

AIST

Quality of Advice Review Consultation paper – Proposals for Reform

Australian Institute of Superannuation Trustees response

26 September 2022

Organisation: Australian Institute of Superannuation Trustees (AIST) response

Questions

Intended outcomes

1. Do you agree that advisers and product issuers should be able to provide to personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?

The obligations applying to the provision of personal advice and product issuers should be those that protect customers from harm, and ensure advice is both in customers interest and is good advice. The Government should consider reducing obligations that extend beyond this in order to make advice simpler, more comprehensible, accessible, and affordable.

A range of additional consumer financial advice protections have been introduced since the FoFA reforms and the Financial Services Royal Commission, and further protections (such as the Financial Accountability Regime) are in the process of being put in place. The totality of these protections should be the subject of detailed consideration in determining the appropriate level of obligations applying to advisers and product issuers, balanced against accessibility and affordability.

However, accessibility and affordability by itself is not enough. It is the quality of the advice provided that makes the most financial difference to advice recipients. Increasing access to, or reducing the cost of, advice where the advice itself is not of sufficient quality or is not aligned with their interests or needs will be to the detriment of consumers.

Issues of misconduct in the retail advice sector remain current and serious, therefore sustaining the overall level of consumer protections through the process proposed above remains an important consideration. According to the most recent ASIC data (released less than a month ago), six of Australia's largest retail banks and retail financial services institutions have paid or offered a total of \$3.6 billion in compensation, as at 30 June 2022, to customers who suffered loss or detriment because of fees for no service misconduct or non-compliant advice. This includes \$438m paid or offered by the institutions between 1 January to 30 June 2022.

What should be regulated?

2. In your view, are the proposed changes to the definition of 'personal advice' likely to:

- a) reduce regulatory uncertainty?
- b) facilitate the provision of more personal advice to consumers?
- c) improve the ability of financial institutions to help their clients?

AIST generally supports the broader definition of personal advice proposed by the Review.

- a) The expansion of personal advice will, by definition, reduce the scope for regulatory uncertainty, as many more interactions between super funds and their members will be personal advice, rather than general advice.

As current general advice would be redefined as personal advice, this would necessarily mean more personal advice would be provided to super fund members.

If, however, the purpose of the question is about whether the change would result in more useful and meaningful advice being provided, the answer is probably also yes.

- b) The expansion of personal advice would better meet the expectations of consumers who do not generally understand or want the existing boundaries between general and personal advice. While the current general advice warning may provide limited value to consumers, the expansion of personal advice must also ensure that both information given, and advice provided, is subject to clear and robust consumer protections.

This will also require increased record-keeping and supervision, especially in relation to the advice provided on simple matters provided by call centre staff. There should be clear and consistently understood guardrails around the provision of simple advice to ensure it appropriately falls into the middle ground of being helpful to the member while not requiring large amounts of additional information from them.

c) The proposed expansion of personal advice may also improve the ability of super funds to help their clients, specifically through being able to respond to member questions about their circumstances more directly and easily.

3. In relation to the proposed de-regulation of 'general advice' - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?

a) If not, what additional safeguards do you think would be required?

a) Removing the requirement that financial services are provided efficiently, honestly and fairly in relation to de-regulated general advice would be a retrograde step that would leave consumers open to mis-selling of inappropriate or poor value products. While the obligation not to engage in deceptive or misleading conduct is important, it is not a sufficient safeguard in itself. Consideration should be given to separating the regulation of conduct issues from the definition of advice, and strengthened, not weakened.

Superannuation funds already have considerable fiduciary obligations in relation to fund members, including to act in the best financial interests of members, and therefore have governance and processes in place to support meeting broader obligations to those consumers. Other providers may not have those same obligations, and as such this may be where greater risk resides.

What is presently known as general advice (ie, the provision of information related to financial options and decisions that does not specifically take into account a person's individual circumstances) should continue to be provided under an AFS Licence in order to ensure that it is provided efficiently, honestly and fairly, and that consumers have access to important consumer protections, including complaints handling.

While much general advice given now will be captured under the proposed broadening of personal advice, what remains should nonetheless provide some consumer protections. A definition and examples of what is *not* personal advice should also be provided.

Specific consideration should be given to educational seminars delivered by super funds and other advice providers. Seminars are an important, valued by members and cost-effective way for super funds to engage and educate their members without taking into account the specific information they hold for each member, and any consideration of increasing the affordability and accessibility of advice should explicitly include support for their continuation (including ancillary activities).

At the same time, consumers should also continue to receive appropriate consumer protections in relation to seminar content and subsequent activities (such as one-on-one discussion with an adviser). Seminars do not just involve a presenter providing content; typically, they are interactive, with questions being asked and answered during and after the formal presentation.

Keeping the provision of information related to financial options and decisions that does not specifically take into account a person's individual circumstances under an AFS licence supports both seminar delivery and the members attending them.

How should personal advice be regulated?

4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide 'good advice' have on:

- a) the quality of financial advice provided to consumers?
- b) the time and cost required to produce advice?

a. The proposed obligation to provide 'good advice' has the capacity to improve the quality of advice and should be assessed against this objective. It will require practical (but not prescriptive) legislative and regulatory guidance and better definition, in order to ensure it protects consumer interests.

The proposal is a starting point for the design of a framework and associated processes needed to fill out the details.

b. The proposed obligation to provide 'good advice' might reduce the time and cost to produce advice. However, this is not guaranteed, and future consultations needs to specifically require this as a necessary outcome both in legislation and regulatory implementation (eg, by ASIC).

5. Does the replacement of the best interest obligations with the obligation to provide 'good advice' make it easier for advisers and institutions to:

- a) provide limited advice to consumers?
- b) provide advice to consumers using technological solutions (e.g. digital advice)?

- a) Yes
- b) Yes.

6. What else (if anything) is required to better facilitate the provision of:

- a) limited advice?
- b) digital advice?

Overall, the proposals will better facilitate the provision of limited advice and digital advice.

7. In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:

- a) the quality of financial advice?
- b) the affordability and accessibility of financial advice?

The requirement for personal advice providers to be 'relevant providers' is generally supported, with AIST's concerns being primarily about the 'non-relevant providers' and the opportunities for misconduct and mis-selling amongst this cohort (see our response to question 8), and the prospect that some product providers may explicitly restructure their arrangements to avoid being a 'relevant provider.' In particular, the avoidance of any professional standards, including education and ethics standards, is of concern where the product provider has a conflict of interest.

The proposed changes are unlikely to be sector neutral, and it is likely that some in the for-profit sector will restructure their operations to avoid being a relevant provider.

8. In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?

a) If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?

a) AIST is strongly concerned about the opening of a training and competence loophole in the provision of financial advice. There should be further consultation around the training and compliance obligations of providers of personal advice not being required to be relevant providers, with a view to ensuring that everyone who provides personal advice meets minimum training and competence levels, commensurate with the advice they are providing.

For example, the business models and income streams used by influencers and others exploiting new opportunities made available through social media are emerging, and the provision of consumer protections in relation to these are also under development. Opening up advice to these groups through the establishment of 'non-relevant providers' may result in indirect and unanticipated income streams (eg, through advertising or other relationships with the manufacturers or promoters of financial products and services). The Government should explore the issues around this on the basis of anticipating consumer protection challenges and managing conflicts of interests (including those that appear to be indirect), rather than responding to them after there is evidence of consumer harm.

On page 170 of the Final Report of the Financial Service Royal Commission, Commissioner Hayne addressed both the training and conflict issue: *I ...remain of the view, that prevention of poor advice begins with education and training.*

...

However, while I am confident that improved education and standards are part of the solution, I do not believe that they will be sufficient, without more being done to ensure that conflicts in the financial advice industry are managed adequately.

Superannuation funds and intra-fund advice

9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):

- a) make it easier for superannuation trustees to provide personal advice to their members?
- b) make it easier for members to access the advice they need at the time they need it?

AIST has supported and continues to support extending the scope of intra-fund advice to allow the provision of advice on retirement adequacy, household wealth and Government benefits including the Age Pension and Centrelink payments. The removal of the restrictions on collective charging may go some way to effectively extending the scope of intra-fund advice that may be provided by super funds. However, the related comments by the Reviewer suggest that she does not propose extending the provision of intra-fund advice to couples or household is not supported.

People often seek pre-retirement advice as couples, and this advice (including consideration of a spouse's super) should be allowed to be collectively charged. One of the main advice strategies for members in the accumulation phase leading up to retirement is increasing contributions and managing contributions for a couple's best interests. Therefore, intra-fund advice should be extended to include a household's retirement adequacy and pension eligibility.

Given current section 99f restrictions make it clear intra-fund advice cannot be provided to someone who is not yet a member about becoming a member, it should be explicit in future legislation that this is still a requirement and intra-fund advice should only be provided to existing members. In relation to the proposal to amend the superannuation sole purpose test to allow funds to give personal advice, AIST does not accept that super funds are currently unable to provide such advice. In the event that the Government determines it is appropriate to amend the test in relation to advice, AIST submits that advice should be included as an ancillary purpose, and that there be a separate consultation about the form of words to be used.

- a) The proposed changes to superannuation trustee obligations will make it somewhat easier for superannuation trustees to provide personal advice to their members. A change to the sole purpose test should not be proposed.

- b) This will also make it somewhat easier for members to access the advice they need at the time they need it.

Disclosure documents

10. Do the streamlined disclosure requirements for ongoing fee arrangements:

- a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, how and to what extent?

AIST does not support ongoing advice fee arrangements for either MySuper or Choice superannuation products and submits that there should be consistency between both types of products (despite ongoing advice fee arrangements currently being permitted for Choice products).

- a) Reduced disclosure requirements for ongoing fee arrangements would reduce the regulatory burden of providing advice but at real risk of exposing consumers to excessive costs. The cost of providing advice may decrease for advice providers and increase for super fund members.
- b) Ongoing fee arrangements may carry a risk to members' interests and may negatively impact them. At the very least, they therefore need to be effectively disclosed and consent must be sought so that the consumer fully understands the service and the fee arrangements.

On page 241 of the Final Report of the Financial Service Royal Commission, Commissioner Hayne addressed ongoing fee arrangements:

Given the limited nature of the advice that may be paid for from a superannuation account, it might be thought that there are few circumstances in which paying fees for ongoing advice of that kind would be in the best interests of a member.

11. Will removing the requirement to give clients a statement of advice:

- a) reduce the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, to what extent?

In many cases statements of advice have become complex documents more focused on meeting compliance requirements and are often of limited use to consumers.

AIST supports streamlined and reduced disclosure arrangements, on the principle that the extent of disclosure should be commensurate with the scale and nature of the advice provided. This should be subject to a test about what content, detail and format is reasonable in the circumstances. This may include a requirement to explain any possible disadvantages of the advice to the customer.

For example, a simple super fund member enquiry to a call centre about retirement income stream options may result in the member being assisted to find the appropriate cohort for them, without the need for a statement of advice being produced. However, an enquiry from a member with significant assets outside of super may require more detailed advice, and the production of a record of the advice given. The level of disclosure should be reasonable having regard to the circumstances of the advice provided. Where a consumer needs to make more than one decision, or make a series of decisions over time, it will often be useful for them to have a reference document.

There needs to be clear guidance (including examples) provided about the circumstances in which different levels of disclosure is provided and where no disclosure is provided. This should not be prescriptive, and regulators should encourage the development of alternative approaches where these are likely to be more useful to clients.

Removing the requirement to provide a statement of advice nonetheless means that the advice provider still needs to maintain complete, comprehensive and verifiable records, including how the customer's needs are being met, and why the advice is suitable for the customer.

- a) A reduced requirement for disclosure documentation will greatly reduce the compliance burden and associated for providing responses to simple super fund member enquiries but will have less impact in relation to more complicated enquiries where the advice provider will still need to ascertain, assess and record the circumstances of the member.

Reduced disclosure will result in an increased focus on the quality and comprehensiveness of record-keeping (although existing record-keeping requirements are significant) and may result in some increased costs.

- b) The risk of negative impacts on consumers would be minimised if the principle of the extent of the disclosure being commensurate with the scale and nature of the advice provided is adopted.

12. In your view, will the proposed change for giving a financial services guide:

- a) **reduce regulatory burden for advisers and licensees, and if so, to what extent?**
- b) **negatively impact consumers, and if so, to what extent?**

- a) The Review's proposal will reduce the regulatory burden for advisers and licensees to a limited extent.

- b) Providing a full FSG to all customers provides limited consumer benefit per se.

However, as a FSG provides consumers with information about their rights, entitlements and services provided, it makes clients aware of these. As an alternative to providing an FSG (and as proposed by the Review), customers should be advised of these in any conversation where simple advice is provided, and a weblink to the FSG should be included in any written communication about more complicated advice.

This will mean the consumer is therefore be made aware that they have recourse to both internal and external dispute resolution mechanisms if required. This approach ensures customers are referred to an up-to-date FSG, or the information referenced in the FSG, each time they are provided with a financial service.

Design and distribution obligations

13. What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:

- a) the design and development of financial products?
- b) target market determinations?

- a) AIST agrees that DDO reporting requirements should be simplified so that providers are required to report to product issuers where they have received a complaint in relation to a financial product (that is, reporting should not be required for 'no complaints')
- b) AIST also agrees that a product issuer should not have to require an adviser to report other information to the issuer by including the reporting obligation in a target market determination.

Transition and enforcement

14. What transitional arrangements are necessary to implement these reforms?

Any transition period should be structured so as to ensure that there is not a regulatory gap in the period between and old and the new rules which would encourage poor behaviour and tardy transition to the new requirements, although this should be limited if the proposal is to allow early opt-in to the new rules. The scale of the proposed reforms would require a sufficient period for businesses to plan and implement new approaches.

During the entirety of the transition period, advice providers should be required to demonstrate 'best endeavours' in order to obtain protection from ASIC taking enforcement action. In the transition period, there should be a requirement for record-keeping requirements to be no less than the requirements under the existing regime, and disclosure requirements no less than those required under the new regime.

General

15. Do you have any other comments or feedback?

AIST welcomes the contribution of the proposals paper to the debate about providing more accessible and affordable advice to more Australians, and generally supports measures to broaden the definition of personal advice. However, this is not an end in itself, and there should be a corresponding focus on the quality of advice.

Consultation with our member funds resulted in a submission broadly supportive of some proposals, including the obligation to give 'good advice', a broader definition of personal advice, for personal advice providers to be relevant providers, the removal of SIS Act restrictions on collective charging of advice fees, and for reduced disclosure requirements. This support is subject to ongoing consumer protections being provided, the provision of supporting guidance, and for disclosure to be commensurate with the advice provided.

However, a principle-based approach nonetheless requires guidance and support from regulators, especially ASIC; and the proposal for 'non-relevant providers' requires more consideration, particularly to protect consumers from unscrupulous operators.

On the other hand, it is not clear the sole purpose test needs to be amended to allow trustees to provide personal advice, and possible consumer protection issues associated with advice given by 'non-relevant providers' should be the subject of further consideration.

The questions in the template do not ask about the proposal to allow advice fee deductions from super in relation to a member's interest in their own superannuation. While this is generally supported by AIST, this support does not extend to the release of fees to independent advisers without verification that the payment does in fact relate to specific superannuation advice.

In considering the Review, the Government should also assess if the quality of advice has improved, in line with the recommendations of the Financial Services Royal Commission. The Royal Commission (RC) explicitly recommended a review focused on whether changes to advice have been effective in improving the quality of advice, noting if those changes have not – or have not sufficiently – improved the quality of advice given by financial advisers consideration must be given to what further changes will be necessary. In the Govt response to this RC recommendation, the

Government committed to undertake a review of reforms (including FOFA) to ensure they are working effectively and improving the quality of advice. Both the recommendation and the Government response goes beyond the remit of the current review.