



8 May 2020

Australian Securities and Investments Commission

Email: feeconsentsandindependence@asic.gov.au

Dear Sir/Madam,

Re: Consultation Paper 329 – Implementing the Royal Commission recommendations: Advice fee consents and independence disclosure

In brief:

AIST supports the implementation of lack of independence disclosure which would require a financial adviser to simply and concisely explain why they are not independent, impartial and unbiased. AIST advocates for more guidance on what the content of this disclosure should include, in order to ensure that clients can understand what this disclosure means and the impact it may have on the financial advice being received.

The Australian Institute of Superannuation Trustees (AIST) is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$1.5 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of their gender, culture, education or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

AIST welcomes the opportunity to provide a submission in respect of the Consultation Paper 329, our submission is limited to the proposed legislative instrument to implement lack of independence disclosure.

AIST supports recommendation 2.2 - Disclosure of lack of independence made by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Our comments relate to the content of the prescribed disclosure and how this is presented to a client.

More clarity needed on content of disclosure

The Exposure Draft Bill implementing this recommendation provides authority for ASIC to issue a legislative instrument that may include:

(a) requirements that a specified form, or specified form of words, be used for the statement;

(b) requirements for the statement to include specified information;

(c) requirements about the presentation, structure and format of the statement, including the location of the statement within the Financial Services Guide.

Given the breadth of advice models, narrow prescription is unlikely to be helpful however more clarity could be provided with regards to the content of this disclosure requirement. Specifically, example statements which would comply would be useful in helping industry implement this measure effectively and efficiently.

In addition to examples, ASIC could consider stating certain requirements that the statement should include which would make it easier for a client to better understand what a lack of independence means in this context. This content may include:

- An explanation of why the adviser is not independent. The reasons that an adviser may be defined as not independent are lengthy and varied. It is therefore important that the disclosure provides an explanation as to which conditions under 923A of the Corporations Act an adviser does not meet. We also note that the term “independent” has conflicting meanings elsewhere in financial services law (e.g. “independent trustee” as per section 10, SISA) and believe that this term should be further restricted consistently as part of this measure.
- The impact that this could have on the financial advice provided. To improve the effectiveness of disclosure it is important that a client properly understands any consequences and implications as a result of such disclosure.

Whilst ASIC have stated that changes to RG175 will be required, we advocate that this occurs prior to the start date of this new requirement and could also include additional guidance sought above.

Verbal disclosure and presentation

Given the plethora of documentation that a client is expected to read when receiving financial advice, there is scope to require that this disclosure is also provided orally. We note that a similar requirement is mandatory in the UK, whereby if a firm provides restricted advice a firm must ‘disclose orally in good time before the provision of its services in respect of a *personal recommendation* that it provides *restricted advice* and the nature of that restriction.’¹

We also note that the research which informed this recommendation highlighted ‘Other researchers discovered via a large online experiment focusing on retail investment decisions that

¹ Financial Conduct Authority, Financial Conduct Authority Handbook. Available from: <https://www.handbook.fca.org.uk/handbook/COBS/6/2B.html>

unless the disclosure was flagged in bold red font (which is likely to increase deliberation on the disclosure), participants did not respond to conflict of interest disclosures².

As highlighted ASICs own report³ though disclosure alone cannot solve complexity that is within the superannuation system and can actually result in increasing trust rather than decreasing trust in conflicted advisers. AIST therefore advocate that ASIC continue to monitor and prioritise progress towards ending grandfathered conflicted remuneration arrangements for financial advice.

For further information in relation to our submission, please contact Zach Tung, Policy & Regulatory Analyst on [REDACTED]

Yours sincerely,

[REDACTED]

Eva Scheerlinck
Chief Executive Officer

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AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

² Sah, Sunita, Conflicts of Interests and Disclosure Research Paper (2018). Available from: <https://financialservices.royalcommission.gov.au/publications/Documents/research-paper-conflicts-interest-disclosure.pdf>

³ ASIC, REP 632 Disclosure: Why it shouldn't be the default (2019). Available from: <https://download.asic.gov.au/media/5303322/rep632-published-14-october-2019.pdf>