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23 December 2011

Mr Shon Fletcher
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: corporations.joint@aph.gov.au

Dear Mr Fletcher,

SUPPLEMENTARY SUBMISSION TO THE INQUIRY INTO THE: -

- **CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL 2011**
- **CORPORATIONS AMENDMENT (FURTHER FUTURE OF FINANCIAL ADVICE MEASURES) BILL 2011**

Further to our submission of 25 November 2011 the Association of Superannuation Funds of Australia (ASFA) would like to provide this supplementary submission in relation to the inquiry into the *Corporations Amendment (Future of Financial Advice) Bill 2011* ("the Bill"), and the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011* ("Further Measures Bill"), collectively "The Bills".

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.

As indicated in our submission of 30 November 2011, ASFA is supportive of the Future of Financial Advice ("FOFA") reforms and of the enhanced ASIC powers proposed in the Bill.

Our primary interest is to ensure that the development of the FOFA legislation does not have the unintended consequence of precluding superannuation fund members from having access to assistance and advice with respect to their retirement savings. This assistance should be able to be provided by, or on behalf of, the trustee of their fund or their superannuation product provider, whether the assistance amounts to factual information, general advice or personal advice.

A) Requirement for advisers to act in the best interests of clients

1) Best interests duty generally

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

2) Application to scaled advice and agreement about scope

As mentioned in our submissions to Treasury dated 20 September 2011 and our submission to the Committee dated 25 November 2011, 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.

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.

We are currently testing scenarios as to whether scaled advice will be possible with the best interests duty as currently drafted.

If this testing determines that paragraph 961B(2)(b) impedes the provision of scaled advice then it is likely that we would submit that the Further Measures Bill should be amended. 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.

At this stage it appears as though the solution may be to permit the adviser and the client jointly to determine the scope of the advice. Any such determination of scope could only be with respect to the **nature** of the advice to be given and could not, for example, be an agreement with respect to the **products** to be advised upon, other than in the circumstance where intra-fund advice was being given.

We will endeavour to provide further information with respect to this to the Committee in January 2012 prior to the hearings scheduled for the 23rd and 24th of January.

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Yours sincerely

Margaret Stewart
General Manager, Policy & Industry Practice