



4 February 2022

Advice and Investment Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: AdviceReview@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – DRAFT TERMS OF REFERENCE: REVIEW OF THE QUALITY OF FINANCIAL ADVICE

The SMSF Association welcomes the opportunity to provide this submission in response to the draft terms of reference for the Review of the Quality of Financial Advice (“Review of Advice”).

Significant complexity resides within the financial advice legislative framework and continues to grow. As such, there is an urgent need for a considered and detailed wholesale review of the current legislative framework, the compliance burdens impacting advisers and licensees in practice and the role of ASIC as regulator.

The Review of Advice should not be rushed and must deliver real, consultative reform. Otherwise, the advice sector will be crushed under the heavy burden of legislative complexity, significant compliance obligations and costs, to the detriment of consumers seeking professional, practical, quality, and affordable financial advice.

Broadly, the draft terms of reference are well considered and, in our view, include the key issues and aspects in need of urgent review and reform. However, there are several other matters we recommend be included in the final terms of reference.

Consumer Focused

The needs of consumers must remain at the heart of the review and its terms of reference. This includes:

1. Consumer protection
2. Accessibility of advice
3. Complexity of the advice process
4. Functional advice documents
5. Costs of obtaining advice

In November 2020, ASIC undertook a review into the cost of providing financial advice, CP 332 *Promoting Access to Affordable Advice for Consumers*. Since the conclusion of the consultative process



on 18 January 2021, no submissions or detailed findings have been published. The publication of outcomes has been limited to a single page info graphic, released in July 2021.

We acknowledge that ASIC's remit is limited to the performance of its regulatory function within the prescribed legislation. ASIC does not have the powers to set policy or change laws. However, there are tangible benefits in incorporating the CP 332 review and findings into the Review of Advice and expanding upon that dialogue.

***Recommendation:** A strong consumer focus must sit at the heart of the review.
ASIC Review CP 332 findings to be tabled and incorporated into the review*

Extension of the Review Timeline

We note that the interim findings of the Australian Law Reform Commission's ("ALRC") *Review of the Legislative Framework for Corporations and Financial Service Regulation* ("ALRC Review") may be considered in the Review of Advice.

The ALRC Review is extensive, and its first interim report highlights the significant complexity present in, what the ALRC have labelled, the 'regulatory ecosystem'.

The size and complexity of the ALRC Review is evident, not only from the work undertaken to date, including its first interim report, but also its terms of reference, and the fact that it has a three-year time frame to issue three interim reports, concluding with its final report due on 30 November 2023.

It is concerning that under the draft terms of reference, the reviewer for the Review of Advice will be required to deliver their report to Government by 16 December 2022. We acknowledge Commissioner Hayne's recommendation 2.3 that a review of measures to improve the quality of advice "*preferably be completed by 30 June 2022, but no later than 31 December 2022*".¹

Since the delivery of Commissioner Hayne's final report, we have seen significant changes in the financial advice sector. Yet the addition of complexity to the legislative framework, significantly impacting the sector has continued unabated and is laden with rear view mirror regulation.

The Review of Advice needs to be conducted in an environment that appropriately considers all the issues and delivers true legislative reform. It must therefore be able to wholly consider all the detailed and complex work resulting from the ALRC Review. Wholesale reform is urgently needed and should be a product of the Review of Advice. Anything less will be merely wallpapering over the cracks and will not resolve the significant issues impacting the sector.

Whilst reform is urgently needed, if the process is rushed and not properly considered, it would be a significant opportunity cost, leading to greater detriment to the sector and ultimately to consumers. There is an opportunity for the Review of Advice to deliver heroic, wholesale, functional reform.

¹ Commonwealth of Australia, 2019, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Final Report: Volume 1



Recommendation – Timeline to be extended to incorporate the full ALRC review.

Recommendation – An interim report to be delivered by 16 December 2022, a further interim report in July 2023, and a final report in December 2023

Professional Indemnity Insurance

We acknowledge that Treasury have commissioned a review into professional indemnity insurance (PII) for Australian Financial Services Licenses and Credit Licensees. Due to the short time frames allotted, we understand that limited but targeted consultation is being sought.

We thank Treasury for commencing this review. Issues with PII have been a concern for the sector for some time, with significant issues emerging over the past five years. It has been a festering issue that has been repeatedly raised by industry for some time.

It is essential that PII is also included in the terms of reference for the Review of Advice. Doing so will allow for the wider industry and stakeholder consultation. Further, any review of the current legislation and compliance framework should also contemplate PII requirements, policy terms, compliance, and regulation.

Recommendation – Include a review of professional indemnity insurance, and AFSL insurance requirements

Review of the Financial Adviser Code of Ethics

The *Financial Adviser Code of Ethics 2019* set by the former Financial Adviser Standards and Ethics Authority Ltd (“FASEA”) has been in operation for three years and has been a pain point for the sector. This has been compounded due to the limited industry consultation undertaken throughout FASEA’s tenure. The consultation on Standard 3 resulted in no outcome.

The timing of the Review of Advice is appropriate to incorporate a review into the suitability and effectiveness of the code of ethics.

The code operates in addition to the legislated compliance obligations contained in the Corporations Act 2001. Aspects of the code do not align with or work harmoniously with the legal obligations.

Given the current terms of reference are to consider principles-based regulation, and a review of the regulatory framework in practice, it is appropriate that the code of ethics too is incorporated and considered.

Recommendation – Include a review of the FASEA Code of Ethics



Other Matters for Inclusion

Other matters that should be included in the terms of reference are:

1. A review of the advice process and how the delivery of advice can be modernised. The current advice model is restrictive and not fit for purpose to meet consumer needs or how they expect to receive advice.
2. Need to recognise the variety of different industry participants. Many components of legislative framework that applies to 'financial advisers' assumes that all industry participants are full service or comprehensive financial advisers. Those providing alternative services such as limited advice services, including those specialising in risk, superannuation and/or self-managed superannuation funds or stockbroking need to be considered.
3. A review of the education standards, entry pathways, professional year and continuing professional development obligations. Commissioner Hayne noted in his final report the importance of education on consumer outcomes.

We acknowledge the recent policy paper regarding proposed changes to the education standards. However, the consultation has not gone far enough. A deeper, more considered review is needed to ensure that the education standards are fit for purpose and consider the specific requirements of all industry participants. The need for specialist education for those advisers who operate within complex areas, such as self-managed superannuation fund advice, should be carefully considered as part of such a review.

We support the inclusion of this point:

"3.4 The role of financial services entities including professional associations."

We look forward to the commencement of the Review of Advice and participating in the consultation process.

If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

A handwritten signature in black ink that reads 'John L. Maroney'.

John Maroney
CEO
SMSF Association



ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing SMSF sector which is comprised of over 1.1 million SMSF members who have more than \$700 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.