

Mr Andre Moore
Assistant Secretary
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

By email: financialadvice@treasury.gov.au

6 December 2023

Dear Mr Moore,

Delivering Better Financial Outcomes – reducing red tape and other measures

The Council of Australian Life Insurers (CALI) is the trusted voice of life insurance in Australia. We support Australians to make informed choices about their future and help them live in a healthy, confident, and secure way on their best and worst days. This includes advocating for national policy settings that expand their access to the life insurance protection that suits them when they need it most over their lifetime.

Our mission is to ensure Australians view life insurance and the industry as accessible, understandable, and trusted. We do this by supporting our members to deliver the protection and certainty Australians need on their worst day.

CALI welcomes the Federal Government's proposals set out in the first tranche of exposure draft legislation on the Delivering Better Financial Outcomes package. In particular, we support the introduction of standardised informed consent for insurance commissions.

CALI would like to provide the following specific comments on the exposure draft:

- The Explanatory Memorandum specifies that the new informed consent requirement applies where a person provides personal advice to a retail client about a life risk insurance, general insurance or consumer credit insurance product. This aligns with recommendations 13.7-13.9 of the Quality of Advice Review in relation to insurance commissions. However, as currently drafted in the legislation, section 963BB would apply more broadly than personal advice situations. CALI recommends that the legislation be amended to reflect the intent articulated in the Explanatory Memorandum and the Quality of Advice Review.
- If a client does not provide consent, or later revokes their consent, then any commission paid would be conflicted remuneration. Section 963K of the Corporations Act prohibits the payment of conflicted remuneration by a product issuer and is a civil penalty provision. As a result, the draft legislation creates a risk for insurers that they may breach conflicted remuneration obligations if an adviser fails to properly meet their new consent obligations but receives a commission anyway, or if the client revokes consent and the adviser does not tell the insurer and trailing commissions continue to be paid. CALI asks that the legislation provide certainty that a breach by a financial adviser in receiving a commission when there is no valid consent is not also a breach by the insurer for paying the commission.
- Before a client can consent to an adviser receiving a commission, the adviser must disclose specific information prescribed in section 963BB(1)(b). This includes the name of the insurer under the relevant

product. The requirement that the name of the insurer be disclosed suggests that the adviser will already have completed their advice and determined the specific product and insurer. Usually a financial adviser will only do this after a fact find, needs analysis, product and price comparison. However, the consent should be obtained before this work is undertaken so that an adviser knows whether or how they will be paid. CALI believes the draft legislation could be amended to require the adviser to disclose the name of the insurer only if it has been determined.

- The proposed revised section 99FA of the Superannuation Industry (Supervision) Act enables superannuation funds to deduct advice fees from member accounts where the advice relates to the “member’s interest in the fund”. There is a lack of clarity about how this would apply in practice and what would constitute the member’s interest in the fund. This could be further defined, and CALI believes it should be clear that insurance held within superannuation would be included within the member’s interest in the fund.
- Currently, it is proposed that section 963BB would apply to new policies sold three months from the date of Royal Assent of the legislation. We expect implementation for some advice licensees will involve significant changes to systems to ensure the right consents are provided at the right time and to ensure they have the means of both recording the consent and producing a copy to customers. CALI believes a longer implementation period is required for compliance with this requirement.

In addition, we note aspects of the exposure draft apply in situations where personal advice is provided to a retail client. The boundary between personal and general advice is a matter that is being considered as part of the Government’s broader response to the Quality of Advice Review. If the Government was to propose changing the current definitions of personal and general advice, this may impact our response.

Thank you for the opportunity to contribute to this consultation. I look forward to continued engagement as the Government progresses this important reform. Please contact Michael Johnston at [REDACTED]

Kind regards,

[REDACTED]
Christine Cupitt
Chief Executive Office
Council of Australian Life Insurers