

## UNDERSTANDING THE FEE CONSENT ACCOUNT NUMBER ISSUE AND BREACH REPORTING OBLIGATION

ASIC's recent confirmation that cases of fee consent forms that are missing an account number could be considered to be reportable to ASIC as a reportable situation (a breach) has caused a lot of angst and confusion. Many members, advisers, licensees and product providers have responded to us, asking why this is necessary in light of the evident flaw in the law requiring an account number to be included on the client consent form for new accounts and the no action position that ASIC has already provided. This only applies to retail clients.

This is a really complex legislative matter that has caused a lot of confusion, so it might help if we go back to the building blocks of this to explain exactly what the situation is and how the law works. The recent Australian Law Reform Commission review of financial services law spoke to the incredible complexity and scale of the Corporations Act. This case helps to highlight the complete truth of this position.

We will address the following:

- The obligations with respect to Ongoing Fee Arrangements and fee consent.
- Actions seeking to resolve this problem.
- The implications for breach reporting (reportable situations).
- Understanding the applicability of any breach reporting exemptions.
- Recognising further complications and unresolved issues.

### Understanding the Obligations

The July 2024 Delivering Better Financial Outcomes Tranche 1 legislation significantly changed the opt-in, fee disclosure and fee consent obligations. This reform removed the Fee Disclosure Statement (FDS) obligation and sought to combine multiple consent form obligations, including the need to comply with the obligation to obtain consent to continue an Ongoing Fee Arrangement (opt-in or renewal) and the obligation to obtain consent for a fee to be deducted from a product account. It also included providing greater clarity about the ability to pay an advice fee from a superannuation account, which added a new obligation in the SIS Act. The goal was to simplify this regime and to streamline it. In practice, that has not been achieved and we now have duplication of forms and confusion. The legislative complications, such as the need to include an account number on a fee consent form for enabling the deduction of a fee from a product, even for new accounts, is a flaw in the law that has caused a significant regulatory burden for all parties.

This section of the law contains two primary obligations:

- A. To get clients to provide consent to the establishment and continuation of an [Ongoing Fee Arrangement](#). We will come back to this, however the definition of an Ongoing Fee Arrangement is important. The legislation around renewal of an Ongoing Fee Arrangement is set out in Sections 962F to 962J of the Corporations Act.

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- B. To get clients to provide consent when an ongoing fee is to be deducted from a product account that is not a credit card or a basic deposit product. The legislation around renewal of an ongoing fee arrangement is set out in Sections 962R to 962WA of the Corporations Act and Section 99FA of the SIS Act.

The difference between the above two obligations is important as they are separate obligations and with some clients, they may not both apply. This will be explained further below.

The definition of an [Ongoing Fee Arrangement](#) is based upon the term of the arrangement for which a fee is to be paid; which must be a period of more than 12 months. Importantly, 12 month fixed term agreements are not Ongoing Fee Arrangements and therefore the obligation to have clients renew and to get them to provide consent for the deduction of fees from product accounts largely do not apply (superannuation accounts are different, where consent to deduct fees is required for both ongoing and non-ongoing arrangements under Section 99FA of the SIS Act).

## Defining what needs to be in a client consent form

Noting that client consent form obligations apply in the case of renewing an Ongoing Fee Arrangement and in terms of obtaining client consent to deduct an ongoing fee from a product account, there are actually three legislative provisions that separately define what must be included in a consent form. These three separate requirements are as follows:

1. [Section 962G of the Corporations Act](#) sets out the requirements for client consent for the establishment and continuation of an Ongoing Fee Arrangement, including what must be contained within this form.
2. [Section 962T of the Corporations Act](#) sets out the requirements for the consent form for fees to be deducted from a product account (excluding a bank account or a credit card) under an Ongoing Fee Arrangement. Importantly, Section 962T includes an expectation that the adviser discloses all the information necessary to comply with Section 962G.
3. [Section 99FA of the SIS Act](#) sets out the requirements for financial advice fees for personal advice to be charged to a superannuation account. Importantly, the obligations are different, depending upon whether the fee is being paid under an Ongoing Fee Arrangement or a Non-Ongoing Fee Arrangement. Section 99FA includes the following obligation - if the arrangement under which the advice is provided is an Ongoing Fee Arrangement – the client consent form must meet any applicable requirements of Division 3 of Part 7.7A (which includes Sections 962G and 962T). Less requirements apply for Non-Ongoing Fee Arrangements.

The different requirements of these three separate sections are set out in detail in Appendix 1. However, the following table includes a summary of the obligations:

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| Category   | Client consent form for an Ongoing Fee Arrangement | Client consent form for deduction of advice fee from account | Comment  |
|--|--|--|--|
| Fee for period of 12 months or less and paid from bank account or credit card. | Not applicable, however some agreement is expected | Not applicable   |  |
| Fee for 12 months or less paid from a product account                          | Not applicable, however some agreement is expected | Yes for Super accounts, but not for investments              | Investment product providers may require some form of consent                          |
| Ongoing Fee Arrangement with fee paid from bank account or credit card.        | Yes  | No   | Given the fee is not paid from the product, the product provider will not need to know |
| Ongoing Fee Arrangement with fee paid from product account.                    | Yes  | Yes  |  |

## What is the problem and what have we done to resolve it?

The core problem is that Section 962T, requires that for an Ongoing Fee Arrangement, where a fee is paid from a product, that the account number needs to be included on the client fee consent form. In certain cases, such as a new account, this account number may not be available from the product provider at the time that the fee consent form is completed and signed by the client. The core issue is whether the fact that the account number is missing will invalidate the form.

The FAAA, along with others, reached out to Treasury from mid January 2025 to obtain guidance on this issue and seeking a solution to avoid a potential problem. Treasury in early February responded to suggest that it was the policy intent to include the account number, that resolving this issue would require changes to the primary law and that instead we should seek regulatory guidance from ASIC. We quickly approached ASIC to discuss potential solutions and clarification on the interpretation of the law. We put forward a couple of options and had a follow-up meeting with ASIC in mid April. They confirmed that they did not consider alternative options existed within the primary legislation and were definitive in terms of the need for the account number to be on the consent form when it is signed by the client. We highlighted the potential practical consequences of this interpretation, including the fact that this would potentially lead to the automatic termination of impacted Ongoing Fee Arrangements where the account number was not available at the time of the client giving their consent.

Specifically, [Section 962WA of the Corporations](#) states that an Ongoing Fee Arrangement terminates if a fee is deducted without client consent. It is a reasonable assumption that this section is triggered if the fee consent form is considered to be invalid, such as missing the account number.

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## ASIC no action – deadline 5 September 2025

On 6 June 2025, [ASIC issued a no action statement](#) with respect to the missing account number issue. This confirmed that they would take no action for the failure to have account numbers on fee consent forms as long as advisers entered into new Ongoing Fee Arrangements and clients signed a new fee consent forms by 5 September 2025 that covered the period where any fees were deducted under the non-compliant consent forms (for example, if the original invalid consent form covered the period 1 March 2025 to 28 February 2026, then the new form would need to cover the same period). This was evidently necessary as the consequence of Section 962WA was that the Ongoing Fee Arrangements were terminated if the fee consent form was invalid. Thus, new forms were required to be completed and signed by clients to renew the Ongoing Fee Arrangement and to provide consent for fees to be deducted from product accounts. The ASIC statement also expressed the position that where a new Ongoing Fee Arrangement and a valid fee consent form were not in place by the **5 September 2025 deadline**, that “the fee recipient must take steps to stop receiving fees”.

The no action position did not make mention of breach reporting, despite the fact that breach reporting was discussed as a consequence of this matter when we had met with them earlier. A further meeting was held with ASIC in late July at which time they confirmed that the no action statement did not provide relief from breach reporting, which would still be required.

## Breach Reporting Obligation

In terms of assessing this matter for breach reporting purposes, we are able to **exclude** the following scenarios:

- Non-Ongoing Fee Arrangements, such as 12 month fixed term agreements, where fee consent is not required.
- Cases where the fees were paid from credit cards and basic deposit accounts, which are specifically exempt.

That left all other cases involving Ongoing Fee Arrangements in the frame for breach reporting, however there were two additional possible exemptions to consider:

- A 2021 Regulation that excluded Subsections 962S(5) and (8) from mandatory reporting of civil penalty provision breaches under [Regulation 7.6.02A](#).
- A recently issued [ASIC relief notice](#) for certain breaches of civil penalty provisions, where the breach occurred on or after 27 June 2025, involved 10 or less clients, \$1,000 or less in client detriment and was remediated within 60 days of having occurred.

The problem with Regulation 7.6.02A, is that it only covers breaches of section 962S, and it does not include breaches of [Section 962Z](#), which is also a civil penalty provision:

*If an ongoing fee arrangement terminates for any reason, the fee recipient must not charge a fee that purports to be an ongoing fee under the arrangement.*

The problem with the applicability of ASIC’s 27 June 2025 relief notice is that this only applies to breaches that occur from that date, and we expect that most of the client fee consent account number breaches will have arisen before that date.

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Thus, the end outcome is that it looks likely that many licensees, particularly those operating on an Ongoing Fee Arrangement basis, will need to do breach reports for any fee consent forms that did not include the account number at the time of client consent. ASIC have confirmed that it is possible to leverage the group reporting option, which will involve an initial breach report, keeping the breach open and then doing a final update within 60 days. This group option will help to avoid doing individual breaches for each case.

This grouping option is described in [ASIC's Regulatory Guide 78 \(Breach reporting by AFS licensees and credit licensees\)](#) in the section under the heading of "When can multiple reportable situations be grouped together in a single report (the 'grouping test')". Please see RG 78.100 – 78.116.

## **Recognising further complications and unresolved issues**

The outcome of all of this is that advisers need to ensure that the account number is included on the fee consent form when signed by the client. For some product providers, a new account number may be available as part of the new business application process, however for others this is not the case. Where the account number is not available, the adviser will need to change their process to have the client come back to sign the client consent at a later stage. We understand that this is a very inefficient process and one that will add to the already costly exercise of providing financial advice.

The problem obviously includes new accounts. It will also include situations where the adviser recommends the client switch from one product to another, or where they transition a superannuation product from accumulation phase to pension phase and get a new account number. It is also likely to be a factor with matters like pension refreshes. It is unfortunately likely to be more common than initially thought, with much greater consequences.

Where one of these product changes happens during the course of a year, the adviser might need to put in place a new consent form to allow the deduction of fees from the new account. The problem here is that this might put the cycle for fee consent forms that are required to enable the deduction of fees from product accounts out of synch with the cycle for the renewal of an Ongoing Fee Arrangement. The Corporations Act allows for an anniversary date to be brought forward for an Ongoing Fee Arrangement, however it evidently does not allow the same flexibility for changing the period for an arrangement to deduct fees from a product account. That is another problem with DBFO Tranche 1, which we have reported to Treasury, however are still waiting for a solution.

## **Conclusion**

As a result of what we believe is a technical flaw in the DBFO legislation, a large number of advisers and licensees are doing extra administrative work to address the fact that consent forms have been submitted without account numbers. Licensees are doing a substantial number of breach reports relating to this matter, at great cost. Another big factor here is that despite the fact that this problem was known from around the time when the obligation commenced, there is no flexibility in this part of the Corporations Act for either the Minister or ASIC to fix it. This outcome should have been avoidable.

As set out above, this is a particularly complex matter where the obligations differ based upon the length of the fee arrangement, the product type and where the fee is paid from. There are many experienced people around the profession who do not fully understand the intricacies of how the different provisions in the law interact and therefore how these obligations work. This adds to the already high level of uncertainty and confusion. This all serves to highlight exactly what the ALRC said about the poor state of the Corporations Act and the need to fix it.

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## Appendix 1 – Consent Obligations

| Obligation  | s962G – applies to the OFA consent | s962T – applies to the fee deduction consent | S99FA Ongoing | S99FA Non Ongoing |
|---|------------------------------------|--|---------------|-------------------|
| the name and contact details of the person who is the fee recipient   | Yes                                | ^  | *             | Yes               |
| an explanation of why the fee recipient is seeking the consent  | Yes                                | ^  | *             |                   |
| the maximum period until the consent will cease to have effect  | Yes                                | ^  | *             |                   |
| information about the services that the client will be entitled to receive under the arrangement during that period   | Yes                                | ^  | *             | Yes               |
| for each ongoing fee that the client will be required to pay under the arrangement during that period the amount of the fee; or a reasonable estimate of the amount of the ongoing fee and an explanation of the method used to work out the estimate | Yes                                | Yes  | *             |                   |
| the frequency of the ongoing fees during that period  | Yes                                | ^  | *             |                   |
| a statement that the ongoing fee arrangement can be terminated by the client at any time  | Yes                                | ^  | *             |                   |
| a statement that the arrangement will terminate, and no further advice will be provided or fee charged under it, if the consent is not given  | Yes                                | ^  | *             |                   |
| the date on which the arrangement will terminate if the consent is not given  | Yes                                | ^  | *             |                   |
| the name of the account holder and the account number   | No                                 | Yes  | *             |                   |
| the name and contact details of the member  |                                    |  |               | Yes               |
| the name of the fund from which the cost of the advice is requested to be paid  | No                                 | No   |               | Yes               |
| Either the amount to be paid for the advice; or a reasonable estimate of that amount and an explanation of the method used to work out the estimate   | Yes                                |  |               | Yes               |
| Either the amount to be charged against the member's interest in the fund; or a reasonable estimate of that amount and an explanation of the method used to work out the estimate   | No                                 | No   |               | Yes               |

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Notes:

^ - It is a requirement of Section 962T that before obtaining the consent, the fee recipient disclosed to the account holder, in writing, the matters set out in subsection 962G(2).

\* - It is a requirement of Section 99FA of the SIS Act that “if the arrangement under which the advice is provided is an ongoing fee arrangement--any applicable requirements of Division 3 of Part 7.7A of the Corporations Act 2001 are met in relation to the arrangement and, if relevant, the deduction of ongoing fees”.

In all cases the consent form must be dated and signed by the client. There is also provision for additional obligations to be prescribed (i.e. included in regulations).

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