

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 158

Minister for Superannuation and Corporate Law

Corporations Act 2001

Corporations Amendment Regulations 2008 (No. 4)

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

Part 7.9 of the Act establishes a general disclosure regime for financial products. Under Part 7.9, financial service providers must provide retail clients with a Product Disclosure Statement (PDS), before the consumer purchases the financial product. The PDS is designed to inform the consumer about important features of the product and can be used to aid the consumer make a decision as to whether to purchase the product or not. Part 7.9 also contains ongoing disclosure requirements in relation to certain products, such as through periodic statements.

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 by regulations, or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Act. Section 1020G of the Act provides that the regulations may modify the effect of Part 7.9 of the Act. These powers have been used previously to create disclosure rules for superannuation and other financial products, as well as rules for short form PDSs and fee disclosure.

The *First Home Saver Accounts Act 2008* (the FHSA Act), and related legislation to implement and regulate First Home Saver Accounts (FHSAs), received the Royal Assent on 25 June 2008. The legislation came into force from 26 June 2008 although, to enable providers to develop products and systems, it will not be possible to open an FHSA until 1 October 2008. FHSAs are a 'financial product' for the purposes of the Act.

These Regulations prescribe the form and content of certain FHSA documents.

As part of the FHSA package, the Government wishes to ensure that the FHSA PDS will be much shorter and simpler than PDSs for other financial products have historically been. It also wishes to ensure that FHSAs can be issued quickly, (including by trustees of public-offer superannuation funds, whose Australian financial services licences may not cover FHSA products) and that FHSA providers are not subject to unnecessary regulation.

The FHSA disclosure project is managed by the Financial Services Working Group (FSWG), which is made up of representatives of the Department of the Treasury, the Department of Finance and Deregulation and the Australian Securities and

Investments Commission. The FSWG has consulted on the FHSA disclosure regime with an industry Advisory Panel.

The Regulations specify that:

- the PDS must not exceed four A4 pages (or the equivalent in other formats);
- the PDS is to be made up of specified sections and sub-sections;
- certain text is to be prescribed;
- periodic statements must contain some prescribed content;
- public-offer licensees will not be required to seek a variation to their Australian financial services licence in order to offer FHSA products, or financial advice on such products (to the extent that their licence already permits them to do so for superannuation products); and
- there are certain exemptions from having to give Statements of Advice and Financial Services Guides to clients who are interested in FHSAs.

Under the *Corporations Agreement 2002*, the State and Territory Governments referred their constitutional powers with respect to corporate regulation to the Commonwealth. Under subclauses 506(1) and 507(1) of the Corporations Agreement, the Commonwealth is required to consult with State and Territory Ministers of the Ministerial Council for Corporations (the Council) before making a regulation under the national law. The Council has been consulted about the proposed Regulations as required by the Corporations Agreement.¹ Paragraph 507(1)(f) of the Corporations Agreement provides that approval of the Council is not required for amendments to regulations relating to financial products and services.

Details of the Regulations are set out in Attachment A. Two prototype examples of PDSs are included at Attachment B.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Authority: Subsection 1364(1) of the *Corporations Act 2001*

Details of the Corporations Amendment Regulations 2008 (No. 4)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Corporations Amendment Regulations 2008 (No. 4)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of Corporations Regulations 2001

This regulation provides that the *Corporations Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Background

The entities which will be able to offer First Home Saver Accounts (FHSAs) are:

- trustees holding a Registrable Superannuation Entity Licence to operate public-offer superannuation funds (public-offer licensees),
- life insurers,
- friendly societies,
- banks, building societies and credit unions (Authorised Deposit-taking Institutions (ADIs))

Items [1], [2] and [7] – Subregulation 1.0.02(1) and 7.7.10(i)

Under section 946A of the *Corporations Act 2001* (the Act), a holder of an Australian financial services licence (AFSL) who gives personal advice to a retail client is generally obliged to provide a Statement of Advice (SOA).

Items [1] and [2] insert definitions of ‘capital guaranteed FHSA product’, ‘FHSA deposit account’ and ‘FHSA life policy’ into the Principal Regulations. A ‘capital guaranteed’ FHSA product is one for which the account balance may not be reduced other than by the debiting of fees, and which also is only offered by ADIs or under a life policy.

Item [7] exempts a provider of an FHSA deposit account or an FHSA life policy which offers a ‘capital guaranteed FHSA product’ from the SOA requirement. The Government has done this because capital-guaranteed FHSA products which are a deposit product or a life policy are lower risk for a consumer and so a SOA is not necessary for advice about these products. This will also reduce the regulatory

burden for ADIs, one of the two groups who can offer capital-guaranteed FHSA products, who do not have systems and procedures for providing SOAs (because personal advice in relation to a basic deposit product does not require an SOA).

Item [3] – Regulation 7.6.01AA

Under section 911A of the Act, a person who carries on a business of providing financial services must hold an AFSL covering the provision of the financial services.

This amendment provides that, where an entity holds an AFSL which authorises the entity to deal in (e.g. issue) superannuation products, and/or to provide financial advice in relation to such products, that licence will be deemed to extend to offering the same services in relation to FHSA trust products. The amendment is mainly intended to enable a public-offer licensee who already holds an AFSL to provide the same services that it is authorised to provide under its existing licence in relation to FHSA products and advice without having to obtain a licence variation from ASIC.

Subsection 911A (2) of the Act provides exemptions to the requirement to hold an AFSL, including exemptions prescribed in regulations (paragraph 911A (2) (k)). However, where a person is exempt from holding an AFSL in relation to a particular financial service, provisions of the Act which apply to the holder of an AFSL do not apply to the person when providing that service.

It was decided that regulations should not exempt a public-offer licensee from holding an AFSL in order to provide financial services relating to FHSAs, otherwise that licensee would not be subject to the provisions of the Act applying to AFSL holders when providing those services. Rather, it was decided to deem that the existing AFSLs of public-offer licensees covers the provision of financial services in relation to FHSAs if those licences already covered the provision of the same financial services in relation to superannuation products. This means that when the public-offer licensee was providing financial services in relation to FHSAs, it would be subject to the provisions of the Act that regulated the provision of financial services in relation to superannuation products. This required a deeming provision to be inserted into the regulations – the proposed subregulation 7.6.01AA (2) – and a regulation-making power was required to support that deeming provision.

Accordingly, the Act is amended by subregulation 7.6.01AA (1) to enable subregulation 7.6.01AA (2) to be made.

Item [4] – Paragraph 7.6.04A(e)

Under section 916F of the Act, a person must generally lodge with ASIC a written notice within 15 business days if the person authorises a representative to provide a financial service. Exceptions to this requirement may be made under the regulations.

This amendment gives FHSA providers an exemption from this requirement. The amendment aligns FHSAs with certain other products, such as general insurance and basic deposit products, which are relatively low risk and which may be offered to clients by authorised representatives based, for example, in rural and regional Australia.

Item [5] – Paragraph 7.7.02(1)(c)

Section 941A of the Act creates a general requirement for an AFSL holder who provides a financial service to a retail client to give the client a Financial Services Guide (FSG). Exceptions to this requirement may be made under the regulations.

This amendment gives FHSA providers an exemption from the requirement to provide an FSG in relation to advice or other services relating to ‘capital guaranteed’ FHSA products that are issued by ADIs and life insurers. That is, the FSG exemption is granted on the same basis as the SOA exemption referred to above.

Item [6] – Subregulation 7.7.08A(1A)

Section 942DA of the Act states that an FSG and a PDS may be combined in a single document in circumstances set out in regulation 7.7.08A.

This amendment prevents FHSA providers from combining an FSG and a FHSA PDS in a single document. This item is intended to protect the integrity of the four page PDS requirement.

Item [8] – paragraph 7.9.09(1)(d)

This item provides that Division 4 of Part 7.9 of the Principal Regulations (*Content of Product Disclosure Statements*) applies to FHSA products.

Item [9] – Chapter 7, Part 7.9, Division 4, Subdivision 4.2

This item inserts a new Subdivision 4.2 entitled *Content of Product Disclosure Statements for First Home Saver Accounts*.

Regulation 7.9.10 – Application of Subdivision

The new Subdivision applies to both a person required to give a PDS for an FHSA product and the PDS itself, i.e. it regulates both the conduct of issuers and advisers and the content of the PDS.

Notwithstanding this general principle, if the issuer has provided information in both the PDS and in other documents (i.e. those other documents are incorporated by reference into the PDS), the Subdivision applies only to the main PDS (i.e. the PDS which deals with the default investment option – see regulation 7.9.10C). That is, the information in the other documents is subject to the general PDS content requirements.

Regulations 7.9.10A – Definitions

Terms that are used in both the FHSA Act and in these Regulations are given the same meaning as they have in the FHSA Act. Additional guidance on certain definitions follows.

Default investment option

Where an FHSA product has 2 or more investment options, the default investment option is the option that the client's funds are invested in if the client does not make an investment choice.

Multiple investment option FHSA product

This is an FHSA product that has 2 or more investment options.

Regulation 7.9.10B – Modification of Act

Section 1020G of the Act enables the making of regulations that, amongst other things, omit, modify or vary the provisions of Part 7.9 of the Act. This enables specific amendments to be made to the financial product disclosure requirements of the Act to deal with specific kinds of financial products for which unique disclosure requirements are required on public policy grounds. This has been done in the past in relation to certain kinds of superannuation products.

The Government has decided that product disclosure requirements for all FHSAs must be short and of a standard format, to ensure that they are accessible to members of the public and different products are easily comparable. Consequently, it is proposed that the standard provisions of the Act relating to product disclosure are be amended for FHSAs.

Regulation 7.9.10B provides that the general PDS content requirements in Part 7.9 of the Act are modified as set out in proposed Part 5 of Schedule 10A (set out below).

Regulation 7.9.10C – Product Disclosure Statement normally does not consist of 2 or more documents

This item creates a general rule that a FHSA PDS must not consist of 2 or more documents.

However, there is an exception in the case of 'multiple investment option' FHSA products. In such a case, the PDS may consist of 2 or more documents if (a) the document describing the default investment option complies with Subdivision 4.2, and (b) the other documents comply with the general PDS content provisions in the Act and Regulations.

It should be noted that the general rule relating to 'incorporation by reference', (regulation 7.9.15DA of the Principal Regulations) applies to FHSA PDSs. Under this rule, product issuers are able to incorporate certain required information or statements into their PDSs by reference, rather than setting them out in the PDS itself. This is subject to the statements or information meeting certain requirements. A copy of the information and statements must be available on request at no charge.

Regulation 7.9.10D – Manner of giving Product Disclosure Statement

This item provides that the PDS must be the first (or only) document given to a person or a person's agent. This is to ensure that the consumer has an opportunity to examine the important information in a PDS without being overwhelmed by other material. There is an exception for a covering letter or fax sheet which accompanies a PDS that is posted or faxed to a person. A covering letter must be a maximum of one page.

Regulation 7.9.10E – Form and content of Product Disclosure Statement

This item provides that an FHSA PDS must (as set out in proposed Schedule 10B) include specified information and statements, and be in a specified form.

This rule is subject to a proviso in subregulation 7.9.10E(2) that, if strict compliance with the prescribed content requirements (other than in sections 1 to 3 of the PDS) would result in the PDS being materially misleading, the PDS must contain material that rectifies this situation. For example, if the features of a specific product would mean that the prescribed content would be incorrect, the FHSA provider must amend the content to ensure that the PDS is not misleading.

This means that product issuers will be responsible for ensuring that any material that is incorporated by reference is consistent with the prescribed content.

Finally, ASIC may give relief from the strict application of the FHSA PDS disclosure requirements.

Items [10] and [11] – Paragraphs 7.9.62(3)(c) and (d)

There is a general rule, which applies to most financial products, that the product provider must confirm transactions, such as credits and debits: see section 1017F of the Act.

These amendments place FHSAs on the same footing as basic deposit products by exempting FHSAs from this general requirement where the holder of the product has been given a periodic statement not later than 6 months after the transaction occurs.

Item [12] – Regulation 7.9.74B

Section 1017D of the Act requires the issuers of many financial products to issue periodic statements to product holders. The Act has been amended to extend this requirement to FHSAs.

This regulation provides that such periodic statements must include words stating that the FHSA is an Australian Government initiative to help Australians save for their first home.

The amendment also provides that the periodic statement must state the number of financial years remaining before the holder of the FHSA product may withdraw money from his or her account to acquire a qualifying interest in a dwelling. This will help consumers appreciate how many more years they must save (and make at least the minimum contribution to their account) before they can withdraw their savings and acquire a home.

Item [13] – Schedule 10A, Part 5

Schedule 10A to the Principal Regulations contains modifications of Part 7.9 of the Act, for example where special disclosure rules for particular financial products are needed. This item inserts a new Part 5 of Schedule 10A entitled *Modifications relating to First Home Saver Accounts*.

Clauses 5.1, 5.2 and 5.3 – Small investments advice

Section 946A of the Act imposes a general obligation to give an SOA when personal advice is given to a retail client.

Section 946AA of the Act creates a ‘small investments advice’ exemption to the general requirement that an SOA be provided. It provides further that in such cases a Record of Advice (ROA) must be prepared and provided.

The *First Home Saver Accounts (Consequential Amendments) Act 2008* has amended section 946AA of the Act to specify that the providing entity does not have to give the client an SOA where the advice relates to an FHSA product and the total value of all investments in relation to which the advice is provided does not exceed the ‘threshold amount’.

Clauses 5.1, 5.2 and 5.3 further amend section 946AA of the Act to provide that an ROA need not be given to a retail client where the small investments advice is in relation to a capital guaranteed FHSA product (which is a low risk product).

The small investments advice exemption is in addition to the total SOA exemption where personal advice is solely about a capital guaranteed FHSA product.

Clauses 5.4, 5.5, 5.6, 5.7 and 5.8 – PDS disclosure requirements

These items:

- provide that the specific content requirements for the FHSA PDS supersede the general PDS content requirements in sub-section 1013C(1) and sections 1013D and 1013E of the Act; and
- ensure that the limitation provision in subsection 1013C(2) applies to the FHSA PDS.

Clause 5.7, which inserts a new subsection 1013C(8) into the Act for the purposes of FSAs, complements the amended paragraph 1013C(1)(a), and allows the regulations to permit ASIC to change the requirements in the regulations for FSA PDSs. The inclusion of subsection 1013C(8), specifically for FSA PDSs, allows the making of regulations such as the proposed subregulation 7.9.10E(4) and sub-clause 14(4) of Schedule 10B. This maintains sufficient flexibility for ASIC to amend the disclosure requirements for FSA products if the need arises.

Clause 5.9 – Regulations may prescribe circumstances in which FSA PDS may not consist of 2 or more documents, and additional requirements where PDS does consist of 2 or more documents

Section 1013L of the Act creates a general rule that a PDS may be made up of 2 or more separate documents that are given at the same time. This item substitutes replacement subsection 1013L(7), providing that there may be circumstances in which a PDS must not be made up of 2 or more documents, and additional requirements to be met when a PDS consists of 2 or more documents. This amendment authorises proposed regulation 7.9.10C.

Clauses 5.10 and 5.11 - a PDS cannot be combined with an FSG or any other document in a single document

Section 942DA of the Act provides that an FSG and a PDS may be combined in a single document (a combined FSG and PDS) in circumstances specified in regulations made for the purposes of that section. (See also section 1013M.)

These items provide that an FHSA PDS must not be attached to, or combined with, an FSG (notwithstanding sections 942DA and 1013M) or any other document. This is to protect the integrity of the 4-page limit for PDSs.

Clause 5.12 – no Supplementary PDS for an FHSA product

Part 7.9, Division 2, Subdivision D of the Act enables a person who has prepared a PDS to prepare a supplementary PDS, for example to correct a misleading or deceptive statement or an omission in the original PDS.

This item provides, in effect, that a person will not produce a Supplementary PDS for an FHSA product. This requirement is to protect the integrity of the 4 page limit. In other words, to correct a material error or omission in an FHSA PDS, the person will have to issue a new PDS.

Item [14] – Schedule 10B

This item inserts a new Schedule 10B to the Principal Regulations entitled *Form and content of Product Disclosure Statement for FHSA product*. The content of this Schedule is called up by proposed subregulation 7.9.10E(1).

Clause 1 – Length and font size for PDSs

Maximum length

This clause ensures that the PDS does not exceed a maximum page limit, while providing for alternative formats which deliver the equivalent content (e.g. 8 A5 or 12 DL (envelope size) pages or a webpage). It provides that the total length of the PDS must not exceed 4 A4 pages, or the equivalent if published in alternative formats.

The page limit is inclusive of any cover pages and any index or table of contents (but does not include an application form).

Minimum font sizes

The font size must not be less than:

- for the company's name, address, Australian Business Number (ABN), Australian Company Number (ACN) and AFSL number– 8 points; and
- for all other text – 9 points.

This clause preserves the requirement in subsection 1013C(3) of the Act that the PDS must be worded in a clear, concise and effective manner.

Other formatting requirements

The clause provides that if a person who must be given the PDS requests or is entitled to expect that the PDS is given to him or her in a particular format, the PDS given to the person is taken to comply with the requirements of the clause if the PDS would otherwise have complied with the normal requirements.

The purpose of sub-clause (3) is to alleviate the strict page limit where compliance with that limit would result in the PDS issuer contravening generally-applicable anti-discrimination laws and policies. For example, persons who provide an FHSA PDS to a vision-impaired person must comply with the requirements of the *Disability Discrimination Act 1992*, and in doing so may provide the PDS in a larger-than-normal font size. Sub-clause (3) allows such a PDS to be longer than permitted by subitem (1) if the PDS, when printed in its normal font size, does not exceed the page limit.

Clause 2 – Sections in a FHSA PDS

This clause provides that the PDS must contain nine sections. The sections must be numbered consecutively from 1 to 9, and the titles for sections 1, 2, 3, 5, 6, 7 and 8 are prescribed.

The PDS may contain other sections. Such additional sections may only be inserted before section 1 (e.g. if it is a table of contents, glossary or index) or after section 9.

All the mandatory information must be contained in the 9 mandatory sections. The order and titles of the 9 mandatory sections are intended to guide the consumer through considering the suitability of the FHSA product and the process of purchasing the product. The prescribed order of sections will also assist consumers in comparing PDSs from different providers, as similar information will be in a similar place in each document.

In some sections of the PDS, specific text is prescribed. This text sometimes contains italicised text in square brackets; the italicised text itself is not to be included in the PDS, but indicates the nature of the text which must be included or is an instruction about whether the text must be included. Thus, for example:

- *[no prescribed title]* for a section of the PDS means that the issuer of the PDS can decide what title to use for that section;
- *[account balance cap]* means include the amount of the account balance cap as defined in section 29 of the FHSA Act, that is, '\$75,000' (currently) or the amount of the account balance cap as indexed under section 30 of the FHSA Act;
- *[Government FHSA contribution threshold]* means include the amount of the Government FHSA contribution threshold as defined in section 39 of the FHSA Act, that is '\$5000' (currently) or the amount of the threshold as indexed under section 40 of the FHSA Act;
- *[name of FHSA provider]* means include the name of the person providing the FHSA, e.g. 'ABC Bank';

- *[For multiple investment option FHSA products, include the following:]* means include the text following the instruction if the PDS is for a multiple investment FHSA product.

Clause 3 – Product Disclosure Statement must be self-contained

This item provides that the FHSA PDS must contain (in summary form) all the key information that a person needs to know before deciding to invest in an FHSA.

Product issuers are entitled to incorporate some material by reference, and some Government material (e.g. on websites) may be referred to. However, such material can only be supplementary in nature and must not be critical to the person's decision whether or not to invest in the product.

Clauses 4, 5 and 6 – Contents of sections 1, 2 and 3

Sections 1 to 3 of the FHSA PDS must contain the prescribed wording that is set out in these clauses.

The sections contain information that is considered to be generic to FHSAs, because it is based on standard Government requirements, for example in relation to eligibility.

All sections of the PDS, including sections 1 to 3, may contain other text. However, in sections 1 to 3, that other text must come after, and be no more prominent than, the prescribed text.

Clause 7 – Contents of section 4

The heading to section 4 is not prescribed, but must be relevant to contents of the section. For example, the heading for Section 4 may be something like 'How [name of issuer] helps you save' or 'Key benefits of the [name of product]' or 'Benefits and risks of the [issuer] fund'.

Section 4 must contain summary information about:

- (if the product is a life policy or trust FHSA) the composition of the underlying investments of the product;
- the nature of the return that the investment may generate;
- how the rate of return for the product is calculated, or where the rate can be found (or the current rate of return);
- if the product can fall in value – a summary of the reasons for that decrease, and a summary description of the likelihood of that decrease;

If the product is a multiple investment option FHSA product, the PDS must contain:

- the name of each investment option, ranked in order of lowest risk to highest risk, and identification of the default investment option;
- for the default investment option, the information mentioned in the 4 dot points above;

- for each other investment option, either: the information mentioned in the 4 dot points above; or a statement directing the reader to where that information can be found.

The rate of return for the FHSA product must be calculated after any applicable fees and taxes.

Worked example of balance changing over time

The PDS for a FHSA deposit product must contain a worked example which shows how the balance of a product holder's account could change over a period of 4 financial years, using the assumptions set out below. The assumptions are based on a hypothetical 'typical' account. There must be a warning that the interest rate used for the example may not be the same as the actual interest rate.

It is optional for the PDS for a FHSA life policy or a FHSA trust to contain the worked example and the warning. This is because there may be significant year-to-year volatility in earnings for the account, so a standard worked example may not provide a realistic demonstration of how the consumer's savings would accumulate. However, if a FHSA life policy or FHSA trust PDS uses a worked example, the provider may, if they have a reasonable basis for doing so, use their own interest/earnings rate.

The worked example is intended to help consumers understand how their savings might grow and how the government contribution works, in addition to their own contributions, to reach the total amount saved. This will provide a realistic picture of the likely amount that will be available to the consumer after four years and encourage the consumer to consider how much they might need to save to reach their own goals. It may be too difficult for many consumers to do the necessary calculations on their own to work this out, and a worked example will assist consumer understanding.

The assumptions underlying the 'end benefit' example are:

- For all versions of the product, the end benefit example is after any fees and taxes.
- The contribution assumption is a \$100 initial deposit followed by \$100 per week (\$5,200 per year)
- The interest rate / earnings assumption is:
 - For the deposit account version: 5% (after taxes) minus any fees and costs.
 - For the life policy / trust version: no percentage is prescribed – but providers may either:
 - : provide an example without earnings, and add a statement to the effect that the end benefit (\$24,000) will be 'plus or minus any investment returns' (e.g. market-linked earnings), or
 - : if they have a reasonable basis for doing so, specify and use their own rate of interest or earnings rate which must be after fees and taxes.

Clause 8 – Contents of section 5 (What happens if your situation changes)

The text of section 5 of the PDS is not prescribed. However, section 5 must contain (in summary form) information about the effects of various hypothetical events on the product holder's ongoing eligibility. This will allow the consumer to assess the suitability of purchasing a FHSA. The section must cover the following situations in which the holder:

- chooses not to purchase a qualifying interest in a dwelling; or
- acquires a qualifying interest in a dwelling less than 4 years after acquiring an FHSA; or
- fails to make a contribution to a FHSA at any time; or
- ceases to be a resident of Australia; or
- actually acquires a qualifying interest in a dwelling; or
- wishes to access the money invested in the FHSA on the grounds of financial hardship, permanent disability or specified compassionate grounds.

Clause 9 – Contents of section 6 (Using your savings for your first home)

The text of section 6 is not prescribed. However, section 6 must contain summary information about:

- what actions the holder of the product needs to take in order to acquire a qualifying interest in a dwelling using the money in the FHSA; and
- what procedures the holder must follow at that time.

Clause 10 – Contents of section 7 (The fees or The fees and costs)

In section 7 of the PDS, the provider must disclose certain prescribed information about:

- the fees and costs that an FHSA holder may be charged; and
- an example of the overall cost of the FHSA product; and
- a consumer advisory statement;

as set out in Part 2 (see below). There are special requirements for multiple investment option FHSA products.

Clause 11 - Contents of section 8 (How to open an account)

The text of section 8 is not prescribed. However, section 8 must contain summary information about:

- how to acquire a FHSA product; and
- the effect and length of the cooling-off period for a FHSA product prescribed in Chapter 7, Part 7.9, Division 5 of the Act; and

- how money can be transferred to another FHSA product.

Clause 12 – Contents of section 9

The text of section 9 is not prescribed. However, section 9 must contain summary information about:

- the name and address of the FHSA provider;
- the internet address and phone number from which a person can obtain further information about the product; and
- the dispute resolution system that covers complaints by product holders and how that system may be accessed.

Section 9 must also contain prescribed text regarding how FHSA enquiries may be made. The web site address that must be included in the PDS is prescribed.

Part 2 – Information on fees and costs

General

All providers who charge fees or costs must disclose their fees and/or costs. All fees and costs applying to the product (or the default investment option for the product, if there is more than one investment option), other than ‘small unusual costs’, must be stated within the PDS. Information about fees (other than ‘small unusual costs’) cannot be incorporated by reference. This is to protect the integrity of the 4-page limit. ‘Small unusual costs’ are one-off irregular costs below \$10 (e.g. a fee for a duplicate statement).

Clauses 13 and 14 Terminology and dollar disclosure

The terminology for this section reflects the terminology used in the ‘enhanced fee disclosure’ rules (Schedule 10 to the Principal Regulations). ADIs may use their own usual terminology for deposit products.

Also there is a requirement that, where an amount of a fee or cost is included in the PDS, that amount (subject to some exceptions) must be expressed as a dollar amount. This is subject to ASIC having the power to give relief from these requirements.

If a fee or cost is negotiable, this fact, and information about negotiating the fee or cost, must be clearly disclosed.

Clause 15 Information on fees and costs

In this section, certain fees and costs (where applicable) must be set out in a prescribed order. The prescribed order is intended to assist the consumer in understanding how they would use the product and so follows the order in which the consumer is likely to encounter the fees (e.g. establishment fees first, then contribution fees, management costs, and termination fees, with service fees and adviser fees set out below this). The fees and costs must be described using prescribed terminology to assist consumers in comparing PDSs about different products and providers.

The information may be presented in narrative form, in a table, or in any other form that enables it to be easily understood and compared with similar information about like products. For example, issuers might want to use a similar (albeit modified) fee table to that used for superannuation and managed funds (see Schedule 10 to the Principal Regulations).

Clause 16 Example of overall cost

Where fees and/or costs are charged, a worked example must be provided which demonstrates both the **overall cost** of the product and (for life policies and trusts only) the **overall cost ratio** over the life of the product, using the assumptions set out below.

- the product commences on the first day of a financial year, with a balance of \$100;
- the holder of the product makes equal fortnightly contributions to the product, amounting to \$5000 per financial year;
- the Commonwealth makes Government FHSA contributions to the product: on 30 November after the end of each financial year other than the financial year in which the product is closed; and at the start of the day on which the product is closed;
- no money is withdrawn from the product (other than for payment of fees and taxes) until it is closed;
- the product earns interest of 5 per cent per year after taxes but before any fees;
- the product is closed, and the balance is withdrawn electronically by the holder for the acquisition of a qualifying interest in a dwelling, at the end of the last day of the financial year that is 3 financial years after the product commenced.

Standard assumptions will ensure that worked examples are comparable across different products.

The example of overall cost must be in the prescribed format. A worked example helps consumers understand how fees and costs are calculated and how they add up over the life of the product.

ADI version

If an ADI charges fees, it must include a worked example of fees. However, it does not need to provide an overall cost ratio as described in sub-clause 16(6) and consequently it need not include the consumer advisory paragraph specified in clause 17 below. A cost ratio for an ADI-issued product may be misleading, as these products generally do not recover most costs via fees, but rather consider costs when setting an interest rate.

Clause 17 Consumer advisory

For trust and life policy versions of the FHSA, the PDS must include a consumer advisory statement in the prescribed form.

The overall cost ratio will provide a simplified single figure that can be compared across similar types of products to help consumers shop around. It covers both direct fees and indirect costs that are deducted from the fund.

Prototype example PDS

The government has prepared two prototype examples of PDSs – one for a FHSA deposit account and one for a FHSA trust product. As FHSA is a new type of financial product, and the disclosure requirements that apply to FHSAs are different from those applying to other financial products, the prototypes are intended to demonstrate a way that providers can make disclosure which is consistent with the 4-page limit and the other disclosure requirements. The prototypes are not intended to represent the only way that providers may make disclosure, and (apart from the prescribed text) providers are free to innovate to make disclosure in a way that best assists their customers understand the product.

The prototypes have been prepared on the basis of a hypothetical product. Real products may have features that are simpler or more complex. For example, the hypothetical bank product charges no fees. The hypothetical fund product has three investment options, whereas a real product may have five options or just one. The prototype has also been developed without reliance upon incorporation of additional material by reference.