

29 April 2020

Ms Maria Hadisutanto
Senior Manager, Financial Advisers
Australian Securities and Investments Commission (ASIC)
by email: feeconsentsandindependence@asic.gov.au

Dear Ms Hadisutanto,

Consultation Paper 329: Advice fee consents and independence disclosure

Disclosing a conflict doesn't remove a conflict. With ASIC research indicating that large parts of the advice sector are still failing to meet the bare minimum requirement to act in the best interests of clients, we see the need for stronger protections for consumers seeking advice.

Super Consumers Australia thanks ASIC for the opportunity to comment on its proposed approach to implementing aspects of the law reform arising from Royal Commission Recommendations 2.1, 2.2 and 3.3 relating to advice fee consents and independence disclosure. We appreciate the provision of an extension of time within which to provide our submission.

Super Consumers broadly supports the approach proposed by ASIC in Consultation Paper 329. The comments below are confined to aspects of the draft legislative instruments that should be amended to strengthen consumer protections.

ASIC Corporations (Disclosure of Lack of Independence) Instrument

We continue to hold serious concerns about conflicted personal advice and see the need for further reform of the financial advice sector.

We welcome ASIC's reiteration in the Consultation Paper that disclosure, on its own, is not an adequate consumer protection and that it intends to "monitor implementation of the proposed requirements and test their impact on consumer outcomes".¹

We also note ASIC's statement that it "encourages firms and trustees to collect and analyse a range of relevant and reliable consumer and transaction data to monitor consumer outcomes in light of these proposed disclosures."²

¹ ASIC, March 2020, *Consultation Paper 329 Implementing the Royal Commission recommendations: Advice fee consents and independence disclosure*, p16.

² ASIC, March 2020, *Consultation Paper 329 Implementing the Royal Commission recommendations: Advice fee consents and independence disclosure*, p16.

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Our view is that 'encouragement' is insufficient. In principle, we agree with CHOICE about the need for government to adopt a performance-based disclosure regime to ensure that disclosure is effective and meaningful. As explained by CHOICE:

'Prescriptive regulations, such as mandating that an adviser discloses a lack of independence in the Financial Services Guides, give specific instructions about what firms must and must not do. Performance-based regulations, on the other hand, give goals toward which firms must work, but are less prescriptive in how those goals must be met. Prescriptive regulations require only that certain actions be taken, whereas, performance-based regulation demands that outcomes be achieved.'³

We support CHOICE's recommendation that the relevant legislative instrument should require advisers to ensure that a specific percentage of financial advice clients clearly understand what it means if an adviser is not independent.⁴

At a minimum, ASIC should clarify within the instrument that it 'expects' (rather than 'encourages') firms and trustees to undertake robust data collection and monitoring to monitor consumer outcomes.

We also recommend that ASIC amend the requirement to disclose lack of independence, to prescribe the prominent inclusion (ie. not in a footnote, smaller font or glossary) of a plain English definition of 'not independent'. This definition should be consumer tested.

As well, disclosure of an adviser's lack of independence should be required within every advice fee consent form, not just the FSG or Supplementary FSG as currently proposed by ASIC. (see recommendations 2 and 3).

Recommendation 1: That ASIC amend the draft ASIC Corporations (Disclosure of Lack of Independence) Instrument to:

- a) require advisers to ensure that a specific percentage of financial advice clients clearly understand what it means if an adviser is not independent**
- b) clarify that ASIC expects firms and trustees to undertake robust data collection and monitoring to monitor consumer outcomes**
- c) prescribe the prominent inclusion (ie. not in a footnote, smaller font or glossary) of a plain English definition of 'not independent'.**

³ CHOICE, February 2020, Submission to Treasury – Ongoing fee arrangements and disclosure of lack of independence.

⁴ CHOICE, February 2020, Submission to Treasury – Ongoing fee arrangements and disclosure of lack of independence. Recommendation 4.

ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument

In principle we do not support the deduction of advice fees from superannuation accounts and have recommended that people should only be able to pay for one-off or ongoing advice fees from their own bank account (or failing this, that fees should only be allowed to be deducted from a choice superannuation account for one-off advice).⁵

However we acknowledge that the draft legislation proposed to enact Royal Commission Recommendation 2.1 is an improvement on the status quo.

Advisers must be required to disclose the full range of services that the client will receive. This information should not be broad or vague in nature, or refer the client to information contained in another document. Clients must then actively consent to receiving this range of services. When people are about to consent to fees, they should be actively reminded of exactly what they are paying for. People are arguably more likely to engage in an assessment of ‘value for money’ if these two pieces of information are presented simultaneously and in close proximity.

Recommendation 2: That ASIC amend the draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument to prescribe that the fee consent will include:

- a) an explanation of the full range of services that the client will receive**
- b) disclosure of an adviser’s lack of independence, where relevant.**

ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument

As noted above, Super Consumers does not support the deduction of personal advice fees from super and has recommended legislation to prohibit this.⁶

If this recommendation is not accepted, we recommend that ASIC amend the legislative instrument to mirror the amendments we have recommended above (Rec 2) in relation to the ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument.

⁵ Super Consumers Australia, February 2020, Submission to Treasury - Enhancing Consumer Protections And Strengthening Regulators. Recommendation 1.

⁶ Super Consumers Australia, February 2020, Submission to Treasury - Enhancing Consumer Protections And Strengthening Regulators. Recommendation 1.



Recommendation 3: That ASIC amend the draft Superannuation (Consent to Pass on Costs of Providing Advice) Instrument to prescribe that the fee consent will include:

- a) an explanation of the full range of services that the client will receive**
- b) disclosure of an adviser's lack of independence, where relevant.**

Thank you again for the opportunity to provide feedback.

Yours sincerely,

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