

Dear client, do you take this adviser for support over the next 12 months?

Annual consent legislation has received Royal Assent and will apply from 1 July 2021. In this podcast, we explore additional issues that aren't addressed by the legislation for which clarity is needed for successful implementation of these measures.

Hello and welcome to today's BT TechKnow podcast. My name is Bryan Ashenden, and I have the pleasure of leading the BT Technical Services team – a team of experts that are available to answer any technical advice strategy related queries you may have.

Early this week, we saw the Financial Sector Reform (Hayne Royal Commission Response No. 2) Bill 2020 receive Royal Assent. As a reminder, this is the legislation giving effect to Royal Commission recommendation 2.1 (and others) to introduce the annual consent requirements for on-going fee arrangements from 1 July 2021.

Whilst the finalisation of that Act has to be welcomed for providing some certainty to advisers, licensees and the industry more broadly on what the requirements will be, it also leads into the need to deal to the next layer of uncertainty, or possible confusion.

As with many pieces of legislation, particularly complicated legislation, there is an expectation that further legislative instruments or regulations will then ensue from the relevant Regulator, in this case ASIC, to provide the next level of detail, or clarity, on what is required and how the legislative changes will truly become operational.

Over the course of the last week, we conducted a series of sessions talking about the implementation of these new annual consent reforms and it is clear that there are a number of areas that advisers are seeking clarity on. Some of these we have answers for now, some may come with further Regulator guidance, and some may ultimately fall into business process decisions at a practice or licensee level. However, I thought it would be worth raising some of those points now for a greater awareness.

First, the question has been raised as to whether clients on arrangements with a 12 month term are captured by these provisions? The technical answer to this is no – the annual consent legislation applies to ongoing fee arrangements, which are arrangements for periods in excess of 12 months, so an arrangement for a maximum of 12 months is technically not caught. But there are some additional considerations that apply here. If you were looking to reduce the length of an existing arrangement from more than 12 months down to 12 months or less to avoid the need to comply with these requirements, do you have concerns under the FASEA Code of Ethics Standard 1, in trying to avoid the intent of the law? However, other than removing the consent requirement, have you actually achieved anything? If you want to continue to have an ongoing relationship with your client, you would need to engage them again, agree your services, agree your fees, agree how they are to be paid, and then implement the processes.

There is also a potential legal question that such arrangements have also raised. If you have clients in what could effectively be viewed as rolling 12 months contractual arrangements, particularly if the substance of the arrangement doesn't change from one period to the next, is it really just an ongoing

arrangement by another name? This issue arose when the FoFA, FDS and existing opt-in measures were first introduced, but has been raised again in some circles.

Second, how do you deal with the circumstances of wholesale clients, who the annual consent provisions do not technically apply to? If you have an on-going arrangement with a wholesale client, from a provider perspective, such as superfund or an investment product or platform, how would they know whether a client is wholesale or retail? You would be required to provide some form of proof to the provider that the relevant clients are wholesale clients, so that consent is not required, but does this reduce any burden within your business?

Finally, but perhaps most importantly, where providers have already implemented changes for the annual consent requirements ahead of the legislated commencement date, it is already evident that each provider has its own format for collecting the relevant consent, with different information being required. And the relevant consent is required for each differing platform as an example, so multiple consents may be required to be completed by a client if they have investments on different platforms, superfunds, etc from which your on-going fees are paid. Calls have been made for the development of a consistent form that all providers use and adopt, but such an approach would generally require the intervention of the Regulator. Privacy concerns would also need to be addressed to ensure information relevant for the client's investments on one platform are not made available to another platform where the client has other investments. So whilst a consistent form may assist in the processing, it may still be the case that multiple forms are still required to overcome privacy concerns.

With the legislation now having received Royal Assent, the opportunity for the Regulator to provide this additional clarity has opened up. These additional issues are not able to be addressed, or perhaps even contemplated, before the legislation is finalised as like all advisers and clients, the Regulator also wishes to deal with certainty, and not the possibility of legislation changing through the Parliamentary processes.

Remember if you have any technical advice strategy questions, you can call our BT Technical Services team on 1800 655 901 or send the team an email at [technical@btfinancialgroup.com](mailto:technical@btfinancialgroup.com).

And join us for our fortnightly BT Academy technical webinars where we dive in more depth into various technical and regulatory matters. Our next fortnightly BT Academy Technical Webinar will be on 10 March 2021 when Michael Tran, a technical consultant from the BT Technical Services team will explore what happens when the social security stimulus measures get the COVID vaccine and disappear at the end of March. With the recent announcement of a \$50 per fortnight permanent increase to some social security payments, such as JobSeeker, the implications need to be clearly understood for impacted clients. To register, head to [www.bt.com.au/professional](http://www.bt.com.au/professional) and follow the links to the BT Academy webinar series. You can also view previous webinar and obtain CPD points.

Until next time, bye for now!

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