

# CORPORATE SUPER ASSOCIATION

July 2008

Financial Services Working Group  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By e-mail to [financialservices@treasury.gov.au](mailto:financialservices@treasury.gov.au)

## **Submission: Simple Superannuation Advice**

Dear Sirs

I refer to the Consultation Paper, *Simple Superannuation Advice*, issued by the Government on 30 May 2008. The Corporate Superannuation Association welcomes the opportunity to provide comments.

### **1 Background: the Corporate Superannuation Association**

The Corporate Superannuation Association represents twenty-three major not-for-profit corporate superannuation funds and their corporate sponsors. These funds are most of the largest funds in the corporate fund sector. The assets of Association members amount to approximately \$34 billion, representing about 46% of total corporate superannuation sector assets in Australia. In general, the funds are sponsored by corporate employer sponsors with membership restricted to employees from the same holding company group, but we also include in our membership a few multi-employer funds with similar employer involvement and focus to our stand alone member funds.

The Association provides the following comments in relation to the Paper and the proposals.

### **2 General comments**

We understand that the concept of "simple advice" relates to the provision of advice by a trustee or representative of a fund to an existing member of that fund on one of several common topics identified on page 7 of the Paper. These topics are confined to issues relating to that fund, and the person's membership of the fund.

We believe that the difficulties our funds have encountered in providing simple advice, as outlined above, can be categorised into:

- Concerns about providing advice because of potential Corporations Act breaches relating to advice misclassification (regulatory issue)
- Difficulties in finding sources of unbiased advice (commercial issue).

These are elaborated below.

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## **1.1. Advice classification**

We believe that there remains uncertainty about the practical distinction between:

- information,
- general advice, and
- personal advice,

as these are defined in the Corporations Act.

We understand that this is because the categorisation of advice (and sometimes information) can vary depending on the relationship between the provider of the advice (or information) and the recipient, and their relative states of knowledge. The provider's knowledge of the recipient's circumstances will affect the character of advice provided. The recipient's state of knowledge about the fund and other matters will affect his or her degree of reliance on the advice from the provider. The status of advice will thus be situation specific. This is the reason why the distinction between general and personal advice can most easily be drawn through specific examples, and why in practice people still struggle when the situation they face differs from stated examples. It is difficult to set general rules other than by reference to the parties' knowledge and intentions.

Trustees without AFSL, and trustees with licences to provide general advice only, therefore have difficulty deciding whether they or their representatives can provide advice on particular topics without breaching the law. In particular, our funds have reported blurring of the concepts of information and general advice. More cautious trustees have obtained AFSL for this reason. This has had cost implications.

It is easier to identify a situation where personal advice is provided, but this area poses particular problems for trustees. It is generally acknowledged that in some situations where a trustee assists a fund member, the trustee runs the risk of providing unlicensed personal advice (because the trustee possesses detailed knowledge of the member) where the same advice provided by an outside party would involve information or general advice only. However, it is in the very area where information is related or made relevant to a personal situation that members require and will benefit from advice.

## **1.2. Unbiased advice**

We are conscious also of the context in which the adviser licensing requirements were set. There is risk in permitting unlicensed and uncontrolled advisers to provide information or advice. The information may not be correct and the advice may not be appropriate to the person's requirements. Corporations Act requirements relating to adviser licensing and training are directed to addressing these problems.

However, there is a risk that has been hard to address in the context of the current advice model, relating to adviser conflicts of interest. The risk that an adviser will provide advice which is either selective or inappropriate increases where the adviser is rewarded where funds flow into a specific product. It is probably fair to say that adviser bias has increased under the current licensing regime. This is because, given the cost and other resource barriers to obtaining licensed status, it has been easier for large financial institutions to obtain licensed adviser status for their sales forces than for unaffiliated advisers to achieve that status. Further, it has been harder for

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independent advisers to make a living from advice when their potential clients find commissions and fees that are embedded within a product structure acceptable (because they still do not realise their extent), but have difficulty accepting an undisguised fee for service.

## ***1.3. Our proposed approach***

Given the above, we would support an approach that would define a further category of advice (separately defined from information, general advice and personal advice, although it may involve any or all of these) involving strictly limited advice on the subjects identified on page 7 of the Paper. RSE licensed trustee, or their representatives authorised for this purpose, under constraints, would be permitted to provide this category of advice outside the AFSL licensing framework, in a context where adviser conflict is minimised. For the purposes of this discussion, we refer to this category of advice as “intra-fund advice”, although it will in many cases be largely information. We refer to the trustee’s representatives as “trustee advisors”. These should be individuals authorised by the RSE licensee to provide intra-fund advice on the basis of their qualifications for the role, and whose advisory activities are closely monitored and controlled by the trustee in a manner the trustee considers appropriate. Further discussion of this point follows in section 3.

Many common queries can be resolved by reference to the fund’s public documents or by reference to the fund’s web site and public web sites. Very often, members simply need to be directed to the right reference for the information they need. They do not have the time, knowledge or familiarity with the material to search for the information. Some will then need to have the information provided in these places repeated to them, interpreted for them in simpler terms or provided in a way that is specific to their circumstances. This is where, under the current regime, there is risk that licensing rules will be breached because the information, in the context, may become advice and the advice may become personal. However, we believe that provision of “intra-fund advice” by trustee advisors on limited topics by primary reference to the fund’s documents and the fund’s web site, and to information, tools and calculators from public web sites, but with the facility to tailor the advice to the member’s specific situation, will assist in providing a necessary service, and will reduce the risk of misinformation.

## **2. How should intra-fund advice be defined?**

It is crucial that there should be very clear delineation of what can be provided as “intra-fund advice”. In practice much “intra-fund advice” would involve providing information about the specific fund, and tailoring and focusing that information to the member’s circumstances. In the list below, many items are likely to involve providing information about the fund and legislative information, much of which is currently provided in funds’ documents, web sites or public web sites. The core of “fund advice” should be what is now understood as “information” or general financial product advice, but it should be possible for this to be provided by the trustee with knowledge of aspects of the member’s situation in a way that provides assistance suitable to the member’s current needs, without the risk of breach. The definition of “fund advice” must clarify this.

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“Intra-fund advice” should encompass the following topics and responding to queries in the areas indicated:

## **2.1. Contributions:**

- The existing level of concessional and non-concessional contributions made to the fund annually for the member.
- How salary sacrifice differs from personal contributions in its effect on after-tax salary and on benefits.
- How salary sacrifice affects a person on a specific marginal tax rate.
- Information about co-contributions, level of income to qualify, type of contributions.

Calculators showing “headroom” beneath the relevant contribution limit would need to clarify that members need to take into account contributions to any other funds.

Calculators relating to co-contributions would have to take into account all sources of income, salary sacrifice and fringe benefits.

## **2.2. Investment choice:**

- Explanation of investment choice categories and concept of diversification.
- Discussion of the member’s obligations, time horizon and risk profile.
- Without making specific recommendations, flagging matters that should be considered by a member in making an investment choice decision.

There is a general view amongst our membership that it is not appropriate for a trustee to provide any views to a member on appropriate choice for the member’s circumstances, other than providing very general observations related to time horizons for particular investment options.

## **2.3. Insurance:**

- Information about premium levels for the person.
- Information from fund documents and public web sites about considerations relevant to the person’s age and circumstances.

## **2.4. Projection of benefits:**

- Defined benefit projections calculated by the trustee, using stated assumptions.
- Projection of accumulation benefits at current contribution rates, with clearly stated assumptions.

## **2.5. Nomination of beneficiaries:**

- Information about what is permitted under the fund’s rules.
- Discussion of personal situation.
- Information and discussion about relevant considerations when nominating a beneficiary, e.g. super outside Will, rationale behind nominations, trustee discretion, class of beneficiaries eligible.

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## ***2.6. General features and advantages of the fund:***

We have included this category because we believe that trustees may in some cases be inhibited from informing existing members about the particular advantages of the fund, particularly in a fund choice situation. We believe that trustees and their appointed delegates should not be inhibited from promoting to and discussing with members the perceived advantages of the fund, such as attractive pension options, investment choices, binding or non-binding death benefit nominations, spouse accounts, and inviting members to consider fee (absence of fee) advantages by reference to fee disclosure documentation.

## **3. Who should be able to provide intra-fund advice?**

### ***3.1. Delegate of RSE licensed trustee only***

The person should be appropriately qualified to provide the advice. In our view, this should not necessarily involve Corporations Act licensing or authorisation. We believe that the judgement of the RSE licensed trustee should be paramount, and that provision of the advice should be delegated by the trustee to a person or group of persons who in the judgement of the trustee can provide advice of appropriate quality. This may include delegates from the employer, provided that the trustee is satisfied that these are from an identified group with access to appropriate information and support, and whose activities are monitored and quality controlled by the trustee. In this discussion these delegates of the trustee are referred to as “trustee advisors”. These would be protected and indemnified by the trustee from any potential personal liability as a result of providing the advice.

### ***3.2. Absence of financial conflict***

In addition, it is our view that intra-fund advice should be provided only by a person with no direct financial interest in the outcome of the advice. No commission should be payable, and no direct financial advantage should accrue to the person as a result of the advice. If fees are charged for the advice, or commissions flow to the person providing the advice as a result of the advice, the advice no longer falls within the definition of intra-fund advice and the standard AFSL requirements should apply for financial advice.

We believe that if advice is provided by a person whose reward for providing the advice is potential commission related to product placement (volume of contributions, insurance premiums) the advice runs the risk of being biased towards specific products and higher contributions or premiums. This approach is not directed to the best outcome for the fund member. If “intra-fund” advice is required to be commission free, this potential source of inappropriately motivated advice is removed.

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## ***3.3. Crucial attributes of trustee advisor and intra-fund advice***

In summary, we stress that intra-fund advice, as we envisage it, should be provided only by a RSE licensee or appropriately appointed delegate, and restricted to matters relating to interests in the fund, for existing members. It is crucial that no commission should be paid to the advisor, to avoid conflict of interest. This type of advice must not be impeded by conflict or red tape, as it is desperately needed by fund members. AFSL licensing requirements should not apply to the trustee advisors, given their direct relationship with the RSE licensee and that licensee's responsibility for the advice provided.

## **4. What documentation should be supplied when intra-fund advice is provided?**

In the context described above we do not believe that the provision of intra-fund advice would involve the need to supply an SOA or an FSG. Reference to the PDS and other general fund information and documents should be sufficient.

We have considered the comments on page 15 of the Paper in relation to the circumstances where an SOA is required. We believe that intra-fund advice, as proposed by us, would generally not require an SOA, and where the advice given was of a type that would be personal advice, the absence of remuneration for the adviser, the existing relationship with the fund and the absence of multiple subjects of advice mean that there is little point in providing an SOA.

On FSG, see our comments on the specific Proposals in the Paper below.

## **5. Should there be a charge for intra-fund advice?**

We believe that the kind of advice discussed above should generally be provided by the trustee at no additional cost.

## **6. Comments on Proposals in the Paper**

### ***6.1. Proposal 1- further clarification and guidance***

We consider that the proposals for further clarification and guidance are constructive but we believe that our proposal for "intra-fund advice" as above would sidestep the complexities and also avoid adviser conflict issues.

### ***6.2. Proposal 2 – responsibility for advice***

We agree with the proposal (related to AFSL licensees) that a licensee should take responsibility for the provision of advice under the direct supervision of the licensee. Most importantly, we believe that this approach must be extended to situations where the "intra-fund advice" proposed in paragraphs 2-5 is provided by an RSE licensee, and that indemnity and insurance for trustee liability arising from the provision of intra-fund advice should involve extension of existing trustee indemnity cover.

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## **6.3. Proposal 3 – provision of an FSG**

We agree that where there is little point in providing an FSG where there is no additional remuneration (other than obvious percentages) paid to the fund as a result of the advice and there is no material conflict.

## **7. Summary and conclusion**

In summary, the Corporate Superannuation Association would welcome the ability for fund trustees to offer limited and defined (“intra-fund”) advice without the need for an AFSL licence through the agency of appropriately qualified trustee delegates (“trustee advisors”). The crucial elements in our proposal would be the absence of financial interest for the advisor in any transaction arising from the advice; and strict limitations on the subject matter of the advice.

Please contact my office on +61 3 9620 5155 or by e-mail to [corsuper@netspace.net.au](mailto:corsuper@netspace.net.au) if you would like to discuss the above.

Yours sincerely



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