



FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

28 February 2020

Mr James Kelly  
Division Head  
Financial Services Reform Taskforce  
Treasury  
Langton Cres  
Parkes ACT 2600

Email: [FSRCconsultations@treasury.gov.au](mailto:FSRCconsultations@treasury.gov.au)

## RE: Recommendation 2.1: Ongoing fee arrangements

Dear Mr. Kelly,

The Financial Planning Association of Australia<sup>1</sup> (FPA) welcomes the opportunity to provide feedback to the Exposure Draft on FSRC Rec 2.1 - Ongoing fee arrangements

The FPA agrees financial advisers should be required to periodically review and renew ongoing fee arrangements, document them and seek the consent of their clients for any fees to be charged.

However, we believe requiring this to be conducted annually without any modification to the existing laws around when an ongoing fee arrangement can be renewed rather than reset, adds considerable time and cost pressures on financial planning practices. It is not practical and will be too much of an administrative burden for many practices. These additional compliance burdens come at a time where the industry is undergoing major structural changes and the FPA encourages a balance between consumer protection without exacerbating: the cost of providing advice; additional regulatory complexity; or additional administrative burdens that will inhibit the access of financial advice for all Australians.

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<sup>1</sup> The Financial Planning Association (FPA) has more than 12,919 members and affiliates of whom 10,618 are practising financial planners and 5,540 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- We are recognised as a professional body by the Tax Practitioners Board.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 188,104 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally.



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The FPA would welcome the opportunity to discuss with the Treasury the issues raised in our submission. If you have any questions, please contact me on [ben.marshan@fpa.com.au](mailto:ben.marshan@fpa.com.au) or on 02 9220 4500.

Yours sincerely

**Ben Marshan CFP® LRS®**  
*Head of Policy and Standards*  
Financial Planning Association of Australia



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

# FSRC Recommendation 2.1

## Ongoing Service arrangement

28 February 2020

Submitted to:  
Treasury



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## FPA CONCERNS

### Issue 1: Flexibility in meeting FDS, RN and Product authorisation obligations

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The existing timelines for issuing fee disclosure statements and renewal notices were modified by the Government in 2014 due to the impracticalities of the original time frames proposed as part of FOFA. From this perspective, they made sense for the purpose of annual fee disclosure and biannual renewal notices. The current laws have led to a general practice whereby in year one clients have their financial plan reviewed at or around 12 months, but for the second year, the review is generally brought forward (typically in the 21<sup>st</sup> to 23<sup>rd</sup> months of the arrangement) to allow clients to renew their ongoing fee arrangements prior to expiration of the existing ongoing arrangement. This has the effect of resetting the ongoing fee arrangement to the date the client renews the arrangement (under S962L). From a practical perspective, this makes sense with biannual renewal arrangements, however, will create challenges on an annual basis. For this reason, the FPA recommends that the renewal notice timeframes be amended to allow for advisers to comply with the administrative obligations to renew a client and to allow for a continuation of current practice from financial advisers who have indicated that they review their client financial plan at or before the renewal notice day (1-3 months before renewal day).

Many advisers find that conducting a review as part of the renewal process to meet the FDS requirements and renewal notice obligations assists clients in understanding the ongoing fee and service arrangements they have entered. However, scheduling a client review within the 60-day time period after the renewal notice day will create challenges for advisers and may lead to consumers being reviewed after their 12-month anniversary on an ongoing basis. Under the proposed measures in this exposure draft, there are no measures which would allow for clients to renew their ongoing fee arrangement with their advisers before the anniversary date without resetting the 'renewal notice' day or 'disclosure day'.

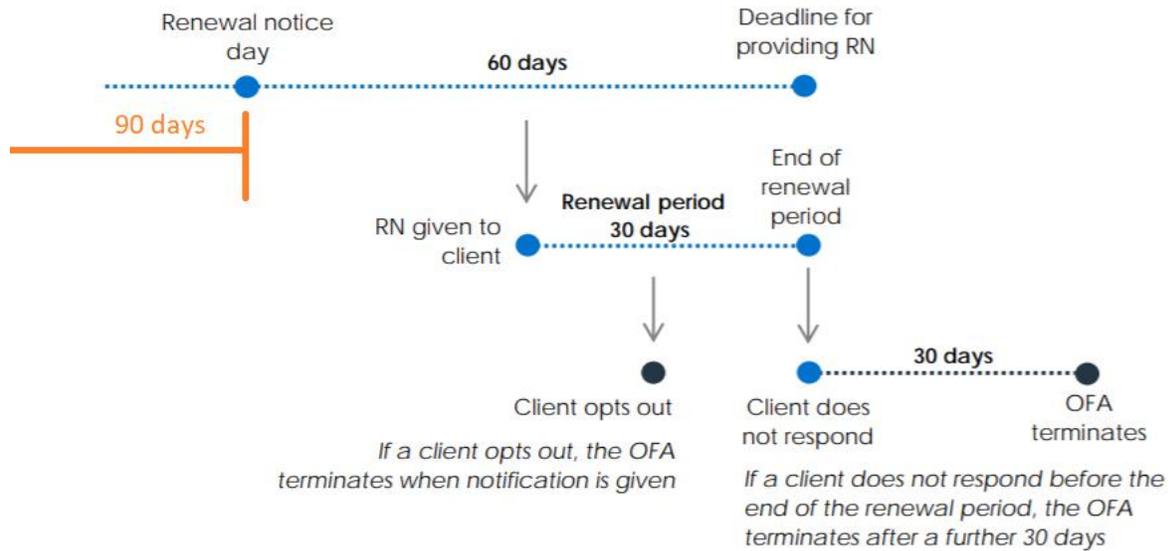
The FPA therefore recommends that to support the intent of the law (i.e. that clients receive annual review services and renew their ongoing fee agreement annually), additional modifications to s962L will be required to provide the required flexibility for advisers to meet these obligations annually as oppose to biennially. It is important to highlight that the additional obligation of opt-in should not duplicate current processes that seek to achieve the same consumer protection.

Currently, the obligation to give a renewal notice and an FDS is required before the end of a period of 60 days beginning on the renewal notice days for the ongoing fee arrangement provides an incentive for advisers to review client agreements after a period of 12 months because as noted above, s962L leads to the fee arrangement date being reset if it is renewed before the renewal notice day. This is not always ideal in the context of annual renewals as opposed to the current biennial renewal period. As noted, the intent of the law is to review the client's situation during the 12-month period to ensure all agreed services are provided and there is an assessment of the appropriateness of the client engaging in advice services for the next 12 months. The FPA therefore recommends that there should be the option to allow for advisers to give the FDS and RN before the 'renewal notice day' without resetting the arrangement date in line with Diagram A below. Consistent renewal notice day provides stability for both the client and



the adviser to ensure they can meet the renewal and FDS obligations.

### Diagram A – FPA recommendation on amended timeframes for renewal notice



We would also highlight that the constant date change would also increase the risk of clients failing to notify the adviser during renewal period. The consequence of non-reply will instigate new-client obligations such as re-charging the client up-front fees and require the creation of a new SOAs which is often not in the client's best interest.

#### Recommendation 1

The FPA recommends amending the renewal period to allow advisers to give clients the FDS and RN before the renewal notice date and disclosure date, by up to 90 days, without resetting the renewal day obligation under s962L (Renewal notice and renewal period).

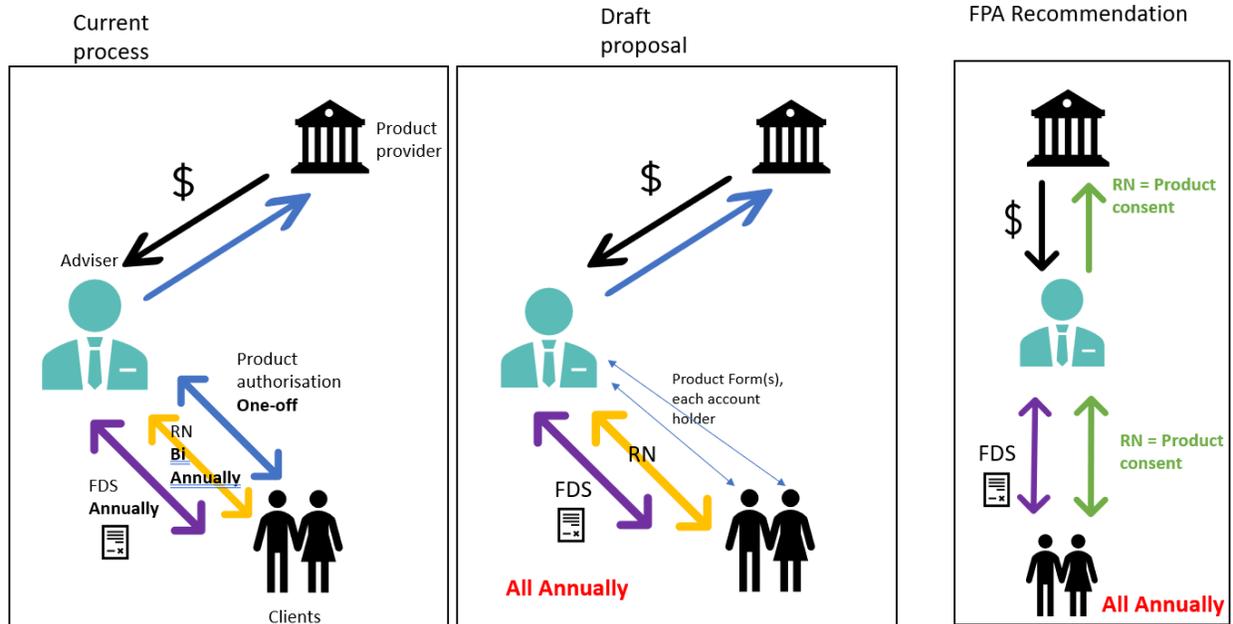


## Issue 2: Consent to arrange or accept such deductions

We agree that the problems of “fee-for-no-service” was the ‘invisible’ nature of ongoing fees. Instilling an authorisation process ensures clients are engaged and aware of the movement of their money. In practice however, it must not cause unnecessary administrative burden by duplicating the opt-in process. Duplication of this kind confuses and frustrates clients as they are required to complete and sign additional forms and increases the administrative cost of providing advice services to consumers.

The FPA believe that when a client consents to renewing their arrangement as provided through a letter of engagement (or terms of engagement as required by the Tax Practitioners Board), that this should equate to consent to deduct advice fee for product providers. As the draft legislation proposes, the consent remains in tandem with the ongoing fee arrangement. That is, so long as the ongoing fee arrangement is in place, then the consent to arrange and deduct fees remains. The only difference between the client signing the renewal notice and signing the product consent form is of who the ultimate recipient of the consent is (i.e. the adviser for the renewal notice and the product manufacturer for the product consent form). The preference of our members and to minimise administrative burden and cost on consumers is that both obligations be handled by the adviser, and to minimise the number of forms of consent to be provided by the client. For this reason, as demonstrated in Diagram B below, the FPA recommends that the legislation at s962(2)(c) be amended to allow the renewal notice under s962K be accepted as confirmation of the client’s product authorisation forms.

**Diagram B: FPA proposed optimisation of product authorisation form**





### **Consent from all account holders**

There is also concern that the requirement to seek authorisation from all account holders would disadvantage clients who are remote and unable to provide authorisation during the renewal period. There are concerns that clients who are on an extended period absence will be disadvantaged by this requirement. For example, defense force personnel, submariners, remote clients, or traveling expats. Under these circumstances, their period of absence is an additional hurdle to renewing their ongoing advice relationship with their financial adviser. From this perspective, the ability to use annual renewal notices as product authorisation forms will simplify the administrative burden for clients who have multiple products or accounts with multiple holders.

### **Multiple product provider forms**

Furthermore, as each product provider will require this form of consent, if an adviser is managing a client who has multiple products, then there is a likelihood that a different and specific consent form for each product is required. Product providers may prescribe their own unique form which will interpret requirements set by ASIC. As a result, the client will be inundated with forms from product providers to ensure they are consenting to pay for their advisory services. This administrative burden increases the risk that clients unintentionally fail to opt-in or administrative mistakes are made. As a result, their investments and funds will be left unmanaged. Neither of these outcomes are in the client's interest.

In summary, the FPA highlights that the new consent requirement is a duplicate of client consent already provided through the renewal notice process. We do accept the importance of product providers having annual visibility of this consent. There is also a client expectation that signing a renewal notice is indicative of their intention continue paying for the services in the manner they have negotiated and agreed to with their adviser and disclosed to them annually in their FDS.

Thus, if an adviser can present the signed renewal notice to product provider as proof of consent, this provides the same consumer protection that Commissioner Hayne sought to achieve with this recommendation whilst minimising compliance cost, and the administrative burden on advisers and consumers.

### **Recommendation 2**

For the purposes of the draft legislation s962(2)(c), a signed renewal notice agreement from a client (as obligated at s962K) should be a valid authorisation form that can be accepted by product providers.

We understand from consultation and further engagement on this issue that this recommendation is also supported by other key professional bodies.

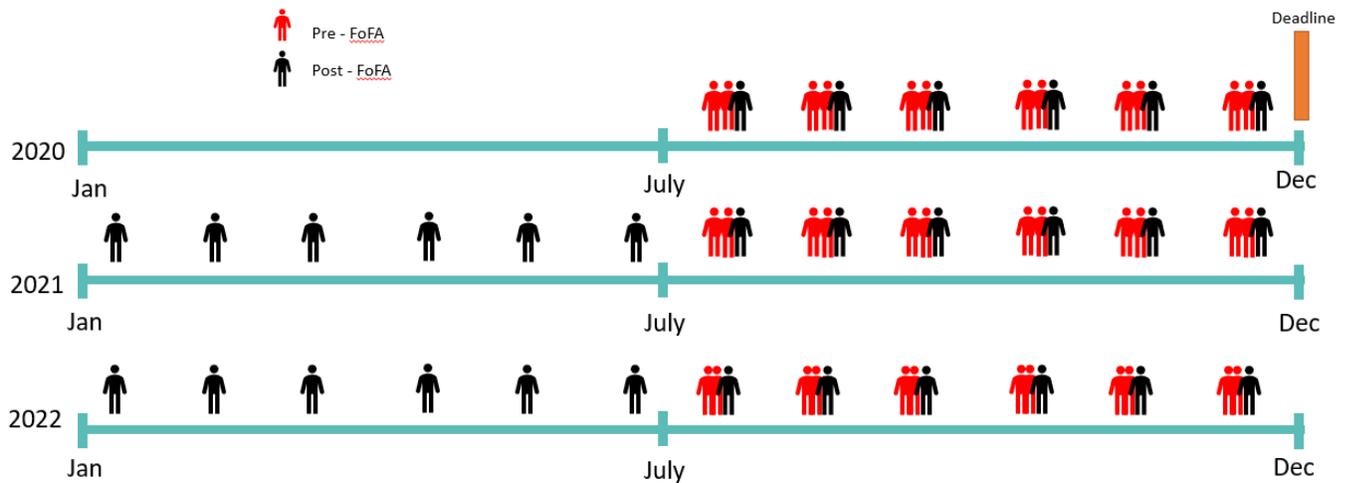


### Issue 3: Pre-FoFA (1 July 2013) Clients opt-in transitional provisions

In relation to existing pre-July 1st, 2013 clients, it is proposed that they must receive a renewal notice between the transitional timeframe of 6 months from 1st July – 31st December 2020, as noted at 1672C (2) of the exposure draft.

The FPA recommends that the transitional provisions should allow 12 months as opposed to only 6 months. This will enable advisers to meet their annual obligations at a month that best suits their clients, as opposed to confining all pre-FoFA clients funneled into 6 months. Spreading these obligations over a 12-month period will allow advisers to administer and service their clients under their existing meeting schedules without the need to commit additional resources to meeting this obligation over a truncated 6-month time frame, as shown in Diagram C below. Using this shortened time period will place significant service pressures between July and December every year which means clients under these arrangements will not have the same resources available in order to be serviced when compared to clients post-FoFA.

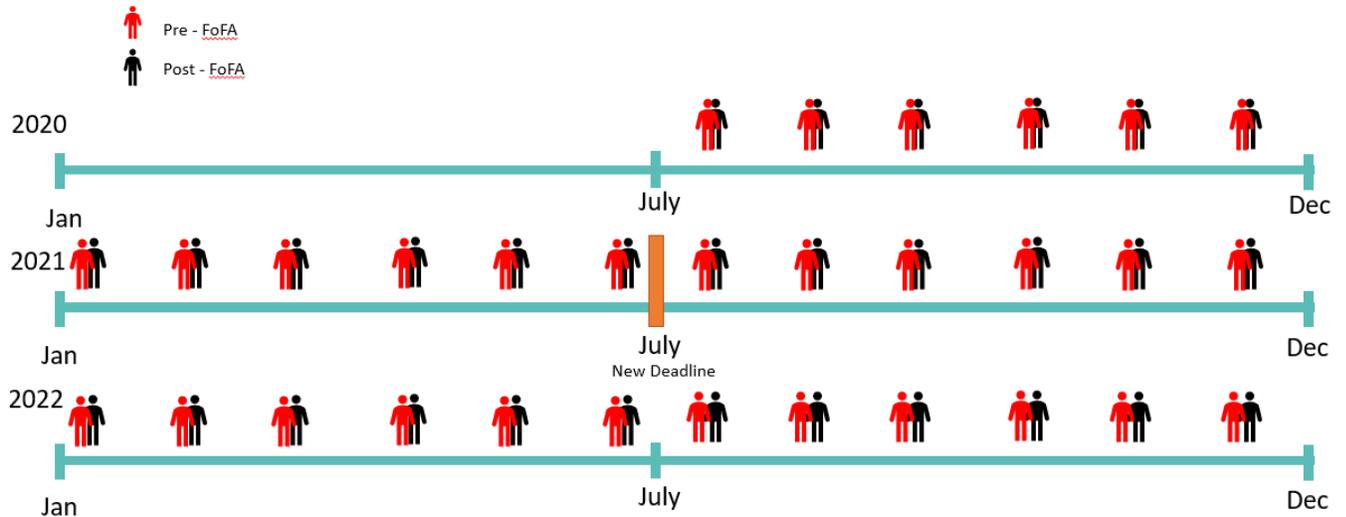
Diagram C: Proposed transitional timeframes



For this reason, the FPA recommends a 12-month transition period to allow for both a more organised transition for pre-FoFA clients as well as a more client focused distribution of annual reviews on an ongoing basis as shown in Diagram D below.



Diagram D: FPA recommendation on transitional timeframes



### Recommendation 3

The FPA recommends a single transition period for both pre- and post- FoFA clients in line with current annual review timeframes which best suits their client-adviser relationship. This will better enable management of the ongoing annual review process, FDS and renewal notice obligations for financial planning practices and advisers between July and December each year due to these transitional provisions.

We understand from consultation and further engagement on this issue that this recommendation is also supported by other key professional bodies.



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## Issue 4: Measures for refunding fees deducted without consent

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The draft legislation proposes that penalties are placed on advisers to ensure that fees are appropriately turned off with product providers when clients have opted out or decided not to authorise payments from their existing products. In most circumstances, the licensee is the responsible entity for the advice, ongoing service arrangements and ongoing fee collection. For this reason, the FPA recommends that penalty provisions should apply to licensees to place a duty of care on the actual fee recipient.

Further, the obligation for advisers to ensure that clients receive a refund of any overpayment of fees is not practical within a 5-business day period. In practice, all fees are transferred from product providers to the licensee first. As fees are not directed to the adviser in the first instance, the adviser is at risk of non-compliance with s962R or 962S (to refund the client within 5 business days) on the basis that they are, in practice, not aware until sometimes months later that an incorrect fee has been collected. It is common practice for licensees to bundle client fees together for an entire practice, and for employee representatives, they may never have visibility of the fees collected from clients. It is therefore inappropriate to place penalties against the adviser and will in most instances be impossible for an adviser to be aware of a payment, let alone an overpayment within 5 business days and potentially indefinitely.

### Recommendation 4

For s1317GB(b) the number of days should be increased to **20 business days** to ensure licensee's, and advisers can appropriately detect the breach, notify the product provider and refund the fee back to client. Appropriately, it should be made clear that the 'fee recipient' can include the licensee who are the first in line to detect such contravention and more appropriately situated to manage the refunding of the fee.

### Cost of providing ongoing renewal services

Surveys conducted by the FPA on an annual basis have demonstrated that over the last 12 months FPA members have had to increase their fees for ongoing services by 12%. The FPA supports that the premise for recommendation 2.1 is to ensure that clients have visibility for all services they are entitled to receive, have received, how much they have paid, how much they will pay and agree to how the fees will be paid over the next year. The FPA is concerned however that prescriptive time frames and disclosure obligations will only exacerbate the cost imposed on clients for the purpose of meeting administrative obligations.

For this reason, the FPA recommends that advisers should – while needing to comply with each of these obligations - have the option of meeting these obligations in a manner which reduces the administrative cost and burden for their individual client relationships as demonstrated in the Appendix to this document. The FPA recommends that the law allow at the discretion of the adviser to severally or jointly comply with each of these obligations at their discretion.

To be clear, the FPA is not recommending that compliance is not required, but that if the consumer will benefit more from the existing fee disclosure being provided in a different form or medium to the prospective fee disclosure obligation there should not be a requirement for these to be provided together.



Equally, where it is best for the client to receive their FDS (fees paid and fees to be paid) in the same document or medium as the renewal notice and product authorisation, this should also be allowed under the law. This will allow advisers to best provide disclosure and authorisation to their clients based on their client's preferences.

### **Recommendation 5**

The FPA recommends that the legislation be modified to require that the FDS, renewal notice and product authorisation requirement all be met, but that they can be met separately or jointly in the best interests of the client to provide flexibility and reduce administration costs for the adviser.



## Summary of FPA Recommendations List

### Recommendation 1

The FPA recommends amending the renewal period to allow advisers to give clients the FDS and RN before the renewal notice date and disclosure date, by up to 90 days, without resetting the renewal day obligation as written at s962L (Renewal notice and renewal period).

We understand from consultation and further engagement on this issue that this recommendation is also supported by other key professional bodies.

### Recommendation 2

For the purposes of the draft legislation s962(2)(c), a signed renewal notice agreement from a client (as obligated at s962K) should be a valid authorisation form that can be accepted by product providers.

We understand from consultation and further engagement on this issue that this recommendation is also supported by other key professional bodies.

### Recommendation 3

The FPA recommends a single transition period for both pre- and post- FoFA clients in line with current annual review timeframes which best suits their client-adviser relationship. This will better enable management of the ongoing annual review process, FDS and renewal notice obligations for financial planning practices and advisers between July and December each year due to these transitional provisions.

We understand from consultation and further engagement on this issue that this recommendation is also supported by other key professional bodies.

### Recommendation 4

For s1317GB(b) the number of days should be increased to 20 business days to ensure licensee's, and advisers can appropriately detect the breach, notify the product provider and refund the fee back to client. Appropriately, it should be made clear that the 'fee recipient' can include the licensee who are the first in line to detect such contravention and more appropriately situated to manage the refunding of the fee.

### Recommendation 5

The FPA recommends that the legislation be modified to require that the FDS, renewal notice and product authorisation requirement all be met, but that they can be met separately or jointly in the best interests of the client to provide flexibility and reduce administration costs for the adviser.



## Appendix

For reference here is a table of the client experience during proposed FSRC Recommendation 2.1 process.

Step	Item	Step	Disclosure	Signatures
1	FSG	They meet you and get disclosed how you will be paid both upfront and ongoing in your FSG	1	0
2	LOE TOE	They want to do business with you, so they then sign a letter of engagement to prepare a SOA where you disclose your fee and they sign (TOE is required by TPB)	1	1
3	SOA	They then get presented a SOA where you disclose your initial fee and ongoing fee and sign an Authority to Proceed	1	1
4	OSA / OFA	They then sign your Ongoing Service Agreement; here you disclose your ongoing fee and the services	1	1
5	Product Provider authorisation application form	You set up an application form with a provider where they get disclosed the fee in the application again and they then sign a consent and direction form for the product provider to deduct the fee for the year ahead.  Product providers may provide their own forms and ASIC is delegated to instruct what information may be required on the consent form.	1	>1
6	Fee disclosure	You earn your fee and after twelve months you disclose <ul style="list-style-type: none"> <li>the fee charged for the year and</li> <li>what you will charge going forward for the year in an FDS</li> </ul>	1	0
7	Re-sign OFA	They then re-sign a new ongoing fee arrangement/engagement where you disclose the services and the fee for the year ahead	1	1
8	Product Provider Authorisation form	They then re-sign a form with the product provider to deduct next year's fee.	1	>1
		Total	8	>6