



# AIST submission

**Response to ASIC Consultation Paper 164:  
Additional guidance on how to scale advice**

**September 2011**

## Background

ASIC has released consultation paper CP164, which gives new guidance to people who give financial product advice to retail clients about how to scale that advice. This paper builds on ASIC Regulatory Guide 200 *Access to advice for super fund members* (RG200) and utilises findings from ASIC's Report 224 *Access to Financial Advice in Australia*. The proposals in this consultation paper are aimed at increasing access to advice for Australians by facilitating the provision of piece-by-piece advice, where appropriate and practical.

This consultation paper sets out ASIC's proposals for:

- (a) updated guidance for AFS licensees about how to give scaled advice in a way that complies with the existing legal obligations when giving advice;
- (b) new guidance and examples of providing factual information, general advice and personal advice on non-superannuation topics;
- (c) additional examples of how to give scaled advice on five new superannuation topics; and
- (d) revoking [CO 09/210] on intra-fund advice.

It is noted that the Future of Financial Advice proposals have not yet been fully released and ASIC will be reviewing their guidance in light of the final reforms.

## AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector. AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST has recently undergone a vast overhaul, elevating its status as a professional institute to further benefit our members. AIST has introduced a new department – Trustee Governance and Professional Standards – responsible for implementing industry policies and developing a comprehensive framework for the not-for-profit sector. AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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## Executive Summary

In compiling our submission for Consultation Paper CP 164, *Additional guidance on how to scale advice*, AIST conducted numerous interviews and round-tables across our member base, including superannuation funds who give advice under both section 945A of the *Corporations Act 2001* and the existing relief provided under *Class Order CO 09/210*.

As part of our submission, AIST offers a number of suggested outcomes. A broad summary of our recommendations are:

- AIST supports the idea of scaled advice and the notion upon which it is developed, however we believe that it is vitally important that the core message relayed in this series of consultation is that these are mere examples. The principles of scalability should be able to be ported to all areas of advice;
- We continue to press for ASIC to support the industry. We believe that ASIC have worked well in the past and encourage them to continue this into the future, with their work in issuing draft guidance as well as consultation with licensees;
- We support the development of more examples of compliant Statements of Advice (SOAs). In addition, we believe that an excellent outcome would be to expand RG 90 to include additional SOAs that may arise through scaled advice;
- We do not support the proposition that scaled advice represents a reduced value proposition; and
- We do not believe there is an immediate need for the revoking of *Class Order CO 09/210*, given that superannuation trustees are subject to a duty to act in their members' best interest.

## Addressing the paper

### Section B: Updated guidance on how to scale advice for all AFS licensees who give advice

#### **B1Q1 – Will our proposed updated guidance help you to scale advice to your retail clients?**

Overall, we feel that the updated guidance paper will assist AFS licensees to scale advice to retail clients and consequently provide greater volumes of advice. The provision of examples further assists licensees how to go about proving this advice, however we feel that ASIC needs to highlight the fact that the examples provided should not be taken as the limit of what advice can be scaled.

The message needs to be clearly enunciated that licensees can scale advice on any topic as long as what is provided meets s945A of the Corporations Act. ASIC must then be willing to assist licensees to test the waters in scaled advice and provides rulings (similar to the ATO), so licensees feel they have the support of the regulator. If licensees believe that they will be punished for scaling advice (which is the prevailing thought), then the goal of greater access to advice will not be achieved.

The recently released Future of Financial Advice (FoFA) reforms provide support for scaled advice through the best interest obligations, specifically the measures outlined in Schedule 1 of the Exposure Draft for the *Corporations Amendment (Future of Financial Advice) Bill 2011, No. 2011*. AIST will be making a submission on the Exposure Draft and highlighting that the proposed new section 961C appears to support scaled advice through implication, rather than explicitly.

#### **Other comments**

The guidance and examples given in RG200 were welcomed by industry and assisted in the deployment of intra-fund advice. As mentioned above, we found that licensees predominately constrained themselves to the examples given in the guide. We consider that it should be made clearer that examples provided are not exhaustive to ensure that licensees are aware that they can expand the subject range.

With regard to the two examples (A & B on pages 11 and 12 of the paper), we feel that these are too general, simplistic and actually cause confusion. The examples included in the appendices provide better guidance and we would recommend that ASIC remove examples A & B and if required, further develop the examples in the appendix.

## Section C: New guidance and examples of scaled advice on non-superannuation topics

### Basic deposit products and insurance

#### **C1Q1 - Do you think that you can scale advice in the way set out in Example 1? Why or why not?**

Under the purest definition, we can see how Example 1 is scaled advice. However, it seems a better example for the different types of advice that can be delivered (i.e. factual information, general and personal), rather than scaling. Although motor insurance, in this instance, could be included as part of “holistic” advice it is generally only dealt with as a single item. However, we do agree that this example demonstrates how such topics can be scaled.

#### **C1Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

N/A

#### **C1Q3 - If yes, do you have any comments on the example we propose?**

The differences between the factual and general examples are marginal and although when seen in text they are clearly not personal, there is some concern that they could be interpreted as personal by the caller. It would be helpful if all necessary disclosure from the Operator was noted. For example, the Operator provides a compliant general advice warning under the relief provided by *Class Order CO 05/1195* in the general advice example. Items like these should be annotated as they are extremely helpful.

With regards to the reference to the PDS/FSG, we recommend that an annotation be included to indicate what should happen if the caller does not have a PDS/FSG. Further, we believe that the usefulness of this example would be heightened by containing an example of the type of information required to be recorded by the adviser to note the advice that has been provided.

#### **C1Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

No, it will not help in terms of scaling, but it will help in terms of understanding the definitions of types of advice. This in itself is very helpful.

#### **C1Q5 - Will this example increase access to advice for your retail clients?**

N/A

#### **C2Q1 - Would it be useful for ASIC to provide further examples along the lines of those set out in paragraph 40?**

We are in two minds about these examples – on one hand not wanting to be too prescriptive and have licensees only give advice on the examples, while on the other hand the fact that the examples are very helpful. A middle ground could be that these topics be highlighted in the guide, as well as any others suggested through submissions that are deemed relevant, plus a comment stating that licensees can scale advice on other topics.

**C2Q2 - Can you suggest any other examples?**

Other topics that could be suggested are:

- Repaying debt, in particular non-deductible (car loan, personal loan, mortgage)
- Consolidating debt
- Credit card interest payments
- “No more to pay” offers
- Budgeting

**Shares and other listed financial products****C3Q1 - Do you think that you can scale advice in the way set out in Example 2? Why or why not?**

As per Example 1, we see this as an example of the different types of advice, rather than scaling per se. However, it is also a good example of how an existing client may move through the advice process with their stock broker.

**C3Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

N/A

**C3Q3 - If yes, do you have any comments on the example we propose?**

We consider our response to this to be similar to our response to Example 1 and we consider that additional enhancements could be made to this example with the addition of the Record of Advice compiled by the stockbroker.

**C3Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

Yes

**C3Q5 - Will this example increase access to advice for your retail clients?**

We would envisage that the example would not necessarily increase advice within the stock broking industry as this would be the typical advice process presently used. It may increase advice within the financial advice industry in situations where licensees are able to advise on listed securities.

**C4Q1 - Would it be useful for ASIC to provide further examples along the lines of those set out in paragraph 46?**

Yes, it would be very useful for there to be more examples, particularly for new clients and also an example on how an adviser should deliver factual, general and personal advice based on the same phone call.

**C4Q2 - Can you suggest any other examples?**

Other topics that could be suggested are:

- Instalment warrants
- Options
- Any areas of private client advice where the private client is classified as a retail investor and there is an exemption under section 946B of the Act available.

**How to invest an inheritance****C5Q1 - Do you think that you can scale advice in the way set out in Example 3? Why or why not?**

Yes, we do believe that this is a good example of how to scale advice and also provides clear distinction between the differing types of advice.

**C5Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

N/A

**C5Q3 - If yes, do you have any comments on the example we propose?**

Firstly, and based on anecdotal feedback from licensees, we would recommend that you remove the accountant status from Emma. This is not a comment against accountants in the least, but more to make sure that other financial advice providers do not misconstrue that the example is only meant to cover accountants.

It is not realistic that William has bought and sold a property by 27 when he has only just graduated and earning \$50,000pa. Also, it needs to be clearer as to why the general advice example is not considered personal advice under s766B(3).

The client has come out as a “Growth” investor. It would be extremely helpful in this example to know what Emma recommends as a default asset allocation and recommended minimum time horizon for a “Growth” investor.

Although the advice for term deposits is appropriate to the client’s needs, objectives and time horizon, it is not necessarily consistent with a “Growth” investor. We would suggest that a comment is added where Emma acknowledges William’s risk profile and explains succinctly why the products recommended were chosen (i.e. liquidity and time horizon).

Also, the client is presented with an SOA as per the example (second last paragraph, page 48); however no SOA is required as per the margin note at the bottom of page 49. This is confusing and would certainly confuse the client.

**C5Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

Yes.

**C3Q5 - Will this example increase access to advice for your retail clients?**

Yes.

**C5Q6 - Can you suggest any other examples?**

Other topics that could be suggested are:

- Redundancy – lump sum payment
- Proceeds from the sale of a house
- Proceeds from winning a lottery

### **Other financial products**

**C6Q1 - Are there other financial products that it would be useful for ASIC to provide guidance and/or examples about? Please be as specific as possible about the guidance or examples you would like.**

Other financial products that could be listed as examples are:

- Managed funds
- Annuities
- Funeral Bonds
- Gifting arrangements
- Investment/Insurance bonds
- Tax deductible donations
- Car leasing arrangements
- Paying down debt compared to salary sacrifice

## Section D: Additional examples of scaled superannuation advice

### Intra-pension issues

#### **D1Q1 - Do you think that you can scale advice in the way set out in Example 4? Why or why not?**

Yes, we believe that intra-pension issues can be scaled, although we feel that there should be much stronger emphasis on the type and scope of the advice at the beginning of the conversation and also there should be better fact finding to determine what type of advice is suitable and actually whether the client is better served by more complex advice. We also note that a key component of this example (and in fact any projection) is investment growth based on past performance.

The operator should commence the conversation by asking what the client is interested in discussing and then establish a very broad picture of the client's financial and personal situation (ie married, debt status, employment), because these aspects will have a considerable impact on what is the most appropriate advice and the operator can better frame the scope of the advice.

#### **D1Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

The example given is fine, but we believe that the guide should set some boundaries where it will be clear that the advice is more complex and needs to be referred to an adviser with sufficient expertise to delivered more complex advice. Examples of this would be if the client is married or has other significant assets that will affect Centrelink payments.

#### **D1Q3 - If yes, do you have any comments on the example we propose?**

The examples are extremely long and it is hard to envisage a client understanding what they have been told from the phone call. It would be more practical for the SOA to be produced and presented.

There is no discussion in this example about tolerance for risk or conducting a risk profile. We acknowledge that the client in the example agrees to stay in the 'Balanced option'; however we feel the example should give better direction around this issue as it is a common occurrence, particularly in times of volatile markets.

Discussion regarding Centrelink should be done at the beginning of the conversation and there is also no note if Michael is receiving any Centrelink payments.

The SOA presented as an example is non-compliant (e.g. no ABN provided) according to previous ASIC guidance. Although we are fully supportive of this significantly reduced SOA, we recommend that either the SOA is completed and made compliant, or it is completely removed from the guide as licensees will rely on the example in the guide as a precedent. Further, we recommend that ASIC expand RG 90 and the replacement for RG 200 to reflect more examples of what compliant SOAs should look like so to encourage smaller and more relevant SOAs.

**D1Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

Yes.

**D1Q5 - Will this example increase access to advice for your retail clients?**

Yes.

### Transition to retirement

**D2Q1 - Do you think that you can scale advice in the way set out in Example 5? Why or why not?**

Although a significantly larger body of work is required to provide scaled personal advice on TTR strategies compared to topics handled so far, we agree that it is possible and have no conceptual issues with the way that this paper has handled this, minor compliance issues notwithstanding.

Transition to retirement (TTR) can be a highly complicated strategy and we feel that in order to scale such advice then certain limitations should be put in place. One such limitation should be that scaled TTR advice should only be allowed to replace current income. This would mean that the advice is essentially a tax minimisation strategy and in general, should not affect any other payments or assets.

**D2Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

N/A.

**D2Q3 - If yes, do you have any comments on the example we propose?**

As mentioned in D1Q1 we feel that it is critical that there should be much stronger emphasis on the type and scope of the advice at the beginning of the conversation and also there should be better fact finding to determine what type of advice is suitable and actually whether the client is better served by more complex advice. Spousal arrangement, non super assets, employment arrangements all make a significant difference to the appropriateness of TTR advice.

We consider that a section that contains a worked example of fee disclosure in the SOA would be helpful. Whilst we're aware that this may double up on work that exists elsewhere, such as in RG 90, we consider that this is a very different SOA.

**D2Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

Yes.

**D2Q5 - Will this example increase access to advice for your retail clients?**

Yes.

## Nomination of beneficiaries

### **D3Q1 - Do you think that you can scale advice in the way set out in Example 6? Why or why not?**

Yes, the nomination of beneficiaries can be scaled and should be limited to the areas drawn out in the example.

### **D3Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

N/A.

### **D3Q3 - If yes, do you have any comments on the example we propose?**

The general and personal advice examples seem to presume that nomination of beneficiary advice will only be given by superannuation funds. The annotation at the beginning of each example states the adviser is from ABC Superannuation fund. Learning from past experience, we would suggest that a further note be provided that an adviser whom is not licensed by a superannuation fund can still provide this advice.

We refer back to D1Q3 regarding the provision of a sample SOA, specifically, the need for guidance that includes a compliance SOA.

### **D3Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

Yes.

### **D3Q5 - Will this example increase access to advice for your retail clients?**

Yes.

## Superannuation and Centrelink payments

### **D4Q1 - Do you think that you can scale advice in the way set out in Example 7? Why or why not?**

Based upon our answers to the previous examples, we have no major objections to whether or not advice can be scaled for this type of situation. However, we do notice that this example is different in flavour to previous examples, containing a situation that may not necessarily be specific to superannuation. We also notice that this specific problem may be ported across to other situations, not necessarily inclusive of Centrelink issues.

We don't believe, therefore, that this is a 'single issue' problem as there are as many as three linked problems requiring advice within this example. At the same time, we don't see the number of issues as a barrier to how the advice can be scaled.

### **D4Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

N/A.

**D4Q3 - If yes, do you have any comments on the example we propose?**

Given that a third option might be Jim withdrawing \$25,000 from a managed fund, we suggest that this problem be moved outside this section as it may not be superannuation specific.

**D4Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

Yes.

**D4Q5 - Will this example increase access to advice for your retail clients?**

Yes.

**Retirement planning: Single issue advice****D5Q1 - Do you think that you can scale advice in the way set out in Example 8? Why or why not?**

We consider this example to be conceptually similar to the previous example and very similar to Example 3. As such, we don't believe advice can't be scaled in this way.

**D5Q2 - If not, can you suggest an example of when it would be appropriate to scale advice?**

N/A.

**D5Q3 - If yes, do you have any comments on the example we propose?**

There may be better examples that could be posed around retirement planning, namely adequacy. Although this is quite similar to other examples, there may be a more "cradle to grave" example of what accumulation balance a caller might expect to reach and then how long that may last. This would have to be based on a number of assumptions and we would suggest not including Centrelink payments if the client is not eligible in the short term, say 3 years maximum.

In our experience, the concept that retirees can draw an account based pension and still receive Centrelink payments is not widely understood. Combining both can deliver higher retirement incomes with greater longevity of the pension and advisers should be encouraged to communicate this message to the community.

**D5Q4 - If you are an adviser, will this example help you to scale advice in a way that complies with your obligations as an AFS licensee? If not, why not?**

Yes.

**D5Q5 - Will this example increase access to advice for your retail clients?**

Yes.

## Section E: Revoking class order relief

**E1Q1 - If you are giving scaled advice, are you currently relying on the relief in [CO 09/210]? If so, what kind of advice are you providing while relying on this relief?**

N/A

**E1Q2 - If you are not relying on [CO 09/210], why have you chosen not to rely on this relief?**

N/A

**E1Q3 - Is there any reason why we should not revoke [CO 09/210]?**

We wish to draw your attention to the reasons why the class order exists.

The intent of *Class Order CO 09/210* was to address the unmet demand for advice about choices within members' existing superannuation funds. We understand that the take up of the class order has been low, however we have received feedback confirming that it has been difficult for some trustees to take advantage of the class order due to the narrow scope of who may be allowed to provide such advice.

We also note that this class order is only slightly over two years old and propose a longer period of time is appropriate to determine the success or otherwise of the class order.

Where this relief is being used, the relief has given members the ability to access quick advice for very simple queries about their interest within their fund. Without the relief the cost of providing simple advice to members would increase due to the paperwork and processes involved with ensuring compliance with s945A of the Corporations Act. That is not to say that the relief means that no enquiries are made of the member, but the level and extent of enquires are restricted.

Further, we propose that the class order relief should be retained where there are some funds that can benefit from it as there is no reason or disadvantage for consumer protection purposes for ASIC to remove the relief. Trustees have obligations both under the Corporations Act and the SIS Act and must already act in the best interest of members.

As a point of interest, if the number of potential members affected, from a consumer protection point of view, rather than the number of funds using the relief is measured, then with just two trustees in mind over 706,000 members are covered by the relief.

**E1Q4 - If you are currently relying on [CO 09/210], could you provide advice by complying with the requirements of s945A?**

Yes, however it would mean that the trustee is spending more time on compliance and paperwork. This in turn reduces the access of advice to members because the trustee is potentially caught up with considering compliance issues and penalties.