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# FUTURE OF FINANCIAL ADVICE SERIES

## OPT-IN AND FEE DISCLOSURE

This update is intended as a general overview, targeted specifically at claims officers and underwriters of insurers of professionals required to comply with the Future of Financial Advice (FOFA) reforms.

### WHAT IS IT?

Opt-in and fee disclosure is a two yearly opt-in arrangement and annual fee disclosure statement for clients paying ongoing fees.

For each client paying ongoing fees, being fees that continue for longer than 12 months, financial advisers are now required to:

- ✓ give each client an annual statement disclosing the fees that the client has paid and the services they have received (the fee disclosure requirement); and
- ✓ send a renewal notice every two years and receive the consent of each client to continue charging them (the opt-in requirement).

Certain fee arrangements are excluded from the requirements, including payment plans such as

upfront advice fees paid by instalments, arrangements where the only fee payable is an insurance premium and arrangements where the fee payable is a product fee.

### COMPLIANCE - WHAT TO LOOK FOR

Financial advisers may elect to comply with the opt-in requirement annually at the annual client review. The renewal needs to be in writing and can be done by facsimile, email, SMS, or through an online facility. We recommend that advisers be encouraged to maintain detailed notes of advice and interactions with their clients in this respect. This will assist greatly in defending any claim that may be brought against the adviser. The Australian Securities and Investments Commission (ASIC) has released draft record keeping obligations for financial advisers. In addition, changes to Regulatory Guide 175 include record-keeping obligations for fee disclosure arrangements.

Financial advisers should implement a process to ensure they are compliant. For example, a reminder alert for each client at the 12 month and two year

anniversary date of the current fee disclosure or renewal. Financial advisers then have 30 days from this date to give the client the next fee disclosure or renewal notice. Once they complete these tasks, they should set the next reminders for the next anniversaries to ensure they continue to be compliant.

For existing clients, the first fee disclosure statement can be given any time before the end of 30 days after the first anniversary after 1 July 2013. If an adviser does not have a record of when they first entered into a relationship with a client, they should provide the first fee disclosure statement as soon as possible.

If a financial adviser is bound by an ASIC approved code of conduct which achieves the same objective as opt-in, they will not have to comply with opt-in, but will have to comply with the code instead. Industry associations are currently developing codes so until ASIC approves a code financial advisers must comply with the opt-in requirement. ASIC is not expected to finalise and approve relevant codes until 1 July 2015.

Financial advisers should have a precedent template renewal notice. The renewal notice must state that the client may renew the arrangement by giving notice and that the arrangement will terminate if the client does not choose to renew the arrangement (or "opt-in").

If the client renews the arrangement within 30 days of receiving the renewal notice (the renewal period), the arrangement continues as normal. If the client is unresponsive to the renewal notice after the 30 day renewal period, the insured can continue to charge an ongoing fee only for an additional 30 day grace period, after which the arrangement automatically terminates. At this point, the insured's obligation to provide ongoing advice ceases and they cannot continue to charge ongoing fees, nor can the client continue to expect management of their financial arrangements.

The opt-in requirement only applies to new clients who started a relationship with the insured after 1 July 2013. Existing and new clients both need to receive annual fee disclosure statements, but only new clients need to be asked whether they agree to continue to pay fees. However, the opt-in requirement will apply if a financial adviser enters into a new advice contract with an existing client.

## CHECKLIST FOR INSURERS

We recommend claims officers consider the checklist below when reviewing any claim brought against a financial adviser post-FOFA. We also recommend that insurers review current claim form and proposal form templates and consider updating them to include reference to the matters set out below.

- ✓ Has the adviser kept detailed records of compliance in respect of issuing a fee disclosure and renewal notice to clients?
- ✓ Does the insured have a precedent or template renewal notice?
- ✓ Does the insured have systems in place to record actions taken where a renewal notice is sent to a client but the client does not respond, for example detailed advice in respect of the consequences of failure to respond to renewal?

## LOOK OUT FOR

Look out for our final FOFA update in this series "ASIC's new powers."

[Click here](#) for our related update "Best interests duty."

[Click here](#) for our related update "Ban on conflicted remuneration."

## MORE INFORMATION

For more information on the FOFA reforms and what it means for you, please do not hesitate to contact:



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