

ONGOING SERVICE AGREEMENT POST 1 JULY 2021

25 June 2021



The obligation to give clients a Fee Disclosure Statement (FDS) annually where there is an ongoing fee arrangement existed since 1 July 2012.

From 1 July 2021, two broad additional obligations apply where there is an ongoing fee arrangement. The obligations seek to renew an ongoing fee arrangement annually and to obtain a client's written consent to deduct ongoing fees were introduced by the Financial Sector Reform (Hayne Royal Commission Response No.2) Act 2021.



How is this different?

Process is similar to what your practice did before with your FDS obligations, but there are some key legislation changes to note:

Then:

- FDS shows fees paid in the last 12 months
- Opt-in (renewal notice) must be renewed every two (2) years.
- It is not compulsory to give renewal notices to persons who were clients before FOFA reforms commenced on 1 July 2013.

Now:

- 'FDS' becomes an **Ongoing Service Agreement (OSA)** - stating fees paid in last 12 months and clients will agree to fees for next 12 months.
- **Annual** renewal and consent for deducting ongoing fees.
- **Both pre- and post FOFA reform clients** fall under the new requirements for **annual renewal** of the service agreement.

FDS stating fees paid & services provided over last 12 months



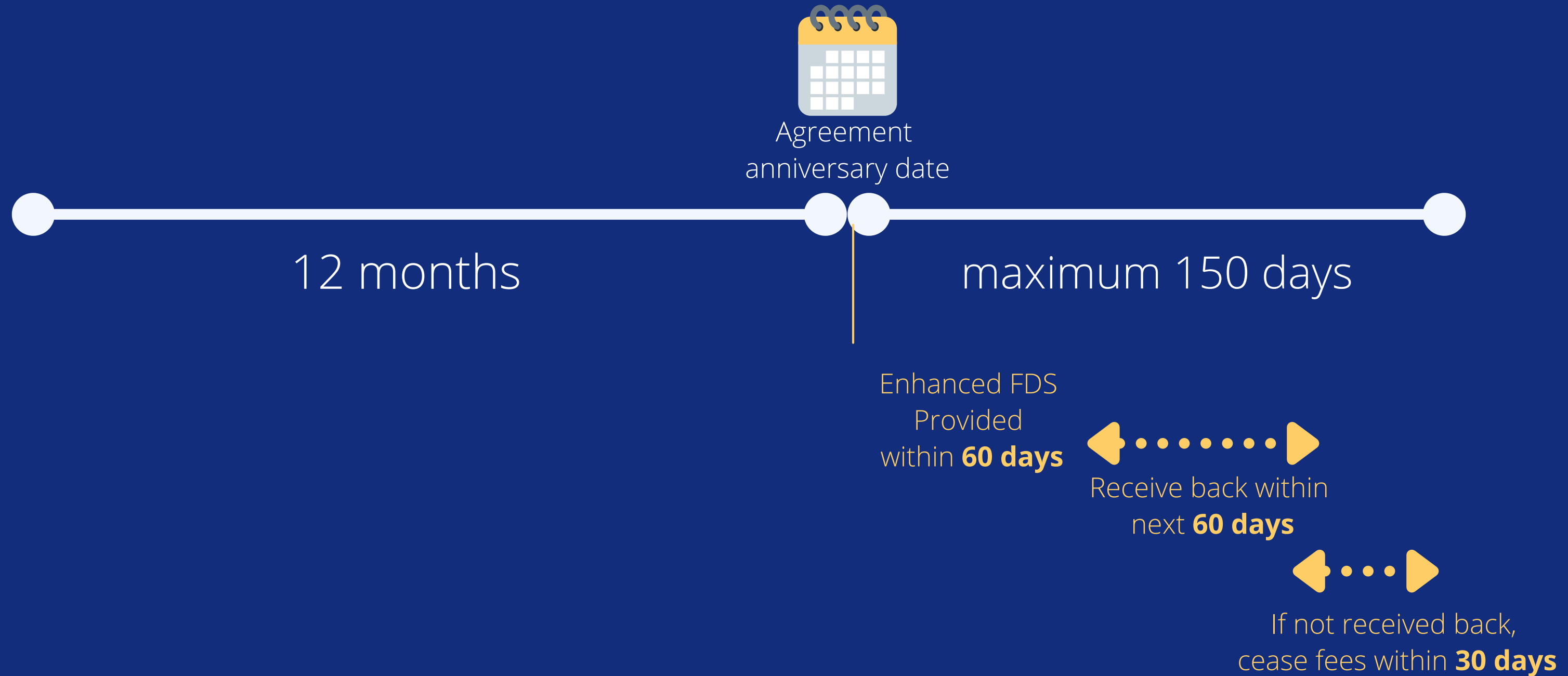
Ongoing Service Agreement (fees and services for next 12 months)



Fee Consent Form signed by client & provided to product provider



What is the renewal period?





WHEN DOES AN ONGOING FEE ARRANGEMENT EXIST?

- the fee recipient give 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).

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)).

WHAT ARE THE OFA OBLIGATIONS?

A fee recipient who enters into an ongoing fee arrangement with a client must, each year, comply with the obligations in Division 3 of Part 7.7A of the Corporations Act.

These obligations include:

- seeking the client's renewal of the ongoing fee arrangement annually and giving the client an FDS.**
- obtaining the client's written consent before they can deduct, arrange to deduct, or accept deductions of, ongoing fees from the client's account.**

The OFA obligations apply only if an ongoing fee arrangement exists between the fee recipient and the client (see section 962D).

WHAT IS THE 'ANNIVERSARY DAY'?

The 'anniversary day' is defined in the law. It is the anniversary of the day on which the ongoing fee arrangement was entered into (see section 962G(3)).

For example, if the client signs an Authority to Proceed to enter into an ongoing fee arrangement on 15 August 2021, then the anniversary day for that arrangement will be 15 August for all future years. This will be the case even if the client begins paying fees and receiving services on, for example, 20 August 2021.

If a fee recipient has entered into two or more separate ongoing fee arrangements with a client, there will be multiple anniversary days, and the obligation to provide an FDS will apply to each anniversary day separately.

If a fee recipient wants to change the anniversary day for an ongoing fee arrangement, the fee recipient must enter into a new arrangement with the client.

For information about how the transitional provisions affect the 'anniversary day' for ongoing fee arrangements entered into before 1 July 2021, see Question 20.

Can I change my anniversary date?

- In the transitional year from 1 July 2021 to 30 June 2022 for all **existing clients**, the **Anniversary day can be chosen** as any date between 1 July 2021 and 30 June 2022. It is important to note that this Anniversary date is fixed and cannot be changed after the transitional year, unlike the previous arrangements which allowed you to re-set the renewal dates.
- For all clients with a due date after 1 July 2021 (i.e. anyone with the old disclosure date being due after 30 April 2021), the Anniversary day can be chosen as any day between 1 July 2021 and 30 June 2022 and will be fixed thereafter. This is so the product issuers can track when they can expect to receive a new sign client consent form to continue to allow advice fees being deducted from the client's investments accounts. Please note that if the Anniversary day is delayed for more than 12 months, then the enhanced FDS must be from the date of the original FDS due date until it is issued and if longer than the 12 months, must be for the full period i.e. 14 months. Same if it is brought forward, must be for the last 12 months i.e. if it is only 8 months since the last FDS was issued, then you must disclose the full 12 months even though there is an overlay period.
- For **new clients** during the transitional year, whatever the agreement's starting date will be the fixed Anniversary date going forward. Up to the adviser to delay the starting of the agreement to fit into their yearly schedule etc.

WHEN DO I NEED TO GIVE AN FDS FOR AN EXISTING ONGOING FEE ARRANGEMENT DURING THE TRANSITION PERIOD?

For all ongoing fee arrangements that are in force immediately before 1 July 2021, the Financial Sector Reform (HayneRoyal Commission Response No. 2) Act 2021 introduced transitional arrangements for fee recipients in relation to providing FDSs.

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 1673C. The FDS that you provide must include the information outlined at Question 15.

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).

For example, if you provide an FDS on 2 July 2021:

the anniversary day for the ongoing fee arrangement will become 2 July for all future years, and

each FDS in the future will need to cover information for the period between 2 July and 1 July (i.e. the previous year) and from 2 July to 1 July (i.e. the upcoming year): see 1673C(4)(b)).

WHAT INFORMATION DO I NEED TO INCLUDE IN AN FDS?

An FDS must include the following information about your client's ongoing fee arrangement:

- the amount of each ongoing fee (in Australian dollars) paid by your client under the arrangement in the previous year**
- the amount of each ongoing fee your client will be required to pay under the arrangement during the upcoming year (see also Question 16)**
- the services that your client received, and was entitled to receive, under the arrangement during the previous year (including from any previous fee recipient under the client's arrangement)**
- the services your client will be entitled to receive under the arrangement during the upcoming year**
- the ongoing fees your client will pay after the end of the upcoming year, but for services they are entitled to receive during the upcoming year, and**
- how to renew the arrangement: see section 962H.**

WHAT ONGOING FEES DO I NEED TO DISCLOSE IN AND FDS FOR THE UPCOMING YEAR?

The FDS must state the amount of each ongoing fee your client will be required to pay during the upcoming year: see section 962H(2A)(a).

The amount of ongoing fees must be in Australian dollars.

The FDS must also state the amount of each ongoing fee your client will pay after the end of the upcoming year but for services they are entitled to receive during the upcoming year: see section 962H(2A)(c).

For example, the anniversary day for an ongoing fee arrangement is 1 July. The client is entitled to receive a service between 1 July 2022 and 30 June 2023 (i.e. the upcoming year) and will need to pay an ongoing fee on 8 August 2023 for that service. The FDS for the period covering 1 July 2022 to 30 June 2023 will need to state that ongoing fee

HOW AND WHEN CAN A CLIENT RENEW AN ONGOING FEE ARRANGEMENT?

A client may only renew the ongoing fee arrangement in writing and during the 'renewal period'.

The renewal period is defined in the law: see section 962L. It is a period of 120 days beginning on the anniversary day.

For example, if the anniversary day is 1 July 2023, the client will need to respond in writing by 28 October 2023 to renew the arrangement.

Your clients may renew an ongoing fee arrangement electronically, so long as it is done in writing.

For example, the client may:

- reply to you via email or SMS confirming that they wish to renew their ongoing fee arrangement,**
- or click a check box on a webpage in response to a statement such as:**
- 'By ticking the box, you elect to renew the ongoing fee arrangement'.**

Notes on best practice process

XPLAN TO BE UTILISED FOR TRACKING OF DATES, CONSENT AND SERVICES

- Record services provided through file notes in xplan with specific file note types.
- Services offered (e.g. annual review, quarterly review) to clients should only be picked from the TAE approved list of services to offer.
- Generate the Ongoing Service Agreement through xplan.
- Utilise Fee Consent area in xplan to track status of fee consents for clients.
- Ongoing Service Agreement and Fee Consent can be signed by clients digitally.
- Practices should be doing a "clean-up" every month - using widgets / reports to ensure they have no overdue FDSs and that they have no unmapped datafeeds & CommPay accounts.
- Practices should be spot checking commpay data against providers to ensure FDS is not missing fees - this is especially important in the transition period.

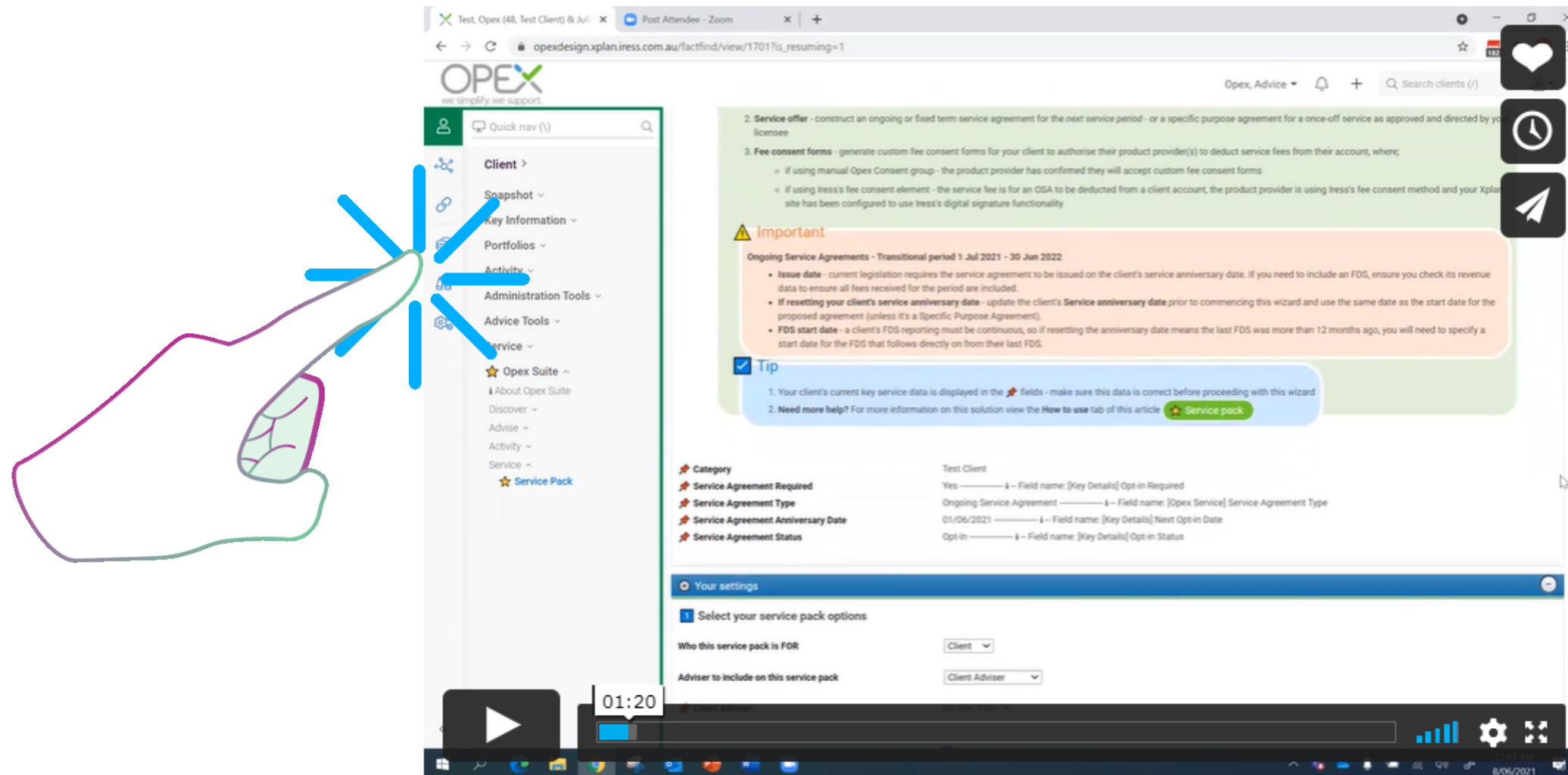


- TAE has chosen the Opex Suite solution to comply with monitoring and reporting obligations.
- New pricing structure which will allow all practices in the TAE network with access to the full Opex suite of wizards and templates. Also provides helpdesk access and access to site-specific training videos.
- Practices already subscribed to the Opex solution and wizards will receive access to the wizard before 1 July 2021.
- Practices not currently subscribed to Opex will be set up with letterheads and access over the next few weeks.

OPEX SUITE: ACCESS TO WIZARDS & TEMPLATES IN XPIAN



Link to full training video will be provided via email.



WIZARD TRAINING VIDEO

This video provides a walk-through of the Service Pack Wizard & Template solution:

- Settings
- Write your own cover letter
- Service offer
- Fee consent - manual option
- Generate template
- Review of merged Service Pack document
- Questions from attendees

QUESTIONS

