

31 August 2011

Future of Financial Advice
Department of Treasury
Langton Crescent
Canberra ACT 2600

Email: futureofadvice@treasury.gov.au

Dear Sir \ Madam,

FUTURE OF FINANCIAL ADVICE 2011 – PEAK CONSULTATIVE GROUP ISSUES PAPER 19 AUGUST 2011 – INTRA FUND ADVICE

The Association of Superannuation Funds of Australia (ASFA) provides this submission in response to the Intra-Fund Advice issues paper dated 19 August 2011 (Issues Paper).

About ASFA

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 system. 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.

The scope of advice that can be bundled into superannuation products

It is ASFA's view that:

- The policy outcome of enabling financial advice to be accessible to all Australians has to be balanced against the potential cost of delivering that service if intra-fund advice becomes a compulsory part of MySuper.
- Members of superannuation funds must have access to basic financial advice about their interest in the superannuation fund and that the cost of this service should not have to be met directly by the member but instead be able to be paid for collectively across the fund or fund division.
- Many trustees believe that as part of their fiduciary duty they have a duty to ensure that members receive appropriate minimum information and assistance including advice with respect to their interest in the fund. Given the current regulatory framework this assistance could amount to personal financial product advice. In this submission, we refer to such assistance as "intra-fund advice".
- The scope of intra-fund advice can be determined by principles that will allow certain exclusions to be enshrined in legislation.

- Further guidance, using the nine intra-fund advice topics (set out in Option 3 in the Issues Paper), should be provided by either ASIC and/or APRA in a regulatory or practice guide in relation to scaled advice as well as intra- fund advice.
- After consideration of all sectors' positions, this we believe what is proposed in this submission has broad industry agreement.

Principles determining the scope of intra-fund advice

ASFA acknowledges that there are many legitimate views on the extent to which a trustee can deliver advisory services to the members of their fund. ASFA has developed principles for determining the scope of intra-fund advice. These principles are:

- The advice must only relate to the member's interest in the superannuation fund.
 - Where it is determined that a member has assets and liabilities outside the fund that are not relevant to the advice being sought, intra-fund advice can be provided which does not take into account such assets\liabilities.
 - Where it is determined that a member has substantial interests outside the fund the member can agree that the advice will ignore such assets\liabilities and that the intra-fund advice provided will not take into account such assets\liabilities.
 - Where it is determined that a member has interests outside the fund that would be material to the advice being sought intra-fund advice cannot be provided.
- Intra-fund advice can include any general advice.
- Intra-fund advice can include personal advice – subject to the limitations contained in these principles.
- Advice that may be provided by a calculator (such as benefit projections) can be included in intra-fund advice but areas outside intra-fund cannot. For example calculators that compare two products cannot be funded out of the administration fee of a fund.
- The provision of intra-fund advice must meet the sole purpose test.
- Areas of advice that are potentially conflicted (such as advice to switch money from another fund), cannot be included in intra-fund advice.
- Intra-fund advice must be available to all members in the fund and the trustee must take reasonable steps to ensure all members are aware that the service is available.
- Members must be made aware of the limited scope of the intra-fund advice being provided.
- Trustees must have a documented policy on how it provides intra-fund advice and this must be published on the fund's website.

In considering how to address this from a legislative perspective ASFA is of the view that to create regulatory certainty the definition should clearly articulate the areas of advice that are excluded in line with the principles above. This will also address any future cost and scope issues by removing the discretionary application for financial planners and/or superannuation funds regarding the cost inclusions or exclusions within the scope of the intra-fund advice mandate. As such ASFA recommends the following specific exclusions:

- consolidation advice: advice concerning any other financial product except eligible insurance in relation to the member's interest in the superannuation fund;

- advice to switch a superannuation balance to or away from the superannuation fund that is bearing the cost of intra-fund advice. (Note that this does not include switching between investment options that is permissible currently under intra-fund advice);
- advice in regards to financial products held outside the member's superannuation fund;
- 1012IA offerings: investment strategies in relation to which the member may give a direction under regulation 4.02 of the Superannuation Industry (Supervision) Regulations 1994 that involves a financial product in relation to which the trustee is required to give disclosure under section 1012IA of the Act or under Part 7.9 of the Act as notionally modified or varied by ASIC Class Order [CO 06/636]; and
- advice in respect of a self-managed superannuation fund as defined under section 17A of the Superannuation Industry (Supervision) Act 1993.

However, advice in regards to a pension operated by the same trustee as the accumulation fund should be included in intra-fund advice, not excluded.

Guidance using the nine intra-fund topics

As mentioned above we believe that ASIC or APRA should provide guidance on the delivery of scaled as well as intra-fund advice using the nine intra-fund advice topics outlined in Option 3 in the Issues Paper. We discuss each of the topics below:

Making additional contributions –basic advice with respect to making additional contributions to the product should constitute intra-fund advice. To the extent that advice with respect to this topic is potentially conflicted, in that an increase in the level of contributions would represent an increase in the funds under management of the fund, the legislation should explicitly recognise that the provision of advice on this topic would not violate the “no conflict” principle. Advice to switch money from another fund is not intra-fund advice

Insurance within super – basic advice on insurance within the product should constitute intra-fund advice.

Investment options – similar principles to above. As part of intra-fund advice trustees should be able to discuss the investment options available within the superannuation products of which the person is a member.

Hardship provisions – this topic is uncontroversial.

Transition to retirement (TTR) – this is probably the most controversial topic as full TTR advice can be very complex, will often need to take into account numerous matters outside the fund and can also have significant down-side if the advice is wrong. Superannuation funds should be able to assist members moving from the accumulation division/product of their fund to the pension division/product in order to commence a TTR pension. Again, to the extent that TTR pension advice may be potentially conflicted, in that the funds under management are retained within the fund, the legislation should explicitly provide that this advice would not violate the “no conflict” principle. If the TTR advice is basic, relates only to the member's interest in the fund, is not tax advice and is the type of advice a calculator can produce then it should be allowable under intra-fund advice.

Nomination of beneficiaries – while this topic has the potential to be complex, trustees should be able to provide basic advice to a member that is consistent with the principles enunciated above.

Intra-pension – we take it that intra-pension advice is basic advice to a pensioner with respect to their pension. Superannuation funds should be able to assist members in the pension division/product with basic advice with respect to their pension. We recommend for this advice topic to include advice to superannuation fund accumulation members transferring to a super income stream / pension within the Fund, or where assets are separated for compliance and

taxation reasons. This is also consistent with the TTR advice topic and transfer from accumulation to a super income stream / pension.

Intra-fund advice should also apply to existing super income stream / pension members and be captured within the proposed scope of topics.

Superannuation and Centrelink payments – given that Centrelink payments generally involve matters outside the fund it is instinctively not intra-fund advice. However if the Centrelink payment advice is basic and the type of advice that can be produced by a calculator it should be permitted as part of intra-fund advice. However it is likely that most Centrelink information is ‘factual’ and does not constitute a personal financial product advice recommendation.

Retirement planning – this topic (as currently named) is controversial. That being said, we understand that all that may be being envisaged under this topic is the provision of advice on adequacy or long-term superannuation projections. If so then we would suggest that this topic be re-named to something like “Superannuation Projections”.

If you have any queries or comments regarding the contents of our submission, please contact me on (02) 8079 0858 or by email dgraus@superannuation.asn.au.

Yours sincerely



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