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21 October 2011

General Manager
Retail Investor Division
The Treasury
Langton Crescent
Parkes ACT 2600

Email: futureofadvice@treasury.gov.au

Dear Sir / Madam,

EXPOSURE DRAFT OF THE CORPORATIONS AMENDMENT (FURTHER FUTURE OF FINANCIAL ADVICE MEASURES) BILL 2011

The Association of Superannuation Funds of Australia (ASFA) provides this submission in response to the release of the Exposure Draft of the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 (the Draft Bill). We apologise for its lateness.

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.

Comments

In this submission, we primarily focus on the ban on conflicted remuneration in relation to certain insurance policies within superannuation. We have identified two key issues specifically, which are outlined below. However, we are also concerned to ensure that Superannuation Trustees are able to provide access to their fund members' advisory services through service contracts. These types of service agreements are particularly prevalent in the not for profit sector. This issue may be clarified with the release of draft legislation relating to "intra- fund" advice but in the meantime we thought we should raise it in this submission.

1. Legitimate service agreements by a Fund

The treatment of service agreements does not appear to have been explicitly covered. We understand the Government's policy intent to remove product biases in advice which volume payments might cause [s963(2)]. However, we are concerned that legitimate agreements within groups and by entities looking to outsource advice functions will be rendered "conflicted" by the

drafting of s963(1) . This includes arrangements between some funds and their member advice providers (owned and otherwise) where the ultimate cost of fund advice is subsidised.

Under these agreements, the trustees provide funding to the service provider to deliver information seminars, general and personal advice to an agreed number of members in relation to their interests in the fund. Consistent with the SIS Act's sole purpose test, the cost of any advice which deals with matters outside the fund is charged to members and paid with non-super money.

Whilst we note subsidised advice in relation to a member's SG would probably be allowable because the member has no choice as to superannuation, general and personal advice about anything else could not possibly be financed in any way by the fund. We do not believe this sits with the Government stated policy goals.

In the absence of a carve out for general and intra fund advice (even as it's contemplated by RG200 and in CP164) our concern is that agreements like this which are entered into in good faith, at arms' length and on commercial terms, for risk management and branding, will be impossible under FOFA tranche 2.

2. Commissions on individual life policies outside MySuper.

We note the Minister's announcement (media release dated 29/8/2011) stating that "The ban on risk insurance commissions will apply to commissions on group life insurance in all superannuation products, and to commissions on any life insurance policies in a default or MySuper product from 1 July 2013."

ASFA has been considering the draft legislation in the context of ensuring the wording gives proper effect to the Government's policy intent of ensuring:

- there is consistency and no regulatory arbitrage between personal life insurance policies held within and outside a superannuation fund.
- that true group arrangements are commission free even where a member increases or otherwise alters their insurance cover within that arrangement.

ASFA also wants to ensure that the risk of anti selection against super funds through advisers placing "poor health risks" in super, through advising members who are in better health and will pass underwriting to take out an individual personal policy [paying commissions], is limited. Even with the "best interest duty", we believe that this risk may still be present. We acknowledge that such drafting is no easy matter.

The Draft Bill includes a carve-out from conflicted remuneration for life risk insurance products other than a group life policy.

It should be noted that 'group insurance' is not currently defined by legislation, however, it is commonly understood to mean the structural arrangement whereby insurance is purchased by the trustees of a superannuation fund on behalf of one or more of its members and subsequently offered by that trustee to its members with no underwriting and with an AAL. Due to the nature of a superannuation trust, however, the trustee owns all policies, whether individual or group. In some cases of what is generally understood to be individual insurance, the policy is a wholesale bulk policy that holds a pool of insurance, which is then arranged individually to members at a retail level. These members are usually issued with a certificate, full underwriting applies and they are in the "personal" division of a fund.

We note it is arguable that life insurance companies and trustees could change their processes going forward to issue individual policies in these circumstances. We are unsure how practical, extensive or expensive this change would be. As Treasury knows, we are generally concerned about the capacity of the industry to make all Stronger Super and FoFA changes in a short time and the cost that would be borne by all members of funds when, in instances such as this one, the impact is on a relatively small percentage of members.

To be frank it has been difficult to draft a phrase that allows for current arrangements without the risk of inadvertently expanding the government's policy exemptions for certain insurance arrangements more broadly than was intended by government.

However, it seems that the use of the word "group" in the Draft Bill is problematic in that its meaning is too broad and is open to different interpretations. ASFA therefore contends that greater clarity should be provided in the legislation to ensure that it gives effect to the Government's intention regarding the circumstance outlined above

3. Profit share arrangements

In banning conflicted remuneration, ASFA contends that the drafting of the legislation must not inadvertently ban profit share arrangements. That is, section 964 (subdivision A) – *Benefits from financial product issuers* should make it clear that profit share arrangements are not captured as a disallowable monetary benefit to a financial services licensee (i.e. the policy owner of a group life policy being the superannuation trustee).

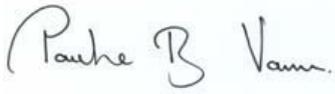
ASFA's view is that profit share arrangements can be beneficial to fund members in that:

- the proceeds of any profit share can assist in:
 - delivering sustainability and stability to premium rates payable by members. This in turn allows trustees to have a longer-term perspective in relation to the insurance offerings provided to members; and
 - investment in insurance technologies and services by the fund
- they allow trustees to introduce new benefits or innovate with new insurance arrangements. New arrangements will generally be conservatively priced by the group insurance market due to lack of claims experience on which to base a price;
- they assist in the amalgamation of different insurance designs when funds merge. If the designs are finely priced and the new fund creates a new single insurance offering then member equity issues will be very high as evidenced by recent mergers;
- they assist the fund in absorbing new business opportunities that are a higher occupational class than the fund average;
- they assist in operational risk decisions when administrator mistakes are made;
- they allow a Trustee to limit agency costs and profit

* * * *

If you have any queries or comments regarding the contents of our submission, please contact me on (02) 8079 0805.

Yours sincerely

A handwritten signature in black ink that reads "Pauline B Vamos". The signature is written in a cursive style with a large, stylized 'B'.

Pauline Vamos
CEO