

# Countdown to Choice

**I**t's the final countdown to the new Superannuation Choice regime that comes into effect on July 1, 2005. On April 15, 2005 ASIC's Chairman, Jeff Lucy, referred to the regulator's role in terms of industry's legal obligations under Choice, "...We (ASIC) are actively policing the marketplace to identify, weed out and deter any isolated bad practices we find that might be inappropriate". ASIC is also conducting shadow-shopping exercises on Choice in relation to the advice that consumers receive, as Lucy reveals, to gain insight into the consumer's "real life experience of getting advice".

Prior to Lucy's public comments, it became apparent to the SIA that the view of the politicians and regulators regarding Choice is that consumers need "confidence" in their financial adviser. Industry therefore has a crucial role to play in protecting consumers by arming advisers with appropriate knowledge of their obligations. These sentiments had been highlighted to the SIA by the Parliamentary Secretary to the Treasurer the Hon Chris Pearce MP, the General Manager of the Consumer and Financial Literacy Foundation, Peter McCray, and Mark Adams, Director for Regulatory Policy at ASIC. Statements by the Minister for Revenue and Assistant Treasurer, the Hon Mal Brough MP, at the Conference on Major Superannuation Funds in Hobart (21-23 March) also revealed the Government's focus on Choice and that:

1. Consumers need confidence in their financial adviser;
2. Consumers need confidence in the fund;
3. Consumers need confidence in Government; and
4. Consumers need confidence in their own abilities.

As such, the underlying message in the SIA's Super Choice campaign launched on May 5, 2005, and organised in collaboration with ASIC, was an intention to avoid a similar situation to the UK in which billions of pounds of retirement savings were lost through 'mis-selling' practices after Choice was introduced in 1988.

The SIA's campaign included: a snapshot document for advisers; two PD Direct modules, and a nationwide seminar series with ASIC. A pro forma template Statement of Advice had also been developed, however given ASIC's recent model SOA project, the SIA template will be used in the consultation phase with ASIC.

Practical guides to the law and template examples by the regulator go significantly towards reducing complexity and uncertainty. Too often, with the new FSR regime, obligations are contained in numerous pieces of legislation, regulations, policy statements and class orders – there is often not one comprehensive guide to the law. The SIA supports the publication of 'user friendly' guides and examples by the regulator to assist advisers in their legal obligations under the Choice regime. Government guides are currently already focused on employers and consumers but there appears to be a black hole when it comes to industry. At the SIA's nationwide seminars on Choice, ASIC and the Chair of the SIA's Financial Advising Committee (FAC) highlighted the major red flag issues regarding Choice. Scott Charaneka, FAC Chair and partner at Deacons stated, "there's a constant theme and constant concern about churning. We are concerned about churning strategies ... it is really up to us (industry) to make sure that doesn't occur ... The government wants

to see smooth sailing on choice. That can easily be delivered".

The regulator's perspective about the need for industry to be "Choice ready" was represented by Louise Du Pre, ASIC's Assistant Director for Regulatory Compliance. Ms Du Pre revealed that ASIC's role under Choice is "we (ASIC) are doing the same things we have always done. Focusing on disclosure and advice and conduct. We will have a different emphasis now in respect of superannuation ... we will do what we can to make sure the choice regime works and that there will not be churning and mis-selling. She also noted that ASIC has two main areas of focus: "one is in relation to the advice industry and the second is in relation to superannuation trustees and what sort of information they provide and how they provide their information about super funds in a choice environment".

In terms of advisers and quality of advice, she highlighted disclosure under 947D of the Corporations Act and revealed that ASIC commenced a campaign across industry in December 2004 which asked for the following information: examples of advice given over a set period; the name of adviser; how many pieces of advice were given; dollar amounts; client's name; funds they were in; and funds they were recommended. ASIC will release its findings in the coming weeks, however its preliminary results were emphasised by Ms Du Pre: "we found a lot of non-compliance with 947D: that is, the disclosures in the statements of advice about loss, benefits, and costs etc from switching. In our view that's got to change, that's got to change and we expect industry to lift its standards in this area ... it affects nearly 5 million Australians. So if they come to an

adviser you've got to talk about more than just the product you want to sell. The law requires it and we expect a lifting of standard in this area".

ASIC has recently consulted industry on superannuation switching issues. In a submission to ASIC dated 7 March, the SIA also highlighted key issues to consider when switching funds. Such issues include consideration of, for example: insurance, fees, investment options, investment performance, benefits, SMSFs and portability.

Ms Du Pre stated that the campaign "analysed what advisers were giving their clients in circumstances where they recommend a switch from one superannuation fund to another super fund and we're actually testing compliance with section 947D... these obligations apply not only in relation to advice about superannuation, but advice about all financial products". She highlighted ASIC's enforcement role: "with all of our campaigns we (ASIC) will take enforcement action where we see blatant contravention to the law, where they are concerning levels of consumer detriment". ASIC also highlighted the need for advisers to have reasonable basis for advice given and Ms Du Pre stated, "our view is that advisers need to make more efforts, they need to make reasonable efforts and make reasonable enquiries about a person's personal circumstances when they come in and ask for advice. In relation to superannuation that means finding out information about a fund that somebody is already a member of ... Advisers aren't going that next step".

Another issue highlighted by ASIC was the absence of Statements of Advice. Ms Du Pre stated, "We hear people in the industry saying that Joe Bloggs didn't give a statement of advice but the advice that he gave was good, well, how do you know and who's saying that and how can you objectively verify that if there's no documentation about it". ASIC's argument was if a fund performs below expectations, then disclosure will protect the adviser as it's not just a compliance issue but also an evidentiary one.

The SIA continues to look forward to dialogue with the Government and the regulators on Choice both pre- and post-implementation of the new regime. **J**

*Further information on the SIA's Super Choice Campaign can be found at: [http://www.securities.edu.au/members/members\\_policy\\_submissions.asp](http://www.securities.edu.au/members/members_policy_submissions.asp)*



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