

6 January 2016

Manager
Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: lifeinsurance@treasury.gov.au

Dear Manager,

Corporations (Life Insurance Remuneration Arrangements) Bill 2015

The Law Council of Australia welcomes the opportunity to provide comments on the exposure draft Corporations (Life Insurance Remuneration Arrangements) Bill 2015 (the Bill).

These comments have been prepared by the Law Council Superannuation Committee, which is a committee of the Legal Practice Section of the Law Council (Committee). The objectives of the Superannuation Committee are to ensure that the law relating to superannuation in Australia is sound, equitable and clear. The Committee makes submissions and provides comments on the legal aspects of proposed legislation, circulars, policy papers and other regulatory instruments which affect superannuation funds.

The Law Council of Australia is the peak national representative body of the Australian legal profession and represents more than 60,000 legal practitioners nationwide.

Comments on the Exposure Draft Bill

Life insurance is frequently held within superannuation funds by trustees for the benefit of members. The *Corporations Act 2001* prohibits the provision of [conflicted remuneration](#) in relation to life insurance policies held by trustees for MySuper members and group life insurance policies. It does not prohibit conflicted remuneration being paid by trustees in relation to individual policies for choice members.

We understand that the Bill intends to further limit the circumstances in which benefits that would otherwise be conflicted remuneration can be provided.

Stated intention

The draft Explanatory Memorandum to the Bill states at paragraph 1.19:

The effect of the amendment is that all benefits paid in relation to life risk insurance products, whether offered inside or outside superannuation, will be considered conflicted remuneration.

However, the Superannuation Committee queries whether this is the effect of the draft Bill.

In the Committee's opinion:

- The draft Bill does not ban or cap commissions on life insurance products as the draft Explanatory Memorandum says it is intended to.
- The drafting of the exceptions to the proposed ban is overly complex and difficult to understand.

The Committee suggests that the provisions could be simpler and clearer. This would make it easier to comply with. A suggestion is set out below.

Proposed amendments

Section 963B(1)(b)(iii) will add another condition to the circumstances in which benefits that would otherwise be conflicted remuneration may be paid to a licensee or representative of a licensee. It allows a benefit to be provided if either sub-paragraph (A) or (B) is satisfied.

Sub-paragraph (A) applies where:

the ratio between the benefit and the relevant amount payable for the product or products, or that part of the relevant amount payable for the product or products to which the benefit relates, is the same for the year in which the product or products are issued as it is for each year in which the product or products are renewed.¹

Despite the statement of intention in the Explanatory Memorandum, quoted above, this paragraph would appear to permit payment of an uncapped commission, provided that it is a level commission payable for the life of the policy. This is because the ratio between the benefit and the relevant amount would remain constant for the life of the policy, if the premium and any other amounts included in the relevant amount also remain constant.

Paragraph (B) provides an alternative to paragraph (A) and it will apply where:

the benefit ratio requirements and clawback requirements in section 963BA are satisfied in relation to the benefit.

Section 963B(3A) will insert the method of determining the 'relevant amount'.

We note that while the period determined under the section is used in section 963BA, there is no period referred to in section [963B\(1\)](#).

We suggest that including a period in section 963B(1)(b)(iii) could provide greater clarity to the section.

ASIC's power to determine an acceptable ratio

Section 963BA will insert provisions giving ASIC the power to determine, by legislative instrument, an 'acceptable ratio' or to determine a method of determining an 'acceptable ratio'.

¹ Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2015, Schedule 1, item 2.

The Committee queries whether it would be better to omit the word 'acceptable' from the section because it suggests that ASIC has approved the payment of commission without adding anything to the legal effect of the section.

The proposed section will also include the 'clawback requirements'. It is unclear why the clawback requirements are a condition to paragraph (B) but not to paragraph (A) of section 963B(1)(b)(iii).

The paragraphs refer to the recipient of the benefit as being a licensee or representative who *provides* financial product advice in relation to a life risk insurance product.

We suggest that these references be omitted since they would exclude a person who has ceased providing advice. They also add nothing to the exception given that a benefit will not be conflicted remuneration in the first place unless it is provided to a licensee or representative of a licensee who provides financial product advice to retail clients and, in this case, the influence test is unlikely to be satisfied unless that advice is about life risk insurance products.

Alternative drafting

Finally, the Committee suggests that section 963B(1)(b)(iii) could be drafted in simpler and clearer terms, for example:

- (iii) *The benefit provided in relation to a year:*
 - (A) *does not exceed the prescribed percentage of the relevant amount payable for the product in the year; and*
 - (B) *is subject to the clawback requirement.*

ASIC may, by legislative instrument, determine:

- (C) *the prescribed percentage; and*
- (D) *that a different prescribed percentage applies for each year during the term of a life risk insurance product.*

For the purposes of this section, the term of a life risk insurance product is deemed to continue if it is renewed and in any circumstances determined by ASIC for the purposes of this section.

The Committee would welcome an opportunity to discuss this submission further. In the first instance please contact Committee Chair, Ms Michelle Levy D: 02 9230 5170, M: 0407 890 715, E: Michelle.Levy@allens.com.au.

Yours sincerely,



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