

# WELCOME



## Webinar: Understanding your Annual Renewal Obligations

With Phil Anderson  
Acting CEO, AFA



# Today's webinar



- **1 Hour CPD** available – AFA will send details within the next week.
- As a webinar attendee you are on 'mute' during the webinar
- Questions will be answered at the end of the presentation. Please use the Zoom QA function (not the Chat function) to ask your question.





# Annual Renewal Member Update

20 April 2021

**Phil Anderson**

# Agenda

- Welcome
- Background
- Annual Renewal
- Charging Fees to Superannuation Accounts
- Disclosing Lack of Independence

# Background



## Final Report

Royal Commission into  
Misconduct in the Banking,  
Superannuation and  
Financial Services Industry



- In response to the Fee for No Service issue, Commissioner Hayne made some key recommendations to ensure that there were more controls in place with respect to charging advice fees and disclosure of lack of independence
- APRA and ASIC issued a joint letter to super fund trustees in April 2019 stating an expectation that trustees check that advice fees are appropriate and that services are being provided
- This has caused some changes to practices by some trustees and has led to the introduction of concerning new expectations, like requiring copies of SOA's
- Even some MIS RE's have tried to put similar measures in place

# Hayne Royal Commission Response No 2

**The Financial Sector Reform (Hayne Royal Commission Response No 2) Bill 2020 was passed in the Senate on 25 February 2021, and included the following:**

- Annual Renewal Obligations
- Disclosure of Lack of Independence through FSGs
- New Requirements on Advice Fees in Superannuation

Today we will address the detail of what is required and when. Hopefully, even if we get something wrong, this will generate debate and lead to answers being provided



***Limitation - Licensees need to get their own advice***

# Annual Renewal – Level of Awareness?

**Poll Question:** How familiar are you with what you are required to do under the new annual renewal requirements?

- At this stage I have no idea.
- I have done some reading on this, however I really don't know what I will need to do and when.
- I have a good understanding of this, however I am waiting for further guidance before making final decisions.
- I am completely aware of the new obligations, and I have a comprehensive plan for implementation. I am ready to go from 1 July 2021.

# Annual Renewal Requirements

## Key Elements:

- Annual Renewal to apply to all Ongoing Fee clients
- FDSs to include services and fees for the last 12 months and the services and fees for the next 12 months
- Where the fee for the next 12 months is an estimate, the basis must be explained, impacting Asset-Based fee arrangements
- Client consent forms must be provided to product providers each year
- Transition rules apply and during the transition period, advisers can choose when they provide the new FDS to existing clients
- For existing clients, the Anniversary Day is the date that the new FDS is provided to the client during the transition year



# Annual Renewal – Opt-In Application

The old Opt-in regime had different rules apply to pre and post FoFA clients:

Old FoFA Regime	Required	Frequency
Pre FoFA (1 July 2013)	No	N/A
Post FoFA (From 1 July 2013)	Yes	Every Second Year

- The exemption for advisers, bound by an ASIC approved Code of Conduct that obviates the new for Opt-In, has been repealed
- Under the new regime, FDS's/Renewal notices are required for all ongoing fee clients and every year, not every second year

# Policy Update – Annual Renewal

## What hasn't changed:

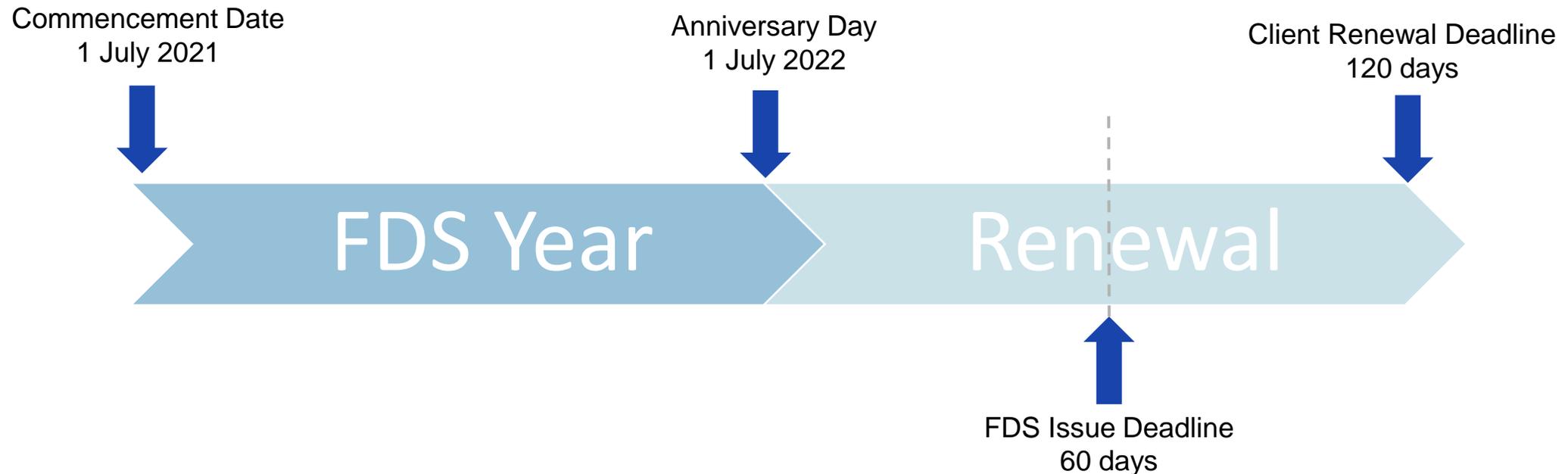
- Definition of an ongoing fee arrangement:
  - Under the terms of the arrangement, a fee is to be paid during a period of **more** than 12 months
  - It is not an ongoing fee arrangement where the client is paying by installments for advice already provided
  - An arrangement is not an ongoing fee arrangement if the only fee payable under the arrangement is an insurance premium
- Advisers have 60 days to provide the FDS
- Clients can terminate the arrangement at any time
- If the client does not renew, the adviser has 30 days to turn the fees off.



# Annual Renewal Requirements

## Annual Renewal – Key Timeframes:

- 60 days to issue the FDS
- The client has 120 days to complete the renewal
- If not renewed, the ongoing fee must be terminated within a further 30 days (i.e. 150 days)



# Annual Renewal – Termination

Termination occurs in the following cases:

- Clients are entitled to terminate an ongoing fee arrangement at any time
- The Ongoing Fee Arrangement is terminated if the core obligations are not complied with
- Where the client fails to respond to an FDS within the 120 day renewal period, in which case the arrangement terminates after a further 30 days (i.e. after 150 days)

Where the client withdraws consent or varies the arrangement, you must:

- Provide confirmation to the client within 10 days.
- Notify any applicable product providers within 10 days.

# Annual Renewal – What we Called for?

**AFA Advocacy on the Annual Renewal Bill.** We have been very active in promoting a more efficient and flexible model for Annual Renewal:

- The ability to bring the Anniversary Day forward
- A fix for the problem with timing and small differences in FDSs
- For the Transition arrangements, the Anniversary Day should be the last day of the transition FDS period, not the date the FDS is given to the client
- The requirements for providing an estimate for asset-based fee clients should be high level and straight forward
- More time should be provided before commencement
- Record keeping failures should not be subject to a maximum 5 year jail term



# Annual Renewal – Transition Arrangements

## The transition arrangements are as follows:

- The obligations, other than consent forms, apply to new clients from 1 July 2021, however would not be required until after 1 July 2022
- Financial advisers have a 12 month transition period, that applies for existing clients and during this period they must:
  - Provide a new FDS before 30 June 2022
  - The Anniversary Day will be set based upon the day they provide the new FDS within the transition year (not the last day of the FDS period)
- Special arrangements apply where the Anniversary Day occurs before 30 June 2021, however the 60 day deadline for the FDS or FDS and Renewal, has not yet passed by 30 June 2021

# Annual Renewal – Transition Arrangements

- Where the Disclosure Day (FDS) is prior to 30 June 2021, and the 60 day period has not expired and the FDS has not been provided by 30 June, the obligation to provide the FDS ceases
- However, to the extent that the FDS would have been required to include information relevant to the FDS period, that will not be required in the transition FDS, that information must be provided in the new FDS during the transition year
- So, assume the Disclosure Day is 15 May 2021 and the FDS is due by mid July 2021, you have a key decision to make – do you provide the FDS before 30 June 2021 or not
- You cannot provide an ‘old FDS’ from 1 July 2021

# Annual Renewal – Transition Arrangements

- Where the Renewal Notice Day (FDS and Renewal Notice) is prior to 30 June 2021, and the 60 day period has not expired and the FDS/Renewal Notice has not been provided by 30 June, the obligation to provide the FDS/Renewal Notice ceases
- However, to the extent that FDS would have been required to include information relevant to the FDS period, that will not be required in the transition FDS, that information must be provided in the new FDS during the transition year
- So, assume the Renewal Notice Day is 1 June 2021 and the FDS is due by late July 2021, you have a key decision to make – do you provide the FDS/Renewal Notice before 30 June 2021 or not
- You cannot provide an ‘old FDS/Renewal’ from 1 July 2021
- The implications of the client signing after 1 July 2021 are unclear

# Annual Renewal – Consent Forms

**The client consent form must contain the following:**

- Name of the Account holder
- Name and contact details of the fee recipient (adviser)
- An explanation of why the consent is being sought
- The frequency and amount of each ongoing fee
- If the ongoing fee is an estimate and explanation of how it was worked out
- Details of each account the fee will be deducted from
- Statement that the consent will cease 150 days after the next anniversary, however the account holder can withdraw consent at any time



# Annual Renewal – Consent Forms

## Other requirements:

- The written consent must be worded and presented in a clear, concise and effective manner
- The written consent can be combined with an FDS, however it must contain all the information on the previous slide and it must be clear, concise and effective
- Where the account is a joint account, the consent must be obtained by each account holder
- In the case of the client varying the consent, the adviser must provide confirmation to the client and the product provider within 10 business days

Merging the consent form and the FDS has complications, if the client holds products with more than one product provider, and the FDS contains information that you would not want each product provider to have

# Annual Renewal – Consent Forms - Super

The consent form must contain the following:

- Name of the **Member**
- **Name and contact details of the fund**
- Name and contact details of the **advice provider**
- An explanation of why the consent is being sought
- **How long the consent will last**
- **Information about the services the member is entitled to**
- The amount of the fee to be deducted
- If the ongoing fee is an estimate and explanation of how it was worked out
- Statement that the member can withdraw consent at any time

# Annual Renewal – Records of Compliance

**Section 962X(1)** – A fee recipient in relation to an ongoing fee arrangement must keep records sufficient to enable the fee recipient's compliance with this Division in relation to the ongoing fee arrangement to be readily ascertained.

**Section 962X(2)** – The regulations may specify records that the fee recipient must keep as part of the obligations in subsection (1).

Failure to comply with subsection (1) is a criminal offence with a maximum jail term of 5 years

Applies from 1 July 2021, however we do not have the regulation. There are numerous questions about how this applies

# Annual Renewal – FFNS and Refunds

**ASIC have pursued the Fee for No Service issue under the Section 912A obligation for licensees to operate efficiently, honestly and fairly, however it is ultimately a contractual issue between the client and the adviser/licensee:**

- You need to deliver the services that you commit to deliver
- If you commit to deliver an annual review in the year, it does not really matter if this is done at the start or the end of the year.
- Where a client does not renew, and the fee needs to be turned off by 150 days after the Anniversary Day, there is no need to refund fees back to the Anniversary Day.

Broadly there are still a number of questions about when services must be provided and what the implications are.

# Annual Renewal – Key Decisions

**Licensees and advisers need to make some key decisions on what they are going to do during the transition year:**

- Strategy for dealing with FDSs and FDS/Renewal Notices that are triggered before 30 June 2021, however are not due until after 30 June 2021
- In the Transition year, should FDSs be provided as per the current Disclosure Day timeframes, noting that the Anniversary Day will be set by the date that the new FDS is provided in the transition year (not the last day of the FDS period), or should they wait until later in the transition year
- Whether to treat the new FDS as the consent form

# Annual Renewal – Implications

**There are a few key implications that flow from the new Annual Renewal regime:**

- It is no longer possible to bring the FDS period forward. The Anniversary Day is set by either the signing of a new agreement or for existing clients on the basis of the date the new FDS was provided to the client in the transition year. Seemingly, the only alternative is to put in place a totally new arrangement
- Systems will need to be built or modified to enable the production of a new FDS that contains the fee or an estimate of the fee for the next 12 months
- Systems will need to be built, most likely by product providers, for the creation, collection and storage of client consent forms

# Charging Advice Fees to Super Accounts

# Charging Advice Fees to Super Accounts

**The Financial Sector Reform (Hayne Royal Commission Response No 2) Bill 2020 had additional new obligations that apply to charging fees to super accounts:-**

- In addition to ongoing fee arrangements where client consents are required as covered previously, trustees also need to obtain client consent forms for clients wishing to charge advice fees to their super account on a non-ongoing fee arrangement
- Ongoing fees are banned from MySuper accounts
- ASIC has issued legislative instruments to set out the information requirements in a consent form.
- ASIC have also issued example consent forms for both ongoing and non ongoing fee arrangements

# Charging Advice Fees to Super Accounts

**The Application of these new requirements for charging fees to superannuation accounts is as follows:**

- Consent forms apply to new clients from 1 July 2021 and existing clients from 1 July 2022
- Ongoing fees are banned for MySuper accounts for new clients from 1 July 2021
- Ongoing fees are banned for MySuper accounts for existing clients from 1 July 2022

# Disclosure of Lack of Independence

# Lack of Independence Requirements

**FSGs must be updated where the adviser does not qualify to use the terms “independent”, “impartial” or “unbiased” in accordance with Section 923A.**

**That means:-**

- No commissions, unless rebated to the client in full
- No remuneration based upon volume of business placed with an issuer of a financial product
- No other gifts or benefits from an issuer of a financial product which may reasonably be expected to influence the person
- The person operates free from direct or indirect restrictions relating to the financial products in respect of which they provide financial services
- The person operates without any conflicts of interest arising from associations or relationships with product providers
- Applies to you, your employer and your licensee

Section 923A is subject to some uncertainty on issues like MDA providers and small benefits

# Lack of Independence Requirements

**ASIC have issued “ASIC Corporations (Disclosure of Lack of Independence) Instrument 2021/125” which requires that an FSG for an entity that is not independent must contain:**

- The statement of lack of independence must appear on the first substantive page of the FSG
- The statement must appear within a box that includes a bold heading such as “Not Independent” or “Lack of Independence” or similar
- Must be in the same font size as the predominant font size for the other text in the FSG
- Must not appear as a footnote

# Lack of Independence Requirements

- The Lack of Independence disclosure applies from 1 July 2021, however it can be done via a supplementary FSG.
- It must be provided when a financial service is next being provided
- ASIC have acknowledged that they have not prescribed the detail that must be included in the lack of independence disclosure statement
- We understand that ASIC intends to issue an example

# Lack of Independence Requirements

- **It is envisaged that it could contain statements similar to the following:**

## **Lack of Independence**

Under the Corporations act, I am prevented from using the terms independent, impartial and unbiased as I receive commissions for the advice that I provide on life insurance products.

Or

## **Lack of Independence**

Under the Corporations act, I am prevented from using the terms independent, impartial and unbiased as I am authorised by a licensee that is owned by a product provider and I receive commissions for the advice that I provide on life insurance products

# Do you need to disclose lack of independence?

## Poll Question: For Practitioners Only

- I don't know if I am caught by this
- Yes, I receive life insurance commissions and my licensee is owned by an entity that provides product
- Yes, but only because I receive life insurance commissions
- No - I qualify with the requirements to describe myself as independent, so I won't need to change my FSG

# Next Steps Awaiting Guidance and Regulation

# YOUR QUESTIONS

# Thank you for joining today

## Access to webinar content

- Today's webinar recording, presentation slides and a CPD assessment quiz will be uploaded to [afa.asn.au](http://afa.asn.au)
- All registrants will receive an email confirming when available
- Get in touch at [info@afa.asn.au](mailto:info@afa.asn.au) if you have any questions