

## Table on commissions, fees and payments in the life insurance industry

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### **Introduction**

This table summarises the types of payments made in the sale of life insurance, and how the different types of payments will be regulated from 1 January 2018, once the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* (the Life Insurance Remuneration Act) commences.

The Future of Financial Advice reforms exempted benefits paid in relation to certain life risk insurance products (i.e. life insurance, total and permanent disability cover, trauma, and income protection, as defined in s764A(1)(e) of the Corporations Act) where advice is given. The Life Insurance Remuneration Act removes this exemption in the Corporations Act from the ban on conflicted remuneration by providing for the setting of commission caps and clawback requirements for benefits paid in relation to life insurance products. Regulations made under the Life Insurance Remuneration Act extend the conflicted remuneration provisions to providing information on, and dealing in, a life risk insurance product.

This note gives some further explanations to accompany the table.

### **Group channel**

As the table shows, the payments made in the group channel between the trustee and the insurer are largely excluded from the ban on conflicted remuneration in the Corporations Act as long as no retail advice is involved. However, group life insurance that does include payments that influence advice to retail clients are banned.

### **Direct and advised channels**

Many of the payments made for the sale of life insurance in the direct and advised channels will be conflicted remuneration after 1 January 2018. Unless payments from a life insurer to an Australian financial services licence holder/adviser come within an exception e.g. they meet the commission caps and clawback requirements or are not reasonably expected to influence:

- the advice given to a retail client;
- the information given to a retail client; or
- the dealing in a life insurance product

the payment will be banned.

### **RG 246 guidance**

The guidance on conflicted remuneration set out in ASIC *Regulatory Guide 246 Conflicted Remuneration* (RG 246) will apply to payments made in respect of sales of life insurance products to retail clients. It is currently being updated to take into account the changes made to the Corporations Act in relation to life insurance, and the extension of the conflicted remuneration regime to direct sales of life insurance. For example, the existing guidance in RG 246 on whether volume-based payments or payments based on performance using a 'balanced scorecard' are

conflicted remuneration will be relevant in the context of life insurance, and RG 246 will be updated to incorporate circumstances where payments are made in the sale of life insurance.

### **Continuing work in this area**

As the Life Insurance Remuneration Act does not commence until 1 January 2018 we will not be able to determine whether the changes are effective in achieving the objective of better aligning the interests of consumers with those selling the life insurance for a number of years.

The Government has asked ASIC to conduct a review of the reforms in 2021. We will be collecting data and conducting surveillances on advice, and have a current project on sales of life insurance through the direct channel – all this work will assist in establishing whether the reforms have been effective in achieving their objective.

Different models of distributing life insurance exist, especially in the direct channel, and we are continuing to assess different types of distribution methods through ASIC's current work on direct sales of life insurance. As we work through the information we are receiving about different models of distribution, we may find models that come within the reforms, some that are not captured, and some models that seek to circumvent the reforms. As yet, we do not have enough information to make an assessment. We will continue to monitor the industry, and consider what, if any, action might be appropriate if we identify any issues.

## Summary of commissions, fees and payments in the life insurance industry

Type of payment	From	To	Regulation of conflicted remuneration (from 1 January 2018)
<b>Group channel</b>			
Profit sharing	Life insurer	Trustee	Not regulated under the conflicted remuneration regime if there is no advice to a retail client, although rules proposed by Insurance and Superannuation Working Group in draft Insurance Code of Practice.
Soft dollar benefits	Life insurer	Trustee	Not regulated under the conflicted remuneration regime if there is no advice to a retail client.
Other payments	Life insurer	Trustee	Not regulated under the conflicted remuneration regime if there is no advice to a retail client.
Other payments	Trustee	Life insurer	Not regulated under the conflicted remuneration regime if there is no advice to a retail client.
Salary / fee for service	Trustee	Adviser / AFSL	Regulated by the conflicted remuneration regime, particularly in MySuper.
<b>Direct channel</b>			
Commission – upfront	Life insurer	Distributor	Upfront commission paid for the direct sale of life insurance is conflicted remuneration and banned unless the commission complies with the commission caps and clawback requirements. * See below for amounts.
Commission – ongoing (trail)	Life insurer	Distributor	Ongoing commission paid for the direct sale of life insurance is conflicted remuneration and banned unless the commission complies with the commission caps and clawback requirements.* See below for amounts.
Commission – level	Life insurer	Distributor	The conflicted remuneration provisions do not apply to level commissions.
Performance pay	Life insurer	Employee	<p>A performance benefit paid for the direct sale of life insurance is conflicted remuneration and banned unless the benefit falls within an exception or could not reasonably be expected to influence the sale of the life insurance product.</p> <p>A performance benefit paid for the direct sale of</p>

			<p>life insurance may not be conflicted remuneration if it is a part of a benefit, which is based on a number of differently weighted criteria ('balanced scorecard'), and it can be shown that the benefit linked to the direct sale of life insurance could not reasonably be expected to influence the relevant activity which gave rise to the sale.</p> <p>A performance benefit paid for the direct sale of life insurance will not be conflicted remuneration if it complies with the commission caps and clawback requirements.* <i>See below for amounts.</i></p>
Performance pay	Distributor	Employee	<p>A performance benefit paid for the direct sale of life insurance is conflicted remuneration and banned unless the benefit falls within an exception or could not reasonably be expected to influence the sale of the life insurance product.</p> <p>A performance benefit paid for the direct sale of life insurance may not be conflicted remuneration if it is a part of a benefit, which is based on a balanced scorecard, if it can be shown that the benefit linked to the direct sale of life insurance could not reasonably be expected to influence the relevant activity which gave rise to the sale.</p> <p>A performance benefit paid for the direct sale of life insurance will not be conflicted remuneration if it complies with the commission caps and clawback requirements.* <i>See below for amounts.</i></p>
Volume bonus	Life insurer	Distributor	<p>Volume based benefits are presumed to be conflicted remuneration and banned unless it can be shown that the benefit could not reasonably be expected to influence the sale of the life insurance product.</p>
<b>Retail channel</b>			
Commission upfront	Life insurer	Advice licensee	<p>Upfront commission paid to an adviser in relation to life insurance is conflicted remuneration and banned unless the commission complies with the commission caps and clawback requirements. * <i>See below for</i></p>

			<i>amounts.</i>
Commission ongoing (trail)	Life insurer	Advice licensee	Ongoing commission paid for advice given in relation to life insurance is conflicted remuneration and banned unless the commission complies with the commission caps and clawback requirements.* <i>See below for amounts.</i>
Commission hybrid upfront and ongoing	Life insurer	Advice licensee	Upfront and ongoing hybrid commission paid to an adviser in relation to life insurance is conflicted remuneration and banned unless it complies with the commission caps and clawback requirements.* <i>See below for amounts.</i>
Commission – level	Life insurer	Advice licensee	The conflicted remuneration provisions do not apply to level commissions.
Volume bonus	Life insurer	Advice licensee	Volume based benefits are presumed to be conflicted remuneration unless it can be shown that the benefit could not reasonably be expected to influence the sale of the life insurance product
Shelf-space fees (not volume or training based)	Life insurer	Advice licensee	Shelf-space fees (e.g. benefits paid to be on an advice licensee's approved product list) relating to life insurance are conflicted remuneration and banned unless the fee could not reasonably be expected to influence the choice of financial product recommended or the advice or an exception applies. # <i>See below for factors we would consider when determining if shelf-space fees are conflicted remuneration.</i>
Training fees	Life insurer	Advice licensee	Non-monetary benefits such as training fees are exempt in certain circumstances (e.g. if the training is relevant to the financial services business and requirements such as time and cost are met).
Commission upfront	Advice licensee	Adviser / AFSL	Upfront commission paid to an adviser in relation to life insurance is conflicted remuneration and banned unless the commission complies with the commission caps and clawback requirements. * <i>See below for amounts</i>
Commission ongoing (trail)	Advice licensee	Adviser / AFSL	Ongoing commission paid for advice given in relation to life insurance is conflicted remuneration and banned unless the commission unless the commission complies with the commission caps and clawback requirements.

			<i>*See below for amounts.</i>
Commission hybrid upfront and ongoing	Advice licensee	Adviser / AFSL	Upfront and ongoing hybrid commission paid to an adviser in relation to life insurance is conflicted remuneration and banned unless it complies with the commission caps and clawback requirements. <i>* See below for amounts</i>
Fee for service with rebated commission	Consumer	Adviser	<p>A benefit is not conflicted remuneration if it is given by a consumer, such as a fee for service paid by the client.</p> <p>Commission received by an adviser and passed onto a consumer is less likely to be conflicted remuneration as it is unlikely to influence the advice.</p>

**\*To comply with the commission caps and clawback requirements:**

- Commission caps – upfront commission:
  - 80% of premium from 1/1/18
  - 70% of premium from 1/1/19
  - 60% of premium from 1/1/20.
- Commission caps ongoing – 20%
- Clawback:
  - 100% repayment if policy lapses (or pro rata if premium is reduced) in first year
  - 60% repayment if policy lapses (or pro rata if premium is reduced) in second year.

# The factors we would look at when determining whether shelf-space fees are conflicted remuneration under the general test include:

- the size of the benefit;
- how the fees are calculated (e.g. are they linked to sale of the insurer's products at all);
- how the licensee utilises the fees;
- is it passed onto advisers, and in what form;
- how the insurer's products are presented on the approved product list and to the advisers (e.g. are they presented as 'preferred products' in any way).