

SUBMISSION

Submission to ASIC — Advice fee consents

8 April 2020

The Association of Superannuation
Funds of Australia Limited
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2020/19

Australian Securities & Investments Commission (ASIC)
Via email: feeconsentsandindependence@asic.gov.au

8 April 2020

Dear Sir/Madam

CP 329 Implementing the Royal Commission recommendations: Advice fee consents

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to CP 329 Implementing the Royal Commission recommendations: Advice fee consents.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact me on [REDACTED], or Maggie Kaczmarska, Senior Policy Advisor, on [REDACTED].

Yours sincerely

[REDACTED]

Glen McCrea
Deputy CEO and Chief Policy Officer

General comments

To help ensure that account holders' consent is clear and identifiable by organisations, it would be beneficial to streamline the process and digitalise wherever possible. This is likely to lead to less compliance gaps.

While we acknowledge the transitional timeframes for existing arrangements are legislative, we encourage a single application date for the proposed amendments as RSE licensees do not have visibility of whether an ongoing fee arrangement (OFA) was entered into pre or post the Future of Financial Advice reforms.

Additionally, ASFA proposes an implementation timeframe of 6 to 12 months after Royal Assent of the relevant legislation. This is to ensure the specifications for system changes are implemented in time, particularly given the COVID-19 impacts and the delays to Royal Commission legislation being considered by Parliament.

ASIC question	ASFA feedback
Consent to the deduction of ongoing fees	
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?	<p>ASFA considers that the Fee Disclosure Statement (FDS) and consent should be together when considered by the account holder. This will ensure that the account holder has the required information about the services they are entitled to receive under the arrangement.</p> <p>Some additional information that could also be included is if services had been provided by the fee recipient previously, the consent form should provide confirmation that services had been provided to the account holder for that period.</p>
B1Q4: Should the legislative instrument take a more prescriptive approach to specifying the information required in the written consent?	<p>ASFA notes that ASIC is striving for a balance between prescriptive standards and providing flexibility for fee recipients. Superannuation funds, as account providers, need to build systems and processes to ensure that the consent received from the fee recipient meets all the requirements. If the form of these consents differs between each fee recipient, this could create significant compliance and administrative costs for superannuation funds.</p> <p>ASFA recommends a more prescriptive approach be used to determine exactly what must be included in a consent to ensure it is as consistent as possible between fee recipients, creating administrative and compliance efficiencies for account providers when processing these forms. Consistency between consent forms is likely to decrease the need for manual interventions and contact with the fee recipient, increasing administrative efficiency for the fee recipient as well.</p> <p>Part of the prescriptive approach could include, for example, a prescribed list of services that will be provided by the fee recipient.</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>Yes, worked examples would be helpful. Examples provided could include a consent form where the advice fees will be deducted from a superannuation account.</p>

<p>B1Q7: Do you think ASIC should provide other guidance to help fee recipients comply with the legislative instrument?</p>	<p>It would be helpful to have guidance on:</p> <ul style="list-style-type: none"> • Extent to which a variation in an OFA will become a new OFA and therefore require new consent. • Confirmation that withdrawal of consent can occur between an account holder and an account provider (e.g. where a member contacts the superannuation fund directly to withdraw their consent for fees being deducted from their account). • Confirmation that once consent is provided, the account holder would be confirming that the requested fees are in line with the terms of the OFA entered into with the fee recipient. Trustees should not be expected to ensure that all the correct components of an OFA are in place for each deduction as this is the fee recipient's responsibility. • Where consent has been provided through an attorney authorised through a power of attorney. • How digital consent is to work practically.
<p>Consent to the deduction of non-ongoing fees</p>	
<p>B2Q1: Do you agree with our proposal? If not, why not?</p>	<p>ASFA supports the proposal in-principle, with a recommendation that requirement 7 be altered. Requirement 7 states that the proportion of costs that will be deducted from any investment option(s) will be need to be included in the consent. This can be difficult to determine as proportions invested in each investment can change on a daily basis and advice fees are generally deducted on the basis of the proportion in each investment option.</p> <p>ASFA recommends that consent confirms that advice fees will be deducted based on proportion invested in each investment option(s), rather than requiring identification of the breakdown of proportion of costs from any investment option.</p>
<p>B2Q2: Should the legislative instrument require any further information to be disclosed in the member consent form?</p>	<p>If the Royal Commission's recommendation 3.2 (no deducting advice fees from MySuper accounts) were to be legislated, the member should be made aware in the consent form that advice fees will not be able to be deducted from their MySuper account.</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>Yes, worked examples would be helpful. Examples provided should encompass the most common scenarios where member consent would be sought for advice.</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>Some additional guidance on the following topics would be helpful:</p> <ul style="list-style-type: none"> • The mechanisms available to withdraw consent and what happens once consent has been withdrawn. • Where consent has been provided through an attorney authorised through a power of attorney. • How digital consent is to work practically.