



20th February, 2014

General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES, ACT, 2600

Email: futureofadvice@treasury.gov.au

Dear Ms Sim,

I would like to congratulate the Government on taking the first steps to make the theoretically sound Future of Financial Advice (FOFA) reforms into a practical regulatory framework. I believe that for the most part the Government has prioritised the changes that need immediate action well and have made commendable progress in realigning the FOFA reforms to match the initial overriding principles of FOFA designed by then Minister Chris Bowen:

1. financial advice must be in the client's best interests – distortions to remuneration, which misalign the best interests of the client and the adviser, should be minimised; and
2. in minimising these distortions, financial advice should not be put out of reach of those who would benefit from it.

Perera Crowther Financial Services Pty Ltd (PCFS) is a firm specialising in corporate superannuation, strategic planning and insurance advice to our Clients. PCFS was founded in 2005 and is currently a Corporate Authorised Representative of Guardianfp. PCFS holds membership with the Association of Financial Advisers and the Corporate Superannuation Specialist Alliance. We have a proud history of serving our clients, contributing to the Australian economy by employing staff, paying our corporate taxes as well as being active corporate citizens within our local community.

We thank you for the opportunity to provide a response to the FOFA Amendments and reiterate that the proposed changes will better enable our firm to continue to deliver financial services to clients under the governing principles of the FOFA reforms.

By way of background and to add context to our responses to the Exposure Draft, below is how we specifically assist our Clients and our areas of expertise:

Corporate Superannuation Advice

Employer

Advice to ensure discharge of compliance obligations relating to superannuation as well as designing corporate superannuation plans that are attractive to their employee base which forms part of the employers value proposition to their employees.

Administration and trouble-shooting also forms part of the service delivery.

Member

Seminars and newsletters are used to educate members about superannuation and the significance of this investment nest egg. Members are actively encouraged to understand the significance of investment strategy, insurance benefits, and beneficiary nominations through regular mail campaigns.

Administration such as provision of forms, follow ups on request and generating instant statements is a key component of the service offered.

In addition, guidance is offered by way of general advice i.e. explaining different ways of making a beneficiary nomination, advising of changes to government incentives such as the co-contribution etc.

Internal reporting demonstrates an increase in voluntary superannuation contributions following our financial literacy and education sessions. This is especially rewarding given that the demographic which showed most improvement were those aged below 35.

Anecdotal evidence suggests that the most valuable assistance offered to our members is the personalised service to help manage insurance claims to resolution. This removes the burden of having to deal with multiple 3rd parties during difficult times. Further, it ensures that a professional is negotiating with an insurer on the members' behalf which improves response times and success rates.

Insurance Advice

Following an analysis of the client's financial position and an understanding of the client's wishes, we design an insurance plan to help protect the client, their family and/or business in the event of an unexpected death or disability. This design process encompasses research of existing products and new solutions, ownership structures, taxation consequences, health and financial assessments.

Once implemented most clients are reviewed every 2 years to ensure continued suitability of the insurance plan for the client's needs as well as analysing market differences that may help improve the clients plan.

Again, anecdotal evidence suggests that the most valuable assistance offered to our members is the personalised service to help manage insurance claims to resolution. This removes the burden of having to deal with multiple 3rd parties during difficult times. Further, it ensures that a professional is negotiating with an insurer on the members behalf which improves response times and success rates.

Strategic Planning Advice

This service is aimed at helping our clients best allocate their capital to achieve their financial goals, taking account of ownership structures, taxation, tolerance to risk, diversification etc.

Responses to Exposure Draft

Chapter 1 – Best interests obligation

Removal of the catch-all provision (1.3,1.4)

PCFS supports the removal of the catch-all provision in the existing best interests duty.

The safe harbour steps were designed to provide a tangible measure to demonstrate how an advice provider took steps to meet their obligations to act in a client's best interests.

The steps aimed to make practical an important principle which should guide all adviser/client relationships.

The "catch-all" provision nullified this tangible measure and removed the ability of an advice provider to clearly demonstrate how they have taken steps to meet their obligation to act in a client's best interests. The proposed amendment seeks to rectify and realign the regulation with the initial purpose of the regulation.

PCFS rejects that the above amendment reduces consumer protection as the obligation to act in a client's best interests remains enshrined in the legislation.

PCFS is concerned that in its current form the legislation lacks a practical framework which increases the litigious risk of providing advice. Litigation in this area may hamper the delivery of quality financial advice that is customised for Clients and their needs. An increase in template advice may result from Licensees seeking to minimise the aforementioned litigious risk.

Further impact may be felt in an already fragile professional indemnity insurance market which may render coverage difficult and costly to obtain.

Clients will again be left with the cost imposts which do not align with the original principle of the FOFA reforms.

Facilitating Scaled Advice (1.5)

PCFS commends the Government on the commitment to amend the legislation to better facilitate the provision of scaled advice. We believe the amendment will enable our firm to provide cost-effective scaled advice ensuring advice is not out of reach of those who need it.

We believe that this amendment realigns the regulation to the original principle of the FOFA reforms.

Chapter 2 – Ongoing fee arrangements

Removal of the “opt-in” requirement (2.3,2.4)

PCFS supports the repeal of the opt-in requirement.

PCFS believes that clients provide informed consent when becoming party to an ongoing service agreement for which an ongoing fee is payable. We assert the right of the client to terminate the agreement and ensuing fee at any time for non-delivery of service. However, given informed consent was provided at the onset, we do not believe a Client needs to perform an administrative task to ratify this consent on an ongoing basis.

The logistics and operational difficulties of implementing the obligation have been outlined to Treasury in previous submissions by my colleagues and in particular the Association of Financial Advisers (AFA).

PCFS is primarily concerned about the administrative cost impost which will ultimately be passed to Clients. Further, there a number of ramifications of a Client (unintentionally) not returning the appropriate consents which will terminate the service agreement.

The cost impost is counter to the guiding principle of the FOFA reforms “financial advice should not be put out of reach of those who would benefit from it.”

Changes to fee disclosure statements (FDS) (2.5,2.6,2.7)

PCFS supports the Government’s commitment to require that clients be provided with a FDS on a prospective basis (i.e. from 1 July 2013) only.

In its current form FDS’s do not mandate the detailing of all remuneration to a client. Rather, the focus is on fees paid and commissions may be excluded. Therefore, PCFS believes that FDS’s are ineffective as they do not disclose all forms of remuneration that an adviser may earn.

Fees are generally agreed to by a client and an adviser and explicitly signed off by the client at the onset. Further, all fees are clearly disclosed in periodic statements sent to clients.

PCFS asserts the right of the client to terminate their relationship with an adviser for non-delivery of service and stop the payment of fees.

However, PCFS does not believe that an additional document needs to be provided to a client to reiterate the fees they are paying to their Adviser. In most cases, where product statements are sent to clients every 6 months, the FDS will be the 3rd document a client receives with the same information.

PCFS believes this exercise is counterproductive and remains concerned that the cost impost will ultimately be passed to clients. This manifests in a misalignment of the regulation and the guiding principle of FOFA – “financial advice should not be put out of reach of those who would benefit from it.”

Clarification of what is intrafund advice (2.8)

PCFS welcomes the clarity in defining intrafund advice.

PCFS affirms the right of superannuation members to be fully informed of all fees and charges relating to their superannuation accounts. Further, we support the right of the member or their representatives (Policy Committee) to have choice and flexibility in remunerating their advice providers.

As a corporate superannuation firm, PCFS believes that the above can be achieved through:

1. Intrafund advice fees being transparent and disclosed separately to all other fees
2. Intrafund advice and fees being limited to general advice
3. Intrafund advice fees being negotiable at employer and policy committee level for corporate superannuation plans and being restricted to a per member flat dollar fee based on the level of service required by the members of the individual plan.

Chapter 3 – Conflicted remuneration and other banned remuneration

General advice (3.3,3.4)

PCFS supports the Government's commitment to exempt general advice from the ban on conflicted remuneration.

PCFS is of the belief that where a conflict of interest may be present during the provision of advice, that the advice provider is obligated under the best interests duty to prioritise the needs of the client. PCFS believes a ban on conflicted remuneration is inconsequential due to the best interests obligation which applies in all instances.

Exemption for life risk insurance benefits (3.5,3.6)

PCFS supports the consistent approach to remuneration with regard to insurance commissions. This will remove any inherent or perceived conflicts of interest in relation to insurance product placement whether structured through superannuation or non-superannuation ownership.

Further complication for corporate superannuation advisers

As a corporate superannuation advice provider, we are remunerated via commission for insurance services provided to members albeit the commission structure is different to retail insurance commissions. Corporate superannuation insurance plans generally pay 20% commission per annum. There are no additional upfront or initial commissions. This commission helps subsidise the following services to members:

- Reporting on and explaining existing benefits to members
- Helping members vary their insurance benefits, quoting, applications, underwriting etc.
- Assisting with general administration queries
- Managing claims to resolution by assisting with completing claim forms, liaising with claims managers etc.

Some of the above services do not strictly fall into the category of personal advice, forbidding the payment of commissions as a form of remuneration. Where personal advice is provided to the member or the employer, current regulation results in members who have accrued a My Super balance needing to find an alternative method to remunerate their advisers for the above essential services.

PCFS recommends that insurance commissions be permissible for My Super members who have received advice (personal or general advice and at member or employer level) in designing their insurance benefits. This will enable the above mentioned valuable services to continue for the benefit of members.

PCFS does not believe that churn is an issue with respect to the above remuneration structure as no upfront commissions are payable. The proposed structure is a model that enables the fair exchange of services for reward.

Execution-only exemption (3.7,3.8)

PCFS supports the Government's commitment to clarify the exemption, given that there are legitimate execution-only services that are undertaken by advice providers for which they are entitled to be remunerated.

Grandfathering – Changing Licensee

PCFS welcomes the proposed regulatory changes to enable an adviser to change Licensees and retain grandfathered benefits.

PCFS currently use remuneration structures that are grandfathered to service clients. If this remuneration is lost, as a result of changing licensees, clients will need to find an alternate remuneration method to compensate our firm for the services rendered.

Whilst a negotiated fee appears to be the logical answer, this may negatively impact a client as they will have to pay an advice fee in addition to their existing product fees.

Existing product fees can include subsidies for the provision of service (commissions). Where this product fee subsidy cannot be unbundled and refunded to the client and where it is inappropriate for a client to change products, the client can be in a position where they may be paying twice for the same service.

Example

John Smith is invested in XYZ superannuation fund. There is a deferred exit fee of \$8,900 on XYZ superannuation fund if John withdraws his balance. John pays an administration fee of 1.5% of his account balance which includes a 0.5% commission to his adviser for the provision of a review service. This commission is bundled within the administration fee.

If John's adviser changed Licensee the grandfathered commission may not be payable to John's adviser. Further, John will not be able to receive a reimbursement for the commission as it is bundled with his administration fee.

Given his investment strategy and complicated financial affairs, John requires ongoing advice. Therefore, John will need to pay his adviser a fee for the service. This is due to the fact that his adviser is no longer receiving the commission that he/she was entitled to prior to changing Licensee.

John cannot exit the product as he does not want to trigger the deferred exit fee of \$8,900. In addition, he does not wish to incur transaction costs such as capital gains tax as his portfolio is valued at over \$1,000,000.

Corporate superannuation

Product Selection Services vs Ongoing Services

A valuable service provided to clients is the research and analysis of the various corporate superannuation funds and providing a recommendation as to which fund best meets the needs of the employer and members. The impending changes that will enable any My Super compliant fund to be used as a default fund will accelerate the activity and the need for professional guidance in this area as employers look to consolidate their funds.

Due to current regulation, our firm along with many others will be forced to decide between providing the above Product Selection Service or Ongoing Service to our clients. Given the certainty of ongoing income, most firms will choose the provision of Ongoing Service as opposed to Product Selection Service which will largely be transactional. This will reduce the ability of employers to engage skilled professionals to help make prudent decisions when selecting a default superannuation fund for their employees.

PCFS submits that consideration be given to overcome the challenge of conflicted remuneration enabling the provision of both the above mentioned services to our clients which are distinct and equally important.

If the above mentioned intrafund advice solution is accepted as a solution for remunerating corporate superannuation firms, PCFS requests clarification as to whether the conflict is removed given that the intrafund advice fee is agreed upon regardless of the fund recommended.

My Super – Tranche 3

PCFS submits that the mandatory transfer of accrued default amounts by 1 July 2017, results in numerous unintended consequences which may disadvantage superannuation members:

- members may have chosen to be in a default investment option as it matched their tolerance to risk and investment objectives
- members may lose insurance benefits which they may not be able to replace if they cannot pass underwriting
- members who are part of large corporate superannuation plans with discount fee structures may incur increased fees by having their funds invested in My Super

PCFS urges the Government to consider an opt-in rather than an opt-out method to the transfer of accrued default amounts by 1 July 2017.

Should you have any questions, please do not hesitate to contact me on (02) 9540 5580.

Yours sincerely,

Stephen (Sam) Perera, Director