

Ongoing fee arrangements

Recommendation	Existing law	Summary of proposed reform	Comments
<p>Recommendation 2.1 – Annual renewal and payment</p> <p><i>These reforms also form part of other proposed reforms to limit advice fees in superannuation (see above).</i></p> <p>The law should be amended to provide that ongoing fee arrangements (whenever made):</p> <ul style="list-style-type: none">• must be renewed annually by the client;• must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and• may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts that account given at, or immediately after, the latest renewal of the ongoing fee arrangement.	<p>Ongoing fee arrangements (OFAs) must be renewed by the client every two years. Fee disclosure statements (FDS) must be given retrospectively summarising the previous year's fees charged to the client. Fees can be deducted with the general consent of the customer at the start of the OFA. For OFAs entered into pre-FOFA, a reduced disclosure regime applies with lesser penalties for non-compliance.</p>	<p>OFAs must be renewed by the client annually. FDSs must be given both prospectively, summarising the fees intended to be charged over the coming year, and retrospectively. Fees can only be charged with the specific consent of the customer which must be provided annually. All OFAs, including pre-FOFA OFAs, are subject to the new requirements.</p>	<ul style="list-style-type: none">• The FDS provisions are still drafted strictly, with no materiality threshold. All amounts in an FDS are required to be accurate, and any error results in an FDS not being provided. This is different to the defective Financial Services Guide or Product Disclosure Statement regimes which have specific materiality thresholds. This issue has caused significant problems in the industry and appears to continue with the new proposed regime.• The new consent provisions requiring a customer to specifically consent to fees being deducted every 12 months appear to be challenging to implement in practice and may cause the OFA regime to be more onerous on industry participants.