

Question No: 011 - 01 & 02
Committee Member: Mr Falinski
Topic: Consumer Advisory Panel

Questions:

QoN 011-01 – Submissions

At the public hearing of the committee on 18 November 2020, Commissioner Press, confirmed that ASIC had funded a submission by two Griffith University academics to the Financial Adviser Standards and Ethics Authority (FASEA) on the Code of Ethics in mid-2018 through the ASIC Consumer Advisory Panel (CAP).

- a) For how long has ASIC funds been used by consumer advocates to make submissions?
- b) Can you please advise all cases of such funding of consumer submissions on financial advice policy matters over the last 10 years, including who did the work, which consumers groups the funding was provided on behalf of, and how much did each assignment cost?
- c) Please advise the total funding provided to the CAP for each of the last 10 financial years.
- d) Does ASIC directly fund consumer groups in any other manner (including through community benefit payments)?

QoN 011-02 – Governance arrangements of the ASIC Consumer Advisory Panel

I would like to better understand the governance arrangements with respect to the funding of the CAP and the use of ASIC funds or funds that ASIC provides for consumer group submissions.

- a) Is the CAP set up as a separate entity, or does the funding come directly from ASIC or funds allocated by ASIC?
- b) For what purposes is funding provided and how is the budget approved?
- c) What internal ASIC processes apply to the approval of any such submission assignments? Is a tender process followed and if not, then how is the consultant selected for the preparation of the submission? Who is this signed off by and how does ASIC form the view that this is an appropriate allocation of money?
- d) How are issues of conflicts of interest dealt with in the selection of the consultant? For example, how does the selection process take into account relationships between members of the CAP and the consultant or with respect to any other connections to ASIC?

- e) How were the Griffith University academics selected? Who recommended them and was consideration given to the appropriateness of selecting them, when there was a Griffith University professor on the Board of FASEA and acting as the CEO of FASEA at that time?
- f) When was the funding of the submission by the Griffith University academics in 2018 approved? The first round of the FASEA Code of Ethics consultation closed on 1 June 2018, however it is evident from this submission, that it was not submitted until August 2018. Did ASIC consider it appropriate to use taxpayer's money to fund a submission that was at least a month late, or was a commitment obtained from FASEA that it would still be considered by FASEA?
- g) Who was on the CAP at this time in mid-2018 and what connections were there between the members of the CAP and the Board of FASEA?
- h) There are stringent disclosure rules that apply in the financial advice sector. What disclosure has been made with respect to the funding of these submissions? It seems that an awareness of this matter has only arisen as a result of the disclosure by these Griffith University academics on a university website, and not as a result of action taken by either ASIC or the CAP. Does ASIC agree that there should be proper disclosure of the source of funding?
- i) What is the role of the ASIC CAP and do ASIC executives attend these meetings and participate in discussions about what actions this panel takes? Can you please explain the way that the ASIC CAP operates and how it reports back to ASIC? What accountability does the CAP have to ASIC?

Answers:

QoN 011-01

- a) For how long has ASIC funds been used by consumer advocates to make submissions?

ASIC established the CAP in November 1998 after ASIC took on regulatory responsibility for consumer protection in financial services.

ASIC's consumer protection role is set out in the ASIC Act 2001 which provides at s12A(2) that "ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system".

S12A(3) provides that "ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the payments system".

ASIC is also responsible for administering such laws of the Commonwealth that confer functions and powers on it (section 1(a) ASIC Act). Those laws include the ASIC Act itself, the Corporations Act and a range of other legislation dealing with financial services, superannuation and credit.

In performing its functions and exercising its powers, ASIC is required, inter alia, to promote the confident and informed participation of investors and consumers in the financial system (section 2(b) ASIC Act).

ASIC's administration of the ASIC Act includes the consumer protection provisions in Part 2, Division 2 of the ASIC Act which include the prohibitions against unconscionable conduct, misleading and deceptive conduct and unfair contract terms.

With an expanded membership to reflect ASIC's broader consumer protection responsibilities, CAP replaced the former National Investor Liaison Committee to advise and brief ASIC on consumer and investor protection issues and provide feedback on ASIC activities. CAP (through member updates) provides ASIC with a real time understanding of issues affecting consumers of financial products and services, including about emerging consumer detriment.

Since inception, ASIC has from time to time funded consumer research projects and/or submissions proposed through CAP, and records indicate that financial year 1999-2000 was the first year funding was allocated for CAP proposed research to assist consumer input into the review of the payments systems code.

- b) Can you please advise all cases of such funding of consumer submissions on financial advice policy matters over the last 10 years, including who did the work, which consumers groups the funding was provided on behalf of, and how much did each assignment cost?

Beyond its broad consumer protection role noted above, one area of Commonwealth laws that ASIC administers is those relating to the provision of financial advice. These include laws going to licensing and the obligations that attach to holding a license, disclosure, standards of conduct and advice, conflicts of interest, codes of conduct approval, and dispute resolution and remediation.

ASIC provided funding to support the preparation of consumer submissions relating to financial advice on 4 occasions in the past 10 years:

- 2018-2019:** Joint consumer submissions on the FASEA code of ethics and education pathways. The submissions incorporate issues raised in the FASEA Consumer Forum of June 29, 2018. Dr Hugh Breakey & Professor Charles Sampford. \$10,000.
- 2012-2013:** Joint consumer submission to ASIC Consultation Paper 191 Future of Financial Advice: Approval of codes of conduct for exemption from opt-in requirement. Gordon Renouf \$5,280.
- 2011-2012:** Joint consumer submission in response to the St John Report on Compensation Arrangements for Consumers of Financial Services. Gordon Renouf and Amie Meers \$6,600.
- 2011-2012:** Coordination and preparation of joint consumer submissions to the consultation on the Future of Financial Advice (FOFA) Bills tranches 1 and 2. Associate Professor, Joanna Bird, University of Sydney \$9,000.

The funding was not provided on behalf of any specific consumer group. CAP members identified the need for consumer submissions to these public consultation processes and ASIC decided to allocate funding to facilitate the preparation of a joint consumer submission. In each case it was up to the relevant consultant to determine what organisations or individuals they spoke to in preparing the submission, including CAP members.

- c) Please advise the total funding provided to the CAP for each of the last 10 financial years.

There is no dedicated funding provided to CAP. Table 1 below sets out for the last 10 financial years where ASIC has covered the costs of consumer research or consumer submissions, where these are identified by CAP, and agreed to by ASIC, as representing or relevant to priority issues affecting Australian consumers within ASIC's areas of legislative responsibility. In each case ASIC procured the research or submission.

ASIC must apologise for the fact that it inadvertently provided incorrect information in evidence to the Committee on 18 November 2020 in relation to fees paid to CAP members. ASIC stated the correct position in its response to QON 008-03 provided to the Committee on 9 December 2020 that, in accordance with the CAP Terms of Reference (TOR attached), ASIC pays sitting fees and meets the reasonable out of pocket expenses (including travel) for CAP members to support participation on CAP.

Sitting fees are currently \$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 currently held three times per year, typically in Sydney. Currently 9 of the 12 members (including the chair) are based in Sydney. In 2020, meetings were held virtually in response to COVID-19.

Table 1: CAP research and submissions over the past 10 years

| No | Year funded | Researcher commissioned | Project | Research / submission | Cost |
|----|-------------|---|---|-----------------------|----------|
| 1 | 2018-2019 | Consumers Federation of Australia. | Joint consumer submission to ASIC's Consultation Paper 310: Review of the ePayments Code. | Submission | \$10,000 |
| 2 | 2017-2018 | Dr Hugh Breakey & Professor Charles Sampford. | Submissions on the FASEA code of ethics and education pathways. | Submission | \$10,000 |
| 3 | 2016-2017 | Consumer Action Law Centre | Joint consumer submission to the Ramsay Review of the dispute resolution framework (Issues paper and Interim report). | Submission | \$15,000 |
| 4 | 2016-2017 | Consumer Action Law Centre | Joint consumer submission to Treasury proposals paper on the DDO and PIP, prepared by CALC. | Submission | \$10,000 |
| 5 | 2014-2015 | Dr Dimity Kingsford Smith & Dr Marina Nehme | Product Intervention Powers: a Legal, Comparative & Policy Analysis. ASIC provided funding for an external consultant, Professor Dimity Kingsford Smith and Dr Marina Nehme to conduct research on product intervention powers. This research was submitted as a Joint consumer submission to the Australian Government's consultation on the recommendations made by the Financial System Inquiry. | Research | \$25,000 |
| 6 | 2013-2014 | Ernst & Young | Market analysis of comparison sites. Research on what makes a good financial comparison website, and to identify the risks and benefits to consumers of these websites. | Research | \$18,000 |

| No | Year funded | Researcher commissioned | Project | Research / submission | Cost |
|----|-------------|--|--|-----------------------|----------|
| 7 | 2013-2014 | BIS Shrapnel | BIS Shrapnel conducted research on financial difficulty businesses operating in Australia. This involved a qualitative analysis of debt management firms' marketing material, stakeholder interviews and a mystery shopping exercise. This research informed Report 465: <i>Paying to get out of debt or clear your record: The promise of debt management firms</i> . | Research | \$29,829 |
| 8 | 2012-2013 | Gordon Renouf | Joint consumer submission on CP 191 Future of Financial Advice: Approval of codes of conduct for exemption from opt-in requirement. | Submission | \$5,280 |
| 9 | 2012-2013 | Susan Bell research | Susan Bell conducted research about SMSF investors achieving their investment goals. | Research | \$39,570 |
| 10 | 2011-2012 | Susan Bell research | Susan Bell conducted research on consumer decision-making when deciding how to pay for a funerals. Report 292 <i>Paying for funerals: How consumers decide to meet the costs</i> . | Research | \$29,896 |
| 11 | 2011-2012 | Gordon Renouf and Amie Meers | Joint consumer submission in response to the St John Report on Compensation Arrangements for Consumers of Financial Services | Submission | \$6,600 |
| 12 | 2011-2012 | Associate Professor, Joanna Bird, University of Sydney | Joint consumer submission to FOFA Bill Inquiries (tranches #1 and #2) | Submission | \$9,000 |
| 13 | 2010-2011 | Chris Connolly | Joint consumer submission to the Richard St John Review of compensation arrangements for consumers of financial services | Submission | \$10,000 |
| 14 | 2010-2011 | Susan Bell research | ASIC Report 240 Compensation for retail investors: the social impact of monetary loss. | Research | \$65,000 |

d) Does ASIC directly fund consumer groups in any other manner (including through community benefit payments)?

ASIC does not directly fund consumer groups.

ASIC has in the past entered into court enforceable undertakings with banks and other financial firms that include an agreement to make a community benefit payment to a charity or other appropriate recipient. The purpose of these payments has been to fund the recipients to provide particular services, education or information to consumers within the cohort who may have been / were likely to have been affected by the relevant misconduct (e.g. older people, Indigenous consumers, people with low financial capability).

The last enforceable undertaking containing a community benefit payment was signed in October 2018. Details about these payments are available in the text of the EU and/or reports against each EO on ASIC's Enforceable Undertakings Register

<https://asic.gov.au/online-services/search-asics-registers/additional-searches/enforceable-undertakings-register/>

ASIC has also from time to time monitored consumer remediation programs conducted by firms. Sometimes these programs include a residual payment where funds could not be returned directly to affected consumers, so instead a residual payment was passed by the firm on to an appropriate recipient to be used to provide services, information or education to consumers of a type that may be affected by the misconduct. In these situations the underlying principle is that a firm should not benefit from the profits of their breach.

In both these circumstances, the firm directly pays the relevant recipient.

Examples of recipients who have received payments under either a CEU and/or residual remediation payment include:

- Ecstra Foundation
- Financial Literacy Australia (wound-up)
- The Financial Counselling Foundation
- The Ethics Centre
- Smith Family
- Brotherhood of St Lawrence
- Salvation Army
- Cerebral Palsy Alliance
- Dementia Australia

Recipients have also included organisations or groups that have had an individual representative on CAP from time to time, including:

- Indigenous Consumer Assistance Network (ICAN)
- Financial Counselling Australia (FCA)
- Consumer Action Law Centre (CALC)
- Financial Rights Legal Service (FRLC)
- COTA Australia
- Australian Shareholders Association (ASA)
- Superannuation Consumers' Centre (SCC).

QoN 011-02

- a) Is the CAP set up as a separate entity, or does the funding come directly from ASIC or funds allocated by ASIC?

CAP is not a separate entity. It is one of a number of ASIC advisory panels and consultative committees established to support effective external stakeholder engagement.

ASIC's Consumer Advisory Panel (CAP) is managed from ASIC's Strategy team.

The Strategy team provides secretariat support for CAP. Funding to cover the costs of CAP comes directly from the Strategy team core budget.

- b) For what purposes is funding provided and how is the budget approved?

As noted above, there is no dedicated annual budget for CAP. Funding from the Strategy core budget pays sitting fees and limited travel expenses in relation to CAP members.

ASIC's Strategy team may allocate funding toward consumer research or consumer submissions as provided for under paragraph 12.3 of the CAP Terms of Reference (TOR).

The allocation of funding is approved by the responsible senior executive for the Strategy team.

- c) What internal ASIC processes apply to the approval of any such submission assignments? Is a tender process followed and if not, then how is the consultant selected for the preparation of the submission? Who is this signed off by and how does ASIC form the view that this is an appropriate allocation of money?

From time to time and in accordance with the CAP TOR, ASIC may support a funding allocation, typically between \$10,000 to \$15,000 for the preparation of a consumer submission into an existing policy consultation process on subjects within ASIC's statutory mandate. This will generally be in response to CAP's identified priorities (e.g. based on current legislative/reform issues impacting consumers).

ASIC will make 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. The decision to do so will be at ASIC's discretion but will typically occur 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 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.

Where ASIC determines that it is appropriate to fund a submission, ASIC will, in consultation with the CAP (and, as appropriate, external experts) identify a suitable candidate to prepare the submission based on relevant expertise and capacity. Candidates are appointed in accordance with ASIC procurement guidelines.

ASIC does the procurement, is the contracting party and manages the contract to ensure delivery and value for money consistent with our general approach to procurements. ASIC does not approve, veto or give instructions about the content or focus of these consumer submissions.

The procurement is signed off by the responsible Senior Executive or Executive Director.

- b) How are issues of conflicts of interest dealt with in the selection of the consultant? For example, how does the selection process take into account relationships between members of the CAP and the consultant or with respect to any other connections to ASIC?

Any potential conflict of interest would need to be disclosed in accordance with the standard ASIC procurement process.

- c) How were the Griffith University academics selected? Who recommended them and was consideration given to the appropriateness of selecting them, when there was a Griffith University professor on the Board of FASEA and acting as the CEO of FASEA at that time?

As previously noted, beyond its broad consumer protection role, one area of Commonwealth laws that ASIC administers is those relating to the provision of financial advice. These include laws going to licensing and the obligations that attach to holding a license, disclosure, standards of conduct and advice, conflicts of interest, codes of conduct approval, and dispute resolution and remediation. The FASEA consultation was relevant to these responsibilities.

ASIC selected the candidates to prepare the FASEA submission in accordance with its usual process. In this case, ASIC undertook a direct approach to a number of possible suppliers and recommended suppliers. Direct approaches to particular suppliers was considered appropriate as the work required specialist expertise and needed to be completed within a short-time frame.

The scope of the work was set out by email to the identified supplier, Dr Breakey, who had the necessary expertise, capacity and availability to prepare the submission and attend a roundtable on 29 June 2018 in response to the Financial Adviser Standards and Ethics Authority consultation about:

- i) the draft Code of Ethics for financial advisers; and
- ii) the proposed guidance on educational pathways for all advisers developed by FASEA.

Dr Breakey is an expert in the area FASEA was consulting on. He was the President of the Australian Association for Professional and Applied Ethics, and a Senior Research Fellow at the Institution for Ethics, Governance & Law at Griffith University.

Because of the narrow scope of the work, short time frame and cost of the procurement, the Commonwealth Standard Purchase Order terms and conditions were used to govern this arrangement. The relevant Standard Purchase Order terms and conditions include the following terms relating to conflicts of interest:

C.C.3 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated relevant to the performance of its obligations under the contract.

If any conflict or potential conflict arises during fulfilment, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict.

No actual or potential conflicts were declared.

- d) When was the funding of the submission by the Griffith University academics in 2018 approved? The first round of the FASEA Code of Ethics consultation closed on 1 June 2018, however it is evident from this submission, that it was not submitted until August 2018. Did ASIC consider it appropriate to use taxpayer's money to fund a submission that was at least a month late, or was a commitment obtained from FASEA that it would still be considered by FASEA?

ASIC sent an engagement letter to Dr Hugh Breakey of Griffith University on 19 June 2018 also attaching the Commonwealth Purchase Order terms.

FASEA conducted a further consultation roundtable with consumer groups on 29 June 2018 and the submission responded to feedback provided in that session.

FASEA agreed to extend the timeframe for submission and were pleased to receive a consumer submission to both rounds of the consultation.

- e) Who was on the CAP at this time in mid-2018 and what connections were there between the members of the CAP and the Board of FASEA?

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 Balzer, Australian Shareholders' Association (ASA)
8. Robert Brown, Air Commodore, ADF Financial Services Consumer Council
9. Viv Elliston, The Melbourne SMSF Group (MSG)
10. Jon O'Malley, Indigenous Consumers Assistance Network (ICAN)
11. Karen Cox, Financial Rights Legal Centre (FRLC)
12. Professor Gail Pearson, Consumers' Federation of Australia (CFA)

No members of CAP were on the FASEA Board during the relevant period.

- f) There are stringent disclosure rules that apply in the financial advice sector. What disclosure has been made with respect to the funding of these submissions? It seems that an awareness of this matter has only arisen as a result of the disclosure by these Griffith University academics on a university website, and not as a result of action taken by either ASIC or the CAP. Does ASIC agree that there should be proper disclosure of the source of funding?

Generally CAP funded consumer submissions are identified as joint consumer submissions with disclosures to the effect that funding assistance was received from the ASIC Consumer Advisory Panel (ASIC CAP). The disclosure on this submission should have more expressly disclosed the funding source. ASIC will ensure that template disclosure is used for any ASIC CAP funded submission in future.

Submissions are generally published on the relevant consultation website. In this case, FASEA received:

- 38 written submissions to its consultation on the code of ethics (2 consumer submissions: Breakey and Choice).
- FASEA received 150 written submissions to its consultation on education pathways (2 consumer submissions: Breakey and Choice).

ASIC does not approve, veto or give instructions about the content or focus of these consumer submissions. As they are not ASIC submissions, they are not published on the ASIC website. However the source of funding should be clear.

- g) What is the role of the ASIC CAP and do ASIC executives attend these meetings and participate in discussions about what actions this panel takes? Can you please explain

the way that the ASIC CAP operates and how it reports back to ASIC? What accountability does the CAP have to ASIC?

ASIC advisory panels and consultative committees operate to support ASIC to effectively engage with our stakeholders. Across ASIC's extensive statutory mandate and responsibilities, Panels support ASIC to gain a deeper understanding of industry and consumer issues, consult on current regulatory and conduct matters and identify threats and harms in the sectors we regulate.

Such panels are common across Australian regulators: the ACCC hosts nine consultation committees including a Consumer Consultative Committee and the ATO operates an external engagement and consultation model comprising a consultation steering group, stewardship groups, stakeholder relationship groups and special purpose working groups.

Internationally, jurisdictions adopt a range of models of external stakeholder engagement including consumer sector engagement subject to their regulatory remit and the maturity of their consumer sector. For example, the UK has an independent statutory panel, the Financial Services Consumer Panel while the Financial Services Regulatory Authority of Ontario (FSRA) is forming a consumer advisory panel.

In addition to the CAP, ASIC's other external panels include:

- **ASIC Business Advisory Panel** provides an ongoing means of direct consultation with the business community, providing input and opinion on the impact of current and proposed registry and licensing services, with particular emphasis on small business. Panel members are drawn from a wide range of business, industry and professional organisations. Each member represents an area of relevant experience and expertise. The Panel met twice in 2019–20. Issues addressed in this engagement included the Government proposal to modernise business registers, the introduction of a Director Identification Number, and the impact of the COVID-19 pandemic on the registry's small business customers. The Panel also provided feedback on the experiences of businesses and agents using our registry services.
- **ASIC Consultative Panel** enables ASIC to consult on proposed regulatory changes; provide intelligence on the external environment, including market conditions; and identifies threats and harms in the markets ASIC regulates. Panel members include senior representatives from industry, legal, academic, consumer and regulatory sectors and are appointed in their personal capacity. Replacing the External Advisory Panel, in 2020 a subset of Panel members met once in 2019-20 to discuss emerging threats and harms in the financial sector.
- **Markets Advisory Panel** comprises members from the financial services industry who have extensive experience in retail markets, institutional banking and asset management. The Panel advises on ASIC's approach to its responsibilities for ongoing supervision of the Australian market, as well as on broader market developments and met five times in 2019–20. Issues discussed included the impact of the COVID-19 pandemic on markets and financial services firms; CHESS replacement; technological, operational and cyber resilience; activist short selling; internal market making for actively managed funds; and retail investor harms, including the application of the product intervention power.
- **Corporate Governance Consultative Panel** enables ASIC to gain a deeper understanding of developments in corporate governance practices and emerging issues. Replacing the Director Advisory Panel, members comprise listed company

directors, industry association representatives, institutional investors and academics and met once in 2019–20. Issues discussed included the key regulatory measures adopted in response to the COVID-19 pandemic, as well as key corporate governance challenges in the pandemic environment, including ASIC's action to maintain equity market resilience, temporary insolvency relief for financially distressed businesses, and ASIC and ASX measures to assist companies with equity raising during the pandemic.

- **Digital Finance Advisory Panel** helps to inform ASIC's fintech and regtech approach and to advise on engagement with the sector. Members are drawn from the fintech and regtech communities, academia and consumer organisations. DFAP also has active observer members from public sector and regulatory agencies, which facilitates dialogue between industry and the public sector. The Panel met three times in 2019-20 and advised on impacts of the Covid-19 pandemic; developments and issues related to crypto assets and initial coin offerings in Australia; and the implementation of reforms such as the consumer data right and the new payments platform, with a focus on what this means for the fintech and regtech sectors.
- **Financial Advisers Consultative Panel** comprises practising financial advisers with expertise in insurance, superannuation (including SMSFs) and digital financial advice and met three times in 2019–20. Issues discussed included the use of ASIC's product intervention powers, law reform arising from the Royal Commission, and ASIC's ongoing work in relation to unmet advice needs, life insurance, fee disclosure statements and renewal notices.

The CAP advises ASIC on current issues faced by retail investors and consumers in the financial services and credit sectors.

The role of CAP is set out in the CAP Terms of Reference (2017). These are currently being updated.

CAP members represent the interests of consumers of financial products and services including shareholders and retirees. Through their participation on CAP they provide feedback to ASIC on key consumer issues consistent with ASIC's statutory mandate, and with a focus on activities regulated by ASIC and a watch on emerging consumer harms on the regulatory perimeter.

CAP currently meets three times per year with most members of the ASIC Commission and senior executives from ASIC teams working on retail financial services (superannuation, insurance, consumer credit, financial advice, investments and enforcement) attending CAP meetings.

The Strategy team provides Secretariat support to CAP and manages the interface between CAP members and ASIC staff. CAP members provide updates at every meeting about the issues, developments or concerns that they are seeing in the market e.g. as reflected in the casework they conduct or via direct consumer contacts such as through the National Debt Helpline. CAP members are appointed to speak from the experience of their relevant organisation at these meetings. ASIC's selection of them to participate and remain on the CAP is based on ASIC's assessment of the quality of their input. CAP meetings are a useful and efficient way for ASIC to better understand consumer participation and outcomes in the financial system.

CAP Terms of Reference

Endorsed on 14 November 2017

ASIC's Consumer Advisory Panel (CAP)

1. ASIC established the Consumer Advisory Panel ("CAP") in November 1998.
2. CAP operates as an advisory body to ASIC, representing the interests of consumers of financial products and services in Australia.

Scope

3. CAP represents the interests of a diverse range of consumers of financial products and services.
4. CAP provides advice and feedback to ASIC on key consumer issues consistent with ASIC's statutory mandate, and with a focus on activities regulated by ASIC.
5. CAP informs the development and delivery of ASIC's strategic and operational objectives.

Membership

6. CAP will have an Independent Chair appointed by ASIC's Commission on the basis of relevant expertise and experience.
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.
8. CAP members will be appointed on a two year term. The CAP membership will be reviewed every two years and terms may be renewed.

CAP's role

9. CAP members will
 - 9.1. Attend meetings typically scheduled 3 to 4 times per year;
 - 9.2. Consult with ASIC on specific regulatory or market issues affecting consumers;
 - 9.3. Bring to ASIC's attention issues which are likely to be of significance to consumers;
 - 9.4. Maintain the confidentiality of information provided to CAP by ASIC or other CAP members.

10. CAP members may

- 10.1. Identify issues that may benefit from consumer or behavioural research to assist and inform ASIC and support ASIC to fulfil its regulatory functions;
- 10.2. Request information from ASIC, subject to statutory limits that apply to ASIC's ability to share information;
- 10.3. Request access to Senior ASIC staff.

ASIC's role

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.

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.

Accountability

13. ASIC will report on the work of CAP in ASIC's annual report.

14. ASIC will provide guidance to CAP on relevant processes and the application of the Freedom of Information Act 1982 (Cth) to CAP.

15. ASIC may report informally on CAP's work to Government or other stakeholders.

16. Given the range of organisations on CAP that may hold different views, CAP members will not speak publicly or to the media on behalf of CAP.

17. Where appropriate (e.g. the release of relevant consumer research), the Independent CAP Chair will speak publicly on behalf of CAP.

18. ASIC and CAP will periodically review the effectiveness and performance of CAP to ensure the Panel continues to operate effectively.