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1 March 2012

Mr Tim Bryant
Secretary
Senate Economics Committees, SG.64
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: economics.sen@aph.gov.au

Dear Mr Bryant,

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

Thank you for the opportunity to appear at the Committee's hearing held in Canberra on the 24th of February.

We were requested to provide additional material in response to two questions taken on notice, as follows: -

1) ASFA's view on a possible framework for introduction of the legislative obligations
2) Whether there been any study about the costs of insurance as part of our system and the extent to which they are impacting on the ultimate retirement incomes.

1) ASFA's view on a possible framework for introduction of the legislative obligations

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.

Implementing all of these changes will take time.

Often there are capacity constraints, especially with respect to the availability of skilled personnel and access to systems and databases, which can create considerable bottlenecks. There are often interdependencies, particularly when it comes to product design and system changes, which means that the effect of changes can be to produce unintended consequences.

Rushing to meet deadlines materially increases the risks to any project.

Superannuation funds are also affected, amongst other things, by the *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011* ("MySuper"). The fact that the FOFA and MySuper legislation are yet to be passed, and that the MySuper legislation commences 1 July 2013, has significantly impacted on the ability of the industry to implement the required changes in an orderly and appropriately risk-managed fashion.

It should be noted in this context that 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.

As such, we consider that a stepped approach to the implementation of FOFA is warranted.

In our view the following requirements could commence from 1 July 2012: -

- Best Interests Duty;
- Scaled advice;
- Intra fund advice;
- Opt in;
- Ongoing fee disclosure to new clients; and
- Ban on soft dollar arrangements.

The remaining requirements could commence from 1 July 2013: -

- Ongoing fee and commissions disclosure to existing clients
- Ban on conflicted remuneration.

Due to the need to establish the correct interpretation and application of the new legislation, and determine its impact as it is being implemented, including any unintended consequences, we would urge that in administering the new legislation in the first year ASIC reaffirm its commitment to adopting a "facilitative" approach to compliance.

This would entail: -

- a requirement for the industry to report breaches;
- a clear statement by ASIC that inadvertent breaches, even in circumstances where a loss may have been sustained by a client, will not be acted upon. Deliberate, pre-meditated or reckless breaches would still be acted upon by ASIC;
- where the legislation has unintended consequences or applies to an activity not intended to be captured - class order relief being provided by ASIC;
- where there is clear industry or sector confusion and\or unintended consequences, or where a technical breach of the legislation is necessary in order to act in the best interests of consumers - a "no action" position being adopted by ASIC.

Alternative approaches to the implementation of the legislation could be as follows: -

- commence 1 July 2012 – as outlined above, there are considerable and significant changes which will need to take place, and rushing to meet deadlines can lead to sub-optimal outcomes;
- deferral of commencement until 1 July 2013 – this would allow the industry sufficient time to implement the changes necessitated by the legislation, and would align with the commencement of MySuper, but would also defer the consumer protection afforded by these measures;
- introduction of a transition period – either until 1 July 2013 or 1 July 2014 - similar to the two year transition period which applied under the Financial Services Regulation regime. This would need to be facilitated by an "opt-in" process whereby advisers elect at which point during the transition period they are to become subject to the legislation and advise ASIC of this by means of an "opt-in" notice. This could operate with respect to the legislation as a whole or the legislation could be broken down into different measures, with "opt-in" occurring on a measure by measure basis. Once an adviser had opted in to the legislation, or part thereof, they would be able to advertise that fact.

2) **Whether there been any study about the costs of insurance as part of our system and the extent to which they are impacting on the ultimate retirement incomes**

We are not aware of there having been any formal studies with respect to the extent of the impact of insurance premiums on retirement incomes.

Ross Clare, Director of ASFA's Research and Resource Centre, has performed some calculations utilising the assumptions in the ASIC MoneySmart calculator, as follows: -

- for an employee on $60,000 a year the projection of retirement savings is around $260,570 in today's dollars after 35 years' employment receiving the superannuation guarantee;
- with $100 a year in insurance premiums the lump sum is $255,600, a reduction of about 2%;
- with $200 a year in insurance premiums the lump sum is $250,650, a reduction of about 4%;
- if an individual stopped paying their car insurance and instead put $1,000 a year in after tax dollars into super they would have $319,000 in today's dollars.

Accordingly, while it is apparent that an individual will have more superannuation if they have less insurance, the existence of insurance cover is of considerable value and it does have to be paid for one way or the other, representing an "opportunity cost" with respect to superannuation and other assets.

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.

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If you have any queries or comments regarding this please contact me on (02) 8079 0805 or 0433 169 342 or by email to pvamos@superannuation.asn.au.

Yours sincerely

Pauline B Vamos

Pauline Vamos
Chief Executive Officer