights implications:*** This Bill does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 3.

*Compliance cost impact:* \$18.2 million

## Summary of regulation impact statement

### Regulation impact on business

*Impact:* The amendments to the Corporations Act will impact on life insurance companies, financial advisers and consumers of life insurance risk products.

*Main points:*

- The Government has been informed of the regulatory impacts of various reform options by the findings of three independent reviews – the ASIC Review, Trowbridge Review and the Financial System Inquiry – as well as through targeted consultations with industry stakeholders.
- ASIC found unacceptable levels of poor quality advice, and a strong correlation between high upfront commissions and poor consumer outcomes, including in situations where the recommendation was to switch products.
- Alternative reform options included a level commission model (proposed by the FSI) as well as a model consisting of an Initial Advice Payment and level commissions of 20 per cent of premiums (proposed by Trowbridge).
- ASIC will conduct a review in 2018 to consider whether the new industry arrangements for life insurance advice have better aligned the interests of financial firms and consumers.





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# **Chapter 1**

## ***Removal of exemption to the ban on conflicted remuneration***

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### **Outline of chapter**

1.1 The Bill will amend the *Corporations Act 2001* (Corporations Act) to remove the exemption from the conflicted remuneration ban on benefits paid in relation to certain life risk insurance products.

1.2 Benefits paid in relation to life risk insurance products will be permissible under certain circumstances specified by the Australian Securities and Investments Commission (ASIC) in a legislative instrument.

### **Context of amendments**

1.3 Currently, paragraph 963B(1)(b) of the Corporations Act provides a broad exemption from the conflicted remuneration bans for benefits paid in relation to certain life risk insurance products.

1.4 A life risk insurance product is defined in section 764A(1)(e) and means a life policy, or a sinking fund policy within the meaning of the *Life Insurance Act 1995* (Life Insurance Act), that is a contract of insurance. The definition excludes payments by employee associations, certain payments under the Life Insurance Act, funeral benefits and employee benefits paid by employers.

1.5 Some common life risk insurance products include:

- (i) Life insurance – a form of insurance that pays out a lump sum to a beneficiary upon the death of the client.
- (ii) Total Permanent Disability cover (TPD) – a form of insurance that pays out a lump sum if the client becomes totally and permanently disabled. Different insurers have different definitions of what it means to be totally and permanently disabled.
- (iii) Trauma cover – a form of insurance that provides cover if a person is diagnosed with a specified illness or injury. These

policies include the major illnesses or injuries that will make a significant impact on a person's life, such as cancer or a stroke.

- (iv) Income protection insurance – replacing the income lost due to a person's inability to work due to injury or sickness.

1.6 A series of reports have identified a need for reform in the life insurance sector.

1.7 In October 2014 ASIC released Report 413, *Review of Retail Life Insurance Advice*, that identified a strong correlation between high upfront commissions and poor consumer outcomes. It found that 82 per cent of the industry utilised upfront commission arrangements and the average commission is high (around 120 per cent of the year one premium). For some insurers, more than 90 per cent of their advice channels are paid under an upfront commission model.

1.8 In response to ASIC Report 413 the Government called on industry to review remuneration practices in the life insurance industry. Mr John Trowbridge was appointed as independent Chair of the Review of Retail Life Insurance Advice (the Trowbridge Review), published on 26 March 2015.

1.9 The Trowbridge Review recommended several reforms, including a significant reduction in upfront commissions.

1.10 The Government also commissioned a review of Australia's financial system, the Financial System Inquiry, led by David Murray AO (the FSI).

1.11 The FSI recommended a complete abolition of the current upfront commission model, and a move to level commissions, where any upfront commission does not exceed ongoing commissions.

1.12 In its response to the FSI the Government announced its support for industry's proposed reforms. The Government announced the final reform package on 6 November 2015.

## **Summary of new law**

1.13 The Bill removes the exemption to the ban on conflicted remuneration for benefits paid in relation to certain life risk insurance products in section 963B(1)(b) of the Corporations Act. Prima facie, benefits paid in relation to life risk insurance products will therefore be

considered conflicted remuneration. The effect of this amendment is that commissions and volume based payments will be banned.

1.14 The Bill amends the Corporations Act to give ASIC the power to specify, by instrument, the criteria which must be satisfied for certain life risk insurance products to be exempt from the ban on conflicted remuneration (*the ASIC Instrument*).

1.15 The criteria ASIC is empowered to specify in the ASIC Instrument are:

- (i) The ratio between the benefit payable to a financial services licensee, or a representative of a financial services licensee, who provides financial product advice in relation to a life risk product, or products and the amount payable for the product, or products, to which the benefit relates.
- (ii) The amount, or way of working out the amount, that is an acceptable payment that is to be repaid under clawback.

### Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Benefits paid in relation to life risk insurance products (including commissions and volume based payments) are subject to the ban on conflicted remuneration, unless they satisfy the criteria in the ASIC instrument.	Benefits paid in relation to life risk insurance products (except for a group life policy for members of a superannuation entity, or a life policy for a member of a default superannuation fund) are exempt from the ban on conflicted remuneration.
The components on which a commission may be payable are introduced under a concept of 'relevant amount.'	No guidance on the components on which a commission may be payable.
Gives ASIC the power to create an instrument specifying the percentages of acceptable commissions in the first and subsequent years of a policy, and the amount which will be clawed back over the two year clawback period	No ASIC instrument-making power in relation to commissions paid and the amount which will be clawed back in each year.

<i>New law</i>	<i>Current law</i>
ASIC may require information to be given in a specified manner, including in electronic form.	No specification about the form in which ASIC may request information.

## Detailed explanation of new law

### *Removing the conflicted remuneration exemption*

This measure will remove the exemption from the ban on conflicted remuneration that applies to licensees, or representatives, in relation to certain life risk insurance products.

#### **[Schedule 1, Item 2, section 963B(1)(b)]**

1.16 Currently a benefit given in relation to life risk insurance advice that relates to:

- (i) a group policy of a superannuation entity (963B(1)(b)(ii)); or
- (ii) a life policy for a member of a default superannuation fund (963B(1)(b)(ii)),

is considered conflicted remuneration. These benefits will continue to be considered conflicted remuneration.

#### **[Schedule 1, Item 2, section 963B(1)(b)(ii)]**

1.17 Conflicted remuneration is defined in section 963A and 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, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence the choice of financial product recommended or the financial product advice given to retail clients.

1.18 Financial product advice may be personal or general. The amendments effected by this Bill apply to both forms of advice.

1.19 The effect of the amendment is that all benefits paid in relation to life risk insurance products, whether offered inside or outside superannuation, will be considered conflicted remuneration.

### *Enabling certain types of commissions to be paid*

1.20 The Bill will enable ASIC, via a legislative instrument, to permit benefits in relation to life risk insurance products to be paid, provided

certain requirements are met (herein referred to as the ‘*ASIC instrument requirements*’). The ASIC instrument requirements relate to:

- (a) certain types of allowable commissions; and
- (b) clawback arrangements.

1.21 Both the commission and clawback requirements must be met to obtain the exemption to the ban on conflicted remuneration.

*[Schedule 1, Item 2, section 963B(1)(b)(iii)(B)]*

1.22 The Bill amends the Corporations Act to introduce a concept of ‘relevant amount’ for life risk insurance products on which commissions may be paid.

1.23 The components of the relevant amount may be:

- a. the premiums payable for the product, or products, for that period;
- b. fees payable for the product, or products, for that period;
- c. any additional fees payable because the premium for the product, or products, is paid periodically rather than in a lump sum (known as ‘frequency loading’); and
- d. any other prescribed amount.

1.24 Taxes imposed by the Commonwealth, or a State or Territory, do not form part of the relevant amount.

*[Schedule 1, Item 3, section 963B(3A)]*

#### **Allowable commissions**

1.25 A commission is a type/or subset of conflicted remuneration; it is a payment from one business to another, based on a percentage of the sale price of the product.

1.26 The first requirement to obtain an exemption from the conflicted remuneration ban is in relation to maximum upfront and ongoing commissions (where the ongoing commission is less than the upfront commission).

1.27 ASIC has the power in the ASIC Instrument to set the maximum commission amount for both the first year of the premium (upfront

commission) and for subsequent years (ongoing commissions) for certain life risk insurance products.

- If commissions are paid at or below the maximum amounts, then such benefits would be permissible under law (exempt) and considered to not be conflicted remuneration.
- If commissions are paid above the maximum amounts, then such benefits would not be permissible under law (not able to obtain the exemption) and considered to be conflicted remuneration.

*[Schedule 1, Item 4, section 963BA(1) and (2)]*

1.28 ASIC is also able to allow level commissions to be paid, with no maximum cap in place when a level commission is paid.

*[Schedule 1, Item 2, section 963B(1)(b)(iii)(A)]*

1.29 The ASIC instrument will set maximum upfront and ongoing commission amounts. There will be a transitional period of three years to allow the industry to adapt to the new regulatory environment:

- Maximums permissible between 1 July 2016 - 30 June 2017;
- Maximums permissible between 1 July 2017 – 30 June 2018; and
- Maximums permissible from 1 July 2018 onwards.

### **Clawback Requirements**

1.30 The second requirement to obtain the benefit of an exemption from the conflicted remuneration bans is in relation to clawback arrangements.

1.31 ‘Clawback’ is where a certain portion of the upfront commission is paid back to the life risk insurer from the financial adviser, under certain circumstances.

1.32 The legislation specifies that clawback occurs in the first two years of a policy where the product is cancelled or is not renewed, other than because of suicide, self-harm or in other prescribed circumstances. ASIC has the power in the ASIC instrument requirements to determine how much is clawed back each year.

1.33 The introduction of mandatory clawback arrangements is intended to limit advisers' incentive to 'churn' clients through to a new product in order to receive a new upfront commission.

1.34 Clawback is only required when an adviser is remunerated on an upfront commission basis.

*[Schedule 1, Item 4, section 963BA(3)]*

1.35 ASIC has the power in the ASIC Instrument to determine the amount, or a way of working out the amount, that is an acceptable payment under the clawback arrangements.

*[Schedule 1, Item 4, section 963BA(4)]*

#### *Reporting Data to ASIC*

1.36 An existing provision (section 912C(1)) in the Corporations Act will be used to facilitate ongoing reporting to ASIC on policy replacement data. This data will assist ASIC in its scheduled 2018 Review of the new arrangements.

1.37 ASIC may request that policy replacement data be provided to it in electronic form.

*[Schedule 1, Item 1, section 912C(1A)]*

1.38 Under this approach, requests for data by ASIC will be subject to merits review consistent with other data requests under this provision.

1.39 The Government is considering whether policy replacement data reporting should be exempt from merits review.

## **Application and transitional provisions**

1.40 These provisions commence on 1 July 2016 or the day after Royal Assent, whichever is the later.

1.41 The amendment applies to benefits that are given under an arrangement that was entered into on or after the commencement day.

*[Schedule 1, Item 5, sections 1701 and 1702(1)(a)]*

1.42 The amendment also applies to benefits that are given under an arrangement that was entered into before the commencement day, but only if the life product was issued after the commencement day.

*[Schedule 1, Item 5, section 1702(1)(b)]*

1.43 The amendments do not apply if the operation of the amendments would result in an acquisition of property from a person otherwise than on just terms.

*[Schedule 1, Item 5, section 1702(2)]*

1.44 The effect of the transitional provisions is to grandfather commissions and volume-based payments that are made under pre-existing arrangements in relation to pre-existing policies.

1.45 The following examples assume a commencement date of 1 July 2016.

**Example 1.1: Arrangement entered into after commencement date**

On 2 July 2016, an insurer and licensee enter into an arrangement under which the insurer pays the licensee upfront and ongoing commissions on life products sold by the licensee.

As the arrangement is entered into after the commencement date, the amendments apply and any benefits paid in relation to a life product must satisfy the criteria determined by ASIC.

**Example 1.2: Arrangement entered into before commencement date, life product issued after commencement date.**

Insurer A and a licensee have an arrangement in place before the commencement date under which Insurer A pays the licensee upfront and ongoing commissions on life products sold by the licensee.

On 28 June 2016, the licensee provides advice to a client on a life product issued by Insurer A. On 2 July 2016, the client purchases the life product. On 3 July 2016, a life product is issued to the client.

As the life product is issued after the commencement date, the amendments apply and any benefits paid in relation to the life product must satisfy the criteria determined by ASIC.

**Example 1.3: Arrangement entered into before commencement date, life product issued before commencement date.**

Insurer B and a licensee have an arrangement in place before the commencement date under which Insurer B pays the licensee upfront and ongoing commissions on life products sold by the licensee. Under the arrangement, if the premium increases due to additional cover being taken up, an additional upfront commission will be paid to the licensee by Insurer B.



The licensee has a client, Client X, who has a life insurance policy with Insurer B that was sold by the licensee. The life insurance policy was issued before the commencement date.

On 2 July 2016, Client X seeks additional cover under the life insurance policy that results in a premium increase. As the arrangement was entered into before the commencement date, and as the life product was issued before the commencement date, the amendments do not apply, and the benefits paid do not need to meet the criteria specified by ASIC.

**Example 1.4: Arrangement entered into before commencement date, payments based on volume of products sold ('volume-based payments').**

Insurer C and a licensee have an arrangement in place before the commencement date under which Insurer C pays the licensee a volume-based bonus that is calculated by reference to the number of life products sold by the licensee. The volume-based bonus is to be paid on 1 January each year.

At 30 June 2016, the licensee has 30 clients that have life products with Insurer C.

On 1 January 2017, the licensee has 40 clients that have life products with Insurer C. The 40 clients consists of the 30 clients who had life products with Insurer C at 30 June 2016, and 10 clients who have had life products issued to them after the commencement date. On 1 January 2017, Insurer C is able to pay a volume-based bonus to the licensee that is calculated by reference to the 30 clients that had life products at 30 June 2016.

On 1 January 2018, the licensee has 50 clients that have life products with Insurer C. The 50 clients consists of 21 clients who had life products with Insurer C at 30 June 2016, and 29 clients who had life products issued to them after the commencement date. On 1 January 2018, Insurer C is able to pay a volume-based bonus to the licensee that is calculated by reference to the 21 clients that had life products at 30 June 2016.



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## **Chapter 2 Regulation Impact Statement**

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2.1 On 20 October 2015, the Government announced as part of its response to the FSI that it would support the retail life insurance industry's proposed reforms as announced by the then Assistant Treasurer on 25 June 2015. In taking this decision and subsequent decisions on the details of the reform package, the Government was informed of the regulatory impacts of various reform options by the findings of three independent reviews as well as through targeted consultations with industry stakeholders.

2.2 The independent reviews of the life insurance remuneration arrangements are:

- (i) Australian Securities and Investments Commission Report 413, Review of retail life insurance advice, October 2014 (ASIC Review).
- (ii) John Trowbridge, Review of Retail Life Insurance Advice Final Report, 26 March 2015 (Trowbridge Review).
- (iii) Financial System Inquiry Final Report, November 2014 (FSI).

2.3 The reform package announced by the then Assistant Treasurer on 25 June 2015 was constructed on behalf of the life insurance industry by the Financial Services Council (FSC), the Association of Financial Advisers (AFA) and the Financial Planning Association (FPA). Targeted consultations with these stakeholders continued up until the Government announced the final package on 6 November 2015.

2.4 Treasury will certify that the independent reviews and consultations is a process and analysis equivalent to a Regulation Impact Statement (RIS).

2.5 The Australian Government Guide to Regulation identifies seven questions that a RIS should address. Following is a summary of the analysis of these questions that occurred as part of the independent reviews and stakeholder consultation process.

### **Problem**

2.6 In 2014, ASIC undertook a surveillance to understand the personal advice consumers were receiving about life insurance and to identify opportunities to promote personal life insurance advice that is in

the best interests of consumers. The findings from this surveillance were presented in the ASIC review published in October 2014.

2.7 ASIC found unacceptable levels of poor quality advice, and a strong correlation between high upfront commissions and poor consumer outcomes, including in situations where the recommendation was to switch products. It found that 37 per cent of the advice reviewed failed to comply with the quality of advice standard in force at the time the advice was given.

2.8 The factors ASIC identified that affected quality of advice were:

- (i) adviser incentives;
- (ii) inappropriate scaling of advice;
- (iii) lack of strategic life insurance advice;
- (iv) weak rationales for product replacement advice; and
- (v) failure to consider the relationship between life insurance and superannuation.

2.9 After reviewing over 200 files, ASIC found that the way advisers were paid had an influence on the likelihood of their clients receiving advice that did not comply with the law. The prevailing form of remuneration was large upfront commissions (in the order of 110-120 per cent of the premium), with an ongoing commission of around 10 per cent of the premium.

## **Need for government action**

2.10 There have been many regulatory interventions by Australian Governments in recent years to help improve trust and confidence in the financial services industry and the quality of information for which consumers of financial services have access. Government intervention is justified because of the significant costs to individuals, the community and/or taxpayers that can result from poor information on the benefits and risks of financial services, including life insurance.

2.11 The problems associated with remuneration arrangements that involve commissions have been known for some time. Under the Future of Financial Advice (FOFA) reforms, conflicted remuneration, such as commissions was prohibited.

2.12 However, benefits paid in relation to life insurance were exempt from this prohibition. The ban on conflicted remuneration does not apply to life insurance due to the features which make it unique from investment products, including the absence of investible funds from which to pay for advice and concerns around levels of underinsurance in the Australian community.

2.13 The evidence of poor quality advice found by the ASIC Review justified further efforts by the Government and the industry to reform the remuneration arrangements in the life insurance industry.

### **Policy options and likely net benefits of the options**

2.14 The FSI drew on the ASIC Review to inform its consideration of the problem of poor quality life insurance advice. Murray recommended the implementation of a 'level commission' structure, whereby the upfront commission is not greater than the ongoing commission. It was argued that:

*“this would provide a balanced and cost effective approach to better align the interests of advisers and consumers. The remuneration model needs to be sustainable; otherwise there is a risk that providers may exit the market, making it more difficult for consumers to obtain life insurance advice.”*

2.15 The FSI did not determine the percentage amount of the level commission that should apply in the life insurance sector as this should be left to the market and industry.

2.16 The Trowbridge Review recommended a remuneration model with the following key features:

- (i) an Initial Advice Payment (IAP) of \$1,200 or, for customers with annual premiums below \$2,000, no more than 60 per cent of the first year's premium, payable once every five years;
- (ii) level commission at a maximum of 20 per cent of the premium;

2.17 Additional elements included: a continuation of existing arrangements for retention periods ('clawbacks') on the first year commission and IAP; reforms to Approved Product Lists (APLs) and Statements of Advice (SoAs); and the introduction of an industry Code of Practice.

2.18 Trowbridge argued that if advisers did not receive an initial payment beyond the ongoing commission, there would be a substantial mismatch between initial advice costs and the initial payment to advisers. This could lead to large numbers of financial advisers ceasing to offer life insurance advice, with the diminished supply of advice likely to exacerbate the underinsurance problem in Australia.

2.19 On 25 June 2015, the then Assistant Treasurer announced the reform package that industry had developed following the recommendations made in the Trowbridge Report. The proposals on commissions and remuneration of advisers included:

- (i) Reduction in upfront commissions, going from a maximum upfront commission of 80 per cent of the first year premium from 1 January 2016, to a maximum upfront commission of 60 per cent of the first year premium from 1 July 2018. Ongoing commission will be 20 per cent from 1 January 2016;
- (ii) Clawback over three years to apply from 1 January 2016;
- (iii) Ban on other forms of conflicted remuneration consistent with the FOFA reforms from 1 July 2016; and
- (iv) Life insurance companies to offer fee-for-service insurance products for those advisers who wish to operate on a fee-for-service basis.

2.20 The Government also announced further proposals relating to APLs, SoAs and an industry code of conduct.

## **Consultation**

2.21 The FSI took initial submissions on the issues set out in the inquiry's terms of reference and a second round of submission in response to its Interim Report. In developing the Government's response, Treasury took submission on the recommendations in the Final Report.

2.22 The Trowbridge Review received 137 submissions from the industry, consumers and other interested parties. Consultations were held with consumer groups, government agencies (ASIC, APRA and Treasury), individual advisers, licensees and insurance company executives.

2.23 The Government and Treasury consulted on a regular basis with industry stakeholders throughout the policy development process. This

included two industry roundtables involving the FSC, AFA and FPA following the Government's announcement of its response to the Financial System Inquiry to settle the final details of the reform package.

## **Agreed Option**

2.24 On 20 October 2015, as part of its response to the FSI, the Government announced it would support the retail life insurance industry's proposed reforms as announced by the then Assistant Treasurer on 25 June 2015.

2.25 Following consultations with stakeholders on some outstanding issues, the Minister for Small Business and Assistant Treasury announced the final reform package on 6 November 2015. This final package included a revised commencement date of 1 July 2016, and a change to the clawback period from three to two years.

2.26 A draft regulatory costing for the reform package has been prepared, consistent with the Government's Regulatory Burden Measurement Framework. These costs are summarised in Table 1.

2.27 For life insurers, implementation costs include the updating of internal policies and procedures, including training courses. There will be ongoing costs associated with monitoring compliance with the new regulations.

2.28 For large and medium sized licensees, there will be implementation costs associated with updating IT and other systems. It is assumed that small licensees do not have advanced IT systems and so the IT costs are not likely to be material. All licensees will have additional costs associated with monitoring compliance with the new regulations.

2.29 Individual financial advisers will incur a small cost associated with updating their knowledge of the remuneration arrangements, including clawback.

2.30 It is estimated that the increase in annual compliance costs for the industry as a whole will amount to \$18.2 million.

**Table 1: Regulatory burden and cost offset estimate table**

<b>Average annual regulatory costs (from business as usual)</b>				
<b>Change in costs (\$ million)</b>	Business	Community organisations	Individuals	Total change in costs
<b>Total, by sector</b>	\$18.2	\$0	\$0	\$18.2
<b>Cost offset (\$ million)</b>				
	Business	Community organisations	Individuals	Total, by source
<b>Treasury</b>	-\$18.2	\$0	\$0	-\$18.2
<b>Are all new costs offset?</b>				
<b>X Yes, costs are offset X No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required</b>				
<b>Total (Change in costs – Cost offset) (\$ million) = \$0</b>				

*Note: A regulatory offset has been identified from within the Treasury portfolio.*

***Please provide feedback on these cost estimates as part of your submission on the draft Bill and other explanatory material.***

## **Implementation and Evaluation**

2.31 Implementing these reforms, which will commence on 1 July 2016, will be a joint effort between industry, ASIC and the Government.

2.32 The Government will amend the *Corporations Act 2001* (Corporations Act) to give ASIC the power to create a legislative instrument to set caps on commissions and implement clawback arrangements. Ultimately, the final form of ASIC’s instrument will be a matter for ASIC, as the independent regulator.

2.33 The FSC will have responsibility for creating the Life Insurance Code of Practice. Similar to existing codes for Banking and General



Insurance, the Code would set out best practice standards for insurers, including in relation to underwriting and claims management. This work is already underway.

2.34 The ASIC review of Statements of Advice will commence in the second half of 2016.

2.35 ASIC will conduct a review in 2018 to consider whether the new industry arrangements for life insurance advice have better aligned the interests of firms and consumers. If the 2018 review does not identify significant improvement, the Government will move to mandate level commissions, as was recommended by the FSI. The Government will ensure that the industry develops appropriate lapse reporting data to provide clear evidence for this review and that ASIC works with industry to ensure strong integrity around the data.

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## **Chapter 3**

# **Statement of Compatibility with Human Rights**

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

#### ***Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2015***

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

#### **Overview**

3.2 The amendments remove the current exemption in the Corporations Act from the ban on conflicted remuneration for benefits paid in relation to certain life risk insurance products.

3.3 The Bill enables the Australian Securities and Investments Commission (ASIC) to make a legislative instrument to permit benefits in relation to life risk insurance products to be paid, provided certain requirements are met. These requirements relate to the quantum of allowable commissions and to ‘clawback’ arrangements, where a certain portion of the upfront commission is paid back to the life insurer by the financial adviser in the event that the life insurance policy is cancelled or the premium is reduced.

3.4 The Bill introduces a ban on volume based payments in life risk products and includes transitional (grandfathering) arrangements in the Corporations Act.

3.5 An existing provision in the Corporations Act will be used to facilitate ongoing reporting to ASIC on policy replacement data. This data will assist ASIC in its scheduled 2018 Review of the new arrangements.

#### **Human rights implications**

3.6 This Bill does not engage any of the applicable rights or freedoms.

## **Conclusion**

3.7 This Bill is compatible with human rights as it does not raise any human rights issues.

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