



File Number: 200810

Review of Australia's Consumer Policy Framework
Productivity Commission
PO Box 1428
Canberra City ACT 2616
Email: consumer@pc.gov.au

15 February 2008

ASFA SUBMISSION TO PRODUCTIVITY COMMISSION REVIEW OF AUSTRALIA'S CONSUMER POLICY FRAMEWORK

The Association of Superannuation Funds of Australia Ltd (ASFA) is pleased to make this submission to the Productivity Commission Review of Australia's Consumer Policy Framework, Draft Report November 2007.

ASFA supports the efforts to improve Australia's consumer policy framework. ASFA agrees that, although the current consumer policy framework is sound in many respects, some systemic impediments detract from its capacity to protect and empower consumers. ASFA has expressed concern in the past about some shortcomings in the current arrangements, particularly in the area of regulatory complexity. We welcome the opportunity to comment on those of the Commission's draft recommendations that are directly relevant to Australia's superannuation funds and their members.

Draft Recommendation 4.1 and 4.2: A new national generic consumer law

A new national generic consumer law has the potential to create greater certainty and to reduce regulatory overlap. However, this proposal should proceed only after a thorough investigation into any constitutional impediments and the potential advantages and disadvantages of such a measure.

Recommendation 1: ASFA recommends a national generic consumer law framework only be implemented with significant research and consultation into the possible implications.

ASFA supports retaining the Australian Securities and Investments Commission (ASIC) as the primary consumer protection regulator for financial services. Financial services require a regulator that has the depth of specialist knowledge necessary to understand complex and highly technical issues. As well, financial services regulation is increasingly global and behaviour-driven rather than rule-driven. Importantly, the impact on consumers can be

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

significant when things go wrong. ASFA agrees that ASIC may need to work more closely with the Australian Competition and Consumer Commission (ACCC) to minimise the risks of both duplicated enforcement effort and inadvertent failure to fully regulate some financial activities.

Recommendation 2: ASFA supports ASIC remaining the primary consumer protection regulator under the current regulatory architecture.

The extension of a generic consumer law to financial services would require some modifications. For example, the extension of strict liability to misleading and deceptive conduct has the potential to lead to risk-averse behaviour including longer and more complicated disclosure documents. This is likely to decrease, rather than increase, the ability of consumers to understand disclosure documents.

Recommendation 3: ASFA supports the proposal that financial disclosures that are currently only subject to “due diligence” requirements should be exempted from the misleading or deceptive conduct provisions of any new law.

Draft Recommendation 9.1 Access to dispute resolution bodies

ASFA supports any cost-effective initiative that would assist consumers to direct complaints to the appropriate alternative dispute resolution (ADR) body. The large number of ADRs can make it difficult for some consumers to identify the appropriate body, interfering with consumer access.

In the case of superannuation, superannuation funds already provide significant information through their disclosure material on the role of the Superannuation Complaints Tribunal (SCT) including how fund members can access the Tribunal. In particular, any member who makes a complaint to a fund is specifically informed of their right to complain to the Tribunal and provided with contact details.

In the absence of evidence that superannuation fund members experience difficulties in identifying the most appropriate alternative dispute resolution (ADR) scheme, ASFA has supported closer co-ordination of existing contact points, but with more efficient mechanisms to direct consumers to the appropriate contact point. ASFA therefore supports the proposal for the ACCC to provide an enhanced web-based information tool, including the consumer testing of any such tool.

Recommendation 4: ASFA supports the proposal that the ACCC improve consumer access to disputes resolution bodies by means of an enhanced web-based information tool. Further, ASFA supports consumer testing of any such tool.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

Draft Recommendation 9.2: Integration of financial ADR services

ASFA has some concerns about the proposal to consolidate the existing financial Alternative Dispute Resolution (ADR) services into a single umbrella scheme.

The Superannuation Complaints Tribunal (SCT), a statutory body established by the Commonwealth Government, is currently responsible for complaints about superannuation. The creation of a superannuation-specific ADR was largely in recognition that the compulsory nature of superannuation required a greater level of consumer protection than was available under the existing finance sector dispute resolution schemes.

The SCT is different in a number of areas, including the following:

- Most regulated superannuation funds are subject to the SCT's jurisdiction. (The exceptions, such as Exempt Public Sector Superannuation Schemes, are subject to other mandatory dispute resolution mechanisms). Unlike most other finance sector ADRs, there is no ability to "leave" a scheme.
- The SCT is independent of both the industry and complainants. It is funded by the Commonwealth Government, by means of a compulsory levy on superannuation funds. Tribunal members are appointed by the Commonwealth Government. This independence has the potential to provide consumers with greater confidence in the integrity of the Tribunal's determinations.
- The Tribunal's determinations are binding on all parties. However there is an ability to appeal to the Federal Court on a matter of law.
- There are no monetary limits on the complaints the Tribunal is able to accept. The limits applicable to some other schemes have the effect that consumers who are not in a position to take court action can be left with no redress. Any imposition of a monetary limit on the SCT would be a retrograde step.

Merging the SCT with other finance sector dispute resolution schemes has the potential to reduce the protection currently available to superannuation fund members. Compulsory consolidations of all existing financial ADR services must be carefully considered. ASFA supports voluntary consolidation in cases where that consolidation would create greater efficiency without detracting from consumer protection.

ASFA strongly supports the efforts by the current ADRs to better co-ordinate their activities. For example, the SCT and FICS operate in adjoining offices and frequently liaise with each other to improve administrative consistency and efficiency. Often such practical measures can improve the efficiency for consumers seeking to access an ADR.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

In terms of future direction for the SCT, it is important that its powers are appropriate and areas for responsibility sufficiently wide so that it can be an effective ADR for the future.

Recommendation 5: ASFA does not support consolidation of existing financial ADR services, but does not object to any encouragement of voluntary mergers or improved co-ordination.

Draft Recommendation 11.1: Consumer testing of disclosure documents

ASFA strongly supports the proposal that disclosure documents should be consumer tested, and amended as required, to facilitate good consumer decision-making.

ASFA has consistently advocated the consumer testing of disclosure documents. Our experiences in consumer testing have consistently demonstrated that consumers experience difficulty in understanding most financial disclosure documents (particularly those that are long and legalistic) and are often unable to make informed decisions on the basis of those documents. As financial services regulation relies heavily on disclosure requirements, it is essential that disclosure be in a form that is useable by consumers. This is best achieved if documents are consumer tested and revised as needed.

Recommendation 6: ASFA supports documents containing information that is comprehensible and facilitates good consumer decision making.

Draft Recommendation 11.1: Layering of complex information

ASFA also supports the proposal that disclosure requirements include the layering of complex information, with the agreed key information that is necessary for decision-making being provided initially and more detailed information being made available on request or otherwise referenced.

The recent “incorporation by reference” amendments¹ to the Corporations Regulations are a useful example of how the suggested layering can work in practice. While Product Disclosure Statements (PDS) and Statements of Advice (SOA) will be required to contain prescribed essential information, other information can be incorporated into the PDS or SOA by a reference to that information, together with an explanation of how consumers can obtain the extra information free of charge. This has the potential to reduce unnecessary complexity in the basic disclosure document while still providing consumers with the information necessary to make an informed decision.

ASFA is currently working with ASIC to ensure effective implementation of the “incorporation by reference” provisions.

¹ Corporations Amendment Regulations 2007 (no 10.), applicable from 22 August 2007.

Recommendation 7: ASFA supports the proposal that complex information that is required to be disclosed be layered, with agreed key information provided initially and more detailed information available on request or otherwise referenced.

If you have any questions or comments on this submission, please feel free to contact me at the ASFA Secretariat on 02 9264 9300.

Yours sincerely,

Dr Brad Pragnell
Director, Policy and Best Practice

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798