

ONGOING FEE ARRANGEMENTS

Information Sheet | May 2021

REGPLANNER PREPARATION PROGRAM

1. INTRODUCTION

This document is designed to provide you with important information regarding recently implemented or soon to be implemented legislation. It includes:

- Summary of legislation
- Details of legislation
- Legislation in practice
- Action and impact requirements
- Frequently asked questions

2. SUMMARY

Category	Information
Legislation	<p>The Act and Explanatory Memorandum can be found here - Financial Sector Reform (Hayne Royal Commission Response No.2) Bill 2020</p> <p>The legislative instrument which sets out the requirements of the consent form can be found here - ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124</p>
Status	Received assent on 2 March 2021
Implementation Date	1 July 2021
Summary of new legislation	<p><u>Enhanced Fee Disclosure Statements (FDS)</u></p> <p>All clients (pre and post 1 July 2013) under an ongoing fee arrangement must be provide with an FDS annually which includes information about:</p> <ul style="list-style-type: none">– the fees to be paid and services to which the client is entitled to receive in the upcoming year; and– the fees paid, services to which the client was entitled to receive and services that the client received during the previous year; and– renewing the ongoing fee arrangement. <p><u>Ongoing fee arrangements to be renewed annually.</u></p> <p>Clients must 'opt-in' or renew the ongoing fee arrangement annually in writing. A separate renewal notice (i.e. opt-in) is no longer required but the renewal process is outlined in the enhanced FDS.</p> <p><u>Consent</u></p> <p>Consent obligations apply from 1 July 2022. Fee recipients must obtain the client's express written consent to deduct, arrange to deduct, or accept an amount for payment of, fees under an ongoing fee arrangement. This does not</p>

Category	Information
	apply to deductions from credit cards or bank accounts. Consent must be provided to the product issuer.
Summary of current legislation	<p><u>FDS and Renewal Notices</u></p> <p>For ongoing fee arrangements entered into prior to 1 July 2013, a fee recipient was required to provide an FDS annually and a Renewal Notice (i.e. opt in) every two years. Ongoing fee arrangements entered into prior to 1 July 2013 required an annual FDS but the arrangement was not required to be renewed. Fee disclosure statements were backwards looking (i.e. covering the previous year) only.</p> <p><u>Consent</u></p> <p>There was no requirement to obtain consent from a client to deduct ongoing fees after the initial consent was given.</p>

3. DETAILS OF LEGISLATION

3.1 Definitions

Definitions	
Ongoing Fee Arrangement	<p>Personal advice is given to a retail client, who enters an arrangement where fees are paid for a period of more than 12 months.</p> <p>'Fees' do not include insurance commissions or once off fees.</p>
Anniversary Day	<p>From new arrangements starting on or after 1 July 2021, it is the anniversary of the day the ongoing fee arrangement was entered into.</p> <p>For existing ongoing fee arrangements (that were in place prior to 1 July 2021) the Anniversary Day is:</p> <ul style="list-style-type: none"> – the transition day; or – the anniversary of the transition day each year.
12 month transition period	<p>The 12 month transition period is from 1 July 2021 to 30 June 2022.</p> <p>The fee recipient must, on a day before the end of the 12 month transition period, give the client an FDS.</p> <p>The FDS covers the period of 12 months ending immediately before the transition day; and the period of 12 months starting on the transition day for the arrangement. i.e. the previous year and the upcoming year.</p>
Transition Day	<p>For an ongoing fee arrangement, the Transition Day is the earlier of:</p> <ul style="list-style-type: none"> – the day within the 12 month transition period when a fee disclosure statement is given; and – the last day of the 12 month transition period.
Renewal Period	<p>The Renewal Period is a period of 120 days beginning on the Anniversary Day.</p>

3.2 Fee Disclosure Statements

Requirements	
New and existing ongoing fee arrangements must be renewed annually	<p>Fee recipients will seek renewal of an ongoing fee arrangement annually by providing a FDS including all information about fees, services, and renewal. A separate renewal notice is not required.</p>

Requirements	
Information to be included in the FDS	<p>The FDS must include information about:</p> <ul style="list-style-type: none"> – the fees to be paid and services to which the client is entitled to receive in the upcoming year; and – the fees paid, services to which the client was entitled to receive and services that the client received during the previous year; and – renewing the ongoing fee arrangement. <p>The FDS must include the following statements about renewing the agreement:</p> <ul style="list-style-type: none"> – a statement that the client may renew the arrangement by giving the fee recipient notice in writing; – a statement that the arrangement terminates, and no further advice will be provided, and no further fees will be charged, if the client does not renew the arrangement; – statement that the client is deemed not to have renewed the arrangement if the client does not give notice in writing before the end of the renewal period; and – a statement that the renewal period is a period of 120 days beginning on the anniversary day.
Information about fees	Fees must be in dollars. If the exact amount cannot be determined for the upcoming year, a reasonable estimate of the fees and an explanation of the method used to calculate the estimate must be given.
Providing the FDS	An FDS must be provided to the client during the same period each year. The FDS must be provided within the first 60 days of the renewal period each year.

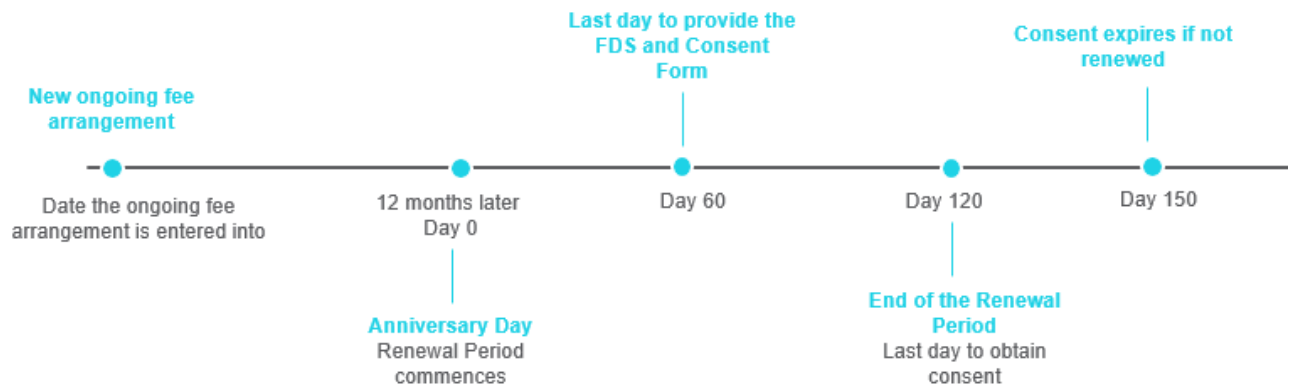
3.3 Written consent for the deduction of fees

Requirements	
Express written consent	<p>Fee recipients must obtain the client's express written consent to deduct, arrange to deduct, or accept an amount for payment of, fees under an ongoing fee arrangement.</p> <p>Written consent means the client may sign (including an electronic signature) or provide written consent in other ways.</p> <p>The written consent must have the date on which consent is given.</p>
Providing consent electronic	<p>The consent form can be provided electronically.</p> <p>The client can also provide their consent electronically including using a digital signature.</p>
What must be included in the consent form	<p>The consent form must include the following:</p> <ul style="list-style-type: none"> – Name and contact details of the fee recipient, at least the phone number and email address – Explain why consent is being sought – The frequency and amount of each ongoing fee that will be paid in the upcoming year if ongoing fee arrangement was renewed. If the exact amount cannot be determined, a reasonable estimate of the fees and an explanation of the method used to calculate the estimate must be given. If it is an estimate this must be made clear.

Requirements	
	<ul style="list-style-type: none"> – Details of each account from which fees will be paid and the amount of each fee. – When the consent will cease. – A statement that the account holder can withdraw consent, vary or terminate the ongoing fee arrangement at any time by providing notice to the fee recipient <p>The consent form may include a statement explaining that once the written consent ceases to have effect, the fee recipient can no longer deduct ongoing fees from the client's account and the account holder is no longer entitled to receive services under the ongoing fee arrangement.</p>
Combined FDS and Consent	To minimise duplication, the FDS and Consent Form can be combined into one document. If information above is included in the FDS, it does not need to be also included in the Consent Form.
Credit cards and basic deposit accounts	<p>Express written consent is not required for deductions made from credit card accounts and basic deposit accounts because clients generally have more visibility of amounts being deducted from these accounts.</p> <p>However, an FDS and consent in writing to renew the ongoing fee arrangement is still required.</p>
Joint accounts	Consent must be provided by all account holders.
Withdrawing or varying consent	<p>An account holder may withdraw or vary consent at any time by providing notice to the fee recipient in writing.</p> <p>An ongoing fee arrangement cannot include conditions that affect the client's right to withdraw or vary consent.</p> <p>If notice is provided, a fee recipient must:</p> <ul style="list-style-type: none"> – Given written confirmation to the account holder within 10 business days that the notice was received; and – (If applicable) Give the account provider a copy of the notice within 10 business days.
Consent ceases	<p>Consent ceases if the ongoing arrangement is terminated (if at any time the client asks for the ongoing fee arrangement to cease), or it expires 30 days after the end of the renewal period (i.e. 150 days commencing on the anniversary day each year)</p> <p>If consent ceases, the fee recipient must notify the account provider within 10 business days.</p>
Giving the consent form to the account provider	The Consent Form must be given to the account provider by the end of the Renewal Period.
Repayments	<p>If a fee recipient arranges to deduct or accepts a fee without consent, and the amount is repaid into the account within 10 business days from the day on which the payment was accepted is not a contravention. Examples where this may inadvertently occur may include the receipt of fees when:</p> <ul style="list-style-type: none"> – consent was given but later withdrawn or varied, – consent has expired and fees were received after 150 days – all account holders had not given consent.

4. LEGISLATION IN PRACTICE

4.1 Ongoing fee arrangements entered into post 1 July 2021



The Anniversary Day is defined as the date that the ongoing fee arrangement is entered into. Previous guidance suggested it could be the date the Authority to Proceed, engagement document or application form is signed. Pending updated regulatory guidance we expect that it will be suitable to determine the anniversary day in the same way.

4.2 Ongoing fee arrangements entered into pre 1 July 2021

Transitional provisions apply to all ongoing fee arrangements in place before 1 July 2021. Clients must be provided with an FDS before the end of the 12 month transition period. The date on which the FDS is provided (the transition day) will be the anniversary day for the arrangement in subsequent years. Only one FDS is required to be given to a client between 1 July 2021 and 30 June 2022.

Advisers may choose any date within the 12 month transition period as the transition day. It does not need to be on the client's current disclosure date, although you may elect to continue to use the disclosure day for continuity purposes. You can choose a date earlier than the current disclosure date or later than the current disclosure date. In both cases, the FDS will cover the period 12 months prior, and 12 months post the transition day. This may mean that there will be either an overlap or a gap in the disclosure since the last FDS was given to the client. This is ok during the transition period.

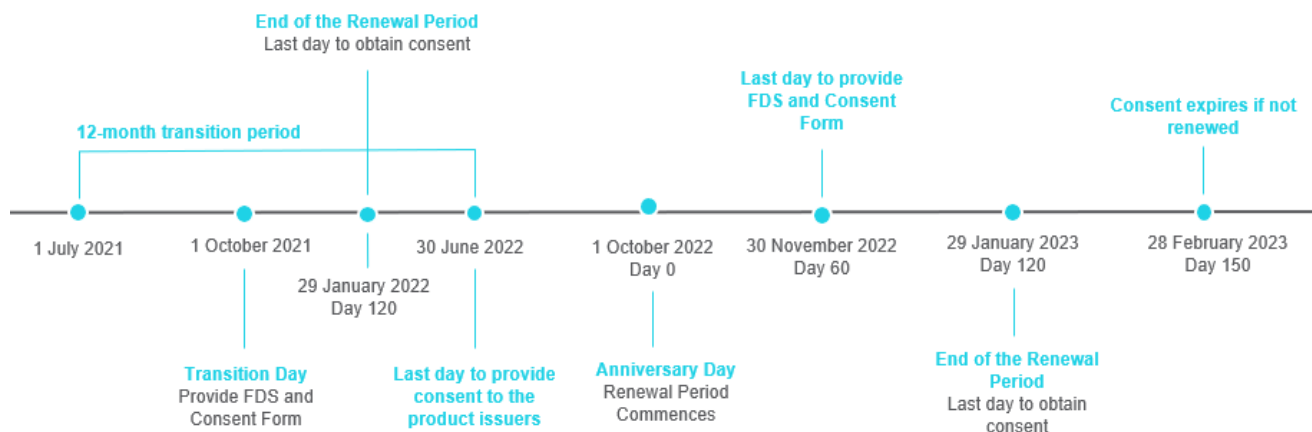
However, if a disclosure day for a client occurs before 1 July 2021, and the client has not been provided an FDS before 1 July 2021, then the FDS that is given to the client during the 12 month transition period must contain additional information. The FDS that is provided in the 12 month transition period must include:

- the fees to be paid and services to which the client is entitled to receive in the upcoming year; and
- the fees paid, services to which the client was entitled to receive and services that the client received since the previous FDS was provided. This may be a period longer than 12 months.

The FDS must also include information about renewal including that the client may renew the arrangement by providing notice in writing within the renewal period.

The requirement to provide a separate Renewal Notice ceases on 1 July 2021. If the client is due for a renewal notice before 1 July 2021 but the 60 day period in which to provide it ends on or after 1 July 2021, you are not required to provide the renewal notice.

The additional consent obligations apply from 1 July 2022. However, a client may provide consent prior to 1 July 2022 i.e. at the same time as the FDS is provided during the 12 month transition period.



5. ACTION AND IMPACT REQUIREMENTS

Timing of Fee Disclosure Statements and Renewal Notices

Generally, you should continue to provide FDS and Renewal Notices as normal until 1 July 2021.

If a disclosure day occurs before 1 July 2021, aim to send the FDS before 1 July 2021. This will help to simplify the FDS you give during the 12 month transition period and eliminate the need to include fees and services for the previous year covering a period longer than 12 months.

If the client was also due for a renewal notice before 1 July 2021, but the 60 day period in which to provide it ends on or after 1 July 2021, you do not need to issue the renewal notice.

If you do send a renewal notice you will need to ensure that fees are turned off if the client does not opt-in.

Review Engagement Documents

An ongoing fee arrangement cannot include conditions that affect the client's right to withdraw or vary consent at any time. You should review your engagement documents to ensure they do not contain any restrictive clauses that limit the client's ability to withdraw or vary their consent or terminate the ongoing fee arrangement.

6. FREQUENTLY ASKED QUESTIONS

Can I 'bring forward' or otherwise change the Anniversary Day?

For new ongoing fee arrangements entered into after 1 July 2021, the anniversary day is set as the day on which the ongoing fee arrangement was entered into. Under current regulatory guidance on FDS obligations, the disclosure date can be reset or 'bought forward' to enable advisers to streamline processes. The new legislation does not address resetting the anniversary day; however this may be addressed once regulatory guidance is provided. Until this guidance is provided, the anniversary date will be fixed.

There is some additional complexity under the new rules because product providers, once they receive the first consent form, will likely record the anniversary day and will be using this date to monitor compliance with the consent requirements. Any changes in the anniversary day (if permissible) would need to be communicated to the product providers.

For existing ongoing fee arrangements, you can set the anniversary day any day between 1 July 2021 and 30 June 2022. This allows flexibility initially when selecting the anniversary day. And you do have up to 60 days after the start of the renewal period in which to issue the FDS allowing some streamlining or batching to occur.

Can terminate an existing Ongoing Fee Arrangement and commence a new one?

We anticipate that ASIC will be providing guidance on situations where an adviser can terminate an existing arrangement and commence a new arrangement.

When is the latest day in which the FDS and consent form needs to be provided to clients during the transition period?

The FDS can in theory be given on any day during the 12 month transition period, but in order to ensure the product providers receive a consent form by 1 July 2022, then you will need to provide the FDS and consent form to the client early enough to receive the signed consent form back before 1 July 2022.

A 120 day renewal period applies in which to obtain consent, so the latest day on which the FDS could be provided while giving yourself the maximum time for a response, would be 3 March 2022. Alternatively you could allow for an additional 30 days as long as the fees were turned off by 1 July 2022. That day would be 1 Feb 2022. Of course, as long as the consent is received by the product provider before 1 July 2022 then you can provide the FDS any day you want.

How can I ensure the FDS includes fees right up to the transition day?

The legislation states that the transition day is the day on which the FDS is given to the client. It also states that the FDS must include information about fees and services relating to the period up to the day immediately prior to the transition day. Practically it will be difficult to do this. In subsequent years you will have 60 days after the anniversary day in which to provide the FDS, however there is no allowance under the transition arrangements.

In the absence of further guidance, you should provide the FDS to the client as close as possible to the transition day. The renewal period still commences on the transition day.

How do I calculate fees for the upcoming year?

Where the amount of an ongoing fee cannot be exactly determined for the upcoming year, the fee disclosure statement must include a reasonable estimate of the fees and an explanation of the method used to work out the estimate.

ASIC's sample consent form includes an example of a reasonable estimate based on the current account balance and the agreed percentage based fee. Fee recipients should when calculating the estimate consider information known to them that would impact the fee in the upcoming year such as:

- A large investment or contribution that would increase the amount of an asset based fee
- An increase in the fee to be charged for the upcoming year
- .

Practically, calculating a fee estimate that considers regular contributions such as SGC and withdrawals occurring periodically throughout the year is likely to be very difficult.

We hope to receive further guidance from ASIC in the Regulatory Guide when released.

When do I need to get client consent for existing ongoing fee arrangements in place before 1 July 2021?

Consent obligations apply from 1 July 2022. Early indications are that product providers expect to receive a consent form for all existing ongoing fee arrangements by this date. Consent can be obtained at the same time as the FDS is provided during the 12 month transition period. The form may then be provided to the product

provider at any time thereafter but before 1 July 2022. Consent forms in subsequent years will be required to be provided within 150 days from the anniversary day.

Will I need multiple consent forms?

It is possible. An ongoing fee arrangement may include fees and services relating to multiple accounts. This may be accounts for a client, a partner, a joint account etc. It may also be for a superannuation account(s), and an investment account(s). A consent form will be required for each product issuer (and potentially for each account). For privacy reasons and for practicality, a consent form should not contain information about accounts with other product issuers. In these cases a combined FDS and Consent Form is unsuitable.

A consent form may include consent to deduct fees from more than once account with the same product issuer e.g. an accumulation super and a pension account, but it must include the details of each account from which fees will be paid and the amount of each fee.

Do I need to do a consent form for SMSFs?

SMSF's must still be provided with an FDS and they must renew the ongoing fee arrangements in writing annually. Many SMSF's pay fees from a basic bank account which do not require consent forms. However, if an ongoing fee is deducted from an investment product, they will need to complete a consent form to be provided to the product issuer. All account holders must sign the consent form. You will need to confirm who may sign on behalf of the SMSF.

Can I accept a consent form signed by the client after the Renewal Period?

If a client does not renew before the end of the Renewal Period (120 days after the anniversary day) then the ongoing fee arrangement will terminate. However the existing consent ceases to have effect at the end of a period of 150 days after the anniversary day, allowing time for the fees to be turned off. Product providers may agree to accept a consent form that has been signed after the Renewal Period, but this will depend on the individual product providers.

Can the FDS and Consent Forms be given to a client at their Annual Review?

Consider the following scenario. You enter into an ongoing fee arrangement with a client on 1 October 2021 which includes an annual review. The next anniversary day is 1 October 2022 at which time you will prepare a FDS for the previous year and upcoming year. If you state that the client was entitled to a review, the review will need to have been provided prior to 1 October 2022 to avoid fee for no service issues.

If you meet with the client for their annual review prior to the anniversary day, you could not provide them with the FDS and consent form as the FDS must include information about fees and services up to the anniversary day i.e. for a period which has not yet passed.

Practically, you may not want to provide the review until after the completion of the first year anyway. Potentially a solution may be that the ongoing fee arrangement specifies that the annual review will occur post the end of the first 12 months and annually thereafter. Then, if you meet with the client for their annual review within 60 days after the anniversary day being 30 November 2022, you could provide the client with the FDS and consent form at the review meeting.

Will product issuers require their consent forms to be used?

Product issuers have not yet confirmed what forms they will accept. Centrepont will provide templates in anticipation that product issuers will accept these versions.

When will Centrepoint have new FDS and Consent Forms available?

Centrepoint are working with Enzumo to have these new forms available as soon as possible. Draft versions are available to view on the RegPlanner page of Centrepoint Connect. Enzumo expect to have versions coded for use from 1 July 2021.

Guidance will be provided on utilising Compass to meet the new requirements.

What are the requirements for fixed term fee arrangements?

Once off advice fees and advice fees with a term of 12 months or less are not ongoing fee arrangements. An FDS is not required to be provided for a non-ongoing fee arrangement.

To deduct fees under a non-ongoing fee arrangement from a superannuation account, the trustee of a regulated superannuation fund must obtain the member's written consent before deducting advice fees from the member's superannuation account under a non-ongoing fee arrangement. The trustee will require a consent form to be completed before deducting the fees (e.g. annually).

The written consent requirements to deduct advice fees from super under a non-ongoing fee arrangement are similar to those for an ongoing fee arrangement, but there are some differences.

However, you need to consider the following when determining the requirements.

- Many product issuers do not have the capability for an end date for the deduction of fees. Even if you have a fixed term arrangement with the client, the product issuer may view it as an ongoing fee arrangement, and therefore require the consent form to meet the requirements for an ongoing fee arrangement. This could negate the benefit of not being required to provide an FDS.
- Under the fixed term arrangement fees must be switched off if the client does not agree to a new term and provide a new consent form. The fee must cease at the end of the fixed term. You will not have the benefit of a renewal period in which to obtain consent.

Is there a Regulatory Guide?

RG 245 has not yet been updated or replaced with a new regulatory guide. It is unclear whether much of the current guidance in relation to FDS will remain.

Where can I get more information?

We recommend you visit the RegPlanner page on Centrepoint Connect for information on this and other legislation. This Information Sheet is based on our current understanding of the legislation but may change as further guidance becomes available.

Contact professionalstandards@cpal.com.au for additional queries.