



**ASIC**  
Australian Securities &  
Investments Commission

CONSULTATION PAPER 329

# **Implementing the Royal Commission recommendations: Advice fee consents and independence disclosure**

March 2020

## **About this paper**

This consultation paper is for persons who provide personal advice to retail clients, superannuation trustees and their professional advisers. It is also for those who use the services of financial advisers. It seeks feedback on our 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. It also seeks feedback on our proposed approach to guidance on ongoing fee arrangements.

Note: Our proposed approach includes making three ASIC legislative instruments. Drafts are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 329.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 10 March 2020 and is based on the legislation as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

You should note that the proposals in this paper are based on draft legislation and the proposals may change depending on the final form of the legislation.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important. See Section D for information on regulatory and financial impact.

Your comments will help us refine our approach.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 7 April 2020 to:

[feeconsentsandindependence@asic.gov.au](mailto:feeconsentsandindependence@asic.gov.au)

## What will happen next?

<b>Stage 1</b>	10 March 2020	ASIC consultation paper released
<b>Stage 2</b>	7 April 2020	Comments due on the consultation paper and draft legislative instruments
<b>Stage 3</b>	By 1 July 2020	Legislative instruments made (subject to passage of legislation)

## A Background to the proposals

### Key points

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) recommended legislative changes to address three significant problems in the financial advice industry:

- the charging of fees for services that have not been provided (fees for no service);
- the giving of inappropriate advice to clients because of conflicts between an adviser's duties to their clients and the adviser's own interests; and
- the erosion of superannuation accounts by inappropriate advice fees.

Changes to existing legal obligations were recommended in the following areas:

- annual renewal and payment of ongoing fee arrangements (Recommendation 2.1);
- disclosure of lack of independence (Recommendation 2.2); and
- limitations on deducting advice fees from superannuation choice accounts (Recommendation 3.3).

Treasury has consulted on draft legislation to implement these recommendations. The draft legislation proposes to give ASIC the power to make certain legislative instruments. This consultation paper seeks feedback on ASIC's proposed draft legislative instruments and also ASIC's proposed guidance on ongoing fee arrangements.

## Problems identified with financial advice fee arrangements and independence disclosure

### Fees for no service

- 1 The Royal Commission highlighted the prevalence of clients being charged for financial advice services that have not been provided (known as 'fees for no service'). ASIC identified this conduct in [Report 499 Financial advice: Fees for no service](#) (REP 499), released in October 2016.

Note: As at 31 December 2019, six of Australia's largest banking and financial services institutions had paid or offered approximately \$607.8 million in total in compensation for fees for no service misconduct: see [Media Release \(20-028MR\) ASIC update on compensation for financial advice related misconduct](#) (11 February 2020).

- 2 In the Royal Commission final report, Commissioner Hayne noted that clients were systemically charged fees for no service, both inadvertently and

in spite of knowledge by the Australian financial services (AFS) licensee that the promised advice had not been, and could not be, given to a client. Fees could be charged ‘invisibly’ because they were often deducted directly from a client’s account.

Note: See Royal Commission, [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report](#) (Royal Commission final report), February 2019, vol. 1, p. 134.

### **Conflicts between an adviser’s duties and interests**

- 3 As highlighted in the Royal Commission final report, conflicts between an adviser’s duties to their clients and their own self-interest continue to arise despite legislative reforms that have sought to address them. These conflicts arise particularly where advisers, and the AFS licensees that authorise them, stand to benefit financially from clients acting on the advice given. The Royal Commission found that the current law has not resulted in these conflicts being managed successfully.

Note: See [Royal Commission final report](#), p. 164.

- 4 The Royal Commission’s findings are supported in ASIC’s [Report 562](#) *Financial advice: Vertically integrated institutions and conflicts of interest* (REP 562), released in January 2018. In REP 562, we looked at 200 files where advisers had recommended an in-house superannuation platform to new clients. These files were gathered from the two largest advice licensees controlled or owned by five of the largest banking and financial services institutions in Australia. We found that in 75% of these files, advisers had not complied with the best interests duty and appeared to prioritise their own interests, or those of a related party of the adviser, over those of their clients.

### **Deduction of advice fees from superannuation accounts**

- 5 The Royal Commission final report raised concerns about fees for financial advice being charged to superannuation accounts. In particular, the Royal Commission final report singled out ongoing advice fees being deducted from superannuation as a specific area of concern.
- 6 Commissioner Hayne suggested that services for which advice fees had been deducted may not be consistent with the sole purpose test in s62 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Commissioner Hayne also considered that the deduction of ongoing advice fees should be tightly controlled, noting concerns about the length of ongoing fee arrangements, and also fees being deducted for no services.
- 7 ASIC and the Australian Prudential Regulation Authority (APRA) issued a letter to trustees in April 2019 to reinforce the importance of superannuation trustees undertaking appropriate oversight of fees and other charges being

deducted from superannuation accounts. The letter outlined an expectation that trustees would be reviewing their oversight practices and that the regulators would follow up with individual trustees about the outcome of their reviews. This work is currently ongoing but has confirmed that trustee oversight practices vary from trustee to trustee.

Note: See [joint letter](#) from APRA and ASIC to all registrable superannuation entities, dated 10 April 2019.

## Royal Commission recommendations and purpose of this paper

- 8 The Royal Commission recommended several legislative changes to address the problems relating to fees for no service, conflicts between an adviser's duties and interests and the inappropriate deduction of advice fees from superannuation accounts. The recommendations that are relevant for the purposes of this paper are:
- (a) annual renewal and payment of ongoing fee arrangements (Recommendation 2.1): see paragraphs 15–24;
  - (b) limitations on deducting advice fees from superannuation choice accounts (Recommendation 3.3): see paragraphs 25–36; and
  - (c) disclosure of lack of independence (Recommendation 2.2): see paragraphs 37–46.

Note: See [Royal Commission final report](#), p. 25 and 29.

- 9 The Government agreed to implement the recommendations as part of its response to the Royal Commission final report. In August 2019, the Government published its Royal Commission implementation roadmap setting out how it will deliver its comprehensive response to the Royal Commission.

Note 1: See Australian Government, [Restoring trust in Australia's financial system: The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), February 2019.

Note 2: See Australian Government, [Restoring trust in Australia's financial system: Financial Services Royal Commission implementation roadmap](#), August 2019.

- 10 On 31 January 2020, the Government released exposure drafts of three excerpts from the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020 (Exposure Draft Bill) and the accompanying Explanatory Memoranda for consultation. The closing date for the Government's consultation was 28 February 2020.

Note: See Exposure Draft [Financial Sector Reform \(Hayne Royal Commission Response—Protecting Consumers \(2020 Measures\)\) Bill 2020: FSRC rec 2.1 \(ongoing fee arrangements\)](#); Exposure Draft [Financial Sector Reform \(Hayne Royal Commission Response—Protecting Consumers \(2020 Measures\)\) Bill 2020: fees \(FSRC Rec 3.2 and](#)



[3.3](#)); and Exposure Draft [Financial Sector Reform \(Hayne Royal Commission Response—Protecting Consumers \(2020 Measures\)\) Bill 2020: FSRC Rec 2.2 \(disclosure of lack of independence\)](#).

- 11 The Exposure Draft Bill proposes to give ASIC the power to make legislative instruments implementing aspects of the Royal Commission’s recommendations. Table 1 provides an overview of the draft legislative instruments we intend to make.

Note: The draft legislative instruments are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 329.

- 12 This consultation paper seeks feedback on these proposed draft legislative instruments: see Section B.

**Table 1: Proposed draft legislative instruments**

Draft ASIC instrument	Purpose of instrument	ASIC power to make instrument—Exposure Draft Bill reference
Draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX: see Attachment 1 to this consultation paper.	To set requirements for the giving of consent (or ‘express written authority’) to the deduction of ongoing fees (i.e. fees payable under an ongoing fee arrangement) from a client’s account (Recommendation 2.1).	Proposed s962T of the <i>Corporations Act 2001</i> (Corporations Act).
Draft ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX: see Attachment 2 to this consultation paper.	To set requirements for the member consent form to deduct fees (‘non-ongoing fees’) from a member’s superannuation account for an arrangement that is not an ongoing fee arrangement (‘non-ongoing fee arrangement’) (Recommendation 3.3).	Proposed s99FA(2) of the SIS Act.
Draft ASIC Corporations (Disclosure of Lack of Independence) Instrument 2020/XX: see Attachment 3 to this consultation paper.	To set requirements for the written statement that discloses a lack of independence (Recommendation 2.2).	Proposed s942B(7A) and 942C(7A) of the Corporations Act.

- 13 The proposed draft legislative instruments are based on the Exposure Draft Bill, although we note that the final legislation could differ from the Exposure Draft Bill.
- 14 Our aim is to make and register the legislative instruments when the final legislation is made. So that we can review submissions and finalise the draft instruments in time for the planned commencement of the final legislation on 1 July 2020, we are consulting for four weeks only and notwithstanding that our proposals may need to change depending on the final legislation. We will take into account any changes to the final legislation and the submissions to this paper when making the final instruments.

## Annual renewal and payment of ongoing fee arrangements

### Current law

#### Fee disclosure statements

- 15 The Corporations Act requires ‘fee recipients’ (typically financial advisers or AFS licensees who provide services under an ongoing fee arrangement) to give clients a fee disclosure statement (FDS) on an annual basis where they have an ongoing fee arrangement with a retail client: see s962G. An FDS is designed to help clients understand if they are receiving a service commensurate with the ongoing fees they are paying.

Note: The Exposure Draft Bill proposes to repeal s962G but the obligation to provide an FDS will remain in s962K, which will have the effect that an FDS must still be provided on an annual basis when annual renewal is required.

- 16 The FDS is currently a ‘backwards-looking’ document that sets out the services the client received, or could have received in the previous 12 months and what fees were paid: see s962H.
- 17 There is currently no requirement in the Corporations Act for the FDS to include information about future fees to be charged and the future services that a client can receive under an ongoing fee arrangement.

#### Renewal notices

- 18 The Corporations Act also requires fee recipients to give clients a renewal notice for an ongoing fee arrangement: see s962K. Renewal notices are intended to help clients to decide whether to renew or opt out of an ongoing fee arrangement.
- 19 Currently, clients must positively renew an ongoing fee arrangement every two years: see s962L. In practice, the ongoing fee arrangement terminates unless the client positively opts in to renew the arrangement within 30 days of receiving a renewal notice: see s962N.
- 20 It is not currently compulsory to give renewal notices to persons who were clients before the Future of Financial Advice (FOFA) reforms commenced (which was, in most cases, on 1 July 2013). However, renewal notices must be given to clients who entered into an ongoing fee arrangement with an AFS licensee or its representative and who received personal advice as a retail client after that time (post-FOFA clients).

### Recommendation 2.1

- 21 As set out in paragraphs 1–2 of this paper, the Royal Commission highlighted problems with clients being charged for services that had not

been provided. The Royal Commission found that these problems are particularly acute for ongoing fee arrangements.

22 The intent of Recommendation 2.1 is to provide further protection against future fees for no service conduct. Recommendation 2.1 states:

The law should be amended to provide ongoing fee arrangements (whenever made):

- must be renewed annually by the client;
- must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and
- may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts the account given at, or immediately after, the latest renewal of the ongoing fee arrangement.

Note: See [Royal Commission final report](#), p. 164.

23 The Royal Commission also recommended that the current exemption for pre-FOFA clients from the renewal notice obligation should be removed.

24 We intend to exercise ASIC's power under proposed s962T in the Exposure Draft Bill to prescribe requirements in a new instrument for the express written consent to deduct ongoing fees—that is, the 'express written authority' element of Recommendation 2.1. In this paper, we are seeking feedback on the proposed draft instrument: see Proposal B1.

## Limitations on deducting advice fees from superannuation choice accounts

### Current law

#### General fees rules in the SIS Act

25 The SIS Act sets out general fees rules that apply to all superannuation trustees (other than trustees of a self-managed superannuation fund): see Pt 11A. Specific fees rules also apply to MySuper products that set out the fees that may be charged for these type of products: see Div 5 of Pt 2C of the SIS Act.

26 The general fees rules restrict the types of financial product advice (commonly known as 'intra-fund advice') that can be provided to a member where the costs are borne by other members. That is, trustees must not directly or indirectly pass the costs of providing financial product advice for one member to another member to the extent that the advice is personal advice provided in circumstances specified in s99F(1) of the SIS Act.

Note: For more information on s99F, see [Information Sheet 168](#) *Giving and collectively charging for intra-fund advice* (INFO 168).

### Trustee covenants and duties

- 27 The SIS Act also sets out covenants and duties that apply to all superannuation trustees. These include responsibilities that influence the circumstances in which advice fees may be deducted from superannuation.
- 28 For example, under s52(2)(a)–(b) of the SIS Act, the governing rules of registrable superannuation entities are taken to include a covenant that requires their superannuation trustees to act honestly and exercise the same degree of care, skill and diligence as a prudent trustee.
- 29 A covenant that superannuation trustees perform their duties and exercise their powers in the best interests of their members also forms part of the governing rules: see s52(2)(c) of the SIS Act. Trustees must prioritise the interests of members if a conflict exists with their own interests, and must act fairly in dealing with beneficiaries and classes of beneficiaries: see s52(2)(d)–(f).
- 30 Superannuation funds must be maintained solely for the purposes outlined in s62 of the SIS Act.

### Recommendation 3.3

- 31 In the Royal Commission final report, after considering possible member motivations for wanting advice fees deducted from superannuation, Commissioner Hayne noted:
- [I]f ongoing fees continue to be permitted, they should be tightly controlled in at least two ways. First, ... the advice in respect of which fees may be charged is limited to advice about particular superannuation investments. Because this is what the law already requires, no change is necessary. And second, ... any such ongoing advice arrangements should require annual renewal. Two years without confirmation that the member wishes the arrangement to continue is too long.
- Note: See [Royal Commission final report](#), p. 242.
- 32 Given this view, the Royal Commission recommended that advice fee arrangements from superannuation choice accounts be renewed annually. Recommendation 3.3 states:
- Deduction of any advice fee (other than for intra-fund advice) from superannuation accounts other than MySuper accounts should be prohibited unless the requirements about annual renewal, prior written identification of service and provision of the client's express written authority set out in Recommendation 2.1 in connection with ongoing fee arrangements are met.
- Note: See [Royal Commission final report](#), p. 243.
- 33 Intra-fund advice costs are excluded from Recommendation 3.3 because Commissioner Hayne did not find that any misconduct had arisen from such advice.
- Note: See [Royal Commission final report](#), p. 242–243.

- 34 The intent of Recommendation 3.3 is to prevent superannuation accounts being eroded through the deduction of inappropriate advice fees. The recommendation requires superannuation trustees to be satisfied members have given consent for advice fees (other than for intra-fund advice) to be deducted from their superannuation choice accounts.
- 35 Proposed s99FA will result in member consent of a specific type being part of the oversight processes of all trustees in relation to deductions for payments for financial advice. It imposes a specific obligation that will form part of the strong governance, risk management and oversight processes expected of trustees in relation to advice fee deductions.
- Note: See [joint letter](#) from APRA and ASIC to all registrable superannuation entities, dated 10 April 2019.
- 36 We intend to exercise ASIC’s power under proposed s99FA(2) in the Exposure Draft Bill to prescribe requirements in a new instrument for non-ongoing fee consent forms. In this paper, we are seeking feedback on the proposed draft instrument: see Proposal B2.

## Disclosure of lack of independence

### Current law

#### Restrictions on using terms such as ‘independent’

- 37 At present, there is no positive obligation in the Corporations Act for a financial adviser, AFS licensee or authorised representative, to disclose to their clients that they are not independent.
- 38 The Corporations Act restricts an AFS licensee or other financial services provider from using certain words, such as ‘independent’, ‘impartial’ and ‘unbiased’, in connection with their financial services business or a financial service unless they can show they are genuinely independent: see s923A.

Note: For guidance on the use of restricted terms such as ‘independent’, see [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* (RG 175).

#### Requirements to disclose matters that may lead to a conflict of interest in a Financial Services Guide or Supplementary Financial Services Guide

- 39 The obligation in the Corporations Act to prepare and provide a Financial Services Guide (FSG) applies to ‘providing entities’—that is, AFS licensees and authorised representatives that give personal advice and/or general advice as well as providers of other financial services.

40 The FSG is designed to give retail clients sufficient information to enable them to decide whether to obtain financial services from the providing entity. This includes information about the providing entity's potential conflicts of interest.

41 For example, an FSG must include:

- (a) the amount of all the remuneration, commission and other benefits that the providing entity (and other specified persons) will or may receive for the advice to be provided (if known when the FSG is given);
- (b) where the providing entity reasonably believes that personal advice will be or is likely to be provided *and* the amount of the remuneration, commission or other benefits is not known at the time the FSG is provided—information about the remuneration and a statement that the method of its calculation will be disclosed at the time the advice is provided or as soon as practicable after that time; and
- (c) details of any associations or relationships that might reasonably be expected to influence the providing entity in providing the advice.

Note: The main requirements for FSGs provided by AFS licensees and authorised representatives are set out in s942B and 942C of the Corporations Act and Div 2 of Pt 7.7 of the *Corporations Regulations 2001* (Corporations Regulations). ASIC has provided guidance on preparing and providing an FSG in [RG 175](#).

42 A providing entity may also issue a Supplementary FSG to correct or update an FSG: see s943A of the Corporations Act. Where a Supplementary FSG is used, its content is taken to be a part of the FSG it updates or corrects. As such, if a Supplementary FSG is used to supplement an FSG, it would need to meet the content requirements of an FSG: see s942B(2) and 942C(2).

## Recommendation 2.2

43 In the Royal Commission final report, Commissioner Hayne considered whether there were additional means through which conflicts of interest could be better managed by financial advisers—for example, by improving the disclosure of conflicts of interest.

44 Accordingly, Recommendation 2.2 states:

The law should be amended to require that a financial adviser who would contravene section 923A of the Corporations Act by assuming or using any of the restricted words or expressions identified in section 923A(5) (including 'independent', 'impartial' and 'unbiased') must, before providing personal advice to a retail client, give to the client a written statement (in or to the effect of a form to be prescribed) explaining simply and concisely why the adviser is not independent, impartial and unbiased.

Note: See [Royal Commission final report](#), p. 176.

- 45 The intent of Recommendation 2.2 is to ensure that a financial adviser's lack of independence is brought to the client's attention through prominent, clear and concise disclosure.
- 46 We intend to exercise ASIC's power under proposed s942B(7A) and 942C(7A) in the Exposure Draft Bill to prescribe requirements in a new ASIC instrument for a statement disclosing a lack of independence in an FSG. In this paper, we are seeking feedback on the proposed instrument: see Proposal B3.

## Our proposed approach

### Legislative instruments

- 47 The Exposure Draft Bill proposes that, from 1 July 2020, there will be new requirements to:
- (a) seek consent to the deduction of ongoing fees (Recommendation 2.1);
  - (b) seek consent to the deduction of ongoing and non-ongoing advice fees from choice superannuation products and meet other requirements (Recommendation 3.3); and
  - (c) provide disclosure of a lack of independence (Recommendation 2.2).
- 48 Due to this timing, we are seeking feedback on our proposed legislative instruments:
- (a) on the basis of the requirements in the Exposure Draft Bill (rather than waiting to consult on requirements based on the final legislation); and
  - (b) without carrying out testing on how the requirements in our proposed instruments will be applied by industry or the resulting disclosures used by consumers.
- 49 However, as outlined in [Report 632 Disclosure: Why it shouldn't be the default](#) (REP 632), ASIC has found that disclosure alone is often not sufficient to drive good consumer outcomes.
- 50 Commissioner Hayne also recognised the limitations of disclosure in relation to disclosure of advisers' conflicts. For example, in the Royal Commission final report, the Commissioner noted that:
- By itself, simple disclosure of conflicts of interest, is insufficient as a means of managing them. The whole regime of disclosure presupposes that what is given to a consumer in writing will be read, and if read, will be understood.
- Often, that presupposition is wrong. And given the length and complexity of FSGs and PDSs that is unsurprising.
- Note: See [Royal Commission final report](#), p. 174–175.

- 51 We encourage 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. Firms and trustees should determine their own methodology and the relevant data for this monitoring, but must ensure that the methodology used is robust and independent and includes relevant criteria. For example, in the case of fee consents, relevant criteria may include metrics about fees, renewals and accounts.
- 52 We intend to monitor implementation of the proposed requirements and test their impact on consumer outcomes. We may reconsider the requirements in the proposed legislative instruments if we find they are resulting in adverse consumer outcomes.

### **Regulatory guidance**

- 53 We are not proposing to issue new regulatory guidance about the amendments proposed in the Exposure Draft Bill to implement Recommendations 2.1, 2.2 and 3.3. The explanatory statements that will accompany our final legislative instruments will provide guidance about the requirements in the instruments. In due course, we will make any necessary consequential amendments to ASIC regulatory guidance in response to amendments proposed in the Exposure Draft Bill. For example, changes will be required to RG 175, as well as other regulatory guidance and resources.
- 54 We are proposing, however, to provide some further guidance on ongoing fee arrangements. As reported in ASIC [Report 636](#) *Compliance with the fee disclosure statement and renewal notice obligations* (REP 636) we reviewed compliance with FDS and renewal notice obligations by a sample of AFS licensees and their representatives. Feedback since the release of the report in November 2019 has highlighted that there are areas of uncertainty in the industry about how to apply certain requirements relating to ongoing fee arrangements. In this paper, we are seeking feedback on the proposed guidance: see Section C.



## B Proposed legislative instruments

### Key points

We are proposing to prescribe requirements in three new legislative instruments for the:

- written consent that fee recipients must receive from clients before deducting, arranging to deduct or accepting the deduction of ongoing fees from a client's account;
- written consent that superannuation trustees must receive from members before allowing non-ongoing fees to be deducted from a member's account; and
- statement that must be included in an FSG or Supplementary FSG about a providing entity's lack of independence.

We have drafted our legislative instruments to allow some flexibility for fee recipients and superannuation trustees to develop a written consent that suits the needs of clients and members. We have also allowed flexibility in how the lack of independence statement is developed.

We are seeking feedback on our draft legislative instruments.

## Consent to the deduction of ongoing fees

### Proposal

- B1** We propose to prescribe the requirements set out in draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX for the written consent that fee recipients must receive from clients before deducting, arranging to deduct, or accepting the deduction of ongoing fees from a client's account.

These requirements are explained in Table 2 below.

#### *Your feedback*

- B1Q1** Do you agree with our proposal? If not, why not?
- B1Q2** Should the legislative instrument require the written consent to include information about the services that the member will be entitled to receive under the arrangement? Will this lead to unnecessary duplication given the consent will often be sought at the same time that an ongoing fee arrangement is being entered into or a fee disclosure statement is given?
- B1Q3** Should the legislative instrument require any further information to be disclosed in the written consent? If so, what other information should be required?

- B1Q4 Should the legislative instrument take a more prescriptive approach to specifying the information required in the written consent? If applicable, please explain where further prescription would help. For example, should we prescribe a maximum length for the consent form?
- B1Q5 Will the requirement for written consent cause practical problems for clients or advisers if a fee is to be deducted from accounts with different third party account providers (i.e. product issuers)? If so, please outline these problems and set out any views on how ASIC or industry can address these problems.
- B1Q6 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?
- B1Q7 Do you think ASIC should provide other guidance to help fee recipients comply with the legislative instrument? If so, what guidance?

## Rationale

### Implementation of Recommendation 2.1

- 55 The Royal Commission noted that the ‘invisible’ nature of the payment of ongoing fees from clients’ investment accounts contributed to the charging of fees for no service. For this reason, the Royal Commission recommended that clients give written consent for ongoing fees to be deducted from their accounts.
- Note: See [Royal Commission final report](#), p. 163.
- 56 The Exposure Draft Bill proposes to implement Recommendation 2.1 by including the requirement for clients to give written consent for ongoing fees to be deducted from their accounts. In particular:
- (a) *for accounts held by the account holder (i.e. client) with the fee recipient*—proposed s962R in the Exposure Draft Bill prohibits the fee recipient from deducting ongoing fees from those accounts unless the fee recipient has obtained each client’s written consent; and
  - (b) *for accounts held by the account holder (i.e. client) with a third party*—proposed s962S in the Exposure Draft Bill prohibits the fee recipient from arranging for the deduction of ongoing fees or accepting such deductions without consent. Fee recipients must also pass these consents on to the third party account provider: see proposed s962S(2)(c).
- 57 The Exposure Draft Bill also provides that it is a condition of an ongoing fee arrangement that the arrangement will terminate if either of the above requirements are not complied with: see proposed s962FA(1). When the client provides their written consent to the fee recipient, the consent will last until it is varied, withdrawn or the relevant ongoing fee arrangement is terminated: see proposed s962U and 962V in the Exposure Draft Bill.

- 58 The new consent requirements:
- (a) will apply from 1 July 2020 for new ongoing fee arrangements entered into from this date;
  - (b) must be complied with by 1 January 2021 for ongoing fee arrangements entered into with pre-FOFA clients; and
  - (c) otherwise, must be complied with by 1 July 2021.

Note: The transitional provisions relating to the requirements are set out at proposed Pt 10.45 in the Exposure Draft Bill.

- 59 Proposed s962T in the Exposure Draft Bill gives ASIC the power to make a legislative instrument that determines the requirements for the giving of consent to deductions or arranging for deductions from an account. We have proposed to exercise this power and make draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX: see Attachment 1.

Note: Attachment 1 to this paper is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 329.

- 60 We have sought to strike a balance between adopting prescriptive standards and providing flexibility for fee recipients. In doing this, we have considered factors in favour of and against a prescriptive approach—for example:
- (a) prescriptive standards may promote standardisation, but may also increase the likelihood of technical breaches that lead to ongoing fee arrangements being terminated under proposed s962FA; and
  - (b) flexibility enables fee recipients to develop a written consent that suits the needs of their clients.

#### Specific requirements in the draft instrument

- 61 Table 2 provides a brief explanation of the requirements in the draft instrument.

**Table 2: Explanation of the requirements in draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX**

Requirement	Explanation
1 The consent must be worded and presented in a clear, concise and effective manner: see s5(4).	This is the same as the requirement in relation to Statements of Advice, FSGs and Product Disclosure Statements.

Requirement	Explanation
<p>2 The consent must include the name of the account holder: see s5(3)(a).</p>	<p>This is to make clear who is providing the consent.</p> <p>The account holder is the person(s) who holds an account with the fee recipient or third party from which ongoing fees will be deducted. This will typically be the client under an ongoing fee arrangement.</p> <p>There may be more than one account holder.</p>
<p>3 The consent must include the name and contact details of the fee recipient: see s5(3)(b).</p>	<p>Contact details should include at least a phone contact and an email address.</p>
<p>4 The consent must include an explanation of why the fee recipient is seeking the account holder's consent: see s5(3)(c).</p>	<p>Only a brief explanation of why the fee recipient is seeking the consent is required (e.g. <i>'I am seeking your consent so that I can deduct ongoing advice fees from your account'</i> or <i>'I am seeking your consent so that I can arrange to deduct ongoing advice fees from your superannuation account'</i>).</p>
<p>5 The consent must include information about the services that the client will be entitled to receive under the arrangement: see s5(3)(d).</p>	<p>This should explain the services that the client will be entitled to receive if they pay the ongoing fees set out in the consent.</p>
<p>6 The consent must include:</p> <ul style="list-style-type: none"> <li>• the frequency, amount and time of payment of each ongoing fee the account holder will pay during a period of 12 months determined by the fee recipient beginning on a day within 30 days after the document seeking consent is given to the account holder: see s5(3)(e); or</li> <li>• if the frequency, amount or time of payment of an ongoing fee cannot be determined at the time the document seeking consent is given or made available by the fee recipient to the account holder—a reasonable estimate of the frequency, amount or time of payment (as applicable) of the ongoing fee that the account holder will pay during the period referred to in the bullet point above and an explanation of the method used to work out the estimate: see s5(3)(f).</li> </ul>	<p>This should be a statement of the frequency, amount and time of payment of each ongoing fee (e.g. <i>'You will pay \$200 monthly on the first business day of each month'</i>).</p> <p>Where an estimate is provided, this should make clear that it is an estimate and should also explain how the estimate was arrived at (e.g. <i>'This is an estimate only. It is based on the ongoing fees that you paid in the previous year and your account balance at the time we prepared this consent.'</i>)</p>
<p>7 The consent must include details of the account from which the account holder will be paying ongoing fees and, if the account holder will pay ongoing fees from more than one account, a breakdown of the proportion of the ongoing fees that will be deducted from each account: see s5(3)(g).</p>	<p>This should set out identifying details of the account that the ongoing fees will be paid from (e.g. account name and number). Where the fees will be paid from more than one account, the proportions should be stated (e.g. <i>'You will pay 50% from Account X and 50% from Account Y'</i>).</p>

Requirement	Explanation
8 The consent must include a warning of the benefits to which the account holder is entitled that may cease or be reduced because of deduction of the ongoing fees: see s5(3)(h).	This should include a warning explaining any benefits that may cease or be reduced because of the deduction of ongoing fees from the account (e.g. <i>'Your insurance cover could cease if the fees make your account balance drop below [\$x] or 'The fees you pay for the [insert name of product] may increase if the fees make your account balance drop below [\$x]'</i> ).
9 The consent must explain that the consent can last until the 'consent expiry date' (i.e. the last date on which the consent may terminate under proposed s962V(b)) and must specify that date: see s5(3)(i)(i).	This should reflect the time periods specified in proposed s962U and 962V in the Exposure Draft Bill and mention the specific date on which the consent would terminate under s962V(b).  While the consent may terminate up to 16 months after the last one was signed (see proposed s962V(b) in the Exposure Draft Bill), a new consent should be sought each year at the same time as the renewal of the ongoing fee arrangement.
10 The consent must include a statement to the effect that the account holder can withdraw their consent or terminate or vary the ongoing fee arrangement at any time by contacting the fee recipient in writing: see s5(3)(i)(ii).	This should explain that the account holder can withdraw their consent to the deduction of ongoing fees from their account or terminate or vary the entire ongoing fee arrangement at any time.  Contact details for how the account holder may terminate the ongoing fee arrangement should also be provided (see item 3 in this table).
11 The consent must include the date on which it was signed by the account holder: see s5(5).	A date field should be included in the consent.

62 Our proposal seeks to make ongoing fees visible by requiring disclosure of the fees a client will pay over a 12-month period or, where that is not possible, a reasonable estimate of those fees. This approach mirrors proposed s962H(2A) and (2B) in the Exposure Draft Bill for FDSs.

63 Fee recipients may seek a client's consent for deducting ongoing fees in the same document as the renewal notice, assuming that the requirements in the draft instrument are met. Alternatively, a fee recipient may seek a client's written consent in a separate consent form—for example, when an ongoing fee arrangement is set up for the first time or when a client decides to pay ongoing fees from a new account.

## Consent to the deduction of non-ongoing fees

### Proposal

- B2** We propose to prescribe the requirements set out in draft ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX for the written consent that superannuation trustees must receive from members before non-ongoing fees are passed on to a member's account.

These requirements are explained in Table 3 below.

#### *Your feedback*

- B2Q1 Do you agree with our proposal? If not, why not?
- B2Q2 Should the legislative instrument require any further information to be disclosed in the member consent form?
- B2Q3 Should the legislative instrument take a more prescriptive approach to specifying the information required in the member consent form? If applicable, please explain where further prescription would help. For example, should we prescribe a maximum length for the consent form?
- B2Q4 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?
- B2Q5 Do you think ASIC should provide other guidance to help superannuation trustees comply with the legislative instrument? If so, what guidance?

### Rationale

#### Implementation of Recommendation 3.3

- 64 The Royal Commission noted that trustees are likely to be in breach of their obligations under the SIS Act if they allow advice fees to be deducted from superannuation when there is no service or inappropriate advice is given. For this reason, the Royal Commission recommended that trustees receive written consent from their members for any advice fees (other than for intra-fund advice) to be deducted from their choice superannuation accounts.

Note: See [Royal Commission final report](#), p. 242.

- 65 The Exposure Draft Bill proposes to implement Recommendation 3.3. From 1 July 2020, proposed s99FA(1) of the SIS Act will prohibit trustees passing on the cost of providing financial product advice in relation to a member to that member unless conditions are met. There is an exception for advice costs that may be charged across the membership as a whole (i.e. for the costs of general or intrafund advice): see proposed s99FA(3).
- 66 The conditions that must be satisfied to pass on the cost of providing financial product advice are that:

- (a) the cost must be paid as set out in the terms of an arrangement entered by the member and the terms of a written consent of the member;
- (b) the trustee must have a copy of the written consent or the consent itself—for example, if they provide advice to the member; and
- (c) if the arrangement is an ongoing fee arrangement, the written consent must be of a kind described in proposed s962R(2)(a) or 962S(2)(b) of the Corporations Act and include the information set out in draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX; or
- (d) if the arrangement is not an ongoing fee arrangement, the written consent must be for the trustee to pass on the cost and include any requirements that ASIC has determined, by legislative instrument, under proposed s99FA(2) of the SIS Act.

67 We have proposed to exercise the power in proposed s99FA(2) and make draft ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX in relation to non-ongoing fees: see Attachment 2.

Note: Attachment 2 to this paper is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 329.

### Specific requirements in the draft instrument

68 Table 3 provides a brief explanation of the requirements in the draft instrument.

**Table 3: Explanation of the requirements in draft ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX**

Requirement	Explanation
1 The consent must be worded and presented in a clear, concise and effective manner: see s5(4).	This is the same as the requirement in relation to Statements of Advice, FSGs and Product Disclosure Statements.
2 The consent must include the name of the member: see s5(3)(a).	This is to make clear who is providing the consent.
3 The consent must include the name and contact details of the fund: see s5(3)(b).	Contact details should include at least a phone contact.
4 The consent must include an explanation of why the member's consent is sought: see s5(3)(c).	Only a brief explanation of why the trustee is seeking the consent is required. The explanation may be the heading for the consent form (e.g. 'Advice Fee Deduction Authority').
5 The consent must include how long the consent will last: see s5(3)(d).	This should explain the time period(s) for when the cost will be passed on (e.g. 'Advice fees can only be deducted in relation to advice provided within 30 days of this form').

Requirement	Explanation
6 The consent must include information about the services that the member will be entitled to receive under the arrangement: see s5(3)(e).	This should explain the purpose(s) for which the cost is passed on. The requirement may be satisfied by attaching information about the advice provided.
7 If the cost is passed on to the member by way of deduction of fees from their superannuation interest, the consent must include: <ul style="list-style-type: none"> <li>• the amount of non-ongoing fees, in Australian dollars, that the member is consenting to pay;</li> <li>• the superannuation account or accounts from which the cost will be deducted; and</li> <li>• if applicable—a breakdown of the proportion of cost that will be deducted from any investment option(s): see s5(3)(f)(i) and 5(g)(i).</li> </ul>	This should set out identifying details of the interest that the cost will be paid from (e.g. account number). Where the cost will be passed on to more than one superannuation account and/or investment option, the proportions should be stated (e.g. <i>'Advice fees will be deducted, in order, from a superannuation account and transition-to-retirement income stream'</i> ).
8 If the cost is passed on to the member by means other than fee deduction, the consent must include: <ul style="list-style-type: none"> <li>• an explanation of how the cost is passed on to the member; and</li> <li>• the estimated dollar amount of the cost and how it was calculated: see s5(3)(f)(ii) and 5(3)(g)(ii).</li> </ul>	This should explain whether the cost will be passed on to the member through means other than deduction from their interest (e.g. increased insurance premium, reduced tax benefit or reduced eligibility for separate advice).
9 The consent must include a warning of the benefits to which the member is entitled that may cease or be reduced because the cost is passed on to the member: see s5(3)(h).	This should include a warning explaining any benefits that may cease or be reduced because of the cost being passed on to the member (e.g. <i>'Your insurance cover could cease if the fees make your account balance drop below [\$x]'</i> ).
10 The consent must include a statement to the effect that the member can withdraw their consent prior to the fee deduction occurring at any time by contacting the fund: see s5(3)(i).	This should explain that the member can withdraw their consent to the cost being passed on to their interest at any time prior to the fee deduction occurring.  Contact details for how the member may withdraw consent should be provided: see item 3 in this table.
11 The consent must include the date on which it was signed by the member: see s5(5).	A date field should be included in the consent.

69 Our proposal is informed by our survey of the contents of several existing fund advice fee consent forms to understand the type of information currently disclosed on these forms.

70 Superannuation trustees must have the consent or a copy of the consent before they pass on the cost of providing financial product advice to a member. Under proposed s962S(2) in the Exposure Draft Bill, trustees, as the 'account provider', must be given a copy of a member consent for a fee recipient to arrange for the deduction of an ongoing fee under that section.



- 71 The requirement that a trustee has the consent or a copy of the consent does not mean the trustee is expected to contact the member to obtain the consent. Rather, as is permitted under proposed s962S(2), the trustee may receive the consent from a third party, such as a financial adviser.
- 72 Receipt of a consent or copy of a consent does not automatically entitle a trustee to pass on the cost of providing financial product advice to the member. Trustees must observe their covenants and duties in the SIS Act, including their best interests duty and the sole purpose test in s62 of the SIS Act, when passing on the cost of providing financial product advice: see paragraphs 27–30. This is especially relevant for consent to deduct ongoing fees from a superannuation interest given the findings of the Royal Commission.

Note: See [Royal Commission final report](#) p. 241–242.

## Lack of independence disclosure

### Proposal

- B3** We propose to prescribe in draft ASIC Corporations (Disclosure of Lack of Independence) Instrument 2020/XX that the FSG or Supplementary FSG include a statement about a providing entity's lack of independence. This statement must appear in a box under a heading, in bold, titled '**Not Independent**', on the first substantive page of the document. The statement must not be in a smaller font size than the predominant font size used in the document and must not be in a footnote.

#### *Your feedback*

- B3Q1 Do you agree with our proposal? If not, why not?
- B3Q2 Should the statement appear on the first substantive page of the FSG or Supplementary FSG in all cases? If not, how should we ensure that the statement is 'prominent' in the manner recommended by the Royal Commission?
- B3Q3 Will the statement be prominent to clients when the FSG or Supplementary FSG is provided in an electronic form? If not, should different requirements apply to electronic FSGs and Supplementary FSGs?
- B3Q4 Should the legislative instrument take a more prescriptive approach to specifying the information required in the statement? If so, why?
- B3Q5 Is there a risk that firms will be able to undermine the intent of the obligation? If so, how should ASIC address this risk?
- B3Q6 Do you think ASIC should provide guidance to help a providing entity comply with the legislative instrument? If so, what guidance?

## Rationale

73 The Royal Commission recommended that financial advisers who do not meet the independence requirements in s923A of the Corporations Act be required to give a written disclosure of this. This disclosure is intended to ensure that the entity's lack of independence is brought to the client's attention through prominent, clear and concise disclosure.

Note: See [Royal Commission final report](#), p. 172–176.

74 The Exposure Draft Bill proposes to implement Recommendation 2.2. In particular, from 1 July 2020:

- (a) proposed s942B(fa) and 942C(2)(g) in the Exposure Draft Bill will require providing entities (i.e. AFS licensees or authorised representatives) that provide personal advice to state in an FSG that they are not independent, impartial or unbiased and the reasons why, if they would be in breach of s923A(5) of the Corporations Act by assuming the words independent, impartial or unbiased; and
- (b) the statement must meet requirements set by ASIC: see proposed s942B(7A) and 942C(7A) in the Exposure Draft Bill. These requirements may include:
  - (i) the specified form, or form of words, to be used in the statement;
  - (ii) the specified information in the statement; and
  - (iii) the presentation, structure and format of the statement, including the location of the statement within the FSG.

75 As FSGs and Supplementary FSGs must currently be worded and presented in a clear, concise and effective manner, our proposal focuses only on the requirement relating to the prominence of the statement—that is, the statement must appear on the first substantive page of the FSG or Supplementary FSG. This means the first page that is not a cover page or a blank page.

76 As explained at paragraph 42 in this paper, a Supplementary FSG is taken to be a part of the FSG it supplements. We note that certain providing entities may comply with the requirements on the lack of independence disclosure by issuing a Supplementary FSG that contains the statement: see proposed s1673A(e) in the Exposure Draft Bill. Our proposal takes this into account by allowing the statement to appear on the first substantive page of either the FSG or Supplementary FSG, where relevant.

77 The requirements in the proposed draft instrument do not apply to the additional information that must be provided to consumers in cases where certain exemptions from providing an FSG apply.

Note: Proposed amendments in the Exposure Draft Bill to s941C(7) (where advice relates to certain basic deposit and other products) and 941D(3)(a) (where advice is

provided in time-critical cases) will require the disclosure of a lack of independence to be given in some cases where an FSG is not required.

- 78 Our proposal gives providing entities the flexibility to develop a statement that suits the needs of their clients. As discussed in paragraph 51 of this paper, we encourage firms to collect and analyse a range of relevant and reliable consumer and transaction data to monitor consumer outcomes in light of this new disclosure.

Note: See draft ASIC Corporations (Disclosure of Lack of Independence) Instrument 2020/XX in Attachment 3 to this paper, which is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 329.

## C Proposed regulatory guidance

### Key points

We are seeking feedback on our proposal to issue guidance on ongoing fee arrangements to address areas of uncertainty with the existing law. This guidance will follow on from our work in [REP 636](#) where we found that consumers who receive financial advice could be at risk of receiving incorrect information or being charged fees after ongoing fee arrangements had ended.

### Proposed guidance on ongoing fee arrangements

#### Proposal

- c1 We propose to issue guidance on ongoing fee arrangements that includes information about:
- (a) whether an FDS can be issued before the end of the 12-month period to which it relates;
  - (b) whether an FDS must specify the 12-month period to which it relates;
  - (c) when a defect in an FDS or renewal notice will be such that the document is no longer an FDS or renewal notice;
  - (d) the fees that should be included in an FDS;
  - (e) the services that should be identified in an FDS as services the client is entitled to;
  - (f) the scope of the definition of an ongoing fee arrangement—for example, whether the scope covers:
    - (i) agreements that have a period of longer than 12 months, but are cancelled before 12 months have elapsed; or
    - (ii) a series of substantially similar agreements that each have 12-month terms;
  - (g) whether an ongoing fee arrangement must only be renewed through a renewal notice;
  - (h) when an ongoing fee arrangement commences; and
  - (i) whether the FDS and renewal notice requirements apply to MDA operators.

#### Your feedback

c1Q1 Do you agree with our proposal? If not, why not?

c1Q2 Are there any additional areas relating to ongoing fee arrangements where we could provide guidance?

## Rationale

- 79 In [REP 636](#), we found that consumers who receive financial advice could be at risk of receiving wrong information about advice fees or, in some cases, could be charged fees after ongoing fee arrangements had ended.
- 80 [REP 636](#) provides practical tips for AFS licensees and their representatives to help them comply with FDS and renewal notice obligations. Since releasing the report in November 2019, we have received feedback from industry that indicates there are other areas of uncertainty with applying the requirements relating to ongoing fee arrangements.
- 81 Our proposed guidance will seek to:
- (a) address the additional areas of uncertainty; and
  - (b) elaborate on the tips provided in [REP 636](#).

## D Regulatory and financial impact

- 82 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. Based on the information currently available to us, we think the proposals will strike an appropriate balance between:
- (a) ensuring that fee recipients, superannuation trustees and providing entities have some flexibility to develop written consents and disclosures that suit the needs of clients and members; and
  - (b) ensuring that consumers receive information that is relevant to them.
- 83 The Government has confirmed that a process equivalent to a Regulation Impact Statement has been undertaken through the Royal Commission.

Note: See [Royal Commission final report](#), 4 February 2019.

## Key terms

Term	Meaning in this document
AFS licence	<p>An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services</p> <p>Note: This is a definition contained in s761A.</p>
AFS licensee	<p>A person who holds an AFS licence under s913B of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>
authorised representative	<p>A person authorised by an AFS licensee, in accordance with s916G or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee</p> <p>Note: This is a definition contained in s761A.</p>
Corporations Act	<p><i>Corporations Act 2001</i>, including regulations made for the purposes of the Act</p>
Exposure Draft Bill	<p>Exposure Draft of Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020, released on 31 January 2020</p>
FDS	<p>A fee disclosure statement—a document required under s962G to be given in accordance with Div 3 of Pt 7.7A of the Corporations Act. Specifically, it is a statement in writing provided by a fee recipient to its clients on an annual basis about the previous period of 12 months of their ongoing fee arrangement, including information about the amount of fees paid by the client, the services received by the client, and the services that the client was entitled to receive</p>
fee recipient	<p>A fee recipient is:</p> <ul style="list-style-type: none"> <li>• an AFS licensee or its representative who enters into an ongoing fee arrangement with a client; or</li> <li>• if the rights of the person who entered into the ongoing fee arrangement have been assigned, the person who currently holds those rights</li> </ul> <p>Note: See s962C of the Corporations Act for the exact definition.</p>
FOFA	<p>The amendments introduced to the Corporations Act by the <i>Corporations Amendment (Future of Financial Advice Measures) Act 2012</i> and the <i>Corporations Amendment (Further Future of Financial Advice Measures) Act 2012</i></p>

<b>Term</b>	<b>Meaning in this document</b>
FSG	<p>A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>
MDA operator	A person who operates one or more managed discretionary accounts
non-ongoing fee	A fee payable under a non-ongoing fee arrangement
non-ongoing fee arrangement	An arrangement providing for the payment of a fee (however described) that is not an ongoing fee arrangement
ongoing fee	A fee payable under an ongoing fee arrangement
ongoing fee arrangement	An ongoing fee arrangement exists when an AFS licensee or its representative gives personal advice to a person as a retail client and the client enters into an arrangement with the licensee or representative, the terms of which provide for the payment of a fee (however described or structured) during a period of more than 12 months. This does not include certain arrangements that are exempt under Div 3 of Pt 7.7A of the Corporations Act
post-FOFA client	A person who enters into an ongoing fee arrangement with an AFS licensee or its representative on or after the date that the FOFA obligations applied to that licensee or representative, and who was not provided with personal advice as a retail client before that date by that licensee or representative
pre-FOFA client	A person who enters into an ongoing fee arrangement with an AFS licensee or its representative either before or after the date that the FOFA obligations applied to that licensee or representative, and who was provided with personal advice as a retail client by that licensee or representative before the FOFA obligations applied to that licensee or representative
Product Disclosure Statement	<p>A document that must be given to a client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
proposed s962G (for example)	A proposed section in the Exposure Draft Bill (in this example numbered 962G)
providing entity	A person to whom the obligations in Pt 7.7 of the Corporations Act apply. This is the AFS licensee or an authorised representative that provides the financial product advice



Term	Meaning in this document
renewal notice	<p>A written notice, in relation to an ongoing fee arrangement, that includes statements that:</p> <ul style="list-style-type: none"> <li>the client may renew the arrangement by giving the current fee recipient notice in writing; and</li> <li>the arrangement will terminate, and no further advice will be provided or fee charged under it, if the client does not elect to renew the arrangement; and</li> <li>the client will be taken to have elected not to renew the arrangement if the client does not give a written notice to renew within the renewal period; and</li> <li>the renewal period is 30 days beginning on the day the renewal notice and fee disclosure statement is given to the client</li> </ul> <p>Note: See s962K of the Corporations Act for an exact definition.</p>
REP 499 (for example)	An ASIC report (in this example numbered 499)
representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> <li>an authorised representative of the licensee;</li> <li>an employee or director or a licensee;</li> <li>an employee or director or a related body corporate of the licensee; or</li> <li>any other person acting on behalf of the licensee</li> </ul> <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations.
RG 175 (for example)	An ASIC regulatory guide (in this example numbered 175)
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Royal Commission final report	<i>Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report</i>
s962G (for example)	A section of the Corporations Act (in this example numbered 962G), unless otherwise specified
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
Statement of Advice	<p>A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to prescribe the requirements set out in draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX for the written consent that fee recipients must receive from clients before deducting, arranging to deduct, or accepting the deduction of ongoing fees from a client's account.</p> <p>These requirements are explained in Table 2.</p>	<p>B1Q1 Do you agree with our proposal? If not, why not?</p> <p>B1Q2 Should the legislative instrument require the written consent to include information about the services that the member will be entitled to receive under the arrangement? Will this lead to unnecessary duplication given the consent will often be sought at the same time that an ongoing fee arrangement is being entered into or a fee disclosure statement is given?</p> <p>B1Q3 Should the legislative instrument require any further information to be disclosed in the written consent? If so, what other information should be required?</p> <p>B1Q4 Should the legislative instrument take a more prescriptive approach to specifying the information required in the written consent? If applicable, please explain where further prescription would help. For example, should we prescribe a maximum length for the consent form?</p> <p>B1Q5 Will the requirement for written consent cause practical problems for clients or advisers if a fee is to be deducted from accounts with different third party account providers (i.e. product issuers)? If so, please outline these problems and set out any views on how ASIC or industry can address these problems.</p> <p>B1Q6 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?</p> <p>B1Q7 Do you think ASIC should provide other guidance to help fee recipients comply with the legislative instrument? If so, what guidance?</p>

Proposal	Your feedback
<p>B2 We propose to prescribe the requirements set out in draft ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX for the written consent that superannuation trustees must receive from members before non-ongoing fees are passed on to a member's account.</p> <p>These requirements are explained in Table 3.</p>	<p>B2Q1 Do you agree with our proposal? If not, why not?</p> <p>B2Q2 Should the legislative instrument require any further information to be disclosed in the member consent form?</p> <p>B2Q3 Should the legislative instrument take a more prescriptive approach to specifying the information required in the member consent form? If applicable, please explain where further prescription would help. For example, should we prescribe a maximum length for the consent form?</p> <p>B2Q4 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?</p> <p>B2Q5 Do you think ASIC should provide other guidance to help superannuation trustees comply with the legislative instrument? If so, what guidance?</p>
<p>B3 We propose to prescribe in draft ASIC Corporations (Disclosure of Lack of Independence) Instrument 2020/XX that the FSG or Supplementary FSG include a statement about a providing entity's lack of independence. This statement must appear in a box under a heading, in bold, titled '<b>Not Independent</b>', on the first substantive page of the document. The statement must not be in a smaller font size than the predominant font size used in the document and must not be in a footnote.</p>	<p>B3Q1 Do you agree with our proposal? If not, why not?</p> <p>B3Q2 Should the statement appear on the first substantive page of the FSG or Supplementary FSG in all cases? If not, how should we ensure that the statement is 'prominent' in the manner recommended by the Royal Commission?</p> <p>B3Q3 Will the statement be prominent to clients when the FSG or Supplementary FSG is provided in an electronic form? If not, should different requirements apply to electronic FSGs and Supplementary FSGs?</p> <p>B3Q4 Should the legislative instrument take a more prescriptive approach to specifying the information required in the statement? If so, why?</p> <p>B3Q5 Is there a risk that firms will be able to undermine the intent of the obligation? If so, how should ASIC address this risk?</p> <p>B3Q6 Do you think ASIC should provide guidance to help a providing entity comply with the legislative instrument? If so, what guidance?</p>

Proposal	Your feedback
<p>C1 We propose to issue guidance on ongoing fee arrangements that includes information about:</p> <ul style="list-style-type: none"> <li>(a) whether an FDS can be issued before the end of the 12-month period to which it relates;</li> <li>(b) whether an FDS must specify the 12-month period to which it relates;</li> <li>(c) when a defect in an FDS or renewal notice will be such that the document is no longer an FDS or renewal notice;</li> <li>(d) the fees that should be included in an FDS;</li> <li>(e) the services that should be identified in an FDS as services the client is entitled to;</li> <li>(f) the scope of the definition of an ongoing fee arrangement—for example, whether the scope covers: <ul style="list-style-type: none"> <li>(i) agreements that have a period of longer than 12 months, but are cancelled before 12 months have elapsed; or</li> <li>(ii) a series of substantially similar agreements that each have 12-month terms;</li> </ul> </li> <li>(g) whether an ongoing fee arrangement must only be renewed through a renewal notice;</li> <li>(h) when an ongoing fee arrangement commences; and</li> <li>(i) whether the FDS and renewal notice requirements apply to MDA operators.</li> </ul>	<p>C1Q1 Do you agree with our proposal? If not, why not?</p> <p>C1Q2 Are there any additional areas relating to ongoing fee arrangements where we could provide guidance?</p>