

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

*Corporations Act 2001*

*Electronic Transactions Act 1999*

*Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024*

Section 1364 of the *Corporations Act 2001* (the Corporations Act) and section 16 of the *Electronic Transactions Act 1999* (the ET Act) provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The purpose of the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* (the Regulations) is to support increased access to affordable and quality financial advice by making amendments consequential to the commencement of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* (the Amending Act).

Schedule 1 to the Amending Act delivers tranche 1 of the Government's Delivering Better Financial Outcomes package, including the initial response to the Quality of Advice Review (the Review). Tranche 1 implements the Government's response to recommendations 7, 8, 10, 13.1 to 13.5 and 13.7 to 13.9 of the Review. This includes:

- Amendments to the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Income Tax Assessment Act 1997* to provide superannuation trustees with more legal certainty about paying financial advice fees agreed between a member and their financial adviser from a member's superannuation fund account by ensuring the adviser fees are not paid in breach of the SIS Act and clarifying the tax treatment of such payment; and
- Amendments to the Corporations Act to remove unnecessary red tape that currently adds to the cost of providing financial advice with no benefit to consumers and improving consent requirements for certain insurance commissions.

These amendments support increased access to affordable and quality financial advice for millions of Australians and will particularly benefit the five million Australians at or approaching and planning for their retirement that need assistance navigating the pension and superannuation systems.

In particular, the Regulations:

- support written information or documentation requirements for the purposes of section 99FA of the *Superannuation Industry (Supervision) Act 1993* to continue to be met electronically;
- remove requirements related to Fee Disclosure Statements, update record keeping obligations for new consent requirements and remove or update references to civil penalties which are removed or updated by the Amending Act;

- align requirements for Financial Services Guides and Website Disclosure Information and make other consequential amendments;
- streamline relevant regulations of the Corporations Regulations for conflicted remuneration in line with the changes made by the Amending Act; and
- ensure the informed consent requirements apply for benefits given in relation to a general insurance product where personal advice is provided.

The Regulations are part of the Government's Delivering Better Financial Outcomes reform package announced on 13 June 2023.

The ET Act and the Corporations Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). The Regulations are subject to disallowance under section 42 of the Legislation Act and will be repealed automatically once they have commenced by force of section 48A of that Act.

Details of the Regulations, including commencement, are set out in Attachment A.

A Statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact Analysis (OIA) has been consulted (OIA23-04551, OIA23-04837, OIA23-04549, OIA23-04550) and agreed that an Impact Analysis is not required. The measure is estimated to have a low impact on compliance costs.

**Details of the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024***

**Section 1 – Name**

This section provides that the name of the regulations is the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* (the Regulations).

**Section 2 – Commencement**

Sections 1 to 4 and Parts 1 to 4 of Schedule 1 to the Regulations commence the day after the Regulations are registered on the Federal Register of Legislation. Parts 3 and 4 commence immediately after Part 2. This sequence is necessary as Part 2 creates a new part of the *Corporation Regulations 2001* (Corporations Regulations) for application provisions which must commence before such provisions can be inserted by other Parts of these Regulations.

Part 5 of Schedule 1 commences when the corresponding Part 5 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* (Amending Act) commences; that is, 9 July 2025 (the day after the end of the period of 12 months beginning on the day the Amending Act received Royal Assent, being 9 July 2024).

**Section 3 – Authority**

The Regulations are made under the *Corporations Act 2001* (the Corporations Act) and the *Electronic Transactions Act 1999* (the ET Act).

**Section 4 – Schedule**

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Part 1 – Superannuation**

Item 1 makes consequential amendments to the *Electronic Transactions Regulations 2020* (ET Regulations) to ensure that written information or documentation requirements under section 99FA of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), as repealed and replaced by item 2 of Schedule 1 to the Amending Act, can continue to be given electronically.

The table in clause 1 of Schedule 1 of the ET Regulations specifies Commonwealth laws to which certain sections of the ET Act do not apply. The SIS Act is such a law, however table item 89 lists certain provisions of the SIS Act which remain subject to the ET Act. Paragraph (h) in table item 89 previously specified subsection 99FA(1) of the SIS Act as a provision which is subject to the ET Act.

Item 1 of the Regulations amends paragraph (h) of table item 89 to prescribe section 99FA in its entirety, rather than only subsection (1). This amendment reflects the expansion of section 99FA by the Amending Act, and is necessary to ensure that actions under the amended section can be satisfied electronically, subject to the specific conditions set out in the relevant sections of the ET Act. For example:

- electronic communication of information contemplated by section 99FA as amended can be done electronically (see subsection 8(1) of the ET Act);
- the requirement for a written consent or request for the purposes of section 99FA as amended can continue to be satisfied electronically (see subsection 9(1) of the ET Act);
- the trustee or trustees of the relevant superannuation fund can store copies of requests or consents electronically (see subsection 12(1) of the ET Act); and
- a written request or consent for the purposes of section 99FA will be attributed to a member if sent electronically by them or with their authority (see section 15 of the ET Act and subject to the conditions in that section).

## **Part 2 – Ongoing fee arrangements**

Part 2 of Schedule 1 to the Amending Act implements recommendation 8 of the Quality of Advice Review (Review), published December 2022, by amending the Corporations Act to establish a consolidated and streamlined consent process for when a client enters or renews an ongoing fee arrangement and authorises ongoing advice fees to be deducted from a financial product. This includes removing the previous requirement for advisers to provide a fee disclosure statement to their clients as part of an ongoing fee arrangement, and removing disproportionate civil penalties attaching to a fee recipient's failure to provide certain notifications to their client.

Part 2 of Schedule 1 to the Regulations makes consequential amendments to remove redundant obligations relating to fee disclosure statements and ensure previous obligations are updated to reflect the Corporations Act as amended. Items 2 and 3 repeal subparagraphs 7.6.02A(2)(a)(vi), (ix) and (x) of the Corporations Regulations. Subregulation 7.6.02A(2) provided that certain breaches of civil penalty provisions which are prescribed in the subparagraphs need not be notified to ASIC. The Amending Act repeals the provisions prescribed in subparagraphs 7.6.02A(2)(a)(vi), (ix) and (x), so those provisions no longer need to be specified in subregulation 7.6.02A(2).

Item 4 repeals regulation 7.7A.11, which relates to fee disclosure statements. Previously, subregulation 7.7A.11(1) provided that for the purposes of paragraph 962H(3)(a) of the Corporations Act information about product fees is not required to be included in fee disclosure statements, while subregulation 7.7A.11(2) contained historic transitional arrangements. The Amending Act repeals the fee disclosure statement regime, so this regulation is no longer required.

Items 5, 6 and 7 adjust regulation 7.7A.11AA, which prescribes certain compliance records which must be kept by a fee recipient for the purpose of section 962X of the Corporations Act.

Item 5 repeals paragraphs 7.7A.11AA(2)(a) and (b), which required records relating to fee disclosure statements to be kept, as that regime is discontinued by the Amending Act. Transitional arrangements supporting this change are made by item 10 and described below.

Item 6 and item 7 add paragraphs into regulation 7.7A.11AA to ensure proper records are kept to demonstrate compliance with the Corporations Act. Paragraph (2)(ca) ensures that a fee recipient keeps a record of each consent given by the client to enter into or renew an ongoing fee arrangement for the purpose of section 962G of the Corporations Act, as amended. Paragraphs (2)(cb) and (3)(ba) ensure that a fee recipient keeps records of the matters disclosed to the client to inform such consent to an ongoing fee arrangement under section 962G of the Corporations Act or to a deduction arrangement under section 962T of the Corporations Act as amended, respectively. These amendments support due diligence and proper record keeping by fee recipients, and leverage the requirements for valid consent to an ongoing fee arrangement and a deduction arrangement set out in new sections 962G(1) and 962T of the Corporations Act, as amended by the Amending Act, which include the fee recipient having the consent or a copy of it.

Items 8 and 9 adjust regulation 9.4AB.02, which prescribes civil penalty provisions that are subject to an infringement notice under section 1317DAN of the Corporations Act.

Item 8 changes the reference in paragraph 9.4AB.02(2)(e) from section 962P to section 962Z. This change reflects the change in numbering of the provision providing a civil penalty for a fee recipient that charges a fee purporting to be an ongoing fee after termination of the ongoing fee arrangement with the relevant client, by the Amending Act.

Item 9 repeals paragraph 9.4AB.02(2)(f), which referred to when a fee recipient contravenes subsection 962U(3) of the Corporations Act, as that subsection is repealed by the Amending Act.

#### *Application and transitional arrangements*

Item 10 inserts Part 10.52 and regulations 10.52.01 and 10.52.02 into the Corporations Regulations to set out how certain amendments in these Regulations apply.

New Part 10.52 contains all application provisions for the amendments made by these Regulations.

Regulation 10.52.01 provides application arrangements in relation to keeping compliance records that relate to fee disclosure statements. A fee recipient was previously required to keep records of each fee disclosure statement the fee recipient had given to a client, the date on which this occurred and the manner in which the statement was given by paragraphs 7.7A.11AA(2)(a) and (b) of the Corporations Regulations. Once those paragraphs are repealed by item 5 of the Regulations there will be no requirement to keep or create new records, but a fee recipient must retain records created under previous requirements to demonstrate compliance with these requirements, for the purposes of section 962X of the Corporations Act. This is consistent with the intent of section 962X to ensure fee recipients can demonstrate compliance with their various obligations over time.

This is consistent with the application provisions of the Corporations Act, as amended by the Amending Act.

Regulation 10.52.02 provides application arrangements for contraventions of subregulations 7.6.02A(2) and 9.4AB.02(2), to align with transitional arrangements in the Amending Act. Subregulation 7.6.02A(2) prescribes civil penalty provisions of the Corporations Act contravention of which is not required to be notified to ASIC, while regulation 9.4AB.02 prescribes civil penalty provisions that are subject to an infringement notice under section 1317DAN of the Corporations Act. Both regulations are amended by Part 2 of Schedule 1 to these Regulations (see items 2, 3, 8 and 9) to reflect changes made by the Amending Act to the relevant civil penalty provisions. However, those Amending Act changes only apply to new and existing ongoing fee arrangements from the ‘start day’, being the day that is 6 months after the commencement of Part 2 of Schedule 1 to the Amending Act (per sections 1708A and 1708B of the Corporations Act, inserted by the Amending Act). Regulation 10.52.02 ensures the changes made to the Corporation Regulations by these Regulations apply in relation to conduct at the same time as the changes made by the Amending Act. This means that the regulator can issue infringement notices with respect to the old civil penalty provisions in the period before the new provisions apply, so there is no gap.

### **Part 3 – Financial Services Guide**

Part 3 of Schedule 1 to the Amending Act amends Part 7.7 of the Corporations Act to address and expand on recommendation 10 of the Review, to make it easier for an AFS licensee or its authorised representative to provide a Financial Services Guide (FSG) to retail clients. The amendments mean a financial services licensee (AFS licensee) or its authorised representative that provides financial product advice (whether general advice or personal advice) can continue to give clients an FSG or, alternatively, can make information that would be required to be in that FSG available on their website as ‘website disclosure information’ in accordance with new Division 2A of Part 7.7. Website disclosure information is defined by section 943J of the Corporations Act as inserted by the Amending Act to mean the same statements and information that are required to be in an FSG by sections 942B and 942C of the Corporations Act, including any modifications, additions or exclusions made by the Corporations Regulations under those sections. This ensures that a client accessing the information through a provider’s website has access to the same information as if they had been given an FSG.

Part 3 of Schedule 1 to the Regulations makes consequential amendments to the Corporations Regulations to clarify how certain regulations relating to an FSG apply in relation to website disclosure information and to adjust references to sections of the Corporations Act.

#### *Explanatory note clarifying operation of subregulation 7.7.02(4A)*

Item 12 inserts an explanatory note under subregulation 7.7.02(4A) of the Corporations Regulations. Subregulation 7.7.02(4A) provides that if general advice is provided during a telephone call and meets the requirements under subregulation 7.7.02(4), that the AFS licensee or authorised representative must tell the client that an FSG exists and that they will send out an FSG on request. Item 12 inserts an explanatory note under subregulation 7.7.02(4A) to clarify that a provider is not required to tell the client of those things if website disclosure information is made available in accordance with Division 2A of Part 7.7 of the Corporations Act. If a client requests an FSG under subregulation 7.7.02(4A), and the AFS licensee or authorised representative has made website disclosure information

available, it is expected that the AFS licensee or authorised representative will assist the client in locating the website disclosure information on their website.

*Explanatory notes clarifying statements and information to be included in website disclosure information*

Items 14 to 17, 24 and 28 to 37 insert explanatory notes about website disclosure information into relevant regulations in the Corporations Regulations to clarify that the requirements that apply in relation to content of an FSG may be relevant to website disclosure information.

Items 14 and 33 insert explanatory notes under subregulations 7.7.03(1) and 7.7.06(1) of the Corporations Regulations, relating to an FSG given by an AFS licensee or authorised representative respectively. These regulations require an FSG to include a statement that describes the purpose and content of the FSG, which must draw the client's attention to certain matters, and if appropriate inform the client of other relevant documents. In an FSG, such information must be easy to understand, and prominently displayed. These information requirements are relevant to website disclosure information, which if made available must contain the required information and be easy to understand. Requirements in paragraph (5)(b) and subregulation (6), which specify how information is to be located in an FSG, are not relevant to website disclosure information, which is different to an FSG and agnostic as to form.

Items 15 and 35 insert explanatory notes under subregulations 7.7.03A(1) and 7.7.06B(1) of the Corporations Regulations, which require an FSG given by an AFS licensee or its authorised representative respectively to include statements about arrangements for compensation. These requirements are relevant to website disclosure information, which if made available must contain the information about compensation arrangements.

Items 16, 17, 36 and 37 insert explanatory notes under subregulations 7.7.04(1) and (5) and subregulations 7.7.07(1) and (5) of the Corporations Regulations, which require an FSG given by an AFS licensee or its authorised representative respectively to contain information about remuneration (including commissions) and other benefits that another person will receive for referring a person to the AFS licensee or representative at the time the FSG is given to the client. The information required depends on the extent to which it is ascertainable at the time the FSG is given to the client, and whether personal advice will be given to the client. In brief, if certain particulars of remuneration are not ascertainable at that time, then a subset of remuneration information must be provided and either a statement about calculation of the information or that the client may request further information (depending on whether personal advice will be given). The notes inserted by items 16 and 36 clarify that these requirements are relevant to website disclosure information, which if made available must contain the relevant information about remuneration and statements. Further, the Amending Act contains a requirement that website information be kept up to date, in new section 943L. This means that if website disclosure information is made available that contains a subset of remuneration information as particulars could not be ascertained, if those particulars later become ascertainable the website disclosure information would need to be updated in accordance with the requirements for ascertainable remuneration information.

The notes inserted by items 17 and 37 clarify the timing requirements of subparagraphs 7.7.04(5)(d)(ii) and 7.7.07(5)(d)(ii) in relation to website disclosure information. Where

applicable, those subparagraphs require a providing entity to give a statement to the client that the client may request particulars of remuneration within a reasonable time of being given an FSG and before receiving any financial service identified in the FSG. The notes clarify that if the providing entity has made FSG information available as website disclosure information, the statement required by the respective subparagraphs (d)(ii) are simply that the client may request particulars of the remuneration before receiving a relevant financial service. This clarification reflects the fact that an FSG may never be given if website disclosure information is made available, and is intended to ensure the required statement is clear that a client can request further information about remuneration in that situation.

Items 24 and 28 insert new explanatory notes at the end of regulations 7.7.04AA and 7.7.04AB. These Regulations provide that information about a non-monetary benefit that is not conflicted remuneration is not required to be included in an FSG given by an AFS licensee or an authorised representative, respectively. The new notes clarify that these provisions are relevant to website disclosure information, which if made available would likewise not need to include that information.

Items 22 and 26 make consequential changes in regulations 7.7.04AA and 7.7.04AB to renumber the existing notes as 'Note 1', as the new notes inserted by items 24 and 28 are 'Note 2'.

Items 29 and 34 insert a note at the end of subregulation 7.7.05A(1) and regulation 7.7.06A of the Corporations Regulations. These require an FSG given by an authorised representative to include the authorised representative number given by ASIC to the authorised representative (except when the FSG is a personalised FSG to which regulation 7.7.05B applies) and the AFS licensee's licence number. The notes clarify that each requirement is relevant to website disclosure information, which if made available by the representative on their website must include those numbers.

Item 30 inserts a note at the end of subregulation 7.7.05B(1) of the Corporations Regulations. Regulation 7.7.05B applies if an AFS licensee or its authorised representative authorises an individual to provide financial services on behalf of the licensee. In this situation, an FSG given by the authorised individual does not have to include certain information or statements specified in the regulation. The note clarifies these modifications to FSG requirements are relevant to website disclosure information, if made available by the authorised individual.

Items 31 and 32 insert notes at the end of subregulations 7.7.05C(1) and (2) of the Corporations Regulations. Subregulation 7.7.05C(1) exempts an AFS licensee from having to provide certain information (about financial services to which subsection 941C(6) of the Corporations Act applies, namely services relating to basic deposit products) in an FSG. This exemption is carried through to an authorised representative of the licensee by subregulation 7.7.05C(2). The notes clarify that these modifications to FSG requirements are relevant to website disclosure information, if made available by the relevant entity.

#### *Requests for further information about remuneration etc*

Items 18, 19, 20, 38, 39 and 40 amend regulations 7.7.04A and 7.7.07A, which provide that a client may request additional details about remuneration or other benefits to what is

provided in an FSG, if personal advice will not be given by an AFS licensee or an authorised representative, respectively.

Items 18 and 19 insert references to website disclosure information after existing references to an FSG in subregulation 7.7.04A(1), to ensure the requirements for the regimes align. Items 38 and 39 do the same in subregulation 7.7.07A(1).

Item 20 repeals and replaces subregulation 7.7.04A(2), to distinguish the timing requirements for when a request for further information must be made depending on whether website disclosure information has been made available or the client has been given an FSG. Item 40 does the same in subregulation 7.7.07A(2).

The effect of the amended regulations 7.7.04A and 7.7.07A is:

- The client may request additional information about remuneration or other benefits if the FSG or website disclosure information do not contain particulars of the remuneration or other benefits, the particulars are not ascertainable at the time the information is given or made available to the client, and personal advice will not be given by the providing entity.
- The client's request for additional information must be made before a relevant financial service is provided to the client – or if an FSG is given, then the request must be made within a reasonable time of being given the FSG and before the service is provided (as was previously the case).
- The additional information is not part of the FSG or website disclosure information, but must contain the particular matters set out in subregulations (3) and (4).

#### *Statements that clients can request records of further advice*

Under section 943N of the Corporations Act, inserted by Amending Act, an AFS licensee or its authorised representative who makes website disclosure information available must comply with a client's request to give the client a record of further market-related advice or advice to which subsection 946B(7) applies (that being advice that does not recommend the purchase or sale of products), where the advice has been provided but not a record of that advice. An AFS licensee or authorised representative commits an offence if it fails to comply with the request.

Item 42 inserts a new regulation 7.7.10ADA into Division 3, which substitutes a new section 943N of the Corporations Act to replace section 943N inserted by the Amending Act. This is done under paragraph 951(1)(c) of the Corporations Act, which provides the regulations may modify the operation of Part 7.7 of the Corporations Act (dealing with financial services disclosure including FSGs) by specifying provisions being modified and the way in which they are omitted, modified or varied. Once modified, the Corporations Act has effect consistent with the modifications in the Regulations rather than the effect it would have on its face.

New regulation 7.7.10ADA modifies the new section 943N such that an AFS licensee or authorised representative must comply with a client's request for a copy of "further advice", rather than limiting this request to the two types of advice specified by the original section 943N in the Amending Act.

This replicates modifications in adjacent regulations which apply to FSG disclosure and ensure consumer protections are maintained irrespective of the form of disclosure. The modification ensures that a client's right to request a copy of a record of further advice is preserved if the advice provider meets their FSG obligations by making website disclosure information available.

Replicating the modification of this provision through the Corporations Regulations aligns with the existing modifications for the FSG regime and provides consistency across the two disclosure regimes. This supports consistent application of any future updates or amendments.

Items 41 and 43 of the Regulations make consequential amendments to the note under regulation 7.7.10AAA and note 2 under subregulation 7.7.10AE(3A) of the Corporations Regulations, respectively. Both notes referred to the client's right to request a record of further advice under subsections 942B(8) and 942C(8) of the Corporations Act. The items add a reference to the similar right created by section 943N of the Corporations Act, as modified above, where the statement referring to that right is in website disclosure information.

#### *Replacement of subregulation 7.7.2A(2)*

Item 13 repeals and replaces subregulation 7.7.02A(2). The replacement subregulation is identical to the repealed subregulation in substance; the difference is that the numbers of the subsections referred to in the subregulation have been amended.

Specifically, the repealed subregulation 7.7.02A(2) was made in 2005 to insert new subsections 941C(7A) and (7B) into the Corporations Act, using the modification power in paragraph 951C(1)(c) of the Corporations Act. However, a different subsection 941C(7A) was inserted into the Corporations Act in 2020. Item 13 resolves the conflict by renumbering the subsections inserted into the Corporations Act by the Corporation Regulations to be subsections 941C (7AA) and (7AB). Item 13 relies on the modification power in paragraph 951C(1)(c) of the Act to support this insertion.

#### *Penalty provisions: exemption from notification requirements*

Item 11 amends subregulation 7.6.02A(2) of the Corporations Regulations by inserting new paragraphs 7.6.02A(2)(va), (vb), (vc) and (vd). The effect of this amendment is that a breach of one of the penalty provisions which are prescribed in those new paragraphs does not need be reported to ASIC as a significant breach of a core obligation, unless other circumstances apply which make it a reportable situation under section 912D. The relevant penalty provisions, subsections 943G(3), 943H(4), 943K(2) and 943L(2) of the Corporations Act, are inserted by the Amending Act to give effect to the website disclosure information regime. These penalties apply where an AFS licensee or its authorised representative, as the case may be, is required to but does not:

- make website disclosure information available on their website (subsection 943G(3) for financial services licensees and subsection 943H(4) for authorised representatives);
- have authorisation to distribute website disclosure information (subsection 943H(4));

- ensure website disclosure information, or something purporting to be website disclosure information, is readily accessible (subsection 943K(2)); or
- keep website disclosure information, or something purporting to be website disclosure information, up to date including specifying the day on which it was prepared or last updated (subsection 943L(2)).

*Penalty provisions: subject to infringement notices*

Item 44 amends subregulation 9.4AB.02(2) of the Corporations Regulations to prescribe additional penalty provisions of the Corporations Act which are subject to the infringement notice regime in Part 9.4AB of the Corporations Act. The relevant penalty provisions, subsections 943G(3), 943H(4), 943K(2) and 943L(2) of the Corporations Act, are inserted by the Amending Act to give effect to the website disclosure information regime and are described above.

In brief, an infringement notice is an alternative to court-based action issued by the regulator for a minor alleged contravention of an offence or civil penalty provision. The person to whom the notice is issued has the option to pay the amount specified in the notice in full or elect to have the matter heard by a court. Failure to pay is not itself a criminal offence or breach of a civil penalty provision, however if the person pays the amount this affects whether they can be prosecuted for the contravention or have proceedings brought in relation to it (see section 1317DAU of the Corporations Act).

*Application and transitional arrangements*

Item 45 adds regulation 10.52.03 to the Corporations Regulations to provide application arrangements for contraventions of subregulations 7.6.02A(2) and 9.4AB.02(2) to align with the commencement of the corresponding provisions in the Amending Act. Subregulation 7.6.02A(2) prescribes civil penalty provisions of the Corporations Act of which contravention of is not required to be notified to ASIC, while regulation 9.4AB.02 prescribes civil penalty provisions that are subject to an infringement notice under section 1317DAN of the Corporations Act. Both regulations are amended by Part 3 of Schedule 1 to these Regulations (see items 11 and 44) to reflect changes made by Part 3 of Schedule 1 to the Amending Act, in which existing civil penalties that apply in relation to FSGs now also apply in relation to the website disclosure information regime. Those Amending Act changes commenced on 10 July 2024.

Regulation 10.52.03 ensures the changes made by these Regulations to the Corporation Regulations apply at the same time as the changes made by the Amending Act. This means the amendments made by items 11 and 44 will apply retrospectively.

The retrospective application of the amendments to subregulation 7.6.02A(2) made by Part 3 of Schedule 1 to these Regulations is beneficial for affected persons as it ensures that a breach of those prescribed civil penalty provisions does not need to be reported to ASIC in relation to conduct between 10 July 2024 and the commencement of Part 3 of Schedule 1 to the Regulations.

The retrospective application of the amendments to subregulation 9.4AB.02(2) made by Part 3 of Schedule 1 to these Regulations ensures that ASIC can issue infringement notices in respect of conduct breaching those prescribed civil penalty provisions even if the conduct occurred before the commencement of item 44. While this empowers ASIC to take

enforcement action it would not otherwise be able to take, an infringement notice is an alternative to court-based action for a minor alleged contravention of an offence or civil penalty provision and provides for a proportionate enforcement response. Further, failure to comply with an infringement notice is neither an offence nor breach of a civil penalty provision so this application provision does not retrospectively criminalise conduct. This capacity for ASIC to take proportional enforcement action in respect of conduct occurring both before and after commencement of item 44 is therefore beneficial to affected persons.

## **Part 4 – Conflicted remuneration**

Part 4 of Schedule 1 to the Amending Act amends Subdivision B of Division 4 of Part 7.7A of the Corporations Act to address recommendation 13.1 and 13.3 of the Review. The Amending Act repeals the previous definition of conflicted remuneration and replaces it with a new definition, to ensure that monetary and non-monetary benefits given by a retail client are not conflicted remuneration. The new definition provides that a benefit will not be conflicted remuneration if it is given by a retail client to an AFS licensee or its authorised representative in relation to a financial product or financial service provided by the licensee or authorised representative. The new definition of conflicted remuneration clarifies the law to achieve the intended outcome of the conflicted remuneration provisions: to ban benefits given by a product issuer or seller which could reasonably influence financial product advice.

Subdivision 1 of Division 4 of Part 7.7A of the Corporations Regulations provides a range of exceptions to conflicted remuneration in relation to benefits given by a retail client. These exceptions are no longer required given they are now captured appropriately in Subdivision B of Division 4 of Part 7.7A of the Corporations Act following the amendments to section 963A and other provisions by the Amending Act. Consequently:

- Item 47 repeals paragraph 7.7A.11C(1)(d), which provided that a monetary benefit was not conflicted remuneration if it was given to a financial services licensee or its authorised representative by a retail client in relation to information that was given in the course of providing a life risk insurance product to the client.
- Item 49 repeals paragraph 7.7A.11C(2)(e), which provided that a non-monetary benefit was not conflicted remuneration if it was given to a financial services licensee or its authorised representative by a retail client in relation to information that was given in the course of providing a life risk insurance product to the client.
- Item 50 repeals paragraph 7.7A.11D(1)(d), which provided that a monetary benefit was not conflicted remuneration if it was given to a financial services licensee or its authorised representative by a retail client in relation to dealing in a life risk insurance product with the client.
- Item 52 repeals paragraph 7.7A.11D(2)(e), which provided that a non-monetary benefit is not conflicted remuneration if it was given to a financial services licensee or its authorised representative by a retail client in relation to dealing in a life risk insurance product with the client.
- Item 54 repeals regulation 7.7A.12E, which provided that a monetary benefit was not conflicted remuneration if it was given to a financial services licensee or its

authorised representative by a retail client in relation to the licensee or representative dealing in a financial product on behalf of the client.

Items 48 and 51 make typographical changes to subparagraphs 7.7A.11C(2)(d)(ii) and 7.7A.11D(2)(d)(ii) respectively to reflect the repeals made by items 49 and 52.

Item 53 repeals note 2 to regulation 7.7A.12, which provided that a reference in Division 4 of Part 7.7A of the Corporations Regulations to giving a benefit includes a reference to causing or authorising it to be given, as per the former definition of ‘doing’ an act or thing in section 52 of the Corporations Act (now repealed). As the Amending Act updates subsection 963A(2) of the Corporations Act to clarify that a reference in Subdivision B of Division 4 of Part 7.7A of the Corporations Act to giving a benefit includes a reference to causing or authorising the benefit to be given, which will also apply to Division 4 of Part 7.7A of the Corporations Regulations, the note was no longer necessary.

Item 53 also repeals note 3 to regulation 7.7A.12. This ensures consistency with the amendments made by the Amending Act which removed a broadly equivalent note to paragraph 963B(1)(e) of the Corporations Act because of the repeal of paragraph 963B(1)(d) of the Corporations Act.

Item 56 repeals regulation 7.7A.12H, which provided an exception to conflicted remuneration in relation to benefits given to an agent or employee of an Australian authorised deposit-taking institution (ADI) for financial product advice about basic banking products, general insurance products or consumer credit insurance. The repeal of regulation 7.7A.12H is consistent with the repeal of section 963D of the Corporations Act by the Amending Act and implements recommendation 13.5 of the Review, that the conflicted remuneration provisions should operate consistently by placing agents and employees of Australian ADI’s in the same position as employees of other financial institutions. Transitional arrangements relating to this repeal are described below.

Item 57 updates the prescribed provisions for the purposes of regulation 7.7A.12I of the Corporations Regulations. Regulation 7.7A.12I provided that a benefit given in the circumstances in the prescribed provisions does not become conflicted remuneration purely because it is paid with another benefit. Item 57 removes references to paragraphs 963B(1)(c) and 963B(1)(d) as prescribed provisions, as these provisions have been repealed by the Amending Act. Item 57 adds paragraph 963B(1)(ba) as a prescribed provision, which relates to benefits given to the AFS licensee or authorised representative in relation to consumer credit insurance. This corrects a missed consequential amendment resulting from amendments of section 963B of the Corporations Act by the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*.

Items 21, 23, 25, 27, 46, 55 and 58 to 71 correct cross-references in the Corporations Regulations by replacing references to various paragraphs of section 963C of the Act with references to paragraphs of subsection 963C(1). These changes correct errors resulting from amendments of section 963C of the Act by the *Corporations Amendment (Financial Advice Measures) Act 2016*.

#### *Application and transitional arrangements*

Item 72 adds regulation 10.52.04 into the Corporations Regulations, to set out how and when the amendments made by item 56 (repeal of regulation 7.7A.12H) apply.

The repeal of regulation 7.7A.12H applies to a benefit given to an employee of an ADI (i.e. an authorised deposit-taking institution) on or after the “deferred start day”, being 10 January 2025 (the day 6 months after the commencement of Part 4 of Schedule 1 to the Amending Act), where the benefit was given:

- under an arrangement that was entered into on or after 10 January 2025; or
- under an arrangement that was varied on or after 10 January 2025, where the variation relates to giving of benefits under the arrangement; or
- in other circumstances (that is, not under a formal arrangement) on or after 10 January 2025.

Put simply, the repeal of regulation 7.7A.12H applies to a benefit given to an employee of an ADI under a formal arrangement entered into or varied, or in other circumstances, from the day that is 6 months after commencement of Part 4 of Schedule 1 to the Amending Act.

From that time, an ADI employee can no longer rely on regulation 7.7A.12H to accept a benefit given in relation to basic banking and certain insurance products, and must instead use the amended provisions of the Corporations Act and Corporations Regulations to determine whether a benefit is conflicted remuneration.

Inclusion of this application provision relating to ADI employee benefits reflects the possible existence of employment contracts with remuneration based on volume of sales that rely on the exception previously in regulation 7.7A.12H, or other existing contractual arrangements that relate to monetary or non-monetary benefits permitted under that regulation. It is not the intention of this measure to extinguish existing benefits, rights or entitlements on commencement; therefore, it will apply to arrangements entered into on or after commencement of these provisions. Further, the 6-month transitional period allows ADIs time to adjust existing remuneration structures before the commencement of the repeal of regulation 7.7A.12H.

Regulation 10.52.04 aligns with section 1708D of the Corporations Act, as inserted by the Amending Act, to provide consistent arrangements.

## **Part 5 – Insurance commissions**

Item 73 is a minor amendment to reflect the addition of subregulation (2) by item 74.

Item 74 adds new subregulation 7.7A.12G(2) to clarify how regulation 7.7A.12G interacts with new section 963BB of the Corporations Act, introduced by the Amending Act, and relates to informed consent to insurance commissions and conflicted remuneration.

Regulation 7.7A.12G provides that a benefit is not conflicted remuneration if the benefit is given in relation to a general insurance product.

Section 963BB inserted by the Amending Act provides that where an AFS licensee or its authorised representative provides or is likely to provide financial product advice to a retail client that is personal advice (not general advice), a monetary benefit given in connection to the issue or sale of relevant products is exempt from the ban on conflicted remuneration under paragraphs 963B(1)(a), (b) and (ba), only when the client’s informed consent has

been obtained. Relevant products covered by those paragraphs are a general insurance product, a life risk insurance product, and consumer credit insurance.

New subregulation 7.7A.12G(2) clarifies that section 963BB applies to regulation 7.7A.12G in the same way as it does to paragraph 963B(1)(a) of the Corporations Act (which is similar to, but narrower than, regulation 7.7A.12G). That is – a benefit given to an AFS licensee or its representative in relation to the issue or sale of a general insurance product to a retail client, where personal advice is provided to the client, will not be conflicted remuneration if the client gives informed consent. This means that, where a retail client receives personal advice, an AFS licensee or its authorised representative can receive commissions when the client purchases a general insurance product if the client provides informed consent before the issue or sale of the product.

The application of regulation 7.7A.12G to benefits given to an AFS licensee or its representative in relation to the issue or sale of a general insurance product where general advice is provided is not altered. That is, where an AFS licensee or its authorised representative provides financial product advice to a retail client that is general advice, a benefit given in relation to the issue or sale of general insurance products will continue to be exempt from the ban on conflicted remuneration under paragraph 963B(1)(a). Informed consent of the client is not required to be obtained under these circumstances.

Item 75 corrects a paragraph reference in paragraph 9.4AB.02(2)(j). Paragraph 9.4AB.02(2) provided certain civil penalty provisions of the Corporations Act are subject to an infringement notice, including section 963K as prescribed by paragraph 9.4AB.02(2)(j). The general prohibition of conflicted remuneration is found in section 963K, specifically in subsection 963K(1) (the Amending Act inserts a new subsection 963K(2) to provide an exception to subsection 963K(1)). The amendment in item 75 reflects this numeric change and ensures that contravention of the prohibition continues to be subject to an infringement notice.

#### *Application and transitional arrangements*

Item 76 adds regulation 10.52.05 to the Corporations Regulations to provide application arrangements for the amendments made by items 73 and 74 to regulation 7.7A.12G. The amendments to regulation 7.7A.12G apply to benefits given in relation to the issue or sale of general insurance products on or after the commencement of Part 5 of the Amending Act (as described above). Aligning the application of the amendments made to regulation 7.7A.12G with that of the commencement of Part 5 of the Amending Act ensures that the new informed consent requirements for insurance commissions in section 963BB as inserted by the Amending Act apply to all relevant insurance products from the same date. Further, and consistent with the Amending Act, this alignment effectively provide an appropriate transition period to assist AFS licensees and authorised representatives to develop a workable approach to obtaining consent.

The amendments do not apply to benefits given in connection with a general insurance product that was issued or sold before the commencement of Part 5 of the Amending Act. The amendments also do not apply to benefits given in connection with a general insurance product where that product is a renewal of a general insurance product that was issued or sold before commencement of Part 5 of the Amending Act. This approach accounts for the fact that it is common for general insurance providers to renew a client's cover on an annual basis without necessarily meeting with the client, so reduces the risk that a client

could be left uninsured if the provider was in fact required to wait for that consent from the client prior to renewal.

**Statement of Compatibility with Human Rights**

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

**Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024**

The Regulations are 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 *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* (the Regulations) is to support increased access to affordable financial advice by supporting the amendments in Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* (the Amending Act).

Schedule 1 to the Amending Act implements the Government's response to the following recommendations of the Quality of Advice Review (the Review):

- recommendation 7: clarifying the legal basis in the SIS Act for superannuation trustees to charge individual members for financial advice from their superannuation account, and clarify associated tax consequences under the ITAA 1997 (Part 1 of Schedule 1);
- recommendation 8: streamlining ongoing fee renewal and consent requirements, including removing the requirement to provide a fee disclosure statement, in the *Corporations Act 2001* (Corporations Act) (Part 2 of Schedule 1);
- recommendation 10: providing more flexibility on how Financial Services Guides (FSGs) requirements can be met under the Corporations Act (Part 3 of Schedule 1);
- simplifying and clarifying the provisions governing conflicted remuneration in the Corporations Act (Part 4 of Schedule 1), including:
  - recommendations 13.1 and 13.3: clarifying that monetary or non-monetary benefits given by a client are not conflicted remuneration along with the removal of consequential exceptions;
  - recommendation 13.2: introducing a specific exception to the conflicted remuneration provisions that permits a superannuation fund trustee to pay a fee for personal advice where the member requests the trustee to pay the fee from their superannuation account;
  - recommendation 13.4: removing the exception to conflicted remuneration rules for the issue of financial products where advice has not been provided in the previous 12 months;
  - recommendation 13.5: removing the exception to conflicted remuneration rules for agents or employees of Australian ADIs; and

- recommendations 13.7 to 13.9: introducing new standardised consent requirements for life risk insurance, general insurance and consumer credit insurance commissions (Part 5 of Schedule 1).

To support these amendments, the Regulations amend the *Corporations Regulations 2001* and the *Electronic Transactions Regulations 2020* to:

- support written information or documentation requirements for the purposes of section 99FA of the *Superannuation Industry (Supervision) Act 1993* to continue to be met electronically;
- remove requirements related to Fee Disclosure Statements, update record keeping obligations for new consent requirements and remove or update references to civil penalties which are removed or updated in the Amending Act;
- align requirements for FSG and website disclosure information and make other consequential amendments;
- streamline relevant regulations for conflicted remuneration in line with the changes made by the Amending Act; and
- ensure the informed consent requirements apply for benefits given in relation to a general insurance product where personal advice is provided.

## **Human rights implications**

The Regulations may engage the following rights:

- Article 14 of the International Covenant on Civil and Political Rights (ICCPR) – the right to a fair hearing and criminal process rights, including the presumption of innocence;

### *Right to a fair hearing*

The Regulations may engage the right to a fair trial in Article 14 of the ICCPR. Article 14 of the ICCPR provides that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(2) of the ICCPR recognises that all people have the right to be presumed innocent until proven guilty according to the law.

Part 7.7 of the Corporations Act imposes a range of disclosure obligations on entities – including individuals – that provide financial services. This includes obligations to provide FSGs to retail clients. A range of criminal and civil penalties apply for failing to comply with those disclosure obligations.

Part 3 of Schedule 1 to the Amending Act introduces an alternative method for financial service providers to meet their FSG disclosure obligations – namely, by making the relevant disclosure information publicly available on their website as ‘website disclosure information’. Comparable penalties apply for failing to comply with these alternative disclosure obligations, consistent with the existing disclosure regime for FSGs.

Under the existing FSG disclosure regime, a financial service provider may be subject to an infringement notice for failing to comply with a penalty provision which is prescribed by the *Corporations Regulations 2001*.

The Regulations update the penalty provisions which are subject to the infringement notice regime in Part 9.4AB of the Corporations Act to also apply to civil penalty provisions for failing to comply with website disclosure obligations, as follows:

- making website disclosure information available on their website (subsections 943G(3) for financial services licensees and 943H(4) for authorised representatives);
- having authorisation to distribute website disclosure information (subsection 943H(4));
- ensuring website disclosure information, or something purporting to be website disclosure information, is readily accessible (subsection 943K(2)); or
- keeping website disclosure information, or something purporting to be website disclosure information, up to date including specifying the day on which it was prepared or last updated (subsection 943L(2)).

The extension of the infringement notice regime of the Corporations Act to website disclosure information provisions is necessary to align the regimes for provision of financial services guidance information, which protect consumers and support accountability of financial service providers.

In extending the infringement notice regime of the Corporations Act to website disclosure information provisions, the Regulations engage the right to a fair and public hearing, because an infringement notice may be issued where the regulator reasonably believes (rather than a court determines) that a person has contravened a relevant civil penalty provision. However, the right to a fair and public hearing by a competent, independent and impartial hearing is not limited by the Regulations because the person may still elect to have the matter heard by a court rather than pay the amount specified in the infringement notice. This right must be stated in any infringement notice.

Infringement notices are an administrative tool that the regulator can use to deter misconduct in relation to the Regulations and can act as an alternative to criminal or civil proceedings. Infringement notices function like a fine or financial penalty. If an infringement notice is complied with, including payment of the penalty, no further action will be taken against the person. The payment is not considered an admission of criminal guilt.

The application of the infringement notice regime to website disclosure information provisions meets all of the conditions listed in the Attorney-General's Department's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. In particular, the relevant provisions do not constitute major offences and apply on the basis of conduct; proof of mens rea (guilty mind) is not required. Further, as there is the potential for a relatively large volume of contraventions, the application of the infringement notice regime supports effective and efficient enforcement.

Given the potential for serious detriment to consumers in relying on website disclosure information, this obligation is a reasonable and proportionate means of achieving the

legitimate objective of ensuring consumers have access to accurate and up to date disclosure information to help them make informed choices about engaging the services of a financial service provider.

## **Conclusion**

The Regulations are compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.