

ISN & AIST Submission on CP182 & CP183



Industry
Super
Network



About ISN

Industry Super Network (ISN) is an umbrella organisation for the industry super movement.

ISN manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings and incomes of their members through improving the super system and enhancing the value of industry super to members, the value of the generic industry super category and the brand of network participants and expanding the market share of network participants.

About AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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Introduction

1. Industry Super Network (ISN) and the Australian Institute of Superannuation Trustees (AIST) greatly appreciate the opportunity to make a submission in relation to the two consultation papers released by ASIC on the proposed guidance for the *Future of Financial Advice: Best interests duty and related obligations – update to RG 175 (CP 182)* and *Giving factual information, general advice and scaled advice (CP 183)*. As representatives of most of the not for profit superannuation sector, this submission reflects the collective views of the largest providers of scaled and intra fund advice.
2. To provide some context for our submission, we have undertaken a short survey of funds represented in relation to their provision of financial advice – in particular, amounts and primary topics of advice, licensing arrangements and channels of delivery.
3. ISN and AIST are supportive of the general approach proposed by ASIC in respect of its proposed guidance. This submission will address in detail our feedback on the exposure drafts. In addition, we will provide detailed feedback on the examples in CP183 to reflect our practical and technical experience in delivering scaled advice on these topics.

Survey of member funds

4. ISN and AIST conducted a brief survey of member funds to obtain a snapshot of provision of financial advice services to members in the financial year ending 30 June 2012. The results of this survey reveal that funds provide a very significant quantity of financial advice to members. The survey covers quantity of advice, broken down by general/personal advice, topics of advice provided, extent to which advice is outsourced or provided by the trustee or a subsidiary entity, and channels of delivery. A list of respondents to the survey is provided in Attachment 1.
5. The funds which participated in the survey represent a significant part of the not-for-profit superannuation sector, totalling funds under management of \$193 billion and 8.7 million members.
6. The responses provided by funds indicated that of the 15 funds which participated, 2 provided all their advice directly from the trustee office or through a wholly owned subsidiary, all provided general advice in-house, while 9 outsourced both general and personal advice to an external provider. One fund used a combination of in-house and outsourced providers for both general and personal advice provision.
7. While there is an increasing and significant quantity of personal advice provided by respondent funds, the bulk of member advice needs are still dealt with by general advice (around 80% of advice delivered was general advice: see Table 1.). Key topics of personal advice provided by funds in the survey included all the main intra fund advice topics. However, member investment choice remains the most sought after advice at around 35% of advice requests. Basic retirement advice, including transition to retirement advice also represents a significant proportion of advice delivered: see Table 2.

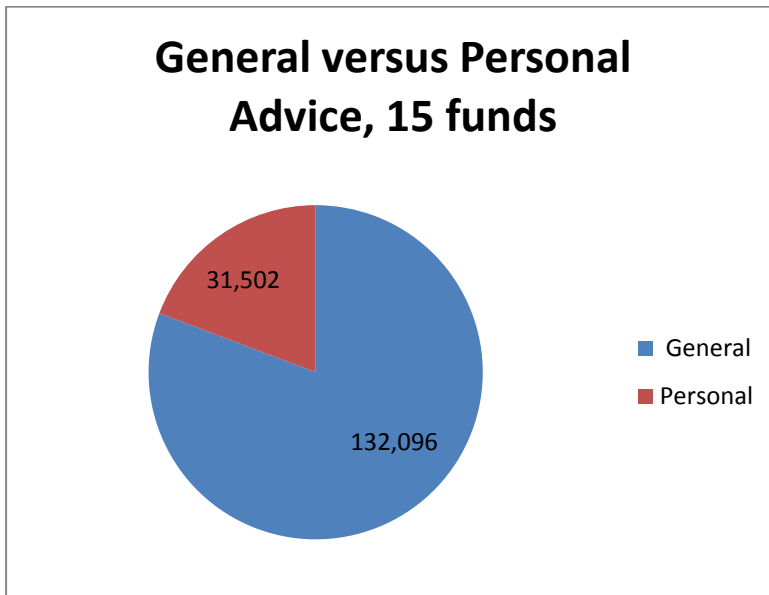


Table 1: Provision of general & personal advice

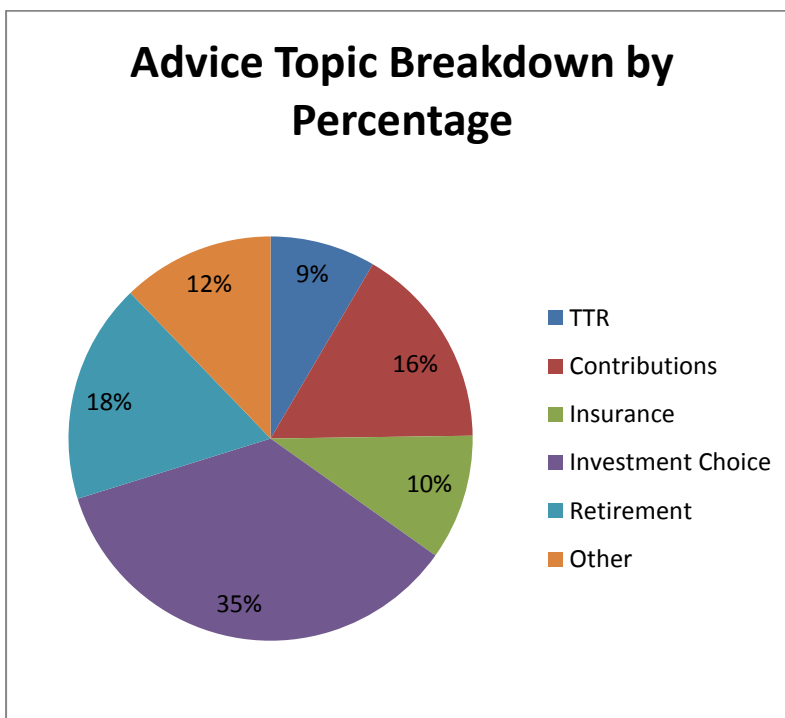


Table 2: Personal advice delivered by topic

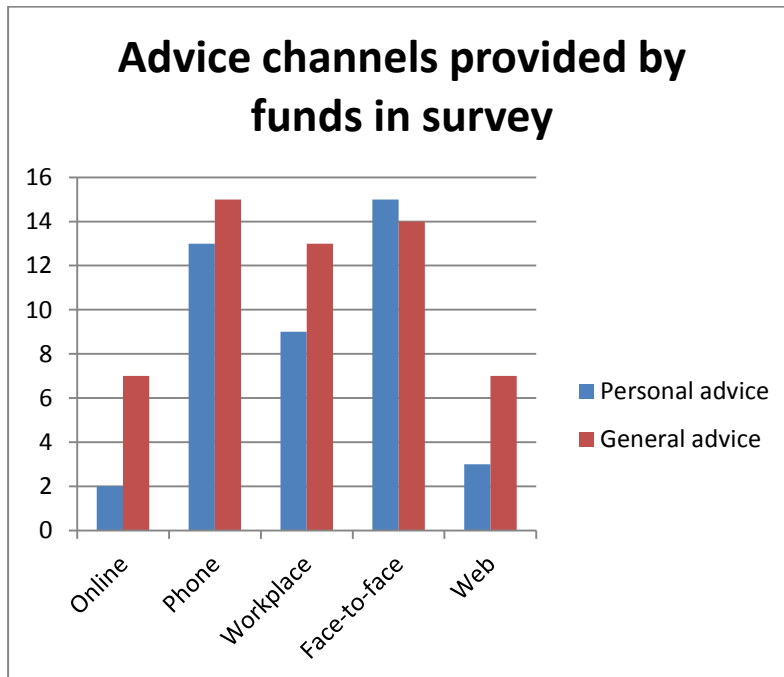


Table 3: Delivery channels of general and personal advice by number of funds

CP 182 – Best Interests Duty and Related Obligations

Background to proposals

8. ISN and AIST both strongly support the objectives of the Future of Financial Advice (FoFA) legislation to improve the quality of advice received by retail clients.
9. We also strongly support the policy principles devised to guide ASIC’s administration of the best interest duty (“the BID”) and related obligations, which include:
 - a. The provisions are intended to enhance trust and confidence in the financial advice industry
 - b. Increased trust and confidence should lead to more consumers accessing financial advice
 - c. The provisions should lead to an increase in the quality of advice being provided
 - d. If the client were to follow the advice, it is likely to leave them in a better position.
10. In particular, we support the final policy principle, that if the advice were followed by the client, it would be likely to leave the client in a better position.

Costs and benefits of implementing the proposed guidance

11. The funds represented by ISN and AIST (and their advice service providers) do not believe that the proposed guidance will have any significant impact in terms of cost, because neither the reforms nor ASIC's guidance would fundamentally alter the approach or model used by funds to provide advice. Funds were already required to comply with the trustee obligation in SIS to act in the best interests of fund beneficiaries in s52(2)(c), and did not pay sales commissions or other conflicted forms of remuneration to financial advisers. There may be some minor costs in ensuring the risk management and compliance processes demonstrate that a fund/provider is meeting their obligations under the FoFA legislation, however this arises more as a result of the legislative provisions rather than ASIC's proposed guidance.

Guidance on s961B(1)

12. We support the expectation that if a client follows the advice provided, it would be likely to leave the client in a better position. We believe that this is a sensible and appropriate measure for advice given in the client's best interests.
13. We support the guidance proposed by ASIC, which makes clear that advice is judged by the circumstances which existed at the time the advice was provided. In addition, the guidance clarifies that 'likely to leave the client better off' is not confined to monetary improvement but includes other benefits such as preparedness for the future or susceptibility to risk. Examples 1, 2 & 3 are good illustrations of this principle.
14. Many providers in the industry have expressed a concern that the BID might leave them susceptible to claims based on a retrospective analysis of the advice provided. An often cited example is liability for investment advice where market volatility results in client losses. While this issue is flagged in paragraph A38 of the draft RG 175 (p42), we submit that the guidance should include an additional example of an adviser who recommends a 'growth' portfolio for a client, having met all the BID obligations, but the client subsequently loses capital due to volatile markets. The example should make clear that the advice will not be judged using a "retrospectascope" but based on the facts and circumstances that existed at the time.
15. We support the issues which ASIC proposes as being relevant in determining the scope of the advice in paragraph A34 (p41). We submit that the guidance should explicitly state that it is good practice for an adviser to articulate the strategy of the advice separately from any new product recommendations.

Guidance on satisfying the safe harbour in s961B(2)

16. We support the intention that specific guidance should be provided on each element of the safe harbour in s961B(2).

Client instructions

17. We support the proposed guidance on gaining client's instructions set out in paragraphs A50-A55.
18. From our experience in providing advice to ordinary consumers who do not have high levels of financial knowledge or sophistication and who do not have significant assets (other than their superannuation and their interest in their residential home), clients will often provide instructions which are unclear, or seem inconsistent with their objectives or circumstances. We therefore agree with the proposed guidance that part of the adviser's task in obtaining instructions is to assist the client properly formulate their needs and objectives in seeking advice.
19. There are also often situations where the client provides instructions which are either incompatible with their circumstances or not the course of action an adviser would normally recommend, and it would be good to include an example of this. The adviser's responsibility is to clearly explain and help the client understand the consequences of their desired course and to help the client prioritise competing needs. Clearly, the extent to which the client's objectives are incompatible with their circumstances will sit on a continuum from totally incompatible to only slightly incompatible. For instance, a client might request advice in which they seek to have a retirement income of \$40,000 per annum which would exhaust their retirement savings within 5 years of retirement. The task of assisting the client to clarify their instructions often takes the form of education through general advice. In the above example, the adviser would caution against the longer term impacts of this course of action whilst assisting the client to clarify their instructions. However, there will be circumstances where a client's instructions are not compatible with their circumstances and if they are not willing to be guided or educated to a more appropriate course, the adviser must decline to advise or provide recommendations which are counter to the client's instructions.

Identify the subject matter of advice sought by the client

20. ISN and AIST support the proposed guidance on identifying the scope of advice as set out in paragraphs A56 to A71. We agree that the subject matter might be sought explicitly or implicitly. Either way, under s961B(2)(b)(i), the adviser remains responsible for determining the subject matter of the advice and for ensuring that the subject matter is consistent with their circumstances and instructions. As is the case with the existing requirements, an adviser cannot rely on a 'client agreement' to escape their obligations as explained in the Explanatory Memorandum to the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2011* ("the EM"):

However, the provider cannot enter into a contract to be exempted from this obligation merely by seeking formal agreement from the client that the subject matter of the advice that has been given by the provider is what has been requested by the client and is therefore in the client's best interests. In identifying the advice that has in effect been sought by the

client (including advice implicitly sought by the client), the provider must take into account the client's relevant circumstances.

21. We submit that the guidance should explicitly address the scoping of advice which relates to a product already held by a client. That is, where the client seeks advice on their existing product (usually super), the adviser can scope the advice around the existing product – providing the advice does not require the adviser to consider other products or interests outside of the fund (for instance consolidation or switching advice). The examples in CP183 provide some demonstration of scoping for existing members but we would like to see the guidance materials explicitly authorise this type of scoping.

Identifying the client's relevant circumstances

22. ISN and AIST support the proposed guidance on identifying client's relevant instructions in paragraphs A72 to A82.
23. There has been a significant degree of concern in the broader industry about the extent to which 'investigating the client's relevant circumstances' can be scaled back based on a limited scope of advice. We therefore support the guidance proposed in paragraphs A80 and A81 which clarifies that particularly where the subject matter identified is of a limited scope, it is likely that the client fact find will also be 'scaled down'.
24. We also support the list of factors which are typically relevant to advice on financial products with an investment component provided in paragraph A82, although it should be noted that example 4 in CP 183 is not consistent with this guidance, and in particular in our view fails to adequately investigate the client's risk tolerance (in relation to capital losses).

Inquiries where information is incomplete and inaccurate

25. In terms of obtaining accurate information from client instructions, we support the proposed guidance. However, it is reasonably common for clients to provide information about their circumstances which is not entirely accurate. It may also be useful to include an example to illustrate what ASIC's expectations are when administering 'reasonably apparent'. For example, an adviser might make inquiries about the contributions a client has made to their super over the past year. The client might provide information on their contributions but could then fail to mention an additional one off contribution that they made earlier in the year. The inaccuracy of the information provided by the client was not reasonably apparent, and so the adviser has not failed to comply with s961B(2)(c) by accepting the client's instructions.
26. Example 10 does not seem to be consistent with the guidance in CP 183, in that it omits a number of issues, including contributions cap issues, debt and preservation issues.

Assessing the expertise of the adviser

27. We support the proposed guidance on assessing the adviser's expertise in paragraphs A87 to A91.

When it is reasonable to recommend a financial product

28. ISN and AIST support the proposed guidance on the obligation in 961B(2)(e) - reasonable investigation of product, in particular paragraph A94 which emphasises the need for a strategy to be determined as a preliminary step before moving to investigate possible products which would enable the client to achieve their strategy, having regard to their circumstances.
29. Paragraph A96 makes clear that this obligation applies to platform recommendations. We note that the term 'platform' is defined in the Consultation Paper. We submit that this definition should be clarified to ensure it also includes such products as 'superwraps' and similar products. We submit that the guidance should make it clear that this obligation also applies to recommendations to establish an SMSF, which is also legally a financial product.
30. In addition, the paraphrasing of switching obligations in paragraph A98 (p54) is inaccurate and in particular fails to catch the redirection of existing superannuation contributions. We submit that the guidance should also make it clear that a client's existing product should always be considered as part of a product investigation. In the past, our funds have been aware of strategies in which an adviser provides advice to redirect future super contributions to a new product, while leaving the existing balance untouched, in an attempt to avoid the switching obligations.
31. The commercial model typically used for advice delivery in which the licensee will usually determine the products available for an adviser to choose from will need to be changed to ensure that this obligation is not breached. It will often be the case that a client's existing product will not be on the approved product list (APL). While the obligation to investigate products now rests with the individual adviser, licensees will be vicariously responsible for losses which result from breaches. ISN and AIST support the proposed guidance regarding the interaction of this obligation and approved product lists (APLs), noting that a provider cannot abdicate responsibility for complying with reasonable investigation of product simply by referring to the APL established by their Licensee (as this would amount to contracting out of their BID, which is prohibited in ss960A of the *Corporations Act 2001*). The following excerpt from the EM clarifies what Parliament's intention was in relation to APLs:

A reasonable investigation into financial products does not require an investigation into every product that is available on the market, given that in many cases this would be impractical and costly. The provider is required to scope their product selection based on the needs and objectives of their client. The provider is expected to exercise professional judgement to determine whether this requires going beyond the provider's approved product list (if the provider operates using such a list).

This is will ultimately depend on the nature and range of products on their approved product list and the needs and objectives of the specific client. Additionally, providers should investigate any specified financial product the client requests be considered.

32. The obligation does not require an adviser or licensee to consider every product, nor does it oblige the adviser or licensee to locate the 'best' product. In our view, if the adviser has undertaken market benchmarking of the product to establish that it is competitive on key criteria such as fees, risk, net performance history and features, then they will have satisfied the reasonable investigation of product obligation.

Base all judgements on the client's relevant circumstances & other reasonable steps

33. ISN and AIST support the proposed guidance on ensuring all judgements are based on the client's relevant circumstances in paragraphs A107-A109.
34. We also support the proposed guidance on 'other reasonable steps' contained in paragraphs A110-A111.

Appropriate advice

35. ISN and AIST support the proposed guidance on appropriate advice.

Switching Advice

36. As noted earlier in our submission, we reiterate that the guidance should explicitly recognise that the switching advice obligations are triggered when there is a recommendation to redirect super contributions into a different product or a recommendation to establish an SMSF.

Prioritising the interests of the client

37. Section 961J creates a new obligation to require an advice provider to prioritise the interests of the client if the providers knows, or ought to know, that there is a conflict between the interests of the client and the interests of the provider, or a related party of the provider. While we support the proposed test of 'what would an adviser without a conflict of interest do', we feel that to have practical application the guidance should provide further explanation of the expected conduct of an advice provider in this situation.
38. It should be noted that all advisers will be conflicted to some extent, even if by virtue of their receipt of remuneration from the client. However, for most advisers in the current structure of the industry, the nature of conflict is more significant, given that around 85% - 90% of advisers are aligned with a product provider whether by ownership, employment or remuneration.

39. The obligation in s961J goes beyond disclosure of the conflict and requires the adviser to ensure that the client's interests have been given priority over the interests of the adviser or a related party of the adviser in the advice provided.
40. In order to demonstrate that the client's interests have been prioritised, the guidance should make clear that an adviser clearly and succinctly identify the conflict and its potential impact as a first step. To clarify the identification of a conflict of interest, the adviser should address the following questions:
- a. Will I receive a benefit personally as a result of the advice I have provided (excluding any base salary based on an hourly rate of remuneration)? This would include financial benefits like commissions and volume rebates, employment benefits, other ongoing fees or payments including audit fees, contingent benefits or soft dollar benefits. If so, quantify over both a 12 month and longer term period.
 - b. Will a related party including my licensee, employer or a related entity benefit from the advice I have provided? This would include volume rebates, product margins generated by recommending an in-house product, or other benefits including rebate arrangements or increased profit to a related/parent entity. If so, quantify for both 12 months and longer term period.
 - c. Are there any other interests which could have the potential to compete with the client's interests? For instance, if you are an adviser employed by or for a product issuer, what misalignment might this cause with the client's interests?
41. We submit that it should be made clear that satisfying this duty is impacted by the materiality of the conflict. The more direct and material the conflict experienced by the adviser, the more rigorous must be the process they follow to ensure the advice they provide is impartial and gives priority to the client's interests. It may assist providers in satisfying this obligation for material benefits to be explicitly identified as such, given they carry the greatest risk of competing with a client's interests. Alternatively, providers could undertake risk rating of the conflicts they face, as this will assist in determining how to ensure they give priority to the client's interests.
42. For instance, where an adviser wishes to recommend a product from which they or their related party derives a commission or financial benefit, this will require the adviser to justify both the strategy and the product choice and demonstrate how their interest has not taken priority. In particular, the products being recommended should be compared against other products for which no benefit would be available to demonstrate that their own interest has not taken priority.
43. ISN and AIST support the guidance in paragraph A142 (p65) which provides that a licensee and authorised representative cannot use information barriers to prevent an adviser from becoming aware of a conflict which they should reasonably have known about.

44. Example 17 is very clear cut – this example would be more useful if it tested the more subtle influences to which commissions on life insurance might give rise. For instance, the adviser has recommended that the client switch into a personal risk product which pays a commission. The adviser should have to justify the value (type and scope of coverage) to the client having regard to the cost. The adviser should also demonstrate why the conflicted product is competitive notwithstanding the benefit it will deliver to the adviser or their related party.
45. We submit that grandfathered commissions cause a clear material conflict which an adviser must disclose as a conflict for the purposes of s961J.
46. The following table sets out more common types of conflict and what implications they have on compliance with s961J.

Type of Adviser	Nature of Conflict	Implications for s961J
Independent adviser – fees based on service provided, time, advice complexity, adviser experience, etc. No asset based charging, volume rebates, referral fees.	The adviser’s conflict is only to be paid for the services provided.	If adviser has satisfied the BID then they will have provided justification for strategy/product recommendations.
Adviser employed by a product provider – not-for-profit entity. No employee benefits based on sales targets etc.	Adviser has bias towards in-house products however no material benefit derived other than increase in scale for provider (which benefits all members).	Adviser must disclose relationship to product provider. Even though benefits of increased scale flows back to members/clients, related party product must be benchmarked to ensure it is competitive in terms of cost, risk, net performance history over a relevant period, features/services, governance, prior to it being recommended.
Adviser employed by a product provider – not-for-profit entity. but provides some incentives for staff on products excluded from conflicted remuneration bans	Adviser has material interest in the products recommended. The adviser, dealer group or employer will generate material benefits from products including commission and volume rebates. Material benefit for adviser.	Where personal advice is provided, adviser must disclose and quantify potential benefits on itemised basis which give rise to conflict, including both for 12 month and longer term projection. Adviser must benchmark conflicted products against others which do not give rise to a conflict to demonstrate that the conflicted product is competitive in terms of cost, risk, performance history over a relevant period, features/services, governance. Conflicted product must only be recommended if it is in the client’s best interests to do so,

		having regard to cost/features of products without a conflict.
Adviser’s employer related to a product provider (in a for profit entity) and product is managed and administered by a related party.	Adviser’s related party has material interest in in-house products. Recommending these products may generate additional product margins for related party, at platform and fund manager level. Potentially also generate other volume based benefits. Material benefit for related entity.	Adviser must disclose relationship to product offeror and quantify the potential benefit derived by related party. Related party product must be benchmarked to ensure it is competitive in terms of cost, risk, net performance history over a relevant period, features/services, governance. Conflicted product must only be recommended if it is in the client’s best interests to do so, having regard to cost/features of products without a conflict.
Adviser related to product provider (by employment, ownership or remuneration arrangement). Approved or in-house products offer commission and volume based incentives.	Adviser has material interest in the products recommended. The adviser, dealer group or employer will generate material benefits from products including commission, volume rebate, soft dollar benefits, additional margin on products through related entities. Material benefit for adviser and related entity	Adviser must disclose and quantify potential benefits on itemised basis which give rise to conflict, including both for 12 month and longer term projection. Adviser must benchmark conflicted products against others which do not give rise to a conflict to demonstrate that the conflicted product is competitive/superior in terms of cost, risk, net performance history over a relevant period, features/services, governance. Conflicted product must only be recommended if it is in the client’s interests to do so, having regard to cost/features of products without a conflict.

Record-keeping

47. We would support the proposed guidance on record-keeping, however would add that the SoA should document concisely any conflicts identified for the purposes of s961J, and the steps taken by the adviser to ensure that the client’s interests have been given priority.

Specific feedback

48. We submit that the table of new obligations on page 10 (Table 1) should include the continuing requirement to provide an SoA. While this is implicit in the content of the table, it would be clearer if stated explicitly.

CP 183 – Giving information, general advice and scaled advice

Background to the Proposals

49. The proposed guidance on provision of scaled advice builds on the guidance provided in RG200 and is intended to facilitate the provision of more simple scaled forms of advice for all AFS licensees.
50. ISN and AIST and all our member superannuation funds support the intention of this guidance and the repeal of CO 09/210.
51. As major providers of scaled advice in the market currently, we strongly submit that there is no inconsistency between the BID and providing scaled advice to clients, especially to those who have less complex needs or circumstances.

Giving factual information

52. ISN and AIST support the proposed guidance on providing factual information. We also support that it can be possible to have information about a client's personal circumstances and yet still provide factual information. Our member funds will often provide factual information in these circumstances. What is important is that the person providing the factual information refrains from offering a recommendation or statement of opinion intended to influence the client.

Giving general advice

53. ISN and AIST support the proposed guidance on providing general financial advice. We also submit that general advice can be provided in circumstances where the provider has information about the client's personal circumstances. In our experience, in addition to providing the general advice warning, it is also important to be very conscious of the language used to ensure that it reflects the general nature of the advice. It is important to avoid framing the discussion in the second person, as this implicitly suggests the advice is tailored to the client. For instance, 'It is often advisable for members with many years to retirement to avoid conservative investment options due to the risk of their super generating lower returns and not supporting them through retirement' underscores the generalised nature of the advice. 'You still have many years left until retirement and so you should consider whether a conservative investment option is going to provide you with sufficient returns to last throughout your retirement' sounds much more like a personal recommendation.

Giving scaled advice

54. We believe that Table 2 provides a good summary of how an adviser can meet their legal obligations when providing scaled advice.
55. ISN and AIST support the proposed guidance in paragraphs A71 to A75 of the draft RG 175, contained in CP 182, in particular the notion that advice cannot be scoped to exclude important issues.

56. A very common concern expressed throughout the development of the FoFA reforms was that the BID would necessitate a full fact find in all advice situations. The proposed guidance in paragraphs A76 to A80 is good at addressing some of these issues. In our experience, in a scaled advice setting, the client fact find will often be in 2 stages – firstly, to receive instructions and determine scope, then to explore in more detail the client circumstances relevant to the scope of the advice.
57. Most superannuation funds who offer scaled advice services to members undertake what is commonly referred to as a ‘triage’ process to screen out members with more complex circumstances, and those members are referred to a planner who can provide more comprehensive advice. For instance, scaled advice on contributions might initially question members about their income, contributions history and debt. If the member indicates they have debt, the adviser will explore the quantum and nature of debt and the member’s capacity to service that debt. If the debt is significant (according to an objective measure established by the fund) then the adviser will refer the member to a different adviser who can provide more tailored advice. We support the steps outlined in paragraph 85 which outline processes for ensuring scaled advice is in a client’s interests.

Scaled advice and s961J

58. We submit that the guidance should specifically address how an adviser providing scaled advice gives priority to a client’s interests where there is a conflict of interest.
59. In particular, the more material the conflict, the more cautious an adviser must be when scaling advice to ensure that the scope of advice is not impacted by the adviser’s conflict.
60. An example might be useful in this section. For instance, there were a couple of examples referred to in ASIC’s Report 279 *Shadow shopping study of retirement advice* in which an adviser sought to exclude topics from a scope based on their own rather than the client’s interests (see p.38). A clear example might be based around an adviser seeking to scope advice around personal risk products (on which commissions can be paid). If the client had personal risk insurance through their super fund, the advice should take into account the strategic and comparative benefits of their existing policy versus alternative options including personal risk.

Communicating the scope of personal advice you are giving

61. We support guidance on communicating the scope of advice provided to a client. Ironically, we believe that the limitations of advice provided on a single topic or limited basis will often be clearly explained –in situations where more holistic advice is scaled, it is more likely to leave the client unaware of the limitations of the advice.

Other issues not fully addressed in CP 183

62. Intra fund advice is undoubtedly the most common form of limited advice provided in the market today. Currently, the regulation of intra fund advice is subject only to satisfying the sole purpose test and ensuring that the manner in which the advice is scaled meets the reasonable basis for advice requirement. However, once tranche 3 of the MySuper legislation is passed, intra fund advice will be subject to a dual set of requirements – that is, to ensure that the advice falls within the definition of intra fund advice in the Stronger Super legislation (to the extent that the advice is funded by the trustee) and to ensure that the advice is scaled in a manner which is consistent with the BID. While the latter aspect is tackled in CP182 & 183, we submit that further specific guidance will be required (presumably by ASIC) around the definition of intra fund advice once it has received Royal Assent. For instance, guidance will be required on issues such as:

- a. How an adviser meets their obligations when recommending a client shift from a MySuper into a Choice product. Do the switching obligations arise when an investment option other than the default is recommended?
- b. If a piece of advice covers topics that fall within and outside the definition of intra fund advice, what steps must a fund take to correctly apportion costs?
- c. Guidance on the nature of ongoing advice, which will be excluded from the definition of intra fund advice.

Examples of scaled advice

63. In general terms our submission will be supportive of the topics and content of the examples. However, we believe that some of the language used in factual and general advice examples unnecessarily blurs the boundary with personal advice due to the use of direct language.
64. We submit that example 4 – changing investment options – fails to adequately deal with investigating the client’s risk tolerance for capital losses. We will provide a marked up version of this example to demonstrate how we would approach this in a practical manner. Also this example does not adequately address the issues identified in CP182 as being relevant factors for investment related advice (CP182 paragraph A82).
65. While the examples all include debt as an issue which is raised by the adviser, it is able to be excluded as a relevant issue (because the client responds by saying they have no/little debt). The experience of fund advisers is that debt is very frequently an issue which needs to be tackled in detail and we submit that at least one of the examples should demonstrate factors advisers should consider when faced with a debt situation. We attach a marked up version of the contributions example which includes consideration of debt in more detail. We submit that an adviser must have a reasonable and objective method for assessing debt (i.e. nature of debt, % of income, capacity to service).
66. Example 9 – Transition to retirement (TTR) :

- a. ISN and AIST strongly support guidance on providing TTR and basic retirement advice. In the experience of our member funds, there are many members with very straightforward circumstances at retirement who greatly benefit from scaled TTR and retirement advice. As shown in our survey, this type of advice represents a substantial proportion of limited advice currently delivered by funds.
- b. However, we think that the factual information and general advice examples get very close to providing personal advice, and have provided a marked up version which reflects how our funds are more likely to approach this.
- c. We have also provided a tracked version of the personal advice example, to reflect the approach taken by our funds.

67. Example 10- we submit that this example should take into account the age pension and have provided a marked up copy to reflect this change.

ATTACHMENT 1

Funds that participated in the survey:

- **HOSTPLUS**
- AustralianSuper
- HESTA
- legalsuper
- LUCRF Super
- UniSuper
- Telstra Super
- Sunsuper
- Vision Super
- Cbus
- AustSafe Super
- First Super
- Media Super
- REST
- MTAA Super