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Quality of Advice Review Secretariat
Financial System Division
The Treasury

Via Email: AdviceReview@treasury.gov.au

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Consultation Paper – Proposals for Reform

Please find following Australian Retirement Trust's submission in response to the Quality of Advice Review (the Review) consultation paper – Proposals for Reform (the proposals paper).

Australian Retirement Trust congratulates the Review for the comprehensive and considered nature of the proposals paper which contains proposed reforms that, in our opinion, have the potential to drive some of the most significant changes in the industry's history.

We note the synergies between our submission to the Review's initial issues paper and parts of the proposals paper, and we would like to express our appreciation for the opportunities to be actively involved in the Review's consultations.

We trust our feedback on the proposals paper will be beneficial to the Review and would welcome the opportunity to discuss our submission in further detail.

Chris Ramsay, Senior Manager Policy and Government Relations is the primary Australian Retirement Trust contact regarding our submission and can be contacted on 07 3029 9666 or Christopher.Ramsay@australianretirementtrust.com.au.

Yours sincerely,

Karin Muller
Chief Member Officer
Australian Retirement Trust

Quality of Advice Review **AUSTRALIAN RETIREMENT TRUST**

This information and all products are issued by Australian Retirement Trust Pty Ltd (ABN 88 010 720 840, AFSL 228975) (Trustee) as trustee for Australian Retirement Trust (ABN 60 905 115 063) (Fund).

Name/Organisation: Australian Retirement Trust

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?**

Yes. To make the provision of advice (particularly simple, limited personal advice) more accessible and affordable to Australians, Australian Retirement Trust is broadly supportive of having scalable obligations, with effectively two tiers of personal advice providers (i.e. Relevant Providers and what we have referred to as Other Providers). We further support the proposed obligation to provide 'good advice' to consumers which shifts the focus to the outcome of the advice rather than the process.

A positive change of this magnitude would place a significant responsibility on the financial services industry to do what is right, not just legally but also to uphold consumer expectations. We believe that the current 'general obligations' under s912A of the *Corporations Act 2001*, which are not proposed to change, will continue to provide a constant and consistent foundation upon which Australian Financial Service Licensees (AFSL) will be measured.

Since October 2021, AFSLs have been required to self-report a broader range of matters to ASIC under the breach reporting regime due to the introduction of the 'deemed significance test', providing the regulator with more insight and, enabling ASIC to take appropriate action should adverse events or trends arise within an institution or industry that impacts consumers. There are sufficient consumer safeguards in place today to provide adequate consumer protection against the potential misuse of this great responsibility.

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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?

a) The proposed amendments to the definition of personal advice, including the removal of the concept of general advice, will help to reduce regulatory uncertainty for institutions but will not eliminate it. There will continue to be 'shades of grey' about whether personal advice or only information has been provided, which in many cases will be situational. Complete certainty, while naturally desired, is not always possible or realistic.

Refreshed regulatory guidance to navigate a principles-based landscape will be paramount as the financial services industry transitions from a 'rules' to a 'principles'-based regulatory regime.

b) The proposals will achieve their intent, to facilitate the provision of more simple, scaled and limited personal advice to consumers. The removal of prohibitive cost barriers to provide limited personal advice (e.g. having only Relevant Providers provide personal advice, producing lengthy advice documents, etc.) will enable more scaled personal advice to be provided by institutions via Other Providers.

Each institution will need to consider their risk appetite for providing personal advice, and the scope and scale of the advice that they will permit Other Providers to provide, before referring the consumer to a Relevant Provider.

c) The proposals will assist financial institutions across the financial services industry to better assist consumers by enabling them to respond to specific questions relating to the individual consumers, needs, circumstances and objectives.

Per the response above, financial institutions will need to carefully consider the circumstances in which Other Providers can provide personal advice and where a handover or referral to Relevant Providers should occur, as well as an understanding of their potential risk and exposure to poor advice.

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?

Following the Federal Court's Westpac decision¹, the provision of general advice has become increasingly challenging for institutions to navigate. The proposed removal of general advice as a financial service and simultaneous broadening of the definition of personal advice will likely lead to greater protection for consumers in many instances. Where personal advice is provided, consumers will be protected under the 'good advice' obligation. For institutions like Australian Retirement Trust, which generally holds information about their members' financial situations, many instances of general advice would be classified as personal advice under the proposals. The 'good advice' obligation would add a higher legislative bar for these advice scenarios.

All information will still be required to be correct and not misleading.

However, we note that for other institutions and providers who do not generally already hold information about their clients, these consumers would likely lose access to cost-effective redress in the event of misleading or otherwise inappropriate information where such providers are not required to maintain AFCA membership.

Proposed changes to remove general advice from the definition of a financial service are welcome, however, appropriate guardrails will be required. Australian Retirement Trust suggests the following:

- Establishing minimum education and qualification standards for individuals providing information only services as well as Other Providers providing personal advice.
- Providing clarity on implications for one-to-many interactions (e.g. seminars and written marketing material providing targeted information to consumers based on information held by the financial institution – for example, retirement income account marketing outlining the benefits and any potential considerations should be permitted to those 60 years and older, who may have recently reduced their working hours).

¹ *Australian Securities and Investment Commission v Westpac Securities Administration, in the matter of Westpac Securities Administration Ltd* [2018] FCA 2078

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) Australian Retirement Trust believes the 'good advice' definition will be a direct measurement of the quality of the advice provided. Successive regulations in relation to the Best Interest Duty (BID) have defined the steps an adviser needs to take in order to prove that good quality advice was provided, resulting in regulation focussed on the individual steps rather than the outcome (the actual advice itself).

Moving to a 'good advice' model would directly measure the thing that is being considered - the advice. It does however assume that 'good advice' is something which can be easily assessed and the difference between good advice and poor advice is easily determined. When the advice is clearly poor this will not be an issue but in some circumstances the difference will be harder to distinguish. A level of regulatory guidance on how to monitor and assess 'good advice' (potentially in the form of case studies) would be useful in guiding the transition to a changed regime.

b) By moving to a 'good advice' model, we believe the time and cost of providing advice will be reduced but the significance of the reduction is unclear at this time. Removing the amount of work required to justify if advice meets the BID leaves just the overall outcome of the advice to be considered and will enable more consumers to be able to get advice but robust governance frameworks will still be required.

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) Proving an adviser has met the BID can be a significant time cost. When providing limited scaled advice to consumers, the model Australian Retirement Trust uses provides significant volumes of advice interactions. Small savings in the time taken to provide the advice will have significant cost savings and benefits for our members. This will result in being able to provide more advice to more Australians as a result.

b) When providing digital advice currently the solution is required to consider BID and ensure it meets these set requirements while not having a deeper conversation with the clients. This is difficult and is exacerbated by the 'take any other step' requirement in the safe harbour provisions. We contend this has slowed the speed of development of digital solutions for advice. Removing this requirement and replacing it with the requirement to provide 'good advice' will enable more digital advice solutions to be developed leading to greater scale in providing advice.

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

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

There are three interconnected proposals that will assist the delivery of more limited, scaled personal advice and make it more achievable to deliver digitally. The three proposals include:

1. Establishing a singular definition of what is considered personal advice, with the removal of the BID safe harbour steps.
2. Allowing Other Providers to provide personal advice under an AFSL where no direct fee is charged, commission received, nor ongoing relationship exits with consumers; and
3. Removal of the Statement of Advice (SoA) and Record of Advice (RoA) requirements, with a focus on providers keeping appropriate records provided to consumers on request.

These three proposals combined will make the delivery of limited personal advice more affordable and accessible and also enable scaled advice to be more readily provided to more consumers via digital means. To further assist, Australian Retirement Trust suggests the following:

- **Retain but refresh regulatory guidance:** Retaining regulatory guidance that is both pragmatic and positive to consumer outcomes will be required: ASIC *Regulatory Guide (RG) 255: Digital Advice* established requirements in relation to digital advice tools (e.g. obligations to test algorithms, ensure providers are competent to deliver such advice and that appropriate record keeping obligations are adhered to in a digital advice setting). This guidance will continue to be required but refreshed for a new regulatory setting.
- **Responsible Manager oversight of digital advice:** We advocate for a continued requirement for oversight of the advice delivered by a digital tool to be overseen by a Responsible Manager who meets the Relevant Provider qualification requirements to support the quality of advice and ensure broader consumer protection.

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?**

a) Australian Retirement Trust believes the proposed changes to the application of professional standards will not change the requirements of current Relevant Providers. There is expected to be no difference to the quality of financial advice provided by Relevant Providers, given the increased standards in place to be met in full by 2026. In relation to Other Providers, each financial institution will need to determine, based on their own risk appetite, what education, qualifications and training is required to deliver personal advice and be satisfied that their employees are capable and actually do provide 'good advice' to consumers.

Without any legislated minimum education and qualification standards for Other Providers the onus of determining who can and cannot provide personal advice will fall on each financial institution, as well as determining the scope of advice that can be covered. The quality of personal advice delivered by Other Providers must be monitored (e.g. internal and external audit) to determine if the personal advice is 'good advice' or not, per current Corporations Act s912A 'general obligations'.

b) Through the proposals, personal advice is expected to become much more affordable and accessible, particularly when provided by Other Providers (i.e. employees) of financial institutions. Financial institutions such as banks and superannuation funds will be able to offer consumers simple, personal advice via customer interacting employees at a much-reduced cost than is possible today. The reduction in cost for advice will depend on the scope of the advice provided, but would not be immaterial.

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?

Today, under s912A of the *Corporations Act 2001* ('general obligations') AFSLs are required to undertake steps to ensure that the financial services delivered to consumers are undertaken efficiently, fairly and honestly. Australian Retirement Trust anticipates that the existing legislative regime will remain sufficient and appropriate to ensure the quality of advice to consumers.

In the absence of legislated minimum education and qualification requirements, financial institutions will need to individually determine what, if any, minimum educational standards are required to provide personal advice on their financial products and services. Guidance on the minimum education and qualification requirements should be provided for Other Providers of personal advice, including the obligation for ongoing continuing professional development requirements. This would avoid disparity and transitional issues for Other Providers when changing roles across financial institutions and avoid each organisation requiring different minimum education and qualification standards.

Consideration should also be given to requiring Other Providers to make the scope of advice offered and limitations publicly available - for example, through a Financial Services Guide (FSG) - so that potential consumers can make an informed decision as to whether this scope and limitations will likely meet their advice needs.

Further, the terms Financial Adviser and Financial Planner should only continue to be employed by Relevant Providers on the ASIC Financial Adviser Register. We advocate for the continued enshrining and protection of the terms to only Relevant Providers who are subject to higher professional standards. This may also assist the public to readily determine the difference between Relevant Providers and Other Providers of personal advice.

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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?

a) Amending the Sole Purpose Test (SPT) under s62 of the *Superannuation Industry (Supervision) Act 1993* (“SIS Act”) and removing s99F (collective charging arrangements) will assist in providing flexibility for superannuation trustees and the personal advice services they provide. This is particularly important in considering the requirements of the Retirement Income Covenant and assisting members during the pre-retirement and retirement phase.

Australian Retirement Trust believes that the removal of s99F will make the identification of the scope of advice that can be provided much clearer. Additionally, it will provide trustees with the ability to assist a consumer to implement the advice they have received and monitor that implementation, which is critical. Without the ability to monitor implementation under the current framework, Australian Retirement Trust’s experience is that some intra-fund advice today goes un-implemented - limiting the value of the advice.

b) We believe these changes facilitate members’ access to personal advice from their fund through several channels of a member’s choice – simple, more complex or referral for comprehensive advice outside the scope of the SPT.

In addition, the ability to consider adjacent areas of retirement planning (e.g. the member’s family situation, debts and social security entitlements) enhances the ability to provide relevant retirement planning advice.

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?

a) The disclosure requirements need to also be considered in combination with the other legislation related to the release of advice fees from superannuation funds; most importantly, the issue of SPT and the trustee obligation to consider whether the advice fees requested to be paid meets the SPT. The proposed changes will make obtaining information to inform the trustee's decision on SPT more difficult as, although there is a requirement for advice to be recorded, it will not be in a SoA and the variation of recording between various licensees and advisers will be vast. There may not be enough information to enable a trustee to make an informed decision.

Specifically, if the disclosure requirements are reduced and SoAs are removed from legislation, licensees will find it difficult or impossible to determine whether the advice provided by advisers meets the SPT. Similarly, trustees will be unable to request documentation to gain assurance that their SPT obligations are met, or the additional burden of the trustees requesting the advice file, file note, record of advice interaction etc will be inefficient and obviate the benefits of a single industry wide form for request of fees to be released.

One alternative for this issue is to have a condition of release added to the SIS Act to permit the payment of advice fees from funds held by the trustee in superannuation. This would then enable a straight through process of payments to be implemented for the payment of advice fees. This however would be at the cost of another control in the system about advice fee payments. It would result in the adviser and licensee being wholly liable to ensure the advice provided is consistent with the updated SIS Act.

The points raised above are not specific to ongoing advice fee payments, but more broadly to any advice fee payments to a third-party financial adviser.

b) The above changes to the SIS Act however would remove a consumer safeguard and change the liability from trustee to licensee and adviser.

More broadly, the recommended changes in the proposals paper would enable easier access to advice fee payments, but would, without the additional recommendations above, reduce the ability for trustees to act efficiently as a consumer protection, shifting the processing burden of SPT issues from licensee to trustee.

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?**

- a) Australian Retirement Trust believes that the proposed changes will significantly reduce the overall time taken and cost of providing advice to members which would mean that we could provide more advice to a greater number of members.

We agree with the proposals paper's assertions that financial advisers spend a significant time preparing an SoA to cover their legal obligations and the process, rather than focussing on the outcome of the advice. We therefore see this as a major step forward in providing information that is relevant and wanted by the consumer.

- b) We don't believe any material consumer impacts will ensue as a direct result of specifically removing the SoA for advice providers. There are questions around the value most clients attribute to the SoA document itself.

We believe that consumer protections are critical and agree that these remain in place despite the removal of SoA obligations or the change in regulation to personal advice.

We would advocate for the process for any questions, complaints or potential disputes to be clearly defined and be easily accessible via existing dispute resolution programs.

The overall cost of providing advice should significantly reduce over time and as a result become more accessible.

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) Australian Retirement Trust supports the recommendation to remove the obligation to provide an FSG prior to providing personal advice and see that this will reduce regulatory burden for advisers. We would note that currently s941D of the *Corporations Act 2001* requires the provision of an FSG when it is apparent a financial service will be provided, this includes the provision of an FSG for general advice as well in all formats of delivery.

Making the FSG content available on a website would remove the requirement of providing one to a client and the time explaining the content during an appointment. We would also consider that the verbal FSG requirement would be removed when giving personal advice over the phone and would be a logical extension of the recommendation.

We agree that there is some important information in the FSG that a potential consumer should have access to and we see that this 'important' information should be identified in guidance to AFSLs as a minimum to be provided on a website.

With respect to licensee impact, minimising what is required on a website to just the 'important' points would reduce licensee workload and costs in maintaining these documents and updating on a regular basis - which can be significant.

b) We don't see any negative impact to a consumer from this recommendation. We agree with the proposals paper that clients are not interested in receiving documents, specifically those that are regulatory in nature and only facilitate a tick the box process to ensure the adviser has met their legal obligations. Further, we consider the content of a FSG in its current form as a low value consumer-facing document. However, we contend that it is important to provide flexibility to make some important FSG information available to a potential client.

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) The proposed amendments are unlikely to have a material impact on the design and development of financial products. Complaints information will continue to be provided from advisers to product issuers, so there will still be an open channel for consumer issues to feed into the design and development of financial products. The Design and Distribution Obligation regime can still operate as designed without the significant dealing obligations for relevant providers of personal advice.
- b) As a product issuer, Australian Retirement Trust is yet to receive a notification from a financial adviser of a significant dealing under the new regime. As a result, our target market determinations are likely to be materially unchanged by the proposed modifications to the regime. We are supportive of the proposed changes, as they will reduce costs of compliance without a material increase in risk of consumer harm.

Transition and enforcement

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

Australian Retirement Trust believes that updated regulatory guidance, and a facilitative approach from regulators will be essential in supporting transition. Superannuation is part of an advice ecosystem, and significant regulatory guidance would be necessary for superannuation trustees to meet existing and any new obligations as a result of these proposals. For example, ASIC and APRA have provided guidance to trustees dated 10 April 2019 and 30 June 2021 relating to the oversight of advice fees from members' accounts. These obligations, in part, would be more difficult to meet where a detailed SoA has not been generated by the financial adviser. Further, trustees, licensees, and advisers will need to allocate resources to training and system changes.

Post the passage of any enabling legislative changes and, the issuing of regulatory guidance, Australian Retirement Trust would support a transition period that incorporates both a soft start date (allowing early adopters to 'opt-in') and a hard start date (by which all industry participants must be compliant) similar to how the changes to *RG97: Disclosing fees and costs in PDSs and periodic statements* allowed issuers to elect to apply the new requirements prior to the new requirements becoming mandatory for all issuers.

Because of the significance of these reforms, we would encourage the Australian Government to consider an education campaign aimed at ensuring consumers are aware of their rights and protections.

General

15. Do you have any other comments or feedback?

- As noted above, Australian Retirement Trust believes the proposed changes will make it easier for Other Providers to provide simple, personal advice. One current issue for financial product issuers who do provide general advice to consumers is the fine line between general and personal advice, and the significant consequences of stepping over the line. We recommend that clarity be provided on whether the breach reporting regime and its impact on individual Relevant Providers today will apply also Other Providers of personal advice as they may not be registered on the ASIC Financial Adviser Register.
- The consultation paper currently does not consider the complexity posed by the RG 78 breach reporting regime and the impact this is currently having on the ability for financial advisers to provide advice which is affordable and accessible for consumers. The breach reporting requirements in RG78 are posing a significant compliance burden on AFS Licensees and advisers and do not appear to differentiate between the very minor (deemed significant) issues and the significant issues - potentially resulting in consumer harm. Australian Retirement Trust recommends that the impacts of RG 78 implementation be considered in the scope of this review to assist consumer access to high quality and affordable financial advice.
- Australian Retirement Trust notes that under the current regulatory framework employers are treated as a retail client and are subject to the same regulatory rules as a member of a fund. We suggest the Review considers advice provided to employers and;
 - consults further with industry if it proposes changing the treatment of advice provided to employers, or;
 - calls out specifically in its final report that there is no proposed change to the treatment of employers and employers are captured under the same recommendations.
- Australian Retirement Trust considers guidance would be beneficial for superannuation trustees on whether a representative who meets the Relevant Provider professional standards (now and under the new regime) could ever be prevented from acting as an Other Provider (i.e they would be unable to provide simple advice to a fund member around contributions and have the cost of this advice collectively charged). Clarity is required whether the representative's status (Relevant or Other Provider) is solely determined based on whether a fee is charged and/or ongoing service provided as this could be different for each member.