24 August 2006.

Committee Secretary

Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

corporations.joint@aph.gov.au

Dear Sir/s

Submission to Inquiry into the structure and operation of the superannuation industry

Please find below a submission to the above Inquiry.

The submission addresses Terms of Reference numbers1, 4, 5, 6, 7, 11&12.

Also attached is a profile in regard to my experience & history both as a practicing adviser & in financial planning management roles over a period of more than 20 years.

I am currently an authorised representative of Godfrey Pembroke Ltd.

My contact details appear below - at the end of the submission attachement.

1. Whether uniform capital requirements should apply to trustees.

As I understand it APRA requires the trustee of a public offer super fund to have capital of $5million. On the other hand the capital requirements for the trustee of an industry fund are nil but all of the member's assets are potentially at risk.

Uniform capital requirements should exist throughout the industry thereby enabling planners to more properly advise clients on the strength of the organisation standing behind their super fund.

Queries about capital adequacy have increased since the Westpoint fiasco and there is heightened investor nervousness with regard to this issue.

If a significant problem arose with an industry fund it would appear that all members could share the pain with the only limit being the value of their holdings within the fund as there is no separate capital upon which to draw.

There is also a level paying field argument in this regard in that all commercial players, including industry funds ,should operate under the same rules.

An exception to the above should of course be self managed superannuation funds.

4. The role of advice in superannuation.

Firstly I wish to comment on some general issues affecting advice including those in regard to superannuation.

The market for advice is essentially divided in to two groups - those divided into two, those:

- who are not open to advice &
- who are open to same.

Over the years I have come to the view (which I believe is backed up by research I have seen over the time) that in regard to financial advice approximately one third of the population either does have all the knowledge required, believes they do, do not trust any advice other than their own or do not wish to &/or see any value in paying for advice & these individuals are not open top advice services. They are commonly known as do – it-yourself investors.

The balance of the population is open to advice & prepared to pay for same provided they perceive there to be value in doing so.

Based on my experience, most people who are open to advice services do not have the knowledge or relevant information required to properly structure their affairs.

Many do not have the time &/or the inclination to deal with financial matters on their own.

Many are also seeking a trusted adviser to rely upon in a very confusing & in a sense lonely financial World. One could suspect that advisers have taken the role that the traditional bank manager used to fill.

Usually a number of these factors would drive most clients or prospective clients to seek or continue to receive advice.

A trigger event often leads an individual to take action. Such events are commonly:

- Impending retirement;
- Redundancy;
- Change of employment;
- Sale of a business or other major asset;
- Divorce , marriage or birth of children;
- Inheritance

A more recent development is for what are known as wealth accumulators, typically those in there 30's,40's & early 50's & often still with debt , to seek advice in regard to building wealth over the long term.

All of the above factors are relevant to the provision of advice in regard to superannuation.

Advice in regard to superannuation also needs to take account of:

- Clients overall situation, needs & objectives;
- Attitudes to risk & return trade off's & investment matters generally;
- Whether or not the client is happy to tie up money in the superannuation system;
- The complex interaction of the tax system in general with the superannuation tax environment & also, where applicable, the social security system.

Advice brings together many & often all of these factors in order to develop an appropriate financial outcome for a client.

Depending upon the circumstances there can be a number of correct “answers” in regard to the question “what is appropriate advice?

It is not usually possible to identify absolutely what is the “best “advice for a particular client except in simple situations.

Client attitudes are also a significant factor in deciding what is appropriate advice in particular circumstances.

Financial modelling can be a great aid in providing advice & enhancing a client outcomes.

In summary, advice includes recommendations in regard to strategy, structure,”products” & implementation.

In addition, ongoing advice services including regular reviews are required to keep the plan on track & update as needed.

5. The meaning of member investment choice.

Member investment choice is simply a superannuation fund providing members with a choice in regard to a range of investments in major asset classes (Australian & International shares, property & fixed interest, cash & possibly what are known as alternatives), combinations of asset classes & investment options, usually managers, within each category.

Depending on the type of fund a default option may be required for those members who do not choose. Default options should not be cash or capital stable or similar (minimal exposure to shares & property) as they are likely to provide low long term average return outcomes for an investment environment that is generally very long term by compulsion.

Why is choice necessary?

Two primary reasons.

Firstly, as client assets grow both inside & outside superannuation it is becomes more & more necessary to align their overall investment approach. If a client already has say a large exposure to international shares outside the super fund they may wish to minimise the exposure within.

Second, clients with superannuation funds are often too conservative for their own long term good & experience unnecessarily low long term average returns. However as assets grow & clients pay more attention to their investments of all types they need the flexibility to move from more to less conservative options. Advice can be a factor in influencing this type of change.

6. The responsibility of the trustee in a member investment choice situation.

Trustee responsibility should be to provide the appropriate options including where applicable default options as detailed in my submission to terms of reference number five above.

They should not be responsible for member choices as such.

The trustees should not be required to restrict client choices other than to the menu of options the fund is to offer.

If client choses to use an adviser & the trustees are informed of this choice the trustees should be bound to act in accord with instructions provided by the adviser

7. The reasons for the growth in self managed superannuation funds.

Based on my experience with clients there are a range of reasons why some clients prefer a self managed superannuation fund (SMSF). They include:

- Perception (but often not reality) of lower overall cost;
- Greater control or potential control over the investment decisions;
- Greater control over any discretionary decisions of trustees;
- Where risk of dispute in regard to an estate (& associated superannuation benefits & usually in the situation of previous marriage , children from same etc) is believed to exist the ability to use binding death nominations that do not have to be renewed every three years & avoidance of coverage by the Superannuation Complaints Tribunal;
- For a few, distrust of institutions;
- Subject to the constraints on member numbers, the ability to run the fund as a form of family fund with one portfolio or segregated portfolio's;
- Option to make in specie contributions of certain assets the client wishes to retain ;
- Option to make in specie contribution of business real property assets;
- Potential for recovery of contributions tax in the event of death of a member. In some cases this option can be provided by other than SMSF's;
- Greater control over decisions in regard to insurance within the fund & greater control over the tax outcomes within the fund in regard to same;
- Some accountants set up SMSF's as an almost standard procedure when establishing companies, trusts & other entities / structures for small to medium business operators.

Often more than one reason will apply.

11. Whether promotional advertising should be a cost to a fund and, therefore, to its members.

My concern in this area is the mutual or industry funds activities in this regard.

Such funds do not have any segregation between what belongs to the members versus the fund as such. They are mutual organisations & the assets all belong to the members.

The reason given for the advertising is to either boost funds under management to provide increased scale or else to protect the existing base of funds

As greater scale can be achieved & probably achieved more quickly by amalgamation of funds this would seem to be a questionable argument.

It could be argued that the prime motivation for the use of advertising by industry funds is growth in funds under management in order to provide enhanced career prospects for the management of such funds.

Other beneficiaries could be seen to be major service suppliers to industry funds.

12. The meaning of the concepts "not for profit" and "all profits go to members."

Given the number of industry funds which claim to be non profit yet operate & /or are involved with numerous subsidiary & associated companies for the provision of services for which the funds pay ,the question arises as to whether or not there is a profit motive at work within these entities?

If there is no profit motive, at least in some form, how do these subsidiaries exist?

Some of the names of subsidiaries &/or associated companies that arise include Industry Fund Services Ltd, Australian Administrative Services Pty Ltd. Deurna Services Pty Ltd, Money Solutions Pty Ltd., Australian Superannuation Services Ltd, Superpartners Pty Ltd, Superannuation Investment Services Pty Ltd & Super Members Investments Ltd.

The entities above are mentioned in documentation of REST &/or Australian Super two major industry funds.

Other funds appear to have similar & in many cases the same relationships.

When we have requested information by telephone (with the authority of clients who happened to be members) we receive highly unsatisfactory answers from an adviser's viewpoint in regard to these entities. I should also add the response to technical questions about asset allocation & details of superannuation deeds & insurance are usually unsatisfactory & frequently so out of date that they are of minimal value.

When REST for instance was asked what does Superannuation Investment Services Pty Ltd (a subsidiary investment vehicle involved in several asset classes & holding a significant percentage of the funds portfolio) do & what fees it receives from the fund & what costs were incurred we were told that it did not matter what the fees etc were because the returns were net of what ever costs happened to be!

We went on in this case to ask what the subsidiary did, what type of investments it held, did this include property development & was there any form of gearing involved?

The response was that that information was not available.

It appears that there are significant businesses providing administrative, investment & advice services to the industry funds &/or members about which full details are at least difficult if not impossible to obtain.

There needs to be much greater disclosure in regard to these matters & there inclusion in costs calculations quoted to members may need to be mandated.

This approach by many industry funds is part of an unacceptable approach by these funds of focussing almost entirely on only the administrative charges the fund itself levy on members without the inclusion of all of the other costs.

Industry funds should not be allowed to continue to talk only about/promote fees such as $x per week & be required to include all of the costs in a readily accessible manner. Details of some of the other costs are available for those who read detailed documents but contact with a call centre will typically in my experience only talk about the so - many - Dollars per week fee which is potentially misleading.

Apples & oranges comparison can mislead.

Yours sincerely,

Peter O'Toole, CFP
Senior Financial Consultant
Authorised Representative

Attachment: Copy of Adviser Profile

Attachment One

PETER O'TOOLE

CFP

Principle Consultant and Authorised Representative

Financial & Investment Planning Experience

Peter has worked in the financial service industry since 1982 initially gaining experience in both unit trust and life insurance fields.

He offers his clients a range of private wealth management services tailoring advice to suit the circumstances of each client. His client base includes senior executives, professional and business owners, wealth accumulators and retirees – both pre and post retirement. He also consults with accountants, corporations and trustees of self managed superannuation funds. In the past he has also provided advice to employer sponsored superannuation funds.

Peter believes that it is important for financial planners to work with clients as partners in a business relationship based on trust and integrity along with sound and accurate advice. In his view strategy & structure are the most important ingredients in successful outcomes for clients followed by efficient implementation of recommendations.

In the early eighties Peter and several colleagues established & developed one of the first national securities dealerships providing advice both directly to clients and indirectly via a network of accountants & other intermediaries. He became the chief executive of the business that at its peak had approximately 200 dealer's representatives. From 1987 to 2001 Peter worked with Deutsche Bank (formerly Bain & Company) where he:

- Established the Melbourne Office in 1987
- Became the organisations most senior financial planner
- Became director and head of Financial Planning in 1996 (and later Portfolio management in addition) a position he held until the businesses were sold to the National Group including Godfrey Pembroke in 2001. The business' he managed became well known for the quality of its advice and services. The financial planning business was described by the Australian Financial Review as "highly regarded by its industry peer's".

He has previously served on the State Council of the Financial Planning Association (FPA).

Currently he is a member of the FPA's Legislative & Regulatory Committee & the Anti – Money Laundering Task Force.

In addition Peter is a Director of the Godfrey Pembroke advisers association, chair of the internal Adviser Compliance Group which assists the licensee in development of compliance standards & a member of the Managed Investments Advisory Group which assists the licensee with management of the approved list of products & services.

Peter has appeared on television, radio and been quoted in the press on numerous occasions.

Contact Details

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