



SUBMISSION

Submission to Treasury — Quality of Advice Review issues paper

3 June 2022

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Quality of Advice Review Secretariat
Attn: Ms Michelle Levy
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: AdviceReview@treasury.gov.au

3 June 2022

Dear Ms Levy

Quality of Advice Review issues paper

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the issues paper released on 25 March as part of the Quality of Advice Review.

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.4 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Helena Gibson, Senior Policy Adviser on 0423 175 385 or by email hgibson@superannuation.asn.au.

Yours sincerely

Julian Cabarrus



Director Policy Operations, Member Engagement and External Relations

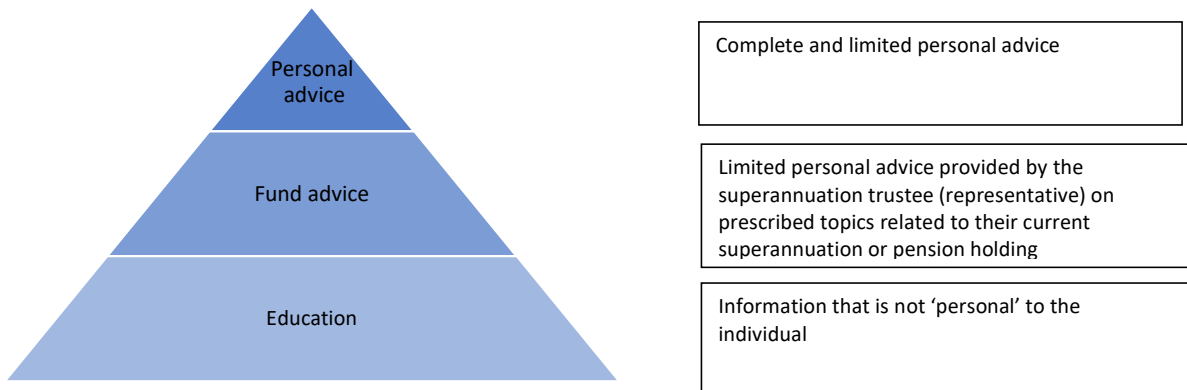
Executive Summary

ASFA's key objective in considering the matters raised in the issues paper has been to identify ways to improve the affordability and accessibility of advice for superannuation fund members without reducing either the quality of the advice or the level of consumer protections.

We support a focus on expanding the opportunity for education to be provided to as many people as possible with limited compliance constraints to provide simple and affordable information. We also support a continuation and expansion of the existing intrafund advice provisions, and propose it is supported by a review of the limited advice compliance requirements. ASFA are also recommending a review of the safe harbour test and disclosure requirements for personal advice.

The diagram below depicts a model that ASFA considers can best support as many Australians as possible to receive the education and advice that they need in an affordable manner. In each category, we believe that regulation of the various offerings should be technology neutral and consumer friendly and that legislation, regulations and guidance should be drafted accordingly.

EDUCATION AND ADVICE PYRAMID



1. Enabling super funds to provide appropriate advice and information that benefits members

Superannuation funds provide their members with information about superannuation and retirement issues through channels such as their websites, retirement seminars and contact centres. While the value of this role played by superannuation funds may not be quantifiable, it is both important and tangible. Any improvement in financial capability improves a consumer's ability to make informed financial decisions. A more educated consumer is more likely to take an active role in improving their financial position, including seeking financial advice.

There are however cohorts of consumers who are unlikely to seek financial advice, either at their stage of life (for example, younger members without the financial means) or at all (for example, members approaching retirement with limited superannuation and other financial assets). The information and education provided by superannuation funds is especially valuable for these consumers.

It is evident that the current advice labels based on legislative definitions and concepts are not meaningful to consumers and that most consumers simply do not understand the nuances between general, limited, and comprehensive personal advice. For example:

- in 2018, the Productivity Commission concluded that the term 'general advice' is misleading, and that alternative terminology should be adopted following consumer testing¹ and recommended that the use of the term 'advice' be used only "in association with 'personal advice' — that is, advice that takes into consideration personal circumstances".²
- research conducted for ASIC in 2019 concluded that "general and personal advice are not familiar concepts for consumers" and are not "clearly distinguishable concepts for consumers", while "advisers' responsibilities when providing general and personal advice are unclear to consumers"³.

ASFA considers that the advice labels should be reviewed to make it easier for consumers to understand what they are receiving and to set an appropriate regulatory framework for the provision of this information.

There is considerable appetite for superannuation funds to expand the level of information and education material made available to their members, and to use tools to build members' engagement with the information provided. There is scope for additional information to be provided by superannuation funds that is not specific to a member's personal circumstances but is nonetheless helpful to them. For example, this could include case studies or other material based on general information applicable to a cohort of members.

There should also be clarity around how tools used by superannuation funds to engage members will be treated, including tools such as trackers, calculators, and retirement estimates. We note that ASIC is currently considering changes to the conditional relief it provides from licensing, conduct and disclosure obligations in relation to personal advice where superannuation fund trustees provide retirement estimates and calculators to their members. We recommend ASIC provide clarity around the types of tools that will be categorised as 'education' and those that will be categorised as 'advice'.

¹ Productivity Commission, Inquiry Report No 89, [Inquiry Report into Competition in the Australian Financial System](#), 29 June 2018 (publicly released 3 August 2018), recommendation 10.2

² Productivity Commission, Inquiry Report No 91, [Superannuation: Assessing Efficiency and Competitiveness Inquiry Report](#), 21 December 2018 (publicly released 10 January 2019), recommendation 8

³ ASIC, REP 614 [Financial Advice: Mind the Gap](#), March 2019, page 6

ASFA Recommendations:

The distinction between education and advice is made clear for consumers by updating the advice labels to terms that are simpler to understand, as well as introducing distinct regulatory frameworks for education, limited advice, and full comprehensive advice.

2. Enhancing intra-fund advice for members

ASFA proposes that superannuation funds continue to be able to offer intra-fund advice, whether in-house or via an arrangement with an external advice provider. This currently includes the matters specified in section 99F of the *Superannuation Industry (Supervision) Act 1993* for which trustees can collectively charge fees across the fund membership.

Intra-fund advice is more scalable and affordable relative to other forms of advice because there are limited topics on which intra-fund advice can be provided. There are productivity gains associated with intra-fund advice, as the scope of the advice is limited and the fact-finding process is simplified, making it less costly to deliver.

ASFA is also proposing:

- A modest expansion of section 99F to ensure that a member is also able to be advised in relation to their fund's retirement income products and related matters such as age pension entitlements, this is especially important given the imposition, from 1 July 2022, of a retirement income covenant on superannuation funds; and
- Intra-fund advice is relabelled as 'fund advice' so that consumers understand that this is financial advice being provided by, and in relation to their superannuation fund.

The purpose of 'fund advice' is to support members to take a positive step in relation to their superannuation held within a fund. It is accessible to all members of a fund and affordable due to its confined scope and targeted nature.

We note that there is currently a level of uncertainty regarding the scope of the matters specified in section 99F, for example, when advice may be deemed to be 'product replacement advice' and outside section 99F. We recommend that additional clarification is provided to ensure consistency of approach across the industry.

We propose that it would continue to be up to fund trustees to determine whether advice on eligible matters is treated as 'fund advice' and collectively charged to members of the fund or treated as limited 'personal advice' and charged directly to the relevant member.

ASFA Recommendations:

Intrafund advice should continue to be available to members and expanded to include retirement advice. We also recommend a simplification of the term intra-fund advice to 'fund advice'.

3. Increasing access to and affordability of personal advice

3.1 Regulatory framework supporting limited advice

ASFA supports the increased provision of limited advice, a type of advice that is frequently sought by superannuation fund members that is more affordable than full personal advice. There is also considerable

potential for superannuation funds to increase their provision of limited advice using digital advice delivery channels. We are seeking greater certainty about how limited advice can be provided in a compliant manner to increase access and affordability for consumers.

ASFA supports a regulatory framework for advice that provides strong protections for consumers while also ensuring that advisers can operate with certainty and are not hampered by requirements that add to the compliance burden and cost of advice and potentially also discourage or limit the provision of types of advice without improving consumer outcomes.

Currently, when giving limited personal advice, there can be uncertainty around whether an adviser needs to provide advice on areas that a consumer has not requested, but which may be relevant to their circumstances. We are proposing that where the individual requests the adviser to provide 'limited advice' on a particular topic or topics, that the legislative framework provides for this to occur without requiring advice to be provided on other matters.

3.2 Streamlining regulatory requirements for providing advice

We acknowledge that the removal or streamlining of regulatory requirements and the prospect of efficiencies gained must be carefully balanced against important consumer protections. However, in reviewing the regulatory framework it is important to have a clear understanding of the intent behind the requirements and then form a judgment as to whether they are operating as intended.

The purpose and intent of the safe harbour introduced as part of the Future of Financial Advice (FoFA) reforms was primarily to aid advisers. The FoFA reforms were extensive and at the time, the safe harbour was viewed to achieve certainty that the Best Interests Duty (BID) had been complied with. The safe harbour steps do not, in themselves, represent additional duties or obligations owed to the client.

The safe harbour steps were never intended to be an exhaustive checklist, however that is the position we have reached in practice. We also note that feedback provided to ASFA highlights a concern that ASIC's regulatory and supervisory approach to the BID assumes the duty can *only* be satisfied through completion of the safe harbour steps. This can hamper the provision of limited advice to consumers and increase the cost of providing financial advice.

We concur with the observations by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Hayne Royal Commission) and the Australian Law Reform Commission (ALRC) that the safe harbour has led to a 'tick-a-box' or checklist approach. This has had an adverse impact on the time taken to document advice. To the extent that completion of the safe harbour steps in this manner adds to the already extensive compliance processes around the provision of advice, it inevitably adds to the cost of advice.

ASFA Recommends the safe harbour steps be removed or the safe harbour steps could be rationalised as suggested by the ALRC.

We note the recommendation by the Hayne Royal Commission that the safe harbour should be repealed unless "a clear justification" could be identified for its retention⁴. In ASFA's view, compelling evidence has not been provided to demonstrate that the removal of the safe harbour would adversely impact consumer protection. If such evidence does become known as part of this Review, we suggest there would be merit in limiting the application of the safe harbour to comprehensive/ongoing advice.

⁴ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, [Final Report](#), February 2019, recommendation 2.3

The ALRC has described the rationalisation approach as ‘re-casting’ the safe harbour steps as “indicative behaviours of compliance, to which a court must have regard when assessing compliance with the duty”⁵, and we concur with the ALRC’s comment that it may “assist to emphasise the primacy of the best interest’s duty and discourage a ‘tick a box’ approach to compliance, while still providing guidance on how satisfaction of the duty may be achieved”⁶.

We note that advisers would remain subject to compliance obligations in relation to the BID as well as the obligations to conclude that advice is appropriate to the client and to give priority to the interests of the client, and these would continue to apply to the provision of all personal advice. The strength of these obligations should not be understated. Further, as observed by the ALRC, there is considerable overlap with other existing obligations, such that the failure to comply with a safe harbour step will often result in a breach of the obligation to give appropriate advice. This suggests there would be little or no effective reduction in consumer protection if the safe harbour is removed or rationalised.

ASFA notes that requiring advisers to consider the Target Market Determination (TMD) may introduce an element of duplication, given advisers are already required, under existing obligations, to demonstrate that any product recommendation is appropriate and meets the needs of the consumer. To that extent, we consider that while advisers may find the TMD a useful resource to consult, its use should not be made mandatory.

ASFA recommendations:

The safe harbour test is removed or rationalised to support the provision of limited advice in a simple and cost-effective manner.

RG 244 is updated to include examples of limited advice and how the obligations can be satisfied in these scenarios.

A review of the disclosure obligations in relation to scoped advice to remove the requirement to include significant detail about the scoping and the reasons why particular topics have been de-scoped in a Statement of Advice (SoA) for scoped advice, to meet requirements under ASIC’s regulatory guides and the FASEA standards. We are proposing a statement signed by the member confirming this is the advice they are specifically requesting.

ASIC release additional SOAs and Records of Advice (RoAs) specifically addressing limited advice scenarios.

3.3 Simplifying disclosure to reduce cost and improve comprehension

As acknowledged in the issues paper, industry stakeholders have identified the costs associated with the provision of a SoA as a major driver of the cost of personal advice⁷. ASFA’s superannuation fund members have indicated that the cost on-charged to a fund member for average SoA is \$1,500 to 2,500, compared to an average cost of \$300 to \$500 for a Record of Advice (RoA).

⁵ Australian Law Reform Commission, [Report 137: Financial Services Legislation, Interim Report A](#), November 2021, page 500

⁶ Australian Law Reform Commission, [Report 137: Financial Services Legislation, Interim Report A](#), November 2021, page 501

⁷ For example, in submissions to ASIC’s Consultation Paper CP 332, *Promoting access to affordable advice* as noted in ASIC’s infographic: [Response to ASIC Consultation Paper CP 332, Promoting access to affordable advice](#)

ASFA acknowledge the value a SOA can provide in certain circumstances, however ASFA is of the view that a SoA is not always an effective means of engaging with a consumer in relation to advice. While the Corporations Act requires a SoA to be set out in a clear, concise, and effective manner, advisers must also comply with detailed content requirements and as a result SoAs are often lengthy documents that many consumers would find difficult to understand.

ASFA recommendations:

The option for advisers to address certain advice topics through a RoA, or other simplified advice document, rather than a SoA. We expect this will reduce the cost of receiving advice and allow for shorter, more targeted disclosure about the advice that is easier for consumers to engage with.

ASIC provide a template RoA for advice that falls under this disclosure model, to ensure consistency for consumers' benefit and to help ensure compliance.

A simplification of the disclosure requirements for intra-fund advice. ASFA members have indicated that the first 10-15 minutes of a simple phone-based appointment for intra-fund advice is typically used for the adviser to go through the various disclosure requirements. Given that the consumer in this scenario is an existing member of the fund and will not be directly charged for the intra-fund advice, some relief in this area would be appropriate.

3.4 Ongoing fee arrangements

ASFA acknowledges that the recent reforms requiring consent for ongoing advice fees are aimed at ensuring consumers understand the fees they are paying and the advice services to which they are entitled, and we consider it important that there is transparency to these matters. However, feedback from ASFA members suggests the reforms have been implemented in a way that disproportionately increases advisers' costs (and therefore the costs that flow through to the consumer).

Consent is required at the superannuation account level, whereas in practice a superannuation fund member may have multiple products within a fund and therefore more than one account. This means that fee disclosure documents can become complex and not able to be automated. In ASFA's view, the consumer protection objective could still be achieved by limiting the consent arrangement to the product platform level, rather than applying separate consent requirements where multiple superannuation accounts are held by the member.

ASFA recommendation:

Consent for ongoing fee disclosure to be managed at a product platform level for superannuation funds.