SUPERANNUATION
CONSUMERS'
Centre

Submission to the Financial System Inquiry

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About the Superannuation Consumers' Centre

In early 2012 the consumer organisation CHOICE convened an establishment committee for a Superannuation Consumers' Centre. The committee included former Macquarie Bank CEO Allan Moss, Former Vanguard CEO and Financial Services Council Chairman Jeremy Duffield, and former ASX and ASIC Chairman Tony D'Aloisio amongst others. In August 2012 the committee took a proposal to Government to provide a one off contribution to an investment fund to provide an endowment to fund the Centre for 20 years. The Government agreed to make a $10million contribution, provided the industry matched that contribution. While a number of major funds agreed to contribute the committee did not raise the matching $10million prior to the 2013 election.

Nonetheless the Superannuation Consumers' Centre has established itself as a legal entity, has received ACNC endorsement and is operating on a limited voluntary basis. The Centre aims to make a positive contribution to restoring trust and confidence in the superannuation industry. It will work to improve the operation of the superannuation and retirement income system so that it delivers the best possible retirement income for Australian consumers.

It aims to do this via input to Government policy and industry practice; and building a social media platform on superannuation assist, engage and empower consumers to act in their own interests. Areas of specific focus are:

1) Ensuring access to **quality advice**;
2) **Identifying retirement risk zone** issues ie the issues faced by consumers in the years either side of retirement; and
3) Highlighting the need for **policy settings and products for in the retirement phase**, in particular the need for good default products.

Given that the Centre is operating without funding it is only able to provide limited input to Government policy processes, including this review.

The business case for the Centre remains relevant. Trust and confidence in the industry is lower than it should be. This is producing suboptimal outcomes for consumers, government and industry. No one policy response will solve this problem but the establishment of a dedicated Superannuation Consumers' Centre is an important part of a suite of measures discussed in this submission.

A meaningful way the Inquiry could facilitate greater consumer participation in ongoing policy development for the super system would be via a specific recommendation that government support development of the Superannuation Consumers Centre via:

- **specific listing in the Tax Act to enable the Centre to receive deductible gifts** from those in the community who support it
- **using a tiny portion of the superannuation levy to support it**
- **government seed funding**.

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Overview

This submission responds to issues raised in the chapters on consumer outcomes, financial advice, regulatory architecture, retirement income and superannuation.

Consumer outcomes

The years since Wallis and the GFC have exposed the limitations of reliance on disclosure. It does not work for conflicts or complex issues and there is no effective one size fits all approach.

The next generation of meaningful disclosure will focus on consumers' use patterns relative to product features. Digital choice engines need access to both consumer data and industry product data to help demand driven competition.

ASIC needs an expanded toolkit that aligns tool to problem, and facilitates a proportionate and graduated approach. We support a range of product intervention powers that allows the regulator to intervene along the value chain, both pre- and post-market with last resort banning powers.

We support product intervention measures **that require product makers to take responsibility** for the **suitability** of their products.

For products sold to retirees we support a "simple, safe and fair"[1] suitability test with a pre-market approval process for "novel" features or products.

Self-regulatory codes within the RG183 framework could improve consumer outcomes in respect of:

- education standards;
- life insurance commissions,
- conflicts of interest such as asset based fees and
- other professional standards.

Financial advice

The process of professionalization must involve higher levels of education both at entry level and on an ongoing basis. A degree, specific learning and national exam must be a minimum. Accreditation for specialised advice eg retirement and complex products is supported as well as ongoing CPD requirements.

[1] In the UK a simple safe and fair test applies to the distribution of products to retirees see RU64 but we are proposing utilizing the test for product suitability

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This is an area where gains could be obtained from a co-regulatory approach. We support an APESB style approach as long as its governance meets the standard in RG 183 and includes consumer representatives in administering the code.

There is a crisis of confidence in the advice industry and it stems from conflicted business models.

Post FoFa new forms of conflicted remuneration have arisen, such as asset based fees, the balanced scorecard and very low platform licensing fees.

Disclosure is not a policy solution to this problem. Disclosure of conflicts has the perverse effect of increasing consumer trust. The only way these issues can be resolved is through structural separation of advice from product manufacture.

Aligned advice will continue to fuel a sense that advice is tainted and consumers will be reluctant to pay for it.

Subsidisation and other supply side preferential arrangements prevent demand driven pricing. .

We do not support the use of the word "sales" or "product" for general advice as these reference the culture the industry is trying to move away from.

Options to ensure consumers are compensated for loss include:

- Create a UK style Financial Compensation Scheme
- Create a "minimalist" scheme that covers FOS and court awards
- Direct FOS to amend its terms of reference to allow it to compensate consumers with unpaid determinations. This is the lowest cost option.

Regulatory arrangements

We support industry funding of regulators in principle. If industry funding of ASIC is introduced ways must be found to assist consumer groups participate in cost recovery processes.

One approach could be to provide specific funding to ASIC's consumer advisory panel to enable it to conduct research and draft submissions and participate in cost recovery reviews on behalf of the community.

Our experience in other areas suggests that periodic external review can be a powerful force for continual improvement. Whole of agency external reviews should be no more often than every five years. Targeted focused reviews could be held more frequently, every three years.

ASIC's Consumer Advisory Panel should be resourced to participate in such reviews on behalf of consumer groups

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We support an objective to promote competition for ASIC.

We do not support any of the suggestions in the interim report at 3 -124 for splitting out functions, with the exception of the registry functions, which has already been decided.

We support a review of the penalty regime in the Corporations Act.

Greater supervisory capacity would increase confidence in the regulatory regime.

Retirement

We support the development of an overarching framework for the retirement phase that is oriented towards an income stream.

We support strong consumer protection for the retirement phase of super given the vulnerability of the cohort. This includes a simple, safe and fair suitability test for retirement products.

Government should lead development of standards for a retirement default product, which should require pre-market authorisation by APRA similar to MySuper.

The default should generate an income stream, and manage market and inflation risk.

We do not support inclusion of an annuity or part-annuity in the default until consumers can afford it (we note compulsory super only achieved 9% in 2002)

Our preferred approach is that MySuper is extended into retirement to provide a seamless uninterrupted path for consumers.

We do not support compulsion to take a particular product especially annuities.

We do however support policy settings and incentives that facilitate the development of annuities that are attractive to consumers.

We also support consideration of way consumers can manage risk in retirement through wealth in the family home.

Superannuation

To exert pressure on fees we suggest:

- Bring forward MySuper transition rules by one year.

- Review MySuper every 3 – 5 years to maintain ongoing pressure on fees and performance
- Govt to lead a process to develop a comparison measure for super funds that includes fees and performance
- Govt to facilitate development of a digital comparison and switching solution for super products (may require relief from switching rules)

Changes to portability rules could undermine confidence, increase switching friction in the system, and provide another reason for high balance members to opt out of regulated fund.

WE support a ban on leverage in super to minimise systemic risk. Leverage also involves levels of risk inconsistent with retirement income policy. It is primarily used by the SMSF sector, driven by advice to unsophisticated consumers.

There is evidence that unsophisticated consumers are being advised into SMSFs. A minimum balance of between $300K and $500K should be set as a default to guide consumers.

The super system is immature and ongoing change is required. There is a need to develop a bi-partisan orderly and inclusive policy making process for super.

Consumers lack of voice in super and retirement incomes policy. Government could support a consumer-led research and policy entity. This could be via specific listing of the Superannuation Consumers Centre in the *Tax Act* as a deductible gift recipient, allocation of a portion of the SIS levy towards funding the Centre, or government seed funding for the Centre.

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1. Consumer outcomes

1.1Summary response to consultations options

Status quo for disclosure	The years since Wallis and the GFC have exposed the limitations of reliance on disclosure. It has produced very poor outcomes for consumers. ASIC needs an expanded toolkit that aligns tool to problem, facilitates a proportionate and graduated approach is required.
Improve disclosure Remove ineffective requirements and replace with new ways of providing information to consumers	Disclosure does not work for conflicts or complexity eg complex products, services or concepts such as risk. All the suggested tools have their place. The key learning post Wallis is the regulator needs **flexibility** to apply the right tool to the problem at hand. The next generation of meaningful disclosure will focus on consumers' consumption or use patterns matched to product features. Digital choice engines need access to both consumer data and industry product data to help demand driven competition. More needs to be done to ensure open access to product data. Investor assessment tools such as on-line quizzes for complex products are worth trying. Financial literacy is useful but outcomes take too long.
Subject products issuers to a range of product design requirements such as regulation of product features, distribution requirement to promote provision of suitable products to consumers	We support a range of product intervention powers that allows the regulator to intervene along the value chain, both pre- and post-market with last resort banning powers. We support product intervention measures **that require product makers to take responsibility** for the **suitability** of their products both **pre- and post-market**. Under such a regime for example **ASIC would set standards that would underpin suitability assessment** for products for particular consumer cohorts. **Standards would cover features**, costs/charging regimes, presentation

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	of features **as well the processes to be used by issuers for assessing suitability** of features eg consumer testing for comprehension, expert opinions (what constitutes an expert opinion). For products sold to retirees we support a "simple, safe and fair"[2] suitability test with a pre-market approval process for "novel" features or products. Fit for purpose is not a suitability test.
Provide ASIC with product intervention powers to: - prescribe market terminology for compex and risky products - temporarily ban products where significant likelihood of detriment to consumer	These tools acknowledge consumers' inherent behavioural biases and would allow the regulator a wider toolkit to flexibility respond to market problems as they emerge earlier in the value chain. Post-market product interventions would allow the regulator to require the modification or removal of features, prescribe terminology, the manner of marketing features etc. At the extreme end post-market intervention powers should enable ASIC to **ban products, at the very least temporarily**. While banning is a last resort tool, its **mere existence would play a useful role**.
Move toward more default products with simple features and fee structures.	Real outcomes for consumers would be achieved. These tools acknowledge consumers inherent behavioural biases This is critical in the retirement income space given the compulsory nature of super. See part 4.3 below
Can industry self-regulation play a role in improving consumer outcomes generally?	Self-regulatory codes within the RG183 framework could improve consumer outcomes. In the short term RG183 compliant codes could improve outcomes in respect of: • life insurance commissions, • other conflicts of interest such as asset based fees, • education standards; and • Professional standards.

[2] In the UK a simple safe and fair test applies to the distribution of products to retirees see RU64 but we are proposing utilizing the test for product suitability

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1.2 Disclosure plus flexibility

In terms of the disclosure options raised in the interim report we think the key thing is flexibility. All of the options have a place.

The key learning from the years since Wallis is that one size does not fit all. Regulators need flexibility to draw on the appropriate tool for the particular problem at hand.

We accept some information can be provided on line eg full terms and conditions in much the same way as appliance manuals are now available online. However prior to purchase consumers must be made aware of the key features of the product in a way that they can meaningful understand. This means the form and language of disclosure must be **clear and comparable** across the market, and any **warnings must be timely and obvious**. The form of disclosure should be **based on consumer testing** and incorporate behavioural learnings. The **regulator should have flexibility to mandate** forms of disclosure where necessary.

However the greatest opportunity for reduced disclosure will come from greater use of standardised products and defaults, which consumers can buy with high levels of confidence that the products will be true to label.

Next generation disclosure

Next generation disclosure will come from disclosures that link consumers consumption patterns to product features. Current disclosure focuses on features or attributes of a product, many of which may be irrelevant to a particular consumer or classes of consumers. Disclosures about consumers' use of a product will help them assess the usefulness of a particular product to their circumstances. This information would be most useful when provided on an ongoing basis such as on recurring statements. For example, information about consumers use of key features of a super choice product would help them decide whether a choice product or a lower cost MySuper product may suit them better.

The concept of consumers use data being used to drive next generation disclosure is under way in the UK and US. The government led UK midata[3] and the US Smart Disclosure Project[4] are working on processes to facilitate access to consumer data in machine-readable formats. This would allow

[3] https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/personal-data
[4] https://www.data.gov/consumer/page/smart-disclosure-policy

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innovators to create tools that facilitate better consumer choice. A similar project here would be extremely useful.

Digital choice engines have the capacity to help drive demand side competition but they are currently inhibited by access to data, both consumer data and industry data.

Access to good data about product features and price is limited, apparently constrained by commercial considerations. This means today's comparison sites compare a limited number of brands and has resulted in sites that are effectively misleading to consumers.

CHOICE[5] and ASIC[6] have found numerous problems with existing sites. CHOICE says some sites give premium position to paid listings; create the impression of covering the market but are in fact highly limited in comparisons (in the worst case only compared their own products). ASIC also found insufficient disclosure of relationships between website and product issuers and lack of warnings on differences between products other than price.

CHOICE found limited disclosure of how the sites are paid, with some receiving a fixed percentage or amount per sale and in some cases a trailing commission. Overall disclosure and disclaimer transparency needs improving.

Comparison sites have a useful role to play in facilitating demand driven competition, but without equal access to product issuer's data they will fall short of meeting consumers' needs and enhancing demand driven competition.

Just as the midata project is working towards accessibility of consumer data in machine readable format we urge the inquiry to recommend the provision of product data in a similar format to facilitate innovation in product choice tools.

Financial literacy

We agree financial literacy is important but alone insufficient. Gains are slow and measured across multiple generations. Even simple concepts like compound interest are not well understood.

1.3 New tools plus flexibility

[5] http://www.choice.com.au/reviews-and-tests/money/banking/saving-money/finance-comparison-websites.aspx
[6] http://www.asic.gov.au/asic/asic.nsf/byheadline/12-304MR+ASIC+warns+comparison+websites?openDocument

Our overarching view is that **ASIC needs an expanded toolkit** that affords it **greater flexibility to match regulatory tools to the problem**. Disclosure appears to work for simple fees and charges and simple warnings, but it does not work for conflicts nor where complexity is involved, whether it is complex products, complex cost structures or complex concepts such as level of risk. For more complex problems other tools are required to ensure appropriate outcomes and avoid consumer detriment. Financial literacy is useful but takes too long to work.

The fast moving nature of the financial services, the complexity of products, the vulnerability of clients and the compulsory nature of superannuation demands an expansion of the regulatory toolkit.

To date the emphasis has been on regulating the sale or distribution of products.

We have a retail client/sophisticated client distinction; we have a best interests duty for advice.

What's missing is capacity for the regulator to intervene earlier in the value chain and influence products and product features.

It has also become clear over the past decade that advisers are not always aware of the risk involved in some of the products they are selling.[7]

We support a suitability test and broad pre and post-market product intervention powers. These powers would allow the regulator to influence:

- the nature of products offered to retail clients
- the so-called choice environment ie the way in which options are presented to consumers
- the marketing and distribution of products to retail clients.

Product regulation

The consultation options broadly cover the suite of tools that are available to the UK FCA[8] and reflect the sort of options that have increasingly been talked about in international forums eg IOSCO[9] and the EU Parliament.

Post the GFC the UK accepted that controls on distribution were not of themselves sufficient to prevent consumer detriment. As part of a new approach to financial regulation the FCA announced a shift in focus. "*We will now* ***intervene earlier in the product value chain, proactively, to anticipate***

[7] See ASIC's shadow shop of structured products
[8] http://www.fsa.gov.uk/pubs/discussion/dp11_01.pdf
[9] IOSCO consultation report on structured products http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-1.pdf

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***consumer detriment** where possible and stop it before it occurs*."[10] The new UK regulator, the FCA, aims to "*build on ...progress towards a more interventionist and pre-emptive approach to regulating conduct in financial services and markets.*"[11]

None of the tools suggested in the committee's interim report are unfamiliar in Australia. MySuper is a way of controlling the choice environment and involves pre-market product approval (authorisation by APRA). Bans on exit fees and commissions on financial products are ways of controlling features of products. The retail client/professional investor/wholesale client definitions are form of controlling product distribution.

Product interventions can be risk-based and graduated, pre-market or post-market and involve regulatory approval or industry-based certification, either self-certification or by a third party.

In general we support product intervention measures **that require product makers to take responsibility** for the **suitability** of their products both **pre- and post-market**.

Under such a regime for example **ASIC would set standards that would underpin suitability assessment** for products for particular consumer cohorts. **Standards would cover features**, costs/charging regimes, presentation of features **as well the processes to be used by issuers for assessing suitability** of features eg consumer testing for comprehension, expert opinions (what constitutes an expert opinion).

Under such a model issuers would have responsibility for suitability certification with ASIC leading supervisory (see 3.5 below) and surveillance programs.

Post-market product interventions would allow the regulator to require the modification or removal of features, prescribe terminology, the manner of marketing features etc.

At the extreme end post-market intervention powers should enable ASIC to **ban products, at the very least temporarily**. While banning is a last resort tool, **its mere existence would play a useful role**.

Fit for purpose

Questions have been raised whether fit for purpose can be used as a suitability test.

The test is contained in s12ED of the ASIC Act, which is the 'implied warranty' provision.

It appears this provision was not amended when the Australian Consumer Law introduced statutory guarantees in place of implied warranties in 2010.

[10] http://www.fca.org.uk/static/pubs/discussion/dp11_01.pdf para 1.4
[11] http://www.fsa.gov.uk/pubs/discussion/dp11_01.pdf para 1.6

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This provision does not give the regulator any ability to take action, but rather implies a warranty into the individual contract between the consumer and the supplier. In other words, it gives an *individual* consumer (ie the party to the contract) the right to take action against a supplier to enforce their implied rights under the contract (whatever these might be in the financial services context). It doesn't impose any penalties beyond voiding or modifying the contract.

It therefore also does not lend itself to any sort of systemic actions.

Statutory guarantees are quite a different concept to product suitability. While the ACL allows a regulator to act, it is simply to 'stand in the shoes' of the consumer in respect of warranties.

On the broader question of whether a different form of fit for purpose could be used for product intervention, a literature search reveals *Reading Suitability against Fitness-for-purpose*[12] by Professor Gail Pearson of Sydney University[13]. Professor Pearson works across financial services and consumer law.

The paper appears to be saying that suitability goes beyond fitness for purpose and makes a link to whether the product is suitable for a specific individual or a specific cohort of consumers, bearing in my their personal characteristics.

Under fit for purpose if the product does what it says it does ie generate a retirement income it would be fit for that purpose, but suitability goes to whether it is suitable for an individual or cohort of consumers based on their personal characteristics.

Simple safe fair test for retirement products

We support a risk-based approach to standards setting and certification. This would allow to a **more interventionist approach for financial products targeted at retirees**, as opposed to investment products sold outside of super.

There are three reasons for a more interventionist approach for retirement products.

1) Super forces people into investment markets who may not otherwise choose to participate
2) The extreme vulnerability of retirees as a cohort and their complete lack of capacity to recover from financial loss

[12] http://sydney.edu.au/law/slr/slr_32/slr32_2/Pearson.pdf
[13] http://sydney.edu.au/business/staff/gailp

3) To learn from the mistakes of the accumulation phase, in particular the plethora of expensive products with features that consumers neither want, need, use or even know they have.

For products sold to retirees we support a "simple, safe and fair"[14] suitability test.

Simple is in responsive to the learnings of the last 15 years around complexity.

- Consumers cannot understand complex products before or after they buy them.
- Complex product contain features consumers do not need, use or know they own.
- Complex products have exposed consumers to excessive risk.
- The GFC has not abated the flow of complex products.
- Complex products undermine competition because consumers cannot understand them and cannot send appropriate signals to the market

Safe is not to say retirement products should be de-risked – just that some risks are inappropriate for retirees with limited cash flow. We do not consider leverage to be safe and support its ban inside all super and retirement products.

Fair would require product makers to consider the interests of their customers, not just their shareholders in product design and distribution. It would preclude for example products with default offerings that consumers do not need or want.

A **simple, safe and fair test** would allow ASIC to develop guidance and describe the sort of product features that meet this test. This would allow industry to self-certify against the standards with ASIC undertaking both supervisory and surveillance activity.

However to allow innovation this could be supplemented by **pre-market "novel features" assessment framework**, which would allow product markers to submit proposed products and or new features to ASIC for approval for sale as suitable for retirees.

We note that premarket approval is already a feature of the compulsory super system in that MySuper products must be authorised by APRA.

There is a question of which regulator (APRA or ASIC) should be responsible for pre-market assessment of novel features for retirement products, given APRA role in premarket assessment of accumulation products. As a principle **we support a single regulator with pre-market and post market product and conduct** oversight to ensure:

- whole of market visibility,
- to avoid responsibility gaps and
- to ensure high levels of regulatory accountability.

[14] In the UK a simple safe and fair test applies to the distribution of products to retirees see RU64 but we are proposing utilizing the test for product suitability

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Choice environment

Providing flexibility for the regulator to consider the impact of behavioural biases in the way consumers respond to the presentation of particular information is critical. For example pre-checked boxes may not be misleading but we do know they result in consumers buying products they don't want, don't need and often don't even know they own[15].

Ways in which the regulator can control the choice environment include:

- Requiring warnings to consumers
- Requiring products to be bought and sold only by competent advisers and consumers eg this could mean special accreditation for advisers and the need for consumers to demonstrate understanding by way of an online test completed on ASIC's website.
- Through default settings which require pre-market approval eg MySuper
- Requiring information to be provided in an interpretive format eg risk ratings

Distribution of products

Product intervention powers should allow the regulator power to influence strategies for marketing and distribution. In addition to the ability to control the way in which products are presented to consumers[16] the regulator could have powers enabling it to:

- Require that certain products can be sold only via advice channels
- Require that consumers participate in education programs, online assessments prior to purchase
- Restrict sale of certain products or features to sophisticated investors or wholesale clients.

1.4 Prospectuses

We make four comments on prospectuses

[15] UK FCA found 20% of people who had bought ad- on PPI insurance sold via a pre-ticked box didn't know they had.

[16] eg to avoid passive purchase of unwanted products as has occurred in the UK with PPI insurance (the equivalent of our Consumer Credit Insurance)

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1) Consumer's think because a prospectus has been **lodged** with ASIC it has been **approved** by ASIC
2) Prospectuses are very long – frequently well over 100 pages
3) Marketing dominates – glossy brochures, emotive images, simple slogans dominate the front sections.
4) Risk information is often presented in a way that obscures meaning eg at the back of long documents in technical and legal language amidst compliance reports.

The combination of these factors mean consumers can be lulled into a false sense of security about the risks.

Firstly they think ASIC will have found them. Secondly the marketing is usually emotional and comforting (eg celebrity endorsements, pictures of happy families) and thirdly the way in which risks are disclosed can obscure real risks eg through the use of technical and legal language or by long lists of things that appear low impact and or unlikely.

1.5 Self-regulation

Can industry self- regulation play a role in improving consumer outcomes generally?	Self-regulatory codes within the RG183 framework could improve consumer outcomes. In the short term RG183 compliant codes could improve outcomes in respect of: • life insurance commissions, • other conflicts of interest such as asset based fees, • education standards; and • Professional standards.

Codes of practice, complaints and disciplinary schemes are the two main tools of self-regulation and the more mature parts of the financial services industry have a good track record in self-regulatory initiatives.

The Financial Ombudsman began its life as seven sector-specific industry-based disputes scheme, each created by the respective industry associations. Similarly the banking and insurance codes of practice have operated for some time with increasing success.

In the time since Wallis there have been three drivers of successful self-regulatory initiatives.

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1) Governance arrangements that involve equal numbers of consumer and industry representatives with an independent chair
2) Periodic external review (usually every three to five years)
3) Approval of arrangements against agreed standards

Shared governance increases independence and consumer confidence. In practice it has proved highly effective, delivering a strong sense of stakeholder ownership and confidence in the impartiality of the scheme. Strong cultures of co-operation, respect and achievement have characterised these boards and difficult issues have been worked through together in a collegiate and timely fashion.

Periodic external reviews have provided an opportunity for users of the scheme to contribute very directly to its development. They have provided a strong accountability mechanism and ensured schemes continue to develop to meet the needs of their users. They have provided useful strategic guidance to Boards and management.

ASIC has developed regulatory guidance for both industry-based complaint schemes and industry based codes. Both RG 139[17] and RG 183[18] set out standards against which ASIC would asses and approve codes and complaint schemes. Importantly both require shared governance arrangements and periodic reviews.

RG 139 has proved particularly effective, largely because post Wallis financial services providers have been required to belong to an ASIC approved complaint scheme. This means operators of complaint schemes have been required to meet all the RG139 benchmarks.

However RG 183 which sets out guidance for developers of codes of practice has not delivered to the same level. While the content is more or less equal to RG139 no industry body has applied it to the same degree as complaint scheme operators have, probably because compliance is a choice rather than an obligation.

That said the banking code, general insurance, mutuals and insurance broking codes broadly meet its criteria even if they are bit slow with conducting and implementing the results of reviews. The biggest gap has been in the advice space, where no code has sought to meet the standards set out in RG 183, the biggest stumbling block has been the willingness to resource proper administration.

[17] https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-published-13-June-2013.pdf/$file/rg139-published-13-June-2013.pdf

[18] http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg183-published-1-March-2013.pdf/$file/rg183-published-1-March-2013.pdf

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In summary RG 183[19] sets out important standards for effective codes. It builds on years of evidence and experience with self-regulatory codes and was updated as recently as March 2013 as part of the FoFA process.

It sets out criteria for five key features of successful codes:

- Processes used to develop codes (consultation especially of end users)
- The sort of content that should be included (eg not merely restate the law)
- Compliance and enforcement approaches
- Administration (independent, properly resourced)
- Periodic independent review.

RG 183 largely mirrors the ACCC's Guidelines for developing effective voluntary industry codes of conduct even though it predates the ACCC guideline. The ASIC document is clearer and consequently we have found it more useful to apply that the more generic ACCC document. [20]

We agree that self-regulatory initiatives have greater flexibility than the law to respond to emerging problems and this has been amply borne out by the various jurisdictional changes to the complaint schemes, most of which have occurred over 6 – 12 months periods. By comparison regulatory or legislative change can take years.

However in our experience self-regulatory initiatives work best when they sit within a co-regulatory framework such as currently exists with RG 183 (codes) and RG139 (complaint schemes).

They also work best when sponsoring organisations:

- have good coverage of the market and
- apply resources to monitor, publicise and enforce requirements.

Within financial services there are a number of areas where industry codes could help improve consumer outcomes, provided they sat within the RG 183 framework. These include:

- life insurance commissions;
- management of conflicts of interest such as asset-based fees
- entry level, accreditation and continuing professional development standards
- other professional standards.

There is nothing inherent about these areas that lend themselves to improvement through industry codes. Rather we see self-regulatory initiatives as part of the evolution of the industry towards a

[19] ibid
[20] http://www.accc.gov.au/system/files/Guidelines%20for%20developing%20effective%20voluntary%20industry%20codes%20of%20conduct.pdf

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profession. Ownership of standards that meet community expectations is fundamental to professional development.

The involvement of consumer representatives on code administration bodies is critical to the success of such initiatives. Not only does it provide a structural way of ensuring community needs and concerns remain an ongoing part of the dialogue, but 25 years of experience with the industry based dispute schemes have shown their involvement is critical to community confidence in self-regulatory initiatives.

1.6 Specialist financial services regulation

We wish to reiterate a point made in our initial submission.

> The case for specialist financial services regulation is stronger than ever.

Wallis made the case for specialist consumer protection regulation on two grounds – the complexity of products and the likelihood that consumers could misunderstand or be misled; and the high cost of resolving disputes.

The 2008 Productivity Commission *Review of Australia's Consumer Protection Framework* The Productivity Commission made the point that "relatively few areas of significant consumer spending are not subject to industry specific consumer protection regulation" and said that **taking action after the event under the general law may not provide adequate protection where**:

- **the risks and costs of detriment are relatively high, and if the detriment is "significant or irremediable"** or
- **the suitability and quality of services is hard to judge before and even after purchase**. [21]

These characteristics exhibit at the extreme end of the spectrum in financial services[22]

However compulsory super has escalated the risks.

For these reasons we **do not support the return of consumer protection functions in financial services to pre Wallis arrangements** as some have suggested.

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[21] P82

[22] Economic Roundup issue 1 2012 http://treasury.gov.au/PublicationsAndMedia/Publications/2012/Economic-Roundup-Issue-1/Report/Consumer-financial-protection

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2. Financial advice

2.1 Summary response to consultation options

Raise minimum standards for personal advice, including additional standards for complex products, national exam	Extreme diversity of practice exists – advisers who are accountants and actuaries at one end to those who have obtained an RTO qualification in a few months. Part of the process of professionalization must involve higher level entry level standards. A degree, specific learning and national exam must be a minimum. A capstone exam has the benefit of allowing multiple pathways for study but ensures a consistent body of knowledge across the industry. Accreditation for specialised advice eg retirement and complex products is supported as well as ongoing CPD requirements. This is an area where gains could be obtained from a co-regulatory approach. We support an APESB style approach as long as its governance meets the standard in RG 183 and includes consumer representatives in governance.
Enhanced public register of advisers	This initiative is underdevelopment and we support that process
Enhance ASIC's power to ban individuals from managing a financial services business	Supported
Would consumers understand the difference between aligned and independent advisers and to what extent would this be a factor in a consumers' decision making.	There is a crisis of confidence in the advice industry and it stems from conflicted business models. Post FoFa new forms of conflicted remuneration have arisen, such as asset based fees, the balanced scorecard and very low platform licensing fees. Disclosure is not a policy solution to this problem. Disclosure of conflicts has the perverse effect of increasing consumer trust. Disclosure makes this worse!

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	The only way these issues can be resolved is through structural separation of advice from product manufacture. The value of advice will only increase in consumers' eyes when conflicts are removed.
Would consumers be likely to be sensitive to difference in the price of independent or aligned advice?	Aligned advice will continue to fuel a sense that advice is tainted and consumers will be reluctant to pay for it. Subsidisation and other supply side preferential arrangements prevent demand driven pricing. Until conflicts are removed a demand driven market price for advice will remain obscure.
Rename general advice as sales or product information and mandate that the term advice can only be used for personal advice	General advice is much more than sales and product information and includes online comparison sites, analyst reports and various guidance offered by community organisations and government.[23] We do not support the use of the word sales or product these reference the culture the industry is trying to move away from.
Given the limitations of professional indemnity insurance what options exist for addressing the issue of consumer loss?	Create a UK style Financial Compensation Scheme Create a "minimalist" scheme that covers FOS and court awards Direct FOS to amend its terms of reference to allow it to compensate consumers with unpaid determinations. This is the lowest cost option.

2.2 Educations standards

Professionals earn their status through a recognised standard of education and learning. This starts with entry level standards, followed by accreditation for higher learning, followed by lifelong learning.

The current framework sets the bar is too low at all steps of the way – at entry level training and ongoing requirements.

What we have is extreme diversity in practices – people entering the industry with quality finance, economics, business, accounting and/or auctorial university degrees, followed by high quality

[23] Eg Information and guidance provided by the National Information Centre on Retirement Income and ASIC's MoneySmart

training provided by some licensees and short courses offered by RTOs with no prior learning at the other end.

There is a crisis of confidence in the community about financial advice. This is driving an appetite in the industry for reform as recent announcements by the CBA and AMP have shown. Last month the CBA announced[24] new minimum education standards for its financial planners, supervisors and managers of planners.

The new education standards include:

- All new CFP financial planners, direct supervisors or managers must hold a degree in finance, business, commerce or a related field;
- Existing financial planners and their supervisors will be required to hold either an Advanced Diploma in Financial Planning (or equivalent) or a degree in finance, business, commerce or a related field by 30 June 2017;
- Existing Senior Financial Planners will be required to obtain the CERTIFIED FINANCIAL PLANNER® certification with the Financial Planning Association of Australia; and
- CFP commits to making membership of a relevant financial services industry association a minimum standard required of all CFP financial planners by 30 June 2015.

In August AMP announced[25] all existing and new advisers must hold a Certified Financial Planner® (CFP), a Fellow Chartered Financial Practitioner (FChFP), or Masters in Financial Planning (MoFP) qualification with a five year transition timeframe.

These are welcome initiatives and suggest the industry may be capable of managing transition to higher standards with lighter touch regulation. However as discussed at 1.4 above industry self-regulation works best when it sits within a co-regulatory framework.

Our preferred framework is:

a) Entry level standards and a capstone exam

University degree combined with specialised learning assessed via a national capstone exam. This would allow multiple pathways to entry to the industry.

b) Specialist accreditation standards for example for retirement income, complex products (structured products, hybrids etc)

c) Continuing professional development obligations.

[24] CBA media release 18 July 2014
[25] http://media.amp.com.au/phoenix.zhtml?c=219073&p=RssLanding&cat=news&id=1959641

A self-regulatory body along the lines of the Accounting Professional and Ethical Standards Board[26] or a regulatory body along the lines of the Tax Practitioners Board could oversight this process.

However the major flaw in both models is the lack of consumer representation at governance level, as required by ASIC's RG183. If this was required then an APESB like model could work well.

2.3 Alternatives to advice

At present consumers need financial intermediaries to address the huge information asymmetry in financial markets. Asymmetries arise because consumers lack knowledge and skills to deal with the complexities of the industry.

However the system should be designed to minimise the need for advice.

This is particularly true for the compulsory super system which forces people into financial markets.

It is also true at a time when trust and confidence in the professional and ethical standards of the industry are at crisis point. Building trust will require sustained effort over the next decade if not longer, but consumers need help today.

Reduced need for advice could be achieved if:

1) complexity was reduced; and
2) increased guidance was available to consumers.

Both could be achieved through greater use of defaults, especially in super and retirement, which are major generators of advice needs.

A default retirement product would greatly reduce advice needs.

Simpler rules eg removal of the transition to retirement provisions (which largely benefit high income earners) would reduce advice needs.

While it may be appropriate to ban leverage in the super system to reduce systemic risk it would also have the benefit of removing an avenue of inappropriate advice.

Similarly introducing a minimum balance for self-managed super fund would also reduce an avenue for inappropriate advice.

[26] http://www.apesb.org.au/

Another way of reducing the need for advice is to reorient financial literacy programs towards greater **guidance** to consumer. To date financial literacy has been heavily focused on giving consumers information. However gains are slow and small.

We suggest financial literacy programs could be enhanced by focusing on interpretative information that guides consumers. Rather than simply explaining the options providing information that guides choice. This could include interpretative information by way of apps and other digital tools eg MoneySmart could use APRA fees and performance data to build a superannuation comparison tool that allowed people to compare their fund to the top five performers (and preferably switch on the spot). While a number of tools exist none have a smooth consumer interface and most were designed for B2B purposes.

The ASIC MoneySmart website would be an ideal place to trial greater guidance in financial literacy programs.

2.4 Conflicts

There is a crisis of confidence in the advice industry. Its cause: conflicted remuneration models which have tainted advice and seen consumers lose their life savings.

Asset fees

FoFA did not remove all forms of conflicted remuneration and new forms of conflicted remuneration have replaced older models.

The dominant form of remuneration post FoFA is asset based fees or percentage fees.

Asset based fees incentivise advice towards assets from which a fee can be deducted. They work against the provision of strategic advice.

Percentage fees obscure the full cost of advice. They result in consumers paying too much and they erode savings as costs escalate over time.

Percentage based so called "fees" will stand in the way of professionalism because they are effectively commissions by another name.

While ever asset based charges are the dominant form of charging the reputation of the whole industry will suffer and confidence will remain low.

Aligned advice and cost

Alignments between advice and product makers create conflicts inconsistent with professional advice giving. Post FoFa new forms of conflicted remuneration have arisen, such as the balanced scorecard and very low platform licensing fees.

Banks have been subsidising advice for a very long time. Effectively general bank customers have been subsiding advice, which is predominantly sought by those with higher net worth.

Post FoFa new forms of subsidisation have emerged including very low licensing fees for platform access.

Any form of subsidisation by product makers of advice is conflicted remuneration.

It occurs for one reason. Product makers find it a profitable way to sell their products. Banks are willing to subsidise advice because it is a good way of selling their products.

While ever the banks, with 80% market share, subsidise advice conflicted remuneration models remain.

However the operation a white label platform or other preferred arrangements between advisers and product makers also create conflicts.

Disclosure is not a policy solution to this problem. Disclosure of conflicts has the perverse effect of increasing consumer trust[27]. Disclosure makes this worse! Therefore disclosure is not an appropriate tool for managing conflicts.

The only way these issues can be resolved is through structural separation of advice from product manufacture.

One argument we have heard against structural separation concerns compensation for loss. It is argued that consumer losses from bad advice will escalate if there are no deep pockets at the end of the day to pay consumers.

This is not an argument against structural separation; rather it underscores the need for the industry to develop a last resort compensation scheme.

Professionals look after their clients from the beginning of the relationship to the end. Hence professions such as doctors and lawyers have developed various last resort funds to enable professionals to fulfil promises to customers when things go wrong.

The Financial Claims Scheme cover losses of banks and insurers, Part 23 of the SIS Act covers superannuation losses but consumers of investments and advice are on their own.

If the advice industry wants to become a profession it must stand on its own feet and look after its customers. We accept this is structural adjustment and those who can't demonstrate value to clients may fail and leave the industry, but these are not reasons against reform. Integrity of the

[27] The dirt on coming clean: The Perverse effects of Disclosing Conflicts of Interest http://www.cmu.edu/dietrich/sds/docs/loewenstein/dirtclean.pdf

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system, consumer trust and confidence require both structural separation and a last resort compensation scheme.

At 2.7 below we outline options given the limitations of PII but our preferred option is a last resort compensation scheme along the lines of the UK Financial Services Compensation Scheme[28]. This pays claims against financial services licensees when the firms are unable to. It does not cover market risk, rather it covers claims arising from breach of the law or other obligations on licensees. It alsohas a funding formula that ensures both advisers and product makers contribute to the scheme in recognition that a major cause of advice failure stems from product failure.

Aligned advice and cost

The question of price sensitivity depends on the value of advice. Consumers pay high fees for a range of professional services (doctors, lawyers, accountants) but they will not pay for conflicted advice. The value of advice will only increase in consumers' eyes when conflicts are removed.

While advice is perceived to be conflicted in any way consumers will not be willing to pay for it. Aligned advice will continue to fuel a sense that advice is tainted and consumers will be reluctant to pay for it.

Subsidisation and other supply side preferential arrangements prevent demand driven pricing. Until they go a demand driven market price for advice will remain obscure.

2.5 General advice

We do not agree with the proposal to rename general advice as "sales" or "product information" for three reasons.

1) The term general advice is wider than sales and products. It covers information about financial strategies, comparison sites and other generic information sites such as the MoneySmart website.
2) It would re-legitimise the "sales" culture the industry is trying to leave behind.
3) General advice regulation appropriately recognises the risks faced by consumers from misselling financial products.

Therefore we support continued regulation of general advice.

Consumers do not differentiate advice types in the way the industry does. Labelling around adviser qualifications is more important for consumers that attempting to popularise regulatory terminology.

[28] http://www.fscs.org.uk/

This issue was reviewed as recently as December 2012 as part of the FoFA processes. RG 244 was updated but it's rationale - to improve ensure access to quality advice and reduce the high risks of misselling – remain as relevant as ever.

2.6 Property advice

We have had a long standing concern that property investment advice falls outside regulated conduct. Post the GFC it is on the rise again and post FoFA the spruikers are targeting self-managed super. They are also targeting unsophisticated consumers and encouraging gearing strategies to buy property inside self-managed super. ASIC has issued a number of warnings over the past few years and ramped these up considerably post FoFA.

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asic property spruikers

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Corporate regulator **ASIC** warns that **property spruikers** ...
www.abc.net.au/news/2013-09-23/...**property-spruikers**.../4974442
by Peter Ryan - Sep 23, 2013 - The recent steady rise in property prices has heralded the return of the property ... Photo: **ASIC** says it plans to act quickly on **property spruikers**.

SMSF **property spruikers** receive **ASIC** warning
www.propertyobserver.com.au/.../**property**.../29004-smsf-**property-sprui**...
Feb 23, 2014 - **Property spruikers** have been warned they must be licensed to offer financial advice if they are targeting people with self-managed ...

SMSF **property spruikers** receive **ASIC** warning
www.smartcompany.com.au/.../35735-smsf-**property-spruikers**-receive-a...
Feb 24, 2014 - **Property spruikers** have been warned they must be licensed to offer financial advice if they are targeting people with self-managed ...

ASIC to take on SMSF **property spruikers**
www.smh.com.au › Money › Planning
Apr 18, 2013 - The corporate watchdog is taking on online **property spruikers** who target people running self-managed superannuation funds. A report ...

ASIC crackdown on unlicensed **property spruikers** in the...
www.moneymanagement.com.au › ... › Property
Nov 7, 2013 - The Australian Securities and Investments Commission (**ASIC**) has signalled a crackdown on unlicensed **property spruikers** who advocate ...

ASIC renews warning to **property spruikers** | Money ...
www.moneymanagement.com.au › News › Superannuation › 2014
Feb 21, 2014 - The Australian Securities and Investments Commission (**ASIC**) has again warned **property spruikers** not to seek to take advantage of the ...

ASIC must deter SMSF **property spruikers** | SMSF Esse...
www.smsfessentials.com.au/news/.../**asic**-must-deter-smsf-**property-sprui**...
Nov 4, 2013 - There is clearly regulatory concern about the activities of **property spruikers** as they seek to target SMSFs and, as Mike Taylor writes, a clear ...

ASIC reinforces problem of **property spruikers** in SMSFs
www.smsfessentials.com.au/.../**asic**-peter-kell-**property-spruikers**-proble...
Apr 11, 2013 - The Australian Securities and Investments Commission (**ASIC**) has identified real **property spruikers** as problem area for self-managed ...

SMSF Roundup – **ASIC** warning to **property spruikers** ...

A way needs to be found to deal with this long standing problem. Licensing is required for provision of "financial service". Financial services involve financial product advice, dealing in a financial product or any conduct prescribed in the regulations. [29]

We urge the inquiry to find a way to bring property investment advice within the scope of regulated conduct.

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[29] See RG 36 Licensing: financial product advice and dealing http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg36-published-20-August-2013.pdf/$file/rg36-published-20-August-2013.pdf

2.7 Compensation for loss

Given the limitations of professional indemnity insurance what options exist for addressing the issue of consumer loss?	Create a UK style Financial Compensation Scheme Create a "minimalist" scheme that covers FOS and court awards. Direct FOS to amend its terms of reference to allow it to compensate consumers with unpaid determinations. This is the lowest cost option.

We are not convinced that the solutions suggested in the St John report will sufficiently address the problem. While many of the measures do represent improvements and could potentially reduce losses, they do nothing to compensate losses where they occur.

There are three possible options for compensating consumers given the limitations of professional indemnity insurance.

a) Create a last resort compensation scheme modelled on the UK Financial Services Compensation Scheme[30]. This scheme pays claims against financial services licensees when the firms are unable to. It does not cover market risk, rather it covers claims arising from breach of the law or other obligations on licensees.
b) Create a scheme that did the minimum necessary to ensure EDR scheme and court awards are paid. To contain costs we would support a model that capped claims.
c) Require FOS and other ASIC approved complaints schemes to amend their terms of reference so that they can compensate consumers where determinations are unpaid.

FOS already has the infrastructure in place to manage a limited internal compensation scheme. It has appropriate governance arrangements via stakeholder board, it currently manages multi-million dollar reserves and importantly it has the power to levy its members.

Given that the dollar amounts are relatively low $8.3million since 1 January 2010 or an average of $2 - $3m a year it would be possible for FOS to operate a limited compensation scheme within its current resources to ensure its determinations are honoured.

[30] http://www.fscs.org.uk/

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At June 30 2011 FOS was holding nearly $13 million in net assets[31].

At June 30 2013 FOS was holding nearly $17 million in net assets.[32]

FOS has the capacity to raise additional funds by levy on its members.

FOS had the capacity to pay all outstanding unpaid determinations over the last four years from its funds in reserve. It is likely this could have been done without use of its levy powers. [33]

This is a simple low cost solution that would not require additional infrastructure.

Using accumulated reserves to pay claims is a way of ensuring contribution by those who cause the claims, rather than passing the full cost on members with higher standards.

3. Regulatory arrangements

3.1 Summary response to consultation options

Move ASIC and APRA to a more autonomous budget and funding process	We support industry funding of regulators in principle. This is consistent with the principle that those who create the risk pay for it. If industry funding of ASIC is introduced ways must be found to assist consumer groups participate in cost recovery processes. One approach could be to provide specific funding to ASIC's consumer advisory panel to enable it to conduct research and draft submissions and participate in cost recovery reviews on behalf of the community.
Conduct periodic legislated independent reviews of the performance and capability of the regulators	Our experience in other areas suggests that periodic external review can be a powerful force for continual improvement. We urge caution on timeframes for external review and audits. If too frequent they can become a major organisational distraction. Too many resources get dedicated

[31] file:///C:/Users/Jenni%20Mac/Downloads/agm-2011-financial-report-2011-finalpdf.pdf

[32] file:///C:/Users/Jenni%20Mac/Downloads/agm-2013-financial-report.pdf

[33]

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	to reviews rather than core business. Whole of agency external reviews should be no more often than every five years. Targeted focused reviews could be held more frequently, every three years. ASIC's Consumer Advisory Panel should be resourced to participate in such reviews on behalf of consumer groups
Strengthen competition considerations through mechanisms other than amending regulators' mandate.	We support an objective to promote competition for ASIC.
Refine the scope and breath of ASIC's manadate	We do not support any of the suggestions in the interim report at 3 -124 for splitting out functions, with the exception of the registry functions, which has already been decided.
Review the penalty regimes in the Corporations Act	We support a review of the penalty regime in the Corporations Act.
Is the current enforcement regime adequate? Does ASIC have adequate powers?	Supervisory capacity would allow it to work alongside licensees and help ensure suitable products come to market. Greater supervisory capacity would increase confidence in the regulatory regime.

3.2 Independent regulators

Funding

We support for industry funding of regulators in principle. This is consistent with the principle that those who create the risk pay for it.

We are not sure that industry funding of itself it would increase independence nor create high degree of funding certainty from year to year.

In other areas we have experienced lengthy delays in obtaining Ministerial approval for increases in cost recovery arrangements where industry funds the regulator. For example the agvet chemical regulator experienced a six year period where neither levy or fee income was increased, nor CPI adjusted due to lobbying by the industry association and politicisation of the cost recovery

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implementation statement process required under Department of Finance rules for cost recovery agencies[34].

Forms of regulatory capture can be an issue in other areas where the regulated community pays for regulation via cost recovery arrangements. While this may be less of an issue with a large regulator such as ASIC, there can be no doubt that industry groups tend to feel they have more authority to tell a regulator what to do when it directly pays for regulation. Experience in other sectors[35] is that the CRIS process provides an opportunity for greater politicisation of the funding process in that Minister's become the appeal mechanism when industry does not like the results of the CRIS process.

If industry funding of ASIC is introduced ways must be found to assist consumer groups participate in cost recovery processes. Industry bodies typically apply huge amounts of resources to these tasks. Consumers on the other hand if they participate in these processes do so on a minimalist basis.

One approach would be to provide specific funding to ASIC's consumer advisory panel to enable it to conduct research and draft submissions and participate in cost recovery reviews on behalf of the wider community.

Accountability

The interim report argues that giving regulators additional power to intervene in the design of financial products creates risks which warrant additional accountability requirements. We have no objection to this in principle. If this path is pursued clarifying metrics for assessing performance could be useful despite the inherent difficulties.

Our experience in other areas[36] suggests that periodic external review can be a powerful force for continual improvement. However as with cost recovery processes industry is well resourced to participate in these processes. To enable any review to be informed about consumer perspectives we support resourcing for consumer representatives to participate in these processes.

ASICs Consumer Advisory Panel should be given a specific mandate to enable it to participate in CRIS processes on behalf of consumer groups. It should be resourced to perform this function.

We urge caution on timeframes for external review and audits. If too frequent they can become a major organisational distraction. Too many resources get dedicated to reviews rather than core business.

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[34] http://www.finance.gov.au/resource-management/cost-recover/implementation-statement-template/

[35] Ag vet and food

[36] Particularly the industry based complaint schemes have evolved significantly as a result of the ASIC required periodic reviews.

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Whole of agency external reviews should be no more often than every five years. Targeted focused reviews could be held more frequently, every three years.

3.3 A competition objective for ASIC

While the Inquiry has sought advice on alternative ways strengthen competition considerations other than through amending regulators' mandates we support **an objective to promote competition** for ASIC.

This is not to widen the scope of ASIC's regulatory ambit rather to ensure that in **its regulatory approach it is empowered to consider impacts on competition of particular market practices or regulatory interventions**. In particular we support a competition objective that would allow ASIC to ensure that:

- firms compete on quality and value rather than exploiting consumers behavioural biases
- consumers are able to choose products that meet their needs and are cost effective
- barriers to switching are low.

As we noted in our first submission: in the time since Wallis it has become clear that the deliberate incorporation of an understanding of consumer biases into financial services products and services is distorting competition and producing outcomes that are in the interests of the industry rather than end users of the system.

We therefore think giving ASIC a specific competition objective would be a significant way of dealing with this problem.

The report notes the UK FCA is the only other comparable regulator with a specific competition mandate. This Inquiry will deliver regulatory settings for Australia for the next 15 if not 20 years. Therefore it must be forwarding looking. The change to the FCA's mandate was recent and reflects finding of behavioural research. It allows a more flexible approach to disclosure. For example its competition objective allows the FCA to look at how information is framed to enhance (or impede) competition, barriers to switching, whether competition is facilitating access to services including by disadvantaged consumers and encouraging innovation.

We note the clarity of the FCA objectives and their specific consumer protection objective and note that the text of ASIC's objectives could be sharpened to provide greater clarity and focus of purpose. THE FCA objectives are worthy of replication here.

- To secure an appropriate degree of protection for consumers.
- To protect and enhance the integrity of the UK financial system.
- To promote effective competition in the interests of consumers.

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3.4 ASIC's mandate

Over the years since the Wallis inquiry, ASIC has developed and enhanced itself as a regulator. Overall we think ASIC is an effective regulator, but its effectiveness has been constrained by the legal and policy framework in which it has operated.

As a general principle we support larger regulators with cradle to grave and whole of market visibility. Smaller agencies are more subject to capture and suffer inherent inefficiencies.

We do not support any of the suggestions in the interim report at page 3 -124 for splitting out functions, with the exception of the registry functions, which Government has already commenced.

We definitely do not support returning consumer protection in financial services to the ACCC. The reasons it was moved to ASIC post the Wallis inquiry stand today as set out at 1.6 above.

We can see no reason to establish a new consumer protection and conduct regulator. Rather we think it preferable to enhance ASICs effectiveness through:

- Giving it a specific competition mandate
- Activating its capacity it facilitate self-regulatory approaches
- Expanding its toolkit
- Providing it with greater autonomy over its budget

3.5Enforcement and penalty regime

As noted above ASIC needs greater flexibility in its ways of operating. While ASIC currently conducts surveillance activities it does not conduct the sort of supervision that would be desirable with a capacity to intervene earlier in the value chain, before consumer detriment has occurred.. Supervisory capacity would allow it to work alongside licensees and help ensure suitable products come to market. Greater supervisory capacity would increase confidence in the regulatory regime.

We support a review of the penalty regime in the Corporations Act.

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4. Retirement incomes

We agree with the observation that the retirement phase of superannuation is underdeveloped and does not meet the risk management needs of many retirees.

Our preferred approach to the problem involves:

1) The development of a policy framework and strategy for the retirement phase that changes the mindset of super away from wealth accumulation and lump sums, and towards income streams.

2) Requires super funds and pension products to provide retirement income projections on member statements twice a year. To enable this government would need to develop an agreed method of generating income projections, including the development of a central calculator for use by industry. This could also be available to consumers through the MoneySmart website.

3) Developing features and standards of a retirement income **default product**.

4) At this stage we do not support compulsion to take any particular product in retirement but we support the further develop options and incentives for consumers to manage their retirement income needs, market, inflation and longevity risk including via:
- annuity and pension products; and
- acceptable incentives and products to facilitate a greater contribution of the wealth in the family home to retirement income

5) Strong consumer protections consistent with the vulnerability of retirees as a cohort including a simple, safe and fair suitability test for retirement products with a pre-marekt "novel" features assessment to facilitate innovation

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4.1 Summary response to consultation options

Maintain status quo with improved financial advice and removal of product impediments	While better advice and removal of product impediments are an important part of a strategy to ensure that compulsory super meets community needs in the retirement phase, other measures are required.
Policy incentives to purchase products that manage longevity and other risks	We support the development of an overarching framework for the retirement phase that is oriented towards an income stream.

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	Policy incentives should support this. We support strong consumer protection for the retirement phase of super given the vulnerability of the cohort. This includes a simple, safe and fair suitability test for retirement products.
Default option	Govt should lead development of standards for a retirement default. APRA to pre-market authorise offering against the standards. Primary objective of the default is to generate an income stream and manage market and inflation risk. Our preferred approach is that MySuper is extended into retirement to provide a seamless uninterrupted path for consumers. We do not support inclusion of an annuity or part-annuity in the default until consumers can afford it (we note compulsory super only achieved 9% in 2002)
Mandate particular products for all or part of retirement	We do not support compulsion because consumers have very different needs and outlooks in retirement, compared to earlier in life where as a group they are more homogenous. We are wary of mandating annuities that would for example result in those who are sick and die relatively young subsidising those who live long lives. We do however support policy settings and incentives that facilitate the development of annuities that are attractive to consumers. We also support consideration of way consumers can manage risk in retirement through wealth in the family home.

4.2 Policy framework for retirement phase

We agree that the retirement phase is underdeveloped. Consumers are largely left to their own devices, and exposed to risk beyond their capacity to bear, at a time when they are by definition vulnerable consumers, with no chance to recover flosses.

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The lack of development provides an opportunity for the Inquiry to have a real impact on the design of the retirement phase **with the benefit of learnings from the accumulation phase**.

The first step is to set an objective for the system and then design it to deliver on that objective.

The **objective of the super system must acknowledge** the **needs of** both **individuals** and the **wider community**.

The objective of the system should be to: **provide an adequate retirement income for individuals, in a way that is both fair and sustainable**.

a) Individuals need a system that provides:

- Adequate income in retirement
- Ways to manage risks - longevity, market and inflation risk (advice and to a more limited extent fraud risk)
- Flexibility to meet their different needs
- Acceptable to them
- Capacity to overcome their behavioural biases
- Appropriate protection for a system built on compulsion

b) The wider community needs a system that meets individual needs in a way that is fair and sustainable. This suggests:

- Tax concessions should be **limited to an agreed standard retirement income**. We suggest the ASFA "comfortable" retirement[37] as the upper limit.
- the concessionally taxed super system should have **limited uses in estate planning**. It is legitimate for super to sustain a surviving spouse to a comfortable standard. Residual funds should also be available to support dependent children to an agreed extent. Beyond these two purposes concessionally taxed super should not be available for general estate planning.
- consideration of **acceptable ways to generate income from the family home to meet people's** retirement needs. In this regard we note the initial reverse mortgage market was a consumer minefield with high fees, negative equity and possible eviction for minor contract breaches. The market slumped during the GFC but appears to re-emerging. The *Credit Act* provides considerably more protection. This is an area where a suitability test could significantly enhance consumer welfare.
- reframing the narrative of super away from wealth accumulation and lump sums towards the delivery of a retirement income.

Design of the retirement framework should also acknowledge:

[37] Using the ASFA standard available at http://www.superannuation.asn.au/ExternalFiles/rs/ASFA_RetirementStandard.html

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- the relative immaturity of the system; and
- that its evolution will be iterative.

The super system has not been in place for long enough to enable baby boomers to fund the totality of their retirement. Most will continue to remain dependent at least in part on the age pension for some – but not all - of their retirement years.

Baby boomers have grown up with the expectation that the pension will be there if they need it. The youngest baby boomers were around 30 when the compulsory super system started with 3% of their salary going towards super. The vast majority will not have accrued enough to support their retirement, and in particular will not have enough to meaningfully manage longevity risk.

They have grown up in an era where the expectation is that the age pension will be available if they need it.

The current narrative of super also involves the **concept of foregone wages**. This entrenches the view that super money belongs to an individual and therefore they have the right to determine what can be done with it.

Just as we need to reposition the lump sum and wealth accumulation narratives as retirement income we need to shift away from "foregone wages" narrative.

As part of this it may be useful to find ways to acknowledge the community contribution (ie tax concessions) towards individuals' retirement income.

It may be that super fund statements could in some way identify the value of the tax concessions to individuals.

However the most important first step is to begin the process of shifting the orientation of super towards retirement income. While the retirement system should be anchored in a default product it should not be mandatory. Rather it should be supported by tax and other incentives that direct consumers towards income stream products.

Elements of the framework are described in more detail below.

4.3 Default offering

The retirement phase architecture should be anchored by a **simple standardised income stream default.**

Why a default is is necessary?

a) **The current system exposes consumers to too much risk**. Consumers effectively bear all the market and inflation risk. Many bear longevity risk (though the age pension currently provides free longevity insurance). Consumers also bear advice risk and the last decade has exposed that the size and impact of that risk.

b) The **super system is built on insights from behavioural economics** – in its use of compulsion, defaults, opt-out settings and commissions ban **– but at the critical juncture** – at arguably their most vulnerable time **consumers are left to their own devices**. It doesn't matter who you are if the first time you have responsibility for managing a large amount of money is at retirement you are by definition a vulnerable consumer, and you have no chance to recover if you get it wrong.

c) **Not all Australians have the skill or desire to spend their retirement years managing a superannuation portfolio**.

d) **The system should not force consumers to obtain financial advice** given the costs and well documented shortcomings of the industry

e) **Consumers behavioural biases mean they will often make sub-optimal decisions**

f) **To set the standard for the retirement phase and reframe the narrative** - A key way of shifting the super narrative from lump sums/wealth to retirement income would be for the **Government to lead the process of developing of an agreed a default product** that delivers a sustainable income stream

g) Given the **compulsory nature of the super system** the Government has an obligation to create a standardised default option to both set the standard expectation for retirement but also to guide and support those who need it

The **default would set the standard expectation** for the retirement phase.

On one view the current default is to take a lump sum. Funds also report high numbers of consumers do nothing ie balances sit in accumulation and tax penalties accrue. [38]

What should the default look like?

We prefer a flexible account based pension with minimum draw down requirements.

We support flexibility to opt out of the default at any time.

The default should address market risk and inflation risk.

We **do not support inclusion of an annuity or part annuity** because **the community is not ready to accept it and most cannot afford it at this point of evolution of the system**.

[38] Personal discussions with super fund executives

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We do see management of longevity risk through the default as a long term goal but this will not be affordable until we get further distance from the start of 9% compulsory super. Indeed we think **its inclusion would have the perverse effect of driving people out of the default offering.**

Consumers (in both My Super and choice products) could be moved to the default at **appropriate triggers** around retirement or pension age.

Our preferred approach would be that MySuper is extended into retirement.

This would help entrench the view that super exists to deliver a retirement income.

Who should develop the default?

Government should lead the process of developing standards for a default product. Funds can then develop products that meet those standards. All default products should require pre-market authorisation by APRA as currently occurs with the accumulation default MySuper.

4.4 Income stream projections on statements

Another key way in which the narrative of super can be changed is through income stream projections on super statements **– in both accumulation and pension phases**.

The interim report refers to a "lump sum" culture. Whether described that way or as a "wealth accumulation" culture it is true that the prevailing view of super needs to be re-oriented towards an income stream in retirement.

While the lump sum culture may have its genesis in tax incentives, and the wealth accumulation mindset may derive from the way the industry has marketed super, stakeholders collectively must work together to reorient the narrative of super.

One simple but effective measure would be to require **retirement income projection on all statements.** The US Department of Labour has worked on such a concept. Details can be found http://www.dol.gov/ebsa/newsroom/fsanprm.html. The Department has standardised methodology for calculations and developed a very simple but effective calculator http://www.askebsa.dol.gov/lia/home

To achieve this **government** should **standardise the way of calculating income protections** and develop a publically available central calculator for industry and consumers to use.

In addition super statements could direct consumers to ASICs MoneySmart website where engaged consumers could play with the calculator and explore the impact of additional contribution on their retirement income.

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- Information Letters
- Interpretive Bulletins
- EO 12866 Guidance

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- Apprenticeship Plans
- Correction Programs
- Fiduciary Education
- For Health Plans
- For Retirement Plans
- For Small Employers
- Reporting and Filing
- 403(b) Plans
- Webcasts

Lifetime Income Calculator

*All fields are required

Retirement Age 68

Current Account Balance $ 500,000

Current Annual Contribution $ 35,000

Years to Retirement 4

Statement Date (MM/DD/YYYY) 06/30/2014

Calculate Clear View Instructions

Calculation Results

			Lifetime Income/Month with Joint & Survivor Annuity	
	Value at Retirement Age	Lifetime Income/Month for Participant With No Survivor Benefit	Participant	Spouse with 50%
Current Account Balance	$500,000	$2,235	$2,075	$1,038
Projected Account Balance	$773,691	$3,458	$3,211	$1,606

All of the results shown are estimates, not guarantees, of the level of the account balance or of the lifetime income streams of payments. The Department does not monitor or save data you enter online, and you cannot save calculations online. You may save your results by printing a copy or copying/pasting a copy into a text document on your computer before terminating your session.

4.5 Caution on compulsion

We are wary of compulsion because consumers have very different needs and outlooks in retirement. They are less homogenous in retirement than earlier in life.

We are wary of mandating annuities that would, for example, result in those who are in poor health and die relatively young subsidising those who live long healthy lives. The community is not ready to accept this outcome from the super system, even though it may be in its best interests over time.

We do however support policy settings and incentives that facilitate the development of risk pooling products to manage longevity risk that are attractive to consumers.

We also support consideration of ways consumers can manage risk in retirement through wealth in their home, through incentives to downsize or access to appropriate equity release type products. We note first generation equity release products were not helpful[39].

4.6 Consumer protection

We support a **more interventionist approach for financial products targeted at retirees**, as opposed to investment products sold outside of super.

There are four reasons for a more interventionist approach for retirement products.

1) Super forces people into investment markets who may not otherwise choose to participate
2) The extreme vulnerability of retirees as a cohort
3) Their complete lack of capacity to recover from financial loss
4) To avoid the mistakes of the accumulation phase, in particular the plethora of expensive products with features that consumers neither want, need, use or even know they have.

We support the Inquiry articulating a suitability test for retirement products and suggest "simple, safe and fair"[40].

Simple is in responsive to the learnings of the last 15 years around complexity.

- Consumers cannot understand complex products before or after they buy them.
- Complex product containing features consumers do not need, use or know they own.
- Complex products have exposed consumers to excessive risk.
- The GFC has not abated the flow of complex products.
- Complex products undermine competition because consumers cannot understand them and cannot send appropriate signals to the market

Safe is not to say retirement products should be de-risked – just that some risks are inappropriate for retirees with limited cash flow. We do not consider leverage to be safe and support its ban inside all super products.

Fair would require product makers to ensure products were in the interests of their customers rather than their own business model eg no hidden default features that resulted in consumers paying for features they didn't want, need or know they had.

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[39] https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Equity_release_report.pdf/$file/Equity_release_report.pdf

[40] In the UK a simple safe and fair test applies to the distribution of products to retirees see RU64 but we are proposing utilizing the test for product suitability

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A **simple, safe and fair test** would allow ASIC to set develop guidance and describes the sort of product features that meet this test. This would allow industry to self-certify against the standards with ASIC undertaking both supervisory and surveillance activity.

However **to allow innovation** this could be supplemented by **pre-market "novel features"** assessment **framework**, which would allow product markers to submit proposed products and or new features to ASIC for approval for sale as suitable for retirees.

We note that premarket approval is already a feature of the compulsory super system in that MySuper products must be authorised by APRA.

There is a question of which regulator (APRA or ASIC) should be responsible for pre-market assessment of novel features for retirement products, given APRA role in premarket assessment of accumulation products and ASIC's current role in oversight of investment product.

As a principle **we support a single regulator with pre-market and post market product and conduct** oversight to ensure:

- whole of market visibility,
- to avoid responsibility gaps and
- to ensure high levels of regulatory accountability.

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5. Superannuation

We agree with the three core observations the Inquiry has made.

1) There is little evidence of strong fee-based competition in super
2) Leverage inside super funds may create vulnerabilities for the system and is inconsistent with the concessional taxed arrangements and objectives of the compulsory super system.
3) The policy framework lacks stability which is eroding confidence and trust in the system.

5.1 Summary response to consultation options

No change, review My Super in due course	Bring forward MySuper transition rules by one year. Review MySuper every 3 – 5 years to maintain ongoing pressure on fees and performance
Consider additional measures beyond My Super including auctions for default fund status	Govt to lead a process to develop a comparison measure for super funds that includes fees and performance Govt to facilitate development of a digital comparison and switching solution for super products (may require relief from switching rules)
Replace the portability rules	No Changes to portability rules could undermine confidence, increase switching friction in the system, and provide another reason for high balance members to opt out of regulated funds
Restore the general prohibition on leverage on a prospective basis	Yes – to minimise systemic risk. Also leverage involves levels of risk inconsistent with retirement savings. It is primarily used by the SMSF sector, driven by advice to unsophisticated consumers.
Should the Inquiry be concerned about the high costs of many SMSFs Should there be limitations on the establishment of SMSFs?	Yes There is evidence that unsophisticated consumers are being advised into SMSFs and that advice is more in the interests of advisers who obtain fees than consumers. A minimum balance of between $300K and $500K should be set as a default to guide consumers.

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Stability of policy	The system is immature and ongoing change is required. There is a need to develop a bi-partisan orderly and inclusive policy making process for super. Consumers lack of voice. Support should be provided for a consumer led research and policy entity. This could be via specific listing of the Superannuation Consumers Centre in the Tax Act as a deductible gift recipient, allocation of a portion of the SIS levy towards funding the Centre, government seed funding for the Centre.

5.2 Fees and competition

Debate around fees is complicated by the lack of good data, particularly data that combines to compares fees together with performance.

However it is clear the demand side is not driving fee based competition, rather funds appear to be competing on features that consumers do not appear to need, use or in some instances even know they have.

One intervention to address the lack of demand driven competition has been MySuper and its mandatory dashboard disclosure.

While it is too early to tell if My Super will continue to exert downward pressure on fees it will not assist in the choice environment, where there is no choice dashboard, as yet.

We suggest three ways in which government could facilitate greater competition.

1) Use MySuper **standards** to continue to drive down fees
2) lead a process to develop a simple way of comparing super funds based on both costs and performance.
3) Find ways to take advantage of the switching opportunity that occurs each time people change jobs. For example Government could develop an app that allows consumers to compare a number of funds or simply provides names of the top five funds. A switching facility could be built into the app. If Government sponsored the app, switching rules could be relaxed.

An emerging fee issue

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Asset based fees bear no relationship to work performed and favour advisers interests over consumers interests. They also take advantage of consumer behavioural biases in that without decisive action by consumers they can go on indefinitely. They are arguably unfair in that they rely on consumer inertia.

We are aware that funds – both industry and retail - are increasingly allowing consumers to pay for advice out of their super balances. We have heard of large advice costs being paid in this way, for both initial and ongoing services.

While we have concerns about any unchecked use of super for advice purposes we are particularly concerned that ongoing asset based fees are levied in this way.

This appears to be a post FoFA trend and we are not sure of its extent. At the very least it should be monitored.

Competition and default funds

We agree that it is too early to assess the impact of MySuper and Superstream on fees.

One easy way of bringing forward analysis of the impact of MySuper on fees would be to **bring forward the transition date for existing fund members to MySuper**. At present the date is 1 July 2017, which is by any measure an extraordinarily long transition time. Under prudential standard 410 RSE funds must have devised plans and strategies for moving default members to an approved MySuper fund by 31 March 2013 and update those plans quarterly.[41] We do not understand why it could take 4 years to action what would appear to be a relatively simple transition.

It is unclear whether over the longer run MySuper alone will continue to sustain lower fees.

Government can exert ongoing pressure in the MySuper market through regular review of MySuper and the standards that support APRA authorisation. We suggest rolling 3 – 5 years review of MySuper offerings.

Default fund auctions

If the default fund auction idea is pursued any "winning features" must be sustained over the longer term eg for at least a decade if not 15 years. System design would need to prevent existing funds using the default system as a part of a wider bait marketing strategy that ultimately resulted in price increases, product redesign or upselling strategies.

[41] Prudential standard 410 sets out the timeframe and processes http://www.apra.gov.au/Super/PrudentialFramework/Documents/Draft-Prudential-Standard-SPS-410-MySuper-Transition-(May-2012).pdf

We note in Chile the winning funds have been new market entrants. We would be concerned if existing providers created new entities as part of a loss leader strategy to gain members.

One of the great strengths of the financial services sector is it innovation but it is also a weakness and no element of a compulsory system should allow "creativity" that benefits the industry rather than consumers in the short or longer term.

Portability and investment switching timeframes

We caution about legislating longer portability and investment switching periods. Superfunds are in receipt of constant inflows. We are not clear a liquidity problem exists, certainly one that cannot be managed by use of APRA's emergency powers. We are concerned that changes to these rules could further drive higher balance consumers to self-managed super and decrease confidence in APRA regulated funds.

At a practical level consumers already experience consideration friction in portability. This largely derives from the efforts to ascertain identity.

Consumers tell us their signatures are frequently rejected. This has particularly affected young consumers, whose handwriting changes enormously from 17 or 18 to 25 years, as well as older consumers who signatures may have been held on file for ten years or more.

In addition certified identification is required.

While it is appropriate that funds exercise caution when consumers are transferring their funds, in practice it means that funds often have more than three days notice of withdrawals.

In addition movement between funds could be a driver of competition between funds. While that is not occurring at present, technology driven initiatives that will increase price transparency and ease of switching is likely increase over the longer term.

Investment switching

Intra-fund investment switching in our experience is primarily utilised by older fund members – particularly those in what we call the retirement risk zone – five years either side of retirement. As we saw in the GFC many switched to defensive asset classes for existing balances and/or new contributions. If funds make it more difficult for consumers to adjust their asset classes it is likely to make self-managed super more attractive to older consumers especially those with higher account balances which will in turn have flow on effects for the funds.

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5.3 Leverage

Leverage is primarily used by self-managed super.

It is generally advice driven, much of it to unsophisticated consumers with low balances who do not understand the risks, nor have the expertise to manage the risks.

Leverage involves a level of risk that is inappropriate for retirement income policy, which is backed by significant contributions from the wider community through tax concessions. The wider community also pays when things go wrong as we saw post the Storm collapse. Greater reliance on health, community and other social services are documented in the ASIC report *Compensation for retail investors: the social impact of monetary loss.*[42]

Leverage is a strategy that feeds into the culture of super as "wealth creation" rather than a means to generate a retirement income.

Restrictions are consistent with concessional taxation.

There is also a question of systemic risk. The banking sector is highly leveraged which raises questions about the appropriateness of leverage across the system.

We support a ban on leverage in super.

5.4 Stability of policy framework

We agree constant changes to policy setting are eroding trust and confidence. While frequency of changes is an issue, a bigger issue is the sense in the community that **super is used politically** as a massive resource **for purposes other than it was intended**.

However super system is still immature and settings in both accumulation and retirement phase require further evolution.

We think agreed objectives for the super system and an agreed process for making changes would help break the perception that super has become a political plaything. The work of Super Charter

[42] Report 240 http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep240-published-May-2011.pdf/$file/rep240-published-May-2011.pdf

group provides a useful reference in identifying objectives and principles for the super system.[43] We have also set out our views under 4.2 above.

The role of policy making in our system is reserved for government and Parliament. It would however be useful to obtain bi-partisan support to policy making in super that was:

- orderly
- evidenced based
- independent of political cycles and
- inclusive of end users

An expert consumer voice has been missing in super and retirement incomes policy debates.

This Inquiry has received over 240 submissions from industries bodies yet only half a dozen submissions from consumer groups. Additionally consumers have been underrepresented in the FSI roundtables.

The FSI process is not unique. The Cooper Review received around 5000 pages in submissions from industry but less than 15% from consumers with half of these from SMSF owners. Treasury, under the previous government, sponsored a proposal to establish a Superannuation Consumers Centre in part because it had felt the need to balance the weight of industry input throughout the FoFA and Stronger Super reforms.

All consumer groups working in the super space have limited capacity. Super and retirement is one issue amongst many that they work on, on behalf of their members. The Superannuation Consumers Centre itself operates on a voluntary basis.

One very significant way the Inquiry could assist consumer participation in policy process is to recommend Government provide direct or indirect support to facilitate development of an expert consumer policy and research body.

The Stronger Super review led by Paul Costello raised the idea in 2011. In early 2012 the consumer organisation CHOICE convened an establishment committee for a Superannuation Consumers' Centre. The committee included former Macquarie Bank CEO Allan Moss, Former Vanguard CEO and Financial Services Council Chairman Jeremy Duffield, and former ASX and ASIC Chairman Tony D'Aloisio amongst others. In August 2012 the committee took a proposal to Government to provide a one off contribution to an investment fund to provide an endowment to fund the Centre for 20 years. The Government agreed to make a $10million contribution, provided the industry matched that contribution. While the industry broadly supports the idea and a number of major funds agreed

[43] http://www.treasury.gov.au/Policy-Topics/SuperannuationAndRetirement/supercharter/~/media/Treasury/Policy%20Topics/Superannuation/supercharter/Downloads/PDF/super_charter_report.ashx

to financially contribute, the committee did not raise the matching $10million prior to the 2013 election and the offer of government funding lapsed.

Nonetheless the Superannuation Consumers' Centre has established itself as a legal entity, has received ACNC endorsement and is operating on a limited voluntary basis. It has no capacity to undertake research or expert analysis of complex proposals.

The concept of a Superannuation Consumers Centre remains as relevant as ever.

- Trust and confidence remains low.
- End users do not have an adequate voice in ongoing debates about evolution of the super system
- Super is so important that consumers need and expect there to be an independent organisation looking out for their interests.

A full business case is available at: file:///C:/Users/Jenni%20Mac/Downloads/Combined%20Centre%20for%20Superannuation%20Consumers%20Business%20Case%20%20Plan%20-%20June%202013%20(1).pdf

A meaningful way the Inquiry could facilitate greater consumer participation in ongoing policy development for the super system would be via a specific recommendation that government support development of the Superannuation Consumers Centre. This could be via:

- **specific listing in the Tax Act to enable the Centre to receive deductible gifts** from those in the community who support it
- **using a tiny portion of the superannuation levy to support it**
- **government seed funding**.

Governments have a long history of facilitating community input to policy making by way of supporting consumer oriented expert research and analysis.[44]

5.5 Self-managed super

The rapid rise in the self-managed super market is evidence that trust and confidence in the APRA regulated industry is lower than it should be. This in part has been driven by negative returns in the GFC.

Consumers have opted for self-managed super in a bid to attain more control over their super, but at the low balance end few actually self-manage. Rather they rely on advice from a host of advisers

[44] State and federal governments have funded a number of specialist centre in energy, telecommunications, credit and debt as well as a host of specialist legal centres

and the costs of doing so are high, higher than if they were in an APRA regulated entity. If something goes wrong they are outside the compensation framework of Part 23 of the SIS Act.

The evidence suggests self-managed super is an entirely appropriate vehicle for those with sufficiently large balances to take advantage of the benefits of scale or those who can minimise costs through self-management of their fund.

However the growth of self-managed super has been fuelled by advice that appears to deliver greater benefits to advisers than fund members.[45]

Data on the cost of running an SMSF suggests that where balances are below $500,000 the benefits appear to accrue to advisers rather than owners.

The SMSF structure was set up for individuals with the capability to do it themselves but in practice it has become another arm of the industry.

While many SMSF trustees say they chose an SMSF to gain greater control in practice they contract out core responsibilities to a host of advisers. This would not matter, were it for the generous tax concessions available to super moneys. Where the costs of running a fund exceed the benefits, it is not only the individual who pays, but the community collectively, due to the generous tax concessions.

The data suggests it is not until balances exceed the $300,000 to $500,000 mark that costs outweigh benefits.

Given the above we support policy settings geared towards a minimum fund balance of between $300,000 - $500,000.

End.

[45] See ASIC retirement advice shadow shop available at https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep279-published-27-March-2012.pdf/$file/rep279-published-27-March-2012.pdf

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