

Future of Financial Advice Reforms (FOFA)

The financial services industry, in particular financial advisers, has been under scrutiny in recent times and various reforms have been proposed by the Federal Government arising from Federal Reviews.

At the end of August 2011, the Government announced the first tranche of proposed legislation which we have outlined below. The AvSuper Management team participated in some of the consultative groups and provided feedback via our industry associations involved in the consultation process to ensure your interests are represented during discussions of these reforms. Members should note that many of these reforms are unlikely to directly impact on AvSuper, but may impact on investments and the type of advice you receive outside of AvSuper.

A second tranche of draft legislation is expected later this year to deal with conflicted remuneration structures, 'soft dollar' benefits, asset-based fees for gearing purposes and the definition of intra-fund (or scaled) advice. As AvSuper currently offers our Member Advice Solution under intra-fund advice rules, we are actively assessing this aspect of the reform package in particular.

We hope you find the following summary of the key reforms arising from the first tranche of draft legislation useful, together with the Trustee's view of the likely impact, and we encourage you to contact us with your comments or queries. We'll continue to keep you informed as the legislation progresses and changes are confirmed.

Michelle Griffiths
Chief Executive Officer

It is important to note that the legislation remains draft only at this point.

Much of the draft legislation will require industry consultation and greater clarification or detail ahead of legislative changes being made. This means it could take some months to legislate any of the changes proposed.

Opt in requirements

It has been suggested that currently many people are paying financial advisers (often on commission based arrangements) from advice agreements set up some time ago. Under the new rules, financial advisers must ask clients to renew such agreements (that is, opt in to remain a paying client) every two years.

This is being implemented to protect consumers from paying for advice years after the event without realising what is happening and the impact this may have on their financial position. Financial industry bodies have fought this on the grounds it will be expensive for advisers to administer, but it should not be a large task for those advisers in regular contact with clients.

If implemented, this will apply from 1 July 2012 for new clients and advisers could face hefty fines if they charge ongoing fees without requesting clients to opt in every two years.

Impact for AvSuper

At this stage we don't expect the opt in rules to apply to us as we do not charge commission based fees or ongoing advice charges for advice. We welcome the opt in rules as it will ensure that individuals get greater transparency on the fees they may be paying advisers and protect our members from advice fees they don't want or need.

Best interest obligations and duty to give priority to a client's interest

The new law proposes to impose a duty for financial advisers to act in the best interests of their client (including the requirement to assess whether the client's objectives and needs could be met through means other than the sale by the adviser of financial products).

Amongst other things the draft legislation introduces the concept of an 'approved product list' (APL) into legislation for the first time. If after making reasonable inquiries an adviser concludes that there is no product on their APL (or that of their financial services company) that meets the client's needs and objectives, they must advise the client in writing of that fact in writing and must not recommend a product on the APL. Additionally, if a client requests an adviser to consider a specific product or a class of products that is not on their APL, there will be an obligation to make a reasonable investigation into those products.

In addition to the best interest obligation, advisers must, in situations of conflict, put the client's interest ahead of their own (or, where the conflicted party is a licensee, ahead of that licensee's interests). If a client suffers loss or damage as a result of a breach of the best interests duty, the reforms propose that the client will be able to recover the amount of loss or damage from the licensee if the breach was by the licensee itself or a representative.



Impact for AvSuper

The AvSuper Trustee already has a legal fiduciary obligation to consider our Members' interest and we do not anticipate that this change will greatly affect the Trustee's legal obligations in relation to considering our Members' interests. More importantly, it means that AvSuper members who seek advice from external financial advisers will be able to require their adviser to consider the benefits of their AvSuper membership in providing recommendations.

Increased ASIC powers

Under the draft legislation, licensing and banning powers of the Government would be increased to provide greater oversight and monitoring of the financial advisory industry for the benefit of all consumers.

ASIC will be able to ban anyone who is of poor character, likely to break a financial services law or acts in a contravention of another person's obligations. This includes removing or suspending a license of anyone likely to break those laws.

The new regulations include penalties of up to \$250,000 (individuals) and \$1 million (corporate entities) for those found to not act in this manner.

Impact for AvSuper

Unlike financial planning groups, AvSuper already has a fiduciary duty to our Members and our Member Advice Consultants have always acted in the best interests of our members, according to the law and are of good character so we are not concerned about these laws impacting us. We do, however, support reforms that improve the integrity of good advice and advice providers.

Defining a financial planner

The Government has announced that a definition of a financial planner will be introduced later this year. A clear definition of 'financial planner' would enable regulations to specify who can give types of advice as well as simplifying choices for consumers. It will also make it mandatory for planners to show qualifications to clients before giving advice so clients know they are dealing with a professional.

Impact for AvSuper

We support measures which are designed to increase the professional standing of financial planning industry practitioners and make it easier for our members to be sure of quality advice both from AvSuper and from other providers.

All AvSuper team members providing you with general advice have superannuation qualifications and our Member Advice Consultants are also qualified financial planners/advisers. So we are confident of their skills and abilities, and expect that these new regulations will not impact on the advice you can currently access from us.

Conclusions?

AvSuper will continue to represent the interest of AvSuper members to our industry bodies and to the Government, where it is relevant to AvSuper, until the legislation is finalised.

We'll keep you informed as changes are made, however if you have any queries or concerns about FOFA, the proposed recommendations or your super generally, please contact us on 1800 805 088 or avsinfo@avsuper.com.au



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