

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Corporations Act 2001

Corporations Amendment (Life Insurance Remuneration Arrangements)

Regulations 2017

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017* (the Regulations) make a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments support the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* (the Life Insurance Remuneration Act) to improve the permissible remuneration arrangements relating to life insurance.

Remuneration relating to life risk insurance advice provided outside of superannuation was excluded from the ban on conflicted remuneration (remuneration likely to influence advice) introduced under the Future of Financial Advice (FoFA) laws.

A series of reports, including a review by the Australian Securities and Investments Commission (ASIC), the industry-commissioned Trowbridge Report and the Financial System Inquiry (FSI), identified the need to better align the interests of providers of financial advice in the life insurance sector with consumers. As part of its response to the FSI, the Government announced that it would support a reform package put forward by industry.

The reform package introduced by the Life Insurance Remuneration Act removes the exemption from the ban on conflicted remuneration, and provides ASIC with the power to set caps under which commissions will be permitted to be paid. The reforms also allow for the ‘clawback’ of commissions where policies lapse in the first two years. The reforms will commence on 1 January 2018.

The Regulations support the reform package introduced by the Life Insurance Remuneration Act by:

- prescribing that benefits paid in relation to providing information about, or dealing in, a life risk insurance products (life risk products) are considered to be conflicted remuneration, in circumstances where these benefits are linked to the value or number of life risk products subsequently acquired or varied by consumers;
- extending the range of existing exemptions from the ban on conflicted remuneration provided for monetary and non-monetary benefits that currently apply to financial advice to benefits relating to dealing in and providing information about life risk products (where relevant);

- prescribing circumstances where ‘clawback’ does not apply, such as in situations where a policy is cancelled automatically due to the age of the insured or where a premium rebate is offered to encourage customers to take up a policy; and
- grandfathering benefits paid in relation to life risk products issued after the commencement of the reforms, in circumstances where those products are substantially related to products issued prior to the commencement of the reforms.

Details of the Regulations are set out in Attachment A.

Public consultation was undertaken on two occasions (April 2016 and October 2016) to support the development of the Regulations. Additional targeted consultation was also undertaken. Feedback from the consultation was considered in preparing the Regulations.

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

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

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

The Regulations commence immediately after the commencement of Schedule 1 to the Life Insurance Remuneration Act (1 January 2018).

Attachment A

Details of the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017

Section 1 – Name of Regulations

This section provides that the name of the Regulations is the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017 (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commences immediately after the commencement of Schedule 1 of the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* (the Life Insurance Remuneration Act).

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001* (the Act).

Section 4 – Schedule(s)

This section provides that Schedule 1 amends the *Corporations Regulations 2001* (the Principal Regulations).

Schedule 1 - Amendments

Item 1 – specifies that certain benefits in relation to life risk products are or are not conflicted remuneration.

Benefits that are conflicted remuneration – direct sales

Item 1 inserts the heading ‘Subdivision 1—Benefits in relation to life risk insurance products that are conflicted remuneration’ before the Subdivision 1 of Division 4 of Part 7.7A.

Item 1 inserts regulation 7.7A.11A to specify the purpose of Subdivision 1 of Division 4 of Part 7.7A of the Principal Regulations.

Regulation 7.7A.11A indicates that the Subdivision is made for the purposes of section 963AA of the Act and prescribes circumstances under which benefits given to licensee or their representatives in relation to a life risk product(s) is considered to be conflicted remuneration.

Item 1 inserts regulation 7.7A.11B which specifies particular circumstances in which benefits given to a licensee or a representative of a licensee in relation to a life risk product(s) is considered to be conflicted remuneration. These circumstances are benefits in relation to:

- providing information relating to a life risk product(s); or
- dealing in a life risk product(s) with a retail client.

Regulation 7.7A.11B thereby extends the range of benefits received by licensees or representatives relating to life risk products that will be subject to the regulation of conflicted remuneration introduced by the Life Insurance Remuneration Act.

These benefits will be considered to be conflicted remuneration even if the benefit could not be reasonably expected to influence the choice of financial product or the financial product advice given to a retail client. This regulation is intended to ensure that all benefits linked to the sale of life risk products (not just benefits linked to the provision of financial product advice) are captured by the Life Insurance Remuneration Act.

Subregulation 7.7A.11B(1) specifies that benefits given to a financial services licensee or a representative are conflicted remuneration if:

- the benefit is given in relation to giving information to a person or persons about a life risk product; and
- access to the benefit, or the value of the benefit, is dependent on the number or value of products subsequently acquired or varied by the person to whom, or in relation to whom, the information is given; and
- the information is not given in the course of, or as a result of, providing financial product advice; and
- the information is not given to a wholesale client (i.e. the information is given to a retail client).

An example of a benefit captured by subregulation 7.7A.11B(1) is a benefit that is provided to a person who mails out factual information on how to apply for life risk products to consumers, without providing financial advice, would be captured by subregulation 7.7A.11B(1) if the benefit was based on the value or volume of life risk products subsequently acquired by the persons who received the mail out.

Subregulation 7.7A.11B(2) specifies that, in relation to dealing in life risk products, benefits given to a financial services licensee or a representative are conflicted remuneration if:

- the benefit is given in relation to the licensee or representative dealing in a life risk product with a retail client; and
- access to the benefit, or the value of the benefit, is dependent on the number or value of products to which the dealing relates; and
- the dealing does not occur in the course of, or as a result of, the licensee or representative providing advice or giving information (where the benefit would otherwise be captured by the ban on remuneration relating to information (subregulation 7.7A.11B(1)).

An example of a benefit captured by subregulation 7.7A.11B(2) is a benefit that is based on the number of life risk product sales that a person facilitates without providing information or advice. For instance, a situation where a consumer enters a firm and requests a particular life risk product without being provided with information or advice and the person facilitating the sale is remunerated based on the value of the life risk product sold would be captured by subregulation 7.7A.11B(2).

Under subsection 766A(3) of the Act, a person's conduct is not the provision of a financial service if it is done in the course of work of a kind ordinarily done by clerks or cashiers. As such, a person conducting work of the type ordinarily done by a clerk or cashier is not engaging in dealing and is not subject to the provisions relating to dealing in the regulation. However, providing information about a life risk product is not a financial service and as such, the clerks and cashiers exemption in subsection 766A(3) does not apply in relation to providing information on a life risk product.

The Regulations also ensure that the bans on conflicted remuneration are applied in a hierarchy, with the ban relating to advice being the primary ban, followed by the ban relating to providing information and then the ban relating to dealing. This means that, where a benefit relates to multiple activities, the benefit will be treated as relating to the activity highest in the hierarchy to which a ban applies. For example, where a benefit relates to providing advice about a life risk product, dealing in a life risk product and providing information about a life risk product, the benefit will only be subject to the requirements relating to conflicted remuneration as they apply to financial product advice (and not in relation to the provision of information or dealing).

Benefits that are not conflicted remuneration – direct sales

Item 1 inserts regulations 7.7A.11C and 7.7A.11D to specify the circumstances in which certain monetary and non-monetary benefits relating to providing information in regulation 7.7A.11C and dealing in regulation 7.7A.11D in life risk products are not considered conflicted remuneration, despite regulation 7.7A.11B.

Monetary benefits

Subregulations 7.7A.11C(1)(a) and 7.7A.11D(1)(a) provide that a benefit is not conflicted if, because of the nature of the benefit or the circumstances in which the benefit is given, the benefit could not reasonably be expected to influence:

- whether the licensee or representative gives the information to the person or deals in the life risk product; or
- the way in which the licensee or representative presents the information in giving it to the person or deals in the life risk product.

Subregulations 7.7A.11C(1)(b) and 7.7A.11D(1)(b) provide that the ban on conflicted remuneration introduced under the reforms does not apply to level benefits (such as commissions which are the same year-on-year) or to benefits which meet the commission caps and clawback requirements established by section 963BA of the

Life Insurance Remuneration Act (and consequently by ASIC under its Legislative Instrument).

Subregulations 7.7A.11C(1)(b) and 7.7A.11D(1)(b) also provide that the above-described exemptions do not apply in respect of the life risk products that are group life policies or life policies for members of a default superannuation fund. These types of policies were not originally exempt from the ban on conflicted remuneration introduced under the FoFA laws and are not intended to be subject to the new commission caps or clawback requirements.

Subregulations 7.7A.11C(1)(c) and 7.7A.11D(1)(c) provide that the ban on conflicted remuneration introduced under the reforms does not apply in relation to consumer credit insurance. This ensures that the stricter commission caps under section 145 of the *National Consumer Credit Protection Act 2009* will continue to apply to these products.

Regulations 7.7A.11C and 7.7A.11D also extend the range of monetary exemptions from the ban on conflicted remuneration provided under FoFA for benefits relating to financial advice to benefits relating to dealing in, and providing information about, life risk products. The regulations are intended to replicate the same practical effect as the existing exemptions provided under FoFA, despite the need for minor drafting differences due to their application to information and dealing.

Subregulations 7.7A.11C(1)(d) and 7.7A.11D(1)(d) extend the existing exemption provided under FoFA from the ban on conflicted remuneration for benefits paid by to a licensee or representative by a retail client (the ‘client pays exemption’). Consistent with the application of this exemption under FoFA, this exemption also applies to benefits a retail client causes or authorises to be given (see Note to section 963A of the Act).

Subregulations 7.7A.11C(1)(e) and 7.7A.11D(1)(e) extend the existing exemption provided under FoFA from the ban on conflicted remuneration for benefits paid to licensees or representatives in relation to the purchase or sale of a business.

Non-monetary benefits

Regulations 7.7A.11C and 7.7A.11D also extend the range of non-monetary exemptions from the ban on conflicted remuneration provided under FoFA for benefits relating to financial advice to benefits relating to providing information about, or dealing in, life risk products. The regulations are intended to replicate the same practical effect as the existing exemptions provided under FoFA, despite the need for minor drafting differences due to their application to information and dealing.

Subregulations 7.7A.11C(2)(a) and 7.7A.11D(2)(a) provide that a benefit is not conflicted if, because of the nature of the benefit or the circumstances in which the benefit is given, the benefit could not reasonably be expected to influence:

- whether the licensee or representative gives the information to the person or deals in the life risk product; or

- the way in which the licensee or representative presents the information in giving it to the person or deals in the life risk product.

Subregulations 7.7A.11C(2)(b) and 7.7A.11D(2)(b) extend the existing exemption for benefits of a small value (less than \$300 in the hands of the final recipient) that are not given on a frequent or regular basis.

Subregulations 7.7A.11C(2)(c) and 7.7A.11D(2)(c) extend the existing exemption for benefits with a genuine education or training purpose relevant to dealing in, or providing information in relation to, life risk products.

Subregulations 7.7A.11C(2)(d) and 7.7A.11D(2)(d) extend the existing exemption for benefits that are information technology (IT) software or support to IT and support relevant to dealing in, or providing information in relation to, life risk products.

Subregulations 7.7A.11C(2)(e) and 7.7A.11D(2)(e) extend the existing exemption provided under FoFA from the ban on conflicted remuneration for non-monetary benefits paid to a licensee or representative by a retail client (the ‘client pays exemption’). Consistent with the application of this exemption under FoFA, this exemption also applies to benefits a retail client causes or authorises to be given (see Note to section 963A of the Act).

Item 2 – clarifies the purpose of the Subdivision by repealing the existing heading ‘Subdivision 1 – Monetary benefits’ and inserting the revised heading ‘Subdivision 2 – Monetary benefits that are not conflicted remuneration’.

Item 3 – repeals the existing regulation 7.7A.12A. This removes the existing provision that exempts life risk products from being considered conflicted remuneration, which is no longer needed following the passing of the Life Insurance Remuneration Act.

Item 4 inserts the heading ‘Subdivision 3 —Monetary benefits that relate to life risk insurance products’ to clarify that regulations 7.7A.12EB and 7.7A.12EC are in respect of monetary benefits related to life risk products.

Clawback requirements

Item 4 also inserts regulations 7.7A.12EB and 7.7A.12EC to specify circumstances in which the cancellation (or non-continuance) of a life insurance policy or a reduction in policy premiums is not intended to trigger the clawback of a commission. These regulations are made for subsection 963BA(3) of the Life Act.

Regulation 7.7A.12EB prescribes the particular circumstances where the cancellation of a product does not trigger the clawback provisions. Specifically, the regulation prescribes that clawback does not apply due to death of the insured; in situations of self-harm; in circumstances where a policy is cancelled due to the insured reaching an age at which coverage is no longer provided; or in circumstances where the product is cancelled as a result of an administrative error.

The administrative error provision is intended to capture circumstances such as where a policy is cancelled and subsequently reissued to fix a genuine error. It does not

cover situations such as where an administrative error has been made but the policy is cancelled for another reason.

Regulation 7.7A.12EC clarifies circumstances where a reduction in the policy cost is not intended to trigger clawback. The regulation provides that clawback does not apply in circumstances where the person who issued the product and the person to whom the product is issued agree that there is a reduction in a risk in relation the insured. This would mean that, for example, a reduction in premium as the result of a decision by the insured to quit smoking would not trigger clawback.

Regulation 7.7A.12EC also prescribes that reductions in the policy cost as a result of rebates or discounts intended to encourage the acquisition or continued holding of a life risk product do not trigger clawback. This would mean that, for example, clawback would not be triggered where an insurer offered a loyalty-based premium reduction.

Regulation 7.7A.12EC further prescribes that clawback does not apply in circumstances where the policy cost is reduced as a result of the person who issued the product reducing the premium without changing the coverage provided. This would mean that, for example, clawback would not be triggered in circumstances where an insurer reduces policy premiums for competitive reasons. Clawback is not intended to affect the pass through of insurance cost reductions to consumers.

The regulation also prescribes that a reduction in the policy cost as a result of a claim being made under a policy does not trigger clawback. For example, a total and permanent disablement claim being made on a policy that has both a death and a total permanent disablement component could result in the policy only having a death benefit going forward. Such a policy would have a reduced policy cost, but would not trigger clawback.

The regulation also prescribes that clawback is not triggered when the policy cost reduces as a result of an administrative error being made. This ensures that clawback is not triggered in the case of a genuine administrative error.

Grandfathering

Item 5 – repeals the existing heading and substitutes the heading ‘Subdivision 4 — Other monetary and non-monetary benefits that are not conflicted remuneration’ to clarify that the Subdivision relates to benefits that are not considered to be conflicted remuneration.

Item 6 – inserts the heading ‘Subdivision 5—Application provisions relating to the Corporations Amendment (Further Future of Financial Advice Measures) Act 2012’ (the FOFA Act) after existing regulation 7.7A.15A, to clarify that regulations 7.7A.15B through 7.7A.16F relate to the application of the FOFA Act.

Item 7 – inserts the heading ‘Subdivision 6—Application of provisions relating to the Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017’

after existing regulation 7.7A.16F to clarify that regulations 7.7A.16G and 7.7A.16H relate to the application of the life insurance remuneration reforms.

Item 7 – also inserts regulation 7.7A.16G to define certain terms to support the operation of Subdivision 2B. Specifically, the regulation clarifies that, for the purposes of Subdivision 2B:

amending Act means the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*.

commencement day means the day on which Schedule 1 to the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* commences.

Item 7 – further inserts regulation 7.7A.16H to prescribe the circumstances under which grandfathering applies to life risk products that substantially relate to existing products.

The regulation is made for the purposes of subsection 1549B(3) of the Life Insurance Remuneration Act and provides that benefits paid to a licensee (or a representative of a licensee) in relation to a life risk product acquired post commencement of the reforms is grandfathered, as long as the product is the result of exercising an option provided by a life risk product held immediately before the commencement of the reforms (or because the pre-commencement product was cancelled due to an administrative error).

An option means each separate component of insurance cover available under a life risk product that is capable of forming a single contract of life insurance. It includes the addition of a new component of insurance cover to an existing life risk insurance product in circumstances where the terms of the policy or the Product Disclosure Statement for the existing life risk insurance product allowed the policy owner to apply for and acquire such new components of insurance cover.

This would mean that, for example, where a customer elects to take up coverage after the commencement date, and the option for coverage was given to the customer as part of a life risk product held immediately prior to the commencement date (such as under a continuation), the benefits paid in relation to the coverage would be grandfathered. This reflects that work relating to developing the option for additional coverage was undertaken before the commencement of the reforms.

For the avoidance of doubt, it is also intended that, where a pre-commencement date life risk product is varied post the commencement of the reforms as a result of the holder of product exercising an option under the product, and a new product is not subsequently acquired as a result, the existing product would continue to be treated as a pre-commencement product.

Item 8 – repeals the existing heading and substitutes ‘Subdivision 7—Asset based fees on borrowed amounts’ to correct the numbering of the Subdivision.

Statement of Compatibility with Human Rights

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

**Corporations Amendment (Life Insurance Remuneration Arrangements)
Regulations 2017**

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

Overview of the Legislative Instrument

The *Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017* (the Regulation) makes a number of amendments to the *Corporations Regulations 2001*.

The amendments relate to the reforms to life insurance remuneration arrangements introduced under the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* (the Act).

The Act removes the current exemption in the *Corporations Act 2001* from the ban on conflicted remuneration for benefits paid in relation to certain life risk products and establishes arrangements for the introduction of caps on commissions and ‘clawback’ arrangements (where a certain portion of upfront commissions must be paid back in the event a life insurance policy is cancelled).

The purpose of the Regulations is to support the implementation of the reforms introduced by the Act by:

- prescribing that benefits paid in relation to dealing in, and providing information about, life risk products are considered to be conflicted remuneration, in circumstances where these benefits are linked to the value or number of life risk products subsequently acquired or varied by consumers;
- prescribing circumstances where ‘clawback’ does not apply, such as in situations where a policy is cancelled automatically due to the age of the insured or where a premium rebate is offered to encourage customers to take up a policy;
- grandfathering benefits paid in relation to life risk products issued after the commencement of the reforms, in circumstances where those products are substantially related to products issued prior to the commencement of the reforms; and

- extending the range of existing exemptions from the ban on conflicted remuneration provided for monetary and non-monetary benefits relating to financial advice to benefits relating to dealing in and providing information about life risk products (where relevant).

Human rights implications

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

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.