

28 February 2020

Australian Securities & Investments Commission

Via email: feeconsentsandindependence@asic.gov.au

Dear Sir/ Madam

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

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

This consultation proposes three legislative instruments which are to be registered upon the passing of legislation implementing recommendations 2.1, 3.3 and 2.2 of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Royal Commission. The proposed legislative instruments set requirements for:

- Consent to ongoing fee arrangements payable from a client's account
- Consent to non-ongoing fee arrangements payable from a member's superannuation account, and
- Written statement confirming that a financial services provider is not independent.

CPA Australia notes that while we generally support the first two legislative requirements, these could be streamlined by re-examining the role of Financial Services Guides within the context of both financial and non-financial services.

Our feedback is contained within an attachment to this submission.

If you have any queries do not hesitate to contact Richard Webb, Policy Advisor Financial Planning & Superannuation at CPA Australia on [REDACTED]

Yours sincerely

[REDACTED]

Dr Gary Pflugrath CPA

**Executive General Manager, Policy and Advocacy
CPA Australia**

Response to consultation paper

Proposal B1: Consent to the deduction of ongoing fees

CPA Australia supports requirements regarding consent and disclosure for adviser fees to be deducted from investments annually. We generally agree with the proposal, however make the point that arrangements should be transparent, simple and should allow for consent to be obtained and processed efficiently.

Accountants are already required to disclose their fees annually, and the relevant ethical standard for professional accountants, APES 230, requires fee consent to be obtained at least biennially.

We welcome the provision granted at section 5(2) of the proposed *ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX* which will ensure that consent can be provided electronically. Any need for physical signatures is likely to unnecessarily impede the operation of these arrangements.

We are concerned that the requirement to provide written information regarding the services to be provided risks endangering the source of truth for the consumers of financial services. In 2004, the *Financial Services Reform Act 2001* came into effect. One of the measures put into place by the reforms was to establish a document, the Financial Services Guide, as a document describing the services which are to be provided to retain investors, if a financial service is being provided. The policy intention of the Financial Services Guide (FSG) is meant to be, like the Product Disclosure Statement (PDS) is for financial products, the source of truth for financial services which are to be, or are likely to be, provided to a consumer.

The problem in this instance is that the only information regarding services needing to be included in an FSG are financial services. It is normally the case that a providing entity will seek to provide a number of services to their clients which are not financial services, and it is often these which form the bulk of services to be provided. Whilst we are aware that services provided to one client by a providing entity may be different to services being provided to another client, the majority are likely to be the same.

This creates a second level of information for consumers needing to be provided where the services covered under an ongoing fee arrangement are not financial services. However, consideration should be given to amending the law as it relates to FSG disclosure, as this would allow for a far more efficient process whereby the services to be provided by a providing entity are held in the one place, and there can be no multiple sources of information for consumers regarding the services that they are to receive. Such a single source of truth regime would be similar to the process by which a PDS is updated or amended via supplementary information and significant events notices.

We additionally note that similar information, required to be produced for fee renewal notices and Fee Disclosure Statements (FDS) may result in an unnecessary duplication of information.

Finally, we note that a number of the questions asked in proposal B1 of the consultation paper would be simplified if an enhanced FSG regime was enabled to assist providing entities to provide this information to their clients, and that the contents of the FDS and renewal notices be included as part of such consideration. We additionally note that the information needed to be provided could also be greatly simplified if material from the FSG for all services – financial or otherwise – could be incorporated by reference from FSG and fee renewal notice sources.

Proposal B2: Consent to the deduction of non-ongoing fees

CPA Australia noted in its submission to Treasury on the exposure draft legislative package relating to advice fees in superannuation, that the context for Commissioner Hayne's recommendations 3.2 and 3.3 from the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was to exclude costs for non-superannuation matters from being charged to superannuation accounts. Hayne noted that this should presently be a function of the sole purpose test.

This proposal from ASIC seeks to clarify the arrangement which underpins any deduction of fees from superannuation which are non-ongoing fee arrangements, such as one-off arrangements. We support the intent of this proposal which sets out requirements for the written consent that superannuation fund trustees must receive from fund members.

Our feedback in response to this proposal is largely similar to the feedback which we provided in respect of Proposal B1: We generally agree with the proposal, however make the point that arrangements should be transparent, simple and should allow for consent to be obtained and processed efficiently.

We are not certain about the intended operation of the requirement to have an expiry timeframe as per section 5(3)(d) of the proposed *ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX* which requires a time period for when the cost will be deducted. The provision of advice quite often happens a long time in advance of any steps required to execute the advice. The advice provided, therefore, regardless of the decision made by the client to follow it, will need to be paid for at some point. This itself could even be delayed further by steps required to satisfy the best interest duty, such as the reasonable investigation required to provide advice in the best interests of the client.

What happens if the period expires and the services agreed upon between the providing entity and the client have not been able to be completed during the timeframe? Does additional paperwork need to be obtained from the client to extend this period?

We are not certain that this requirement supports the best interests duty and may encourage the 'cutting of corners' in the provision of advice. As such, we recommend that the requirement to have an expiry timeframe be removed.

Proposal B3: Disclosure of non-independence

This proposal would implement recommendation 2.2 from the Final Report of the Royal Commission, to require a disclosure of a lack of independence where a financial adviser is not independent, as per the definition contained in Section 923A(5) for the *Corporations Act 2001*.

CPA Australia does not support this measure. We note that presently, estimates range from 9 to 25 in relation to how many financial advisers can actually call themselves "independent". Compared to the total number of registered financial advisers, this is a very small number of people. Furthermore, we consider that the definition contained in the Corporations Act is unhelpful to consumers in determining who is an independent adviser.

Whilst we support the FSG as the logical place for such a statement, we recommend that additional clarity be provided in the FSG to explain the providing entity's ties to financial product providers. We do not agree that a blanket statement such as "Not independent" is helpful to consumers and may serve to confuse them.

Proposal C1: Proposed guidance on ongoing fee measures

CPA Australia supports this proposal to issue further guidance in relation to ongoing fee arrangements. However, we recommend that additional consultation be provided at the time that any proposed guidance is issued, as per the normal process.