



Fee Disclosure Statement & Renewal Notice Guide

v 2.0 November 2018

The Fee Disclosure Statement (FDS) is a reporting requirement and is part of the 'Future of Financial Advice' (FoFA) reforms. The Renewal Notice (RN), sometimes referred to as 'Opt In', is a requirement and is part of the same 'Future of Financial Advice' (FoFA) reforms.

The annual FDS provides clients, who have an 'Ongoing Fee Arrangement' in place with you, with transparent information regarding the ongoing fee paid; the services that they were entitled to receive and the services they actually received over the previous 12 months.

The Renewal Notice is to be completed at a minimum every two (2) years and seeks to obtain written confirmation from a client that they wish to maintain or renew an existing Ongoing Fee Arrangement.

Definitions

An **existing client** is a retail client who received personal advice and entered into an ongoing fee arrangement before 1 July 2013.

A **new client** is a retail client who receives personal advice and enters into an ongoing fee arrangement after 30 June 2013.

The **fee recipient** is the the entity or person holding the rights to and being currently entitled to receive the fees paid by the client for the agreed ongoing services under the arrangement. This may be the licensee, a representative of the licensee or the assignee or person who currently holds those rights.

An **ongoing fee arrangement** exists where a retail client is given personal advice and is charged an ongoing fee over a period of more than 12 months. The arrangement must be with your client and payment must be made under that arrangement either:

- directly from your client; or
- with the clear consent of; or
- at the direction of your client.

Generally, an ongoing fee arrangement exists where you are receiving direct payments from the client whether it is a flat fee or an amount based on a percentage of funds under advice, that is either:

- invoiced directly;
- direct debited from their nominated bank account; or
- deducted from their investment.

An ongoing fee arrangement may also exist where you are receiving commissions from product issuers that are prearranged with the client as being a payment in lieu of an ongoing service fee charged to the client and agreed by the client.

An **ongoing fee** is any fee paid by a client however described or structured. Examples of ongoing fee arrangements include adviser service fees, commissions and payments linked to the provision of

ongoing services and retainer arrangements for annual reviews where the retainer is paid for a period of more than 12 months. Insurance commission will generally not be an ongoing fee unless the fee is paid with the clear consent or at the direction of the client in lieu of direct fees that may otherwise be charged as part of an ongoing fee arrangement.

An **ongoing service agreement** is a document or other confirmation outlining the terms of the Ongoing Fee Arrangement.

The **disclosure day** is the anniversary of when the ongoing fee arrangement was entered into.

The **renewal notice** is a notice in writing provided to the client that includes statements confirming how the client may renew the ongoing fee arrangement and what will occur if the arrangement is not renewed.

The **renewal notice day** is generally the second anniversary of the day the agreement was entered into or the last day on which the arrangement was renewed.

Fee Disclosure Statement Obligations

The obligation to give an FDS arises if an 'Ongoing Fee Arrangement' exists between the fee recipient and the client. This obligation applies to both new and existing clients.

The Fee Disclosure Statement must be in writing. The FDS can be provided to clients by email, post, fax, hand delivered or through a secure online facility. Whichever method you choose, you should consider the timeliness and ability to monitor the provision. The client is not required to respond to a standalone Fee Disclosure Statement.

This means that all clients that pay ongoing fees as part of an ongoing service agreement should receive an annual FDS within 60 days of the anniversary date of a client's Ongoing Fee Arrangement. The anniversary date is also referred to as the disclosure day.

For example, if a client entered into an ongoing fee arrangement on 1 August 2017, the disclosure day would be 1 August each year thereafter and the client would need to receive an FDS within 60 days of the disclosure day. In this example, the first FDS must be provided before 30 September 2018 with all subsequent FDS falling due within 60 days of the disclosure day each year.

The information to be included in the FDS must relate to the previous 12 months, up to the disclosure day, and must include information from both the current and any previous fee recipient regarding:

- The amount of each ongoing fee paid by the client expressed in Australian Dollars;
- Descriptions of the services the client was entitled to receive; and
- Details of the services the client actually received.

We understand that there are many types of services being delivered by our Authorised Representatives. Neither the Corporations Act or ASIC's guidance prescribe the level of detail or descriptions required in an FDS provided the mandatory information requirements (above) are satisfied.

Descriptions of the services to which a client is entitled and descriptions of the services that have been provided will need to be personalised according to what the client understands and has agreed to in the initial Ongoing Fee Arrangement.

Identifying the Disclosure Day

In most cases, and with all new clients, the disclosure day will be the anniversary of the date the Ongoing Fee Arrangement was entered into. This may be the date an Authority to Proceed or an Ongoing Service Agreement was signed, or where a defined agreement is not in place the disclosure day may be the date

a financial product was acquired by the client.

For existing clients, you will need to determine (e.g. by reviewing client files) when you first entered into an Ongoing Fee Arrangement with each existing client. It is recommended you document the approach taken to identify the date that ongoing fee arrangements were entered into with existing clients, and to apply that approach consistently across your client base.

Where it is impossible or unreasonably onerous to identify the actual date an Ongoing Fee Arrangement was entered into with an existing client (strict criteria apply), you should adopt a common-sense approach.

For example, where you have purchased clients or been provided with orphan clients and receive ongoing service payments prior to undertaking a review of the client, you may not have the necessary information to determine the disclosure day in relation to the existing Ongoing Fee Arrangement. In this situation you may nominate the FDS disclosure day.

In these situations it is recommended you document in a file note the methodology used and also record, as part of the next client review meeting, the fact you have provided the client with an explanation of the date chosen and discussed with the client the significance of the FDS obligations.

Resetting the Disclosure Day

You have some flexibility to provide an FDS early to clients, if it is necessary and appropriate to do so, even though each statement must cover a 12-month period. For example, you can give a client their first FDS before the expiration of the first 12 months of the ongoing fee arrangement in order to reset the disclosure day to another time of year that better suits your business needs.

In this situation the FDS will still cover a 12-month period, but it must be clearly noted that the ongoing fee arrangement only existed for a portion of that 12-month period, and that the fees disclosed and services received only relate to that part of the 12-month period.

A disclosure day may also be reset where there is a material or significant change to the original Ongoing Fee Arrangement. This means that where there is a material or significant change to the service offering or to the fees being charged under the agreement with your client, a new arrangement may take effect. In this situation the Ongoing Service client must consent to the new Ongoing Fee Arrangement and the acceptance date of the new arrangement then becomes the Disclosure Day.

Renewal Notice Obligations

The obligation to give a Renewal Notice noting that that a client may renew their arrangement only arises if an 'Ongoing Fee Arrangement' between you and the client was entered into after 1st July 2013.

A Fee Disclosure Statement is generally provided at the same time as the Renewal Notice, to provide the client with information on the Arrangement that they may renew.

The Adviser must, before the end of a period of 60 days, beginning on the renewal notice day for the arrangement, provide the client a Renewal Notice and a Fee Disclosure Statement in relation to the arrangement.

If the arrangement has not previously been renewed, the Renewal Notice Day is the second anniversary of the day the arrangement was entered into.

If the arrangement has previously been renewed, the Renewal Notice Day is the second anniversary of the last day the arrangement was renewed.

The information in the Renewal Notice must relate to Ongoing Service Arrangement and include statements that confirm:

- The client may renew the arrangement, by notifying the Adviser in writing; and
- That the arrangement will terminate and that no further ongoing service will be provided or charged under it, if the client does not elect to renew the arrangement; and
- That the client will be taken to have elected not to renew the arrangement, if the client does not give the Adviser notice in writing of an election to renew before the end of the renewal period; and
- That the renewal period is period of 30 days beginning on the day the Renewal Notice and Fee Disclosure Statement is provided to the client.

For an Ongoing Fee Arrangement to be renewed the client must provide the fee recipient with written confirmation of their intent to renew within a period of 30 days beginning on the Renewal Notice Day (the day the Adviser provides a Renewal Notice). The arrangement is considered to be renewed only after the Adviser has received written notification from the client.

The arrangement is considered to be terminated if the client has not renewed the arrangement in writing, within the Renewal Period, the arrangement terminates at the end of a further period of 30 days after the end of the Renewal Period.

If for any reason a renewal notice is not provided to the client within the prescribed timeframe, the ongoing fee arrangement will be considered to be terminated. The client should be notified in writing and all ongoing fees should be cancelled.

Termination of an Ongoing Fee Arrangement

There are a number of situations where an Ongoing Fee Arrangement may be terminated including at the direction or request of the client, at the discretion of the fee recipient or where the regulatory obligations are not satisfied.

The client can cancel the arrangement at any time. In the event a client directs the termination of an ongoing fee arrangement, the arrangement will terminate on the day on which notification is given.

The fee recipient can cancel the arrangement at any time. This cancellation should be confirmed by the fee recipient, as the client cannot restart their cancelled arrangement but they can start a new Ongoing Fee Arrangement.

If for any reason a FDS is not provided to the client within the prescribed timeframe, the ongoing fee arrangement will be considered to be terminated. The client should be notified and all ongoing fees should be cancelled.

If for any reason a Renewal Notice is not provided to the client within the prescribed timeframe, the ongoing fee arrangement will be considered to be terminated. The client should be notified and all ongoing fees should be cancelled.

If for any reason a client does not confirm in writing their intent to renew the ongoing fee arrangement within the renewal period, the arrangement terminates at the end of a further 30 days after the end of the renewal period for the arrangement.

Once the arrangement terminates, the obligation to continue to provide ongoing service to your client also terminates and the entitlement to charge fees under the agreement also terminates. However, you may choose to provide ad-hoc ongoing service and charge at your hourly rate.

Once an ongoing fee arrangement terminates for any reason, it cannot be reinstated. In these circumstances a new Ongoing Service Agreement must be entered into between the client and the fee recipient. This will reset the Disclosure Day for Fee Disclosure Statements and reset the Renewal Notice Day for Renewal Notices.

Arrangements that are not Ongoing Fee Arrangements

Product Fees

Fees that the issuer of a financial product charges a client for the management and operation of a financial product issued to the client.

Commission payable by the product issuer

Commissions received by Authorised Representatives from product issuers will not generally comprise an ongoing fee arrangement where no Ongoing Fee Arrangement between the Representative and client exists.

Insurance premiums

An arrangement is not an ongoing fee arrangement if the only fee payable under the arrangement is an insurance premium and this commission is not linked to the provision of ongoing services or advice.

Other circumstances

An arrangement is not an ongoing fee arrangement if each of the following is satisfied:

- the total of the fees payable under the terms of the arrangement is fixed at the time the arrangement is entered into;
- the total of the fees payable under the terms of the arrangement is specified in the arrangement;
- the fees payable under the terms of the arrangement are to be paid by instalments over a fixed period specified in the arrangement;
- the fees payable under the terms of the arrangement can reasonably be characterised as relating to personal advice given to the person before the arrangement is entered into;
- under the terms of the arrangement, there is no fee payment of which, or the amount of which, is dependent on the amount invested by the person, or the amount in relation to which personal advice is given; and
- the person cannot opt out of payment of any of the fees payable under the terms of the arrangement.