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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

[HOUSE OF REPRESENTATIVES/SENATE]

TREASURY LAWS AMENDMENT BILL 2025: DELIVERING BETTER
FINANCIAL OUTCOMES

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Presentation note

For consistency and ease of presentation, the package is presented as one document. However, the government has announced its intention that the content in this package would be combined with legislation to modernise the best interests duty and introduce a new class of adviser before being introduced to Parliament as a single package. The whole package works together to expand access to affordable, quality financial advice.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
CAR	Client Advice Record
Corporations Act	<i>Corporations Act 2001</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SOA	Statement of Advice

Chapter 1: Delivering Better Financial Outcomes

Outline of chapter

- 1.1 The Bill contains amendments to the SIS Act and the Corporations Act to reform financial advice rules in relation to the provision of a client advice record and provision of advice through superannuation.

Context of amendments

- 1.2 Following the 2019 *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, the Government commissioned an independent review to consider how regulatory settings could better enable access to high quality, accessible and affordable financial advice for retail clients (the Quality of Advice Review). The final report, which was provided to Government on 16 December 2022, made 22 specific recommendations.
- 1.3 The first tranche of reforms was progressed in the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*, which implements 11 of the Government's response to these recommendations. That package of reforms included amendments to improve the process of providing financial advice by providing legal certainty for the payment of adviser fees from a member's superannuation fund account, removing onerous red tape that adds to the cost of advice with no consumer benefit, and improving consent requirements for certain insurance commissions.
- 1.4 This Bill implements the next tranche of the Delivering Better Financial Outcomes reforms through amendments that:
- clarify when advice relates to a financial product that is a beneficial interest in the superannuation fund, for the purposes of collectively charging for that advice;
 - facilitate certain superannuation funds to send targeted superannuation prompts to classes of members; and
 - reform statements of advice to create a new client advice record that supports consumers to make informed decisions about the advice.
- 1.5 The Delivering Better Financial Outcomes reforms are intended to support the increased delivery of high quality, accessible and affordable financial advice for retail clients through clearer and more streamlined regulatory requirements.

Financial Advice Through Superannuation

- 1.6 In response to recommendation 6 of the Quality of Advice Review, the Government announced that, as part of its Delivering Better Financial Outcomes reforms, it would clarify the topics that superannuation funds can charge for advice on and the circumstances they can consider in providing advice about a member's interest in the fund.
- 1.7 Section 99F of the SIS Act sets out rules for collective charging by trustees of a regulated superannuation fund. Collective charging refers to advice fees that are charged across multiple members of the superannuation fund, rather than individually charged to specific members. One of the existing requirements is that a trustee must not collectively charge for advice that relates to a financial product that is not a beneficial interest in the fund (or related product).
- 1.8 The Bill creates a framework to clarify the scope of this prohibition and provide guidance to trustees about when advice is or is not taken to relate to a financial product that is a beneficial interest in the superannuation fund. This collective charging framework will work in conjunction with the framework in relation to charging against an individual member's interest in the superannuation fund for financial advice (member-deducted advice) implemented by the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.
- 1.9 Whilst the Bill provides greater clarity to trustees regarding the types of personal advice that will relate to a beneficial interest in the fund, trustees are also expected to exercise their judgement in relation to their existing obligations and requirements when collectively charging for personal advice. The requirements under the SIS Act and related Regulations include other charging rules, the best financial interests duty, the sole purpose test and the requirement to share costs in a fair and reasonable manner across members of the fund.
- 1.10 The Bill also includes amendments so trustees of MySuper products are able to charge advice fees in accordance with arrangements between members and third parties or in accordance with the terms of a written request or written consent of the member. These amendments are consequential to the amendments made by the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*. The amendments ensure that the MySuper rules in relation to advice fees are consistent with the member-deducted advice framework implemented by the first tranche of the Government's Delivering Better Financial Outcomes package of reforms.

Targeted Superannuation Prompts

- 1.11 Some aspects of the superannuation system require members to make active decisions, such as switching from accumulation to retirement products when they retire. Recent reviews, such as the Quality of Advice Review and the

Retirement Income Review, noted that members can benefit from information, advice and guidance about their superannuation and retirement options. However, the reviews found that many members do not engage with their superannuation account and may not know when it is appropriate to do so. As part of the Delivering Better Financial Outcomes reforms, these amendments intend to facilitate meaningful communication between superannuation funds and their members to encourage members to engage with their superannuation at, or near, key decision points.

- 1.12 The law in relation to the provision of personal advice and general advice is not well suited to enabling superannuation funds to provide advice of a general nature through targeted prompts to groups of members. This uncertainty arises because even where the advice provided is general in nature, a reasonable person may assume that their fund has considered their objectives, financial situation and needs in providing the advice. This would therefore mean that the fund may need to comply with more rigorous requirements, or not be permitted to provide the advice, because it would be considered personal advice. Additionally, information that currently satisfies the requirements of the general advice provisions may not drive the uplift in member engagement that could lead to better outcomes in retirement, due to its lack of personalisation.
- 1.13 The Bill addresses this limitation by creating a framework for trustees of certain superannuation funds to send targeted superannuation prompts to members. To ensure members are protected, the framework will include a requirement to develop an assessment framework before sending any targeted superannuation prompts, which will involve identifying the targeted group, considering the appropriateness of the advice for the group and taking steps to identify and manage any risks. If the trustee complies with the provisions relating to targeted superannuation prompts, the law provides clarity that the targeted superannuation prompt is not personal advice.
- 1.14 The new framework will reduce uncertainty and allow superannuation funds to deliver prompts that are targeted to groups of members, as opposed to generic information that might be discarded for being perceived as irrelevant. This will allow the prompts to better support member engagement and decision-making regarding superannuation, particularly at key life stages. As the advice will be generalised for a specific class of members, trustees may also include a recommendation that members consider obtaining personal advice to ensure that any advice in a prompt is right for them. Receiving prompts about a key decision-point may be an opportunity to drive better uptake of personal advice offerings – either independent of the fund or offered by the fund – to help the member make optimal decisions.

Client Advice Records

- 1.15 A Statement of Advice (SOA) is a document that provides or records personal advice given to a retail client. An SOA is intended to ensure consumers receive

a record which would enable them to make informed decisions about whether to act on the advice.

- 1.16 The Quality of Advice Review found that current SOA requirements are onerous and complicated resulting in overly legalistic SOAs that are not specific to a client's advice needs. While SOAs are intended to be flexible, the Review found that advisors often provide clients a large volume of information to demonstrate that they had met their legislative obligations. The document is therefore often too lengthy and complex to be useful for the client, and the time to prepare such a detailed document adds significantly to the cost and regulatory burden of providing personal advice.
- 1.17 Recommendation 9 of the Quality of Advice Review suggested that the requirement to provide an SOA or record of advice be replaced with the requirement for providers of personal advice to retail clients to maintain complete records of the advice provided and only provide written advice on request by the client.
- 1.18 However, in further consultations, stakeholders indicated that abolishing SOA requirements would create regulatory uncertainty and pose greater risk for consumers. In its response to the Quality of Advice Review, the Government committed to replacing the current SOA requirements with a requirement for advisers to give the client a clear, concise and fit-for-purpose advice record.
- 1.19 This Bill replaces SOAs with a principles-based, technologically-neutral record that is in plain English and supports the client to make an informed decision about the advice. Licensees and authorised representatives will keep appropriate records on file to demonstrate their compliance with legislative requirements, but this information does not need to be provided to the client unless requested, in line with the *Privacy Act 1988*. The intention is to reduce the cost of providing advice while ensuring clients receive helpful and accessible information that allows them to make informed financial decisions.

Schedule 1 – Advice Through Superannuation

1.20 Schedule 1 of the Bill inserts new subsections into the SIS Act to:

- clarify that advice will relate to a financial product that is a beneficial interest in the superannuation fund, if it is given in the circumstances prescribed by the regulations, for the purposes of collective charging;
- clarify that trustees can assist members implement collectively charged advice without breaching the ongoing advice prohibition; and
- align the definition of advice fee in relation to MySuper products with the MySuper charging rules and requirements for member-deducted advice.

Collectively Charged Advice – Beneficial Interest in the Superannuation Fund

1.21 Subparagraph 99F(1)(c)(ii) of the SIS Act prohibits trustees from collectively charging for advice to the extent that it is related to a financial product that is not a beneficial interest in the superannuation fund. This Bill inserts new subsections into the SIS Act to clarify the scope of this prohibition.

1.22 The policy intent of the amendments is to allow superannuation funds greater flexibility to provide their members with simple and cost-effective advice about retirement, in addition to the collectively charged advice they already provide.

1.23 Advice that is provided under circumstances prescribed by the relevant regulations is taken to be related to a financial product that is a beneficial interest in the superannuation fund. Trustees can therefore collectively charge for the provision of such advice, providing they comply with other relevant requirements such as the best financial interests duty and requirement to share costs in a fair and reasonable manner across members of the fund.

1.24 The regulations can prescribe circumstances such as the:

- advice topic;
- person to whom the advice is provided; and
- personal circumstances of that person that the trustee takes into account in providing this advice.

- 1.25 The matters prescribed by the regulations, which may include advice topics such as superannuation contributions, investment options, insurance held through super and retirement income are not an exhaustive list as to when advice will or will not be taken to relate to a beneficial interest in the superannuation fund. Advice may meet the requirements for collective charging, even if it is not given in circumstances prescribed by the regulations. The regulations are intended to provide trustees with guidance around the scope of what a beneficial interest in the superannuation fund is, for the purposes of collective charging.
- 1.26 For example, it is envisaged that the regulations may provide that advice about drawdowns from account based pensions is a topic that is taken to relate to a beneficial interest in the fund. The regulations may also provide that the member's personal circumstances, such as assets outside superannuation, mortgage repayments and spouse's income, are able to be considered in determining the advice for the recommended level of drawdowns. As the account based pension is a beneficial interest in the superannuation fund, the trustee can collectively charge for the advice provided they determine that collectively charging for that advice is a service in the best financial interest of members. While the advice can consider the member's personal circumstances, the advice must relate to the beneficial interest in the fund, and therefore not make any recommendations about those other matters.
- 1.27 There will be circumstances where advice may relate to a beneficial interest in the superannuation fund, but it will be inappropriate to collectively charge for advice. For example, a member may contact their super fund for advice regarding a change to their insurance. The advisor would consider the member's personal circumstances, and in doing so determine that the member's advice needs are complex. Whilst the advice topic, insurance held through superannuation, relates to a beneficial interest in the superannuation fund and personal circumstances can be considered when providing the advice, because the advice is complex and therefore costly, the trustee may determine the advice in this instance cannot be collectively charged as it is not in the best financial interest of members. Instead, the trustee informs the member the advice should be charged as member-deducted advice.
- 1.28 A beneficial interest in the superannuation fund is not constrained to advice about the member's specific beneficial interest. For example, the advice could be to an existing member to consider whether another product offered by the fund would be suitable to that member.
[Schedule 1, items 7 and 8, heading of section 99F and subsections 99F(1A) and (1C) of the SIS Act]
- 1.29 The regulations may also prescribe circumstances under which advice is taken to relate to a financial product that is not a beneficial interest in the fund for the purposes of collective charging. Therefore, if the advice is about a topic, provided to a person, or in providing the advice, the trustee takes into account personal circumstances prescribed by the regulations for the purpose of

subsection 99F(1B), trustees are prohibited from collectively charging for that advice. For example, the regulations may provide that a trustee cannot provide personal advice to a member in relation to property and collectively charge for the advice, as property does not relate to a beneficial interest in the fund. However, as outlined in the earlier example, a trustee may take into account that the member is a property owner when providing financial advice about retirement drawdown strategies, and collectively charge for that advice.

[Schedule 1, item 8, subsection 99F(1B) of the SIS Act]

- 1.30 These amendments provide trustees with certainty around the legislative grounds to collectively charge for advice about a beneficial interest in the superannuation fund by clarifying the scope of the prohibition under paragraph 99F(1)(c)(ii) of the SIS Act. Nevertheless, trustees must continue to comply with the other collective charging rules and the existing obligations around the provision of personal advice, which are not amended by this Bill. These include the prohibitions about advice provided to members that have not acquired a beneficial interest in the superannuation fund and advice that relates to certain consolidation matters, such as whether the member should consolidate their superannuation holdings in two or more superannuation entities into one account. Trustees must also continue to perform their duty and exercise their powers in the best financial interests of members and comply with the sole purpose test.

[Schedule 1, item 8, note to subsection 99F(1) of the SIS Act]

Implementation of Advice

- 1.31 Subparagraph 99F(1)(c)(iv) of the SIS Act prohibits trustees from collectively charging for the provision of ongoing advice, which includes monitoring whether the initial advice has been implemented and the results of implementation. This Bill clarifies that trustees are able to implement, or assist members to implement, the initial advice or any later advice, without breaching this prohibition. Such assistance does not constitute further advice being provided as part of an ongoing advice arrangement. However, implementation or assistance by the trustees cannot involve the provision of a new recommendation or statement of opinion that is discrete from the initial advice the trustee provided or about a separate matter from the initial advice. For example, trustees could provide a link in the advice to a relevant application form or help facilitate communication with a third party.

[Schedule 1, item 8, subsection 99F(1D) of the SIS Act]

MySuper Advice Fees

- 1.32 The Bill also amends the definition of advice fee and the charging rules in relation to a MySuper products to also include a fee that relates directly to costs incurred by the trustee of a superannuation entity because of the provision of financial produce advice to a member:
- in accordance with the terms of a written request or written consent of the member; or
 - in accordance with an arrangement entered into by the member.
- 1.33 The amendments align the MySuper charging rules with the general charging rules for advice fees in section 99FA of the SIS Act.
- 1.34 The amendments to the definition of advice fee ensures that the definition captures any arrangements to provide financial advice entered into by members, which can include an arrangement for a third-party financial adviser to provide advice about their MySuper product.
[Schedule 1, items 1 to 5, subsection 29V(8) of the SIS Act]
- 1.35 The inclusion of the requirement that advice fees must be charged in accordance with the written request or written consent of the member ensure these MySuper rules operate consistently with the requirements that must be met for trustees to charge advice fees against individual members' interest in the superannuation fund at section 99FA of the SIS Act. The other MySuper charging rules remain the same, including the restriction on ongoing fee arrangements.
[Schedule 1, item 6, paragraph 29VA(9A) of the SIS Act]

Schedule 2 – Targeted Superannuation Prompts

- 1.36 Schedule 2 to the Bill inserts a new subsection into the Corporations Act to stipulate that a recommendation or statement of opinion in a targeted superannuation prompt is not personal advice.
- 1.37 The Bill also inserts a new division into the Corporations Act that:
- sets out the components of a targeted superannuation prompt;
 - creates consumer protections in relation to developing and giving targeted superannuation prompts; including assessment and record-keeping obligations for trustees;
 - enables members to elect to not receive targeted superannuation prompts for a specified period of time;
 - creates obligations on trustees to monitor the effects of the targeted prompts superannuation trustees send out; and
 - provides ASIC with the ability to declare that certain trustees cannot provide targeted superannuation prompts.

Personal Advice Carve Out

- 1.38 These amendments clarify that a recommendation or statement of opinion that is contained in a targeted superannuation prompt that meets all the legislative requirements, is not classified as personal advice. Such advice is therefore subject to the requirements in relation to the provision of general advice, and will satisfy the requirements relating to general advice if the relevant requirements under the new Division are complied with.
- 1.39 However, if advice is provided in a document that does not satisfy all the legislative requirements to be a targeted superannuation prompt, this carve out will not apply. Depending on the circumstances, it is therefore possible that this advice will constitute as personal advice, the provision of which must satisfy the existing obligations and requirements. If trustees fail to satisfy these obligations and requirements, they will be subject to the relevant penalties as set out in the Corporations Act for the provision of personal advice.
- [Schedule 2, item 4, subsection 766B(3B) of the Corporations Act]***

Applicable Superannuation Entities

- 1.40 Only trustees of superannuation funds with two or more beneficiaries or exempt public sector superannuation schemes can send targeted superannuation prompts.
- 1.41 The provisions exclude registrable superannuation entities that are pooled superannuation trusts, excluded approved deposit funds (as defined by the SIS Act) or entities with fewer than two beneficiaries. Pooled superannuation trusts are used as investment vehicles and therefore do not have individual members; while excluded approved deposit funds only have one beneficiary. Targeted superannuation prompts are designed to support trustees to communicate with members at a group level (classes of members), rather than one-on-one communication with individual members. Self-managed superannuation funds are also not captured by this new division.
[Schedule 2, item 7, section 949C of the Corporations Act]

Superannuation-Related Advice

- 1.42 Targeted superannuation prompts can only contain financial product advice that is superannuation-related advice. This is defined as a recommendation or statement of opinion that is about any of the matters set out in subsections 950A(1) and (2). If a document contains advice that is not superannuation-related advice, as defined below, it will not be a targeted superannuation prompt. Such advice may therefore be classified as personal advice.
[Schedule 2, items 3 and 7, section 9, paragraph 950(1)(b) and section 950A of the Corporations Act]

Transferring Interests to Other Kinds of Superannuation Products

- 1.43 Superannuation-related advice can be about the transfer of some or all interests in the superannuation fund to other kinds of superannuation products.
- 1.44 Targeted superannuation prompts are intended to promote meaningful engagement between members and their superannuation fund, to ensure they are making decisions that optimise retirement outcomes. It is not intended that targeted superannuation prompts are to be used as methods to advertise particular products. Superannuation-related advice must therefore be strategic advice about the types of superannuation products that are suited to the class of members, rather than specific individual product offerings by the superannuation fund. To comply with this requirement, trustees will need to refer to types of products, and their common characteristics, in generality. For example, if a trustee of a superannuation fund chooses to prompt a class of members entering the retirement phase that they should consider annuitising a portion of their balance to deliver more consistent income in retirement and provide longevity risk protection, the fund must refer to annuities and the

characteristics and benefits of annuities in general. The fund would not be permitted to refer to or specifically recommend X annuity product. The recommendation of a specific product also constitutes excluded advice, further discussed below.

- 1.45 This limitation is intended to address the risk of superannuation funds using the provisions to advertise products as opposed to providing genuinely useful and strategic advice to members. It also lowers the risk that members act without due consideration of the recommendation they receive. Trustees are, however, able to provide advice through targeted superannuation prompts about the particular product that members have an interest in or the settings that relate to those interests (discussed below).

[Schedule 2, item 7, paragraphs 950A(1)(a) and (e) and subsection 950A(2) of the Corporations Act]

Settings in Relation to Existing Interests

- 1.46 Targeted superannuation prompts can also be about the settings of existing interests that the members have in the superannuation fund. The recommendation or statement of opinion may be about the characteristics or options in relation to that particular product that:

- relate to making contributions to those existing interests;
- relate to the level or levels of cover under life risk insurance products issued to the trustee or trustees for the benefit of members of the superannuation fund;
- relate to the rates of payment for superannuation income streams from those existing interests;
- relate to changing investment options offered within a class of interests, for example changing between balanced and high-growth investment options; or
- are prescribed by the regulations.

- 1.47 For example, a class of members in the retirement phase who are drawing down the legislated minimum amount from an existing account-based pension interest may be prompted by their superannuation fund to consider if the minimum amount is meeting their financial needs. The prompt could contain advice on whether, based on the class of members they belong to, this is a suitable drawdown rate and the benefits and risks of changing their drawdown rate. This type of prompt may be accompanied with a recommendation that members consider obtaining financial advice. It would also contain the required warnings, discussed below.

[Schedule 2, item 7, paragraph 950A(1)(b) of the Corporations Act]

Benefits of Obtaining Personal Advice and other advice

- 1.48 As prompts are unlikely to account for the unique circumstances for every individual member of a class, trustees may also include recommendations or statements of opinion that are about the benefits to a class of members to whom the targeted superannuation prompt will be sent (the recipient class) in obtaining personal advice.

[Schedule 2, item 7, paragraph 950A(c) of the Corporations Act]

- 1.49 A prompt may also be given in relation to a member's existing interest in the fund. This provision is intended to allow prompts to be given on matters not covered by the above criteria that relate to the member's existing interest in the fund.

[Schedule 2, item 7, paragraph 950A(d) of the Corporations Act]

Examples

- 1.50 Permissible targeted superannuation prompts may include the following examples:

- a prompt to members over the age of 65 still in accumulation phase, highlighting the tax benefits that may be available if they were to move their interest into the retirement phase;
- a prompt to members approaching retirement on retirement income solutions, including combinations of retirement product types, that could be suitable for members of that class;
- a prompt to members drawing down the legislated minimum amount from an account-based pension comparing their drawdown rate with the superannuation fund's recommended drawdown range for that selected class. The prompt may also include a recommendation to obtain personal advice (and can include details of an advice service provided by the fund);
- a prompt to members whose investment choice appears out of step with people of similar age or similar balance size to consider making changes to their investment options, combined with a recommendation to obtain personal advice if they wish to do so.

Prompts which are not targeted superannuation prompts

- 1.51 Not all prompts which superannuation funds send will contain financial advice. For example, a prompt by a superannuation fund alerting members who do not have a death benefit nomination to the benefits of making a binding death benefit nomination is not financial advice and therefore would not be subject to

the rules for providing a targeted superannuation prompt. Similarly, advising members of the existence of any tools the fund provides, such as superannuation calculators and retirement estimates is factual, and also not subject to these rules.

Excluded Advice

- 1.52 Targeted superannuation prompts cannot contain any excluded advice. Excluded advice is a recommendation or statement of opinion that:
- is not superannuation-related advice which is appropriately targeted to a class of members of the fund;
 - requires the recipient to act on the recommendation or statement of opinion within a specified period or before a specified time; or
 - is prescribed by the regulations.
- 1.53 The excluded advice provision is an important safeguard to ensure that targeted superannuation prompts are limited to superannuation-related advice which members would benefit from at, or near, key points of their superannuation life cycle. Advice will be excluded advice if it is not appropriately targeted to the class of members. This is important to ensure that these provisions are not used to give irrelevant or unhelpful advice to members. A targeted superannuation prompt must also not require the member to take action within a specified time period, to ensure that prompts are not used to pressure members into taking some action, since the advice will necessarily be of a general nature. The regulations can prescribe further excluded advice to address any additional risks or new products or settings that are not considered appropriate for targeted superannuation prompts.
[Schedule 2, items 1 and 7, section 9, paragraph 950(1)(c) and subsection 950(3) of the Corporations Act]
- 1.54 Targeted superannuation prompts are also subject to anti-hawking provisions in the Corporations Act and the *Spam Act 2003* (the Spam Act) under the relevant circumstances when the prompt satisfies the conditions of an ‘commercial electronic message’, or the prohibited communications captured by the Spam Act.

Advice is Appropriately Targeted

- 1.55 To ensure that targeted superannuation prompts are sent in a principled and consistent manner, the superannuation-related advice in a prompt must be appropriately targeted to the recipient class. This obligation is satisfied if the requirements in paragraphs 950B(a) to (c) are fulfilled. This is an ongoing requirement, and will apply each time that the prompt is sent to a person. As such, if there are material changes or reasons for the trustee to consider the advice is no longer appropriate for the class, they will no longer satisfy this

requirement. If the superannuation-related advice is not appropriately targeted to a class of members, the document within which it is contained will not be a targeted superannuation prompt. This advice may therefore constitute personal advice.

[Schedule 2, items 1 and 7, section 9, paragraph 950(1)(b) and section 950B of the Corporations Act]

Assessment Framework

- 1.56 The first requirement for superannuation-related advice to be appropriately targeted to a class of members, is that the trustee must have prepared an assessment framework before the first time they send out a targeted superannuation prompt containing that advice.

[Schedule 2, item 7, paragraph 950B(a) of the Corporations Act]

- 1.57 An assessment framework will be required if the trustee:

- intends to give particular superannuation-related advice (which will be set out in the assessment framework) to a selected class that consists of at least two members; and
- selects the class of members (which will be set out in the assessment framework) on a reasonable basis; and
- is reasonably satisfied that the superannuation-related advice (which will be set out in the assessment framework) is appropriate for that selected class.

[Schedule 2, item 6, paragraphs 950C(1)(a) to (c) of the Corporations Act]

- 1.58 An assessment framework is a written document that sets out:

- the superannuation-related advice that is intended to be included in the targeted superannuation prompt;
- the class of members to which the targeted superannuation prompt will be sent and how the trustee selected that class of members;
- the basis on which the trustee is reasonably satisfied that the superannuation-related advice is appropriate for that class;
- the trustee's or trustees' assessment of the likely objectives, financial situation and needs of the members of the class;
- the trustee's or trustees' assessment of the risks for the recipient class relating to the superannuation-related advice contained in the targeted superannuation prompt, and the steps (if any) the trustee has taken or will take to manage those risks;

- how the trustee or trustees intend to give the targeted superannuation prompt (for example, the communication method to be used);
- when the trustee or trustees intend to give the targeted superannuation prompt (this may be a specified time, a period of time or on or after a specified day); and
- how the trustee or trustees intend to monitor the effect of the targeted superannuation prompt on the behaviour of the members to whom it is given.

1.59 This assessment only needs to be undertaken once prior to the targeted superannuation prompt first being sent out to a member of the class identified in the assessment framework. Trustees are not required to prepare an assessment framework each time this same prompt is subsequently sent out to members of the same class within the period specified in the assessment framework. For example, superannuation entities may employ automated systems that send out a particular targeted superannuation prompt on an ongoing basis each time a member meets the requirements to be assigned to a particular class.

1.60 However, after trustees have developed a recipient class of members, there is an ongoing obligation on them to take reasonable steps to ensure that the person to whom each targeted superannuation prompt is sent belongs to the class before sending the prompt to them.

1.61 Trustees would be required to update the assessment framework where they intend to change or update the advice contained in the prompt so it is materially different from the original advice. Trustees would also need to update the assessment framework if they intend to make changes to the class of members to whom the prompt is sent, and this class of members is materially different from the class in the original assessment framework. For example, where a trustee makes a decision to alter the design of the class from members aged between 45 and 55 to a new age range, they would need to update the assessment framework prior to commencing the new prompt.

1.62 If trustees fail to prepare an assessment framework prior to sending out advice to a class of members, that superannuation-related advice will not be appropriately targeted to the class of members.

[Schedule 2, items 1 and 7, section 9, subsections 950C(2) and 950C(3) of the Corporations Act]

1.63 The assessment framework is intended to ensure that trustees have sound grounds to send targeted superannuation prompts to members before they do so. This requirement will also serve as an important record and evidence the decision-making behind each targeted superannuation prompt that is sent (record-keeping obligations are further discussed below).

Selecting Classes of Members

- 1.64 Before sending out a targeted superannuation prompt, trustees must have selected the recipient class on a reasonable basis. The assessment framework is only valid if this obligation is discharged. The assessment framework can therefore be utilised as a tool to document the basis for selecting the class. Trustees should be satisfied that members of the prospective class have similar circumstances or needs, so it is reasonable to send them uniform advice. Trustees can make this assessment based on their consideration of the following matters:
- the members' ages;
 - the members' incomes;
 - the members' superannuation balances;
 - whether the members own property;
 - the members' relationships
 - a beneficial interest in the superannuation fund; or
 - any other matter the trustee considers relevant.
- 1.65 Such an assessment is by its nature based on high-level characteristics rather than the specific individual circumstances of members. However, the process of selecting classes of members should be robust and with a clear eye towards creating classes that meaningfully differentiate between other classes of members, so that prompts are well-targeted and useful for that particular class. Trustees should consider the content of the proposed prompt when considering the prospective class – a prompt of a more general in nature may be able to be sent to a wider class of members, compared with a prompt that contains more specific information and may only be suitable to some members based on age and superannuation balance.
- [Schedule 2, item 7, paragraph 950C(1)(b) and subsection 950C(4) of the Corporations Act]***
- 1.66 Trustees may consider sending prompts to classes of members they develop under the Retirement Income Covenant, provided those classes are constructed in a manner which meet the requirements for targeted superannuation prompts.
- 1.67 Trustees should utilise information they have about their members when developing classes. This does not preclude trustees from proactively gathering more information about their members over time, for example, through the use of surveys. Further, it does not preclude trustees actively confirming member information, to mitigate risks of assigning members to a particular class based on data which is incorrect or out of date.

Advice is Appropriate

- 1.68 Similarly, for an assessment framework to be valid, trustees must be reasonably satisfied that the relevant superannuation-related advice is appropriate for the recipient class. This should also be evidenced in the assessment framework. In making this assessment, trustees must consider the likely objectives, financial situation and needs of the people in the selected class of members. For clarity, trustees are only required to consider the objectives, financial situation and needs that are likely shared by members in the selected class. This does not require an assessment of a particular member's individual circumstances or unique characteristics that may not be shared across every member in the class. However, it is intended to be a holistic assessment that takes into account all of the objectives and needs that are likely to be shared by the class, both immediate and long-term. Trustees may also need to balance potentially conflicting objectives and needs depending on the selected class. For example, advice for a class of members that are not yet in retirement phase should balance the members' likely current financial needs and those for retirement. Prompts regarding contributions, therefore, would require trustees to consider whether the circumstances of the class of members, and thus their likely financial objectives during working life, as well as retirement, would be advanced by the proposed prompt.
- 1.69 As members approach preservation age, their objectives and needs will include drawing down their superannuation as income in retirement. Trustees are therefore required to consider the objectives in paragraphs 52AA(2)(a) to (c) of the SIS Act, which relates to their retirement income strategy, when developing the advice in the targeted superannuation prompt given to classes of members that are approaching or at retirement. These objectives are:
- to maximise the members' expected retirement income over the period of retirement;
 - to manage the following expected risks to the sustainability and stability of the members' retirement income over the period of retirement:
 - longevity risks;
 - investment risks;
 - inflation risks; and
 - and any other risks to the sustainability and stability of the retirement income; and
 - for members to have flexible access to expected funds over the period of retirement.

[Schedule 2, item 7, paragraph 950C(1)(c) and subsection 950A(3) of the Corporations Act]

Advice Continues to be Appropriately Targeted

- 1.70 For superannuation-related advice to be appropriately targeted to a class of members, the trustee must:
- believe, after taking reasonable steps, that the person to whom the prompt will be sent, belongs to the recipient class; and
 - continue to be reasonably satisfied that the superannuation-related advice in the prompt is appropriate for the recipient class.
- 1.71 After trustees have developed a recipient class of members, they must take reasonable steps to ensure that the person to whom the targeted superannuation prompt is sent belongs to the class before sending the prompt to them. Taking reasonable steps means at a minimum, trustees cannot send a targeted superannuation prompt to someone if they have no evidence indicating that they belong to the recipient class. Trustees should also not send prompts to a given member where they have received information that the member no longer belongs to that class.
- 1.72 This is an ongoing obligation for each targeted superannuation prompt. Even if trustees implement an automated system to send out targeted superannuation prompts, they must have processes in place to ensure that the recipient is a member of the relevant class of members at the time the prompt is sent.
- 1.73 Similarly, the requirement that the superannuation-related advice in a targeted superannuation prompt is appropriate for the recipient class is an ongoing obligation that trustees must satisfy before each time they send out that prompt. These requirements are intended to ensure that attention is given to whether the assessment framework and prompts continue to be appropriate for the class of members, and therefore the person, to whom it is sent. This is linked to the requirement for the assessment framework to consider any risks, and for the trustee to have a monitoring process in place.
- 1.74 The legislation contemplates that there may be minor changes to the advice or class of members over time, and this will not trigger the need to review the assessment framework. If the changes are minor and not material, the trustee may continue to rely on the assessment framework. For example, if stylistic changes or wording changed to address an ambiguity, but without changing the substance of the advice in a material way, this would not require a new assessment framework. However, if material changes are made to the advice or the class of members, then the trustee would need to do another assessment framework. The trustee must continue to be reasonably satisfied that the superannuation-related advice is appropriate for the recipient class, and the trustee should take account of learnings from monitoring and any other changes of circumstances or matters that may mean the advice may no longer be appropriate for that class.

[Schedule 2, item 7, subsection 950A(4) and paragraph 950B(c) of the Corporations Act]

- 1.75 Members can request trustees rectify incorrect information. They may do so by written notice after they receive a targeted superannuation prompt sent to a class of members which that particular member considers they have been assigned in error, based on incorrect information. Trustees should act promptly on such notifications to verify this claim. If the information identified in this written notice is in fact incorrect and the member continues to receive targeted superannuation prompts for that same class, the trustee may be found to have failed to take reasonable steps to ensure that all persons are correctly assigned to that class of members.

[Schedule 2, item 7, section 950H of the Corporations Act]

Statements and Warnings

- 1.76 Although trustees may consider the likely objectives, financial situation or needs of a class of members, the advice in targeted superannuation prompts is still based on aggregate group-level data, rather than an individualised assessment for each particular member. Therefore, to minimise the risk that members may misinterpret targeted superannuation prompts as personal advice, targeted superannuation prompts must prominently display the following statements and warnings:

- a statement that:
 - specifies the class of members to whom the targeted superannuation prompt is provided (the target class); and
 - explains why the recipient is a member of that class;
- a warning that the advice in the prompt is based on the broad characteristics of the target class, and does not take into account members' individual objectives, financial situation and needs. By displaying this warning in accordance with these requirements, trustees will have satisfied the obligation to provide a general advice warning in relation to the superannuation-related advice in the targeted superannuation prompt;
- a statement that the recipients of the prompt should, before acting on the advice contained in the prompt, consider whether to obtain personal advice;
- a statement that sets out:
 - the name and contact details of the superannuation entity giving the prompt;

- how the person can request for information held by the trustee to be corrected, if they believe it is incorrect; and
 - how the person can elect to not be given targeted superannuation prompts.
- 1.77 Trustees must display these statements and warnings at, or close to, the start of the information contained in the targeted superannuation prompt and must ensure that they stand out from the other information in the prompt.
- 1.78 Failure to include these statements and information in a document means that it does not meet the requirements for it to classify as a targeted superannuation prompt. The advice in this document therefore may be classified as personal advice.
- [Schedule 2, items 5, 6 and 7, note 2 to subsection 949A(2), paragraph 950(1)(d) and section 950D of the Corporations Act]***

Mode of Communication

- 1.79 Targeted superannuation prompts must be given through the following modes of communication:
- sending it to an address, including an electronic address, that is nominated by the member;
 - displaying it on a digital platform designed for the purpose of providing access to the person's superannuation account; or
 - some other method prescribed by the regulations.
- 1.80 If a document, or other form of written communication, is sent via a method that is not identified in the legislation, it does not meet the requirements for it to classify as a targeted superannuation prompt. Again, the advice in this document may also be classified as personal advice under such circumstances.
- [Schedule 2, item 7, paragraph 950(1)(e) and section 950E of the Corporations Act]***
- 1.81 This requirement intends to prevent targeted superannuation prompts being made through real-time interactions, for example phone calls. This exclusion seeks to facilitate time for members to consider the advice in the targeted superannuation prompt and whether to obtain personal advice before acting on it. Prompts should not be provided through modes of communication where there is an expectation for members to immediately respond, as this would be covered by the anti-hawking regime in the Corporations Act. The regulations may prescribe other methods of communication as technology develops.

Monitoring Requirements

- 1.82 In addition to requirements trustees must satisfy before sending out each individual targeted superannuation prompt, the amendments introduce an overarching ongoing obligation for trustees to monitor the effects of the targeted superannuation prompts they send.
- 1.83 Trustees must monitor member behaviour concerning their interest in the fund (such as making changes to their account), and other interactions that are related to their interests in the superannuation fund (such as requesting further advice from the entity or scheme or making a complaint), at a class level. This does not encompass any behaviours or interactions beyond the superannuation fund or scheme, for example members seeking further advice from a third-party or making financial decisions outside of their superannuation interest. Trustees would not have oversight over such behaviours and therefore are not required to actively obtain or request such information from members to satisfy their monitoring obligation.
- 1.84 If a trustee or trustees fail to have a monitoring system, ASIC may make a declaration that the trustee or trustees must not give targeted superannuation prompts.
- 1.85 The assessment framework, monitoring and record-keeping requirements ensure that trustees must satisfy ongoing obligations to maintain the integrity of not only each individual targeted superannuation prompt that is sent out, but the overarching system that facilitates this capability. For example, if an automated system is utilised that automatically sends a prompt to a member that meets the requirements of a selected class, trustees are required to consistently ensure that this system remains fit-for-purpose and to address any risks that may emerge over time.

[Schedule 2, item 7, section 950G of the Corporations Act]

Opt-Out Requirements

- 1.86 Members are able to elect not to receive targeted superannuation prompts for a specified period of time by notifying the trustee in writing. This election is in force on the first business day after the date the trustee receives this notice.
- 1.87 If they do so, trustees cannot send that member a targeted superannuation prompt from the day the election is in force until the earlier of:
- the end of 5 years from this day; or
 - the day on which the member withdraws their election, or on a day that is specified in the notice of withdrawal (if any).

[Schedule 2, item 7, section 950J of the Corporations Act]

ASIC Declarations

- 1.88 ASIC has the power to declare that certain trustees are prohibited from giving targeted superannuation prompts if they have not complied with the requirements in the newly inserted Division or it has found that a trustee has not corrected information after being requested to do so by a member. ASIC may make such a declaration if it considers it reasonable, and in doing so, may have regard to whether the contravention is serious or systematic.
- 1.89 A declaration is effective until it is subsequently revoked by ASIC. This power provides an additional safeguard to protect consumers against breaches of the obligations. ASIC will consider the reasonableness of making such a declaration based on the circumstances, including with regard to whether the conduct is serious or systemic. This allows for a proportionate response, so that minor or inadvertent breaches of the trustees' obligations will not automatically give rise to a specific sanction. However, ASIC may take action if it considers in the circumstances that it would be appropriate.
- 1.90 If ASIC has made a declaration under this provision, any document that purports to be a targeted superannuation prompt will not be treated as such, and therefore will need to comply with relevant requirements regarding the provision of personal advice.
[Schedule 2, item 7, subsection 950(2) and section 950K of the Corporations Act]

Record-Keeping Obligations

- 1.91 Trustees that have sent targeted superannuation prompts must keep written records of basic information around the targeted superannuation prompts they have given. Records should include details of the day the prompt was given, the superannuation-related advice in the prompt, the target class, and persons to whom the prompt was given. After identifying and managing risks of a particular targeted superannuation prompt for the selected class, as part of the assessment framework analysis, trustees must keep written records of this assessment. These obligations intend to preserve the integrity of this framework, by ensuring that records are available to trustees and regulators to assess the efficacy and utility of the prompts that have been given. It will generally be sufficient for trustees to retain the assessment frameworks for each prompt to satisfy these record-keeping obligations.

- 1.92 These records must be retained for seven years from the day the targeted superannuation prompt was first given. The penalty for breaching these record-keeping obligations, as specified in Schedule 3 to the Corporations Act, are aligned with those for a failure by registrable superannuation entities to keep certain written financial records, being two years imprisonment for a fault-based offence and 60 penalty units for strict liability offence.
[Schedule 2, items 7 and 9, section 950F and table items and table items in Schedule 3 to the Corporations Act]

Schedule 3 – Client Advice Records

- 1.93 Schedule 3 of the Bill replaces the requirement to provide an SOA with a new requirement to provide clients with a Client Advice Record (CAR).
- 1.94 While the circumstances in which a CAR must be provided to a client remain the same as under the current SOA requirements, the presentation and content requirements are modified to ensure the CAR supports the client to make an informed decision about the advice provided. In line with the current arrangements for an SOA, a CAR may be the means by which the advice is provided or a separate record of the advice. This obligation is separate to the record-keeping and proof of compliance obligations discussed further below.
- 1.95 Record-keeping requirements are also modified to encourage a risk-based approach to keeping records that appropriately support the provider's ability to demonstrate their compliance with the Corporations Act. The record-keeping requirements are purposefully distinct from the CAR requirements to ensure that the CAR is focused on supporting the client to make decisions about the advice, rather than demonstrating the process the provider has performed to meet their regulatory obligations.
- 1.96 This contrasts with the SOA which can in practice contain information relevant to record-keeping and proof of compliance.

Replacing Statement of Advice with a Client Advice Record

- 1.97 Item 1 inserts a definition for 'Client Advice Record' which refers to section 946A. The definition remains the same as for an SOA but will be subject to the new content requirements outlined below.
- 1.98 If the providing entity does not provide a CAR, they will still be subject to a civil penalty under section 1317E.
[Schedule 3, item 1, section 9 – definition of Client Advice Record; items 20 and 21, section 946A (heading) and subsections 946A(1) and (2) of the Corporations Act]
- 1.99 The Bill updates reference to SOAs throughout Part 7.7 to now refer to a CAR.
[Schedule 3, item 5, subsection 766B(9)(subparagraph (a)(i) of the definition of exempt document or statement); item 7, subsection 921F(4); item 8, paragraph 940B(1)(a); item 9, subsection 940C(1); item 19, Subdivision C of Division 3 of Part 7.7 (heading); item 20, section 946A (heading); item 22, section 946AA (heading); item 23, subsection 946AA(1); item 26, section 946C (heading); item 28, paragraph 946C(3)(b); item 29, subsection 946C(3); item 31, paragraph 951A(b); item 63, paragraphs 985G(3)(a)-(e) of the Corporations Act]

- 1.100 The obligations regarding CARs continue to be dealt with in Division 3 of Part 7.7 of the Corporations Act. Item 18 inserts section 944, which provides a simplified outline of Division 3, outlining the requirement to provide a CAR and the purpose of a CAR. The simplified outline is intended to assist readers to understand the substantive provisions and is not comprehensive.
[Schedule 3, item 18, section 944 of the Corporations Act]
- 1.101 The requirement to feature the words ‘Client Advice Record’ prominently is to support the client to understand that they are being given a copy of their advice record. For example, an audio-recording of a CAR is intended to be compliant if it features the words ‘Client Advice Record’ at the start of the recording.
- 1.102 The contents of the CAR must be expressed and presented in a manner that, having regard to clarity, conciseness and effectiveness, is fit for the purpose of assisting the client to make an informed decision on whether to act on the advice as a retail client.
- 1.103 These requirements are intended to bring a client-centred focus to the CAR and allow providers to have flexibility in providing it in a way that is responsive to the client’s needs. It is meant to be technologically neutral as a CAR does not need to have the form of a written statement.
- 1.104 The type and format of information provided in the CAR is expected to vary depending on the specifics of the situation, such as the complexity of the advice, to reduce the compliance burden on the provider. For example, a written document may be appropriate when providing comprehensive advice with complex client circumstances to support the client’s ability to understand and act on the advice. It may be appropriate to provide an audio recording or email when providing relatively simple limited or single-issue advice that is easy to implement with minimal client considerations.
- 1.105 Warnings provided under section 961H also do not need to be in the same format as a CAR, as was previously required for an SOA.
- 1.106 This is intended to give the provider flexibility over the format and amount of information provided in the CAR to support the client to understand the advice and decide whether to act on it.
[Schedule 3, item 30, sections 947A and 947B; item 62, subsection 961H(3) of the Corporations Act]

New content requirements

- 1.107 A CAR must include the following:
- the words “Client Advice Record” featured prominently (as outlined in section 947A),
 - the scope of the advice,
 - the advice,

- reasons for the advice, including how it meets the client's objectives, financial situation and needs,
 - cost of the advice to the client and benefits received by the provider, as outlined in below, and
 - the name and contact details of the providing entity as well as information on whether the providing entity is an authorised representative.
- 1.108 The policy intent behind these new content requirements is to focus the CAR on the information a client needs to make an informed decision. The level of detail provided in the CAR is intended to be scalable depending on factors such as the scope of the advice. The intent is to reduce the length of the CAR where appropriate to contribute to reducing the regulatory burden in providing advice.
- 1.109 The scope of the advice should clarify the agreed parameters surrounding the advice. For example, this could include the client's relevant circumstances that were included or excluded where it would be meaningful to the client when making a decision about the advice. It should also include the consequences in limiting the advice to the agreed upon topics.
- 1.110 The reasons for the advice requirement should be focussed on why the advice is appropriate for the client and leaves them in a better position, considering their relevant circumstances.
- 1.111 The details of the providing entity support the client to know who is providing the advice and inform potential dispute resolution processes.
[Schedule 3, item 30, section 947A, subsection 947C(1), and section 947E]
- 1.112 Disclosing the costs of the advice, and the benefits received and relationships that might reasonably influence the provider are intended to capture the full cost of the advice to the client and disclose factors that could influence the advice.
- 1.113 Where the advice recommends replacing a product with another, information needs to be disclosed about the consequences, such as the charges or loss of a benefit incurred by disposing of a product. This is intended to act as a consumer protection to ensure the client can make an informed decision about whether to act on the advice.
- 1.114 For the purposes of this section, costs and benefits cover the following:
- any remuneration or other benefit that the providing entity or any other person outlined in subsection 947C(2) is to receive that might influence or reasonably be expected to influence the advice,
 - any other interest or relationship that might affect the providing entity (as outlined in subsections 947C(3) and (4)),

- any charges or significant consequences, or an indication that these exist if the charges or consequences are not clear, the client may incur due to the advice in situations where the client is told to dispose, reduce, acquire or increase their interest in a financial product or a regulated superannuation scheme or fund, as outlined in subsections 947C(5)-(7).

[Schedule 3, item 30, subsections 947C(2)-(7)]

- 1.115 Subsections 947B(8)-(9) allow ASIC to determine via legislative instrument that remuneration, benefits, other interests or charges could be described through a percentage or via some other method if it would not be practicable to state the amount in dollars. This is intended to allow ASIC to determine an alternative method to state this information if producing it in dollar terms is an unreasonable burden on the provider, or if it is not useful for the client to inform their decision-making. This incorporates an existing power that ASIC had regarding SOAs.

[Schedule 3, item 30, subsections 947C(8)-(9) of the Corporations Act]

- 1.116 Subsection 947B(10) provides a regulation-making power which would be able to modify content requirements for a CAR. In particular, the regulations may require further detail on any of the requirements or potential exceptions to the requirements.

[Schedule 3, item 30, subsection 947C(10) of the Corporations Act]

- 1.117 There is flexibility to include other information in the CAR even if it is not related to the prescribed components. However, it must be expressed and presented in a manner that is fit for the purpose of assisting the client to make an informed decision on whether to act on the advice.
- 1.118 However, a CAR still should not be combined with a Financial Services Guide or Product Disclosure Statement.

[Schedule 3, item 30, sections 947E and 947F of the Corporations Act]

Timing

- 1.119 Item 27 outlines the timing requirements for providing a CAR, which is at the time or as soon as practicable after the advice is provided, and before any further financial services relating to the advice are provided. This includes any relevant warnings regarding advice based on incomplete or inaccurate information as outlined in section 961H.

[Schedule 3, item 27, subsections 946C(1) and (2); item 61, subsection 961H(3) of the Corporations Act]

Situations where a CAR is not needed

- 1.120 The Bill includes exceptions to the requirement to provide a CAR in certain situations:

- For small investments below a threshold amount prescribed by the regulations.
- Where a providing entity has previously given a client a CAR that takes into account the client's relevant personal circumstances, which have not significantly changed, and is now providing further personal advice.
- Advice relating to basic deposit products or non-cash payments relating to basic deposit products; and
- Advice where no recommendation has been made to buy or sell products.

[Schedule 3, items 22 to 24, section 946AA; item 25, sections 946B, 946BA, and 946BB of the Corporations Act]

1.121 The exceptions are consistent with the exceptions to the previous requirement to provide an SOA.

1.122 The Bill introduces a new definition for this exception called 'further personal advice'. The definition captures the situation that this exception applies to, as outlined in subsections 946B(2) and (3). Previously, regulation 7.7.10B of the Corporations Regulations had a definition of 'further advice' however, this phrase has been used in the Act in different contexts. The definition of 'further personal advice' is not intended to practically change the operation of the existing requirements in relation to 'further advice'.

[Schedule 3, items 5 and 10, section 9 – definition of further personal advice; item 55, paragraph 942B(2)(g); item 60, paragraph 942B(8)(a); item 65, paragraph 942C(2)(h); item 70, paragraph 942C(8)(a); item 75, paragraph 943N(a) of the Corporations Act]

1.123 Even in the above situations, the providing entity must still provide the following information (known as a record of advice) to the client when or as soon as practicable after the advice was provided:

- Any remuneration or other benefit that the providing entity or any other person outlined in subsection 947C(2) is to receive that might influence or reasonably be expected to influence the advice, and
- Any other interest or relationship that might affect the providing entity (as outlined in subsections 947C(3) and (4)).

[Schedule 3, item 24, paragraph 946AA(5)(b); item 25, subsection 946B(4), subsection 946BA(2), subsection 946BA(2) of the Corporations Act]

1.124 For small investments and further personal advice, the providing entity must also provide information about any charges, losses or consequences involved in the purchase or disposal of a certain product (as outlined in subsections 947C(5)-(6)).

[Schedule 3, item 24, paragraph 946AA(5)(b); item 25, subsection 946B(4) of the Corporations Act]

Record-keeping requirements

- 1.125 The amendments ensure that all record-keeping obligations are set out in the primary law. Currently, record-keeping obligations are outlined in ASIC Class Order 14/923, which is made under paragraph 926A(2)(c) of the Corporations Act. The amendments incorporate the contents of this instrument to the primary law under section 912G.
- 1.126 The modified record-keeping obligation encourages the CAR to be simpler and more client focused by separating it from other compliance and administrative information kept on file.
- 1.127 The record-keeping obligation is intended to be scalable and technologically neutral. In some cases, such as basic deposit products, it may require no or minimal additional records beyond the copy of whichever type of record or information was provided to the client. In some limited scope or simple advice circumstances, the additional records may be those generated in the process of developing the advice without requiring additional overlays or explanations as to which regulatory obligation that activity satisfied. In some instances, such as more comprehensive advice interactions, some bespoke files may be appropriate.
- 1.128 When deciding what additional records to keep and whether they contain adequate detail, providers are expected to exercise their judgement to ensure the records can support their ability to appropriately demonstrate their compliance with the requirements of the Act. This includes satisfying the best interests duty and other obligations.
- 1.129 If the provider is a financial services licensee, the records, information or documents must be kept for 7 years after the day the personal advice is provided, in a manner that is readily accessible to the licensee. If the provider is an authorised representative, they must keep records, information or documents for 7 years and provide these to the licensees if requested, regardless of whether they stop being authorised representatives in those 7 years.
- 1.130 The requirement for the materials to be readily accessible is intended to enable the provider to produce them when requested, such as by ASIC.
[Schedule 3, item 6, section 912G of the Corporations Act]

Penalties

- 1.131 Item 65 inserts a penalty for the record-keeping obligation of 50 penalty units if appropriate records under section 912G are not kept. This is because the record-keeping obligation is a core obligation and is intended to hold relevant

information for compliance purposes.

[Schedule 3, item 65, after table item dealing with subsection 912F(1) in Schedule 3 of the Corporations Act]

- 1.132 The remainder of the penalties in Schedule 3 and offences in Subdivision A of Division 7 remain the same, however with consequential amendments to update references to the new sections 946B, 946BA and 946BB which require a more limited record of advice and update references from an SOA to a CAR.
- [Schedule 3, item 32, subsection 952B(1) (paragraph (b) of the definition of defective; item 33, Subsection 952B(1) (paragraph(b) of the definition of defective; item 34, subsection 952B(1) (subparagraph (b)(ii) of the definition of defective); item 35, subsection 952B(1) (subparagraph (b)(iii) of the definition of defective); item 36, subsection 952B(1) (at the end of the definition of defective); item 37, subsection 952B(1) (paragraph (c) of the definition of disclosure document or statement); item 38, subsection 952B(1) (paragraph (d) of the definition of disclosure document or statement); item 39, subsection 952B(1) (at the end of the definition of disclosure document or statement); item 40, subparagraph 952E(2)(a)(i); item 40, subparagraph 952E(2)(a)(i); item 41, subparagraph 952E(2)(a)(iii); item 42, subparagraph 952F(1)(b)(i); item 43, subparagraph 952F(1)(b)(iii); item 44, subparagraph 952F(1)(c)(i); item 45, subparagraph 952F(1)(c)(i); item 46, subparagraph 952G(1)(b)(i); item 47, subparagraph 952G(1)(b)(iii); item 48, subparagraph 952G(1)(c)(i); item 49, subparagraph 952G(1)(c)(i); item 50, section 952J (heading); item 51, paragraph 952J(1)(a); item 52, paragraph 952J(1)(b); item 53, subsection 953A(1) (Paragraph (b) of the definition of defective; item 54, subsection 953A(1) (paragraph (b) of the definition of defective; item 55, subsection 953A(1)(subparagraph (b)(ii) of the definition of defective); item 56, subsection 953A(1) (subparagraph (b)(ii) of the definition of defective; item 57, subsection 953A(1) (at the end of the definition of defective); item 58, subsection 953A(1)(paragraph (c) of the definition of disclosure document or statement); item 59, subsection 953A(1) (paragraph (d) of the definition of disclosure document or statement); item 60, subsection 953A(1)(at the end of the definition of disclosure document or statement); item 66, table item dealing with subsections 946B(3A) of Schedule 3 of the Corporations Act]***
- 1.133 The amendments listed in Schedule 3 of the Bill apply to advice provided on or after the commencement date.
- 1.134 For the purposes of the provisions relating to further personal advice in 946B, the previous advice given could be an SOA provided before the amendments commence.
- [Schedule 3, item 64, section 1711A of the Corporations Act]***

Commencement, application, and transitional provisions

- 1.135 Schedules 1 and 2 to the Bill commence the day after Royal Assent. Schedule 3 commences 12 months from Royal Assent.
- 1.136 The amendments in Schedule 1 (advice through superannuation) apply to arrangements to provide financial product advice entered into on or after the commencement of that Schedule.
- 1.137 The amendments in Schedule 2 (targeted superannuation prompts) apply to a document given after commencement of that Schedule, though assessment frameworks may be prepared before the commencement date.
- 1.138 The amendments in Schedule 3 (client advice record) apply in relation to advice provided after the commencement of that Schedule.
