

# EXPOSURE DRAFT

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

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

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## Schedule 1—Quality of advice

### Part 1—Superannuation

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

##### *Superannuation Industry (Supervision) Act 1993*

#### 1 Section 99FA

Repeal the section, substitute:

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

- (1) The trustee or the trustees of a regulated superannuation fund must not charge against a member's interest in the fund the cost of providing financial product advice, unless:
- (a) the financial product advice is personal advice and is wholly or partly about the member's interest in the fund; and
  - (b) the amount charged does not exceed the cost of providing financial product advice about the member's interest in the fund; and
  - (c) the trustee charges the cost in accordance with the terms of a written request or written consent of the member; and
  - (d) if the arrangement under which the advice is provided is an ongoing fee arrangement—any applicable requirements of Division 3 of Part 7.7A of the *Corporations Act 2001* are met in relation to the arrangement and, if relevant, the deduction of ongoing fees; and
  - (e) if the arrangement under which the advice is provided is not an ongoing fee arrangement—the request or consent satisfies the requirements in subsection (2); and
  - (f) the trustee has the request or consent, or a copy of it.

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

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

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

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- 3 (2) For the purposes of paragraph (1)(e), the written request or written  
4 consent must include the following:
- 5 (a) the name and contact details of the member;  
6 (b) the name and contact details of the provider of the financial  
7 product advice;  
8 (c) the name of the fund from which the cost of the advice is  
9 requested to be paid;  
10 (d) a brief description of the services the member is entitled to  
11 receive under the arrangement;  
12 (e) a request from, or consent by, the member for the cost of  
13 providing the advice to be paid by the trustee and charged  
14 against the member's interest in the fund;  
15 (f) either:  
16 (i) the amount to be paid for providing the advice; or  
17 (ii) if the amount cannot be determined at the time the  
18 request is made, or the consent is given, a reasonable  
19 estimate of the amount to be paid for providing the  
20 advice and an explanation of the method used to work  
21 out the estimate;  
22 (g) the member's signature;  
23 (h) the date the request is made.
- 24 (3) For the purposes of paragraph (2)(e), ASIC may, in writing,  
25 approve a form.
- 26 (4) If ASIC has approved a form under subsection (3), a request or  
27 consent for the purposes of paragraph (2)(e) must be in the  
28 approved form.

29 *Cost treated as direct cost of operating fund*

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

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*Collectively charged fees not covered*

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

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

## 2 Application—financial product advice fees charged to a member

(1) In this item:

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

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

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

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

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

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

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

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

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

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

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

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1 **Division 2—Amendment of the Income Tax Assessment**  
2 **Act 1997**

3 *Income Tax Assessment Act 1997*

4 **3 Section 12-5 (at the end of the table item headed**  
5 **“superannuation and related business”)**

6 Add:  
financial product advice 295-490(1) (table  
item 5)

7 **4 Subsection 295-490(1) (at the end of the table)**

8 Add:

9			
5	CSF N-CSF	An amount paid by the *superannuation provider of the CSF or N-CSF to the extent: (a) the amount is for a cost incurred because of the provision of personal advice (within the meaning of Chapter 7 of the <i>Corporations Act 2001</i> ) to a member of the fund about the member’s interest in the fund (regardless of whether that cost was incurred by the provider, the member or another entity); and (b) the amount is paid at the request, or with the consent, of the member; and (c) the provider has a copy of the written request or consent; and (d) the amount is not incurred in relation to gaining or producing the fund’s *exempt income or *non-assessable non-exempt income	The superannuation provider paid the amount

10 **5 At the end of section 307-10**

11 Add:

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

## 4 **6 Application**

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

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## 1 **Part 2—Ongoing fee arrangements**

### 2 *Corporations Act 2001*

#### 3 **7 Subdivision B of Division 3 of Part 7.7A**

4 Repeal the Subdivision, substitute:

#### 5 **Subdivision B—Client consent required for ongoing fee** 6 **arrangements**

##### 7 **962D Consent for ongoing fee arrangement**

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

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

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

##### 15 **962E When consent covers ongoing fee arrangement**

- 16 (1) For the purposes of section 962D, an ongoing fee arrangement is  
17 covered by a written consent of the client at a time if:
- 18 (a) before obtaining the consent, the fee recipient disclosed to  
19 the client, in writing, the matters set out in subsection (3);  
20 and
  - 21 (b) the consent is for:
    - 22 (i) the ongoing fee arrangement to be entered into, or  
23 renewed (as the case requires); and
    - 24 (ii) the ongoing fees disclosed as required under  
25 paragraph (3)(e) to be charged to the client; and
  - 26 (c) the consent is signed by the client; and
  - 27 (d) the consent is dated; and
  - 28 (e) the fee recipient has the consent or a copy of the consent; and
  - 29 (f) the time is in the period specified in column 2 of the item of  
30 the following table applicable to when the consent is given.
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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>If the consent is given:</b>	<b>The consent covers the period that:</b>
1	on or before the arrangement is entered into	(a) starts when the arrangement is entered into; and (b) ends at the earlier of: (i) the end of the first renewal period for the arrangement; and (ii) if the arrangement is terminated—the day the arrangement is terminated.
2	in a renewal period for an arrangement	(a) starts immediately after the end of that renewal period; and (b) ends at the earlier of: (i) the end of the following renewal period; and (ii) if the arrangement is terminated—the day the arrangement is terminated.

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### *Meaning of renewal period*

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

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

6

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

7

8

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

9

10

(c) the period the consent will cover;

11

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

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

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

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

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- 1 (h) a statement that the arrangement will terminate, and no  
2 further advice will be provided or fee charged under it, if the  
3 consent is not given;  
4 (i) the date on which the arrangement will terminate if the  
5 consent is not given;  
6 (j) information about any other matters determined under  
7 subsection (5).
- 8 (4) If an amount of an ongoing fee that is required to be disclosed by  
9 paragraph (3)(e) cannot be determined at the time of disclosing the  
10 matters in subsection (3), a reasonable estimate of the amount of  
11 the ongoing fee and an explanation of the method used to work out  
12 the estimate may be disclosed instead.
- 13 (5) The Minister may, by legislative instrument, determine matters for  
14 the purposes of paragraph (3)(j).

## 15 **962F Ongoing fee arrangement terminates without consent**

- 16 (1) It is a condition of the ongoing fee arrangement that the  
17 arrangement terminates if it is not covered by a written consent of  
18 the client.
- 19 (2) The client is not taken to have waived the client's rights under the  
20 condition (subject to subsection (3)), or to have entered into a new  
21 ongoing fee arrangement, if the client makes a payment of an  
22 ongoing fee after the arrangement terminates under subsection (1).
- 23 (3) However, if the client makes a payment of an ongoing fee after the  
24 arrangement terminates under subsection (1), the fee recipient is  
25 not obliged to refund the payment.
- 26 Note: A Court may order that the fee recipient refund the amount (see  
27 section 1317GA).
- 28 (4) If an ongoing fee arrangement terminates under this section, the fee  
29 recipient must, within 10 business days of the termination, give  
30 written notice to the client that the arrangement has been  
31 terminated.
- 32 Note: This subsection is a civil penalty provision (see section 1317E).
- 33 (5) If an ongoing fee arrangement terminates under this section, the fee  
34 recipient must not continue to charge an ongoing fee.
- 35 Note: This subsection is a civil penalty provision (see section 1317E).

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## 1 962G Client may terminate ongoing fee arrangement at any time

- 2 (1) It is a condition of the ongoing fee arrangement that the client may  
3 terminate the arrangement at any time.
- 4 (2) A client may terminate the ongoing fee arrangement by giving  
5 notice to the fee recipient in relation to the ongoing fee  
6 arrangement, in writing, that the client wishes to terminate the  
7 arrangement.
- 8 (3) If the client gives a notice under subsection (2) to terminate the  
9 ongoing fee arrangement, the arrangement terminates on the day on  
10 which the notice is given.
- 11 (4) Any condition of the ongoing fee arrangement, or any other  
12 arrangement, that requires the client to pay an amount on  
13 terminating the ongoing fee arrangement is void to the extent that  
14 the amount exceeds the sum of:
- 15 (a) any liability that the client has accrued but not satisfied under  
16 the ongoing fee arrangement before the termination; and  
17 (b) the costs of the current fee recipient incurred solely and  
18 directly because of the termination.
- 19 (5) If an ongoing fee arrangement terminates under this section, the fee  
20 recipient must, within 10 business days of the termination, give  
21 written notice to the client that the arrangement has been  
22 terminated.

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

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

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

## 27 962H Effect of termination of ongoing fee arrangement

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

## 33 8 Subdivision C of Division 3 of Part 7.7A (heading)

34 Repeal the heading, substitute:

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## 1 Subdivision C—Account holder consent required for deducting 2 ongoing fees from accounts

### 3 9 Paragraph 962R(2)(b)

4 Repeal the paragraph, substitute:

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

### 6 10 Paragraph 962S(3)(b)

7 Repeal the paragraph, substitute:

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

### 9 11 Section 962T

10 Repeal the section, substitute:

## 11 962T Requirements for consent—deduction of fees from accounts

12 The requirements for the consent are:

- 13 (a) before obtaining the consent, the fee recipient disclosed to  
14 the account holder, in writing, the matters set out in  
15 subsection 962E(3); and  
16 (b) the consent is given by the account holder for the ongoing  
17 fees disclosed under paragraph (a), to be deducted from the  
18 account; and  
19 (c) the consent specifies the name of the account holder and the  
20 other details of the account; and  
21 (d) the consent is signed by the account holder; and  
22 (e) the consent is dated.

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

### 25 12 After paragraph 962U(2)(a)

26 Insert:

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

### 30 13 After subsection 962V(1)

31 Insert:

- 32 (1A) If a consent given in relation to an ongoing fee arrangement for the  
33 purposes of this Subdivision ceases to have effect under

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1 subsection (1), the fee recipient must, within 10 business days of  
2 the cessation, give written notice of the cessation to:

- 3 (a) unless paragraph (b) applies—the account holder; or  
4 (b) if the account is held jointly with one or more other  
5 persons—all account holders.

## 6 **14 Subsection 962V(3)**

7 After “subsection”, insert “(1A) or”.

## 8 **15 At the end of Subdivision C**

9 Add:

### 10 **962WA Ongoing fee arrangement terminates if fee deducted without** 11 **consent**

- 12 (1) It is a condition of the ongoing fee arrangement that the  
13 arrangement terminates if any of the following provisions have not  
14 been complied with in relation to the arrangement, whether by the  
15 current or a previous fee recipient:  
16 (a) section 962R (fee recipient must not deduct ongoing fees  
17 without consent);  
18 (b) section 962S (fee recipient must not arrange for deduction of  
19 ongoing fees without consent or accept such deductions).
- 20 (2) The client is not taken to have waived the client’s rights under the  
21 condition (subject to subsection (3)), or to have entered into a new  
22 ongoing fee arrangement, if the client gives consent that covers the  
23 deduction of ongoing fees from the account, after the arrangement  
24 terminates under subsection (1).
- 25 (3) However, if the client gives consent for deduction of ongoing fees  
26 from the account after the arrangement terminates under  
27 subsection (1), the fee recipient is not obliged to refund an amount  
28 deducted, or received as a result of a deduction made, in  
29 accordance with that consent.

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

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

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

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

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

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

## 9 **16 Subdivision D of Division 3 of Part 7.7A (heading)**

10 Repeal the heading, substitute:

## 11 **Subdivision D—Common rules for consents under this Division**

## 12 **17 At the end of Subdivision D**

13 Add:

### 14 **962Y Form for consents**

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

- 18 (a) entering into an ongoing fee arrangement;  
19 (b) renewing an ongoing fee arrangement;  
20 (c) deducting an amount in respect of ongoing fees from an  
21 account;  
22 (d) arranging to deduct an amount in respect of ongoing fees  
23 from an account.

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

### 27 **962Z Combining information in a single notice or form**

- 28 (1) If, under this Division, a person is required to give more than one  
29 notice or form to the same person, the information may be  
30 combined and given in a single notice or form.
- 31 (2) If a single notice or form is given under subsection (1), the single  
32 notice or form must satisfy all of the requirements for giving each  
33 notice or form and clearly state the purposes for which it is being  
34 given.

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1 **18 Subsection 1317E(3) (table items dealing with**  
2 **subsection 962G(4) and section 962P)**

3 Repeal the items, substitute:

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

5 **19 Subsection 1317E(3) (table item dealing with**  
6 **subsection 962V(3))**

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

8 **20 In the appropriate position in subsection 1317E(3)**

9 Insert:

10  
subsection 962WA(4) obligations on fee recipients when uncategoryed  
and (5) ongoing fee arrangements terminate

11 **21 Subsection 1317G(1A) (table items 4 to 9)**

12 Repeal the items.

13 **22 Section 1317GA (heading)**

14 Repeal the heading, substitute:

15 **1317GA Refund orders—charging ongoing fee after termination of**  
16 **arrangement**

17 **23 Paragraph 1317GA(1)(a)**

18 Omit “section 962P”, substitute “subsection 962F(5), 962G(5) or  
19 962WA(5)”.

20 **24 In the appropriate position in Chapter 10**

21 Insert:

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

4 **Division 1—Ongoing fee arrangements**

5 **1710 Definitions**

6 In this Part:

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

10 **1711 Application—ongoing fee arrangements**

- 11 (1) The amendments made by Part 2 of Schedule 1 to the *Treasury*  
12 *Laws Amendment (2024 Measures No. 1) Act 2024* apply in  
13 relation to an ongoing fee arrangement entered into on or after the  
14 start day.
- 15 (2) If an ongoing fee arrangement is in force immediately before the  
16 start day, the amendments apply in relation to the arrangement on  
17 and after the first day on or after the start day that is an anniversary  
18 of the day on which the ongoing fee arrangement was entered into.



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## 1 **Part 3—Financial Services Guide**

### 2 *Corporations Act 2001*

#### 3 **25 After subsection 941C(5)**

4 Insert:

5 *Personal advice—information is publicly available on providing*  
6 *entity's website*

7 (5A) The providing entity does not have to give the client a Financial  
8 Services Guide if:

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

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

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

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

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

20 (i) is readily accessible by the public; and

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

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

#### 25 **26 At the end of section 941D**

26 Add:

27 *Timing when information is publicly available on website*

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

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

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

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- 1 (c) paragraph 941(5A)(c) is satisfied in relation to each webpage  
2 on which the information is available;  
3 then the Financial Services Guide must be given to the client  
4 within 10 business days after the later of:  
5 (d) providing the advice; and  
6 (e) receiving the request for the copy of the Financial Services  
7 Guide.

## 8 **27 At the end of Division 2 of Part 7.7**

9 Add:

### 10 **Subdivision D—Obligations relating to website information**

#### 11 **943G Obligation to give a copy of Financial Services Guide**

- 12 (1) Subsection (2) applies if:
- 13 (a) apart from subsection 941C(5A), a person (the *providing*  
14 *entity*) would be required to give another person (the *client*) a  
15 Financial Services Guide; and
  - 16 (b) subsection 941C(5A) applies and the client is not given a  
17 Financial Services Guide; and
  - 18 (c) after the financial service is provided to the client, the client  
19 requests a copy of the Financial Services Guide.
- 20 (2) The providing entity must provide the client with a copy of the  
21 Financial Services Guide within 10 business days after receiving  
22 the request.

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

#### 24 **943H Obligation to keep website information up to date**

- 25 (1) Subsection (2) applies if:
- 26 (a) apart from subsection 941C(5A), the providing entity would  
27 be required to give the client a Financial Services Guide; and
  - 28 (b) subsection 941C(5A) applies and the client is not given a  
29 Financial Services Guide.
- 30 (2) The providing entity must ensure that each web page on which the  
31 information mentioned in subparagraph 941C(5A)(b)(ii) is  
32 available:
- 33 (a) is kept readily accessible by the public; and

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

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

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

Insert:

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

## 29 At the end of Part 10.76

Add:

## Division 2—Financial Services Guide

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

(1) Subsection (2) applies if:

- (a) a Financial Services Guide is given to a person (the *client*) before the financial service is provided and before the commencement of Part 3 of Schedule 1 to the *Treasury Laws Amendment (2024 Measures No. 1) Act 2024*; and
- (b) at or after that commencement, the providing entity:
  - (i) provides personal advice to the client; and
  - (ii) would be required to give the client another Financial Services Guide or Supplementary Financial Services Guide under section 941F.

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

- (a) at the time the financial service is provided to the client the information that would be required to be in the Financial Services Guide by section 942B or 942C, as the case requires, is available on the providing entity's website; and
- (b) at that time, each web page on which the information is available:
  - (i) is readily accessible by the public; and
  - (ii) is up to date and specifies the day on which it was prepared or last updated.

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

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## 1 **Part 4—Conflicted Remuneration**

### 2 *Corporations Act 2001*

#### 3 **30 Section 960 (definition of *conflicted remuneration*)**

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

#### 5 **31 Section 963A**

6 Repeal the section, substitute:

#### 7 **963A Meaning of conflicted remuneration—general**

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

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

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

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

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

23 Note: A reference in this Subdivision (including sections 963A, 963AA,  
24 963B and 963C) to giving a benefit includes a reference to causing or  
25 authorising it to be given (see section 52).

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

#### 30 **32 After paragraph 963B(1)(ba)**

31 Insert:

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

# EXPOSURE DRAFT

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- 1 (i) the benefit is given to the licensee or representative by a  
2 trustee or trustees of a regulated superannuation fund;  
3 (ii) the benefit is given in relation to financial product  
4 advice that is personal advice, which is provided by the  
5 licensee or representative to a retail client, about the  
6 client's interest in the fund;  
7 (iii) the benefit is charged against the client's interest in the  
8 fund, or against the interests of other members of the  
9 fund;

10 **33 Paragraph 963B(1)(c)**

11 Repeal the paragraph.

12 **34 Paragraph 963B(1)(d)**

13 Repeal the paragraph.

14 **35 Paragraph 963B(1)(e) (note)**

15 Repeal the note.

16 **36 Subsection 963B(5) (note)**

17 Repeal the note.

18 **37 Paragraph 963C(1)(e)**

19 Repeal the paragraph.

20 **38 Section 963D**

21 Repeal the section.

22 **39 At the end of Part 10.76**

23 Add:

24 **Division 3—Conflicted remuneration**

25 **1713 Benefits given by a retail client**

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

# EXPOSURE DRAFT

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1 **1714 Benefits for employees of ADIs**

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

# EXPOSURE DRAFT

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## 1 **Part 5—Insurance commissions**

### 2 *Corporations Act 2001*

#### 3 **40 Paragraph 963B(1)(a)**

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

#### 6 **41 Paragraph 963B(1)(b)**

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

#### 9 **42 Paragraph 963B(1)(ba)**

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

#### 12 **43 After section 963BA**

13 Insert:

#### 14 **963BB Informed consent for certain insurance commissions**

- 15 (1) Paragraphs 963B(1)(a), (b) and (ba) do not apply to a monetary  
16 benefit given in connection with the issue or sale to a retail client  
17 of a financial product (the *relevant product*) that is a general  
18 insurance product, a life insurance product, or consumer credit  
19 insurance unless:
- 20 (a) before the issue or sale of the relevant financial product, the  
21 client consented to the monetary benefit being given; and
  - 22 (b) before the consent was given, the following information was  
23 disclosed to the client:
    - 24 (i) the name of the insurer under the relevant product;
    - 25 (ii) an explanation of why consent is required;
    - 26 (iii) for a general insurance product—the rate of the  
27 monetary benefit, expressed as a percentage range of the  
28 policy cost for the product;
    - 29 (iv) for a life risk insurance product or consumer credit  
30 insurance—the rate of the monetary benefit, expressed  
31 as a percentage of the policy cost payable for the  
32 product;
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# EXPOSURE DRAFT

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- 1 (v) if more than one monetary benefit will be given in  
2 connection with the issue or sale of the relevant  
3 product—the frequency of giving those monetary  
4 benefits and the period over which monetary benefits  
5 covered by the consent could be given, including any  
6 renewals; and  
7 (vi) the nature of any services that the financial services  
8 licensee or representative will provide the client (if any)  
9 in relation to the relevant product; and  
10 (vii) whether the consent is irrevocable; and  
11 (c) the licensee or representative has:  
12 (i) the client’s written consent or a copy of the client’s  
13 written consent; or  
14 (ii) if the consent was not obtained in writing—a written  
15 record of the client’s consent; and  
16 (d) the licensee or representative gives a copy of the written  
17 consent, or a copy of the record of the consent, to the client;  
18 and  
19 (e) if the consent is revocable—the consent has not been  
20 revoked.

21 *Renewals of general insurance products*

- 22 (2) For the purposes of subsection (1), a consent (the **original consent**)  
23 to a monetary benefit given in connection with the issue or sale to a  
24 retail client of a general insurance product is taken to also be a  
25 consent to a monetary benefit (a **renewal benefit**) being given in  
26 connection with a renewal of that product if:  
27 (a) the information disclosed to the client before the original  
28 consent was given included the fact that the original consent  
29 would cover renewals of the general insurance product; and  
30 (b) the rate of the renewal benefit is consistent with the  
31 information disclosed to the client before the original consent  
32 was given, as mentioned in subparagraph (1)(b)(iii).

33 *Transfer of financial product advice business*

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

# EXPOSURE DRAFT

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- 1 (a) the original licensee’s financial product advice business is  
2 sold or transferred to another financial services licensee; and  
3 (b) the new recipient is that other financial services licensee or a  
4 representative of that other financial services licensee.

5 *Variation of consent*

- 6 (4) If a client has given a consent for the purposes of subsection (1),  
7 the financial services licensee or representative may:  
8 (a) disclose to the client proposed variations to one or more of  
9 the matters mentioned in paragraph (1)(b); and  
10 (b) request the client to consent to those variations.

- 11 (5) If:  
12 (a) the client consents to those variations; and  
13 (b) paragraphs (1)(c) and (d) are satisfied in relation to that  
14 consent;  
15 then the consent has effect as varied for the purposes of this  
16 section.

17 **44 At the end of Part 10.76**

18 Add:

19 **Division 4—Insurance commissions**

20 **1715 Informed consent for certain insurance commissions**

- 21 (1) The amendments made by Part 5 of Schedule 1 to the *Treasury*  
22 *Laws Amendment (2024 Measures No. 1) Act 2024* apply to  
23 benefits given on or after the commencement of that Part in  
24 relation to the issue or sale of general insurance products, life risk  
25 insurance products or consumer credit insurance on or after that  
26 commencement.
- 27 (2) However, those amendments do not apply to benefits given in  
28 connection with the issue or sale of a general insurance product if:  
29 (a) the product is a renewal of another general insurance product;  
30 and  
31 (b) that other general insurance product was issued or sold  
32 before the commencement of Part 5 of Schedule 1 to the  
33 *Treasury Laws Amendment (2024 Measures No. 1) Act 2024*.