

Consultation Paper 329

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

First State Super response

1. Introduction

We thank ASIC for the opportunity to provide comments on the proposals set out in Consultation Paper 329. We recognise and are committed to promoting the importance of financial advice for all Australians, and the critical role it plays in providing them with a better retirement outcome.

We are equally committed to ensuring that advice is delivered in a way that meets the service delivery promises made to members and clients. This includes considering their best interests at all times, ensuring fees are only charged for services delivered and that fees are set at an appropriate level given the needs of clients and the complexity of advice given.

We note the Royal Commission into Banking, Superannuation and Financial Services 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. Specifically, we note the recommendations that are relevant for the purposes of Consultation Paper 329, being:

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

Finally, we note the proposed draft legislative instruments that have been released by Government, which ASIC are now seeking to consult on in Consultation Paper 329. We have provided in the section below our responses on each of these draft instruments and the questions posed by ASIC in the consultation paper.

2. Comments on proposed draft legislative instruments

2.1 Consent to the deduction of ongoing fees

We note ASIC's proposal 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.

ASIC's questions:

1. Do you agree with our proposal? If not, why not?

First State Super response -

In principle, we agree with the proposal that there is a need for clients to provide written consent.

There are however some practical matters where we think further guidance from ASIC would be beneficial.

Firstly, it would be helpful if ASIC could provide explicit expectations regarding the timeframes for the issuing and receiving consent.

Currently the opt in legislation requires that we issue a renewal notice after the 2 year anniversary date of the last advice, with a 30-day period for the member to provide consent. Would this same 30-day time frame apply to these new proposals that are the subject of this consultation?

Secondly, guidance on the treatment of consents that are received in a digital format would be appreciated. Would a digital format be acceptable for meeting the consent requirements? We recommend ASIC provide a clear definition of written consent, particularly covering the position in relation to consents received in digital format.

2. 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?

First State Super response -

In our view the critical issue here is providing a simple and easy to understand process from a consumer viewpoint. While we generally support increased prescription for forms such as this, in the case of including information about the services the member will be entitled to in the consent, there is a real danger that there will be duplication and confusion caused.

Currently members are required to sign an Ongoing Advice Agreement, which includes details of service delivered and fees charged. In addition, member receive a Fee Disclosure Statement, which also outlines services promised and delivered. The member may also receive a renewal notice which includes a fee disclosure statement. Depending on each member's position in the advice cycle, they may receive each of these documents at different times.

The member currently provides consent in two ways; either via an Ongoing Advice Agreement or a Renewal Notice.

We recommend, to reduce duplication and confusion going forward, that the new proposed consent document include the requirement to detail services and fees and that this replaces the Ongoing Advice Agreement and Renewal Notice requirements.

As an aside, we also recommend that ASIC provide more guidance on the determination of fees that should be included in Fee Disclosure Statements. For example; there are practical issues regarding the materiality of errors on Fee Disclosure Statements, that arise from timing issues between fees being deducted from members' accounts and the release of

disclosure statements, where further guidance would be useful in clarifying licensees' obligations.

3. **Should the legislative instrument require any further information to be disclosed in the written consent? If so, what other information should be required?**

First State Super response -

We don't have any recommendations on further information that should be disclosed.

4. **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?**

First State Super response -

Generally, we support increased prescription for forms such as this, as we believe it encourages greater simplicity and consistency, which is beneficial for the industry as a whole. Over the longer term, increased consistency could reduce costs for industry participants and increase the level of understanding of critical processes by members.

Currently, the format of Fee Disclosure Statements issued by different licensees across the industry can vary significantly. For example; some may contain all required information on one page, where others might run to over seven pages. Therefore, prescription will help for consistency, clarity and comparability.

Areas where prescription would be most helpful would be around the types of services required to be included in the written consent and any rules that may apply regarding the layout of information.

We therefore recommend that the legislative instrument take a more prescriptive approach to specifying the information required in the written consent.

5. **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.**

First State Super response -

The requirement will cause practical problems for clients or advisers. While the advice licensee is responsible for obtaining consent from clients, the fee deduction may be implemented by a third-party product provider. Whilst a standardised approach would be preferable, there remains a question as to how much accountability the responsible RSE Licensee will have.

Currently we have multiple consent forms signed by the client as follows:

- i. An ongoing advice agreement to commence the agreement
- ii. A renewal notice to meet the opt in requirements
- iii. Product application consent to deduct advice fees from the clients account, which is provided to a third party (the trustee).

With the proposed addition now of the new annual consent process, there be a large potential for practical problems for clients and advisors to arise. We are uncertain however from ASIC's proposals whether the new annual consent process will enable the ongoing advice agreement and renewal notice to be replaced, but if this was being considered it would certainly assist in reducing some of these practical problems.

6. **Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?**

First State Super response -

Yes, examples would be helpful and should include the different types of advice servicing models in place across the industry. Examples on how fees disclosed in consents should be calculated and what a forward-looking statement should look like would be most useful.

7. **Do you think ASIC should provide other guidance to help fee recipients comply with the legislative instrument? If so, what guidance?**

First State Super response -

Yes, we recommend that ASIC review corresponding advice Regulatory Guides to provide relevant guidance on the new consent process. ASIC where possible should also provide worked examples as part of the Regulatory Guide.

In particular, the industry would greatly benefit from guidance from ASIC on the materiality thresholds that should be applied by licensees in regard to breach reporting. For example; is it intended that a failure to receive and process a consent form by 1 day constitutes a reportable breach or is there a threshold or tolerance level around this period before breach reporting is required.

Implementation timeline - Notwithstanding the recent challenges that COVID-19 has presented the industry and ASIC, we believe a 1 July 2020 implementation date for these changes will not enable the industry to properly prepare for the changes. We recommend that ASIC further consult with industry to determine a more suitable implementation date.

2.2 Consent to the deduction of non-ongoing fees

We note ASIC's proposal 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.

ASIC's questions:

1. **Do you agree with our proposal? If not, why not?**

First State response -

Yes, we agree with the proposal. As a part of our process to gain authority for the deduction of event-based fees, we currently receive consent from members.

2. **Should the legislative instrument require any further information to be disclosed in the member consent form?**

First State response -

We recommend that the instrument include the requirement that the consent form clearly show the destinations of the fees and funding components. For example; what part of the advice relates to superannuation, as opposed to that relating to investments outside of superannuation.

3. **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?**

First State Super response -

Yes, please see our response to question 4 at section 2.1 above.

4. **Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?**

First State Super response -

Yes, worked examples would be helpful and should provide guidance on how we should have regard to the Sole Purpose Test under Section 62 of the Superannuation Industry (Supervision) Act (SIS Act).

Further to our response to question 2 in this section. Worked examples should also cover expectations on details to be provided for the destinations of fees and funding components.

5. **Do you think ASIC should provide other guidance to help superannuation trustees comply with the legislative instrument? If so, what guidance?**

First State Super response -

Yes, further to our response to question 4 above, guidance should be provided on how the Sole Purpose Test under the SIS Act should be applied.

2.3 Lack of independence disclosure

We note ASIC's proposal 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.

ASIC's questions:

1. **Do you agree with our proposal? If not, why not?**

First State Super response -

Yes, we agree with the proposal.

2. **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?**

First State Super response -

Yes, we agree that the statement should appear on the first substantive page of the FSG or Supplementary FSG.

We suggest that the following wording would be appropriate for this statement:

'Our advice services are provided by xxxx [the AFSL] and that is provided by xxxx [trustee] and we are operated by xxxx [the fund]'.

As discussed in section 2.1 above, we have concerns over what the timeframe for expected compliance. We recommend that ASIC consider a 'soft compliance' approach, allowing trustees to change statements as part of next FSG roll out rather than a fixed date. This would save costs, which are ultimately borne by members.

3. **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?**

First State Super response -

We do not see any issues arising in terms of the prominence of the statement in electronic form. In our case it is the same document which is provided wither in physical electronic form to clients - the presentation does not differ differences in presentation between the two forms.

4. **Should the legislative instrument take a more prescriptive approach to specifying the information required in the statement? If so, why?**

First State Super response -

In line with our comments in sections 2.1 and 2.2 above, we believe prescription is beneficial to the industry as a whole. We recommend that ASIC provide in this prescription the explicit terms they would like to appear in the statements. Furthermore, we recommend ASIC provide clear examples of appropriate wording for different advice models, for example; vertically integrated models and independent.

5. **Is there a risk that firms will be able to undermine the intent of the obligation? If so, how should ASIC address this risk?**

First State Super response -

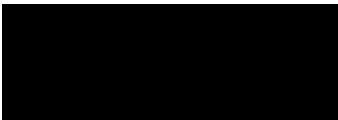
We believe the risk of firms undermining the intent of the obligations could be managed through prescription, as discussed above. In addition to our above feedback, it will be important that ASIC provides a clear legal definition on independence.

6. Do you think ASIC should provide guidance to help a providing entity comply with the legislative instrument? If so, what guidance?

First State Super response -

Yes, it would be helpful for ASIC to provide guidance around many of the topics discussed above. We recognise however that more prescriptive the approach taken by ASIC in the instruments the less the need will be to provide extensive guidance.

We are pleased to discuss any queries that ASIC has regarding this submission. Please contact me at the below contact details should you wish to discuss.



Stuart Watson
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