



Australian Government

Simple advice on choices within an existing superannuation account

Consultation Paper

Financial Services Working Group:

The Treasury

Australian Securities and Investments Commission

Department of Finance and Deregulation

May 2008

BACKGROUND

The Financial Services Working Group comprises senior officials from the Department of Treasury, the Australian Securities and Investments Commission (ASIC) and the Department of Finance and Deregulation. Its role is to look at several key issues associated with financial product disclosure and advice.

One key issue is access to simple advice on choices within an existing superannuation account (intra-fund advice). We are seeking comments from industry, their advisers and consumers about what regulatory and other steps Government could take to help more consumers get this advice.¹

The content of this document does not necessarily represent current or future Government policy. This document is intended to provide a constructive basis for public consultation on the issues surrounding provision of simple, low-cost intra-fund advice on superannuation.

1 For reference purposes, this document is also known as ASIC Consultation Paper 97.

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The consultation process

What is the Financial Services Working Group?

On 5 February 2008, the Minister for Superannuation and Corporate Law, Senator the Hon Nick Sherry, and the Minister for Finance and Deregulation, the Hon Lindsay Tanner MP, announced that the Financial Services Working Group (the Working Group) had been established.

The Working Group is comprised of senior officials from the Department of Treasury, ASIC and the Department of Finance and Deregulation. Its role is to look at several key issues associated with financial product disclosure and advice. One key issue is access to simple advice on choices within an existing superannuation account (intra-fund advice).

Information that we would like to receive from you

We would like your comments about what regulatory and other steps we could be taking to help more consumers get simple cost-effective advice about how to use their superannuation fund.

You are invited to comment on the proposals in Section D of this paper. The proposals are only tentative and are not our final views. We have also invited feedback about other issues surrounding the provision of intra-fund advice discussed in this paper.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

Where possible, we welcome any estimates that you could provide regarding the current cost of providing advice and the likely cost of providing advice under a proposed alternative model.

We are keen to fully understand and assess the impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely impact on supply and demand for advice services;
- the likely effect on consumer protection; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

Your comments will help the Government to develop policy on advice in relation to existing superannuation investments.

Making a submission

It will be assumed that submissions are not confidential and may be made publicly available. If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly. A request made under the *Freedom of Information Act 1982 (Cth)* for a submission marked confidential to be made available will be determined in accordance with that Act.

Comments should be sent by 15 July 2008 to:

Financial Services Working Group
The Treasury
Langton Crescent
PARKES ACT 2600
email: financialservices@treasury.gov.au

A. Scope of this consultation

- The Government wishes to improve Australians' access to low-cost financial advice about their superannuation.
 - Simple personal advice on superannuation is not commonly offered at a low cost.
 - This consultation paper looks at barriers to the provision of simple, low-cost advice for people about the options and strategies available within their existing superannuation fund.
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Why is this consultation occurring?

Improving Australians' access to cost-effective financial advice about their superannuation is important for both consumers and the economy.

Issues within superannuation are sometimes complex. However, many people have one or two simple questions about using their superannuation fund. Such simple personal advice on superannuation is not commonly offered at a low cost. This has reduced the ability of retail investors to make optimal decisions about how to use their superannuation funds. This, in turn, has reduced the effectiveness of the retirement savings system.

The Working Group's mandate is to assess whether government action is necessary to facilitate the availability of advice on simple superannuation issues.

ASIC and Treasury have already had detailed discussions with some providers about the unmet demand for advice and why low-cost superannuation advice is not more widely available. Regulatory obligations or uncertainties were some of the reasons mentioned, as were commercial reasons.

The Working Group wants to consult further with industry and consumers about how these issues can best be addressed.

What issues are within the scope of consultation?

This consultation paper looks at barriers to the provision of simple advice to consumers about the options and strategies available within their existing superannuation fund. The objective of this project is to increase access to low-cost, simple advice about a person's investment in an existing superannuation fund (intra-fund advice).

This paper covers accumulation, transition to retirement and pension products. However, the main impact is likely to be in the accumulation phase.

Information from industry shows that common requests for intra-fund advice are on topics such as:

- the best form of super contributions (for example personal contributions versus salary sacrifice);
- choosing between the fund's investment options (for example five pre-mixed investment options);
- choosing a suitable level of insurance within the fund;
- projection of current contributions to retirement, and the level of retirement income that is likely to be available; and
- nominating beneficiaries.

For many people, advice on these topics could be validly given in isolation from other issues, and may only require limited inquiries.

The Working Group is interested in learning about factors affecting the availability of intra-fund advice, including:

- supply and demand side factors; and
- market and regulatory factors.

Although our proposals only cover regulatory issues, regulatory responses may be ineffective if there are intervening market issues or barriers. The project may also make recommendations addressed to industry or other stakeholders.

Although there may be broader issues about the availability of low-cost financial advice, we (throughout this paper, 'we' refers to the Working Group) have confined this project to intra-fund advice about superannuation funds for the following reasons:

- superannuation is a compulsory system so the Government has a duty of care to ensure simple cost-effective advice is available;
- superannuation is the largest area of unmet need for advice;
- superannuation has large numbers of unsophisticated investors, many with modest account balances; and
- superannuation funds are one likely provider of simple, low-cost advice.

What issues are outside the scope of consultation?

Certain issues are outside the scope of this consultation paper. These include, for example, advice on switching between super funds or consolidating numerous funds, and more complex advice on retirement planning strategies.

Advice on non-superannuation investments is also outside the scope of this paper. However, the proposals discussed here may indirectly facilitate simple advice on other investment products.

B. Current availability of simple financial advice

- Available evidence suggests that there is a significant unmet demand for simple superannuation advice.
 - Some businesses are currently providing simple advice about their superannuation products to clients at low cost. Other businesses would be keen to provide a similar service to their clients if there was a commercially viable way to do so.
 - We have identified some commercial and regulatory impediments to the provision of simple financial advice to superannuation fund members.
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What is the current access to simple intra-fund advice?

At present, consumers can potentially receive four types of assistance with simple questions about superannuation intra-fund issues:

- **Factual information** — this includes information such as how the superannuation system works, tax rates, and product features. This is widely available from sources such as Product Disclosure Statements (PDSs), Government and corporate websites, brochures, media publications, financial planners and superannuation fund call centres;
- **General advice** — this takes no account of the consumer's specific circumstances. Some general advice is available for free via brochures and websites;
- **Simple personal advice confined to the one issue** — this is available from a few providers at low cost, but is not widely offered and
- **Simple personal advice within a wide-ranging financial plan** — a wide-ranging financial plan is likely to cost a substantial amount (via fee or commission).

The third category describes the objective of this project — more access to simple personal advice on basic superannuation issues.

Superannuation funds have told us that staff at their administration call centres are frequently asked for advice from fund members. They generally only give factual information, but not advice. For many callers who are unfamiliar with superannuation, the response is: 'Thanks for the information, but what should I do?'

It is estimated that one in five adult Australians currently uses a financial planner.² Some financial planners have commented that their services are only commercially viable to provide if the client has substantial investment funds (for example at least \$60,000–\$100,000). However, some advice providers do also cater for clients with more modest amounts. ABS statistics suggest that about 70 per cent of Australian

² Galaxy Research, *Consumer Attitudes to Financial Planning*, Prepared for Financial Planning Association, May 2007.

households have less than \$100,000 in financial investments. Half of households have less than \$35,000 in super.³

Overall, the available evidence suggests a significant unmet demand for simple superannuation advice. We also expect that the increased availability of low-cost advice will foster extra demand, as well as meeting existing demand.

What low-cost advice models are already in operation?

A small number of providers are already delivering simple, personal financial advice to customers at low cost. We are also aware that a number of other providers are exploring possibilities.

We have outlined some of the existing services below, based on our research. We are interested in learning details of other existing or proposed services.

Providers offering low-cost advice are from various segments of the market. They include industry, retail and corporate super funds, their service providers and specialist advice firms. Some services are confined to members of particular super funds; others are open to the general public.

Most of the providers offer different levels of assistance:

- general education (online, seminars, phone, etc);
- simple advice on specific issues, ('money coaching' or a 'financial health check'); and
- traditional financial advice on more complicated issues and holistic financial planning.

The advice may be confined to intra-fund issues (for example contributions, investment choice, insurance), or may cover broader issues (for example transition to retirement).

Simple advice may be provided for free (subsidised by a super fund) or at a flat fee (for example \$200) or a combination. Some is done face to face, whilst other simple advice is via a 15–30 minute phone call.

One provider reported that 80 per cent of its callers had less than \$40,000 in super.

All the providers we consulted provided a Statement of Advice (SOA) for each piece of advice. The SOAs are typically 12-20 pages long. However, only two pages of the SOA may be 'core' material required by legislation, with the rest being educational material. One provider said an average SOA took five minutes to prepare, with the assistance of software.

3 Australian Bureau of Statistics, Cat. No. 4102.0 - Australian Social Trends, 2006

What are the barriers to simple advice?

In our discussions with providers, we canvassed possible reasons why low-cost, simple advice might not be provided more widely (see Table 1).

Table 1: Some of the possible barriers to providing simple advice

Regulatory issues	Commercial issues
<ul style="list-style-type: none"> • Level of detail in a Statement of Advice (SOA), or the need to produce an SOA at all. • Uncertainty within industry about how the suitable advice requirement and the ‘scaleable’ concept apply to simple personal advice (for example, can you give advice on just one aspect of the client’s affairs?) • Uncertainty about the extent of inquiries required under the ‘know your client’ rule. • Uncertainty within industry about the line between personal and general advice (that is, a fund might like to give more assistance via a general advice model, but might be reluctant due to the risk of over-stepping into personal advice). • The training standards required for personal advice may lack flexibility. • Liability risk if mistakes are made and the law breached. 	<ul style="list-style-type: none"> • Providers have given more priority to other business (for example, other advice segments may be more profitable). • Consumers may be reluctant to pay for simple advice. • High cost of providing the service, including recruiting and training staff. • Advice is not actually simple, so limited advice is difficult in practice. • Reputation risk if mistake was made/do not want to be the ‘guinea pig’. • Technology/systems to support the advice process may be expensive or difficult to implement. • ‘Channel conflict’—simple advice services for people buying direct could cut across other distribution channels, such as funds sold via financial planners.

Regulatory issues

Our analysis of industry information, combined with our own observations, suggests that the regulatory barriers or issues can be overcome relatively easily. This view is reinforced by the fact that some providers are already giving simple, low-cost advice within the current law.

The biggest regulatory impediment appears to be uncertainty about how regulatory principles for suitable advice and SOA content apply to simple advice. Minor impediments are:

- needing to provide additional disclosure to identify the individual adviser and explain his or her relationship as a representative of the product provider, when the client’s primary relationship is with the product provider; and
- ensuring a Financial Services Guide (FSG) has been provided to existing fund members.

In Section D we outline three proposals as potential responses to overcome these impediments.

Some recent amendments to the *Corporations Act 2001* (Corporations Act) have eased the regulatory obligations in certain circumstances (see page 16). These include SOA exemptions and the ‘asset class’ exemption. However, we think that the flexibility offered by the current law is not yet widely understood.

The requirement to give a SOA did not appear to be a major barrier (see page 21). During our preliminary consultations, providers said they would provide written confirmation of advice, even if a SOA was not required by law. The problem seems to lie in uncertainty about the required SOA content, not the requirement to give an SOA.

Commercial issues

Commercial issues represent impediments of differing significance for different parts of the market. Table 2 summarises some of these issues.

Table 2: Commercial issues limiting the provision of simple advice

‘Channel conflict’	For retail providers, ‘channel conflict’ is a real issue. Their business model may be compromised if a direct service appears to ‘undercut’ the adviser distribution channel that provides 80% of their funds under management.
Cost of technology	For semi-automated systems, technology is likely to be expensive. This may be a significant hurdle for players serving a small market, but less so for high-volume players. On the other side, large amounts have already been spent on sophisticated financial planning software, so adaptations for simple advice may only be a marginal cost.
Staff issues	Staff availability, training costs and remuneration are frequently mentioned issues (to meet both commercial and regulatory needs). The issue is partly a result of a full capacity economy and growth in the financial service sector. Financial planners currently attract high remuneration compared to other occupations, and are in short supply (a commercial issue). Minimum training standards (a regulatory issue) also impact on staffing availability and costs, and they also need to balance consumer protection and protecting the reputation of the industry. Recent ASIC consultation ⁴ revealed that there is no consensus on whether the current minimum training standards are at the right level, too high or too low.
Reluctance of consumers to pay	Many consumers appear reluctant to pay for simple advice. Some may be used to ‘free’ advice under the commission system where the advice cost is contained within the product cost. We note that the Financial Planning Association is running a major campaign to make consumers aware that financial advice has value.
Reputation risk	Many providers mentioned that reputation risk was a significant factor. They steered clear of business areas that carried the risk of adverse publicity, even where the direct cost of any regulatory breach would be minor.
Is it really simple?	There are practical issues in distinguishing whether a particular consumer’s issue really is simple, or whether it has unusual complexity.

4 ASIC Consultation Paper 88 ‘Reviewing and updating RG 146: Training of financial product advisers’

Your feedback

The Working Group is interested in comments about the reasons why low-cost intra-fund advice is not more widely available. Some reasons may be regulatory; some may be commercial or economic.

We would be interested in hearing your views on the degree to which any of these factors do (or do not) restrict you from providing simple, low-cost intra-fund advice. Are there any other factors significantly restricting supply of or consumer demand for such advice?

What are the factors or barriers that have impacted on the availability of simple, low-cost intra-fund advice?

What are the factors or barriers (if any) that impact on clients seeking and obtaining limited personal advice? For example, is the cost of advice a key barrier for clients?

C. Current rules for giving financial advice

- Where personal financial advice is given, the Corporations Act imposes a number of obligations upon a financial adviser.
 - In this section, we briefly summarise the current obligations and our proposals to facilitate simple advice.
-

Personal advice vs general advice

Financial advice is:

- a recommendation or statement of opinion; and
- intended to influence a person in making a decision about a financial product or class of products.⁵

All financial advice is either personal advice or general advice:

- Personal advice is where the adviser has (or could reasonably be expected to have) considered one or more of the person's objectives, financial situation or needs.
- General advice is all other advice⁶ (that is, advice that doesn't consider the client's personal circumstances).

Advisers who provide personal advice must ensure it is suitable for the client, and may need to provide an SOA.

ASIC has provided a large amount of guidance on the meaning of advice, and the boundaries between information that does not amount to financial advice, general advice and personal advice.⁷ However, the Working Group is aware that superannuation advisers sometimes struggle with the dividing line between general and personal advice. They may be more willing to provide useful general advice (and information that does not amount to financial advice) if they were more confident about where the dividing line lies.

The focus of this paper is on the provision of simple personal advice to existing members of superannuation funds.

5 Section 946B(7). However, in this case the client must be given certain other information instead (that is, in relation to fees and any conflict of interest issues) as soon as practical after the advice is given: s946B(8).

6 Section 766B(3) and (4).

7 See Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) and Regulatory Guide 175 *Licensing: Financial product advisers—conduct and disclosure* (RG 175) at www.asic.gov.au/rg. RG 175 also explains the rationale for regulating to the giving of advice to retail clients.

Suitability of personal advice

Personal advice, by its nature, is likely to be relied on by retail clients, who may suffer significant loss if the advice is not suitable. Where personal advice is given, the financial adviser must ensure that the advice is suitable for the client's circumstances.⁸ In summary, this involves an obligation to:

- make client inquiries that are relevant to the advice (research obligation—'know your client');
- consider and investigate the subject matter of the advice (consideration obligation); and
- ensure the advice is appropriate for the client's situation (appropriateness obligation).

The research, consideration and appropriateness obligations are based on what is 'reasonable in the circumstances'. This takes into account all the circumstances surrounding the advice, including the nature of the advice being offered and the fee or commission (if any) being charged.

Providing a statement of advice

Where personal advice is given, an SOA is generally required. The principle behind the SOA is that it allows the client to make a considered and informed decision whether to act on the advice. It also provides a record of the advice, which may be important in case of a dispute or for a compliance review.

Obligations are scaleable

The suitable advice obligations and SOA content obligations are 'scaleable'. This means that the action necessary to meet these obligations varies depending on the circumstances.⁹ For example, advice can address a single issue being faced by the client ('limited' advice) rather than being a comprehensive financial plan.

An adviser is only required to conduct client inquiries and undertake product research that is relevant to the advice that is actually given. Therefore, an adviser giving simple personal advice will only need to ask the client a more limited range of questions. Their investigation of the subject matter of the advice might also be more limited in these circumstances.

The content and level of detail of an SOA are both scaleable. Simple advice would normally have a relatively simple basis, so only a simple explanation is required. The required level of detail is what a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client.¹⁰ Therefore, a short, simple SOA would normally be satisfactory for simple advice.

⁸ Section 945A.

⁹ See RG 175.97.

¹⁰ Section 947B(3).

While the Corporations Act and ASIC guidance indicate that many of the obligations are scaleable, we understand that there is some uncertainty within the industry about how these concepts are applied in practice.

What existing laws facilitate giving simple advice?

For this discussion, it is useful to mention some existing provisions in the Corporations Act that ease the regulatory obligations in certain circumstances.

There are a number of provisions in the Corporations Act that vary or remove some of the regulatory obligations relating to simple advice. We recognise that these exemptions might not be widely known and understood by all providers. It is also possible that some are not useful in practical circumstances.

Where a Statement of Advice is not required

In general, no SOA is required in the following circumstances:

- The advice is purely strategic—that is, it does not recommend the purchase or sale of any specific financial products, and no remuneration is received;¹¹
- The advice is to buy or sell an interest in the superannuation fund worth not more than \$15,000 (at the time of the advice or in the coming year), and the client already has an interest in the fund.¹² Advice on life insurance within the super fund can be given within the same threshold where it is integral to the provision of the superannuation advice; and
- The advice is further advice.¹³ In simple terms, this is personal advice that a licensee gives an existing client that relates to previous personal advice, and certain conditions are met. Typically, this applies where a financial adviser gives advice that follows on from previous personal advice where an SOA was given.

Further, in time critical cases, the SOA may be delayed¹⁴ where:

- the client instructs the service provider that the service must be provided immediately or within a specified time; and
- it is not reasonably practical to give the SOA to the client before the service is provided as instructed.

Information or recommendations that are not advice

Certain information or recommendations are specifically excluded from the definition of advice, and therefore are exempt from most of the statutory obligations described above (regulated advice):

11 Section 946B(7). However, in this case the client must be given certain other information instead (i.e. in relation to fees and any conflict of interest issues) as soon as practical after the advice is given: s946B(8).

12 Section 946AA(1)(c) and reg 7.7.09A(1) of the Corporations Regulations 2001. However, a record of the advice must be kept: s946AA(4).

13 Regulation 7.7.10AE.

14 Section 946C(3).

- **Asset class exemption**—advice is not regulated advice if it is only about broad asset classes.¹⁵ This is where the service consists only of a recommendation or statement of opinion provided to a person about the allocation of the person's funds that are available for investment among one or more of the following: superannuation, shares, debentures, government bonds, deposit products, managed investment products, investment life insurance products, or other types of asset. For example, it is not regulated advice if a person says 'you should put \$10,000 into superannuation rather than in managed funds or in a bank account'.
- **Advice not affecting the client's interest in the superannuation fund** — other recommendations are outside the definition of regulated advice because they do not concern a financial product. Recommending someone use their spare money to pay off their mortgage is not regulated financial advice.¹⁶

Giving advice via the internet

The Corporations Act is generally principles-based and attempts to be neutral about technology. This applies equally to the provision of financial advice as it does to other aspects of financial product regulation.

There is no provision in the Corporations Act that would restrict the use of the internet to give general or personal advice. In other words, the same obligations apply, regardless of whether advice is provided face to face, by telephone, by letter or over the internet. The regulatory issues are the same as for any other communication channel (for example, is the person giving the advice licensed? If the advice is personal, has the provider of the advice inquired about the client's relevant facts? Is the advice appropriate?)

The Working Group would be interested to know if anyone has experienced unintended practical difficulties in giving (or receiving) advice via the internet.

¹⁵ Regulation 7.1.33A.

¹⁶ Defined in s764A.

D. Options for change

- In this section we give several proposals for changes to the current regime. Other options are also mentioned that have not been put forward as proposals..
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How the law applies to simple advice

While the Corporations Act and ASIC guidance indicate that many of the obligations are scaleable, the Working Group understands that there is some uncertainty within the industry about how these concepts are applied in practice.

Proposal 1—Further clarification and guidance

ASIC could provide further guidance on how the obligations in Part 7.7 of the Corporations Act apply to simple advice.¹⁷ This could include guidance and examples on:

- how the ‘suitable advice’ rule is scaleable, as the extent of ‘know your client’ obligations is limited by advice actually given (for example, some simple intra-fund advice issues could be answered after asking the client just a few questions);
- expectations for SOA content and the use of standard templates;
- how staff with less training can be used to ‘pass on’ advice by following a script;
- how ASIC will view accidental breaches by licensees with robust compliance systems (including overstepping from general advice into personal advice); and/or
- how conflicts of interest can be dealt with (for example, ensuring advice is not skewed towards encouraging actions that generate more fees).

A variation on this proposal would be to also amend the Corporations Act to more explicitly refer to the principle of scalability.

Your feedback

Would this additional ASIC guidance be useful? Would the legislative amendment provide an additional benefit? Would it reduce the cost of providing advice and if so by how much? We welcome any specific suggestions on how the legislation and interpretation impact on simple advice.

¹⁷ For example, in Regulatory Guide 175.

Responsibility for advice

In general, the person providing advice is legally responsible for the quality of the advice. Simple advice is often provided by a call centre or website, based on software or a script approved by the licensee.

Proposal 2—Responsibility for advice

The law could allow a licensee to take responsibility for the provision of advice where it is provided under the direct supervision of the licensee. No disclosure would be required about the individual adviser (for example, adviser or call centre operator) provided there were no relevant conflicts of interest to disclose. This would not alter the obligation for a qualified adviser to be involved in designing the advice for the licensee.

Your feedback

We believe this would simplify disclosure about who is providing the advice (for both the fund and the member). Do you agree?

Provision of a Financial Services Guide

Although there are some exceptions, s941D(1) of the Corporations Act generally requires that a client be provided with an FSG before a financial service is provided.

Some flexibility is allowed for time critical cases.¹⁸ An FSG can be provided up to five days after the advice, as long as key FSG information is stated at the time (for example, verbally).

In many cases, a superannuation trustee would have already provided a combined PDS/FSG. However, in some cases it may be unclear whether FSG information was received or if it contains the current information. FSG information can be given orally, but it may extend the length of an advice call.

Proposal 3—Provision of an FSG

Where the advice is provided by the superannuation fund, the requirement to provide an FSG could potentially be removed where:

- the superannuation fund does not receive any additional remuneration as a result of providing the advice that needs disclosing—it would be possible to not require disclosure of benefits that would be obvious to the consumer (for example, a percentage fee will result in a higher dollar fee payment where more funds are invested); and
- there is no material conflict of interest.

¹⁸ Section 941D(2).

An alternative approach is for ASIC to extend the relief for FSGs to enable providers to use a website as the default method for providing their FSGs.¹⁹

Your feedback

If FSG provision is an irritant, either approach may reduce a minor problem. We are interested in feedback about the extent to which this is a problem.

Your feedback on all proposals

Do the proposals adequately address the regulatory barriers? If not, what are the changes necessary to address those barriers?

If the Government made some or all of the changes outlined above, would your business provide limited advice to consumers? Are there other commercial or economic barriers to your business providing simple advice? Please give details.

If the proposed changes are made, are there any particular risks or consumer protection issues that we need to consider?

If the proposed changes are made, would they reduce the cost of providing advice and if so by how much?

It would be useful if you could provide specific examples of problems and/or possible solutions and how they would assist business and consumers. Also, please attempt to identify whether the barriers are regulatory (for example, legislation or regulatory guidance) or non-regulatory (for example, consumers are unwilling to pay for advice).

What we have not proposed

We have considered other options, but these appear to be less useful from our initial analysis than the above proposals.

New training standard

We considered a new intermediate training standard for providers of simple intra-fund personal advice on superannuation. This would be higher than the Tier 2 training typically required of call centre operators, but lower than the Tier 1 training required for financial planners.²⁰ A proposal along these lines was made in the UK Financial Services Authority's Retail Distribution Review.²¹ We considered whether a lower training standard would lower recruitment and training costs, widen the potential pool of advisers and/or provide a career progression path.

¹⁹ This option is canvassed in ASIC Consultation Paper 93 *Facilitating online financial services disclosures* (CP 93) on p. 10 at www.asic.gov.au/cp.

²⁰ See Regulatory Guide 146 *Licensing: training of financial advisers* (RG 146) at www.asic.gov.au/rg.

²¹ See www.fsa.gov.uk.

ASIC recently reviewed training standards in Regulatory Guide 146.²² Industry opinion was mixed, with some advocating higher standards, some lower standards and some supporting the status quo. Therefore, we have not proposed a change to training standards, but would welcome any feedback on this issue.

Changes to definitions of 'advice'

We have not attempted to define a category of 'simple advice' and apply special rules to that category. Our view was that individual circumstances would dictate whether advice was actually simple or not. For example, advice on a topic like 'extra super contributions' may be simple for 90 per cent of the population, but complex for the other 10 per cent.

We have not proposed moving certain kinds of advice into the 'general advice' category. Our impression is that many consumers would expect that specific advice from an expert source is advice they can (and would) rely on, despite any disclaimer. Our starting point is that the principles behind the current personal advice category are still valid.

We are aware of proposals by some industry members to significantly change the boundary between the definitions of general advice and personal advice. Our initial impression is that this change is not necessary to achieve our objective on this particular issue, and could create other problems.

Further SOA exemption

We considered whether a further SOA exemption was necessary.

Industry has often mentioned SOAs as a major compliance cost burden. Detailed SOAs can be expensive to produce (if individually crafted), both from the software development viewpoint, and the time taken for the financial planner to input a client's information and check the SOA.

However, it is unclear whether the requirement to provide an SOA is a significant impediment to low-cost, intra-fund advice, for the following reasons:

- Recent reforms mean SOAs are not required in a range of situations;
- There may be misunderstanding about regulatory standards, as simple advice only necessitates a simple SOA. The actual barrier may be perceptions about the level of detail required in the SOA content, not the requirement to give an SOA;
- Some providers are already delivering low-cost advice with a short SOA. The providers we have contacted said they would provide written confirmation of advice, even if an SOA was not required by law. This suggests that providing the SOA is not necessarily a major problem;
- If a record of advice is kept, it is unclear how much extra it costs to provide a copy to the consumer; and

²² See Consultation Paper 88 *Reviewing and updating RG 146: Training of financial product advisers* (CP 88), published July 2007, at www.asic.gov.au/cp.

- New software may allow SOAs to be produced with little additional human intervention.

Your feedback

Do you have any factual information about the level of any costs imposed by the SOA requirement on simple intra-fund advice?

If the SOA obligation is demonstrated to be a significant barrier, one possible approach would be to exempt the SOA requirement in specific low-risk situations (for example, low conflicts of interest, high legal obligations on the standard of advice, advice is easy for a consumer to recall). We are interested in your feedback on this.

If you feel that these (or any other) other options are desirable, we would be interested in your specific feedback on:

- why the existing options are not sufficient, and why other options are necessary to achieve our objectives;
- any evidence to support this point of view; and
- your view on whether more far-reaching reform would still provide adequate consumer protection.

Sole purpose test for advice

Some providers have mentioned possible implications from the sole purpose test in the *Superannuation Industry (Supervision) Act 1993*.²³ This limits the type of advice that can be paid for out of a superannuation fund (either as a trustee expense or a deduction from the member's account). Intra-fund advice can clearly be paid for by the fund.

Your feedback

We would be interested in any feedback on whether this presents practical difficulties, and (if it does) on any suggested improvements.

Specific provisions for advice via the internet

As mentioned above, the Corporations Act is generally principles-based. The internet is likely to be an important channel for low-cost, simple advice, and there is no provision in the Corporations Act that would restrict the use of the internet to give general or personal advice.

²³ See Australian Prudential Regulation Authority, Superannuation Circular No III.a.4, 'The sole purpose test', February 2001.

E. Regulatory and financial impact

In developing the proposals in this paper, the Working Group has considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- encouraging industry to provide low-cost, intra-fund advice to consumers; and
- ensuring an adequate level of consumer protection.

Before settling on a final policy, the Working Group will comply with the requirements of the Office of Best Practice Regulation (OBPR) by:

- considering all feasible options;
- if regulatory options are under consideration, undertaking a preliminary assessment of the impacts of the options on business and individuals or the economy;
- if our proposed option has more than low impact on business and individuals or the economy, consulting with OBPR to determine the appropriate level of regulatory analysis; and
- conducting the appropriate level of regulatory analysis—that is, complete a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).

All BCC reports and RISs are submitted to the OBPR for approval before any final decision. Without an approved BCC Report and/or RIS, the Working Group is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

To ensure that the Working Group is in a position to properly complete any required BCC report or RIS, we ask you to provide us with as much information as you can for our proposals or any alternative approaches on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.