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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Financial Sector Reform (Hayne Royal
Commission Response No. 2) Bill 2020**

No. , 2020

(Treasury)

**A Bill for an Act to amend the law in relation to the
financial sector, and for related purposes**

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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. Schedules 1 to 3	1 July 2021.	1 July 2021

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Ongoing fee arrangements**

2 **Part 1—Main amendments**

3 *Corporations Act 2001*

4 **1 Section 960**

5 Insert:

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

8 **2 Section 960**

9 Repeal the following definitions:

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

13 **3 Section 960 (definition of *renewal period*)**

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

15 **4 Sections 962CA and 962D**

16 Repeal the sections.

17 **5 Subsection 962F(1)**

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

20 **6 Subsections 962F(2) and (3)**

21 Omit “or section 962K”.

22 **7 After section 962F**

23 Insert:

1 **962FA Arrangement terminates if Subdivision C not complied with**

2 (1) It is a condition of the ongoing fee arrangement that the
3 arrangement terminates if any of the following provisions have not
4 been complied with in relation to the arrangement, whether by the
5 current or a previous fee recipient:

6 (a) section 962R (fee recipient must not deduct ongoing fees
7 without consent);

8 (b) section 962S (fee recipient must not arrange for deduction of
9 ongoing fees without consent or accept such deductions).

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

12 (2) The client is not taken to have waived the client's rights under the
13 condition (subject to subsection (3)), or to have entered into a new
14 ongoing fee arrangement, if the client gives consent under
15 Subdivision C, in relation to the deduction of ongoing fees relating
16 to the ongoing fee arrangement, after a failure to comply with a
17 provision referred to in subsection (1) in relation to the ongoing fee
18 arrangement.

19 (3) However, if the client gives that consent after a failure to comply
20 with a provision referred to in subsection (1) in relation to the
21 ongoing fee arrangement, the fee recipient is not obliged to refund
22 an amount deducted, or received as a result of a deduction made, in
23 accordance with the consent.

24 **8 Section 962G (heading)**

25 Repeal the heading, substitute:

26 **962G Annual requirement to give fee disclosure statement**

27 **9 Subsection 962G(1)**

28 Repeal the subsection, substitute:

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

1 **10 At the end of section 962G**

2 Add:

3 *Meaning of anniversary day*

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

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

8 *Civil penalty*

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

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

12 **11 Subsection 962H(1)**

13 Repeal the subsection, substitute:

14 *Fee disclosure statement*

- 15 (1) A **fee disclosure statement** for an ongoing fee arrangement and an
16 anniversary day is a statement in writing that:

17 (a) includes the information and statements required under this
18 section; and

19 (b) relates to:

20 (i) the period of 12 months (the **previous year**) ending
21 immediately before the anniversary day; and

22 (ii) the period of 12 months (the **upcoming year**) starting on
23 the anniversary day.

24 (1A) A fee disclosure statement may also include other information.

25 **12 Before subsection 962H(2)**

26 Insert:

1 *Information relating to the previous year*

2 **13 Subsection 962H(2)**

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

7 **14 Paragraph 962H(2)(a)**

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

10 **15 Paragraph 962H(2)(f)**

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

13 **16 After subsection 962H(2)**

14 Insert:

15 *Information relating to the upcoming year*

16 (2A) The fee disclosure statement must include the following
17 information relating to the upcoming year, subject to
18 subsection (3):

- 19 (a) the amount of each ongoing fee that the client will be
20 required to pay under the arrangement during the upcoming
21 year;
- 22 (b) information about the services that the client will be entitled
23 to receive under the arrangement during the upcoming year;
- 24 (c) if the client will be required to pay under the arrangement an
25 ongoing fee after the end of the upcoming year for a service
26 referred to in paragraph (b)—the amount of any such
27 ongoing fee;
- 28 (d) information about any other prescribed matters.

29 (2B) If an amount of an ongoing fee that is required to be included in a
30 fee disclosure statement under subsection (2A) cannot be
31 determined at the time of preparing the statement, the statement
32 must include a reasonable estimate of the amount of the ongoing

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

3 *Statements relating to renewal*

4 (2C) The fee disclosure statement must include:

- 5 (a) a statement that the client may renew the ongoing fee
6 arrangement by giving the current fee recipient notice in
7 writing of the election; and
8 (b) a statement that the arrangement will terminate, and no
9 further advice will be provided or fee charged under it, if the
10 client does not elect to renew the arrangement; and
11 (c) a statement that the client will be taken to have elected not to
12 renew the arrangement if the client does not give the current
13 fee recipient notice in writing of an election to renew before
14 the end of the renewal period; and
15 (d) a statement that the renewal period is a period of 120 days
16 beginning on the anniversary day.

17 *Other requirements*

18 **17 At the end of section 962H**

19 Add:

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

24 **18 Section 962J**

25 Repeal the section.

26 **19 Section 962K**

27 Repeal the section.

28 **20 Section 962L**

29 Repeal the section, substitute:

1 **962L Renewal period**

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

4 **21 Section 962M**

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

6 **22 Section 962N**

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

9 **23 Section 962N**

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

12 **24 Subdivision C of Division 3 of Part 7.7A**

13 Repeal the Subdivision, substitute:

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

16 **962R Fee recipient must not deduct ongoing fees without consent**

17 (1) This section applies if:

- 18 (a) an ongoing fee is, or will be, payable to a fee recipient under
19 an ongoing fee arrangement; and
20 (b) a person (the *account holder*) holds an account with the fee
21 recipient; and
22 (c) the account is not:
23 (i) an account linked to a credit card; or
24 (ii) a basic deposit product; and
25 (d) the fee recipient proposes to deduct the amount of the
26 ongoing fee from the account holder’s account.

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

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

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

23 **962S Fee recipient must not arrange for deduction of ongoing fees**
24 **without consent or accept such deductions**

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

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- 1 (d) the fee recipient proposes to arrange with the account
2 provider for the amount of the ongoing fee to be deducted
3 from the account holder's account.
- 4 (2) To avoid doubt, the fee recipient proposes to arrange with the
5 account provider for the amount of the ongoing fee to be deducted
6 from the account holder's account:
- 7 (a) if the fee recipient is a financial services licensee—by doing
8 so directly or through another entity such as a representative
9 of the financial services licensee; or
- 10 (b) if the fee recipient is a representative of a financial services
11 licensee—by doing so directly or through another entity such
12 as the financial services licensee.
- 13 *Fee recipient must not arrange deductions without consent*
- 14 (3) Subject to subsection (4), the fee recipient must not arrange for the
15 account provider to deduct the amount from the account unless all
16 of the following are satisfied:
- 17 (a) the account holder has given the fee recipient written consent
18 for the fee recipient to arrange for amounts to be deducted
19 from the account in respect of ongoing fees under the
20 ongoing fee arrangement;
- 21 (b) if requirements that apply in relation to the consent are
22 determined under section 962T—the consent complies with
23 those requirements;
- 24 (c) the fee recipient has given a copy of the account holder's
25 consent to the account provider;
- 26 (d) at the time of giving the copy of the consent to the account
27 provider:
- 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.
- 35 (4) If the account holder holds the account jointly with one or more
36 other persons, the fee recipient must not arrange for deductions
-

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

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

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

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

8 (6) Subject to subsection (7), if the fee recipient has arranged with the
9 account provider, with the account holder's consent, for an amount
10 to be deducted from the account, the fee recipient must not accept
11 payment of the amount unless at the time the payment is made to
12 the fee recipient all of the following are satisfied:

13 (a) the consent has not been withdrawn under
14 paragraph 962U(1)(a);

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

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

19 (7) If the account holder holds the account jointly with one or more
20 other persons, the fee recipient must not accept the payment unless
21 all of the paragraphs in subsection (6) are satisfied in relation to the
22 account holder as well as each of those other persons as account
23 holders.

24 (8) A person contravenes this subsection if the person contravenes
25 subsection (6) or (7).

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

27 (9) However, subsection (8) does not apply if an amount accepted in
28 contravention of subsection (6) or (7) is repaid into the account
29 holder's account within 10 business days of the day on which the
30 payment was accepted.

1 **962T Requirements relating to consent**

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

9 **962U Variation or withdrawal of consent**

- 10 (1) If a person (the *account holder*) who holds an account gives
11 consent to a fee recipient under section 962R or 962S for the
12 purposes of this Subdivision, the account holder may:
13 (a) withdraw the consent at any time, by notice in writing to the
14 fee recipient; and
15 (b) vary the consent at any time, by notice in writing to the fee
16 recipient.
- 17 (2) If the fee recipient receives a notice from the account holder under
18 subsection (1), the fee recipient must within 10 business days of
19 receipt:
20 (a) give written confirmation to the account holder that the
21 notice was received; and
22 (b) if the fee recipient gave a copy of the account holder's
23 consent to an account provider under paragraph 962S(3)(c)—
24 give the account provider a copy of the notice.
- 25 (3) A person contravenes this subsection if the person contravenes
26 subsection (2).

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

28 **962V When consent ceases to have effect**

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

- 1 (a) unless paragraph (b) or (c) applies—at the end of the period
2 of 150 days after the anniversary day for the ongoing fee
3 arrangement; or
4 (b) if the ongoing fee arrangement is terminated—at the time the
5 ongoing fee arrangement terminates; or
6 (c) if a new consent is given in relation to the ongoing fee
7 arrangement for the purposes of this Subdivision—at the time
8 that new consent is given.

- 9 (2) If:
10 (a) a consent given in relation to an ongoing fee arrangement for
11 the purposes of this Subdivision ceases to have effect under
12 subsection (1); and
13 (b) a fee recipient gave a copy of the consent to an account
14 provider under paragraph 962S(3)(c);
15 the fee recipient must give written notice of the cessation to the
16 account provider within 10 business days of the cessation.
17 (3) A person contravenes this subsection if the person contravenes
18 subsection (2).

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

20 **962W Conditions requiring consent to be given are void**

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

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

28 **Subdivision D—Records of compliance**

29 **962X Obligation to keep records of compliance**

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

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

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

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

6 **25 After section 1317GA**

7 Insert:

8 **1317GB Refund orders—contraventions of section 962R or 962S**

9 (1) This section applies if a person (the *fee recipient*):

10 (a) deducts an amount of an ongoing fee payable under an
11 ongoing fee arrangement from an account held by a person
12 (the *account holder*) with the fee recipient; or

13 (b) accepts payment of the amount of the ongoing fee that has
14 been deducted from an account held by a person (the *account*
15 *holder*) with another person (the *account provider*) under an
16 arrangement the fee recipient made with the account
17 provider.

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

20 (a) either:

21 (i) if paragraph (1)(a) applies—the fee recipient knowingly
22 or recklessly contravened section 962R (fee recipient
23 must not deduct ongoing fees without consent) in
24 deducting the amount; or

25 (ii) if paragraph (1)(b) applies—the fee recipient knowingly
26 or recklessly contravened section 962S (fee recipient
27 must not arrange for deduction of ongoing fees without
28 consent or accept such deductions) in arranging for the
29 deduction of the amount, or accepting payment of the
30 amount; and

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

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

1 *Applications for order*

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

6 *When order may be made*

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

10 *Recovery of amount as a debt*

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

14 **26 In the appropriate position in Chapter 10**

15 Insert:

16 **Part 10.46—Application and transitional provisions**
17 **relating to Schedule 1 to the Financial**
18 **Sector Reform (Hayne Royal Commission**
19 **Response No. 2) Act 2020**

20 **Division 1—Introduction**

21 **1673 Definitions**

22 In this Part:

23 *amending Schedule* means Schedule 1 to the *Financial Sector*
24 *Reform (Hayne Royal Commission Response No. 2) Act 2020*.

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

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

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

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

7 (a) the day when a fee disclosure statement is given for the
8 arrangement in accordance with subsection 1673C(3); and

9 (b) the last day of the 12 month transition period.

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

11 **1673A Application provision for new ongoing fee arrangements**

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

14 **Division 3—Existing ongoing fee arrangements**

15 **1673B Application of this Division**

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

18 **1673C Application—annual requirement to give fee disclosure 19 statement**

20 *General rule*

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

24 *Modified application during transition period*

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

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

21 *Modified application after transition period*

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

28 *Acquisition of property*

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

1 **1673D Transitional—existing obligation to give a fee disclosure**
2 **statement under section 962G**

- 3 (1) This section applies if:
- 4 (a) a disclosure day for the ongoing fee arrangement occurs
5 before 1 July 2021; and
 - 6 (b) the period of 60 days beginning on the disclosure day ends
7 on or after 1 July 2021; and
 - 8 (c) before 1 July 2021 the current fee recipient in relation to the
9 ongoing fee arrangement has not given a fee disclosure
10 statement in relation to the ongoing fee arrangement in
11 accordance with the obligation arising under section 962G
12 (as in force before 1 July 2021) in relation to the disclosure
13 day.
- 14 (2) The obligation on the fee recipient to give the fee disclosure
15 statement within the 60 day period beginning on the disclosure day
16 ceases on 1 July 2021.
- 17 (3) However, to the extent that the fee disclosure statement referred to
18 in subsection (2) would have been required to include information
19 in relation to a period that would not otherwise be required to be
20 included in a fee disclosure statement given under section 1673C,
21 the fee disclosure statement given under that section must include
22 that information.

23 **1673E Transitional—existing obligation to give a renewal notice and**
24 **fee disclosure statement under section 962K**

- 25 (1) This section applies if:
- 26 (a) a renewal notice day for the ongoing fee arrangement occurs
27 before 1 July 2021; and
 - 28 (b) the period of 60 days beginning on the renewal notice day
29 ends on or after 1 July 2021; and
 - 30 (c) before 1 July 2021 the current fee recipient in relation to the
31 ongoing fee arrangement has not given a renewal notice and
32 a fee disclosure statement in relation to the ongoing fee
33 arrangement in accordance with the obligation arising under
34 section 962K (as in force before 1 July 2021) in relation to
35 the renewal notice day.

- 1 (2) The obligation on the fee recipient to give the renewal notice and
2 fee disclosure statement within the 60 day period beginning on the
3 renewal notice day ceases on 1 July 2021.
- 4 (3) However, to the extent that the fee disclosure statement referred to
5 in subsection (2) would have been required to include information
6 in relation to a period that would not otherwise be required to be
7 included in a fee disclosure statement given under section 1673C,
8 the fee disclosure statement given under that section must include
9 that information.

10 **1673F Application—consent requirements for deductions of ongoing**
11 **fees**

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

27 **1673G Application—compliance records**

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

1 **Part 2—Consequential amendments**

2 *Corporations Act 2001*

3 **27 Section 9 (paragraph (ba) of the definition of *civil penalty***
4 ***order*)**

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

6 **28 Section 9 (after paragraph (c) of the definition of *Part 7.7A***
7 ***civil penalty provision*)**

8 Insert:

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

11 **29 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(5) or (8) (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 (ec) subsection 962V(3) (fee recipient must give written notice of
23 cessation of consent to account provider);

24 **30 In the appropriate position in subsection 1317E(3)**

25 Insert:

26 subsection 962G(4) fee recipient must give client a fee uncatagorised
disclosure statement

27

1 **31 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(5)	fee recipient must obtain consent to arrange for deductions of ongoing fees from an account	uncategorised
subsection 962S(8)	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
subsection 962V(3)	fee recipient to give written notice of cessation of consent to account provider	uncategorised

5
6 **32 Subparagraph 1317QF(2)(a)(ii)**

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

8 **33 At the end of paragraph 1317QF(3)(b)**

9 Add “or 1317GB”.

10 **34 Subsection 1317S(1) (paragraph (a) of the definition of**
11 ***eligible proceedings*)**

12 After “1317GA,”, insert “1317GB,”.

13 **35 In the appropriate position in Schedule 3**

14 Insert:
15

Subsection 962X(1) 5 years imprisonment

1 **Schedule 2—Disclosure of lack of**
2 **independence**
3

4 ***Corporations Act 2001***

5 **1 At the end of subsection 923A(1)**

6 Add:

7 Note 3: A Financial Services Guide may need to include a statement relating
8 to the restriction in this subsection (see paragraphs 942B(2)(fa) and
9 942C(2)(ga)).

10 **2 At the end of section 923A**

11 Add:

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

16 **3 Subsection 941C(7)**

17 Omit “paragraphs 942B(2)(a) and (h), or paragraphs 942C(2)(a) and
18 (i),”, substitute “paragraphs 942B(2)(a), (fa) and (h), or paragraphs
19 942C(2)(a), (ga) and (i),”.

20 **4 Paragraph 941D(3)(a)**

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

24 **5 After paragraph 942B(2)(f)**

25 Insert:

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

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

14 **6 After subsection 942B(7)**

15 Insert:

- 16 (7A) ASIC may, by legislative instrument, determine requirements for a
17 statement for the purposes of subparagraph (2)(fa)(iii).
- 18 (7B) Without limiting subsection (7A), the instrument may include the
19 following:
- 20 (a) requirements that a specified form, or specified form of
21 words, be used for the statement;
- 22 (b) requirements for the statement to include specified
23 information;
- 24 (c) requirements about the presentation, structure and format of
25 the statement, including the location of the statement within
26 the Financial Services Guide.

27 **7 After paragraph 942C(2)(g)**

28 Insert:

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

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

14 **8 After subsection 942C(7)**

15 Insert:

16 (7A) ASIC may, by legislative instrument, determine requirements for a
17 statement for the purposes of subparagraph (2)(ga)(iii).

18 (7B) Without limiting subsection (7A), the instrument may include the
19 following:

- 20 (a) requirements that a specified form, or specified form of
21 words, be used for the statement;
22 (b) requirements for the statement to include specified
23 information;
24 (c) requirements about the presentation, structure and format of
25 the statement, including the location of the statement within
26 the Financial Services Guide.

27 **9 In the appropriate position in Chapter 10**

28 Insert:

1 **Part 10.47—Application and transitional provisions**
2 **relating to Schedule 2 to the Financial**
3 **Sector Reform (Hayne Royal Commission**
4 **Response No. 2) Act 2020**
5

6 **1674 Application of disclosure of lack of independence reforms**

7 The amendments made by Schedule 2 to the *Financial Sector*
8 *Reform (Hayne Royal Commission Response No. 2) Act 2020* apply
9 in relation to a financial service provided on or after 1 July 2021.

10 **1674A Obligation to give updated Financial Services Guide**

11 (1) If:

- 12 (a) the providing entity has given a Financial Services Guide to
13 the client under section 941A or 941B before 1 July 2021;
14 and
15 (b) the providing entity will provide a financial service to the
16 client on or after 1 July 2021; and
17 (c) paragraph 942B(2)(fa) or 942C(2)(ga), as inserted by
18 Schedule 2 to the *Financial Sector Reform (Hayne Royal*
19 *Commission Response No. 2) Act 2020*, applies in relation to
20 the providing entity and the financial service;

21 the providing entity must, before the financial service is provided
22 to the client, give the client:

- 23 (d) another Financial Services Guide that contains the statement
24 required by whichever of the paragraphs referred to in
25 paragraph (c) of this subsection is applicable; or
26 (e) a Supplementary Financial Services Guide that contains that
27 statement.

28 (2) Subsections 941A(1) and 941B(1) apply as if the reference in those
29 subsections to “this Division” included a reference to this section.

1 **Schedule 3—Advice fees in superannuation**

2 **Part 1—General fees rules**

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

4 **1 Subsection 10(1)**

5 Insert:

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

8 **2 Section 99F (heading)**

9 Repeal the heading, substitute:

10 **99F Cost of financial product advice—collectively charged fees**

11 **3 After section 99F**

12 Insert:

13 **99FA Cost of financial product advice—fees charged to member**
14 **concerned**

15 (1) The trustee or the trustees of a regulated superannuation fund must
16 not directly or indirectly pass the cost of providing financial
17 product advice in relation to a member of the fund on to the
18 member, unless:

- 19 (a) the cost is to be paid in accordance with the terms of an
20 arrangement entered into by the member; and
21 (b) the trustee passes the cost on, or the trustees pass the cost on,
22 in accordance with the terms of a written consent of the
23 member; and
24 (c) if the arrangement is an ongoing fee arrangement:
25 (i) the consent is of a kind described in
26 paragraph 962R(2)(a) or 962S(3)(a) of the *Corporations*
27 *Act 2001*; and

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

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

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

1 **Part 2—Fees for MySuper products**

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

3 **4 After paragraph 29V(7)(a)**

4 Insert:

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

6 **5 Paragraph 29V(7)(b)**

7 Omit “, an advice fee”.

8 **6 Paragraph 29V(8)(b)**

9 Omit “, an activity fee”.

10 **7 At the end of subsection 29VA(9A)**

11 Add:

12 ; and (d) the fee is to be paid in accordance with the terms of an
13 arrangement entered into by the member; and

14 (e) the arrangement is not an ongoing fee arrangement.

1 **Part 3—Application**

2 **8 Application**

3 The amendments made by this Schedule apply:

- 4 (a) in relation to a fee payable under an arrangement entered into
5 on or after 1 July 2021—on and after 1 July 2021; or
6 (b) in relation to a fee payable under an arrangement entered into
7 before 1 July 2021—on and after 1 July 2022.