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Inserts for
**Financial Sector Reform (Hayne Royal
Commission Response—Protecting
Consumers (2020 Measures)) Bill 2020:
FSRC rec 2.1 (ongoing fee arrangements)**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule [2.1]	1 July 2020.	1 July 2020

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Schedule [2.1]—Ongoing fee arrangements

Part 1—Main amendments

Corporations Act 2001

1 Section 962CA

Repeal the section.

2 Section 962D

Repeal the section.

3 Subsection 962F(1)

Omit “section 962G (the disclosure obligation) or”.

4 Subsection 962F(1)

After “renewal notice”, insert “and fee disclosure statement”.

5 Subsections 962F(2) and (3)

Omit “section 962G or”.

6 After section 962F

Insert:

962FA Arrangement terminates if Subdivision C not complied with

(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).

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

(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 under

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1 Subdivision C, in relation to the deduction of ongoing fees relating
2 to the ongoing fee arrangement, after a failure to comply with a
3 provision referred to in subsection (1) in relation to the ongoing fee
4 arrangement.

- 5 (3) However, if the client gives that consent after a failure to comply
6 with a provision referred to in subsection (1) in relation to the
7 ongoing fee arrangement, the fee recipient is not obliged to refund
8 an amount deducted, or received as a result of a deduction made, in
9 accordance with the consent.

10 **7 Section 962G**

11 Repeal the section.

12 **8 Subparagraph 962H(1)(b)(ii)**

13 Repeal the subparagraph, substitute:

- 14 (ii) a period of 12 months (the *upcoming year*) that begins
15 at the end of the previous year.

16 **9 Before subsection 962H(2)**

17 Insert:

18 *Information relating to the previous year*

19 **10 Subsection 962H(2)**

20 After “following information”, insert “relating to the previous year”.

21 **11 Paragraph 962H(2)(a)**

22 Omit “, expressed in Australian dollars unless an alternative is provided
23 in the regulations”.

24 **12 Paragraph 962H(2)(f)**

25 Omit “, including information that relates to a period that begins after
26 the previous year”.

27 **13 After subsection 962H(2)**

28 Insert:

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Information relating to the upcoming year

1
2 (2A) The following information relating to the upcoming year is
3 required for a fee disclosure statement in relation to an ongoing fee
4 arrangement, subject to subsection (3):

- 5 (a) information about the services that the client will be entitled
6 to receive under the arrangement during the upcoming year;
7 (b) the amount of each ongoing fee that the client will be
8 required to pay under the arrangement during the upcoming
9 year;
10 (c) if the client will be required to pay under the arrangement an
11 ongoing fee after the end of the upcoming year for a service
12 referred to in paragraph (a)—the amount of any such ongoing
13 fee;
14 (d) information about any other prescribed matters.

15 (2B) If an amount of an ongoing fee that is required to be included in a
16 fee disclosure statement under subsection (2A) cannot be
17 determined at the time of preparing the statement, the statement
18 must include a reasonable estimate of the amount of the ongoing
19 fee and an explanation of the method used to work out the
20 estimate.

21 *Other information requirements*

22 **14 At the end of section 962H**

23 Add:

- 24 (4) Information about the amount of an ongoing fee that is required to
25 be included in a fee disclosure statement under this section must be
26 expressed in Australian dollars, unless an alternative is provided in
27 the regulations.

28 **15 Section 962J**

29 Repeal the section.

30 **16 Section 962K (at the end of the heading)**

31 Add “and fee disclosure statement”.

32 **17 At the end of section 962K**

33 Add:

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1 (4) A person contravenes this subsection if the person contravenes
2 subsection (1).

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

4 **18 Paragraphs 962L(1)(a) and (b)**

5 Omit “second anniversary”, substitute “anniversary”.

6 **19 Subdivision C of Division 3 of Part 7.7A**

7 Repeal the Subdivision, substitute:

8 **Subdivision C—Consent required for deduction of ongoing fees** 9 **from accounts**

10 **962R Fee recipient must not deduct ongoing fees without consent**

11 (1) This section applies if:

- 12 (a) an ongoing fee is, or will be, payable to a fee recipient under
13 an ongoing fee arrangement; and
14 (b) a person (the *account holder*) holds an account with the fee
15 recipient; and
16 (c) the fee recipient proposes to deduct the amount of the
17 ongoing fee from the account holder’s account.

18 (2) Subject to subsection (3), the fee recipient must not deduct the
19 amount of the ongoing fee from the account unless all of the
20 following are satisfied:

- 21 (a) the account holder has given the fee recipient written consent
22 for the fee recipient to deduct amounts from the account in
23 respect of ongoing fees under the ongoing fee arrangement;
24 (b) if requirements that apply in relation to the consent are
25 determined under section 962T—the consent complies with
26 those requirements;
27 (c) at the time of making the deduction:
28 (i) the consent has not been withdrawn under
29 paragraph 962U(1)(a); and
30 (ii) if the consent has been varied under
31 paragraph 962U(1)(b)—the consent as varied still
32 allows for the deduction to be made; and
33 (iii) the consent has not ceased to have effect under
34 section 962V.

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1 (3) If the account holder holds the account jointly with one or more
2 other persons, the fee recipient must not deduct the amount of the
3 ongoing fee from the account unless all of the paragraphs in
4 subsection (2) are satisfied in relation to the account holder as well
5 as each of those other persons as account holders.

6 (4) A person contravenes this subsection if the person contravenes
7 subsection (2) or (3).

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

9 **962S Fee recipient must not arrange for deduction of ongoing fees** 10 **without consent or accept such deductions**

11 (1) This section applies if:

- 12 (a) an ongoing fee is, or will be, payable to a fee recipient under
13 an ongoing fee arrangement; and
14 (b) a person (the *account holder*) holds an account with another
15 person (the *account provider*) who is not the fee recipient;
16 and
17 (c) the fee recipient proposes to arrange with the account
18 provider for the amount of the ongoing fee to be deducted
19 from the account holder's account.

20 *Fee recipient must not arrange deductions without consent*

21 (2) Subject to subsection (3), the fee recipient must not arrange for the
22 account provider to deduct the amount from the account unless all
23 of the following are satisfied:

- 24 (a) the account holder has given the fee recipient written consent
25 for the fee recipient to arrange for amounts to be deducted
26 from the account in respect of ongoing fees under the
27 ongoing fee arrangement;
28 (b) if requirements that apply in relation to the consent are
29 determined under section 962T—the consent complies with
30 those requirements;
31 (c) the fee recipient has given a copy of the account holder's
32 consent to the account provider;
33 (d) at the time of giving the copy of the consent to the account
34 provider:
35 (i) the consent has not been withdrawn under
36 paragraph 962U(1)(a); and

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- 1 (ii) if the consent has been varied under
2 paragraph 962U(1)(b)—the consent as varied still
3 allows for the deduction to be made; and
4 (iii) the consent has not ceased to have effect under
5 section 962V.

6 (3) If the account holder holds the account jointly with one or more
7 other persons, the fee recipient must not arrange for deductions
8 from the account unless all of the paragraphs in subsection (2) are
9 satisfied in relation to the account holder as well as each of those
10 other persons as account holders.

11 (4) A person contravenes this subsection if the person contravenes
12 subsection (2) or (3).

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

14 *Fee recipient must not accept deductions made without consent*

15 (5) Subject to subsection (6), if the fee recipient has arranged with the
16 account provider, with the account holder's consent, for an amount
17 to be deducted from the account, the fee recipient must not accept
18 payment of the amount unless at the time the payment is made to
19 the fee recipient all of the following are satisfied:

20 (a) the consent has not been withdrawn under
21 paragraph 962U(1)(a);

22 (b) if the consent has been varied under paragraph 962U(1)(b)—
23 the consent as varied still allows for the deduction to be
24 made;

25 (c) the consent has not ceased to have effect under section 962V.

26 (6) If the account holder holds the account jointly with one or more
27 other persons, the fee recipient must not accept the payment unless
28 all of the paragraphs in subsection (5) are satisfied in relation to the
29 account holder as well as each of those other persons as account
30 holders.

31 (7) A person contravenes this subsection if the person contravenes
32 subsection (5) or (6).

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

34 (8) However, subsection (7) does not apply if an amount accepted in
35 contravention of subsection (5) or (6) is repaid into the account

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holder's account within 5 business days of the day on which the payment was accepted.

962T Requirements relating to consent

- (1) ASIC may, by legislative instrument, determine requirements for the giving of consent to deductions from an account for the purposes of this Subdivision.
- (2) Without limiting subsection (1), the instrument may require that:
 - (a) a specified form, or specified form of words, must be used for giving consent; or
 - (b) a consent must include specified information.

962U Variation or withdrawal of consent

- (1) If a person (the *account holder*) who holds an account gives consent to a fee recipient for amounts to be deducted from the account for the purposes of this Subdivision, the account holder may:
 - (a) withdraw the consent at any time, by notice in writing to the fee recipient; and
 - (b) vary the consent at any time, by notice in writing to the fee recipient.
- (2) If the fee recipient receives a notice from the account holder under subsection (1), the fee recipient must within 5 business days of receipt:
 - (a) give written confirmation to the account holder that the notice was received; and
 - (b) if the fee recipient gave a copy of the account holder's consent to an account provider under paragraph 962S(2)(c)—give the account provider a copy of the notice.
- (3) A person contravenes this subsection if the person contravenes subsection (2).

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

962V When consent ceases to have effect

A consent given in relation to an ongoing fee arrangement for the purposes of this Subdivision ceases to have effect:

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- 1 (a) if the ongoing fee arrangement is terminated—at the time the
2 ongoing fee arrangement terminates; or
3 (b) at the end of the period of 30 days after the end of the
4 renewal period for the ongoing fee arrangement that is the
5 first renewal period to start after the consent is given.

6 **962W Conditions requiring consent to be given are void**

7 Any condition of the ongoing fee arrangement, or any other
8 arrangement, that requires the client to do either or both of the
9 following is void:

- 10 (a) to give consent under this Subdivision in relation to the
11 deduction of ongoing fees relating to the ongoing fee
12 arrangement;
13 (b) not to vary or withdraw such consent.

14 **Subdivision D—Records of compliance**

15 **962X Obligation to keep records of compliance**

- 16 (1) A fee recipient in relation to an ongoing fee arrangement must
17 keep records sufficient to enable the fee recipient's compliance
18 with this Division in relation to the ongoing fee arrangement to be
19 readily ascertained.

20 Note 1: Failure to comply with this subsection is an offence: see
21 subsection 1311(1).

22 Note 2: For preservation of records, see section 1101C.

- 23 (2) The regulations may specify records that the fee recipient must
24 keep as part of the obligation in subsection (1).

25 **20 After section 1317GA**

26 Insert:

27 **1317GB Refund orders—contraventions of section 962R or 962S**

- 28 (1) This section applies if a person (the *fee recipient*):
29 (a) deducts an amount of an ongoing fee payable under an
30 ongoing fee arrangement from an account held by a person
31 (the *account holder*) with the fee recipient; or
32 (b) accepts payment of the amount of the ongoing fee that has
33 been deducted from an account held by a person (the *account*)
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1 *holder*) with another person (the *account provider*) under an
2 arrangement the fee recipient made with the account
3 provider.

4 (2) A Court may order that the fee recipient refund the amount if the
5 Court is satisfied that:

6 (a) either:

7 (i) if paragraph (1)(a) applies—the fee recipient knowingly
8 or recklessly contravened section 962R (fee recipient
9 must not deduct ongoing fees without consent) in
10 deducting the amount; or

11 (ii) if paragraph (1)(b) applies—the fee recipient knowingly
12 or recklessly contravened section 962S (fee recipient
13 must not arrange for deduction of ongoing fees without
14 consent or accept such deductions) in arranging for the
15 deduction of the amount, or accepting payment of the
16 amount; and

17 (b) it is reasonable in all the circumstances to make the order.

18 Note: An order may be made under this subsection whether or not a
19 declaration of contravention has been made under section 1317E.

20 *Applications for order*

21 (3) The Court may make the order under this section:

22 (a) on its own initiative, during proceedings before the Court; or

23 (b) on application by ASIC; or

24 (c) on the application of the account holder.

25 *When order may be made*

26 (4) The Court must not make an order under this section in relation to
27 amounts paid more than 6 years before the proceedings for the
28 order are commenced.

29 *Recovery of amount as a debt*

30 (5) If the Court makes an order that the fee recipient refund an amount
31 specified in the order to the account holder, the account holder may
32 recover the amount as a debt due to the account holder.

33 **21 In the appropriate position in Chapter 10**

34 Insert:

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1 **Part 10.45—Application and transitional provisions**
2 **relating to Schedule [2.1] to the Financial**
3 **Sector Reform (Hayne Royal Commission**
4 **Response—Protecting Consumers (2020**
5 **Measures)) Act 2020**

6 **Division 1—Introduction**

7 **1672 Definitions**

8 In this Part:

9 *amending Schedule* means Schedule [2.1] to the *Financial Sector*
10 *Reform (Hayne Royal Commission Response—Protecting*
11 *Consumers (2020 Measures)) Act 2020.*

12 **Division 2—New ongoing fee arrangements**

13 **1672A Application provision for new ongoing fee arrangements**

14 The amendments made by the amending Schedule apply in relation
15 to an ongoing fee arrangement entered into on or after 1 July 2020.

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1 **Division 3—Ongoing fee arrangements covered by former**
2 **Subdivision C of Division 3 of Part 7.7A**

3 **1672B Application of this Division**

4 This Division applies in relation to an ongoing fee arrangement
5 that:

- 6 (a) is in force immediately before 1 July 2020; and
7 (b) is an ongoing fee arrangement to which Subdivision C of
8 Division 3 of Part 7.7A, as in force before 1 July 2020,
9 applied before the repeal of that Subdivision by item 19 of
10 the amending Schedule.

11 **1672C Application—termination, disclosure and annual renewal**
12 **requirements**

- 13 (1) Subdivision B of Division 3 of Part 7.7A, as amended by the
14 amending Schedule, applies to the ongoing fee arrangement from
15 1 July 2020.
- 16 (2) However, for the period from 1 July 2020 to 31 December 2020
17 (the **6 month transition period**), subsection 962K(1) applies in
18 relation to the ongoing fee arrangement as if it were replaced with
19 subsection (3) of this section.
- 20 (3) The current fee recipient in relation to the ongoing fee arrangement
21 must, before the end of the 6 month transition period, give the
22 client a renewal notice and a fee disclosure statement in relation to
23 the arrangement.
- 24 (4) Section 1350 does not apply in relation to the operation of
25 Subdivision B of Division 3 of Part 7.7A, as amended by the
26 amending Schedule, in respect of the ongoing fee arrangement.

27 **1672D Transitional—existing obligation to give a fee disclosure**
28 **statement under section 962S**

- 29 (1) This section applies if:
30 (a) a disclosure day for the ongoing fee arrangement occurs
31 before 1 July 2020; and
32 (b) the period of 60 days beginning on the disclosure day ends on
33 or after 1 July 2020; and
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- 1 (c) before 1 July 2020 the current fee recipient in relation to the
2 ongoing fee arrangement has not given a fee disclosure
3 statement in relation to the ongoing fee arrangement in
4 accordance with the obligation arising under section 962S (as
5 in force before 1 July 2020) in relation to the disclosure day.
- 6 (2) The obligation on the fee recipient to give the fee disclosure
7 statement within the 60 day period beginning on the disclosure day
8 ceases on 1 July 2020.
- 9 (3) However, to the extent that the fee disclosure statement referred to
10 in subsection (2) would have been required to include information
11 in relation to a period that would not otherwise be required to be
12 included in a fee disclosure statement given under section 1672C,
13 the fee disclosure statement given under that section must include
14 that information.

15 **1672E Application—consent requirements**

- 16 (1) Subdivision C of Division 3 of Part 7.7A, as inserted by the
17 amending Schedule, applies in relation to the ongoing fee
18 arrangement on and from 1 January 2021.
- 19 (2) However, if a person gives a fee recipient in relation to the ongoing
20 fee arrangement consent for the purposes of that Subdivision
21 before 1 January 2021:
- 22 (a) section 962U (variation or withdrawal of consent) in that
23 Subdivision applies in relation to the consent from when it is
24 given; and
- 25 (b) section 962X (obligation to keep records of compliance), as
26 inserted by the amending Schedule, applies in relation to
27 records relating to the consent.
- 28 (3) Section 1350 does not apply in relation to the operation of
29 Subdivision C of Division 3 of Part 7.7A, as inserted by the
30 amending Schedule, in respect of the ongoing fee arrangement.

31 **1672F Application—compliance records**

- 32 Subdivision D of Division 3 of Part 7.7A, as inserted by the
33 amending Schedule, applies on and from 1 July 2020 in relation to
34 a fee recipient's compliance with Division 3 of Part 7.7A on and
35 from that date in relation to the ongoing fee arrangement.

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1 Division 4—Other ongoing fee arrangements

2 1672G Application of this Division

3 This Division applies in relation to an ongoing fee arrangement
4 that:

- 5 (a) is in force immediately before 1 July 2020; and
6 (b) is not an ongoing fee arrangement to which Division 3 of this
7 Part applies.

8 1672H Application—annual renewal notice requirements etc.

- 9 (1) The amendments of Subdivision B of Division 3 of Part 7.7A made
10 by the amending Schedule apply in relation to the ongoing fee
11 arrangement on and from 1 July 2020.
- 12 (2) However, for the period from 1 July 2020 to 30 June 2021 (the *12*
13 *month transition period*) subsection 962K(1) applies in relation to
14 the ongoing fee arrangement as if it were replaced with
15 subsection (3) of this section.
- 16 (3) The current fee recipient in relation to the ongoing fee arrangement
17 must, before the end of the 12 month transition period, give the
18 client a renewal notice and a fee disclosure statement in relation to
19 the arrangement.
- 20 (4) Section 1350 does not apply in relation to the operation of
21 Subdivision B of Division 3 of Part 7.7A, as amended by the
22 amending Schedule, in respect of the ongoing fee arrangement.

23 1672J Transitional—existing obligation to give a fee disclosure 24 statement under section 962G

- 25 (1) This section applies if:
26 (a) a disclosure day for the ongoing fee arrangement occurs
27 before 1 July 2020; and
28 (b) the period of 60 days beginning on the disclosure day ends on
29 or after 1 July 2020; and
30 (c) before 1 July 2020 the current fee recipient in relation to the
31 ongoing fee arrangement has not given a fee disclosure
32 statement in relation to the ongoing fee arrangement in
33 accordance with the obligation arising under section 962G

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(as in force before 1 July 2020) in relation to the disclosure day.

(2) The obligation on the fee recipient to give the fee disclosure statement within the 60 day period beginning on the disclosure day ceases on 1 July 2020.

(3) However, to the extent that the fee disclosure statement referred to in subsection (2) would have been required to include information in relation to a period that would not otherwise be required to be included in a fee disclosure statement given under section 1672H, the fee disclosure statement given under that section must include that information.

1672K Transitional—existing obligation to give a renewal notice and fee disclosure statement under section 962K

(1) This section applies if:

(a) a renewal notice day for the ongoing fee arrangement occurs before 1 July 2020; and

(b) the period of 60 days beginning on the renewal notice day ends on or after 1 July 2020; and

(c) before 1 July 2020 the current fee recipient in relation to the ongoing fee arrangement has not given a renewal notice and a fee disclosure statement in relation to the ongoing fee arrangement in accordance with the obligation arising under section 962K (as in force before 1 July 2020) in relation to the renewal notice day.

(2) The obligation on the fee recipient to give the renewal notice and fee disclosure statement within the 60 day period beginning on the renewal notice day ceases on 1 July 2020.

(3) However, to the extent that the fee disclosure statement referred to in subsection (2) would have been required to include information in relation to a period that would not otherwise be required to be included in a fee disclosure statement given under section 1672H, the fee disclosure statement given under that section must include that information.

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1 **1672L Application—consent requirements for deductions of ongoing**
2 **fees**

- 3 (1) Subdivision C of Division 3 of Part 7.7A, as inserted by the
4 amending Schedule, applies in relation to the ongoing fee
5 arrangement on and from 1 July 2021.
- 6 (2) However, if a person gives a fee recipient in relation to the ongoing
7 fee arrangement consent for the purposes of that Subdivision
8 before 1 July 2021:
- 9 (a) section 962U (variation or withdrawal of consent) in that
10 Subdivision applies in relation to the consent from when it is
11 given; and
- 12 (b) section 962X (obligation to keep records of compliance), as
13 inserted by the amending Schedule, applies in relation to
14 records relating to the consent.
- 15 (3) Section 1350 does not apply in relation to the operation of
16 Subdivision C of Division 3 of Part 7.7A, as inserted by the
17 amending Schedule, in respect of the ongoing fee arrangement.

18 **1672M Application—compliance records**

19 Subdivision D of Division 3 of Part 7.7A, as inserted by the
20 amending Schedule, applies on and from 1 July 2020 in relation to
21 a fee recipient's compliance with Division 3 of Part 7.7A on and
22 from that date in relation to the ongoing fee arrangement.

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1 **Part 2—Consequential amendments**

2 *Corporations Act 2001*

3 **22 Section 9 (paragraph (ba) of the definition of *civil penalty***
4 ***order*)**

5 After “section 1317GA”, insert “or 1317GB”.

6 **23 Section 9 (after paragraph (c) of the definition of *Part 7.7A***
7 ***civil penalty provision*)**

8 Insert:

9 (ca) subsection 962K(4) (fee recipient must give renewal notice
10 and fee disclosure statement);

11 **24 Section 9 (paragraph (e) of the definition of *Part 7.7A civil***
12 ***penalty provision*)**

13 Repeal the paragraph, substitute:

14 (e) subsection 962R(4) (fee recipient must not deduct ongoing
15 fees without consent);

16 (ea) subsection 962S(4) or (7) (fee recipient must not arrange for
17 deduction of ongoing fees without consent or accept such
18 deductions);

19 (eb) subsection 962U(3) (fee recipient must confirm receipt of
20 variation or withdrawal of consent for deductions of ongoing
21 fees);

22 **25 Section 960 (definition of *disclosure day*)**

23 Repeal the definition.

24 **26 In the appropriate position in subsection 1317E(3)**

25 Insert:

26 subsection 962K(4) fee recipient must give client a uncategorised
renewal notice and fee disclosure
statement

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1 **27 Subsection 1317E(3) (table item dealing with**
2 **subsection 962S(1))**

3 Repeal the item, substitute:
4

subsection 962R(4)	fee recipient must obtain consent to deduct ongoing fees from an account	uncategorised
subsection 962S(4)	fee recipient must obtain consent to arrange for deductions of ongoing fees from an account	uncategorised
subsection 962S(7)	fee recipient must not accept payment of ongoing fees resulting from a deduction from an account without consent	uncategorised
subsection 962U(3)	fee recipient to confirm receipt of variation or withdrawal of consent for deductions of ongoing fees	uncategorised

5

6 **28 Subparagraph 1317QF(2)(a)(ii)**

7 After “section 1317GA”, insert “or 1317GB”.

8 **29 At the end of paragraph 1317QF(3)(b)**

9 Add “or 1317GB”.

10 **30 Subsection 1317S(1) (paragraph (a) of the definition of**
11 ***eligible proceedings*)**

12 After “1317GA,”, insert “1317GB,”.

13 **31 In the appropriate position in Schedule 3**

14 Insert:
15

16 Subsection 962X(1) 5 years imprisonment