



SUBMISSION

Submission to Treasury — Quality of Advice Review Consultation Paper- Proposals for Reform

23 September 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

23 September 2022

Dear Ms Levy

Quality of Advice Review Proposals paper

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Quality of Advice consultation paper released in August 2022 as part of the Quality of Advice Review.

We have also included the results of a survey ASFA have recently conducted on the provision of financial advice by superannuation funds.

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 proposals paper has been to determine whether these proposals would improve the affordability and accessibility of advice for consumers without reducing either the quality of the advice or the level of consumer protections.

The existing regulatory framework and documentation requirements for financial advice are compliance focused rather than consumer focused, increasing the cost of provision and impacting the number of Australians who can access valuable advice.

The proposals contained in the consultation paper provide flexibility around the way in which advice is delivered, place the consumer at the centre of the regulatory framework and ensure that effective consumer protections are maintained. These protections are outlined below:

1. When a provider who does not have an AFSL advertises a financial product, provides a newsletter, or conducts a seminar, consumers maintain protections under the Competition and Consumer Act that the provider does not engage in misleading or deceptive conduct.
2. The protections are strengthened where the provider has an AFSL, requiring the provider to ensure that services are provided efficiently, honestly, and fairly and to have a complying dispute resolution system.
3. The protections are further increased under the proposals where personal advice is provided, noting that the definition of personal advice has been expanded to improve clarity and better align with consumer expectations and must satisfy the 'good advice' requirement.
4. All personal advice must satisfy the 'good advice' requirement, that is the advice must be reasonably likely to benefit the client. This is an objective test that requires the provider of the advice to ask the question; will this advice benefit the consumer?
5. Where the advice is provided by an individual for remuneration the consumer protections are even higher. Advisers must satisfy the Code of Ethics and the associated obligations which include acting with integrity and the best interests of each of the adviser's clients; not to give advice, refer or act in any other manner where the adviser has a conflict of interest or duty; provide advice and financial product recommendations in the best interests of the client and that are appropriate to the client's individual circumstances; and take into account the broad effects arising from the client acting on the advice and actively consider the client's broader, long-term interest and likely circumstances.

The proposals provide a framework that will:

1. Simplify the provision of advice from a consumer perspective because of the broadening and clarification of what is termed personal advice.
2. Ensure that consumers are receiving advice that is appropriate to their personal circumstances with the proposed 'good advice' requirement.
3. Support superannuation funds to enhance the retirement outcomes of their members.
4. Reduce the compliance burden and cost of providing advice, and support flexibility and innovation in the provision of advice.

The role of the regulator, ASIC, is pivotal in managing the transition to an environment which is more principals based. There is an opportunity for ASIC to demonstrate the value they can provide to consumers through appropriate regulation that reflects the consumer focus of the review and enhances access to and affordability of advice.

In conclusion ASFA is of the view that the proposals paper is a step in the right direction and one that will improve the advice experience without compromising on consumer protections or the quality of advice in the market.

1. Expansion of personal advice and removal of general advice

ASFA supports the proposal to broaden the definition of personal advice to include a recommendation or opinion provided to a client where the provider holds information about the client's objectives, needs or any aspect of the client's financial situation. We also support the proposal that general advice should no longer be regulated as a financial service and that the definition should be removed along with the requirement to give a general advice warning.

ASFA are of the view that this would address the issue that the current advice labels, based on legislative definitions and concepts, are not meaningful to consumers and that many simply do not understand the nuances between general, limited, and comprehensive personal advice.

This proposal would help align the financial advice framework with consumer expectations, that is that they are provided tailored recommendations where they request assistance from a provider who holds personal information about them.

ASFA also supports the proposal that the conflicted remuneration provisions be amended to ensure they apply where information is being provided to ensure consumers' interests are protected.

ASFA Recommendation:

ASFA supports the broadening and clarification of the definition of financial advice and the removal of general advice to better align the framework with consumer expectations.

2. Focus on consumer outcomes

ASFA supports the proposal to repeal the Chapter 7 best interests' obligations and for this requirement to be replaced with the requirement that advice must be 'reasonably likely to benefit the consumer' because it's a simpler mechanism that will focus the advice on improving the consumer circumstances rather than compliance check lists.

We also suggest the term 'good advice' be replaced with 'quality advice', as this would more accurately describe the proposal that the advice be of a nature that provides a benefit to the consumer.

ASFA notes that advisers would remain subject to compliance obligations due to the application of the Code of Ethics in relation to the best interests, 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 that these would continue to apply to provision of all personal advice.

ASFA Recommendation:

ASFA supports the requirement to provide advice that would 'reasonably be likely to benefit' the consumer as this will lead to better financial outcomes for consumers.

3. Enhancing intra-fund advice for members

ASFA supports the proposal to allow superannuation funds to continue offering intra-fund advice to their members on a range of topics that are relevant to their interest in the fund, including when they are transitioning to retirement and the associated considerations including the member's personal circumstances, their family situation and social security entitlements relevant to the provision of the advice. It is important that funds are enabled to provide advice to members in the retirement phase following the introduction of the retirement income covenant.

Intra-fund advice is an accessible and affordable way by which financial advice can be provided to consumers. Superannuation funds can provide intra-fund advice efficiently due to their large scale and ease of access to their members. Further, many funds are resourced to deliver quality advice across a range of means from simple phone conversations, digital advice to face to face advice.

We support the proposal to allow fund trustees to continue to collectively charge members of the fund or have fees deducted from the member's account for advice provided. Trustees are required to determine whether any expenditures by the fund satisfy members best financial interests and comply with obligations about fund expenditure in Prudential Standard SPS 515.

ASFA also supports the proposal for the Sole Purpose Test within the SIS Act to be amended to provide trustees with clarity beyond doubt that they can provide personal advice to members about their interests in a fund and to apply fund assets to meet the cost of providing advice to members about their interest in the fund. This would support the provision of advice to members in the retirement phase including consideration of assets and liabilities, social security entitlements and aged care needs.

ASFA Recommendation:

Intra-fund advice should continue to be available to members and include all areas of advice relevant to the member's interest in the fund.

ASFA supports additional clarity in the proposals to ensure that the Sole Purpose Test will provide regulatory certainty for trustees and increase consumer access to advice.

4. Reducing compliance burden

ASFA supports a regulatory framework for advice that provides strong consumer protections while ensuring that advice providers can operate with certainty and without undue compliance burden that increases the cost of advice. ASFA considers the proposals in the consultation paper will provide efficiencies without compromising consumer protections.

We acknowledge the value a Statement of Advice (SoA) can provide in certain circumstances; however it is not always an effective means of engaging with a consumer in relation to advice, nor is it appropriate for all types of personal advice. While the Corporations Act requires an 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, compliance focused documents that many consumers would find difficult to understand.

ASFA welcomes the proposal for providers of personal advice to maintain complete records of advice, only providing a written record of advice to a client on request.

This proposal would reduce the compliance costs for advice providers without compromising any consumer protections. It would allow advice providers to make an assessment as to the appropriateness of documentation based on the complexity of the advice. In practice an SoA type document would still be provided for complex advice, however a recorded file note could be used for simple advice.

We also support the proposal for the regulatory framework for advice to be technology neutral, with the same rules applying regardless of how the advice and information is delivered – that is, whether it is provided via face-to-face engagement between a consumer and their adviser, or through technological means such as digital or robo-advice.

ASFA Recommendation:

ASFA supports the requirement for providers of advice to maintain complete records of advice and the removal of the requirement to provide a SoA.