



# Ongoing Fee Arrangements & Ongoing Fee Consents Policy

Entity: Integrity Financial Planners (**INTEGRITY**)

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Template Administration History

Action (e.g. creation)	Date	Version Number	Description/Reason (e.g. new precedent; amendment; review)
Creation	1.10.2021	1.0	New precedent
Review	1.6.2022	2.0	<ul style="list-style-type: none"> <li>• 2.2 (d) an arrangement under which the only fee payable is an insurance <b>commission on a</b> premium (this is excluded under S9962A(4))</li> <li>• 2.7 Paragraph 3 replace “As a fee recipient, you must give the client an FDS between 1 July 2021 and 30 June 2022 (i.e the transition period) for an existing ongoing fee arrangement (see section 1637C). The day that you provide the client with an FDS during the transition period will become the anniversary day for that arrangement in each subsequent year (see section 1673C(6)).” with “The transitional arrangements for ongoing fee arrangements that were in force immediately before 1 July 2021 allowed the fee recipient to select a specific day to issue an FDS to the client between 1 July 2021 and 30 June 2022 (ie. the transition period) which became their anniversary date for that arrangement in each subsequent year (see section 1673C(6)).”</li> <li>• 2.8 – Note 1 add: “As this is a new process for product providers,” Integrity understands that the product provider forms and processes will likely change from time to time and you will need to check that you have the right documents completed for clients.</li> <li>• 3.4 – remove “For an FDS that is provided during the transition period, the FDS can include a reasonable estimate of the amount of fees and information about services for the last 60 days of the 12 month period ending immediately before the transition day, if the exact amount cannot be determined. An explanation of the method used to work out the same estimate (see section 962H(2B)) must also be included (see Item 3.5 – A reasonable estimate’</li> <li>• Remove sections 3.8 to 3.12</li> <li>• 4.2 last paragraph updated to “The written consent will take the form determined by the product provider from which the fees will be deducted. To avoid delays or confusion, please contact the relevant provider and ensure you access the correct form. In addition, fee consents can be obtained from clients electronically. We expect that there will be further improvements and developments in this area.”</li> <li>• 4.3 Update contact email from Integrity @iplan.com.au to <a href="mailto:Compliance@iplan.com.au">Compliance@iplan.com.au</a></li> <li>• 4.12 Remove</li> <li>• Add 7 Historical Transition Year Information (previously Sections 3.8 to 3.12)</li> <li>• Item 8 – Templates available was previously Item 7 to item 8</li> <li>• 8.1 (iii) remove “Fee Disclosure Statement: more than 12 months – for use during the Transition Period where the time between the new FDS and previous FDS is greater than 12 months.</li> </ul>
Review	1.6.2023	3.0	<ul style="list-style-type: none"> <li>• 2.11 (d) include further information about termination arrangements</li> <li>• Remove section 7 – Historical Transition Year Information</li> </ul>
Review	1.6.2024	3.0	<ul style="list-style-type: none"> <li>• No changes</li> </ul>
Review	16.1.2025	4.0	<ul style="list-style-type: none"> <li>• Update references to FDS and removal of FDSs from 10 January 2025</li> <li>• Update requirements for ongoing fee consent</li> </ul>

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## *Intellectual Property and disclaimer*

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## **Version 4.0 – January 2025**

### **References**

**Corporations Act 2001 Section 962H:** Fee disclosure statements

**ASIC Information Sheet 256 (INFO 256):** FAQs: Ongoing fee arrangements

**ASIC information Sheet 286 (INFO 286) :** FAQs: Ongoing fee arrangements and consents

**Financial Planners and Advisers Code of Ethics 2019 (Code of Ethics)**

# 1 Purpose of document

## 1.1 Background

- (a) The obligation to give clients a fee disclosure statement (FDS) annually where there is an ongoing fee arrangement has applied since 1 July 2012.
- (b) From 1 July 2021, two broad additional obligations apply where there is an ongoing fee arrangement. The obligations to seek to renew an ongoing fee arrangement annually and to obtain a client's written consent to deduct ongoing fees from financial products, which were introduced by the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*.
- (c) From 10 January 2025, new requirements relating to ongoing fee arrangements (OFAs) and fee consent apply. The new legislation introduces significant changes to the management of OFA including removing the FDS and introducing increased requirements for ongoing consent.

## 1.2 Purpose and framework

This policy (**Policy**) is developed by Integrity Financial Planners (**Licensee**) for the purposes of enabling the Licensee to meet its obligations under the Corporations Act and ASIC guidance.

## 1.3 Responsibility

A Responsible Manager (or a delegate with appropriate experience and seniority) will be responsible for ensuring that the Licensee:

- (a) meets the requirements of this Policy;
- (b) reviews this Policy not less than an annual basis (unless more immediate updates are required due to legislative or regulatory change).

## 1.4 What if your client is a wholesale client?

The Ongoing Fee Arrangements (OFA) and ongoing fee consent (OFC) obligations only apply where the client is a retail client. If your client is a wholesale client, these requirements do not apply to that client, however Integrity does recommend that you have a clearly documented arrangement with your Wholesale Client, demonstrating their agreement/consent to your services and fees. Refer to IFP Wholesale Client Policy for details and guidance in relation to Wholesale Clients.

## 1.5 What if your client has an anniversary date before 10<sup>th</sup> January 2025?

If you have a client with an anniversary date before 10<sup>th</sup> January 2025, the previous FDS regime applies e.g anniversary date is 9<sup>th</sup> January 2025, the client must receive an FDS by 9<sup>th</sup> May 2025 (120 days) and returned to the product provider by 8<sup>th</sup> June 2025 (150 days).

Please refer to the *IFP Ongoing Fee Arrangements, Fee Disclosure Statements & Ongoing Fee Consents Policy, version 3.0 June 2023* for details on FDS and your requirements.

## 2 Ongoing fee arrangements

### 2.1 What is an ongoing fee arrangement?

An ongoing fee is any fee (however described or structured) that is paid under the terms of an ongoing fee arrangement between the fee recipient and the client, for an advice provider (the fee recipient) to provide ongoing personal advice to a retail client during a period of more than 12 months.

If a third party pays the fee recipient a fee (e.g. commissions), this will generally not be an ongoing fee, where it is paid under a commercial arrangement between a product issuer or platform operator and a fee recipient. However, commissions may be considered ongoing fees if they are paid with the clear consent, or at the direction, of the client.

ASIC would not generally consider that a commission arrangement is entered into with the clear consent of, or at the direction of, the client merely because it has been disclosed in a Statement of Advice.

- (a) An ongoing fee arrangement exists when:
  - (i) a retail client is given personal financial advice;
  - (ii) the client enters into an arrangement with the adviser; and
  - (iii) the terms of the arrangement are such that the client will be charged an ongoing fee for a period of more than 12 months.
  
- (b) An ongoing fee arrangement is usually structured as follows:
  - (i) Member ongoing advice fees and advice;
  - (ii) Review fees – fixed fees or asset based fees.

### 2.2 What is not an ongoing fee arrangement?

- (a) initial advice fees (upfront advice fees);
- (b) advice implementation fees;
- (c) an upfront advice fee paid in instalments (this is excluded under s962A(3));
- (d) an arrangement under which the only fee payable is an insurance commission on a premium (this is excluded under s962A(4));
- (e) fixed term arrangements i.e. an arrangement for fees that are to be paid for a period of less than 12 months; and
- (f) an arrangement to the extent that the fee payable is a product fee (this is excluded under s962A(5) and reg 7.7A.10).

## Fixed term arrangements

Where a fee recipient enters into an ongoing arrangement for a fixed term that does not exceed 12 months, this is determined to be a fixed term arrangements and therefore the ongoing fee arrangement obligations do not apply.

It is Integrity's considered position that if the *intention* is for the fee arrangement to continue beyond 12 months, this will be determined to be an ongoing fee arrangement. In determining the intention of a fee arrangement, the history of the arrangement will be examined. If the client has entered into 2 (two) or more fixed term arrangements, it will be considered if the arrangement is intended to be an ongoing fee arrangement rather than a fixed term arrangement.

Some product providers have confirmed they will accept the IFP templated ongoing fee consent form, as long as it meets all legislative requirements. However, be aware of client privacy where the IFP ongoing fee consent contains more than one product and details. If this is the case, as well as having the client sign the standard IFP ongoing fee consent, you may need the client to sign a fee consent form for each separate product provider.

You also need to consider how you will issue the document and how the client will return the document, to ensure client privacy and to protect their personal data. This is particularly relevant as the product providers require you to identify the exact account for the fees to be deducted from. Ensuring you are sharing these documents in a secure manner eg via online portals, Sharepoint, Password Protection etc.

## 3 Complying with OFA Consent Obligations

### 3.1 Who must comply with the OFA consent obligations?

Fee recipients must comply with the OFA consent obligations.

A fee recipient is:

- an Australian financial services (AFS) licensee or its representative who enters into an ongoing fee arrangement with a client, or
- if the licensee or representative has transferred (or 'assigned') their rights under the arrangement, the person who currently holds those rights (i.e. the 'assignee'): see section 962C.

A fee recipient may outsource some of its administrative or compliance functions to a third-party agent. For example, an agent may provide a written consent form to a client on behalf of the fee recipient and arrange to deduct ongoing fees on behalf of the fee recipient. Where the fee recipient is an authorised representative of an AFS licensee and the client has given consent to the fee recipient to arrange a deduction, the AFS licensee can act as an agent for the fee recipient, and vice versa. However, the fee recipient will remain responsible for meeting the OFA consent obligations.

Trustees of regulated superannuation funds are also required to comply with the OFA consent obligations. They must only charge ongoing advice fees against a member's

interest in the fund where they comply with the OFA consent obligations: see section 99FA(1)(d) of the *Superannuation Industry (Supervision) Act 1993*.

### **3.2 Where does an ongoing fee arrangement exist?**

An ongoing fee arrangement exists where:

- the fee recipient gives personal advice to a retail client
- the fee recipient and client enter into an arrangement, and
- under the terms of the arrangement, the client must pay the fee recipient a fee (however described or structured) during a period of more than 12 months: see section 962A.

The following examples are not ongoing fee arrangements:

- a payment plan meeting the requirements in section 962A(3), and
- an arrangement under which the only fee payable is:
  - an insurance premium (see section 962A(4)), or
  - a product fee (see section 962A(5)).

ASIC recognises that licensees and advisers frequently enter into fixed-term agreements for charging a client fee for a period of 12 months or less. There are a range of factors that ASIC will consider in determining whether or not such an agreement is an ongoing fee arrangement.

In addition to the terms of the written agreement, these factors include but are not limited to whether:

- the agreement is limited to a fixed-term period of 12 months or less
- fees stop being charged at the end of the fixed-term period and do not exceed 12 months (e.g. because the adviser or licensee has back-office or administrative systems in place to turn off the fees by the end of the fixed-term period), and
- there is an understanding between the client and the adviser or licensee that the client will be charged for a period of 12 months or less. This can be demonstrated by information given to the client, including brochures and marketing material, and a general record of discussions with the client.

### **3.3 What are the OFA consent obligations?**

A fee recipient who enters into an ongoing fee arrangement with a client must comply with the OFA consent obligations in Division 3 of Part 7.7A of the Corporations Act: see section 962.

These obligations include a requirement for fee recipients to obtain written consent from a client:

- to enter into or renew (as relevant) an ongoing fee arrangement, and
- for the ongoing fees that the client will be required to pay under the arrangement: see sections 962F and 962G(1).

The written consent to enter into or renew an ongoing fee arrangement must be signed by the client and dated, and the fee recipient must retain the consent or a copy of it: see section 962G(1).

The OFA consent obligations also require fee recipients to obtain the client's written consent before they can deduct, arrange to deduct, or accept payment of, ongoing fees from a client's account, unless the account is linked to a credit card or is a basic deposit product: see sections 962R and 962S.

The written consent for the fee recipient to deduct or arrange to deduct ongoing fees from a client's account must be signed by the account holder and dated, and specify:

- the name of the account holder (i.e. the client name(s))
- the account number
- for each amount to be deducted:
  - the amount to be deducted, or
  - if the amount cannot be determined at the time of the consent, a reasonable estimate of the amount and an explanation of how it was worked out, and
- any requirements specified in regulations (noting that no regulations have currently been made for these purposes): see section 962T.

Note: The Minister has the power to approve a form or forms for deducting or arranging to deduct ongoing fees from an account: see section 962Y. However, no form(s) have currently been approved for this purpose.

The fee recipient must not deduct, or accept payment of, ongoing fees if, at the time of making the deduction or accepting the payment, the written consent has been withdrawn, ceased to have effect, or been varied so that the deduction cannot be made: see sections 962R(2) and 962S(6).

The fee recipient must not arrange to deduct ongoing fees from an account holder's account with a third-party account provider unless it has given a copy of the account holder's written consent to that account provider and, at that time, the consent had not been withdrawn, ceased to have effect or been varied so that the deduction could not be made: see section 962S(3).

Before obtaining consent to enter into or renew an ongoing fee arrangement, or to deduct, arrange to deduct, or accept payment of, ongoing fees, a fee recipient must disclose to the client, in writing, certain information: see Section 3.4

### **3.4 What information must be disclosed to a client under the OFA consent obligations?**

Before a client enters into or renews an ongoing fee arrangement, or before a fee recipient deducts, arranges to deduct, or accepts payment of, ongoing fees from a client's account, the fee recipient must disclose to the client, in writing:

- the name and contact details of the person who is the fee recipient under the ongoing fee arrangement
- an explanation of why the fee recipient is seeking the consent

- the maximum upcoming period before the consent ceases to have effect (see Section 3.11)
- information about the services that the client will be entitled to receive under the ongoing fee arrangement during the upcoming period
- for each ongoing fee that the client will be required to pay under the arrangement during the upcoming period either:
  - the amount of the fee, or
  - if the amount of the fee cannot be determined at the time of disclosure, a reasonable estimate of the amount of the ongoing fee and an explanation of the method used to work out the estimate
- the frequency of the ongoing fees during the upcoming period
- a statement that the ongoing fee arrangement can be terminated by the client at any time
- 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, and
- the date on which the arrangement will terminate if the consent is not given: see sections 962G(2) and 962T(a).

Fee recipients must also disclose information about any other matters prescribed by regulations: see section 962G(2)(j). However, no regulations have currently been made for these purposes.

Note: The Minister has the power to approve a form or forms for deducting or arranging the deduction of ongoing fees from an account: see section 962Y. However, at the date of publishing this Policy, no form(s) have currently been approved for this purpose.

### **3.5 What are the consequences of not complying with the OFA consent obligations?**

If a fee recipient fails to comply with the OFA consent obligations, the ongoing fee arrangement will terminate: see sections 962F and 962WA.

If an ongoing fee arrangement terminates, the fee recipient must not continue to charge fees under the arrangement. Civil penalties apply to a breach of this requirement: see sections 962Z and 1317E.

Failure to comply with the obligation not to deduct, arrange to deduct, or accept payment of, ongoing fees without the client's written consent is also subject to civil penalties: see sections 962R, 962S and 1317E.

A court may order payment of a penalty for breach of a civil penalty provision. For an individual, the penalty is the greater of:

- 5,000 penalty units, or
- three times the benefit obtained and detriment avoided because of the contravention.
- For a body corporate, the penalty is the greater of:
  - 50,000 penalty units

- three times the benefit obtained and detriment avoided because of the contravention, or
- 10% of annual turnover (capped at 2.5 million penalty units): see section 1317G.

Note: See [Fines and penalties](#) on the ASIC website for more information about penalties.

### **3.6. Can I seek written consent electronically?**

Yes. You can seek written consent to enter into or renew an ongoing fee arrangement, or to deduct, arrange to deduct, or accept payment of, ongoing fees from a client's account electronically (e.g. by email or on a webpage): see section 110C(3)(da) and paragraphs 1.166–1.173 of the Revised Explanatory Memorandum to the Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024.

- Your client can also sign the written consent electronically by, for example:
- clicking a check box on a webpage in response to a statement such as: 'By ticking the box, you consent to renewing the ongoing fee arrangement and to the charging of the ongoing fees that are set out in this document', or
- sending you their written consent by email with their electronic signature attached.

However, a client cannot give consent verbally (e.g. a voice recording or verbal confirmation). This is because the law requires written consent: see sections 962G, 962R and 962S.

For more information about electronic disclosure, including good practice guidance, see Regulatory Guide 221 *Facilitating digital financial services disclosures* (RG 221). For information about electronic signatures, see Electronic Signatures on the federal Attorney-General's Department website.

### **3.7 Change of name or contact details after the consent has been given**

If your client's name (e.g. following marriage) or your name changes or your client's or your contact details change after the consent has been signed, this does not cause their written consent to the ongoing fee arrangement to become invalid, provided the consent and arrangement remains the same in all other respects. However, it is best practice to notify the client of any change to your name or contact details, as a courtesy.

Likewise, if you have arranged for ongoing fees to be deducted from a client account with a third-party account provider and your client's or your name or contact details change, you do not need to obtain a new written consent from that client to arrange for the fees to be deducted, provided the consent and arrangement remains the same in all other respects.

### **3.8 Transferring of rights under an OFA (sale or transfer of business)**

If you transfer the rights under an ongoing fee arrangement to a new fee recipient (e.g. following the sale or transfer of the advice business), this does not cause a client's written consent in relation to that arrangement to become invalid, provided the consent and arrangement remains the same in all other respects.

This means that a transfer of rights does not automatically require a new written consent to be obtained. However, ASIC considers that, as part of a transfer of rights under an ongoing fee arrangement, clients should be notified of the change in fee recipient by both the existing and new fee recipient. The relevant communications should be clear, concise and effective, and remind clients that they can terminate their ongoing fee arrangement at any time.

Likewise, if you have received a transfer of rights under an ongoing fee arrangement and the ongoing fees are deducted from an account with a third-party account provider, you do not need to obtain a new written consent from the client to arrange for the ongoing fees to be deducted. Instead, you will be able to accept payments under the existing arrangement even though the fee recipient details will have changed, provided the consent and arrangement remains the same in all other respects and you have ensured that the third-party account provider has a copy of the original consent.

### **3.9 Is there a prescribed form for written consents?**

There is currently no prescribed form for written consents. However, the Minister has the power to approve one or more forms for the following purposes:

- entering into or renewing an ongoing fee arrangement, and
- deducting, or arranging to deduct, ongoing fees from an account: see section 962Y.

The Minister has not currently approved any such forms. However, if a form is approved by the Minister, that form becomes mandatory for collecting written consent: see section 962Y(2).

If a form is approved by the Minister, an account provider (other than the fee recipient under the ongoing fee arrangement) may request additional information from the fee recipient before deciding whether or not to deduct ongoing fees from an account. For example, the account provider may be the trustee of a superannuation fund and may request additional information as part of determining whether deduction of ongoing fees from the account is consistent with the *Superannuation Industry (Supervision) Act 1993*.

### **3.10 Can I combine information into a single notice or form?**

Yes. If you are required to give multiple forms or notices to the same person, you may combine the information into a single form or notice. However, the single form or notice must satisfy all of the requirements for each form or notice and clearly state the purposes for which it is being given: see section 962YA.

For example, if ongoing fees are to be deducted from multiple accounts, you may consolidate the required information into one or more consent forms.

If the client holds accounts with multiple third-party account providers, you should consider your privacy obligations when passing on confidential information in the written consent to different account providers, and seek independent legal advice if necessary.

### **3.11 When can a client renew an ongoing fee arrangement?**

At the time an ongoing fee arrangement is first entered into or renewed, clients and fee recipients may agree on a day (known as the 'reference day') which is used to determine the timeframe in which fee recipients can obtain written consent to renew an ongoing fee arrangement from their clients: see section 962H. The timeframe commences 60 days before the reference day and ends 150 days after the reference day.

For a reference day to have effect, it must be a day that is earlier than the anniversary of the day that the ongoing fee arrangement was entered into, and it must be disclosed to the client before they provide consent: see Section 3.4.

If a reference day is agreed on, its anniversary will be relied on to determine the timeframe in which a written consent can be signed going forward, unless the client and fee recipient subsequently agree on a different reference day.

- This means that each year, a written consent that meets the requirements must be signed in the timeframe that starts 60 days before and ends 150 days after:
- the agreed reference day, or
- if no reference day has been agreed on, the anniversary of:
  - the most recent reference day specified in a consent, or
  - if no reference day has ever been specified, the anniversary of the day on which the arrangement was entered into.

The reference day should be relied on to determine the period in which the client is entitled to services under the ongoing fee arrangement and the period in which ongoing fees are to be paid. If the client and fee recipient agree on a different reference day, the services that the client is entitled to receive under the arrangement should be provided by that day.

#### **Example 1**

On 1 September 2025, Billy enters into an ongoing fee arrangement with a fee recipient, Lisa. The consent that Billy signs to enter into the ongoing fee arrangement does not disclose a reference day. This means the timeframe within which Billy can renew his consent is based on the anniversary of the day that the ongoing fee arrangement was entered into (i.e. 1 September 2026).

The earliest date that Billy can renew his consent to the arrangement is 60 days before 1 September 2026 (i.e. 3 July 2026). The latest date that Billy can renew his consent is 150 days after 1 September 2026 (i.e. 29 January 2027). If a new consent satisfying the OFA consent obligations is not signed before the end of 29 January 2027, the ongoing fee arrangement will terminate.

After renewing the consent arrangement, Billy and Lisa decide that in future years they would like the ongoing fee arrangement to be renewed around 1 July as it aligns with both

their schedules. They agree on a new reference day of 1 July 2027 for the new written consent. This reference day is effective given it is before the next anniversary of the day that the ongoing fee arrangement was entered into (i.e. 1 September 2027).

If Billy and Lisa wish to renew their ongoing fee arrangement again, the written consent may be signed in the timeframe commencing 60 days before 1 July 2027 (i.e. 2 May 2027) and ending 150 days after 1 July, 2027 (i.e. 28 November 2027). If the written consent is not in place before the end of 28 November 2027, the ongoing fee arrangement will terminate.

The same schedule will continue each subsequent year while Billy and Lisa continue their ongoing fee arrangement unless they agree on a new reference day. The reference day is not impacted by the date the ongoing fee arrangement is actually renewed each year.

## **Example 2**

Michael is the fee recipient for an ongoing fee arrangement with Julie, who has ongoing fees deducted from an account with Michael under that arrangement. The anniversary day of the arrangement is 15 December each year. Michael and Julie's ongoing fee arrangement is already in force on 10 January 2025 (start day). As such, requirements under the former law continue to apply until the first anniversary of the arrangement that falls after the start day (i.e. 15 December 2025).

Michael and Julie can elect to renew their ongoing fee arrangement and meet the OFA consent obligations (see Section 3.3) during the 60 day period before the anniversary of their arrangement (i.e. the 60 day period starting from 16 October 2025). If Michael and Julie elect to meet the OFA consent obligations in renewing their ongoing fee arrangement before 15 December 2025, the amended consent requirements will apply from the date of the renewal. If Michael has not obtained Julie's written consent in accordance with the OFA consent obligations by 14 May 2026 (i.e. 150 days after the anniversary of their arrangement), the ongoing fee arrangement will terminate.

### **3.12 What happens if a written consent expires?**

Your client's written consent will cease to have effect 150 days after the anniversary of the day the ongoing fee arrangement was entered into, or if a reference day applies (see Section 3.11), 150 days after that day, unless your client:

- terminates the ongoing fee arrangement at an earlier date, or
- gives a new written consent in relation to the arrangement.

If a written consent for you to arrange to deduct ongoing fees ceases to have effect, you must:

- notify the relevant account provider or account providers within 10 business days after the consent has ceased, and
- not continue to arrange to deduct further ongoing fees unless you have obtained a new written consent for these purposes from the client: see section 962V(2).

A fee recipient must not deduct, or accept payment of, ongoing fees if, at the time of the deduction, a written consent has ceased to have effect: see sections 962R(2)(c)(iii) and 962S(3)(d)(iii).

If you accept payment of ongoing fees from an account provider after a client's written consent ceases to have effect, you have 10 business days from the date of payment to repay the amount into the client's account: see section 962S(9). If you do not repay the amount, the client will have the right to seek a refund of that amount in court: see section 1317GB.

### **3.13 When is it a new OFA instead of renewing an existing OFA?**

A new ongoing fee arrangement will generally be in place when both of the following conditions are met:

- the old arrangement is terminated and a new arrangement commences (these may occur on the same day), and
- the client signs a new written consent to enter into the new arrangement.

After the old arrangement is terminated, you must stop charging ongoing fees under that arrangement. You are also required to notify relevant third-party account providers within 10 business days of the termination that fees can no longer be deducted under the old arrangement: see section 962V(2). You are not required to keep providing services under the old arrangement.

The date that the new ongoing fee arrangement commences will generally be the date the client consents to entering into the new arrangement by signing a written consent that meets the requirements. Once a new arrangement is entered into, the old arrangement automatically terminates if it has not terminated already.

For information about renewing an existing ongoing fee arrangement, see Section 3.11.

### **3.14 When does an ongoing fee arrangement end?**

A client can end an ongoing fee arrangement at any time, in writing: see section 962J.

An ongoing fee arrangement can also come to an end if:

- a written consent is not put in place before the end of 150 days after the anniversary of the day the ongoing fee arrangement was entered into, or if a reference day applies, 150 days after that day: see Section 3.11 and section 962F of the *Corporations Act*, or
- the fee recipient fails to comply with their OFA consent obligations (e.g. if the fee recipient deducts, or arranges to deduct, ongoing fees without first obtaining written consent): see Section 3.3 and sections 962F and 962WA of the *Corporations Act*.

If the ongoing fee arrangement terminates, no further fees can be charged under the arrangement and there is no obligation to continue to provide services to the client.

### **3.15 When can I deduct, arrange to deduct, or accept payment of, ongoing fees?**

As a fee recipient, if your client holds an account with you from which you intend to deduct ongoing fees, you must first obtain written consent to deduct those fees: see section 962R.

If your client holds an account with a third-party account provider (e.g. a superannuation trustee or responsible entity of a managed investment scheme) from which you intend to arrange to deduct ongoing fees, you must first obtain written consent from the client to arrange the deduction: see section 962S(3).

Before you accept payment of ongoing fees deducted from a client account with a third-party account provider, you must be satisfied that the client consent for you to arrange the deduction has not been withdrawn, been varied to prevent the deduction from being made or expired: see s962S(6).

### **3.16 Can someone else deduct ongoing fees from a client's account on my behalf?**

Yes. If a third party is arranging a deduction of ongoing fees from a client's account on behalf of the fee recipient as its agent, and the client has given consent to the fee recipient to arrange such a deduction, the account provider can rely on the consent given through the third party: see section 962S(2).

For example, if you are a representative of an AFS licensee and your client has given you their written consent, the AFS licensee can act as your agent and rely on the written consent to arrange with an account provider to have ongoing fees deducted from the client account. Or, if you are an AFS licensee, your representative may act as your agent and rely on a written consent given to you to arrange deduction of ongoing fees from the client account with an account provider.

### **3.17 What happens if there is more than one account holder?**

Where there is more than one account holder (e.g. a couple), the fee recipient must:

- satisfy the OFA consent obligations (see Section 3.3) in relation to all joint account holders, and
- be satisfied that the written consent has not been withdrawn or varied to deny the fee deduction, and has not expired for each joint account holder before deducting, arranging to deduct, or accepting payment of, ongoing fees from the joint account: see sections 962R(3), 962S(4) and 962S(7).

### **3.18 What happens when a client's written consent is withdrawn or varied?**

Your client may withdraw or vary their consent for you to deduct, arrange to deduct, or accept payment of, ongoing fees from their account at any time by giving you written notice (e.g. by email, SMS or any other written form): see section 962U(1).

You must within 10 business days of receiving this written notice:

- give written confirmation to the client that you received the notice, and
- if a copy of the consent was provided to a third-party account provider, give the account provider a copy of the notice: see section 962U(2).

If your client gives notice to the third-party account provider asking them to stop deducting ongoing fees from their account, the third-party account provider should immediately stop deducting ongoing fees when they receive this notice. If the third-party account provider is a superannuation trustee, the trustee will need to stop deducting ongoing fees from their member's account as part of their existing obligations.

It is best practice to have arrangements with any account provider offering an account to your client that has ongoing fees deducted from it so that you are made aware in a timely manner when a client gives notice to an account provider withdrawing their consent.

### **3.19 When must I stop deducting ongoing fees from a client's account?**

You must stop deducting, arranging to deduct, or accepting payment of, ongoing fees from your client's account if the client's written consent has:

- been withdrawn
- been varied in any way that does not allow for the deduction to be made from the account, or
- ceased to have effect because:
  - the consent has expired
  - the ongoing fee arrangement has terminated (see section 962F), or
  - a new consent has been given: see sections 962U and 962V.

### **3.20 What records need to be kept?**

The following records must be kept in relation to ongoing fee arrangements for at least 5 years:

- each consent given by a client to enter into or renew an ongoing fee arrangement
- any notification from a client to renew, not renew or terminate an ongoing fee arrangement, and the date on which the notification was given
- the information disclosed to the client under the OFA consent obligations (see Section 3.4), and
- if an ongoing fee arrangement has terminated, the date on which it terminated and the basis on which it terminated: see regulation 7.7A.11AA(2)

You must keep the following records in relation to written consents to deduct ongoing fees from client accounts for at least 5 years:

- each written consent given to you by a client, including the date when the consent was given (e.g. if the client provides their written consent by ticking a box on a webpage, you can keep a timestamped screenshot of that page as evidence of the client's written consent)

- each notice to vary or withdraw a written consent given to you by a client, including:
  - the date you were given the notice, and
  - the date you confirmed you had received the notice
- communications from you (e.g. emails, SMS and letters) about giving the third-party account provider:
  - a copy of the written consent
  - a copy of a notice to withdraw or vary the consent, and
  - written notice of when the consent ceases, and
- details of any arrangement between you and an account provider: see regulation 7.7A.11AA(3).

Records of electronic documents must also be kept. For example, you can keep an image of an SMS including the sender's name and date of receipt.

Where a consent given by a client to enter into or renew an ongoing fee arrangement and a consent given by the same client to deduct ongoing fees is combined in the same form or notice (see Section 3.11), record of the consents may be combined in the one document.

If you are a representative of an AFS licensee, the licensee should also keep or have access to the records, to allow them to monitor compliance with their OFA consent obligations: see section 912A(1)(ca).

Failure to comply with the record-keeping obligations for ongoing fee arrangements is a criminal offence, punishable for individuals by up to 5 years imprisonment and/or a fine of 120 penalty units, and for bodies corporate a fine of 1,200 penalty units: see section 962X(1).

Note: See [Fines and penalties](#) on the ASIC website for more information about penalties.

### **3.21 Can ASIC provide relief from the OFA consent obligations?**

No. ASIC does not have any exemption or modification powers in relation to Division 3 of Part 7.7A of the Corporations Act. As a result, ASIC cannot provide relief from the OFA consent obligations.