



Mercer (Australia) Pty Ltd  
ABN 32 005 315 917  
33 Exhibition Street Melbourne Vic 3000  
GPO Box 9946 Melbourne Vic 3001  
61 3 9623 5552  
Fax +61 3 8640 0800  
john.ward@mercer.com  
www.mercer.com.au

Future of Financial Advice  
Department of Treasury  
Langton Crescent  
CANBERRA ACT 2600

By email: [futureofadvice@treasury.gov.au](mailto:futureofadvice@treasury.gov.au)

24 February 2011

Subject: Wholesale and Retail Clients Future of Financial Advice Options Paper

Dear Sir

Thank you for the opportunity to comment on this options paper.

Mercer provides a financial advice services to:

- individuals
- superannuation fund trustees
- employers

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### **Executive Summary**

We have no particular concerns in relation to the various options as they relate to individuals. However we note that the advice requirements are very complex and some simplification would be desirable, for instance by applying the same wholesale/retail rules to all types of advice/product.

However, we have concerns with the existing legislation and some of the Options in relation to superannuation advice and superannuation products provided to superannuation trustees and employers.

We recommend that, irrespective of other changes, the following principles should be incorporated:

- that trustees of superannuation funds, ADFs and PSTs who satisfy the current \$10 million asset test should continue to be treated as wholesale clients in relation to superannuation advice/products
- that the legislation be amended to enable superannuation fund trustees who have previously met the net \$10 million asset test in the relevant trust, to continue to be treated as wholesale clients
- that the legislation be amended to enable superannuation fund trustees who are trustees of more than one superannuation fund to be treated as wholesale clients if the total net assets of the funds for which they are the trustee exceed \$10 million
- that the legislation be amended to enable employers (other than small businesses) to be treated as wholesale clients in relation to superannuation advice and superannuation products (as they already are in relation to most other financial advice).

Paragraph 8.2 of the Options Paper refers to confusion as to the operation of s761G. We are unsure about the confusion to which the Options paper refers. We would be happy to comment further if more detail on the confusion can be provided.

## **Submission in detail**

### *Individual clients*

A significant majority of the financial advice provided by Mercer relates to superannuation.

Mercer has adopted a process of treating all individual clients as retail clients to avoid the complexity of the legislation, and because we decided to adopt the requirements of Corporations Law with respect to the provision of personal financial product advice in the same manner for all individual clients.

Hence none of the Options canvassed in the consultation paper would have any significant impact on Mercer's business in relation to clients who are individuals.

We note, in particular, that the different rules applicable to different types of advice create difficulties for advisers. For example, for superannuation advice an individual must be treated as a retail client whereas for life insurance advice, it may be possible to treat the same individual as a wholesale client. We consider that it would be simpler and more appropriate for the same rules to apply to all types of advice to individuals.

**We recommend that the rules to determine whether an individual is a wholesale or retail client should be consistent across all categories of advice/product.**

### *Superannuation trustee clients*

The significant majority of our advice to superannuation trustees relates to trustees managing more than \$10 million of assets and hence we do not need to treat them as retail clients. We consider that these arrangements are appropriate and should be continued. To require trustees (who are running significant financial institutions) to be treated as retail investors would result in an increase in the cost of advice.

**We recommend that the current rules enabling trustees of larger superannuation funds to be treated as wholesale clients be continued.**

One issue that has created difficulties with the current legislation relates to the case of a trustee involved with the winding up of a large superannuation fund. These trustees are treated as wholesale clients however, at some stage during the wind-up process, the assets fall below \$10 million. From that point, the trustee needs to be treated as a retail client. This appears totally illogical and unnecessary. The trustee is effectively the same body as before and has the same knowledge and financial capacity.

**We recommend that the provisions be amended to enable advisers to continue treating such trustees as wholesale clients following the fall in assets to below the (\$10 million) threshold.**

We also have situations where the same company is the trustee of funds with less than \$10m and funds with more than \$10m. We consider it inappropriate that this trustee needs to be treated as a retail client for the funds with less than \$10m.

**We recommend that the provisions be amended to enable advisers to treat trustees as wholesale clients where the aggregate of the assets of the funds for which they are the trustee exceeds the (\$10 million) threshold.**

## *Employer clients*

For some advice, employers (other than small business employers) can be treated as wholesale clients, however, in relation to superannuation, they must be treated as retail clients. We deal with many very large employers, who may have managed their employees' superannuation fund for many years and have considerable knowledge of financial services, including superannuation.

The current requirements to treat such employers as retail clients result in unnecessary additional costs of advice.

**We recommend that the provisions be amended to enable advisers to treat employers (other than small businesses) as wholesale clients for all financial services/products.**

Our comments on the various options are as follows:

### **Option 1 – Retain and update the current system**

We have no comment other than to restate the recommendations listed above.

### **Option 2 – Remove the distinction between wholesale and retail clients**

We consider that it is important that superannuation trustees and employers (other than small businesses) be able to be classified as wholesale clients in relation to all financial services/products.

### **Option 3 – Introduce a 'sophisticated investor' test as the sole way to distinguish between wholesale and retail clients**

We consider that subjective rules are likely to result in higher compliance costs and will increase uncertainty of application. We therefore consider that this option is unsuitable.

### **Option 4 – Do Nothing**

We consider that this option is not appropriate as it would fail to implement the recommendations listed above.

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## Paragraph 8.2

This paragraph of the Options Paper refers to confusion as to the operation of s761G. We are unsure about the confusion to which the Options paper refers. We would be happy to comment further if more detail on the confusion can be provided.

If you have any queries on this submission, please contact Paul Shallue on 03 9623 5061 or Jo-Anne Bloch on 02 8864 6159.

Yours Sincerely

A handwritten signature in blue ink that reads "John Ward". The signature is written in a cursive style with a large, looping initial "J".

John Ward  
Manager, Research and Information