

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 29, 30 & 31 May 2007

Question: bet 67 (ASIC)

Topic: First Capital Financial Planning

Hansard Page: E107

Senator SHERRY asked:

That is right. The impact of the fees and the insurance are much more easily quantifiable. But my question goes to where would they get that information about 'How does this affect me?'

Mr Cooper—Maybe we need to have a look at the pro forma letter because, I must admit, I do not have an example of what the letter would say. Maybe we have not drafted it yet; I just do not know. So the question is: when the superannuant opens up the letter explaining all of this, do they need external advice to help them make the decision or is it clear from the document that they have been misled about fees, misled about insurance, they can go back to First State Super and they will be topped up and put back in the position that they were in?

Senator SHERRY—Yes. You have obviously done some hypotheticals based on real-life examples, but my assumption would be that in the letter there would be an illustration of those hypotheticals, without names, in the correspondence. My other assumption is that there would be some provision for them to, if they wish, get an individual advice at no cost, and it should not be at any cost given the circumstances, paid for by the recipient fund. There should also be that advice provision for them if they wish to seek it. They are just practical issues that I think would be reasonable in the circumstances.

Mr Cooper—Can we take just that aspect of that matter on notice, because I just do not know the answer to that.

Answer:

The orders made by the Supreme Court of New South Wales on 11 May 2007, together with enforceable undertakings given to ASIC by First Capital Financial Planning (*First Capital*), provide for the following redress mechanism:

1. First Capital must send to the 170 superannuants who switched funds a letter containing a proper comparison of the fees, charges and available insurance, and giving them the opportunity to return to First State Superannuation (*FSS*) if they wish to. The form of the letter is attached.

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2. The superannuants are entitled, prior to electing whether to return to FSS, to request from First Capital what their FSS balance would have been had they not switched. First Capital must calculate this figure under the supervision of an independent accountant and provide it to the superannuant.
3. If the superannuant elects to return to FSS and, after doing so, their balance is less than it would have been had they not switched, First Capital will pay them the difference.
4. First Capital must report to ASIC every three months about the number of superannuants requesting details of what their balance would have been had they not switched, the number of superannuants electing to return to FSS and compensation payments made by First Capital.

The new funds typically charged a transfer fee (of an average 2% to 4% on the whole of the balance rolled into the new fund) and further fees payable on every dollar placed into the new fund after rollover (usually 4%), as well as the adviser and administration fees (typically over 2% per annum of the account balance). FSS fees were limited to administration fees of \$52 per annum. Accordingly, unless the new fund significantly outperformed FSS, the superannuants would have suffered a loss. [Note that FSS returns to 31 May 2007 for the diversified investment option have been: 1 yr 14.3%, 3yr 15.1% and 5yr 10.8%.]

For example, ASIC is aware of one superannuant, who switched their \$55,000 super balance from FSS to the recommended fund. The new fund charged a 4.1% contribution fee on rollover (over \$2,200) and will charge 4.1% on all subsequent contributions into the fund. The new fund also charges administration and adviser fees of 2.1% p.a. (about \$1400 in the first year) on the balance of the superannuant's account. In comparison, FSS has no contribution fees, no adviser fees and charges an administration fee limited to \$52 per annum. Accordingly, unless the new fund outperforms FSS by at least 2% better, the superannuant will incur further losses.

Given ASIC does not have information about how the various new funds have performed (as it was not required for the purposes of the proceedings), ASIC has not made any calculations of the precise losses of individual superannuants in this case; however, this will be addressed as part of the process outlined above.

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ATTACHMENT

[First Capital Financial Planning letterhead]

Address

Dear ...

Correction of advice provided to you about your superannuation

First Capital Financial Planning (**First Capital**) holds an Australian Financial Service Licence issued by the Australian Securities and Investments Commission (**ASIC**). ASIC is responsible for ensuring that all licence holders fully comply with the financial services laws and accordingly undertakes audits and other compliance monitoring and complaint investigation programs.

During an investigation ASIC identified that the written Statements of Advice given to a number of First Capital's clients (including the Statement of Advice given to you on [insert date]) did not contain all the information required by the Corporations Act and Regulations and ASIC policies and that it did not record sufficiently the reasons for the recommendations made to you in that Statement of Advice.

Accordingly, in December 2005 ASIC filed proceedings in the Supreme Court of NSW against First Capital. We agreed with ASIC about its concerns and accordingly we consented to a number of orders being made by the Court, including that we write this letter to you.

The Orders made by the Court

The orders agreed upon between ASIC and First Capital and that were made by the Court include that First Capital breached the law by giving clients Statements of Advice that:

- did not include all the information we should have when we recommended that you move your superannuation from First State Superannuation (**FSS**) to [insert name of fund]; and
- included information that was incorrect or misleading.

The orders also state that the Statements of Advice did not disclose a reasonable basis for recommending that you move your superannuation out of FSS.

Additional information we should have included

The Statement of Advice we gave you should have included the following information:

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- q Details of the fees you were paying in FSS;
- q A comparison of the fees you were paying in FSS with the fees you would pay in [insert name of fund]; and
- q An explanation of the potential impact differences in fees and costs can have on superannuation returns.

[Insert following two points in respect of Schedule A and C clients only – delete for Schedule B clients]*

- q Details of insurance (including the cost of that insurance) which was available to you in FSS; and
- q A comparison of the cost of insurance available to you in FSS and the cost of insurance we recommended to you.

Please find enclosed a document titled ‘Comparison of Fees and Charges’ setting out this information for you.

Incorrect or misleading representations *[* Insert only in relation to Schedule C Statements of Advice]*

The Statement of Advice we gave you contained the following information which was incorrect or misleading.

- q The Statement of Advice contained a table comparing the fees payable in FSS and First Capital One Retirement Builder (FORB). However, the table did not include all the fees payable in FORB and overstated the fees payable in FSS. The correct fees are set out in the enclosed document titled ‘Comparison of Fees and Charges’.
- q The Statement of Advice included a comparison of the past investment performance of FSS and FORB. However, the past performance figures did not take account of contribution, advisor and administration fees which are higher in FORB.
- q The comparison of past investment performance of FSS and FORB compared investment options with different underlying investment strategies and different levels of risk. For example, FSS Cash Plus option invests 100% into cash and fixed interest investments, whereas the FORB Conservative option invests 70% into cash and fixed interest and 30% into shares and property.
- q The Statement of Advice listed Morningstar as the source of the past performance figures for FSS and FORB. However, Morningstar does not rate either FSS or FORB.

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Your options

You have the following options in relation to your superannuation.

1. If you are happy to continue with our advice, you may keep your superannuation investment with [insert relevant fund] as per our recommendation that you previously accepted.
2. Alternatively, you may return to FSS. If you choose to return to FSS, we will provide you with all reasonable assistance to transfer your superannuation account back to FSS. Further, if the balance of your account after you return to FSS is less than it would have been had you never left FSS, we will pay an amount equal to the difference into your account with FSS within 21 days.

If you are not happy with this arrangement you should not hesitate to contact our Compliance Manager (contact details below). If they are unable to resolve your complaint, you have the right to make a complaint to the Financial Industry Complaints Service Limited on [insert contact details].

In either case you should complete and sign the attached letter confirming your intention and return it to us within 30 days of the date of this letter.

Should you have any questions relating to any of these matters please do not hesitate to contact our Compliance Manager at GOP Box 5133 Sydney NSW 2001 or by telephone on 02 9222 1202.

Yours faithfully

First Capital Financial Planning Pty Limited

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Comparison of Fees & Charges

Impact of differences in fees and costs

All funds charge fees. Small differences in fees can have a significant impact upon your long-term returns.

The table below lists the fees you were paying in FSS and the fees payable in the fund that we advised you to move to.

If you would like to find out more, or see the impact of fees based on your own circumstances, the Australian Securities & Investments Commission (**ASIC**) website (www.fido.asic.gov.au) has a superannuation fee calculator to help you check out different fee options.

Type of Fee	[Insert Fund Recommended e.g. First Capital One Retirement Builder]	First State Super
One Off Fees		
Initial Contribution Fee	[insert the percentage stated in statement of advice that client would be charged.]	Nil
On Going Fees:		
On-Going Contribution fee	[insert percentage stated in statement of advice that client would be charged.]	Nil
Administration Fee	[insert percentage stated in statement of advice that client would be charged.]	\$4.33 per month = \$52 per year
Switching Fees	Nil	Nil for 1 st in any financial year then \$25 per switch in any financial year
Exit Fees	Nil	\$30 per withdrawal
Adviser Fee (compulsory)	[insert percentage stated in statement of advice that client would be charged.]	Nil. FSS does not provide personal financial advice.
Based on your superannuation balance at the time we advised you move your super, and the level of contributions we recommended that you make, below is the initial and on-going fees you would be paying in the fund we recommended and in FSS.		
Balance held in fund	[Insert dollar figure stated in statement of advice]	[insert same dollar figure]
Initial Contribution fee	Insert the amount stated in the Statement of Advice	Nil

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Minimum Ongoing Fees	Insert the total amount for the contribution fees and administration fees stated in the Statement of Advice	\$52
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Investment Managers Fees

[Insert Fund Recommended eg First Capital One Retirement Builder]	First State Super
Range of 0.22 – 2.50% pa depending on fund chosen, plus performance fees (depending on chosen fund) up to 25% of return in excess of particular benchmarks.	0.09% to 0.35% pa of fund balance depending on investment option

Comparison of insurance available through FSS and [insert name of fund]

In the Statement of Advice we gave you we recommended that you take out the following insurance:

[List type of insurance, amount of coverage and premium]

At that time you had the following insurance coverage through FSS:

[List type of insurance, amount of coverage and premium]

And you could have applied for additional insurance cover of [insert amount needed to top up to recommended coverage] at a cost of [insert additional premium].

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Compliance Manager
First Capital Financial Planning
GPO Box 5133
Sydney NSW 2001

Dear Sir,

Letter of Direction regarding my Superannuation Investments

I have read your letter dated _____2007 and make the following choice:

- I wish to keep my superannuation investment with [insert relevant fund] as per your recommendation I accepted previously.

- I wish to return to First State Super.

Name: _____

Address: _____

Date: _____

Signature: _____