

6 January 2016

Manager
Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: lifeinsurance@treasury.gov.au

Dear Manager,

Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015

The Law Council of Australia welcomes the opportunity to provide comments on the exposure draft Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 (the Bill).

This submission has been prepared by the Law Council Superannuation Committee, which is a committee of the Legal Practice Section of the Law Council (Committee). The objectives of the Superannuation Committee are to ensure that the law relating to superannuation in Australia is sound, equitable and clear. The Committee makes submissions and provides comments on the legal aspects of proposed legislation, circulars, policy papers and other regulatory instruments which affect superannuation funds.

The Law Council of Australia is the peak national representative body of the Australian legal profession and represents more than 60,000 legal practitioners nationwide.

Summary

In summary, in the Committee's opinion:

- The draft Bill may limit the opportunities for superannuation fund members to obtain low cost advice (for example, 'intra-fund advice') about their superannuation. The Committee considers that the additional requirements in the Bill, especially the minimum education standards, should apply to a narrower class of persons. A narrower application in the Committee's opinion is more likely to achieve a better balance between improving standards and providing access to personal advice at a low cost.

This could be achieved by directing the additional education standards only to financial advisers who provide financial product advice (that might be described as financial planning advice) and not also to individuals who provide personal advice on limited topics (for example intra-fund advice).

- The Committee notes that the Bill will permit different ethical standards to apply to financial advisers depending on which professional association or licensee they are covered by. This is difficult to understand given the 'one-size fits all approach' the Bill has adopted for education standards. It may be appropriate for ethical standards to be tailored according to the adviser's circumstances (although this might mean that different codes should apply within licensees), but the Bill does not require any consistency. It also does not provide any guidance about what conduct or topics should be included in the codes or set any minimum standards of conduct. The Committee considers that there should be some alignment in approach to the development of educational and ethical standards.
- Clients of relevant providers must be able to complain about breaches of the relevant Code of Ethics to the monitoring body of the relevant compliance scheme. It is likely that a client who complains about a breach of ethical standards may also want to complain about the quality of the advice they have been given. The Bill would appear to require clients to bring such complaints to two bodies – the relevant monitoring body as well as the relevant external complaints handling body. The Committee queries whether complaints about a breach of a Code of Ethics should be dealt with in the same manner as any other complaint about an adviser. A single process that saw a complaint initially considered by the relevant licensee under its own internal disputes resolution process and then by the relevant external dispute resolution body would reduce complexity for the complainant and avoiding inconsistent decisions and double handling.

Impact of the Bill on the superannuation industry

The Committee's interest in the Bill arises primarily because many superannuation funds provide advice to their members about their interest in the fund. This advice will often be personal advice but limited to a narrow range of matters related to interests in the fund, generally about a member's insurance in the fund, their investment strategy or their contributions. This limited advice (commonly referred to as 'intra fund advice') may be paid for by the trustee as a general expense of the fund because it is not proscribed by section 99F of the *Superannuation Industry (Supervision) Act 1993* (Cth).

The Committee understands that this limited or scaled advice is often provided by supervised call centre staff with relevant training. They are unlikely to meet the proposed education standards contained in the Bill.

The Committee notes that whether or not the standards in the Bill should apply to any person who provides personal advice to retail clients about any financial product other than a basic banking product, general insurance product or consumer credit insurance product is a question of policy for the Australian Government. However, the Committee queries whether the issues that the Bill is intending to address (poor and inappropriate financial product advice and a lack of consumer confidence) are issues that affect the limited advice given by superannuation funds to their members about their interests in the fund.

The Committee also queries whether the proposed professional and education standards will reduce access for superannuation fund members to low cost accessible advice about their superannuation interests.

The Committee also notes that while there is to be a consistently applied educational standard across the financial advice industry, there is no consistency of approach or minimum standard level proposed for the ethical standards.

Stated intention

The introduction to the draft Explanatory Memorandum to the Bill states that:

In recent years, numerous cases of inappropriate financial advice have decreased consumers' confidence in the financial advice industry. This lack of trust has become a barrier to consumers seeking financial advice.

The cases of inappropriate advice that ASIC investigations and parliamentary committees have considered have, to the Committee's knowledge, been concerned with financial product advice that is in the nature of financial planning advice. The Committee is not aware of any widespread instances of inappropriate advice provided by (or made available by) superannuation fund trustees to their members. It would be an unfortunate outcome of the Bill if intra fund advice to members became less accessible.

The Committee notes that the Future of Financial Advice reforms had two aims:

to ensure the integrity of the financial advice framework was maintained whilst delivering a system that offered affordable and accessible financial advice to the Australian community.

Superannuation fund trustees have been able to make financial advice accessible to their members by offering limited or scaled advice about single topics. This advice may be provided through online calculators, call centre staff or face-to-face. In each case, this advice is frequently personal advice because it considers the relevant financial circumstances and needs of the client. The advice is not complex. It is not clear to the Committee that this limited advice requires (or would be improved by) the provider meeting the proposed enhanced education standards. Indeed, the Committee believes there is a real risk that the wide application of the additional requirements will compromise access to limited or scaled advice, particularly in relation to superannuation.

Proposed amendments

The Committee notes that there is a very wide and diverse range of conduct that falls within the scope of personal advice under the *Corporations Act 2001*. The education standards that would be introduced by the Bill are high and do not distinguish between the different kinds of personal advice other than to exclude those individuals who provide personal advice to retail clients about basic banking products, general insurance products and consumer credit insurance products.

In summary, while these minimum standards may well be appropriate for a person who provides financial planning advice to their clients, it is not clear that they are needed for many kinds of scaled advice, for example advice about a member's interest in a superannuation fund. The Committee is concerned that the proposed education standards will prevent superannuation fund members obtaining low cost or free advice from their superannuation funds about their superannuation because funds may not be

able to recruit people meeting the proposed education standards or may be unwilling to pay the higher salaries they will demand.

The Committee would welcome an opportunity to discuss this submission further. In the first instance please contact the Chair of the Superannuation Committee in the Law Council's Legal Practice Section, Ms Michelle Levy, 02 9230 5170, 0407 890 715 Michelle.Levy@allens.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael Young". The signature is stylized with a large, sweeping loop at the end.

Mr Michael Brett Young
Chief Executive Officer
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