

CORPORATE SUPER ASSOCIATION

SUBMISSION TO

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

ON

DISCLOSURE OF FEES AND CHARGES:

Background Paper and Draft Disclosure Template (January 2003)

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1 BACKGROUND

1.1 *The Corporate Super Association*

The Corporate Super Association is Australia's representative body for major Not For Profit corporate superannuation funds and their corporate sponsors.

The assets of Association members amount to approximately \$60 billion, representing about 85% of total corporate superannuation sector assets in Australia and some 750,000 individual employee fund members.

1.2 *Abbreviations used in this submission*

The Association	The Corporate Super Association
ASIC	Australian Securities and Investments Commission
The Policy Proposal	ASIC policy proposal paper: <i>Licensing: Financial product advisers – Conduct and disclosure</i> , December 2002
Corporations Act, Corporations Regulations	Corporations Act 2001 and related regulations
FSR Act, FSR regulations, FSR regime	Financial Services Reform Act 2001 and related regulations
SIS Act, SIS legislation	Superannuation Industry (Supervision) Act 1993, and related legislation
Ramsay Report	<i>Disclosure of Fees and Charges in Managed Investments</i> , report prepared by Professor Ian Ramsay for ASIC and released on 25 September 2002
Background Paper and Draft Disclosure Template	Discussion documents issued by ASIC in January 2003 regarding proposals for standardised fee disclosure in FSG and investor statements
ACA	Australian Consumers' Association
FSG	Financial Services Guide
PDS	Product Disclosure Statement

1.3 *Context of submission*

The submission has been prepared in response to the invitation to comment directed to Nicholas Brookes, CEO, Corporate Super Association, by Pam McAlister, Director, Legal & Technical Operations, Financial Services Regulation, ASIC.

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2 INTRODUCTION

We welcome the opportunity to provide comment on the Draft Disclosure Template and the Background Paper. Our comments provided below are a starting point only and we look forward to contributing to productive dialogue on a standard disclosure template.

We understand and support the approach outlined, but raise at (3) below some general issues of concern and our preferred format for the disclosure template. At (4) below we have addressed the specific issues for comment set out in Section C of the Background Paper.

3 REVIEW OF THE BACKGROUND PAPER AND DRAFT DISCLOSURE TEMPLATE: GENERAL ISSUES

For reasons outlined below, we believe the approach in the Draft Disclosure Template to disclosure of adviser fees and to fee negotiability is inadequate and that more detailed disclosure and greater precision regarding the fee levels and ranges are required for these.

3.1 *Separate disclosure of adviser fees*

We acknowledge that there is a separate document required, the FSG, which should set out the interest the adviser has in any proposed transaction. Nevertheless, we believe that it is crucial that the product issuer should set out in the PDS, as the primary product information document, a clear statement identifying separately the element of fees paid to advisers. The PDS is the first point of reference regarding the specific product for the investor and it is important that it should highlight the interest the adviser has in introducing the investor to the particular product.

3.2 *Variable fees*

We understand that fees may be variable for a number of reasons:

- deeds may specify a maximum level of fees, but the fund/product manager does not levy fees at the maximum level for various market reasons. However, the power to increase the fees exists. Not all prospectuses disclose the maximum fees permitted under the deed, and most prospectuses do not disclose the notice period required to disclose to investors in relation to an increase in fees and charges¹;
- not all investors pay the same fee for the same service, owing to different fees for the same service applying to different types of products or to fee negotiability and rebate arrangements;
- some fees are discretionary in the sense that they apply if the investor adopts a particular course of action, such as switching, or requires a special purpose report (e.g. for family law purposes).

We have put our views about disclosure of these items below.

¹ Ramsay Report, Part 3, page 40

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3.2.1 Fee negotiability

We believe that the existence of negotiable fee scales in the market creates significant uncertainty and confusion. Whilst it may aid some investors to know that there is scope for negotiation, not all investors have the same leverage or general ability to negotiate, or knowledge about the range within which they should be paying. For this reason we are uncomfortable with the proposed approach in ASIC's Draft Disclosure Template which would assign a separate column to a mere "Yes/No" response to the issue of fee negotiability for a particular service. This assigns a special importance to fee negotiability, without providing full details of the actual range of fee levels.

For this reason we believe that where there is a range of levels of fees for a particular product or service the useful approach would be to require disclosure of the maximum and minimum fee and to require reasons to be given for the existence of a range. We believe that where rebate arrangements apply the main arena for disclosure should be the FSG, which outlines the arrangements with the adviser and the adviser's interests in proposed transactions.

3.2.2 Discretionary fees

We are not in agreement with the categorisation in ASIC's proposed Fees and Charges Table of all contribution fees, withdrawal fees and exit fees as "discretionary". We believe that the process of contribution and withdrawal of capital are an intrinsic part of the investment process, and that to categorise these as discretionary or optional is misleading, as they apply to every investor. We prefer to limit the "discretionary" description to fees for events or services which will not apply to every investor, such as switching investment options and requiring special reports. We prefer to separate contribution fees into a special category, and also to identify separately the fees which apply on withdrawal: refer to our preferred table format at 3.3 below.

3.3 Preferred disclosure model

We support the use of a simple tabular model which can be supplemented by other information as necessary by way of additional notes. We believe that this format is easiest for the investor to absorb.

We believe that the disclosure model proposed by the ACA is a useful starting point, requiring disclosure of fees by broad functions:

- administration;
- trustee;
- fund manager (with separate explicit disclosure of fees paid to advisers); and
- other (e.g. taxes and other charges);

with sub-categories which inform about the time and circumstances under which these are imposed:

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- initial (with distinction between account establishment and contribution fees);
- ongoing;
- switching and other “discretionary” fees; and
- withdrawal fees.

The broad function categories are similar to those identified by Professor Ramsay² and we would have little difficulty with using his categories as an alternative.

We believe that such information can usefully be presented in, say, a table of four columns by five with the main categories (administration, etc) along one axis and the sub-categories (initial, etc) along the other.

4 SPECIFIC ISSUES FOR CONSIDERATION

We have set out below our responses to the issues for consideration at Part C of the Background Paper.

- a) We support the use of a table for presentation of standardised descriptions of fee arrangements: see comment above.
- b) As a).
- c) We support inclusion of the suggested information but, as indicated above at 3.2.1, believe that the bare information that fees are negotiable will not promote equity and may cause confusion. We believe that where there is a range of possible fee levels the maximum and minimum should be stated and the reasons provided for the existence of a range of fee levels.
- d) See response to a) and b).
- e)
 - (i) We believe that there is a place for such phrases/questions where it is believed these assist communication. However, a tabular format has the advantage of providing a significant amount of information in an easily accessible style, with the primary tabular format supplemented by a section of “Frequently asked questions”.
 - (ii) The use of the word “entry fee” should be clarified. Standard terminology should be adopted for account establishment fees (one-off fees which are unrelated to the initial capital contributed and which do not recur when further capital contributions are added). Separate standard terminology should apply to all fees charged on contributions of capital to the investment, regardless of whether the contribution is the first or one of a series. We support Professor Ramsay’s recommendation that fees on contributions be described as “contribution fees” rather than entry fees.³

² Ramsay Report, Part 2, page 29.

³ Part 6 of Ramsay Report, page 200

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- (iii) The most useful and meaningful way of disclosing fees is in terms of the percentages by which they are calculated, unless they are flat fees. We would suggest that dollar amount illustrations be provided by means of a ready reckoner provided as an Appendix or other reference, rather than cluttering up the central disclosure. We support Professor Ramsay's recommendation⁴ that ASIC consider providing a fee calculator on its website. Alternately, product issuers should be encouraged to provide web-based calculators for their product fees.
- (iv) We are concerned about arrangements where the fees are not defined but are subject to a range. We believe that there should be greater certainty regarding the levels of fees. Disclosure of historical information about fee levels where a range is possible may be misleading as it does not indicate intentions for the future. Instead, full information should be provided about the maximum and minimum levels and the notice period required for an increase in fees.
- (v) We support the disclosure of information about the direct source of adviser commission but believe that this can be limited to whether the fee is charged direct to the investor, to the investor's account or to the fund. It should be made clear to the investor what the fees are for and it should be clarified that even if fees are paid from the fund rather than from the investor's account that these reduce overall returns (and hence are a cost to the investor).
- (vi) We strongly support the separate identification and quantifying of adviser fees. These should not be disclosed only as an unquantified amount included in other fees. We believe that full information about the fees payable to the person with whom the investor is interacting directly is most important and relevant, as it makes the investor fully aware of the interest the adviser has in recommending a particular product. We do not think that referral to the FSG or SOA is sufficient. We believe that the place for disclosure of adviser fees on a particular product is in the primary product information document: see 3.1.
- (vii) We believe that the fees of service providers other than the investor's adviser are less directly relevant to the investor's decision to choose a particular product. They are not paid to people who interface directly with the investor or receive fees directly related to the investor's choice to enter the product. Fees to these other service providers can usefully be incorporated into the recommended model (under a category such as "administration fees" or "fund manager fees") without the need for detailed analysis. We believe that fees paid to service providers to the fund or other entity are a fund efficiency issue rather than a matter that affects the integrity of the advice provided to the investor.
- (viii) As indicated above, we believe that there should be certainty regarding the level of fees for particular products and that disclosure of information about negotiability of fees should not be limited to the bare fact that negotiability exists. To reduce

⁴ Part 6 of Ramsay Report pages 218 to 222

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confusion and promote equity, there should be full disclosure of the potential range of fees and the reason for variability.

- (ix) We suggest that factual information about fee percentages and flat dollar arrangements should be favoured over dollar illustrations. Where it is felt that greater clarity would be achieved by calculation of fees for particular circumstances we suggest access to a ready reckoner or web-based calculator rather than the provision of calculations illustrating arbitrary circumstances, which may mislead.
- (x) We note the difficulty with buy/sell margins⁵ and note that these can encompass exit fees and contribution charges. Given the difficulty of isolating these elements, we believe that a standard approach should be adopted of treating the buy/sell margins as another form of exit fee, and favour the disclosure of this margin under the exit fee classification. An alternative approach would be to treat the margin as a form of contribution fee. We recognise this as an important issue and believe that standard disclosure should be adopted as this is otherwise a way in which fees can be disguised or at least not disclosed.

⁵ See Ramsay Report page 30