

General Manager, Policy
Australian Prudential Regulation Authority

Via Email: superannuation.policy@apra.gov.au

21 December 2023

Dear APRA,

Discussion Paper – Strategic and Transfer Planning – Enhancing Member Outcomes

The Financial Advice Association of Australia¹ (FAAA) appreciates the opportunity to provide feedback on APRA’s consultation on strategic and transfer planning.

In summary, we recommend that APRA should continue to provide guidance to trustees with regards to the application of the Sole Purpose Test, including with regards to fees paid for financial advice. A standard approach across the superannuation sector will have substantial benefits in ensuring consistency and providing clear guidance to consumers on how they can meet this cost, irrespective of which super fund they are a member of. In recognition of the many changes that have occurred in financial services regulation since formal guidance was last provided in February 2001, we suggest that this guidance be updated and include relevant examples, once the Quality of Advice Review (QAR) legislation has been finalised.

We also suggest that the Sole Purpose Test should be clarified as not applying to “unrestricted non-preserved” funds, and where the member has met a condition of release and funds are in retirement phase (eg funds are held in an account based pension).

In this submission, we have limited our feedback to the statement made about APRA not intending to provide guidance on the application of the Sole Purpose Test.

¹ The Financial Advice Association of Australia (FAAA) was formed in April 2023, out of a merger of the Financial Planning Association of Australia Limited (FPA) and the Association of Financial Advisers Limited (AFA), two of Australia’s largest and longest-standing associations of financial planners and advisers.

The FPA was a professional association formed in 1992 as a merger between The Australian Society of Investment and Financial Advisers and the International Association of Financial Planning. In 1999 the CFP Professional Education Program was launched. As Australia’s largest professional association for financial planners, the FPA represented the interests of the public and (leading into the merger) over 10,000 members. Since its formation, the FPA worked towards changing the face of financial planning, from an industry to a profession that earned consumer confidence and trust, and advocated that better financial advice would positively influence the financial wellbeing of all Australians.

The AFA was a professional association for financial advisers that dated back to 1946 (existing in various forms and under various names). The AFA was a national membership entity that operated in each state of Australia and across the full spectrum of advice types. The AFA had a long history of advocating for the best interests of financial advisers and their clients, through working with the government, regulators and other stakeholders. The AFA had a long legacy of operating in the life insurance sector, however substantially broadened its member base over a number of decades. The AFA had a strong focus on promoting the value of advice and recognising award winning advisers over many years. The AFA had strong foundations in believing in advocacy for members and creating events and other opportunities to enable members to grow and share best practice.

Background

It is the view of the FAAA, that guidance should be provided on the application of the Sole Purpose Test. Our views on this are reinforced by the current policy deliberation with respect to the Quality of Advice Review and the suggestion of extending the types of advice that might be paid for by superannuation funds, including under the Intra-Fund advice provisions in Section 99F of the Superannuation Industry (Supervision) (SIS) Act.

In our view, the application of the Sole Purpose Test is complex and there are a range of other factors that influence the payment of advice fees from superannuation funds that warrant the provision of guidance. We are conscious that APRA does not regulate financial advice, however APRA does regulate super funds, and thus the rules for the payment of financial advice fees from a superannuation fund does come under the jurisdiction of APRA. APRA has in the recent past (in consultation with ASIC) provided guidance to superannuation fund trustees with respect to oversight of the payment of advice fees. This guidance did address the Sole Purpose Test.

The existing guidance on the Sole Purpose Test - in Superannuation Circular No. III.A.4 The Sole Purpose Test - was released in February 2001. This was well before many reforms that have impacted the financial services sector, including the Future of Financial Advice, MySuper and more recently the reforms that have flowed from the Hayne Royal Commission. Specifically with respect to financial advice, when the existing guidance was released, the predominant form of adviser remuneration was commissions. This has now completely changed. Therefore, in our view, updated guidance is both necessary and appropriate.

APRA and ASIC jointly wrote to superannuation fund trustees on 30 June 2021 and specifically made mention of uncertainty about the application of the sole purpose test, including through the following statement:

There appears to be continued uncertainty among trustees about the services for which fees can be deducted from member accounts in line with the sole purpose test.

The guidance in this document referred to complexity in areas such as the apportionment of fees, where only part of the advice complies with the Sole Purpose Test. Section 3 in this document ('Is the deduction consistent with the sole purpose test?') provides some useful information for both trustees and advisers. We do believe that this guidance could go further, including with respect to the utilisation of examples.

On 7 December 2023, Minister Stephen Jones issued a 'Delivering Better Financial Outcomes – Detailed Overview' paper on the Government's plans in response to the QAR. Within this document, there is a section on 'Expanding superannuation advice' that includes the following statements:

The Government will introduce a comprehensive framework for superannuation advice by:

- *Legislating consistent rules on what advice topics can be paid for via superannuation. The same list of advice topics will apply to collectively charged advice, and advice that is charged direct to the individual member's superannuation account.*
- *Allowing superannuation funds to consider a broader range of a member's personal and household circumstances such as debt, spouse's income, or age pension eligibility.*

This statement suggests probable changes to the Sole Purpose Test, as at present advice on the members debt, spouse's circumstances and entitlements to the age pension would not be considered to be consistent with the Sole Purpose Test.

If APRA does not provide guidance after such substantial additional changes, trustees will individually make decisions as to whether fees for certain types of advice are appropriate, or not. This will inevitably lead to major differences in approach across the superannuation sector, leaving members of one fund in a position where their advice fees can be paid from their superannuation, whereas members of other funds will not have this option.

Other factors

We suggest that there are other circumstances where a member should be able to authorise the payment of advice fees from superannuation (or pension) funds to pay for advice that might not currently be considered to comply with the Sole Purpose Test:

- Where the member has already met a condition of release, and should be entitled to withdraw their money from their superannuation or pension account for any purpose. Specifically, where a member is in pension phase, we do not believe that any ongoing restrictions should apply. We are not aware of any guidance that addresses this point.
- We also argue that members should be able to use the balance of any "unrestricted non preserved" benefit category at any time for the payment of financial advice fees. The ability to cash "unrestricted non preserved" benefits at any time is set out in SIS Regulation 1994 - Regulation 6.20. For this reason, members should be able to use these balances to pay for financial advice if they choose.

Recommendations

We recommend that APRA does update the guidance on the Sole Purpose Test and specifically updates it to address issues relevant to financial advice fees. We specifically request that this guidance addresses the issues that we have raised above, including apportionment, application when a condition of release has been met (specifically pension phase) and "unrestricted non preserved" benefit. Whilst some level of uncertainty prevails, and particularly in the context of the

likely further changes as part of the Quality of Advice Review, we strongly suggest that guidance is important.

Greater certainty with respect to the application of the Sole Purpose Test will be beneficial for clients, in having certainty regarding how they can pay for their advice, for advisers in efficiently arranging payment for their services, and superannuation fund trustees in processing payments for financial advice.

Conclusion

We welcome the opportunity to provide APRA with feedback on the importance of regulatory guidance on the Sole Purpose Test. In the context of the multiple different segments of the financial services industry that this applies to, and with changes likely as a result of the Quality of Advice Review, we recommend that APRA continues to provide guidance in this area, and updates this guidance to take account of the many important changes that have occurred in the financial services sector.

The FAAA would welcome the opportunity to discuss the issues raised in our submission in more detail. Please contact me on [REDACTED] should you have any questions.

Yours sincerely,

[REDACTED]

[REDACTED]
Chief Executive Officer
Financial Advice Association of Australia