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7 September 2006

David Sullivan  
Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
Department of the Senate  
**By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)**

Dear Mr Sullivan

**INQUIRY INTO THE STRUCTURE AND OPERATION OF THE  
SUPERANNUATION INDUSTRY – ASIC'S SUBMISSION**

I refer to the Terms of Reference for the Inquiry into the structure and operation of the superannuation industry (Inquiry) released by the Parliamentary Joint Committee on Corporations and Financial Services on 30 June 2006.

I attach ASIC's submissions to this inquiry. ASIC is happy to assist the Committee in any way it can.

If you have any questions about the Commission's submission to the Inquiry please call Mark Adams, Director Regulatory Policy and Research on (02) 9911 2622.

Yours sincerely

Malcolm Rodgers  
Acting Commissioner and Executive Director, Regulation



**ASIC**

Australian Securities & Investments Commission

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Investments Commission**

**Parliamentary Joint Committee on  
Corporations and Financial Services  
Inquiry into the structure and  
operation of the Superannuation  
Industry**

**Submission**

**September 2006**

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## Introduction

1. This ASIC Submission contains information for the purposes of the Inquiry into the structure and operation of the Superannuation Industry ('Inquiry') conducted by the Parliamentary Joint Committee on Corporations and Financial Services. The Terms of Reference of the Inquiry were made available for public comment on 30 June 2006.

- (a) Section 1 contains an introduction to ASIC's responsibilities and activities in relation to the superannuation industry.
- (b) Section 2 contains ASIC's comments on those of the Terms of Reference ('TRs') for the Inquiry that relate to ASIC's jurisdiction and role in the superannuation industry, ie:
  - (i) TR4 The role of advice in superannuation
  - (ii) TR5 & TR6 Member investment choice issues
  - (iii) TR7 Self managed superannuation funds
  - (iv) TR9 Cost of compliance
  - (v) TR12 The meaning of 'not for profit'
  - (vi) TR13 International benchmarking

In this Submission we refer to a number of ASIC publications. In the Schedule to this Submission we provide the webpage addresses for these publications.

## Overview of ASIC's role in the Superannuation Industry

### Laws we administer covering the superannuation industry

2. We administer the *Corporations Act 2001* ('Corporations Act'), some parts of the *Superannuation Industry (Supervision) Act 1993* ('SIS Act') and the *Australian Securities and Investments Commission Act 2001* ('ASIC Act') as they apply to superannuation trustees and other financial service providers in the superannuation industry. Some of the key provisions of these pieces of legislation as they apply to the superannuation industry include:

- (a) the requirement in the Corporations Act that providers of financial services must generally hold an Australian Financial Services Licence ('AFSL'), or be a representative of an AFSL holder, and comply with the conditions of the licence. In the wider superannuation industry this covers fund trustees, specialist advisers and providers of custodial services to fund trustees as well as financial planners advising fund members and the public;
- (b) disclosure obligations in the Corporations Act when superannuation products are provided to retail clients. For example, disclosure by trustees of superannuation funds to both prospective and current fund members. This includes requirements to give clients a Product Disclosure Statement ('PDS'), ongoing disclosure of material changes and significant events and provide periodic statements. These are independent of any applicable AFSL obligations;
- (c) particular trustee conduct obligations under the SIS Act relating to employers and fund membership, complaints handling and record keeping<sup>1</sup>;
- (d) requirements in the Corporations Act about the quality of personal advice provided about superannuation products to retail clients, the conduct of business providing such advice and related disclosure obligations. These general requirements apply broadly to most financial products, including superannuation products; and
- (e) prohibitions in the Corporations Act and ASIC Act on misleading or deceptive conduct and unconscionable conduct in relation to financial products, including superannuation products.

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<sup>1</sup> *SIS Act 1993* s 64A, s 68A, s 101, s 103 and s 105

## Functions

3. Our functions include licensing, maintaining public registers, issuing policy and guidance, monitoring compliance with the law and enforcing the law. In many cases we also grant relief from provisions of the Corporations Act. The following paragraphs outline these functions.

## Licensing

4. We are responsible for granting AFSLs and imposing and changing licence conditions on superannuation trustees, advisers and other financial services businesses in the superannuation industry.

5. Generally, any person (including a fund trustee) carrying on business as an adviser on superannuation products must operate under an AFSL authorising financial product advice in relation to superannuation products. Exceptions include the provision of general advice about a superannuation product by the relevant fund trustee, in the PDS or otherwise (for further detail in relation to advice, see the comments in relation to TR4 below).

6. Generally, the trustee of a standard employer-sponsored fund (within the meaning of the SIS Act) will not be required to hold an AFSL authorising it to deal in its own superannuation products, while the trustee of a public offer superannuation fund (within the meaning of the SIS Act) is required to do so. An exception from the requirement to hold an AFSL for a superannuation trustee applies where an AFSL holder arranges for the issue of the interests in the superannuation entity under an arrangement with the trustee of the superannuation entity.

7. Based on work with APRA, of the 307 superannuation trustees holding RSE licences under the SIS Act, 180 also hold AFSLs under the Corporations Act.

8. All AFSL holders, including those in the superannuation industry, are subject to the following core obligations in respect of the provision of financial services<sup>2</sup>:

- (a) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;
- (b) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative;
- (c) comply with the conditions on the licence;
- (d) comply with the financial services laws;
- (e) take reasonable steps to ensure that its representatives comply with the financial services laws;

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<sup>2</sup> *Corporations Act* s 912A

- (f) unless the licensee is a body regulated by APRA—have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements;
- (g) maintain the competence to provide those financial services;
- (h) ensure that its representatives are adequately trained, and are competent, to provide those financial services;
- (i) if those financial services are provided to persons as retail clients—have a dispute resolution system approved by ASIC;
- (j) unless the licensee is a body regulated by APRA—have adequate risk management systems; and
- (k) comply with any other obligations that are prescribed by regulations.

#### **Maintaining public registers**

9. We keep a number of public registers, including registers of:

- (a) holders of AFSLs;
- (b) authorised representatives of AFSL holders;
- (c) ‘in-use’ notices in relation to PDSs for financial products including superannuation products;
- (d) people who have been banned from providing financial services; and
- (e) people who have entered into enforceable undertakings with us (for example, not to carry on a financial services business).

#### **Issuing policy and guidance**

10. We publish Policy Statements, Guides, Information Sheets and Frequently Asked Questions to explain how the law works and how to comply.

#### **Adapting the law**

11. We have powers to modify the application of many parts of the Corporations Act and SIS Act and to grant exemptions from some parts of the Corporations Act. We can do this for individual applicants, or classes of people or entities (through Class Orders). We publish regular reports summarising the relief we have granted and explaining how and why we have made these decisions.

#### **Monitoring compliance**

12. We monitor how the superannuation industry complies with the laws we administer. This allows us to detect and deal with non-compliance early, which minimises the damage caused by misconduct and limits interruption to businesses where non-compliance is less significant.

13. There are four elements to our compliance approach:

- (a) helping the superannuation industry understand their compliance obligations;
- (b) creating incentives for the industry to inform us when they have breached their obligations;
- (c) monitoring compliance with obligations through surveillance and targeted programs; and
- (d) taking action where there are serious breaches, particularly breaches that harm members of superannuation funds.

#### **Enforcing the law**

14. In some circumstances, we take action for breaches of the law, including inappropriate advice about superannuation and misleading or deceptive and unconscionable conduct in relation to superannuation products and advice.

#### **Our education role**

15. Part of ASIC's statutory mandate is to 'promote the confident and informed participation of investors and consumers in the financial system'. Our superannuation education work has focused on helping consumers to know questions to ask and things to look for when making decisions about superannuation as well as provide them with practical tools that will assist them in this process. Our recent products include:

- (a) primary authorship of *Super Choices*, the main educational publication accompanying the introduction of choice of superannuation funds;
- (b) continual upgrading of our superannuation calculators, which are designed to enable consumers to compare superannuation funds and determine how different scenarios will impact upon their likely retirement income; and
- (c) a listing of the fees charged for nearly 1,500 super products to assist consumers in comparing funds.

#### **Our relationship with other superannuation regulators**

16. ASIC co-regulates the superannuation industry with the Australian Prudential Regulation Authority and the Australian Taxation Office.

17. ASIC administers the relevant licensing, disclosure and conduct obligations under its jurisdiction in cooperation with APRA and the ATO. ASIC maintains memoranda of understandings with both APRA and ATO. Liaison with APRA and the ATO takes place regularly.



## Further information about ASIC's role

18. Our general approach to regulation is set out in *ASIC: a guide to how we work*.<sup>3</sup>

19. Our approach to regulation in relation to choice of superannuation fund is set out in the joint ATO-ASIC publication *Choice of superannuation fund – meeting your obligations*.<sup>4</sup>

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<sup>3</sup> See also ASIC Media and information release 06-233 *ASIC releases guide for stakeholders* 10 July 2006

<sup>4</sup> See also ASIC Media and information release 05-181 *Meeting your obligations for super choice* 28 June 2005

## ASIC Submissions on Selected Terms of Reference

### TR4 The role of advice in superannuation

#### Overview of regulatory requirements

20. Chapter 7 of the Corporations Act imposes a number of regulatory requirements on superannuation trustees, financial advisers and others that give advice about superannuation. The following paragraphs outline these requirements.

21. Financial product advice is defined broadly in the Corporations Act as a recommendation or statement of opinion (or a report of either) that:

- (a) is intended to influence a person or persons in making a decision in relation to a financial product or class of products (including superannuation products); or
- (b) could reasonably be regarded as being intended to have such an influence.<sup>5</sup>

22. Persons who might provide financial product advice about superannuation products include (but are not limited to):

- (a) financial planners, giving advice to clients;
- (b) the trustees of superannuation funds, giving advice to members and to prospective or former members and beneficiaries;
- (c) accountants, giving advice to clients; and
- (d) employers, giving advice to employees and to prospective or former employees, union officials, giving advice to union members or other employees.

23. Chapter 7 of the Corporations Act requires a person who carries on a financial services business to obtain or operate under an AFSL, or fall under an express exemption contained in the Corporations Act. Particular superannuation related exemptions include advice provided by accountants in relation to the establishment of self managed superannuation funds (SMSFs).<sup>6</sup>

24. Under the current law, in most cases, any client who receives advice about superannuation products is required to be treated as a 'retail client'. The only exception to this is advice provided to trustees of superannuation funds with net assets of at least \$10 million, and these trustees may be treated as 'wholesale clients'.<sup>7</sup> Members of superannuation funds, employers and trustees of superannuation funds with net assets of less than \$10 million are treated as retail clients when they obtain advice about superannuation.

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<sup>5</sup> *Corporations Act* s 766B(1)

<sup>6</sup> Regulation 7.1.29 of the *Corporations Regulations 2001*

<sup>7</sup> *Corporations Act* s 761G(6).

25. Chapter 7 distinguishes between personal advice and general advice about superannuation. Personal advice is advice where the adviser has considered one or more of the person's objectives, financial situation and needs, or a reasonable person might expect the adviser to have considered one or more of those matters.<sup>8</sup> General advice is advice that is not personal advice.<sup>9</sup> The regulatory requirements are more onerous for personal advice.

26. Under Chapter 7, personal advice about superannuation provided to a retail client must be based on the client's relevant personal circumstances and reasonable inquiries. The advice provided must also be appropriate to the client.<sup>10</sup>

27. A Statement of Advice containing prescribed information must generally accompany personal advice to retail clients about superannuation including:<sup>11</sup>

- (a) the advice itself;
- (b) information about the basis of the advice;
- (c) how the adviser is paid; and
- (d) conflicts of interests the adviser has.

28. There are some circumstances in which a Statement of Advice is not required when giving advice about superannuation. For example, if a client has received advice and a Statement of Advice about a superannuation fund, and receives further advice recommending that they make additional contributions to that fund, a Statement of Advice may not be required.<sup>12</sup> However, where a client who has not received previous advice on choosing a superannuation fund seeks advice on switching to a new fund, the adviser must provide a Statement of Advice.<sup>13</sup>

29. When personal advice recommends that a client switch superannuation funds, the Statement of Advice must include additional information about the costs of switching, any benefits the client will lose and any other significant consequences.<sup>14</sup> This focussed disclosure aims to enable the client to assess the cost and potential for loss involved in advice to replace a product. Compliance with this requirement can limit the potential for churning of superannuation fund members.

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<sup>8</sup> *Corporations Act* s 766B(3).

<sup>9</sup> *Corporations Act* s 766B(4).

<sup>10</sup> *Corporations Act* s 945A.

<sup>11</sup> *Corporations Act* s 946A, s 947B and s 947C.

<sup>12</sup> *Corporations Act* s 946B as amended by *Corporations Regulations* reg 7.7.10AE. See also *Corporations Amendment Regulations 2005 (No 5)* (Cth), Explanatory Statement, page 11.

<sup>13</sup> *Corporations Act* s 946B as amended by *Corporations Regulations* reg 7.7.10AE. See also *Corporations Amendment Regulations 2005 (No 5)* (Cth), Explanatory Statement, page 11.

<sup>14</sup> *Corporations Act* s 947D.

## ASIC guidance

30. We have published extensive policy and guidance on these regulatory requirements, including the following (available on the ASIC website):

- (a) *PS 175 Licensing: Financial Product Advisers: Conduct and Disclosure;*
- (b) *Example Statement of Advice – an ASIC Guide;*
- (c) *Super Switching Guide;*
- (d) *Licensing: The Scope of the Licensing Regime: Financial Product Advice and Dealing.*
- (e) Numerous Frequently Asked Questions published on the ASIC website relating both generally to advice and advice in the particular superannuation context, including:
  - (i) *QFS 55 What is the distinction between factual information and financial product advice?;*
  - (ii) *QFS 123 I am an accountant. What advice can I provide about self managed superannuation funds (SMSFs) and related activity under reg 7.1.29?;*
  - (iii) *QFS 147 What information can be provided about superannuation without requiring an AFS licence?;*
  - (iv) *QFS 150 When financial services are provided to a trustee of a superannuation fund, are they provided to a retail client?;*
  - (v) *QFS 152 I am a superannuation trustee. What advice or promotional material can be included in the Product Disclosure Statement for a superannuation product without breaching the Corporations Act?;*
  - (vi) *QFS 156 I am an employer. What can I tell my employees about making a choice of superannuation fund?;*
  - (vii) *QFS 160 Are employers retail clients in relation to financial product advice about employer 'default' funds under super choice?; and*
  - (viii) *QFS 162 Is providing 'ratings' or other evaluations of superannuation products financial product advice?*

## ASIC compliance work

31. In conducting our compliance work we focus on areas of greatest risk, such as misconduct that affects a consumer's decisions. We also respond to issues identified in complaints.

32. Raising the quality of financial advice is the focus of ASIC's activities in the financial planning industry. In 2006 there have been two primary compliance programs in relation to the superannuation industry.

33. In April 2006, we released a report of a shadow shopping survey on superannuation advice. This survey examined whether superannuation advice given to members after the introduction of choice of superannuation funds complied with the regulatory requirements outlined above. The survey found that:

- (a) 16% of advice was not reasonable, as required by law, and a further 3% was probably not reasonable;
- (b) where members were advised to switch funds, a third of this advice was not reasonable and risked leaving the member worse off;
- (c) unreasonable advice was three to six times more common if the adviser had a conflict of interest over the advice;
- (d) in 46% of cases, advisers failed to give a Statement of Advice when this was required; and
- (e) strategic advice about superannuation was generally helpful to members.

34. The full *Shadow shopping survey on superannuation advice: ASIC surveillance report* is available on our website.

35. In July 2006, we accepted an Enforceable Undertaking (EU) from AMP Financial Planning following an extensive surveillance of reviewed 300 files selected from 30 AMP Planners chosen at random, which primarily related to superannuation switching advice. ASIC's analysis and investigations found that on many occasions:

- (a) planners' files did not disclose a reasonable basis for advice;
- (b) planners failed to make proper disclosures about the costs of acquiring the recommended product and the significant consequences of replacing the existing product;
- (c) planners made statements on its website and in its Financial Services Guide that suggested AMPFP Planners could consider a broader range of products than permitted, which could have misled consumers; and

- (d) planners may not have had adequate arrangements in place to manage conflicts of interest.<sup>15</sup>

36. We are also currently undertaking a compliance surveillance project monitoring advice provided to employers about superannuation.

#### **Further ASIC guidance**

37. We are currently developing industry guidance about complying with the requirement that AFSL holders must have in place adequate arrangements to manage conflicts of interest in relation to some specific conflicts of interest. This is further to ASIC Policy Statement PS 181 *Licensing: managing conflicts of interest*, and the hypothetical case studies being considered that include scenarios in relation to the superannuation industry.<sup>16</sup>

38. We are also involved in work with industry groups on matters that take into account the superannuation benefit portability and lost member register aspects of the Government's *Plan to Simplify and Streamline Superannuation*, including:

- (a) consideration of whether we can facilitate consolidation advice and contribute to the reduction of the high number of multiple superannuation accounts and producing information for members about the factors to consider when deciding whether to consolidate multiple accounts, industry guidance and/or relief;
- (b) involvement in a project by a number of superannuation industry associations to produce an enquiry form for advisers to gather information about a client's existing superannuation fund when considering whether to recommend that they switch funds. The Financial Planning Association is leading this work.

#### **Further ASIC education work**

39. Our major superannuation education initiative over 2006 will be developing an online superannuation resource for secondary school children who are approaching the end of their schooling and likely to be entering the workforce soon (if they aren't already in it).

40. Following up on the industry guidance we have issued on the obligations on superannuation fund trustees to provide significant event and material change disclosure to fund members<sup>17</sup>, we will be running an education campaign for consumers about the need to check the impact on fees and insurance of changing employers if they wish to remain with their old employer's default fund.

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<sup>15</sup> ASIC media and information release 06-251 *ASIC accepts a legally enforceable undertaking from AMP financial planning* 27 July 2006

<sup>16</sup> *Managing conflicts of interest in the financial services industry : ASIC discussion paper* April 2006

<sup>17</sup> ASIC Frequently Asked Question QFS 163 *I am a superannuation trustee. Do I need to notify members about member transfers without consent?* July 2006

## Proposed legislative reforms

41. In April 2006 the Government released a number of law reform proposals in the *Corporate and Financial Services Regulation Review Consultation Paper*. If implemented, these proposals would alter the regulatory requirements for advice, including advice in relation to superannuation products. This would include changes to the classification of who is a retail client for superannuation advice.

### **TR5 & TR6 The meaning of member investment choice and the responsibility of the trustee in a member investment choice situation**

42. ASIC regulates the disclosure obligations arising from a fund trustee offering member investment choice (ASIC also regulates advice services to members about making an investment choice as outlined in the comments on Term of Reference 4). The form and extent of the fund trustee's disclosure obligations varies with the form in which member investment choice is offered.

43. In all cases, the trustee's responsibilities include the general SIS requirement to only act on a member's investment choices after having disclosed the information reasonably necessary for the fund member to understand the effect of, and any risk involved in, the strategy.<sup>18</sup>

44. However, some superannuation funds allow members to instruct the trustee to follow an investment strategy (ie: investment strategy choice) that permits a direction to the trustee that the member's benefits be invested into a specific financial product, e.g. a named managed investment scheme. In this situation, further disclosure obligations will, from 1 July 2007, arise under the Corporations Act in relation to disclosures made in Product Disclosure Statements.

45. Under the Corporations Act the trustee is required to provide the member with a Product Disclosure Statement for that financial product before it is acquired.<sup>19</sup> This requires the trustee to give the member a PDS prepared by the issuer of the specific product.

46. However, we have recently modified this requirement to facilitate alternative product disclosure by superannuation trustees in this situation. Under our relief, trustees may prepare product information about the specific product themselves, instead of giving the member a PDS prepared by the issuer of the underlying specific product. This is set out in detail in ASIC Policy Statement 184 *Superannuation: Delivery of product disclosure strategies*.<sup>20</sup>

47. The requirement for further disclosure was introduced by the Financial Services Reforms implemented as Chapter 7 of the Corporations Act, to apply in addition to the

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<sup>18</sup> See regulation 4.02 of the *Superannuation Industry (Supervision) Regulations 1994*

<sup>19</sup> *Corporations Act* s 1012IA.

<sup>20</sup> See also ASIC Information Release IR 06-29 *ASIC policy on how to deliver product disclosure about superannuation investment strategies* 3 August 2006

specific SIS disclosure requirements. The commencement of these further obligations in the Corporations Act was deferred by the Government and ASIC to permit the application of the requirement to superannuation trustees to be refined and provide industry with a transition period for compliance arrangements.<sup>21</sup>

## **TR7 The reasons for growth in self managed superannuation funds**

48. ASIC has not conducted its own research into the reasons for the growth of SMSFs. However, we have noted generally a common theme in the results of relevant research conducted elsewhere that has highlighted the desire for control and flexibility in relation to superannuation being an important driver for the establishment of a SMSF.

49. We have been concerned to ensure people make a soundly based decision to establish a SMSF. In the Joint ASIC and ATO fact sheet *Is self managed super right for you?*, we have outlined four questions people should ask before establishing a SMSF:

- (a) is the fund strictly for retirement benefits only?
- (b) do you have the time and skills?
- (c) will the benefits be worth the cost?
- (d) how will switching to a self managed fund affect your current super?

50. We have also highlighted the important role of accountants in relation to SMSFs and that ASIC will be looking for instances where an accountant:

- (a) has advised a client to establish a SMSF when their current superannuation savings are insufficient and their circumstances do not otherwise support the advice;
- (b) has failed to advise a client properly about ongoing costs and the time and skill needed to administer a SMSF;
- (c) without an AFSL, has failed to advise a client in writing that they are not licensed to provide financial product advice, and that the client should consider taking advice from an AFSL holder before making a decision; or
- (d) has given financial product advice, including about switching to a SMSF or the investment strategy that a SMSF should pursue, without an AFSL.<sup>22</sup>

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<sup>21</sup> See ASIC Class Order [CO 03/1097] and IR 06-22 *Interim relief extended for superannuation investment strategy product disclosure* 23 June 2006.

<sup>22</sup> ASIC Media and information release IR 05-127 *ASIC to keep a close eye on accountants' advice about self-managed superannuation funds* 16 May 2005



## TR9 Cost of Compliance

51. ASIC takes the cost of compliance seriously when we formulate policy and prepare guidance in all areas of our regulation, including superannuation. In our publication *Better Regulation: ASIC initiatives* we have identified our priorities towards better regulation through:

- (a) reduced regulatory burden on business;
- (b) making our regulatory approach and processes more transparent;
- (c) minimising any duplication;
- (d) making it easier to deal with us; and
- (e) making our publications easier to understand, and our publications clearer and easier to find.<sup>23</sup>

52. We have ensured that at all times we have applied the guidance from the Office of Regulation Review on considering the regulatory impact of our policies and exercising our powers to grant relief from the law. Where required, this includes the development of Regulation Impact Statements in consultation with the Office of Regulation Review.

53. If we make a class order we have ensured we have complied with the requirements of the *Legislative Instruments Act 2003* to:

- (a) undertake appropriate consultation before making the class order;
- (b) register the class order on the Federal Register of Legislative Instruments; and
- (c) prepare an Explanatory Statement outlining the purpose and operation of the class order.

## TR12 The meaning of the concepts 'not for profit' and 'all profits go to members'

54. The financial services and consumer protection laws we administer prohibit misleading or deceptive conduct and unconscionable conduct by superannuation trustees, advisers and others in the superannuation industry.<sup>24</sup>

55. The scope of these laws would cover any misuse of the phrases 'not for profit' or 'all profits go to members' in the superannuation industry.

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<sup>23</sup> See also ASIC Media and information releases 06-139 *ASIC outlines better regulation initiatives* 3 May 2006

<sup>24</sup> *Corporations Act* Part 7.10 Division 2 and *ASIC Act* Part 2 Division 2.

## **TR13 Benchmarking Australia against international practice and experience**

56. An assessment of the current state of Australia's implementation of the IOSCO Objectives and Principles of Securities Regulation was carried out as part of the Financial Sector Assessment Program undertaken in December 2005 by the International Monetary Fund.<sup>25</sup>

57. We understand the report of that assessment is expected to be made available to the Government and the public in September or October 2006.<sup>26</sup>

58. This assessment included examination of the effectiveness of securities regulation and involved a review of the legal framework, both generally and as specifically related to the financial sector. The assessment also involved a detailed examination of the policies and practices of the Australian institutions responsible for securities regulation, including ASIC and APRA.

59. While the assessment did not focus on Australia's superannuation industry, it did assess Australia's implementation of IOSCO Principles covering intermediaries. This included the regulation of financial advisers (see the outline in ASIC's comments on TR4 above). That part of the assessment reviewed Australia against the following relevant IOSCO Principles:

- (a) Regulation should provide for minimum entry standards for market intermediaries (Principle 21);
- (b) There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake (Principle 22);
- (c) Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters (Principle 23); and
- (d) There should be a procedure for dealing with the failure of a market intermediary in order to minimise damage and loss to investors and to contain systemic risk (Principle 24).

60. ASIC considers that the Corporations Act regime for the regulation of market intermediaries is generally consistent with the relevant IOSCO principles.

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<sup>25</sup> See Treasurer's Press Release No. 26 *Australia's Financial Sector Assessment Program* 4 April 2005

<sup>26</sup> See Transcript of The Hon Peter Costello MP, Treasurer, and Rodrigo De Rato, Managing Director of IMF, Joint Press Conference Parliament House Wednesday, 14 June 2006

## Schedule

### ASIC Policy Statements

*ASIC Policy Statement [PS 175] Licensing: Financial Product Advisers: Conduct and Disclosure*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/PS175.pdf/\\$file/PS175.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/PS175.pdf/$file/PS175.pdf)

*ASIC Policy Statement [PS 181] Licensing: managing conflicts of interest*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps181.pdf/\\$file/ps181.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps181.pdf/$file/ps181.pdf)

*ASIC Policy Statement [PS 184] Superannuation: Delivery of product disclosure strategies*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps184.pdf/\\$file/ps184.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps184.pdf/$file/ps184.pdf)

### ASIC Class Orders

ASIC Class Order [CO 03/1097]

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/co03-1097.pdf/\\$file/co03-1097.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/co03-1097.pdf/$file/co03-1097.pdf)

### ASIC Guides

*ASIC: a guide to how we work.*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/asic\\_guide\\_how\\_we\\_work.pdf/\\$file/asic\\_guide\\_how\\_we\\_work.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/asic_guide_how_we_work.pdf/$file/asic_guide_how_we_work.pdf)

*Choice of superannuation fund – meeting your obligations*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/superchoice\\_obligations.pdf/\\$file/superchoice\\_obligations.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/superchoice_obligations.pdf/$file/superchoice_obligations.pdf)

*Example Statement of Advice – an ASIC Guide*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Example\\_SOA\\_guide.pdf/\\$file/Example\\_SOA\\_guide.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Example_SOA_guide.pdf/$file/Example_SOA_guide.pdf)

*Super Choices*

[http://www.fido.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Super\\_Choices.pdf/\\$file/Super\\_Choices.pdf](http://www.fido.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Super_Choices.pdf/$file/Super_Choices.pdf)

*Super Switching Guide*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Super\\_switching\\_advice\\_guide.pdf/\\$file/Super\\_switching\\_advice\\_guide.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Super_switching_advice_guide.pdf/$file/Super_switching_advice_guide.pdf)

*Licensing: The Scope of the Licensing Regime: Financial Product Advice and Dealing*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/advicedealguide.pdf/\\$file/advicedealguide.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/advicedealguide.pdf/$file/advicedealguide.pdf)

## Reports

*Shadow shopping survey on superannuation advice: ASIC surveillance report*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/shadow\\_shop\\_report\\_2006.pdf/\\$file/shadow\\_shop\\_report\\_2006.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/shadow_shop_report_2006.pdf/$file/shadow_shop_report_2006.pdf)

## Discussion papers

*Managing conflicts of interest in the financial services industry : ASIC discussion paper April 2006*

[http://www.asic.gov.au/asic/asic.nsf/lkuppdf/ASIC+PDFW?opendocument&key=Conflicts\\_discussion\\_paper\\_April\\_2006\\_pdf](http://www.asic.gov.au/asic/asic.nsf/lkuppdf/ASIC+PDFW?opendocument&key=Conflicts_discussion_paper_April_2006_pdf)

## Frequently asked questions and fact sheets

QFS 55 *What is the distinction between factual information and financial product advice?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=FFC482A31171B8B6CA256D810018AA9B>

QFS 123 *I am an accountant. What advice can I provide about self managed superannuation funds (SMSFs) and related activity under reg 7.1.29?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=1567F3AC0FAB85C4CA256F65001B317A>

QFS 147 *What information can be provided about superannuation without requiring an AFS licence?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=296BE44DA4D04181CA256F4700748C6D>

QFS 150 *When financial services are provided to a trustee of a superannuation fund, are they provided to a retail client?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=7BDE894D55A75B3BCA256F56007AEED1>

QFS 152 *I am a superannuation trustee. What advice or promotional material can be included in the Product Disclosure Statement for a superannuation product without breaching the Corporations Act?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=F69B01A27B50645CCA256F5D0001B97F>

QFS 156 *I am an employer. What can I tell my employees about making a choice of superannuation fund?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=5F870369A8E08C1FCA256F640012E62E>

QFS 160 *Are employers retail clients in relation to financial product advice about employer 'default' funds under super choice?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=338F7E14D32C4B4ECA2570DD007BCF10>

QFS 162 *Is providing 'ratings' or other evaluations of superannuation products financial product advice?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=590138CCA4B7896CA2571720075330E>

QFS 163 *I am a superannuation trustee. Do I need to notify members about member transfers without consent?*

<http://www.asic.gov.au/asic/asic.nsf/ASIC+FSR+FAQ+DisplayW?ReadForm&unid=644D56EE38A1EEE6CA2571A400002F84>

*Is self managed super right for you?*

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/SMSF\\_factsheet\\_ATO\\_version.pdf/\\$file/SMSF\\_factsheet\\_ATO\\_version.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/SMSF_factsheet_ATO_version.pdf/$file/SMSF_factsheet_ATO_version.pdf)

## **Media and Information releases**

05-127 *ASIC to keep a close eye on accountants' advice about self-managed superannuation funds* 16 May 2005

[http://www.asic.gov.au/asic/ASIC\\_PUB.NSF/byid/650DC69062D964A9CA25700300076D78?opendocument](http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/650DC69062D964A9CA25700300076D78?opendocument)

05-181 *Meeting your obligations for super choice* 28 June 2005

[http://www.asic.gov.au/asic/ASIC\\_PUB.NSF/byid/F24CCA76AB132FFDCA25702F00804BEA?opendocument](http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/F24CCA76AB132FFDCA25702F00804BEA?opendocument)

06-139 *ASIC outlines better regulation initiatives* 3 May 2006

[http://www.asic.gov.au/asic/ASIC\\_PUB.NSF/byid/9F90E85ABF450C4BCA2571630019D307?opendocument](http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/9F90E85ABF450C4BCA2571630019D307?opendocument)

IR 06-22 *Interim relief extended for superannuation investment strategy product disclosure* 23 June 2006

[http://www.asic.gov.au/asic/ASIC\\_PUB.NSF/byid/8EF82BCAEB70B300CA257196000CCE0F?opendocument](http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/8EF82BCAEB70B300CA257196000CCE0F?opendocument)

06-251 *ASIC accepts a legally enforceable undertaking from AMP financial planning* 27 July 2006

[http://www.asic.gov.au/asic/ASIC\\_PUB.NSF/byid/9DE57C13D37F22F9CA2571B800002556?opendocument](http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/9DE57C13D37F22F9CA2571B800002556?opendocument)

06-233 *ASIC releases guide for stakeholders* 10 July 2006

[http://www.asic.gov.au/asic/ASIC\\_PUB.NSF/byid/E42F8298DA7175E0CA2571A7001DBD9A?opendocument](http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/E42F8298DA7175E0CA2571A7001DBD9A?opendocument)

IR 06-29 ASIC policy on how to deliver product disclosure about superannuation investment strategies 3 August 2006  
[http://www.asic.gov.au/asic/ASIC\\_PUB.NSF/byid/E25C8D04D3079F70CA2571BF000AA9A1?opendocument](http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/E25C8D04D3079F70CA2571BF000AA9A1?opendocument)