

SUBMISSION

Submission to Treasury — No hawking of financial products

28 February 2020

**The Association of Superannuation
Funds of Australia Limited**
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2020/12

Senior Adviser
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: FSRCconsultations@treasury.gov.au

28 February 2020

Dear Sir/Madam

Royal Commission Recommendation 3.4 – No hawking of financial products

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation on no hawking of financial products.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Maggie Kaczmarska, Senior Policy Advisor, on (02) 8079 0849 or by email mkaczmarska@superannuation.asn.au, or me on (02) 9264 9300 or by email gmcreea@superannuation.asn.au. We acknowledge that the deadlines for this consultation are tight but we would welcome the opportunity to discuss our submission with you if time permits.

Yours sincerely



Glen McCrea
Deputy CEO and Chief Policy Officer

Recommendation 3.4 – No hawking

Examples in the explanatory memorandum

ASFA recommends the inclusion of an example that considers educational seminars that are held in the workplace by RSE licensees or their authorised representatives. These could be undertaken either in person or via digital medium. To be clear, the seminar does not lead to an offer of a product as its purpose is purely educational. A seminar could include, for example, an explanation of superannuation contribution caps.

An example that could be added to the explanatory memorandum could include:

XYZ Super Fund holds a seminar at a workplace where all employees are invited to attend if they are interested in doing so. XYZ Super Fund representatives present to employees information on how superannuation works and the benefits of having superannuation. At the end of the seminar an employee, who is not a member of XYZ Super Fund, approaches one of the representatives. The employee asks questions about XYZ Super Fund's products. This is not hawking as the employee made a clear, positive and informed request for more information on XYZ Super Fund's products.

Example 1.19 suggests that a superannuation product would not be what a reasonable person would expect to be offered in that situation. However, if Jon were 65-74 in age and employed, they could make regular contributions and draw down on the returns and principal at any time. ASFA recommends this example clarifies that Jon is below preservation age.

Definition of a superannuation interest

The explanatory memorandum refers to an exemption to the hawking prohibition when it applies to investment and insurance options for members that form part of a superannuation interest (paragraph 1.28, subparagraph 992A(2)(i)). ASFA understands that the intent is for a 'superannuation interest' to refer to a 'product' as defined in section 10 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

However, this is not clear based on the legislation. To avoid confusion, it should be absolutely clear what 'superannuation interest' specifically refers to. For example, a member can have money in both a MySuper investment option and a choice investment option. There are differing views as to whether the member is both a MySuper member and a Choice member or just a Choice member, notwithstanding they have some money in a MySuper investment option. It is critical a clear, appropriate, workable definition of 'superannuation interest' is developed and guidance provided to the industry.

There is no specific exception for an offer made to a reversionary beneficiary in subparagraph 992A(2)(i). ASFA recommends that the prohibition on hawking not apply to an offer of a financial product made to a reversionary beneficiary on the death of the primary beneficiary.

Regulatory Guidance – RG 38 the hawking prohibitions

To assist in ensuring compliance by the relevant entities, guidance to support the legislation is necessary. It is important that RG 38 be updated as soon as possible to ensure that it is clear what interactions would fall under the proposed hawking provisions. Any changes to the hawking legislative provisions might require changes to business practices, particularly around training of staff. Given the proposed tight timeframes in the commencement of these changes, guidance will be vitally important.

ASFA recommends that implementation is not required until 6 months after the updated RG 38 is released. RG38 provides context and practical guidance on exactly how hawking provisions are to work operationally.

Regulatory and/or legislative changes that require contact with members

There may be circumstances where a superannuation fund needs to contact members to remind them to make a decision as a result of, for example, changes to their corporate superannuation product or legislative changes requiring changes to insurance offered through superannuation. Where the superannuation fund contacts these members and discusses their options with them, or reminds them that a decision needs to be made, it could be considered an 'offer' because a new product is generally the end result. There is a question as to whether this would be considered hawking.

ASFA understands that insurance that is provided through the superannuation fund (i.e. group insurance) will not be captured by the hawking provisions. Any changes that are made to the insurance policy, when requiring confirmation/contact with members, will not be considered hawking. This could include examples such as contacting members during implementation of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* changes. ASFA supports this approach. ASFA understands that if the insurance is directly paid by the member, then it will be captured by the hawking provisions. It would, however, be beneficial to have this distinction in regulatory guidance.

Consumer requests for contact and withdrawals/variations

Where a consumer has requested to be contacted, subparagraph 992A(5)(e) requires this to be within a six-week period. When a consumer varies their request for contact, ASFA assumes this does not reset the six-week period. This should be made clear in the explanatory memorandum.

There is also a question as to whether a consumer withdrawing or varying their request online through, for example, social media channels would qualify under subparagraph 992A(6). It can be quite difficult for entities to be completely across all their social media channels, particularly in relation to matters like these. Clarification around the 'form' in which a variation or withdrawal can be provided is needed to ensure the entity has the ability to be notified.

Recommendations

- Include an example that considers workplace seminars that are held in the workplace by RSE licensees or their authorised representatives in the explanatory memorandum.
- Clarity in the meaning of 'superannuation interest' for the purposes of the hawking provisions.
- Implementation of the hawking provisions should occur 6 months after ASIC has updated RG 38.
- Regulatory guidance should include distinction between contacting a member because there has been a change in their product because of legislation/regulation/terms changes versus contacting a member to hawk products.
- The form in which a consumer can vary or withdraw a request to be contacted should be clarified.