

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2012 No.**

**Issued by authority of the Minister for Financial Services and Superannuation**

*Corporations Act 2001*

*Corporations Amendment Regulation 2012 (No. )*

The *Corporations Act 2001* (the Act) provides for the regulation of corporations, financial markets, products and services, including in relation to licensing, conduct, financial product advice and disclosure.

Subsection 1364(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Corporations Amendment Regulation 2012 (No. )* makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments are in respect of the provisions relating to charging ongoing fees to clients and conflicted remuneration as introduced by the *Corporations Amendment (Future of Financial Advice) Act 2012* and the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012*.

Specifically, the amendments to the Principal Regulations:

- exclude product fees from the definition of an ‘ongoing fee arrangement’;
- introduce a delayed application date of 1 July 2013 for the ban on conflicted remuneration with respect to group life risk insurance inside choice superannuation funds and all life risk insurance policies in default superannuation funds;
- exclude benefits given for advice relating to interests in time-sharing schemes from the ban on conflicted remuneration;
- provide further details to the exemptions from the ban on conflicted remuneration for certain non-monetary (‘soft-dollar’) benefits and introduce record keeping requirements in relation to those benefits.

Details of the proposed Regulation are set out in Attachment A.

A statement of the Regulation’s compatibility with human rights is set out in Attachment B.

This Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**DRAFT ONLY**

The Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The sections or schedules of the Regulation commence either on 1 July 2012 or immediately after.

**Details of the proposed Corporations Amendment Regulation 2012 (No. )**

**Section 1 – Name of Regulation**

This section specifies the name of the Regulation as the *Corporations Amendment Regulation 2012 (No. )*.

**Section 2 – Commencement**

This section provides for:

- sections 1 to 3 and Schedule 1 of the Regulation to commence on the commencement of Schedule 1 to the *Corporations Amendment (Future of Financial Advice) Act 2012*; and
- section 4 and Schedule 2 of the Regulation to commence immediately after the commencement of Schedule 1 to the *Corporations Amendment (Future of Financial Advice) Act 2012*.

**Sections 3 and 4 – Amendment of the Corporations Regulations 2001**

This section provides that Schedule 1 and Schedule 2 amend the *Corporations Regulations 2001* (the Principal Regulations).

**Schedule 1 – Amendments commencing on commencement of Schedule 1 to the *Corporations Amendment (Future of Financial Advice) Act 2012***

Schedule 1 makes regulations for Division 3 of Part 7.7A of the *Corporations Act 2001* (the Act).

**Item 1** inserts new regulations 7.7A.10 and 7.7A.11.

Regulation 7.7A.10 prescribes arrangements which are not ongoing fee arrangements for the purposes of subsection 962A(5). The arrangements it prescribes are those under which the only ongoing fee payable is a product fee. Subregulation 7.7A.10(2) defines a product fee as a fee that the issuer of a financial product charges a retail client in relation to the administration of a financial product issued to the client. For example, a fee charged by a platform operator in relation to a custodial arrangement.

Regulation 7.7A.11 clarifies that information about an ongoing fee which is a product fee is not required to be disclosed in fee disclosure statements under paragraph 962H(2) of the Act.

## **Schedule 2 – Amendments commencing immediately after commencement of Schedule 1 to the *Corporations Amendment (Future of Financial Advice) Act 2012***

Schedule 2 makes regulations for Divisions 2 and 3 of Part 7.7, Division 4 of Part 7.7A, Part 7.8 and Part 10.18 of the Act.

Item 1 inserts new regulations 7.7.04AA and 7.7.04AB which provide that a non-monetary benefit under the prescribed amount that is not conflicted remuneration under paragraph 963C(b) of the Act, do not need to be disclosed in a Financial Services Guides given by a financial services licensee or an authorised representatives. Regulation 7.7.A.13 provides \$300 as the prescribed amount for the purposes of paragraph 963C(b).

Item 2 inserts new regulations 7.7.09BC and 7.7.09BD which provide that a non-monetary benefit under the prescribed amount that is not conflicted remuneration under paragraph 963C(b) of the Act, do not need to be disclosed in a Statement of Advice given by a financial services licensee or an authorised representatives. Regulation 7.7.A.13 provides \$300 as the prescribed amount for the purposes of paragraph 963C(b).

The intention to make such regulations was set out in paragraph 2.49 of the Replacement Explanatory Memorandum to the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012*.

Item 3 inserts new regulations 7.7A.12 to 7.7A.15 which relate to the conflicted remuneration provisions in Division 4 of Part 7.7A of the Act.

Regulation 7.7A.12 provides that a benefit given to a financial services licensee or a representative of a financial services licensee, for advice that relates to an interest in a time-sharing scheme is a prescribed benefit. That is, such a benefit is not conflicted remuneration.

Regulation 7.7A.13 prescribes for subparagraph 963C(b)(i) of the Act the amount of \$300 as a non-monetary benefit given to each financial services licensee, or each representative of a financial services licensee. Such a prescribed benefit is not conflicted remuneration if identical or similar benefits are not given on a frequent or regular basis (subparagraph 963C(b)(ii) of the Act).

Regulation 7.7A.14 and 7.7A.15 prescribe for paragraph 963C(iii) of the Act the requirements if a non-monetary benefit to which that section applies is the provision of an education or training course to a financial services licensee, or a representative of a financial services licensee. Under regulation 7.7A.14, the requirements are:

- at least 75 per cent of the time spent on the course must be spent on education or training activities for the professional development of the participants in the course; and

- the participant or their employer must pay for the costs of travel and accommodation relating to the course and events and functions held in conjunction with the course.

Alternatively, under regulation 7.7A.15, if a non-monetary benefit is not an education or training course, the dominant purpose of the benefit must be education and training.

A non-monetary benefit which satisfies the requirements under paragraph 963C(c) and either regulation 7.7A.14 or 7.7A.15, is not conflicted remuneration.

Item 4 inserts new regulation 7.8.11A which requires a financial services licensee to keep records under paragraph 988E(g) and section 988F of a non-monetary benefit given to them or a representative which, in accordance with section 963C, is not conflicted remuneration. Only a benefit which would be conflicted remuneration under section 963A, but because of section 963C is not, is required to be recorded. A benefit which is not conflicted remuneration under section 963A is not required to be recorded.

The table in subregulation 7.8.11A(1) sets out the categories of information which must be shown in the records kept by a financial services licensee of non-monetary benefits that are not conflicted remuneration as a result of section 963C of the Act. Subregulations 7.8.11A(2) to (5) provide that such records for the last financial year must be made available to a person on request as soon as practicable but no later than one month after the person makes the request to the licensee. The licensee may require the person making the request to pay a charge for obtaining the particulars but the amount of the charge must not exceed the reasonable costs that the licensee incurs in providing the particulars.

The intention to make regulations requiring the disclosure of such non-monetary benefits was set out in paragraph 2.47 to 2.50 of the Replacement Explanatory Memorandum to the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012*.

Item 5 inserts new regulation 10.18.01 which provides a delayed application date of 1 July 2013 for the ban on conflicted remuneration with respect to benefits relating to a group life policy for members of a superannuation entity or a life policy for a member of a default superannuation fund.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Corporations Amendment Regulation 2012 (No. )**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to support the measures introduced by the *Corporations Amendment (Future of Financial Advice) Act 2012* and the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012*, specifically:

- the prohibition on conflicted remuneration with respect to time-sharing schemes, non-monetary benefits and certain life policies; and
- the requirements relating to charging ongoing fees to clients.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.