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Financial Services Working Group
The Treasury
Langton Crescent
PARKES ACT 2600

By e-mail: financialservices@treasury.gov.au

Re: Shorter PDS Draft Regulations, Commentary and Example PDS

The Association of Superannuation Funds of Australia (ASFA) is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

ASFA welcomes the work of the Working Group in proposing a regime for PDSs designed to make them easier to read and understand, reduce costs for members and the exposure of our environment to excess paper wastage.

Based on the materials available to date, ASFA has identified a number of issues to be addressed before the PDS will allow a simple (yet meaningful) comparison between products, and balance workability in the new regime with the appropriate level of consumer protection.

Three of these issues identified by ASFA are of major significance and are discussed in detail below. Our review also identified a number of other associated issues and areas where the regulations and other materials might be improved, and we have included these for your consideration also.

Finally, we are aware that the Institute of Actuaries of Australia has concerns with the proposed approach for fees, and in particular the impact of fees on member accounts across different products and over the lifetime of an individual's participation. ASFA's primary concern is that any simplistic disclosure of fees should allow an individual to make a meaningful comparison between products, and therefore supports further work being undertaken in this area aimed at providing clear and balanced information for individuals.

1. The balance between generic education materials and product specific information

ASFA is very concerned that there is a considerable amount of prescribed generic educational information in the PDS which relates to superannuation generally and too little information about the specific product offering. This raises a number of difficulties:

- much of the generic material will be identically reproduced across the industry in these 'short form' documents;
- much of the generic material assumes the consumer is using the PDS to choose between superannuation and a different financial product. This is unhelpful for the vast majority of consumers, who would be more likely to use a PDS only to choose between different superannuation products;
- the inclusion of this material leaves little space for key product information (see item 2 below) and heavy mandated reliance on incorporation by reference (IBR) information; and
- if the documents are not useful for individuals, product providers will adapt other marketing materials to describe and highlight the key product features – these documents will be subject to weaker regulatory control.

There are a number of options that should be considered to provide the generic content, including providing the material as a public document or having it placed on various public and private websites. In this regard, ASFA is happy to place the generic content on its consumer Super Guru website.

2. Inadequacy of the maximum PDS length

Given the complexity and diversity of products which are covered by the new PDS requirement, ASFA is concerned that limiting the PDS to 6 pages will lead to documents that do not achieve the primary aims of ensuring that individuals understand the key features, costs and risks of the product and allowing individuals to make valid comparisons between products. In particular:

- there is considerable generic material which is required to be included, thereby reducing the capacity to describe the key features which differentiate each product (as discussed in item 1 above). Generic material (such as the benefits of super, risks of investing in super, how super is taxed etc) should be limited to a maximum of one page;
- the small maximum length leads to mandatory reliance on IBR material and the high risk that such IBR information will not be sought, found, or read. In practice, it would be desirable to incorporate all of the key product information in the PDS (or at least a summary). By extension, requiring that fee information be included and allowing other key product features to be externally referenced will lead to some individuals choosing a product on price with little regard for the features of the product being purchased; and

- there is a risk that important information currently required to be included in a PDS (such as complaints procedures) will never be accessed or considered by potential customers.

We acknowledge that there needs to be a balance between producing incomprehensible and/or long documents with overly simple inadequate disclosure. However, the risks of oversimplification carry the dangers of individuals choosing products without adequate knowledge of (or access to information about) the product features, which was the primary concern leading to the establishment of the current PDS regime. In an attempt to simplify and standardise the PDS content ASFA believes that the draft materials prepared to date go too far in this regard.

For example, in our view the sample XYZ PDS is insufficient to describe a simple industry fund accumulation product. A potential customer considering several similar PDS documents by different providers would have no convincing basis for choosing a particular product other than by the branding and fees.

If this sample document were adopted for more complex products¹ then too much reliance would be placed on the individuals needing to externally research and understand each of the key differential features (including product risks) before making a product decision.

Finally, from a practical perspective, it is not generally possible (or cost effective) to print documents which are not a multiple of four pages. Thus an 8 page document (or any document size in multiples of four) is much more practical when printed as a booklet.

In summary, ASFA believes that the minimum PDS length should be larger than proposed, and should therefore be allowed to extend to 12 pages if that is what is necessary to describe the key features of the product. Our preference is for the FSG and the member application form (MAF) to be included with the PDS in the one document if the fund chooses. Including the FSG and MAF, the preferred maximum document length is a total of 16 pages.

3. What comprises a 'key feature'? - Liability Issues

Other than for prescribed items, the short form PDS must describe a summary of the "significant features and the benefits" provided by a product – Schedule 10D 5(2).

In the past, to minimise their exposure to liability, providers (generally on the advice of their lawyers) have expanded the PDS content to cover all items which might possibly comprise a feature, benefit or risk. This approach has been a major impediment to shortening PDSs.

¹ For example, many investment options (some have 250 or more), default and flexible insurance levels (and definitions), lifestyle products including accumulation and decumulation accounts, wrap accounts etc.

This raises two issues around discretionary content:

(i) *Lack of clarity about what is (or is not) a significant feature or benefit*

Under the short-form PDS regime being considered, ASFA believes the requirements of Schedule 10D 5(2) are too vague, and given the limitation on PDS length, not consistent with the potential liability associated with defective disclosure.

Importantly, the limitation on PDS length will require providers to exercise judgment as to what significant features and what benefits to describe in the space available, and which to reference by IBR. Statutory guidance or guidelines for the industry must be provided.

(ii) *Liability for content inclusion or omission*

ASFA further submits that the liability provisions should be adjusted to provide a more consistent balance with the constraints now imposed on the short form PDSs and the requirement for providers to exercise judgement as to content inclusion or exclusion. Providers should be free of liability if they properly comply with the explicit disclosure requirements, with liability being limited to:

- misleading or deceptive statements in the PDS; or
- the omission of prescribed *statements* in the PDS (eg the name and contact details of the product issuer).

4. Other comments and issues

In addition to the three major issues discussed above, our review also identified the following issues:

- *Pension funds.* The current disclosure requirements are inadequate and inappropriate for pension products, which are very different to accumulation products and have many different features and rules. As pension products are discretionary products for individuals who are more engaged, disclosure for pension products should be allowed to be longer. ASFA request that the FSWG prepare a separate template and regulations for pensions. As stated previously, ASFA believes the standard PDS should have a maximum of 12 pages (or 16 pages if it includes an FSG and MAF). For a product with a pension, the maximum document size should be 16 pages (or 20 pages if it includes an FSG and MAF).
- *Defined Benefit (DB) products.* The current disclosure requirements are inadequate and inappropriate. ASFA requests that FSWG prepare a separate template and regulations for DB products.
- *Potential Timing of Introduction.* ASFA is concerned that the introduction of this new regime must be co-ordinated with the work of the Cooper review. Some concerns exist that trustees may have to move to comply with this proposed regime only to have the requirements change again when the Cooper review is finalised and recommendations adopted by the Government. Similar issues would apply to any future reviews or statutory requirements.

- *Application and Transition Period.* To allow Trustees sufficient time to amend their communications (and the interaction of PDS with other communication materials such as websites, forms, marketing materials), a 2 year transition period should be provided during which trustees can use existing PDSs but may move to the new regime any time prior to the end of that period. It should be left to trustee discretion when to adopt any new requirements for new PDSs issued during the two year transition period.
- *Public Availability of Information.* ASFA does not support and has strong concerns to making information publicly available for products which are not open for the public to invest in; Corporate and employer specific plans which are not open to the public do not need to be and should not be required to be disclosed publicly. Disclosure of this information is inappropriate as it is of concern only to the employer, employees, regulators and trustees of those non public plans. A possible solution is to define publicly available as being available to all persons who are eligible to invest in the product.
- *Clarity of graphic or other restrictions.* It is not clear whether there are other restrictions on the documents (particularly the front cover) other than the font size. Regarding the font size restriction we would suggest that the restriction be limited to no smaller than a prescribed font size and style (eg. 9 point Arial font). As font size varies with font style, this will avoid the temptation to use font styles which deliver compressed and/or smaller text than expected. Note, ASFA is not advocating the mandatory use of any particular font.
- *Investment Return Objectives.* We do not believe that describing an investment return objective over the rate of inflation is appropriate in all circumstances. Trustees have the clear requirement to set an investment objective for their fund having regard for the nature of their liabilities amongst other things. Many of them have made the decision not to set a numeric investment objective, or an objective linked to absolute growth rather than real growth. Forcing them to report in the manner proposed is problematic as it may not relate to the actual investment objective set (or worse it may lead to investment approaches which diverge from their preferred objective). Providing investment return objectives above inflation should not be mandatory, and should be at the discretion of the trustee.
- *Disclosure of investments.* ASFA seeks clarification that trustees are able to disclose the growth/defensive split in the table in section 5 (How we invest your money) – i.e. in addition to the strategic allocation to each class of assets.
- *Describing risk levels - Schedule 10D 7(3) (f).* There are no current industry standards or agreement about how to describe risk levels. In order to prescribe that issuers must describe the risk level of an option it will be necessary that ASIC or APRA (working with industry) agree upon a consistent standard that can be applied across funds – without this consistency it will not be possible for people to properly compare funds. However, many trustees clearly identify the risk/return profile of their portfolio. ASFA supports, as a starting point, the notion that risk be related to the likelihood of a negative return within a specified period.

- *Use of the word 'earnings' - Schedule 10D 8(9)(b).* Use of the word “earnings” implies positive returns which will not always be the case – ASFA suggests that this word be replaced with “returns”.
- *Disclosure of insurance - Schedule 10D 10.* This schedule requires the disclosure of insurance. Given the nature of insurance, and the different types of insurance offered (death, permanent disability, temporary disability, and the different definitions of disability) adequate disclosure is generally lengthy and takes multiple pages. ASFA believes that the space allowed in the XYZ PDS for insurance information is inadequate and unworkable. Insurance information should be incorporated by reference with a brief overview only provided in the short PDS. This overview should include levels of cover, types of cover and ability to opt out as well as opt in, warnings on limits on the ability to claim, and the potential impact of the cost of insurance premiums on accounts where contributions are not continued.
- *Identification of Product Provider.* The sample XYZ PDS contains disclosure of the product provider on the back page. It is not clear whether this positioning is a requirement or discretionary. ASFA would suggest that the placement of this information be at the discretion of the provider, or if prescribed on the inside front cover (close to the branding assumed to be prominent on the front cover).
- *Small Fees – Schedule 1.* The definition of minor fee of \$10 should be clarified to be \$10 per occurrence (assuming this is the intention).
- *Financial Services Guide (FSG).* In ASFA’s view, it would seem logical to allow the FSG to be incorporated into the PDS, as many FSGs are relatively simple.
- *Member Application Form (MAF).* ASFA considers it to be entirely appropriate to include the MAF with the PDS to minimise avoidable confusion and risks, provide sufficient disclosure and for ease of fulfillment. It makes no sense from a disclosure point of view and from a practical point of view for individuals, employers, regulators and trustees to mandatorily separate these documents.
- *Supplementary PDS (SPDS) – Regulation 7.9.11M.* This requirement does not appear to envisage the use of SPDS to supplement a PDS. Some materials, such as investment performance or performance based investment fees, need to be updated regularly and quickly, and usually require less than a page. Rather than re-issuing the entire PDS (although shorter) the use of a SPDS is much more practical (and cost efficient) in these situations. ASFA contends that SPDS should remain an option for trustees to apply at their discretion.
- *Provision of hard copy IBR materials.* The timeframe for the provision of hard copy IBR materials should be extended from 5 business days to 10 business days for practicality purposes.

Summary

ASFA welcomes the work of the Working Group in proposing a regime for improving PDSs for individuals.

We trust the comments incorporated in this document are useful for the Working Group and would be happy to expand on any of the areas covered or meet with you to discuss our submission should this be useful.

Should you have any questions please contact me on 02 8079 0858

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Graus', written in a cursive style.

David Graus
General Manager, Policy & Industry Practice