

Question No: 008-01
Reference: Hansard page 52
Committee Member: Mr FALINSKI

Questions:

Mr FALINSKI: Thank you, Ms Chester. I appreciate that. Going back—and this is slightly tangential, I accept, but—recently, as you would be aware, FASEA has decided that it is going to apply a very strict ruling that there can be no conflicts of interest under its Standard 3. This came out under questioning in a Senate committee when Senator Stoker put on notice that she would like to know who had made submissions for this very strict ruling. There appears to have only been two submissions in favour of applying an absolutely-no-conflicts standard to Standard 3. One was by CHOICE, which received substantial amounts of money from the taxpayer. The other was from two Griffith University academics, where it was noted by them that their submission was developed with input from members of ASIC's Consumer Advisory Panel. Can you tell us who's on that advisory panel?

Ms Chester: I'm happy to take on notice who is on the advisory panel. It is quite a large panel, and I would be bound to miss somebody. Would you like me to tell you at the time when that report was made or now?

Mr FALINSKI: That submission was only made in December 2018, so not that long ago.

Ms Chester: Yes. It has changed since then. I'm assuming you're looking at the time of December '18?

Mr FALINSKI: Okay. What changes have been made in terms of the selection of the people on that panel?

Ms Press: I don't think the selection process has changed, but the people on the panel have. As naturally occurs, they've rolled through as their terms have expired.

Answers:

The members of ASIC's Consumer Advisory Panel (CAP) in December 2018 were:

1. Gordon Renouf (Chair)
2. Xavier O'Halloran, CHOICE
3. Ian Yates, COTA Australia
4. Katherine Temple, Consumer Action Law Centre (CALC)
5. Julie Barrow, Financial Counselling Australia (FCA)
6. Dana Beiglari, Legal Aid NSW (LAN)
7. Fiona Belzar, Australian Shareholders' Association (ASA)
1. Robert Brown, Air Commodore, ADF Financial Services Consumer Council
8. Viv Elliston, The Melbourne SMSF Group (MSG)
9. Jon O'Malley, Indigenous Consumers Assistance Network (ICAN)
10. Karen Cox, Financial Rights Legal Centre (FRLC)
11. Professor Gail Pearson, Consumers' Federation of Australia (CFA)

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Question:

Mr FALINSKI: Could you also let us know the selection process?

Ms Press: Certainly.

Answer:

ASIC Consumer Advisory Panel (CAP) members are selected in accordance with the CAP Terms of Reference (TOR) which provides at paragraph 7 that:

(7) CAP members will be appointed by ASIC on the basis of relevant expertise and experience and their ability to represent the interests of Australian consumers or consumer groups.

ASIC selects CAP members in accordance with these requirements also having regard to current, or new and emerging financial services issues, where new consumer voices may emerge over time. We may reach out to the Consumers Federation of Australia (CFA) or individual groups directly in an effort to ensure that the panel continues to be broadly representative of consumer issues relevant to the products and services we regulate.

The selection process is also guided by the need to ensure the panel includes a mix of members capable of responding to a broad range of financial services consumer issues on the one hand along with representatives with deep, specialist expertise in a specific set of issues, such as corporate governance or superannuation, while others hold specialist expertise on consumer issues affecting specific cohorts of consumers, such as older people, Indigenous people or low income and disadvantaged consumers.

The current CAP membership represents consumers of all the financial products and services we regulate from general and life insurance products, superannuation, financial advice, investment products, consumer credit and financial services issues affecting Indigenous Australians and older Australians.

ASIC reviews the composition of CAP every two years in an effort to ensure the panel retains this necessary diversity and currency.

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Questions:

Mr FALINSKI: When you say you funded submissions, that's not the total amount of funding that the panel receives though, is it?

Answers:

No.

The Consumer Advisory Panel (CAP) Terms of Reference (TOR) at paragraph 11 sets out ASIC's role in relation to CAP.

11. ASIC will

- 11.1. Provide a secretariat to support CAP and enable it to operate effectively;
- 11.2. Consider and respond to issues raised by CAP;
- 11.3. Pay sit fees and meet reasonable out of pocket expenses for CAP members to support participation on CAP.

Sit fees paid to CAP members have not changed for many years and are \$395 per meeting incl GST for CAP members and \$1800 incl GST for the chair, in acknowledgement of the additional time involved for the chair in preparation for the meeting.

CAP meetings are typically held in Sydney with only 3 of the 12 members (including the chair) currently based outside Sydney. There has been no travel for CAP meetings in 2020.

Paragraph 12 of the TOR states that:

12. ASIC may

- 12.1. Consult CAP or CAP members on policies and practices that have a consumer impact, as appropriate;
- 12.2. Provide access to information and relevant ASIC staff, subject to statutory limits that apply to ASIC's ability to share information;
- 12.3. From time to time provide funding to CAP to enable it to commission research, undertake public submissions and/or support consumer communications.

There is no dedicated annual budget for CAP per se. From time to time, funding is made available to CAP under paragraph 12.3 of the TOR.

Question No: 008-04
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Committee Member: Mr FALINSKI

Questions:

Mr FALINSKI: No, industry bodies appointed by you. Did you fund any other submissions to FASEA on this issue?

Ms Chester: We might take that on notice, because I know there has historically been a governance panel and I recall, from the time I actually did the capability review—not currently—that there was some funding for some governance research to be done. Can we take that on notice so we can give you a more fulsome answer?

Answers:

No.

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Questions:

Ms Chester: I think more importantly is the question: on what basis did ASIC make the decision to provide that money for that purpose. I think that would go to addressing issues that you're raising. And, just to reinforce the point that Commissioner Press made before, we are very fortunate with all of our panels—our external advisory panel, the governance related panel that we have and the Consumer Advisory Panel. They have very different lenses on the work that we do as a regulator, but they inform us and help us do our jobs well. We get a lot of information and data from the Consumer Advisory Panel, as we do from the governance panel and others, that help inform our metrics and our data for helping us understand consumer harms, market integrity issues and the like. We're happy to give you a bit more of an expansive response on this one so you can get a better handle on the benefits that we get. On the issue of whether or not it was industry-funded—I might be incorrect here but my recall is—under the industry funding model, part of the funding that goes to CAP is not picked up in the industry funding model, but we'll also cover that off in the response to your issue.

Answers:

ASIC's Consumer Advisory Panel (CAP) is managed from ASIC's Strategy team. The Strategy team provides secretariat support for CAP, and ASIC, through the Strategy Team core budget, pays sitting fees and limited travel expenses in relation to CAP members.

CAP does not have a dedicated annual research/submission budget. From time to time, ASIC will support a funding allocation, typically between \$10,000 to \$15,000 for the preparation of a consumer submission into an existing policy consultation process. This will generally be in response to CAP's identified priorities (e.g. based on legislative/reform issues impacting consumers) though whether to fund a submission is at ASIC's discretion. This typically occurs where there is a need for a consumer voice in a consultation process and where

- consumer groups may lack capacity themselves to prepare their own submission, given the volume and competing demands for submissions;
- there is a clear benefit in a joint consumer submission (that provides for broader consultation with other consumer groups or organisations) to assist policy makers; and/or
- specific legal or operational expertise is necessary to make a considered contribution to the debate.

Ultimately ASIC makes an assessment as to whether the potential benefit of a submission to the legislative / reform process to which it would contribute justifies the provision of funding. ASIC does the procurement, is the contracting party and manages the contract to ensue delivery and value for money consistent with our general approach to procurements. Nevertheless, ASIC does not approve, veto or give instructions about the content or focus of these consumer submissions.

As with the other costs of CAP, the cost of such submissions is met through the Strategy Team's core budget. That core budget forms part of ASIC's overall budget which is recovered through the industry funding model.

ASIC considers that CAP funded submissions have played an important role in ensuring the consumer voice is heard in consultation processes on issues that materially affect the lives of Australian consumers.

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Questions:

Mr Day: Can I also add, Mr Falinski, to ensure we don't mislead you, that we don't pay per diems, but occasionally we have paid travel costs, some small contribution towards travel costs, and it may be—I'll have to check this and take it on notice—that we also pay a small fee to the independent chair of the Consumer Advisory Panel, just to assist with the time it takes working through the agenda and preparing and chairing the meeting, but that amount is a very small amount. But we will take that on notice and bring that back to you.

Answers:

As set out in a previous answer, ASIC's Consumer Advisory Panel (CAP) Terms of Reference (TOR) at paragraph 11 sets out ASIC's role in relation to CAP.

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