



Investment & Financial Services Association Ltd

**IFSA Submission on
Simple advice on choices within an existing
superannuation account**

**Financial Services Working Group
Consultation Paper**

Dated: 23 July 2008

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PART I – EXECUTIVE SUMMARY

IFSA's submission, in response to the Consultation Paper, includes the following points:

1. IFSA has made a number of submissions to Government in the last few years that seek to address various problems with the law and its administration around the provision of financial advice, in particular the need to clarify the law for the provision of "limited advice".
2. Only a broad approach to facilitating limited advice can begin to address the inherent supply and demand issues associated with the delivery of advice, including those relating to advice within the superannuation system. Amendment of the Corporations Act 2001 is necessary if certainty is to be provided and advice barriers reduced.
3. Further regulatory guidance will not address the fundamental problems of legal uncertainty that have to some degree been exacerbated through regulator actions. Piecemeal or 'Band-Aid' measures to significant legal issues are not the solution.
4. Some of the major issues that the industry as a whole faces today (eg under-insurance), in part, stem from the complexities of the existing regulatory framework. The requirements need to be fine tuned to reflect practical realities.
5. The focus of the reforms should be to provide legal certainty around the provision of "limited personal advice" under section 945A of the *Corporations Act 2001*. In addition, IFSA continues to advocate a change to the definitions of 'personal advice' and "general advice".
6. Simple or complex, the client should be able to decide the level of advice to be provided. A providing entity should be free to offer particular targeted services and the charge will vary accordingly. Clearly, a client receiving a Statement of Advice that took 5 minutes to prepare is receiving a different level of advice and service to a client receiving a statement of advice taking 12 hours to prepare.
7. There should be no change to the training/accreditation requirements set out in ASIC Regulatory Guide 146 to cater for the provision of limited advice. RG146 obligations should remain the minimum for all authorised representatives.
8. There should be no change to the Financial Services Guide (**FSG**) and Statement of Advice (**SoA**) requirements other than to facilitate their provision online.
9. Industry guidance should be developed on how the law deals with certain limited advice scenarios to ensure consistent interpretation across the industry.

PART II – INTRODUCTION

We welcome the proposed initiatives in the paper and the recognition that the current legislative framework is a significant inhibitor to consumers obtaining low cost personal advice in relation to their superannuation. To the extent that the proposals would make it easier and cheaper for licensees to deliver personal advice, while maintaining appropriate levels of investor protection, we support the objectives of the Consultation Paper.

IFSA members consider that the provision of financial advice to assist investors in the making of informed decisions is fundamentally important to addressing the ongoing needs of investors. While the focus of the Consultation Paper (**CP**) on superannuation is welcome, we believe that the barriers limiting the provision of financial advice are common to investors in superannuation funds and to other retail investors generally.

The reference in the CP to “Simple Advice” we believe is a misnomer. We believe that the proposals should be focussed on “limited personal advice” and not merely “intra fund” advice. In their provision for retirement a person may hold assets both within and outside superannuation. A piecemeal approach to the regulation of advice is neither practical nor good policy and runs the risk of creating unintended consequences for the financial services industry and its clients.

The CP does not address the underlying core problem with the availability of “limited personal advice”. The lack of availability of limited personal advice arises from uncertainty regarding the interpretation of section 945A of the *Corporations Act 2001 (Act)*. The various endeavours by industry to provide “limited personal advice” has, in our view, been undermined by ASIC in issuing various enforceable undertakings with regard to the provision of limited advice. This has significantly impacted the confidence of industry in acting in this area.

A consequence of the current definitions of personal advice and general advice, is that almost every advice discussion needs to be structured as personal advice (with all of the consequent accompanying disclosure). The breadth of the definition of personal advice also impedes the ability of advisers to have personalised conversations which can help educate consumers where product recommendations are not being made.

Given the particular focus and limited scope of the CP, we believe that the provision of “limited personal advice” would be greatly facilitated through a clarifying amendment to section 945A of the Act. Amendment of the definitions of “personal advice” and “general advice” would also greatly assist in the provision of a clear structural framework for the provision of financial advice.

It is important that a ‘limited personal advice’ model within superannuation does not create an ‘uneven playing field’ and inconsistent regulation for advice. For this reason, the scope of the limited personal advice model should be applicable generally and not limited to ‘intra-fund advice’. IFSA recommends that:

1. section 945A be amended to provide certainty that limited personal advice can be provided without having to undertake a full investigation of the client’s circumstances and objectives;
2. any relief be expressed in terms of the providing entity and not expressed as being solely for the trustee of the relevant superannuation fund; and
3. if the proposal is to remain limited to operation within a particular fund, that the term “intra-fund” be clearly defined.

IFSA believes that industry is better placed to provide, in consultation with ASIC, guidance on the provision of limited personal advice. Once there is a clear Government proposal for the removal of existing legal impediments and uncertainties, IFSA will initiate a project with other relevant industry bodies to develop industry guidance on the provision of limited personal advice.

PART III – GENERAL QUESTIONS CONTAINED IN CP

A. Please comment on:

- **the likely impact on supply and demand for advice services**
- **the likely effect on consumer protection; and**
- **other impacts, costs and benefits**

Both quantitative and qualitative information sought.

Supply

Given that the current proposals in the CP do not include any legislative amendments which aim to address the legislative uncertainty and barriers created by the current definitions of advice, the increased supply of services would be much more limited than if, as we suggest above, amendments are made to section 945A of the Act and the Government was to provide further clarity with respect to the definitions of personal and general advice.

It could be expected that there would be a significant increase in the demand for financial advice if it was provided at a reduced cost to the client. Advice provided by a fund trustee will be a cost to the fund and members generally. Advice cannot be provided at no cost.

Supply will depend on what types of advice are characterised as “limited”. Limited advice is not defined by cost but by the scope of the advice. Price is determined not only by the service being provided but also the extent and complexity of the agreed service. Care must be taken not to confuse the ability to limit advice with the many factors that determine the price of personal advice.

Demand

We consider that there is a growing demand for financial advice at all stages of the investment process. This advice covers both the provision of general and personal advice. Financial literacy will be an ongoing challenge for many investors and IFSA members consider it important for all members to have access to limited personal advice at a low cost.

Consumer protection

The quality of available advice should not be compromised under a limited personal advice model. It is imperative from a member protection perspective that there should be no change to licensing, training or other compliance requirements accompanying the delivery of ‘limited personal advice’. That is, existing RG146 standards should apply, and the advice must only be delivered by those authorised under an appropriate Australian Financial Services Licence (**AFSL**).

The industry has been working hard to demonstrate the value of advice and promote professional accreditation. The proposal to have staff with less training ‘passing on’ advice by following a script may reduce the cost of delivering advice but should not be implemented. Members will be acting on information provided by staff that are not qualified, may not have the skills required to explain complex concepts and may pass on inappropriate advice because they don’t understand the complete picture. In addition, if the client is mid conversation in this scenario and has a question, the staff member will not necessarily be able to answer and must pass the client on to a qualified adviser. Therefore, this scenario is not a solution to the current difficulties in delivering low cost advice.

Poor quality information or advice harms the member, the firm providing the information and the industry. Any move to reduce professional standards in the provision of advice will reduce member protection. Compliance with the standards set out in RG146 should be a requirement for all staff engaged in these types of conversations with members. In particular, RG146.21 already provides for certain staff to be able to pass on prepared information.

When the consultation paper refers to conflicts of interest, we assume that this relates to any payment from a manufacturer to an advice provider, and includes commissions, subsidies, rebates and salaries. These payments all currently exist, and are essential in the provision of

low cost advice. In our view, the current approach to the management and disclosure of conflicts of interest caters adequately for limited personal advice.

B. As well as responding to specific proposals and questions, please describe any alternative approaches you think would achieve the FSWG's objectives.

An amendment to section 945A of the Act to allow for single issue, product or topic advice would have the effect of providing regulatory certainty for advisers in providing limited personal advice (refer to Paragraph F in Part III of this submission). This would enable licensees to provide the types of intra-fund advice contemplated in the CP as well as other types of limited advice. Such an approach would achieve the Government's objectives, whilst also reflecting good policy by creating an industry wide, longer term solution.

C. Estimates regarding the current cost of providing advice and the likely cost of providing advice under a proposed alternative model.

Where a customer is given very clear notice of the limits and extent of personal advice to be provided, together with any relevant warnings, a customer should be able to choose the service they are to receive. Facilitating the provision of limited personal advice will, we believe, enable advice services to be provided more efficiently and will provide the customer with the choice of advice service and payment options.

It is important to recognise that the SoA is the output following the fact find, the analysis, the research and the recommendations which are pre-requisites to the formulation of personal advice. If advice is limited the costs associated with the preparation of the SoA will also be reduced.

D. FSWG is interested in learning about factors affecting the availability of intra-fund advice including:

- **supply and demand side factors;**
- **market and regulatory factors.**

As noted above, there remains much uncertainty for licensees around the provision of financial advice. Increased supply would, therefore, best be achieved by addressing this uncertainty for the industry as a whole through appropriate amendments to section 945A of the Act, and the definitions of personal and general advice.

There is a growing market and need for financial advice. The supply of financial advisers has not kept pace with demand. Impediments to the supply side have largely been a result of the demonisation of financial advisers by the press responding to a small number of advisers who have been prosecuted for breaching their duties under the law. This is unfortunate when IFSA research shows that the great majority of customers are happy with the services provided to them by their financial advisers. IFSA Investor Benchmark Research (May 2008 - attached) shows that 95% of investors that currently have an adviser say they are satisfied or very satisfied with the financial services provided by their current adviser.

E. FSWG is interested in learning details of existing or proposed low-cost advice services.

A number of IFSA members are investigating the possibility of offering limited advice to clients. Their priority remains, however, that consumers continue to have access to high quality advice.

If the proposal for reform was to be limited to "Intra Fund Advice", there are a number of scenarios that are appropriate for the provision of limited advice, namely;

- Asset allocation
- Risk profile
- Selection of investment options within a superannuation product
- Quantification of a 'retirement savings gap'
- Certain recommendations in relation to insurance
- Certain recommendations for additional contributions

Limited advice on insurance could be combined with tools such as easy to use insurance calculators.

There are, however, some areas of advice in which a full analysis of cashflow, income, debts, assets, lifestyle goals and family situation are required. In the limited sphere of "Intra Fund Advice" we do not think that limited advice can cover advice regarding:

- Estate planning
- Complex recommendations in relation to additional contributions
- Retirement income streams including transition to retirement strategies.

These areas require a detailed analysis to establish the most appropriate course of action. For example, consider the relatively straightforward case of a fund member seeking advice regarding superannuation contributions. It is not difficult to ascertain how much could be contributed via salary sacrifice. It is much more difficult, however, to establish whether this is a more appropriate course of action than reducing a mortgage or other household debt, or saving outside of super to meet upcoming financial commitments, or whether the consumer will be comfortable with reduced cashflow.

In order to ensure consistency, IFSA suggests a coordinated industry approach to establish an agreed set of guidance principles for the application of limited advice in the above scenarios.

F. FSWG interested in comments about the reasons why low-cost intra-fund advice is not more widely available (CP notes that some reasons may be regulatory; some reasons may be commercial or economic). FSWG interested in hearing your views on the degree to which any of these factors do (or do not) restrict you from providing simple, low-cost intra-fund advice.

The lack of certainty associated with the existing definitions of "personal advice" and "general advice", and the inconsistent regulation of advice provisions over the last few years has produced a less than optimal outcome for investors while limiting the ability of industry participants to provide information and direction to their customers. Further, the reasonable inquiries and appropriate advice requirements (section 945A of the Act as interpreted, for example, by ASIC in the AMP Enforceable Undertaking - EU) has made licensees wary of limited advice scenarios. In addition, ASIC refers to 'scalability'¹ but this concept is not expressly provided for in Chapter 7. The fundamental issue is that the scope of advice should be scaleable and that the level of necessary inquiry should be appropriate to the scope of the personal advice.

Despite section 945B of the Act, ASIC expressed the view that disclosures about limitations of any personal advice were not sufficient to allow the proper discharge of obligations under section 945A(1) (see paragraphs 3.3 and 3.4 of the AMP EU). The implication of that EU was that clients and the providers of personal advice cannot agree on the scope of the advice, even if the client agrees and is given a warning and confirms their agreement.

This lack of certainty does not assist customers to control what they wish to pay for and purchase. In practice, the law now effectively requires the customer to receive a full service offering with the consequent expense, even if they do not want it. For those clients with limited capacity to pay, it would normally mean that a request for advice cannot proceed. The

¹ 'Scaleable' is referred to in ASIC's RG175 however it is not a term defined in law

risk therefore, is that customers are not adequately advised and purchase financial products that may not be appropriate to their circumstances.

To put the issue beyond doubt, we propose a very simple amendment to section 945A(1) of the Act. Section 945A(1) could be amended by prefacing the subsection with the words:

"For the subject matter of the advice, a providing entity must only provide the advice to the client if: ..." and then proceed with the current wording.

The explanatory memorandum dealing with the amendment could include a description as follows:

"The amendment is made to clarify that the subject matter of personal advice can be a single issue such as a particular objective or need, an aspect of a single financial product or a single topic. The scope of personal advice can be agreed between a customer and a providing entity or can be offered on a limited basis. Inquiries, under section 945A can be tailored to the scope of the advice to be provided."

If section 945A were to be amended in this way, it would be quite plain that advice on, say, 'contributions to a particular superannuation product' could be made without having to go through a full investigation of the client's objectives, financial situation and needs and the production of a full financial plan (ie SoA). The subject matter of the advice would be the 'contributions to the ABC superannuation product'.

If the subject matter of the advice was the adequacy of a person's insurance cover, the above amendments would facilitate the simple topic of the advice. This would apply even if insurance was held in a super fund, several funds or even insurance held outside of a fund. The advice is limited to the stated topic and can be handled appropriately.

The amendment allows the limited advice to be provided even though the advice extends beyond the one product. Therefore, simple advice is facilitated and the consumer has proper coverage of the chosen topic. Naturally, inquiries to be made under section 945A would be tailored to illicit information on the subject matter of the advice only and to that end we believe that the amendment to section 945A as set out above should be accompanied by the following additional provision (section 945A(2)):

"Where it is clear in the provision of the advice that only certain types of products or identified objectives are to be considered, the provider need only obtain personal and other information that is relevant to the subject matter of the advice under consideration."

These proposed amendments to section 945A, together with industry guidance, will facilitate the provision of low cost advice.

G. Are there any other factors significantly restricting supply of, or consumer demand for, such advice?

Existing legal and regulatory factors limit the availability of limited or scaleable advice to consumers.

We note that reference is made throughout the CP to a number of provisions in the law which provide relief from various obligations of the associated advice requirements. Unfortunately, the provisions, in general, offer **limited practical relief**. This includes:

- (1) Statements on relief from the requirement to provide a statement of advice (section 946B of the Act). That relief **does not operate** in circumstances where:
 - (a) a specific financial product or products of a specific issuer are identified;

- (b) the advice or opinion would result in the modification to an investment strategy or contribution level in relation to a product held by the client; and
 - (c) the person providing the advice does not directly receive remuneration or other benefits in relation to the advice.
- (2) The comments on 'scaleable advice'². While the comments are encouraging, the practical application of the law is at best ambiguous and attempts by certain significant and well resourced industry participants to implement scaleable advice has resulted in heavy handed action by ASIC. This has not inspired industry confidence in taking the risk of excluding certain questions in assessing the client's circumstances.

Additionally, broad statements implying that single issue advice is necessarily simple is misleading. The GE Money enforceable undertaking demonstrates an expectation that in recommending levels of cover a full investigation and enquiry into the customers circumstances is required to meet the 'appropriateness' test of section 945A albeit the advice is 'limited' to a particular need or financial product (see Paragraph F in Part III of this submission)

We note that advising people on the intra-fund issues (i.e. asset allocation, insurance) is often more difficult and complex than advising on simpler concepts such as consolidation and the impact of saving, and compound interest.

- (3) The CP also includes some examples of "information or recommendations that are not advice"³ and, in particular, refers to the "asset class exemption" contained in Regulation 7.1.33A. This reference ignores the limitation that the "regulation does not apply to a recommendation or statement of opinion that relates to specific financial products or classes of financial products"⁴.

It is difficult to see the point of the statement if it excludes what this consultation is seeking to achieve - the provision of "limited advice" about a particular product or class of product. For it to have any use in the superannuation 'intra fund advice' area there needs to be the ability to give advice with respect to the 'superannuation' class of financial product and indeed the member's actual superannuation product.

In relation to the issue of scaleable advice with respect to superannuation fund members, industry made a submission in 2004⁵ that focussed on asset allocation and stated;

"...it is often difficult for an adviser to restrict advice to members to general advice given their need to understand how the "asset allocation" options affect them personally. Therefore, in most cases the advice will drift into personal advice thus triggering all the requirements of the law in this regard.

By applying a 'scaleable' approach where the advice in these circumstances could be restricted to just the asset allocation and perhaps treated as 'general advice' members are more likely to be put in a position of making an informed judgment. A provision similar to Regulation 7.1.33A⁶ by way of relief may be one path to explore"

² Page 14 of the CP

³ Page 15 and 16 of the CP

⁴ Note to Regulation 7.1.33A

⁵ Joint submission dated 10th March 2004 from IFSA, ASFA, NIBA, ABA and FPA

⁶ **7.1.33A Allocation of funds available for investment**

For paragraph 766A (2) (b) of the Act, a circumstance in which a person is taken not to provide a financial service within the meaning of paragraph 766A (1) (a) of the Act is the provision of a service that consists only of a recommendation or statement of opinion provided to a person about the allocation of the person's funds that are available for investment among 1 or more of the following:

- (a) shares;
- (b) debentures;

Further regulatory guidance will not address the fundamental problems of legal uncertainty that has to some degree been exacerbated through regulator actions. Piecemeal or 'Band-Aid' measures to significant legal issues are not the solution.

H. What are the factors or barriers that have impacted on the availability of simple, low-cost intra-fund advice?

See above. Simple or complex, the client should be able to decide the level of advice to be provided. A providing entity should be free to offer particular targeted services and the charge will vary accordingly. Clearly, a customer receiving a SoA that took 5 minutes to prepare is receiving a different level of advice and service to a customer receiving a SoA taking 12 hours to prepare (see page 9 of the proposal paper). It is not a matter of simplicity or complexity of the advice strategies being provided, but the time invested to go through the advice process and complete it with the production of a SoA. This is quite separate from the complexity of strategies.

One IFSA member, in conducting its own shadow shopping exercise, received a computer generated SoA where the substantive advice provided included statements that were more akin to general advice and are indicative of the fact that no effort had been made to conduct reasonable inquiries into the relevant personal circumstance of the client. The SoA contained statements like:

"We recommend that you make non-concessional or after-tax contributions of an amount that you decide you can afford into your super"

and

"We have assumed that your superannuation monies are invested in the Core Strategy which does not attract an investment choice fee".

"Simple advice" is not the nature of the proposals as much as "limited advice". The paper implies incorrectly that "simple" is determined by price.

I. What are the factors or barriers (if any) that impact clients seeking and obtaining limited personal advice? For example, is the cost of advice a key barrier for clients?

As indicated, drawing a line between limited advice and the need to conduct further investigations or fact find on a person's personal circumstances makes the provision of limited advice under the current law very difficult.

Limited personal advice is being provided by various licensees at present but the regulator response is not being applied consistently. Where a customer is given very clear notice of the limits and extent of personal advice to be provided, together with any relevant warnings, a customer should be able to choose the service they are to receive. They should also be able to choose the services for which they wish to pay. At present, licensees are required to refuse to provide personal advice if the scope is to be limited. This does not assist customers to control what they wish to pay for and purchase. As noted throughout the submission it requires the customer to receive a full service offering with the consequent expense, even if they do not want it. For those clients with limited capacity to pay, it would normally mean that

(c) debentures, stocks or bonds issued, or proposed to be issued, by a government;

(d) deposit products;

(e) managed investment products;

(f) investment life insurance products;

(g) superannuation products;

(h) other types of asset.

Note This regulation does not apply to a recommendation or statement of opinion that relates to specific financial products or classes of financial products.

a request for advice cannot proceed. The risk therefore, is that customers are not adequately advised.

Appropriate amendment of section 945A to clarify the operation of the provision would address this problem.

J. FSWG interested to know if anyone has experienced unintended practical difficulties in giving (or receiving) advice via the internet.

While we agree that the internet is likely to be an important channel for low-cost, limited advice, many consumers will use online services to obtain information but still want human interaction when it comes to making and implementing a decision. Online self-service in the super space is still a relatively small segment.

We also note that ASIC's policy on calculators and online illustrator tools has inhibited the development of online personal advice tools by industry.

K. Provide as much information as possible for FSWG's proposals or any alternative approaches on:

- **the likely compliance costs;**
- **the likely effect on competition; and**
- **other impacts, costs and benefits.**

We are unable to provide costings until more formalised proposals are determined.

PART IV – SPECIFIC PROPOSALS

Proposal 1: Further Clarification and Guidance

Uncertainty surrounding the interpretation of current legislation is a considerable barrier to the provision of limited personal advice.

The confusion in the industry derives from uncertainty in the law, and inconsistent ASIC statements and regulatory action. ASIC has provided guidance previously and we do not think that further guidance will advance the current situation. We support an amendment to section 945A of the Act to provide regulatory certainty for the provision of limited personal advice.

The amendments would, we believe, reduce the cost of advice because it would allow information and advice to be given on only those matters agreed between the customer and the providing entity. It would also result in greater availability of general advice which in turn would aid in increasing the financial literacy of consumers.

Proposal 2- Responsibility for advice

It is difficult to comment on this proposal because the meaning of the proposal is quite unclear. Licensees are currently responsible for the advice given by their representatives and the concept of 'direct supervision' is already contained in ASIC's RG146⁷. We also caution against diluting the training and accountability of the person delivering the advice. The provisions contained in ASIC's RG146 ensure the integrity of the advice and we would oppose any dilution of those provisions as being against the consumers' interests.

We are unclear on what aspect of the current law would be different if the proposal was implemented.

Proposal 3 – Provision of a Financial Services Guide

The provision of limited personal advice requires scale and a level of subsidisation. It is important that clients understand who is providing them advice and the relationships that exist with manufacturers. It is, therefore, important that an FSG is available and we do not believe there is a need to provide any exemptions to the provision of an FSG. To enable efficient delivery of this information electronic disclosure should be embraced.

This proposal is expressed to be for the benefit of superannuation trustees but the remainder of the CP refers to the person providing the advice. The relief should be expressed as being for the benefit of a providing entity, to be consistent with the current section 945A(1).

Why is payment the benchmark of whether an FSG is given? An FSG is required to contain more information than simply the general information on fees or commissions. It would seem more logical for an FSG exemption to be given where a client can be directed to a website if they want to read the FSG.

Feedback on specific proposals

(i) Do the proposals adequately address the regulatory barriers? If not, what are the changes necessary to address those barriers?

No. We need to unravel the regulatory framework that has been put in place to "protect" and "best serve" consumers. Some of the major issues that the industry as a whole faces today

⁷ RG145-15 refers to Customer Services Representatives providing advice under supervision – RG146-17 contains the same provisions relating to para-planners and trainee advisers.

(eg under-insurance), in part, stem from the complexities of the existing regulatory framework that has been put in place.

As noted above, we believe that amendments are required to section 945A to provide certainty regarding the level of inquiry and reasonable basis for advice requirements. Substantive amendments to the definition of personal and general advice would also help to remove the barriers which currently exist to investor's access to advice.

(ii) If the Government made some or all of the changes outlined above, would your business provide limited advice to consumers? Are there any other commercial or economic barriers to your business providing simple advice? Please give details.

We believe both the IFSA product providers and distribution channels would embrace the provision of 'limited personal advice' if appropriate amendments proposed were implemented. We believe that currently the majority of employer sponsored superannuation fund members receive little or no personal financial advice. The ability to provide limited and relatively low cost advice would assist and encourage advisers to deliver advice to the market as a whole.

(iii) If the proposed changes are made, are there any particular risks or consumer protection issues that the FSWG need to consider?

It is IFSA's view that the proposals, in particular Proposal 1 for all the reasons previously stated, do not address the substantive issue of regulatory certainty and, therefore, the real risk to consumers is that the availability of appropriate targeted advice will still be limited.

If, however, the IFSA proposal relating to section 945A and the availability of 'limited advice' is adopted, it is our view that appropriate advice at reasonable cost would be more readily available. The IFSA proposal would particularly benefit individuals that need assistance in decision making the most and will provide a higher level of superannuation fund member engagement.

The IFSA proposal does not affect a fund member's right to receive 'appropriate advice' from licensed and qualified advisers, nor does it in any way reduce consumer protection provided by the law including access to dispute resolution and to compensation where warranted.

(iv) If the proposed changes are made, would they reduce the cost of providing advice and if so by how much?

A clear delineation of basic and more complex advice would assist in both defining the roles and responsibilities of all within the industry as well as ensuring a greater level of basic education and guidance is provided to a currently disengaged audience.

The more financially literate end consumer will continue to call upon the services of the adviser market and costs to this audience would not necessarily reduce. However, there is a significant percentage of investors who do not currently seek advice, education and/or guidance. Amendment to the Act would afford this audience the opportunity and, perhaps, motive to be provided with basic levels of financial advice and assistance.

PART V – FEEDBACK ON OPTIONS NOT PROPOSED IN CP

New training standard

FSWG has not proposed a change to training standards, but would welcome any feedback on this issue.

Training standards should be maintained. The requirements of ASIC's RG146 set out minimum levels of competence required to ensure consumers at least receive reasonable advice and compliance with RG146 is a licence condition of AFS licensees. Any reduction in training standards could put at risk the success and considerable investment made in raising the standards of advice over the last 10 years.

Changes to definition of advice

FSWG is aware of proposals by some industry members to significantly change the boundary between the definitions of general and personal advice. FSWG's initial impression is that this change is not necessary to achieve their objective. Please provide feedback.

As per the FICA submission to Government in late 2007, the amendment proposed by FICA establishes a clear structural framework for the provision of financial advice. The change is essential to the proper operation of the advice industry and clarity will enable greater transparency, investor engagement and protection. As set out in the FICA submission the current definition of personal advice is such that any statement that is made after the adviser has been informed about the aspects of a client has the potential to influence a person in relation to a financial product and also has the potential to become personal advice. This is to the detriment of consumers as it has created a barrier to obtaining advice on a limited basis.

The recommendation in this submission for the amendment of section 945A will in part address some of the issues inherent in the current advice provisions of the Act and will enable the Government to achieve its objectives within superannuation and the industry more broadly.

Further SOA Exemption

Do you have any factual information about the level of any costs imposed by the SOA requirement on simple intra-fund advice?

If the SOA obligation is demonstrated to be a significant barrier, one possible approach would be to exempt the SOA requirement in specific low-risk situations (for example, low conflicts of interest, high legal obligations on the standard of advice, advice is easy for a consumer to recall). We are interested in your feedback on this.

The SOA is not considered to be a significant barrier to the provision of advice but rather the actual process needed to arrive at the advice. However, an increase of the threshold operating under section 946AA (regulation 7.07.09A), requiring instead a Record of Advice, would we believe lead to greater consumer engagement and benefit.

Sole purpose test for advice

Some providers have mentioned possible implications from the sole purpose test in the *Superannuation Industry (Supervision) Act 1993*. This limits the type of advice that can be paid out of a superannuation fund (either as a trustee expense or a deduction from the member's account). Intra-fund advice can clearly be paid for by the fund.

FSWG would be interested in any feedback on whether this presents practical difficulties, and (if it does) on any suggested improvements.

No. The client should be able to access the balance of their superannuation account for the purpose of managing their retirement savings. The sole purpose test poses a stronger argument against 'advertising' by the trustee than it does for a superannuant managing their retirement savings.