Contact:
Graham Sale Chair of Policy and Government Liaison Committee CIFAA
T: [redacted]
M; [redacted]

CIFAA Submission on "Delivering Better Financial Outcomes – reducing red tape and other measures"

The Certified Independent Financial Advisers Association Ltd (CIFAA), is Australia's largest association of Independent Financial Advisers.

CIFAA is a not-for-profit association whose membership is restricted to Independent Financial advisers as defined in S923a of the Corporations Act. It is staffed entirely by volunteer practitioners and one of its main objectives is to provide input on policy matters that deliver better outcomes for consumers.

Key recommendations of the CIFAA submission.

- Fee Disclosure Statements be strengthened with fee consent forms only required once, when the fee charged is a flat-fee, not based on funds under management.
- Consolidated Fee Disclosure Statements to be provided by Advisers
- Advice Fees deducted by superannuation funds, should be available through MyGov portal.
- Non independent bias statements should be present on all advice communications provided by advisers to clients.
- S923a should be redefined to include asset-based fees charged by advisers as conflicted remuneration.

Ongoing fee arrangements

There is a clear duplication in the current process of providing both Fee Disclosure Statements and Fee Consent Forms.

The proposal in Part 2 is to remove the current requirement for advisers to provide a Fee Disclosure Statement (FDS), and to retain the Fee Consent forms, in a hopefully more streamlined format.

We believe the overall objective would be better served by doing the opposite.

Retain the current fee disclosure statement, including the offer to renew. Remove the fee consent renewal requirement where a flat fee arrangement is in place. A new fee consent to be provided only when there is an increase in the advice fee.

<u>To help illustrate why, we provide an example:</u>

Jack and Jill are aged 67 and retiring.

Assets are home, no debt, Jack – ABC Super Fund - $250,000, Jill - XYZ Super Fund - $100,000, non super investments in joint names - $150,000.

The Adviser will normally treat this family unit as one client.

The adviser will go through their normal advice and documentation processes and quote the client one ongoing service fee. For the sake of example in this case, lets say the Fee is $3,000 per annum for ongoing advice and service.

The adviser proposes to collect this Fee as follows:
Jack ABC Pension Fund - $1,500 per annum
Jill XYZ Pension Fund - $600 per annum
Non Super assets - $900 per annum

Jack and Jill agree to this proposal.

The adviser can't simplify this and just collect the total fee from, say, Jack's Super Fund, because to do so would breach the superannuation sole purpose test.

<u>Total fee not disclosed</u>

Under the current proposal, the adviser would have to provide 3 different fee consent forms, one to each of the super fund accounts, and a 3rd to the non super account which might be, say, a master trust or a wrap account.

Under the proposal, none of these 3 forms would show the actual total fee being charged by the adviser for his or her service – it would be a piecemeal disclosure of fees. The Fee Disclosure statement shows the total adviser service fee, but it is proposed that the FDS be removed. If the current proposal is implemented, there is no document showing the total fee.

Saving Time

The fee disclosure statement is one form, already in place, designed by the advisers office within the guidelines, and consistent in the advisers office across all clients. In the example set out above, there are 3 Fee consent forms, for 2 different Super funds, plus one different wrap account provider. These consent forms and attached processes are not consistent. All have their own rules.

It is the Fee Consent Forms which are by far the most time consuming part of the current and likely future fee disclosure requirements.

Can the Fee Consent Forms and processes be streamlined?

We understand that part of the proposal is to make the Fee Consent Forms more consistent. The opportunity to do so has been there for 3 years and it hasn't happened yet. Each major product provider runs on their own IT systems, has their own legal department and interpretation of the laws, and has their own appetite for how conservative or not they want to be in protecting themselves from perceived legal risks. They have all also spent significant amounts of money to put their current systems in place and we would suggest they are likely to be reticent about ditching those systems and spending even more money aligning with the proposed new standardised form to be set out by the Minister.

The proposal recognises these barriers to developing one consistent form across all providers.

1.79 of the exposure draft explanatory materials says "the law would not require a product issuer to accept the form"

1.83 says that the Form is not mandatory.

1.84 suggests that if required to give more than one notice or form, the information may be combined and given in a single notice or form.

- Using our fairly typical example from above, 1.84 suggests that we do one form for all 3 of Jack and Jills' different product providers. This form would have to set out the ongoing service fee being deducted from Jack's ABC super Fund, Jill's XYZ Super Fund, and their separate jointly held wrap account, and send this information to all 3 providers. We would suggest that there might be some privacy issues to be considered if this were to be done.

Exposure Draft 962Y - Form for consents: specifically recognises the difficulty in having consistent fee consent forms and processes across all providers with the Note:

- Despite consent being given in an approved form, an account provider (other than the fee recipient) may request additional information from the fee recipient before deducting ongoing fees from an account.

To summarise, the proposal is to retain the fee consent process, which is the most time consuming part, while recognising that it is probably never going to achieve standardisation and consistency across the industry, and do away with the far less time consuming part of the process, being the Fee Disclosure Statements and renewal request.

Clear, concise and effective

Fee Disclosure Statements make much more sense than Fee Consent forms. The Fee Disclosure Statements show the total fee being charged, how it is being charged, what services have been provided and what fee has been paid for those services over the last 12 months, what services are to be provided for the next 12 months and what the fee is going to be for these services, and asks the client to renew their agreement within prescribed time frames if they want to continue with this service.

On the other hand, the whole concept of Fee Consent is confusing. The Fee Consent Form is an agreement between the adviser and their client, yet the form is invariably designed by neither the adviser or the client, but is instead done via a 3rd party designed form or through a 3rd party's online portal.

What is the client to make of an agreement between themselves and the adviser which is being presented to them with an unrelated product providers logo all over it?

By creating this confusion, the Fee Consent Form and process fails the first test of being clear to the client as to exactly what this document is.

Because the product providers are also including all their own conditions in this agreement, which are irrelevant to the ongoing service agreement between the adviser and the client, these fee consent forms also fail the test of being concise. Some of these Fee Consent forms run to 5 pages in small font, whereas the ASIC example version, which the product providers have almost uniformly failed to adopt, is one page.

CIFAA also believes that fee consent form arrangements should reflect situations where flat fees are charged. In some advice situations, advisers do not charge a percentage fee where the monetary amount varies from one day to the next. When these fees are fixed, there should be no requirement to produce an annual consent form.

We believe CIFAA's recommendation to require trustees to upload advice fees to the ATO for inclusion in the MyGov superannuation data goes a long way to ensuring clients are informed about the total fees being charged for advice.

As the current Fee consent Forms are neither clear, nor concise, it is safe to say that they are certainly not effective.

Hayne Royal Commission recommendations, and future processes

The relevant recommendation from the Final Report of the Royal Commission is set out below:

Recommendation 2.1 – Annual renewal and payment

The law should be amended to provide that 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 that account given at, or immediately after, the latest renewal of the ongoing fee arrangement.

The third leg of Recommendation 2.1 is the basis for the introduction of the Fee Consent renewal laws. Hayne **also** recommended a review of these laws after a period of time to see how they were working, and this is the exercise we are in the middle of now.

Hayne's last word in the Final Report was an argument for simplification, so the law's intent is met.

It is clear that the current duplication from having both the Fee Disclosure and renewal requirements **and** the Fee Consent Forms is inefficient, costly to operate, and of debatable benefit to the consumer. The current Fee Consent system has been in place for almost 2 and a half years, and by the time changes are enacted we would imagine the earliest starting date would be 1 July 2024, which would give it 3 full years.

This means that any existing ongoing fees in the system have been renewed by clients 3 consecutive times. If there were ongoing advice fees being deducted from accounts that the clients weren't aware of, or no longer wanted to pay, then these will be well gone, meaning that what has been achieved so far is that the system has been cleansed (which is an excellent achievement).

Any new ongoing service agreements where fees are deducted from accounts with product providers can and would be set up the way they are now. The product providers have forms and processes in place to do this already, and have had for many years. The Client has to sign and agree to having their fees deducted from their accounts.

If a client in the future decides to terminate their relationship with the adviser, then it is the adviser's responsibility to immediately contact the product provider and have ongoing fees stopped. The adviser has this responsibility under various laws including their AFSL, various parts of Corporation law, the Code of Ethics, Common Law and common sense.

If the client does not return the renewal agreement that comes with the FDS within the prescribed time frame, then that is a termination of the agreement and once again it is the advisers responsibility to contact product providers and ensure that any ongoing fees being deducted are stopped.

The product provider's responsibility should only be to set up these arrangements with a clear agreement and consent from the client. It should **not** also be one AFSL's (the product provider) responsibility to check on or do the job of another AFSL (the adviser). The current interpretation of dual responsibility around the annual renewal of the ongoing fee is the basis of the current inefficient and confusing duplication of the system.

Summary

We believe that retaining the Fee Disclosure regime, integrating parts of it within the MyGov portal and removing the annual Fee Consent requirement, is the better way to meet the stated objectives. That is, to increase accessibility and affordability of personal financial advice, improve the experience for consumers and remove unnecessary red tape.

Producing the Fee Disclosure Statement and getting effective renewal is a far more efficient process than doing a number of Fee Consent forms for each client, with each product provider having their own, different processes.

Everything, including the total fee is in **one** document in the FDS, and given that it is an agreement between the adviser and their client, the FDS actually makes sense as opposed to the 3rd party designed and branded Fee Consent form.

Other matters

While CIFAA endorses many of the simplifications contained in the QOR, we are concerned that important consumer safeguards flowing from the Financial Services Royal Commission are being diluted.

We believe underpinning many of the recommendations from the Royal Commission and the QAR review, was a desire to remove or reduce the effects of systemic conflicts of interest that currently exist in the industry.

CIFAA maintains that ultimately the best outcome for consumers, is where no real or perceived conflicts of interest exist.

The more advisers that operate under an independent model, the better the overall outcome for consumers.

Lack Of Independence

Hayne Royal Commission Recommendation 2.2 was to require providers to disclose a lack of independence to consumers at the point of initial contact.

Commissioner Hayne found that consumers should clearly understand that advice could be conflicted when the provider's AFSL imposed certain requirements on their representatives. These included but were not limited to, promoting "in-house" products, working off an approved product list, where arrangements between different product providers were not clearly disclosed and undisclosed performance measures of advisers that might be applied by an AFSL and could create conflicts of interest on the advice provided.

In this case, implementation of Recommendation 2.2 required that a statement to the effect of non-independence be clearly made on the FSG provided to consumers at the first point of contact.

If the proposed FSG changes are adopted, CIFAA recommends that all Statements of Advice and Records Of Advice clearly state the lack of independence as currently exists on an FSG. All verbal advice should include a similar statement. Please note that we do not propose this course of action for routine enquiries of fact and information, only when personal advice is being provided.

Restrictions imposed by trustees.

CIFAA members regularly encounter obstacles when contacting superannuation funds on matters concerning a client's membership. These are routine enquires regarding current fund balances, contribution details, insurance cover and other matters.

This enquiries are made when required privacy release documentation has been completed and a member has fully authorised an adviser to make these enquiries.

This obstacles range from significant delays in providing information or blanket refusals. Variations between funds mean that rules vary from one fund to the next.

CIFAA believes that such obstacles can prevent a member receiving independent and objective advice from a professional not connected with the product. Indeed sometimes that information offered in a frank and fearless manner, might conflict with the objectives of the fund concerned in growing funds under management or identifying systemic operational issues.

We believe that advisers who satisfy S923A of the Corporations Act, should be granted different access rights to other advisers that might be conflicted.

We suggest that:

On identification as an independent adviser with required proofs, superannuation funds be required to furnish the required information in a timely manner or provide viewing access to that data for the adviser concerned.

A standardised set of proofs be adopted and all APRA regulated funds comply in recognising those proofs.

Clarification of S923a

CIFAA is concerned that ASIC's present interpretation of S923a of the Corporations Act, does not align with the objectives of that section of the Act and opens the door for conflicted advice under the guise of independence.

Specifically, Rg175.64, deals with the types of remuneration that might give rise to a breach of S923a.

RG 175.64.a.2 refers to:

"forms of remuneration calculated on the basis of the volume of business placed by the person with an issuer of a financial product".

In effect, this is a commission payment based on the funds placed with an fund manager and quite properly, prohibited.

CIFAA believes that a percentage based adviser service fee, is also based on the volume of business placed or funds under management, is simply another form of commission payment, albeit under another name.

Clearly under this structure, the more funds invested, the higher the adviser service fee, with no demonstrable increase in the work performed.

Where a percentage-based fee is used, it bears no relation to the amount of time an adviser spends on the client’s requirements.

The adviser should be remunerated for their time, skills and knowledge.

Using an asset based fee, could give rise to a real or perceived inclination for an adviser to use investment strategies to increase the balances without proper regard to the client’s risk profile.

Lower net wealth clients deserve the same level of time and attention (if not more) than high net worth clients to protect their investments and give the required level of retirement income. Asset based fees can imply an inequality in the levels of service provided- and limit access to clients who needed professional financial advice.

CIFAA requests that asset and specifically percentage based payment arrangements are regarded as a commission or a “volume of business” type payment and therefore, would fall under the types of payment that are prohibited for someone calling themselves “independent” or “unbiased”.

An independent adviser should only receive a flat fixed fee, that does not automatically vary as fund values rise and fall.

All CIFAA members operate on that principle.