

29 July 2019

Mr Ashley Brown
Senior Adviser, Strategic Policy
Australian Securities and Investments Commission (ASIC)
GPO Box 9827
Brisbane QLD 4001
Email: product.regulation@asic.gov.au

Dear Mr Brown,

Consultation Paper 313 Product intervention power

Industry Super Australia (ISA) undertakes policy research and advocacy on behalf of over five million members of industry superannuation funds, to ensure that the policy settings for superannuation are consistent with the objective of maximising their retirement incomes.

ISA welcomes the opportunity to make this submission to ASIC.

ISA's position

ISA strongly supports the new product intervention power and recognises its potential value in protecting consumers from significant detriment. Of course, the usefulness of these powers relies on ASIC's readiness to use them. The Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry has demonstrated the need for a nimble power that can be used to prevent consumer harm early and, in some instances, before it happens by removing the product from offer.

ISA generally supports the proposed guidance on how ASIC will use the product intervention power. We encourage ASIC to:

- provide tangible examples to support some of the propositions as this will enhance the utility of the guidance; and
- take a broad and flexible view of 'significant consumer detriment' to address potentially harmful selling practices.

Consumer detriment – Proposal B1

ISA supports the high-level guidance provided by ASIC at RG 000.37-RG 000.54.

ISA notes that ASIC will consider intervening where there is a likelihood of consumer detriment where a product has limited or no use to consumers because it has been designed poorly without consumer needs in mind. An example of such a product, based on ASIC's regulatory experience would be helpful here. It will also provide a guide for how ASIC may interpret what is of limited or no use to consumers and therefore assist industry to anticipate and identify such features or products as they are designed.

In the area of superannuation, ISA considers that consumers can suffer long term detriment from the use of cross-selling or up-selling techniques deployed by retail funds to sell members into more expensive superannuation products or additional products, unrelated to superannuation.

In its final report on Superannuation – Assessing Efficiency and Competitiveness, the Productivity Commission expressed a clear expectation that “...*the new product intervention powers put forward for the Australian Securities and Investments Commission (ASIC) will strengthen its ability to guard against upselling.*” (p. 27). The guidance should include a clear statement that such harmful selling practices will also be the subject of an intervention order.

Additionally, the bundling of financial products remains a significant issue. This can occur in a variety of situations. For example, where consumers pay for additional services or features that they are unlikely to use or where consumers will only receive product benefits (such as reduced interest rates) if they purchase a second product from the same issuer.

ASIC should clarify that both types of bundling described above can be the subject of an intervention and again, provide examples based on ASIC’s regulatory experience.

Intervention B2

ISA has no comments on how ASIC proposes to exercise its intervention power.

Engagement and consultation on a proposed intervention order C1, C2 and C3

ISA strongly supports public consultation by ASIC to assist ASIC to understand the problem and the impact of the proposed order. It is necessary that any consultation be open and transparent so that the public has trust and confidence in the way in which ASIC is exercising its powers. However, we note that RG 000.66 says ‘*We will generally undertake public consultation...*’. It would be helpful if ASIC could explain the circumstances where it will not consult publicly, given the purpose of public consultations are to (amongst other things) provide balanced and objective information to assist it in understanding the problem, alternatives, opportunities and/or solutions.

ISA also notes that ASIC will publish the necessary consultation document on its website. We assume this publication will be accompanied by a public notification e.g., a media release to alert interested persons to the consultation so that they can make submissions.

ISA has no other comments on ASIC’s proposed guidance on consultation with affected persons, how it will describe the consumer detriment or the commencement date for any order.

If you wish to discuss this submission, please contact Ella Cebon at

██████████ or ██████████.



Ella Cebon
Senior Policy Adviser.