



Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

No. 19, 2021

**An Act to amend the law in relation to the financial
sector, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)



Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

No. 19, 2021

An Act to amend the law in relation to the financial sector, and for related purposes

[Assented to 2 March 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*.

No. 19, 2021 *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 2 March 2021 |
| 2. Schedules 1 to 3 | 1 July 2021. | 1 July 2021 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Ongoing fee arrangements

Part 1—Main amendments

Corporations Act 2001

1 Section 960

Insert:

anniversary day, for an ongoing fee arrangement, has the meaning given by subsection 962G(3).

2 Section 960

Repeal the following definitions:

- (a) definition of *disclosure day*;
- (b) definition of *renewal notice*;
- (c) definition of *renewal notice day*.

3 Section 960 (definition of *renewal period*)

Omit “subsection 962L(2)”, substitute “section 962L”.

4 Sections 962CA and 962D

Repeal the sections.

5 Subsection 962F(1)

Omit “(the disclosure obligation) or section 962K (the renewal notice obligation)”.

6 Subsections 962F(2) and (3)

Omit “or section 962K”.

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

8 Section 962G (heading)

Repeal the heading, substitute:

962G Annual requirement to give fee disclosure statement

9 Subsection 962G(1)

Repeal the subsection, substitute:

- (1) The current fee recipient in relation to an ongoing fee arrangement must, no later than 60 days after the anniversary day for the arrangement in each year, give the client a fee disclosure statement for the arrangement and the anniversary day.

10 At the end of section 962G

Add:

Meaning of anniversary day

- (3) **Anniversary day**, for an ongoing fee arrangement, means the anniversary of the day on which the arrangement was entered into.

Note: Section 1673C provides a modified meaning of **anniversary day** in relation to ongoing fee arrangements in force before 1 July 2021.

Civil penalty

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

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

11 Subsection 962H(1)

Repeal the subsection, substitute:

Fee disclosure statement

- (1) A **fee disclosure statement** for an ongoing fee arrangement and an anniversary day is a statement in writing that:
- (a) includes the information and statements required under this section; and
 - (b) relates to:
 - (i) the period of 12 months (the **previous year**) ending immediately before the anniversary day; and
 - (ii) the period of 12 months (the **upcoming year**) starting on the anniversary day.

(1A) A fee disclosure statement may also include other information.

12 Before subsection 962H(2)

Insert:

Information relating to the previous year

13 Subsection 962H(2)

Omit “The following information is required for a fee disclosure statement in relation to an ongoing fee arrangement,”, substitute “The fee disclosure statement must include the following information relating to the previous year,”.

14 Paragraph 962H(2)(a)

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

15 Paragraph 962H(2)(f)

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

16 After subsection 962H(2)

Insert:

Information relating to the upcoming year

- (2A) The fee disclosure statement must include the following information relating to the upcoming year, subject to subsection (3):
- (a) the amount of each ongoing fee that the client will be required to pay under the arrangement during the upcoming year;
 - (b) information about the services that the client will be entitled to receive under the arrangement during the upcoming year;
 - (c) if the client will be required to pay under the arrangement an ongoing fee after the end of the upcoming year for a service referred to in paragraph (b)—the amount of any such ongoing fee;
 - (d) information about any other prescribed matters.
- (2B) If an amount of an ongoing fee that is required to be included in a fee disclosure statement under subsection (2A) cannot be determined at the time of preparing the statement, the statement must include a reasonable estimate of the amount of the ongoing

fee and an explanation of the method used to work out the estimate.

Statements relating to renewal

- (2C) The fee disclosure statement must include:
- (a) a statement that the client may renew the ongoing fee arrangement by giving the current fee recipient notice in writing of the election; and
 - (b) a statement that the arrangement will terminate, and no further advice will be provided or fee charged under it, if the client does not elect to renew the arrangement; and
 - (c) a statement that the client will be taken to have elected not to renew the arrangement if the client does not give the current fee recipient notice in writing of an election to renew before the end of the renewal period; and
 - (d) a statement that the renewal period is a period of 120 days beginning on the anniversary day.

Other requirements

17 At the end of section 962H

Add:

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

18 Section 962J

Repeal the section.

19 Section 962K

Repeal the section.

20 Section 962L

Repeal the section, substitute:

962L Renewal period

The *renewal period* for an anniversary day is the period of 120 days beginning on the anniversary day.

21 Section 962M

Omit “for the arrangement”, substitute “for an anniversary day”.

22 Section 962N

Omit “for the arrangement” (first occurring), substitute “for an anniversary day”.

23 Section 962N

Omit “after the end of the renewal period for the arrangement”, substitute “after the end of the renewal period for the anniversary day”.

24 Subdivision C of Division 3 of Part 7.7A

Repeal the Subdivision, substitute:

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

962R Fee recipient must not deduct ongoing fees without consent

- (1) This section applies if:
 - (a) an ongoing fee is, or will be, payable to a fee recipient under an ongoing fee arrangement; and
 - (b) a person (the *account holder*) holds an account with the fee recipient; and
 - (c) the account is not:
 - (i) an account linked to a credit card; or
 - (ii) a basic deposit product; and
 - (d) the fee recipient proposes to deduct the amount of the ongoing fee from the account holder’s account.
- (2) Subject to subsection (3), the fee recipient must not deduct the amount of the ongoing fee from the account unless all of the following are satisfied:

- (a) the account holder has given the fee recipient written consent for the fee recipient to deduct amounts from the account in respect of ongoing fees under the ongoing fee arrangement;
 - (b) if requirements that apply in relation to the consent are determined under section 962T—the consent complies with those requirements;
 - (c) at the time of making the deduction:
 - (i) the consent has not been withdrawn under paragraph 962U(1)(a); and
 - (ii) if the consent has been varied under paragraph 962U(1)(b)—the consent as varied still allows for the deduction to be made; and
 - (iii) the consent has not ceased to have effect under section 962V.
- (3) If the account holder holds the account jointly with one or more other persons, the fee recipient must not deduct the amount of the ongoing fee from the account unless all of the paragraphs in subsection (2) are satisfied in relation to the account holder as well as each of those other persons as account holders.
- (4) A person contravenes this subsection if the person contravenes subsection (2) or (3).

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

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

- (1) This section applies if:
- (a) an ongoing fee is, or will be, payable to a fee recipient under an ongoing fee arrangement; and
 - (b) a person (the **account holder**) holds an account with another person (the **account provider**) who is not the fee recipient; and
 - (c) the account is not:
 - (i) an account linked to a credit card; or
 - (ii) a basic deposit product; and

Schedule 1 Ongoing fee arrangements

Part 1 Main amendments

- (d) the fee recipient proposes to arrange with the account provider for the amount of the ongoing fee to be deducted from the account holder's account.
- (2) To avoid doubt, the fee recipient proposes to arrange with the account provider for the amount of the ongoing fee to be deducted from the account holder's account:
 - (a) if the fee recipient is a financial services licensee—by doing so directly or through another entity such as a representative of the financial services licensee; or
 - (b) if the fee recipient is a representative of a financial services licensee—by doing so directly or through another entity such as the financial services licensee.

Fee recipient must not arrange deductions without consent

- (3) Subject to subsection (4), the fee recipient must not arrange for the account provider to deduct the amount from the account unless all of the following are satisfied:
 - (a) the account holder has given the fee recipient written consent for the fee recipient to arrange for amounts to be deducted from the account in respect of ongoing fees under the ongoing fee arrangement;
 - (b) if requirements that apply in relation to the consent are determined under section 962T—the consent complies with those requirements;
 - (c) the fee recipient has given a copy of the account holder's consent to the account provider;
 - (d) at the time of giving the copy of the consent to the account provider:
 - (i) the consent has not been withdrawn under paragraph 962U(1)(a); and
 - (ii) if the consent has been varied under paragraph 962U(1)(b)—the consent as varied still allows for the deduction to be made; and
 - (iii) the consent has not ceased to have effect under section 962V.
- (4) If the account holder holds the account jointly with one or more other persons, the fee recipient must not arrange for deductions

from the account unless all of the paragraphs in subsection (3) are satisfied in relation to the account holder as well as each of those other persons as account holders.

- (5) A person contravenes this subsection if the person contravenes subsection (3) or (4).

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

Fee recipient must not accept deductions made without consent

- (6) Subject to subsection (7), if the fee recipient has arranged with the account provider, with the account holder's consent, for an amount to be deducted from the account, the fee recipient must not accept payment of the amount unless at the time the payment is made to the fee recipient all of the following are satisfied:
- (a) the consent has not been withdrawn under paragraph 962U(1)(a);
 - (b) if the consent has been varied under paragraph 962U(1)(b)—the consent as varied still allows for the deduction to be made;
 - (c) the consent has not ceased to have effect under section 962V.
- (7) If the account holder holds the account jointly with one or more other persons, the fee recipient must not accept the payment unless all of the paragraphs in subsection (6) are satisfied in relation to the account holder as well as each of those other persons as account holders.
- (8) A person contravenes this subsection if the person contravenes subsection (6) or (7).

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

- (9) However, subsection (8) does not apply if an amount accepted in contravention of subsection (6) or (7) is repaid into the account holder's account within 10 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 under section 962R or 962S 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 10 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(3)(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

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

- (a) unless paragraph (b) or (c) applies—at the end of the period of 150 days after the anniversary day for the ongoing fee arrangement; or
 - (b) if the ongoing fee arrangement is terminated—at the time the ongoing fee arrangement terminates; or
 - (c) if a new consent is given in relation to the ongoing fee arrangement for the purposes of this Subdivision—at the time that new consent is given.
- (2) If:
- (a) a consent given in relation to an ongoing fee arrangement for the purposes of this Subdivision ceases to have effect under subsection (1); and
 - (b) a fee recipient gave a copy of the consent to an account provider under paragraph 962S(3)(c);
- the fee recipient must give written notice of the cessation to the account provider within 10 business days of the cessation.
- (3) A person contravenes this subsection if the person contravenes subsection (2).

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

962W Conditions requiring consent to be given are void

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

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

Subdivision D—Records of compliance

962X Obligation to keep records of compliance

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

Schedule 1 Ongoing fee arrangements

Part 1 Main amendments

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

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

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

25 After section 1317GA

Insert:

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

- (1) This section applies if a person (the *fee recipient*):
- (a) deducts an amount of an ongoing fee payable under an ongoing fee arrangement from an account held by a person (the *account holder*) with the fee recipient; or
 - (b) accepts payment of the amount of the ongoing fee that has been deducted from an account held by a person (the *account holder*) with another person (the *account provider*) under an arrangement the fee recipient made with the account provider.
- (2) A Court may order that the fee recipient refund the amount if the Court is satisfied that:
- (a) either:
 - (i) if paragraph (1)(a) applies—the fee recipient knowingly or recklessly contravened section 962R (fee recipient must not deduct ongoing fees without consent) in deducting the amount; or
 - (ii) if paragraph (1)(b) applies—the fee recipient knowingly or recklessly contravened section 962S (fee recipient must not arrange for deduction of ongoing fees without consent or accept such deductions) in arranging for the deduction of the amount, or accepting payment of the amount; and
 - (b) it is reasonable in all the circumstances to make the order.

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

Applications for order

- (3) The Court may make the order under this section:
- (a) on its own initiative, during proceedings before the Court; or
 - (b) on application by ASIC; or
 - (c) on the application of the account holder.

When order may be made

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

Recovery of amount as a debt

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

26 In the appropriate position in Chapter 10

Insert:

Part 10.46—Application and transitional provisions relating to Schedule 1 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

Division 1—Introduction

1673 Definitions

In this Part:

amending Schedule means Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*.

disclosure day for an ongoing fee arrangement has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

renewal notice has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

renewal notice day has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

transition day, for an ongoing fee arrangement, means the earlier of:

- (a) the day when a fee disclosure statement is given for the arrangement in accordance with subsection 1673C(3); and
- (b) the last day of the 12 month transition period.

Division 2—New ongoing fee arrangements

1673A Application provision for new ongoing fee arrangements

The amendments made by the amending Schedule apply in relation to an ongoing fee arrangement entered into on or after 1 July 2021.

Division 3—Existing ongoing fee arrangements

1673B Application of this Division

This Division applies in relation to an ongoing fee arrangement that is in force immediately before 1 July 2021.

1673C Application—annual requirement to give fee disclosure statement

General rule

- (1) Subject to this section, Subdivision B of Division 3 of Part 7.7A, as amended by the amending Schedule, applies to the ongoing fee arrangement on and from 1 July 2021.

Modified application during transition period

- (2) For the period from 1 July 2021 to 30 June 2022 (the **12 month transition period**):

- (a) subsection 962G(1), as amended by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (3) of this section; and
 - (b) subsection 962H(1), as amended by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (4) of this section.
- (3) The current fee recipient in relation to the ongoing fee arrangement must, on a day that is before the end of the 12 month transition period, give the client a fee disclosure statement for the arrangement and the transition day.
- (4) A **fee disclosure statement** for an ongoing fee arrangement and a transition day is a statement in writing that:
- (a) includes the information and statements required under this section; and
 - (b) relates to:
 - (i) the period of 12 months (the **previous year**) ending immediately before the transition day for the arrangement; and
 - (ii) the period of 12 months (the **upcoming year**) starting on the transition day for the arrangement.

Modified application after transition period

- (5) After 1 July 2021, subsection 962G(3), as inserted by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (6) of this section.
- (6) **Anniversary day**, for an ongoing fee arrangement, means:
- (a) the transition day for the arrangement; or
 - (b) the anniversary of the transition day for the arrangement.

Acquisition of property

- (7) Section 1350 does not apply in relation to the operation of Subdivision B of Division 3 of Part 7.7A, as amended by the amending Schedule, in respect of the ongoing fee arrangement.

1673D Transitional—existing obligation to give a fee disclosure statement under section 962G

- (1) This section applies if:
 - (a) a disclosure day for the ongoing fee arrangement occurs before 1 July 2021; and
 - (b) the period of 60 days beginning on the disclosure day ends on or after 1 July 2021; and
 - (c) before 1 July 2021 the current fee recipient in relation to the ongoing fee arrangement has not given a fee disclosure statement in relation to the ongoing fee arrangement in accordance with the obligation arising under section 962G (as in force before 1 July 2021) 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 2021.
- (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 1673C, the fee disclosure statement given under that section must include that information.

1673E 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 2021; and
 - (b) the period of 60 days beginning on the renewal notice day ends on or after 1 July 2021; and
 - (c) before 1 July 2021 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 2021) in relation to the renewal notice day.
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- (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 2021.
- (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 1673C, the fee disclosure statement given under that section must include that information.

1673F Application—consent requirements for deductions of ongoing fees

- (1) Subdivision C of Division 3 of Part 7.7A, as inserted by the amending Schedule, applies in relation to the ongoing fee arrangement on and from 1 July 2022.
- (2) However, if a person gives a fee recipient in relation to the ongoing fee arrangement consent for the purposes of that Subdivision before 1 July 2022:
 - (a) section 962U (variation or withdrawal of consent) in that Subdivision applies in relation to the consent from when it is given; and
 - (b) section 962X (obligation to keep records of compliance), as inserted by the amending Schedule, applies in relation to records relating to the consent.
- (3) Section 1350 does not apply in relation to the operation of Subdivision C of Division 3 of Part 7.7A, as inserted by the amending Schedule, in respect of the ongoing fee arrangement.

1673G Application—compliance records

Subdivision D of Division 3 of Part 7.7A, as inserted by the amending Schedule, applies on and from 1 July 2021 in relation to a fee recipient's compliance with Division 3 of Part 7.7A on and from that date in relation to the ongoing fee arrangement.

Part 2—Consequential amendments

Corporations Act 2001

27 Section 9 (paragraph (ba) of the definition of *civil penalty order*)

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

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

Insert:

- (ca) subsection 962G(4) (fee recipient must give fee disclosure statement);

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

Repeal the paragraph, substitute:

- (e) subsection 962R(4) (fee recipient must not deduct ongoing fees without consent);
- (ea) subsection 962S(5) or (8) (fee recipient must not arrange for deduction of ongoing fees without consent or accept such deductions);
- (eb) subsection 962U(3) (fee recipient must confirm receipt of variation or withdrawal of consent for deductions of ongoing fees);
- (ec) subsection 962V(3) (fee recipient must give written notice of cessation of consent to account provider);

30 In the appropriate position in subsection 1317E(3)

Insert:

| | | |
|--------------------|---|---------------|
| subsection 962G(4) | fee recipient must give client a fee disclosure statement | uncategorised |
|--------------------|---|---------------|

Schedule 2—Disclosure of lack of independence

Corporations Act 2001

1 At the end of subsection 923A(1)

Add:

Note 3: A Financial Services Guide may need to include a statement relating to the restriction in this subsection (see paragraphs 942B(2)(fa) and 942C(2)(ga)).

2 At the end of section 923A

Add:

(6) To avoid doubt, for the purposes of this section a restricted word or expression is not assumed or used if the restricted word or expression is included in a statement in accordance with a requirement in paragraph 942B(2)(fa) or 942C(2)(ga).

3 Subsection 941C(7)

Omit “paragraphs 942B(2)(a) and (h), or paragraphs 942C(2)(a) and (i),”, substitute “paragraphs 942B(2)(a), (fa) and (h), or paragraphs 942C(2)(a), (ga) and (i),”.

4 Paragraph 941D(3)(a)

Omit “paragraphs 942B(2)(e), (f) and (i), or paragraphs 942C(2)(f), (g) and (j),”, substitute “paragraphs 942B(2)(e), (f), (fa) and (i), or paragraphs 942C(2)(f), (g), (ga) and (j),”.

5 After paragraph 942B(2)(f)

Insert:

(fa) if the authorised services provided by the providing entity include the provision of personal advice to retail clients, and the providing entity would contravene subsection 923A(1) by assuming or using a restricted word or expression (within the meaning of subsection 923A(5)) in relation to such provision of personal advice—a statement that:

-
- (i) sets out that the providing entity is not independent, impartial or unbiased (which are restricted words or expressions within the meaning of subsection 923A(5)) in relation to the provision of personal advice, and explains the reasons why; and
 - (ii) if any other word or expression has been specified as a restricted word or expression in regulations made for the purposes of subparagraph 923A(5)(a)(ii)—sets out that the providing entity is not able to assume or use the restricted word or expression in relation to the provision of personal advice, and explains the reasons why; and
 - (iii) meets the requirements (if any) determined in an instrument under subsection (7A); and

6 After subsection 942B(7)

Insert:

- (7A) ASIC may, by legislative instrument, determine requirements for a statement for the purposes of subparagraph (2)(fa)(iii).
- (7B) Without limiting subsection (7A), the instrument may include the following:
 - (a) requirements that a specified form, or specified form of words, be used for the statement;
 - (b) requirements for the statement to include specified information;
 - (c) requirements about the presentation, structure and format of the statement, including the location of the statement within the Financial Services Guide.

7 After paragraph 942C(2)(g)

Insert:

- (ga) if the authorised services provided by the providing entity include the provision of personal advice to retail clients, and the providing entity would contravene subsection 923A(1) by assuming or using a restricted word or expression (within the meaning of subsection 923A(5)) in relation to such provision of personal advice—a statement that:

- (i) sets out that the providing entity is not independent, impartial or unbiased (which are restricted words or expressions within the meaning of subsection 923A(5)) in relation to the provision of personal advice, and explains the reasons why; and
- (ii) if any other word or expression has been specified as a restricted word or expression in regulations made for the purposes of subparagraph 923A(5)(a)(ii)—sets out that the providing entity is not able to assume or use the restricted word or expression in relation to the provision of personal advice, and explains the reasons why; and
- (iii) meets the requirements (if any) determined in an instrument under subsection (7A); and

8 After subsection 942C(7)

Insert:

- (7A) ASIC may, by legislative instrument, determine requirements for a statement for the purposes of subparagraph (2)(ga)(iii).
- (7B) Without limiting subsection (7A), the instrument may include the following:
 - (a) requirements that a specified form, or specified form of words, be used for the statement;
 - (b) requirements for the statement to include specified information;
 - (c) requirements about the presentation, structure and format of the statement, including the location of the statement within the Financial Services Guide.

9 In the appropriate position in Chapter 10

Insert:

Part 10.47—Application and transitional provisions relating to Schedule 2 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

1674 Application of disclosure of lack of independence reforms

The amendments made by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* apply in relation to a financial service provided on or after 1 July 2021.

1674A Obligation to give updated Financial Services Guide

- (1) If:
 - (a) the providing entity has given a Financial Services Guide to the client under section 941A or 941B before 1 July 2021; and
 - (b) the providing entity will provide a financial service to the client on or after 1 July 2021; and
 - (c) paragraph 942B(2)(fa) or 942C(2)(ga), as inserted by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*, applies in relation to the providing entity and the financial service;the providing entity must, before the financial service is provided to the client, give the client:
 - (d) another Financial Services Guide that contains the statement required by whichever of the paragraphs referred to in paragraph (c) of this subsection is applicable; or
 - (e) a Supplementary Financial Services Guide that contains that statement.
- (2) Subsections 941A(1) and 941B(1) apply as if the reference in those subsections to “this Division” included a reference to this section.

Schedule 3—Advice fees in superannuation

Part 1—General fees rules

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1)

Insert:

ongoing fee arrangement has the same meaning as in Part 7.7A of the *Corporations Act 2001*.

2 Section 99F (heading)

Repeal the heading, substitute:

99F Cost of financial product advice—collectively charged fees

3 After section 99F

Insert:

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

- (1) The trustee or the trustees of a regulated superannuation fund must not directly or indirectly pass the cost of providing financial product advice in relation to a member of the fund on to the member, unless:
 - (a) the cost is to be paid in accordance with the terms of an arrangement entered into by the member; and
 - (b) the trustee passes the cost on, or the trustees pass the cost on, in accordance with the terms of a written consent of the member; and
 - (c) if the arrangement is an ongoing fee arrangement:
 - (i) the consent is of a kind described in paragraph 962R(2)(a) or 962S(3)(a) of the *Corporations Act 2001*; and

- (ii) if requirements that apply in relation to the consent are determined under section 962T of that Act—the consent complies with those requirements; and
- (d) if the arrangement is not an ongoing fee arrangement:
 - (i) the consent is for the trustee or the trustees to directly or indirectly pass the cost of providing financial product advice in relation to the member on to the member; and
 - (ii) if requirements that apply in relation to the consent are determined under subsection (2)—the consent complies with those requirements; and
- (e) the trustee has, or the trustees have, the consent or a copy of the consent.

Note: If the arrangement is an ongoing fee arrangement, it may be terminated as a result of section 962F or 962FA of the *Corporations Act 2001*.

- (2) ASIC may, by legislative instrument, make a determination specifying requirements for the purposes of subparagraph (1)(d)(ii).
- (3) Subsection (1) does not apply if the cost is shared by passing it on to the member mentioned in subsection (1) and to other members of the fund.

Part 2—Fees for MySuper products

Superannuation Industry (Supervision) Act 1993

4 After paragraph 29V(7)(a)

Insert:

(aa) the fee does not satisfy the condition in paragraph (8)(a); and

5 Paragraph 29V(7)(b)

Omit “, an advice fee”.

6 Paragraph 29V(8)(b)

Omit “, an activity fee”.

7 At the end of subsection 29VA(9A)

Add:

- ; and (d) the fee is to be paid in accordance with the terms of an arrangement entered into by the member; and
- (e) the arrangement is not an ongoing fee arrangement.

Part 3—Application

8 Application

The amendments made by this Schedule apply:

- (a) in relation to a fee payable under an arrangement entered into on or after 1 July 2021—on and after 1 July 2021; or
 - (b) in relation to a fee payable under an arrangement entered into before 1 July 2021—on and after 1 July 2022.
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*[Minister's second reading speech made in—
House of Representatives on 9 December 2020
Senate on 15 February 2021]*

(180/20)

No. 19, 2021

*Financial Sector Reform (Hayne Royal Commission Response No. 2)
Act 2021*

29