

APRA Provides Limited Guidance on the Sole Purpose Test

By Phil Anderson – Acting CEO and General Manager, Policy and Professionalism

More than 20 years ago, APRA issued [guidance on the Sole Purpose Test](#), which is a [key part of the Superannuation Industry \(Supervision\) Act](#) that limits what a super fund can be maintained for and therefore what members funds can be spent on. The sole purpose test is therefore critically important for financial advisers to understand, as advice fees charged to a member's account must comply with the sole purpose test.

A lot has changed over the last 20 years, and most particularly in financial advice. In that time the way clients pay for financial advice has changed substantially, and therefore updated guidance is very important.

APRA's Commitment to Review the Sole Purpose Test

APRA promised, back in 2018, to review their guidance on the Sole Purpose Test, as set out in a [letter that they sent to super fund trustees in March 2019](#). This is what they said on 27 March 2019:

APRA indicated in December 2018 that it would be updating its guidance on the sole purpose test during 2019. Given the questions that have arisen about the appropriate range of activities that fall within the sole purpose test, and its importance in determining the boundaries of practices that may be regarded as acting in the best interests of members, APRA intends to undertake a review, involving ASIC as appropriate, of particular cases or circumstances where compliance with the sole purpose test has been called into question. The aim of this review will be to develop clear principles to inform updated guidance and its implementation, as well as identifying potential breaches where appropriate action should be taken. The review may also lead to recommendations as to whether the law could be clarified to better meet the intent of the sole purpose test.

Senate Estimates Hearing Questioned Status of Review

We have all been waiting ever since for this updated guidance to arrive. On 2 June 2021, during a Senate Estimates hearing with APRA, Senator Slade Brockman (Chair of the Senates Economics Committee) asked a question of APRA on the status of the review of the sole purpose test guidance:

CHAIR: I have a quick follow-up, more generally on the sole-purpose test. My memory is that you announced that you were going to review it in 2018. Has that come to a conclusion? Did I just miss it or has that not come to a conclusion yet?

Mrs Rowell: There was a Productivity Commission recommendation that said that there would be some merit in having some more clarity around the sole-purpose test and the best-financial-interests duty. We had some guidance on the sole-purpose test and its application, which we—

CHAIR: But that was quite old—is my understanding.

Mrs Rowell: It was quite old, and we were undertaking work to update it. That work has been superseded by the government's measures under the 'Your Future, Your Super' bill to change the best-financial-interests duty and the application of that duty, and so at this stage we are not proposing to release updated guidance on the sole-purpose test, until the landscape settles. **Even then, there's a question as to whether we would need to provide additional guidance.**

CHAIR: That's something we'll need to follow up in future. So, effectively, people in the financial advice industry and the super industry would still look to the old guidance?

Mrs Rowell: Yes, and a lot of the substance in the old guidance is still appropriate. It's just somewhat dated and written in a very different way to the way we would write guidance today.

Seemingly APRA had concluded that a review of the sole purpose test guidance was less important.

Fees Guidance to Super Fund Trustees

On 30 June 2021, APRA issued a joint letter with ASIC on [oversight of advice fees charged to members' superannuation accounts](#), which amongst other things addressed the issue of the sole purpose test. In that letter they did acknowledge that uncertainty continues to exist, highlighting the fact that there is a genuine need for their guidance to be reviewed and updated. Something they failed to acknowledge less than a month before at the Senate Estimates hearing.

“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.”

At least in this letter, APRA have provided some information on the sole purpose test:

“if advice is provided on a broad range of topics that includes superannuation investments, only a portion of the fee may be able to be met from a member’s superannuation account.

For example, advice about the following topics would generally be acceptable:

- consolidation of superannuation accounts;
- selection of superannuation funds;
- selection of superannuation products/investment options;
- asset allocations within a fund;
- taking pensions and/or lump sums (including seeking advice on how much to drawn down);
- whether to salary-sacrifice into super or make deductible contributions (concessional contributions); and
- whether to make non-concessional contributions.

Conversely, the following areas of financial advice would not be consistent with the legislated sole purpose of a regulated superannuation fund:

- broad advice on how the member might best provide for their retirement; and
- how a member might maximise their wealth generally”

In this section, they left out one key area of advice, being life insurance arrangements within the fund. Hopefully, this will be fixed when they do eventually release updated guidance.

For any questions on the APRA update on the sole purpose test please email policy@afa.asn.au

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