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27 January 2012

Dr Richard Grant
Acting Secretary
Senate Economics Committees, SG.64
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: economics.sen@aph.gov.au

Dear Dr Grant,

INQUIRY INTO THE CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL 2011 AND THE CORPORATIONS AMENDMENT (FURTHER FUTURE OF FINANCIAL ADVICE MEASURES) BILL 2011

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to the inquiry into the *Corporations Amendment (Future of Financial Advice) Bill 2011* ("Bill") and the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011* ("Further Measures Bill").

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 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.

A) VALUE OF ADVICE, NEED FOR SCALED ADVICE AND INTRA-FUND ADVICE

ASFA is supportive of the Future of Financial Advice ("FOFA") reforms and of the enhanced ASIC powers proposed in the Bill.

ASFA's primary interest in the development of the FOFA legislation is to ensure that it does not have the unintended consequence of precluding superannuation fund members from having access to assistance with respect to their retirement savings. This assistance should be available from the trustee of their fund or the superannuation product provider, whether the assistance amounts to factual information, general advice or personal advice.

1) Value of advice

Research clearly demonstrates that people who seek financial advice are more likely to achieve their goals for retirement.

The value of financial advice relative to its costs has been explored in recent research conducted for the Financial Services Council. In a January 2011 report prepared by KPMG Econtech the basic findings were that: -

- after making allowance for differences in income, assets, etc the average individual with a financial adviser saved an additional \$6,900 between 2005-06 and 2008-09 compared to similar individuals without a financial planner;
- the average cost of developing a savings plan was \$530;
- those with a financial planner are more likely to have insurance cover, and the policy amounts are higher as well, compared to individuals without a financial planner.

2) Need for simple \ scaled advice

Research also indicates that superannuation fund members are interested in advice of various types delivered in a variety of ways.

According to ASIC Report 224, *Access to Financial Advice in Australia*, December 2010, there is growing interest in email, phone and internet based advice.

A third of Australians are now expressing a preference for piece-by-piece simple advice rather than holistic or comprehensive advice. The preference for piece-by-piece simple advice is more pronounced for those consumers who have never used a financial planner than for those consumers who have previously used a financial planner.

The ASIC research findings also indicate that consumers are only prepared to pay relatively low amounts for financial advice, with a sizeable proportion of people who are not willing to pay anything at all.

Research conducted by Mercer and released in a November 2010 report, *The Trustee Dilemma: Low fees or more services?* confirms that fund members are generally unwilling to pay extra for financial advice provided over the phone or over the internet or by mobile device. Mercer Research released in March 2011 showed that 40 per cent of superannuation fund members will contact their fund if they need advice.

Research conducted for ASFA by Rice Warner Actuaries indicates that in 2009-10 the cost per fund member of advice delivered through call centres and advice delivered by a financial planner that is paid for directly by the fund rather than by the member is relatively low.

The average cost per member per year for call centre activities is \$11.23 with average cost of financial planning \$2.99. The average cost per call received is \$17.00.

There was, however, a reasonably wide variation across each of these expenses. Significant contributors to the variation include differences between funds in the level and quality of service, particularly in respect of member contact centre services, and also in the incidence of members taking advantage of different services.

The cost of operating call centres ranged from a low of \$4.47 a year per member to a maximum of \$21.16 per member. Expenditure on financial planning services varied from \$0.65 a year per member to \$26.25. That said, in each fund such costs generally were only a relatively small proportion of overall fund costs.

By way of example of some of the financial advice provided to members of superannuation funds, Mercer is a global company that specialises in employee benefit services for large organisations and their employees. They run a financial advice business for superannuation trustees and their members, including corporate, public sector and industry funds, as well as their own master trust.

Their financial advice business employs 100 people, including 55 salaried advisers, who provide scaled advice on the phones and in the workplace, and strategic advice for more complex needs, through their five offices around Australia. They established a phone and workplace advice business in 2003 to support the many superannuation fund members who continued to ask questions about their superannuation.

They provide scaled advice to some 20,000 super members each year, mainly in relation to investment options, contributions and insurance. Their financial advice business is fee based and they provide annual client reviews for those clients who have an ongoing service.

Similarly another financial advice provider, Money Solutions, has delivered scalable advice since 2004 with over 90,000 statements of advice provided to members over this time.

3) Scaled advice and interrelationship with MySuper \ intra-fund advice

a) Scaled advice

FOFA needs to bolster confidence in the provision of financial advice, without making it too difficult for superannuation fund members to obtain advice. If it were to become too difficult members may not seek advice and disengage further from their superannuation. At different stages in a member's life, and in times of market volatility especially, there is a need to be able to support members with simple, scaled advice in an efficient and cost effective manner.

ASFA believes that it is essential that: -

- members of superannuation funds are easily able to obtain cost effective, simple financial advice with respect to their retirement savings;
- individuals and members of funds have access to advice about simple, specific or single-issue scenarios, particularly lower to middle income or first time employees;
- any person providing advice should be required to act in the best interests of the person seeking advice;
- persons seeking advice may receive it in person, over the phone, on-line or via tools such as calculators;
- the advisor bears the onus of ensuring that the person receives appropriate advice relevant to their current circumstance; and
- the advisor has a duty to not provide advice where it would be in the best interests of the person for advice not to be provided.

By way of illustration, we have enclosed in the Annexure to this submission material with respect to ASFA's revised Diploma of Financial Planning which includes a diagrammatic representation of the different types of financial advice which can be given.

Given the above, it is imperative that "scaled", generally single issue, advice be readily available, especially to those on a relatively low income. It is critical that the FOFA legislation does not have the unintended consequence of creating barriers to the provision of scaled advice, thereby limiting superannuation fund members' access to assistance with advice about their retirement savings.

b) Interaction with MySuper and the concept of “intra fund advice”

As part of the Stronger Super announcements it is proposed that superannuation fund members should be able to access no fee, simple advice about their superannuation through their fund through enabling the provision of “intra-fund”, scaled advice. This advice would be able to be provided to members as part of their standard administration fee.

Obviously the FOFA reforms, and in particular the application of the best interests duty, will affect how such intra fund advice may be provided to fund members.

Given the degree of interdependency between FOFA and intra fund advice it is critical that the FOFA legislation be considered in conjunction with the MySuper legislation re intra fund advice, once it has been introduced. To consider the FOFA legislation in isolation, without consideration of its interaction with, and potential impact upon, the provision on intra fund advice risks there being unintended consequences which, at the extreme, may affect the viability of providing such advice.

B) IMPLEMENTATION, LEGISLATIVE TIMEFRAME & TRANSITIONAL ARRANGEMENTS

1) Practical implementation issues

While ASFA supports the FOFA reforms, it is important to note that implementation of these reforms, especially for superannuation funds which will also have to implement changes resulting from the StrongerSuper reforms, will necessitate significant and comprehensive changes having to be made to what are mature and complex arrangements.

For financial advisers and trustees to be in a position to be able to implement the required changes necessitates a degree of certainty as to the regulatory requirements.

A variety of strategic and tactical decisions need to be made, which involve the identification of, and agreement upon the approach to, considerable and extensive alterations to IT systems; processes and procedures, documentation and training. Business requirement documents, let alone functional and technical specifications, cannot be agreed upon and signed off, nor most work commenced, until such time as there is a high degree of legislative certainty.

Change management on this scale and with this degree of interrelatedness is not only expensive but, more importantly, making significant alterations to IT systems and databases poses considerable risks of lost or corrupted data, resulting in inaccurate or incomplete records. The most effective means by which such a risk is mitigated is by utilising robust project management methodologies to determine timelines; identify interdependencies; produce a staged project plan, including sufficient time for regression and user acceptance testing, and then executing in accordance with the plan.

All of this takes time. Often there are capacity constraints, especially with respect to skilled personnel and system \ database access, which create bottlenecks and there are interdependencies, particularly when it comes to coding and testing system changes, which can produce unintended consequences. Rushing to meet deadlines materially increases the risks to any project.

2) Legislative timeframe

The Bill has been referred both to this Committee, with a reporting date of 14 March 2012, and the Joint Parliamentary Committee, with a reporting date of 29 February 2012.

Given the Parliamentary sitting calendar for 2012 is it unlikely that the Bill, or the Further Measures Bill, will be passed through Parliament until May 2012 at the earliest.

Superannuation funds are also affected, amongst other things, by the *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011*, which was only introduced into Parliament on 3 November 2011. The exposure draft of the second tranche of MySuper legislation (trustee obligations and prudential standards) was not released until 12 December and the bill is yet to be introduced into Parliament, while the third tranche is yet to be released as an exposure draft.

3) Need for transition period

These delays to the enactment of the FOFA legislation, and the MySuper legislation with respect to superannuation, significantly impacts on the ability of the industry to implement the required changes in an orderly and appropriately risk-managed fashion.

Many FOFA obligations commence from 1 July 2012. Further to this, the necessary regulations – which frequently contain the details pertinent to decision-making and change implementation – cannot be made until after the bills have been passed.

Even at the best of time it is a considerable risk to authorise the expenditure of resources based on draft legislation. In the context of FOFA, where there have been material differences between some policy announcements and the draft legislation, it is even riskier.

Decision makers committing significant financial and other resources to implementing change of this complexity and scale deserve legislative certainty.

Both the *Financial Services Reform Act 2001* and the RSE licensing amendments to the *Superannuation Industry (Supervision) Act 1993* included a two year transition period for implementation.

Accordingly, given the significant effect on the industry of implementing the FOFA reforms, ASFA is supportive of ASIC's stated intention to adopt an approach of "facilitated implementation" during a transition period of 12 months from 1 July 2012 whereby to allow the industry to implement these changes in an appropriate fashion.

C) SPECIFIC ISSUES WITH THE FURTHER MEASURES BILL

1) Requirement for advisers to act in best interests of clients.

ASFA is supportive of a best interests duty being enshrined in legislation.

2) Application to scaled advice and agreement about scope

Our fundamental concern is that financial advisers be able to provide "scaled" advice on single issues or simple scenarios.

In order for advisers to be able to do this there needs to be a degree of certainty as to what "best interests" means in the context of scaled advice. It is important that providers are not deterred from providing, and fund members are protected when seeking, scaled advice.

As such, the legislation needs to give appropriate certainty for advisers to enable them to provide scaled, or de-scoped, advice in an efficient and cost effective manner.

The best interests duty is contained in sub-section 961B of the Further Measures Bill.

The Further Measures Bill, in providing that matters only need to be "reasonably apparent"; permitting "reasonable investigation"; defining what would be "reasonably regarded as being in the

best interests of the client” and providing for when advice is based on incomplete or inaccurate information, does afford a considerable degree of certainty to advisers with respect to this duty.

Concern has been expressed by some of our members, however, with respect to one aspect of the “safe harbour” regarding the best interests duty.

Paragraph 961B(2)(b) requires the adviser to: -

“(b) identify[y]:

- (i) the subject matter of the advice that has been sought by the client (whether explicitly or implicitly); and*
- (ii) the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on that subject matter (the **client’s relevant circumstances**)”.*

Paragraph 961B(2)(b) places the obligation upon the adviser to determine the subject matter of the advice.

While this is appropriate with respect to full or holistic advice, in the context of scaled advice, concern has been expressed by some of our members as to what an adviser is to do in circumstances where it appears there is a conflict between the (scaled) subject matter of the advice that has been sought (for example on a single issue) and the scope indicated by the client’s financial situation and needs.

It has been suggested that, where a client has sought advice on a specific matter and the adviser becomes aware of some aspect of the client’s financial circumstances or needs that broadens the scope, in the absence of the ability to agree scope with the client the subject matter must therefore become broader. This may be significantly wider than the client wants or for which the client is prepared to pay.

This is especially the case where single issue advice is being sought from a superannuation fund, where a member contacts the fund for advice with respect to one or more specific aspects of their superannuation. In this circumstance the member does not have the same relationship with the adviser as a client who has sought holistic advice from an adviser. Generally the member will want to confine the advice to the single issue and is not interested in more holistic advice at that stage.

3) Currently adviser required to identify subject matter – need to allow agreement

We agree that, where a client has sought advice on a specific matter and the adviser becomes aware of some aspect of the client’s objectives, financial circumstances or needs which indicates that advice on additional matters should be sought, the adviser should disclose this to the member. It would appear, however, that paragraph 961B(2)(b) may effectively place an obligation upon the adviser to determine that – irrespective of the advice sought by the client – the subject matter of the advice must now be broadened to include those additional matters.

This may be significantly wider than the client wants or for which the client is prepared to pay.

This is especially the case where single issue advice is being sought from a superannuation fund, where a member contacts the fund for advice with respect to one or more specific aspects of their superannuation. In this circumstance the member does not have the same relationship with the adviser as a client who has sought holistic advice from an adviser and generally will want to confine the advice to the single issue, not being interested in more holistic advice at that point.

4) Example of potential application of current best interests duty to scaled advice

By way of example, a member of a superannuation fund may request scaled advice about rolling-over into a fund, saying “I’m just looking for some advice about rolling-over my super”.

Sub-paragraph 961B(2)(b)(i) means the provider should identify that the subject matter not only includes how to roll-over (explicit) but should extend to whether the client may lose insurance and the existence \ quantum of any exit fees in the rolling-out fund (implicit - client may be unaware of these potential consequences and so not ask explicitly about them). On the face of it, the scope of the subject matter of the advice could include insurance (in both funds); exit fees in the rolling-out fund and the process to roll-over from the rolling-out fund to the rolling-in fund.

Accordingly, the provider has to identify the objectives, financial situation and needs of the client as they pertain to whether the level of insurance in the rolling-out fund should be maintained, either by retaining it in the rolling-out fund or by obtaining or increasing insurance in the rolling-in fund. Clearly the adviser has to provide advice on the insurance cover held by the client in the rolling-out fund and the insurance held and available to them in the rolling-in fund.

The critical question appears to be, in the circumstance of scaled advice about rolling-over, the extent to which the adviser is required to provide advice with respect to the adequacy of the client's insurance arrangements overall? Even if there were no "prima facie" obligation to do so, it is unclear whether the position may be different if the client were to volunteer additional information – say that this was their only insurance and they had a minor child – which may serve to indicate, on the face of it, that the client may be significantly under - insured.

Given the current drafting of sub-paragraph 961B(2)(b)(i) it is unclear as to how far the adviser would then need to go in providing advice on insurance in this example.

While the adviser clearly needs to provide advice with respect to insurance within both the rolling-out and rolling-in fund, it is arguable that the adviser must identify that the subject matter of the advice must now encompass the overall adequacy of the client's insurance. As such, the adviser will need to identify quite a few facts about the client (dependants \ health \ income \ expenses \ assets \ liabilities \ cash-flow etc).

If this were the case, it is not clear what the position of the adviser would be if the client were to state “I don't want any advice as to the adequacy of my insurance at this time – I just want advice about rolling-over my super and my insurance in Fund X (rolling-over fund)”. It is arguable that, in the absence of an explicit ability to agree subject material, under sub-paragraph 961B(2)(b)(i) the adviser would be compelled to determine that the subject matter of the advice must include the adequacy of the client's insurance.

As such the adviser could either: -

- attempt to provide advice on adequacy - this would involve enquiring as to the client's circumstances, which - given their request to confine the subject matter to rolling-over their super - the member may be reluctant or even refuse to provide. This would result in a longer, potentially more expensive, and possibly futile, process if the client does not provide the requested information; or
- decline to give any advice at all in these circumstances.

In the case of the former - while it is likely that the adviser may be able to rely upon section 961H to provide what effectively will be “limited” advice, together with appropriate warnings, the client may well be upset at being asked what they consider to be unnecessarily intrusive, personal questions not relevant to rolling-over their superannuation. This can result in a disengagement from, or distrust of, the adviser or the advice process, especially in the circumstances, common in scaled advice, where the member may not have an pre - existing relationship with the adviser.

In the case of the latter – this is obviously deleterious to the provision of scaled advice.

Suggested Amendment

Accordingly, in order for advisers to be able to deliver scaled advice, the Further Measures Bill should be amended to enable the client and the adviser jointly to determine the subject matter of the advice. Any such ability should, of course, be subject to relevant warnings where the adviser identifies that the subject matter could potentially be broader than that which has been agreed and would be documented in the Statement of Advice.

Given the asymmetry of knowledge between the adviser and client a balance will need to be struck between facilitating scaled advice and protecting the interests of the clients. It appears as though the solution may be to permit the client and the adviser jointly to determine the **nature** of the advice to be given but not, for example, the **products** to be advised upon (other than in the context of intra fund advice).

Once the (scaled) subject matter of the advice has been determined then the legislation should make it clear that paragraph 961B(2)(b)(ii) operates only to the extent of the agreed subject matter of the advice.

5) Adviser to take any further steps – needs to be relevant to subject matter

Paragraph 961B(2)(g) states as follows: -

“(2) The provider satisfies the duty in subsection (1), if the provider proves that the provider has done each of the following:

.....

*(g) taken **any other step** that would reasonably be regarded as being in the best interests of the client, given the **client’s relevant circumstances**” (emphasis added).*

The reference to the “client’s relevant circumstances” poses a similar difficulty to that outlined above with respect to sub-paragraph 961B(2)(b)(ii) in that it would compel the adviser to take any step which is reasonably indicated by the client’s circumstances, irrespective of the (scaled) subject matter of the advice.

Suggested Amendment

In order to facilitate the provision of scaled advice, paragraph 961B(2)(g) of the Further Measures Bill should be amended to confirm that the adviser should take any other step which would reasonably be regarded as being in the best interests of the client, given the client’s relevant circumstances **and the (agreed) subject matter of the advice**.

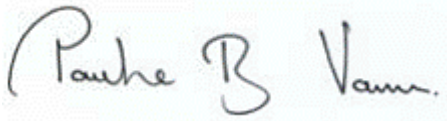
For the avoidance of doubt it may be worth specifying that, in the context of scaled advice, either: -

- generally - the adviser will be taken to have met the best interests duty if the adviser performs the steps in subsection 961B(2) to the extent required to provide the scaled advice; or
- specifically - that the requirement under paragraph 961B(2)(g) to take any other reasonable step does not require the adviser to provide any further advice beyond the (scaled) subject matter.

* * * *

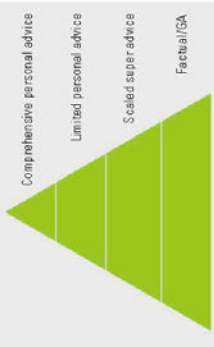
If you have any queries or comments regarding the contents of our submission, please contact me on (02) 8079 0805 or 0433 169 342 or by email pvamos@superannuation.asn.au.

Yours sincerely

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

Pauline Vamos
Chief Executive Officer

ASFA Diploma of Financial Planning

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| <p>RG 146 authorisation pathway</p>  | <p>ASFA Advice 1: Scoping, Compliance and Super</p> <p>Generic knowledge Superannuation General advice (optional personal advice)</p> <ul style="list-style-type: none"> Contact centre member engagement staff Dealer group client service officers | <p>ASFA Advice 2: Risk Strategies for Life</p> <p>Life insurance General advice (optional personal advice)</p> <ul style="list-style-type: none"> Contact centre member engagement staff Scaled super advice staff Dealer group client service officers | <p>ASFA Advice 3: Building Wealth for Clients</p> <p>Managed investments Securities Margin lending General advice (optional personal advice)</p> <ul style="list-style-type: none"> Scaled investment advisers Paraplanners | <p>ASFA Advice 4: Financial Planning for Engagement and Retention</p> <p>Financial planning Mandatory personal advice skills assessment</p> <ul style="list-style-type: none"> Paraplanners Financial planners working under supervision |
| <p>Client advice simulation Lifecycle narrative: client's financial needs, financial and life objectives, risks, planned and unforeseen events</p> | <p>Client advice case study Scaled advice: superannuation</p> | <p>Client advice case study Scaled advice: insurance</p> | <p>Client advice case study Multi-product comparison: provide product comparisons, projections and quantitative analysis</p> | <p>Client advice case study Holistic advice simulation: a full financial advice process walkthrough, including data collection, analysis, advice preparation and advice delivery</p> |
| <p>Assessment Short-form SoA based on case study</p> | <p>Assessment Short-form SoA based on case study</p> | <p>Assessment Short-form SoA based on case study</p> | <p>Assessment Short-form SoA based on case study</p> | <p>Assessment Fully compliant SoA based on case study</p> |
| <p>Personal advice skills assessment (optional)</p> | <p>Personal advice skills assessment (optional)</p> | <p>Personal advice skills assessment (optional)</p> | <p>Personal advice skills assessment (optional)</p> | <p>Personal advice skills assessment (mandatory if not already completed)</p> |

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| <p>Typical problems with DFP training</p> <ul style="list-style-type: none"> Compliance delivered without customer service context Conventional DFPI-4 authorisation pathway doesn't fit job needs Little realism in portraying the adviser workplace Soft skills included in written assessments – no verbal practice Poor compliance behaviour outcomes and customer experience Poor student experience due to skills gaps on completion No support for follow-up training during induction process No ongoing narrative across the whole qualification | <p>ASFA Diploma of Financial Planning</p> <ul style="list-style-type: none"> Compliance for member engagement, customer service and retention Built from industry consultation Aligns to both super fund and comprehensive advice delivery models Courseware and assessments situated in the workplace Up-to-date regulatory guidance for advice delivery Facilitation guides for in-house soft skills sessions Lifecycle scaled and holistic advice simulations Investment products across the risk/return spectrum |
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