# EXPLANATORY STATEMENT

## Issued by authority of the Minister for Revenue and Financial Services

*Corporations Act 2001*

*Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016*

Section 1364(1) 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) Regulation 2016* (the Regulation) makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments support the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016* (the Life Act) to improve the permissible remuneration arrangements relating to life insurance.

Remuneration relating to life 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 Act removes the exemption from the ban on conflicted remuneration, and introduces caps under which commissions will be permitted to be paid, as well as arrangements to ‘clawback’ commissions where policies lapse in the first two years. The reforms will commence on 1 January 2018.

The Regulation supports the reform package introduced by the Life Act by:

* + prescribing circumstances where benefits paid in relation to life risk insurance products are considered to be conflicted remuneration, such as where information is given in relation to these products;
  + 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 insurance 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 Regulation are set out in Attachment A.

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

The Regulation commences immediately after the commencement of Schedule 1 to the Life Act (1 January 2018).

## Attachment A

**Details of the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016**

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016 (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commences immediately after the commencement of Schedule 1 of the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016* (the Life Act).

Section 3 – Authority

This Regulation is 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**

*Benefits that are conflicted remuneration*

Item 1 – specifies that certain benefits in relation to life risk insurance products are conflicted remuneration.

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.

Regulation 7.7A.11A specifies the purpose of Subdivision 1 of Division 4 of Part 7.7A of the Principal Regulations. The regulation indicates the Subdivision:

(a) is made for the purposes of section 963AA of the Act; and

(b) prescribes circumstances under which a benefit given to a licensee or a representative of a licensee in relation to a life risk insurance product(s) is conflicted remuneration.

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

(a) dealing in a life risk insurance product(s) with a retail client(s); or

(b) the provision of financial product advice to a retail client(s) relating to a life risk insurance product(s); or

(c) the provision of information relating to a life risk insurance product(s) other than information given in the course of providing a financial product or financial product advice to a wholesale client.

The regulation extends the range of benefits received by licensees or representatives relating to life risk insurance products that will be subject to the regulation of conflicted remuneration introduced by the Life 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 benefits associated with the direct marketing or direct sale (that is, marketing or sales not involving the provision of financial product advice) are captured by the Life 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 – this amendment serves to repeal the existing regulation 7.7A.12A. This removes the existing provision that exempts life risk insurance products from being considered conflicted remuneration, which is no longer needed following the passing of the Life 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 insurance 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 particular circumstances where the cancellation of a product does not trigger the clawback provisions. Specifically, the regulation prescribes that clawback does not apply in situations of self-harm; death of the insured; 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 reissued as a result of an administrative error.

The administrative error provision is intended to captures 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 does not 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 insurance 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.

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, an income protection claim being made on a policy that has both a death and income protection 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.

*Grandfathering*

Item 5 – repeals the existing heading ‘Subdivision 2 – Monetary or non-monetary benefits’ and inserts the heading ‘Subdivision 4 – Other monetary and non-monetary benefits that are not conflicted remuneration’ to reflect the additional Subdivisions that have been added to Division 4 of Part 7.7A.

Item 6 – inserts the heading ‘Subdivision 5—Application of 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 regulation 7.7A.16G to define certain terms to support the operation of Subdivision 5. Specifically, the regulation clarifies that, for the purposes of Subdivision 5:

***amending Act*** means the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016*.

***commencement day*** means the day on which Schedule 1 to the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016* commences.

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

The regulation is made for the purposes of subsection 1549B(3) of the Life Act and provides that benefits paid to a licensee (or a representative of a licensee) in relation to a life risk insurance 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 insurance product held immediately before the commencement of the reforms (or because the pre-commencement product was cancelled due to an administrative error).

Option means each separate component of insurance cover available under a life risk insurance 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 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 term life coverage after the commencement date, and the option for term life coverage was given to the customer as part of a life risk insurance product held immediately prior to the commencement date, the benefits paid in relation to the term life coverage would be grandfathered. This reflects that work relating to developing the option for additional coverage was undertaken before the commencement of the reforms.

Item 8 – repeals the existing heading ‘Subdivision 3 – Asset-based fees on borrowed amounts’ and inserts the heading ‘Subdivision 7 – Asset-based fees on borrowed amounts’ to reflect that additional Subdivisions have been added to Division 4 of Part 7.7A.