

Financial Intermediaries Task Force

Response to Consultation Paper

From



The Association of Superannuation Funds of New  
Zealand Inc.

20 June 2005

## **1. Introduction**

- 1.1. ASFONZ responded to the Task Force Initial Issues Paper on 18 February 2005.
- 1.2. As stated in that response, the response was deliberately limited in scope to focus attention on a particular issue of importance to the majority of ASFONZ members.
- 1.3. This was the issue of whether or not an employer who makes membership of a superannuation scheme available to its employees should be included in the definition of “financial intermediary”.

## **2. The Consultation Paper**

- 2.1. We note that specific reference has been made to *Employers in relation to superannuation schemes* in Section 6 of the paper, “Scope and Coverage of Inquiry and Proposals”, under the sub-section on page 18 looking at Specific scope issues.
- 2.2. The Consultation Paper confirms that the Task Force’s preference is to include employers offering access to superannuation schemes as financial intermediaries. Brief reasons for arriving at this conclusion are included.
- 2.3. We also note that “a superannuation provider promoting the benefits of a work place superannuation scheme at a work-site”, giving factual information but not giving advice on the suitability or appropriateness for the “customer”, would be said to assume the “product marketer” role.
- 2.4. Unfortunately, it is not clear whether the reference to a superannuation provider is, in fact, intended to be the employer who is offering the scheme to its employees.
- 2.5. The position of employers offering membership of a superannuation scheme does not appear to be referred to in any other part of the Consultation Paper.

## **3. Our Comments**

- 3.1. ASFONZ’s prime concern is that the practical implications of including employers in the definition of financial intermediary has not been fully thought through. This applies whichever of the roles an employer intermediary is said to perform (see page 16 of the paper).
- 3.2. At the very most, we believe that the employer’s role in the majority of cases will be more akin to the provision of factual information. Even then, this will often be restricted to merely passing on a copy of the Investment Statement for the scheme to the employee. In some cases this may be accompanied by a letter (or

verbal comment) recommending that the employee carefully consider joining the scheme. The Investment Statement will, of course, contain the wording required by the Securities Act 1978 suggesting that advice is sought.

- 3.3. Numerically, the majority of work-based superannuation schemes are now operated as part of a master trust offered by a financial institution. The particular offering will have been selected by the employer based on submissions made by one or more potential providers. Apart from this selection process, it would be common for the employer to have no more knowledge of the product or its suitability than any of the employer's employees. If an employee wanted help or information this would be sought from a representative of the provider (and this representative may then be considered to be a product marketer or a financial adviser depending on the circumstances).
- 3.4. In cases where the scheme does not form part of a master trust, it is likely that the invitation to join the scheme would come from the employer's HR department. Again, it would not be seen as part of their function to give further information beyond what was contained in the Investment Statement. HR staff are not qualified or trained to give this information and would rarely see themselves as being competent to do so.
- 3.5. The Consultation Paper confirms that the Task Force is supportive of the disclosure provisions of the Securities Legislation Bill, which has now been reported back from select committee. The requirements for a financial adviser (the differing roles of intermediaries are not yet recognized of course) would be draconian for most employers. Few, if any, would be able to give any meaningful "disclosure" to their employees.
- 3.6. We strongly believe that any requirement that may be introduced that would require an employer, or the employer's staff, to be qualified in any way to provide information to employees would impact markedly on employers' willingness to make superannuation schemes available.
- 3.7. Finally, the government's recent budget launched their work place savings vehicle "KiwiSaver". Employers will be obliged to offer a savings vehicle to their employees, and have the option of nominating a default provider. We believe that this option will not be exercised if this action could possibly lead to the employer being considered a financial intermediary.

#### 4. ASFONZ Suggestions

- 4.1. We agree with, and wholeheartedly support, any moves to enhance the financial literacy of all parts of the investing public. This is a fundamental step.
- 4.2. It is vital that there is certainty on this issue. The current situation, whereby some people maintain that employers might be financial advisers, is not tenable.

- 4.3. We believe that an employer who offers membership of a superannuation scheme to its employees should be specifically exempted from being a financial intermediary. This exemption should extend to the issuing of an Investment Statement for the scheme and to suggesting that the employee carefully considers joining. However, the individual concerned should be considered to be a financial intermediary if they went further than this in giving advice. As indicated in 3.3 and 3.4 above, this would happen relatively rarely.

It is recognized that an exemption might be considered undesirable in circumstances where the employer has an interest in the scheme other than as the employer of its employees (ie where there is a significant investment made in the employer's business). This situation is foreseen in the Superannuation Schemes Act 1989 whereby scheme trustees are obliged to include details of investments in the scheme's annual report if more than 10% of the market value of assets has been invested in the employer (Clause 1(g), Second Schedule). The Task Force might consider that the exemption should not apply in circumstances where this notification is required.

- 4.4. Representatives of master trust providers would generally be considered to be financial intermediaries, depending on the kind of service provided. The practicalities of advance disclosure for such people need to be considered carefully as many queries are made over the phone.
  - 4.5. If it is felt to be necessary, a further comment could be added to the information at the front of Investment Statements for work-based schemes reminding potential members that their employer is not in a position to advise them on the suitability or appropriateness of the scheme to them on a personal level.
5. We appreciate the opportunity given to comment on the Task Force's work to date. We will be pleased to discuss this issue further if required or to clarify any of the points made.

## Our organisation

### The Association of Superannuation Funds of New Zealand Inc. ("ASFONZ")

ASFONZ is an independent national, non-profit organisation founded in 1969. Its current membership comprises around 100 major workplace superannuation schemes and around 50 organisations and individuals representing the various product and service providers for workplace superannuation.

The mission of ASFONZ is to promote workplace superannuation in New Zealand.

ASFONZ seeks to achieve that mission through:

- 1 **Advocacy** – being the recognised voice for all employers and trustees involved in workplace superannuation, through:
  - (i) advocating legislative and public policy initiatives beneficial to the industry;
  - (ii) making submissions and commentary on existing legislative and public policy initiatives;
  - (iii) issuing regular press releases and other public commentary on matters of wider concern or interest to members; and
  - (iv) staying in regular contact with responsible Ministers, regulatory and industry bodies, the Retirement Commissioner and Government Departments to project, promote and advance members' interests.
- 2 **Education** – promoting trustee, employer and member education through dedicated training programmes, newsletters and special interest seminars.
- 3 **Networking** – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.

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