Australian Government
The Treasury

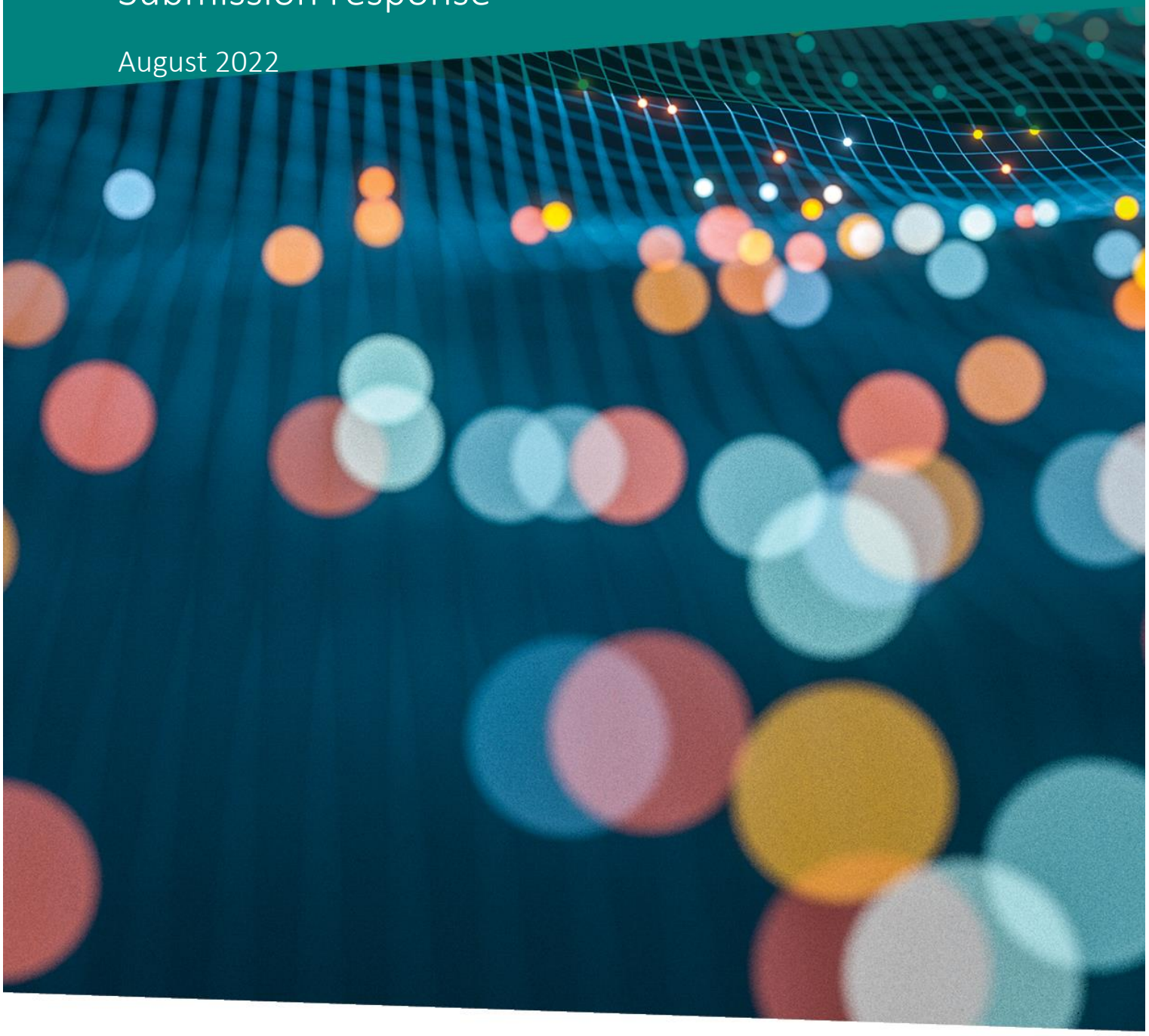
TSY/AU

Hostplus Superannuation Fund

Quality of Advice Review – Proposals Paper

Submission response

August 2022



Consultation process

Request for feedback and comments

Interested parties are invited to provide feedback on the proposals for reform listed in the Quality of Advice Review Proposals Paper using the template in Appendix 1. Consultation will close on Friday 23 September 2022.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses in a Word or RTF format via email. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All of the information (including the author's name and address) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

View our submission guidelines for further information.

Closing date for submissions: 23 September 2022

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Appendix 1: Consultation template

Name/Organisation: **Hostplus Superannuation Fund**

Questions
Intended outcomes
1. Do you agree that advisers and product issuers should be able to provide personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?
Hostplus in-principal supports aspects of the Review's proposals to improve consumer's access to and the affordability of quality advice. This extends to generally supporting the Review's objective to reduce or remove overly proscriptive requirements attached to the provision of personal advice, and others relating to the provision of general advice provided by product issuers. However, Hostplus does not support such reforms which based on our experience in the financial services industry have the potential or likely tendency to inappropriately or prematurely dilute or remove important consumer-focussed protections and controls against inappropriate, conflicted or sub-optimal (ie, "bad") advice. Presently, Div 2 of Pt 7.7A of the Corporations Act requires that personal advice provided to retail clients comply with the 'best interests duty' and a number of related covenants which are paramount in ensuring the objectivity and suitability of financial advice in the interests of the consumer. These important requirements were largely introduced as part of the then government's Future of Financial Advice (FOFA) reform package as a necessary and appropriate response to the acknowledged need to safeguard people from bad, conflicted or inappropriate advice, and more generally, to improve the quality of, and community confidence in, financial advice received by retail clients. However, such reforms, while accepted as being appropriate, nonetheless have impacted the affordability, accessibility and user-friendliness of personal advice. It is appropriate in Hostplus' view to strike the correct balance between appropriate regulation and efficiency in the provision of timely and affordable financial advice. To ensure a pragmatic and workable balance is achieved between the Review's principal objectives of making advice more efficient and accessible, while maintaining important consumer protections, reforms must in our submission maintain safeguards to protect customers from harm and continue to ensure that advice is "good" advice which prioritises the consumer's interests over those of the adviser and product issuers.

Achieving that balance necessarily means that reforms should not come at the cost of demonstrably effective and necessary consumer protections. To do so would in our view wind-back market improvements whereby financial planning and allied advice-providers have moved to a more professional and trusted standing in Australia.

Some of the suggested reforms and initiatives covered in the Proposals, we submit, would erode or could cause to be sidestepped several important and necessary consumer protections currently attached to the provision of quality, warrantable and affordable advice, and particularly personal advice.

In particular, the best interest duty, safe harbour steps and adviser Code of Ethics were collectively introduced as part of the FOFA reforms and subsequent to concerning practices in the Hayne Royal Commission findings to add necessary measures to improve both advisers' and licencees' conduct and professionalism, and add mandatory risk controls and associated safeguards deemed appropriate to instil or restore consumers' confidence and trust in the advice industry, its practitioners and in the quality of advice delivered. These covenants must in our view remain a central obligation in the provision of personal advice.

We agree that advisers and product issuers should provide advice that is 'good advice'. However, in and of itself, an obligation to simply provide "good advice" that is reasonably likely to benefit the advice recipient is in our submission insufficient to address the multitude of complex considerations, interests and market forces which impact an adviser's provision of personal advice and to which the consumer is inherently vulnerable.

To take an example, we can foresee advice provided to a person as being said to have discharged the basic obligation of being 'good advice' likely to leave the client in a better financial position, without however addressing the circumstance where the advice serves the adviser's subjective commercial interests and is therefore inherently influenced and conflicted by reason of that interest. The Review's proposed reform would not address that conflict.

Example

A person inherits $100,000 and also has a large mortgage, consumer credit debt, a car loan a modest superannuation balance and little other savings or investments. They see an adviser to recommend what they should do with the inheritance. The adviser recommends that as they are relatively young, with many years ahead of them to pay off debts and increase their super, they should invest the money in a portfolio of shares and ETFs via a wealth platform owned by the adviser's parent licensee company that charges asset-based fees.

Prima facie, that advice could be characterised as 'good advice', in that investing is such assets over a long term is most likely to see the client's $100k increase over time to an amount that would be expected to be much larger a sum than had they left in cash in the bank.

However, that basic obligation does not address nor regulate the fact that the adviser has prioritised this option over others, such as reducing consumer debt, or increasing their super balance, by reason of the fact that these latter options result in a longer-term, continuous, financial interest for the adviser (ie, the asset-based fees the adviser's employer's platform will accrue over time).

The simple "good advice" and "better off" obligation does not account for or regulate the above conflict and, as the example demonstrates, is therefore open to abuse by advisers to the ultimate detriment of consumers and community confidence in the financial advice industry. We submit that such an outcome is contrary to the objectives of the Review and counterproductive to the demonstrable benefits achieved by reformed to date. Whilst hypothetical, the above example represents a typical advice scenario and is not unrealistic or unrepresentative in any way.

In our view, the deficiency identified can be efficiently addressed by including an additional requirement to the 'good advice' and 'better off' tests — that being the retention of the duty of the adviser, whether a Relevant Provider (ie, fully FASEA qualified financial adviser or another person authorised to provide personal advice pursuant to the Reviewer's Proposals), to prioritise the client's interests over their own. That is an obligation well established in the law, which is not novel in its practical application.

We submit that the duty to avoid conflicts remains a positive and constant regulatory requirement and control to avoid the situation as demonstrated above. And as per the above example, this does not prohibit or prevent an outcome whereby an adviser or their stakeholders might also benefit from the advice provided. Rather, it appropriately reorders and prioritises the client's interests, such that those interests remain paramount, influential and guiding in the formulation of the advice and recommendations provided by the adviser. To do so is in our submission consistent with the primary objective of maintaining consumer confidence in financial advice.

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?**

We agree that the proposed changes to the definition of 'personal advice' is likely to facilitate the provision of more personal advice to consumers. However, the provision of more personal advice cannot in our submission be the goal in and of itself.

The advice must remain appropriately regulated and able to be provided only by appropriately qualified and trained personnel. On that basis, we submit that while the proposed new definition and scope of 'personal advice' would likely achieve greater provision of personal advice, it is not necessarily an appropriate reform.

We further address this point below.

While we accept that presently there is a deal of regulatory uncertainty and consumer comprehension challenges with the existing demarcation between 'product information', 'general' and 'personal' advice, we are also concerned that the proposed extended definition of 'personal' advice would remain problematic (refer below) and unlikely to in and of itself materially reduce uncertainty regarding regulatory or consumer comprehension.

For these and the reasons set our below, we also are concerned that the proposed changes, made without further amendment, may not improve the ability of financial institutions to help their clients or members and may in fact, in cases where it is proposed that the extended scope of personal advice is provided by other than an appropriately qualified adviser, this may cause material harm to such clients and members by exposing them to advice provided by insufficiently qualified or regulated providers.

The Reviewer has advised that in her view the financial services regime (which we assume refers principally to the Corporations Act) should continue to regulate the provision of 'personal advice'. We agree with that proposal.

However, we do not wholly agree with the suggested broadening of the definition of 'personal advice', such that it applies whenever a recommendation or opinion is provided to a client about a financial product (or class of financial product) and, at the time the advice is provided, the provider has or holds information about the client's objectives, needs or any aspect of their financial situation. For the reasons explained, that proposal creates inflexibility and is contrary to the objective of personal advice — which is to ensure that the provider, who is appropriately qualified, appropriately interrogates, determines and analyse those personal factors of the recipient which properly inform the advice.

Cognisant of that requirement, the existing definition of 'personal advice' applies where the provider of that advice considers the client's objectives, financial situation or needs, or where a reasonable person might expect the provider to have considered any of these key matters.

Under the Reviewer's proposed change, an adviser (for example, an adviser employed by the advice receiver's superannuation fund) would be regarded as having, or been required to have, utilised and considered information held about the client, irrespective of whether such information or data is relevant to the matter for which the client has sought advice.

That is an incongruous outcome which imposes an inflexible, inefficient and unnecessary regulatory burden without improving the advice that the recipient actually receives. We submit that the proposal unduly impacts an entity, such as Hostplus, and many other similar entities who currently, and will increasingly in the future, hold data, information and insights about their members which may not necessarily be relevant to the scope of the advice being sought by the member. Having regard to that market reality, the definition of 'personal advice' should, in our view, remain subject to a suitably qualified and trained adviser to make appropriate enquiries of what facts and other information the entity might hold relating to a person and apply their own professional assessment in determining what of such information is relevant to the provision of the advice they provide. The requirement for tailored consideration by an appropriately qualified adviser, rather than automatic application of inflexible requirements, should form the basis for the definition of personal advice.

We believe the above matters can be addressed simply by replacing the proposed extended definition of "…has or holds information about the client's objectives, needs or any aspect of their financial situation", with "…has or holds relevant information about the client's objectives, needs or any aspect of their financial situation". In doing so, we submit that the adviser would be expected to be required to specifically include in their advice file notes and highlight in a requested SoA or RoA the information, etc held by the adviser or their entity relating to the client that has expressly been taken into account and not been taken into account in providing personal advice, and why that was the relevantly the case.

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?

We see merit in the Reviewer's ambition to remove or reduce the current ambiguity and demarcation lines between general and personal advice definitions and attendant regulatory requirements. However, we submit that the proposed reforms, which essentially do away with regulation of the provision of general advice in relation to financial products, go too far in seeking to achieve that objective. Whilst consumer protections are an effective regulatory tool, they are inherently reactive (that is, as a means to prosecute identified unlawful conduct) and do not achieve proactive means of regulation, market education and ongoing training and suitability requirements — which together improve market efficiencies by reducing the need for enforcement activity in reliance on consumer protection laws.

There remains a role and requirement for general product advice as a mechanism to efficiently inform and educate consumers in relation to financial products and services. Equally, there remains a need in our submission for such advice to be provided under appropriate licencing and consumer protection boundaries and standards. In this regard, we a strongly of the view that general advice, and particularly as it relates to products, must only be provided by a person or entity holding or operating as an Authorised Representative, under an Australian Financial Services Licence issued and, most critically, proactively regulated by ASIC.

This ensures for example that those who provide general advice are subject to the general obligations in section 912A of the Corporations Act — including the requirement to act efficiently, honestly and fairly in relation to the provision of the advice — and are also subject to requirements relating to the avoidance of conflicts.

This is an important control and restraint that would restrict or prevent inappropriate advice being provided by the likes of spruikers, unlicensed financial product/service providers and so-called "finfluences" who may hold themselves out to be advisers, as well as people broadly sanctioned other than by experience, training, qualifications and regulatory oversight to provide general advice.

We submit that if any of these types of 'advisers' wished to provide advice to retail clients or the public more generally, then the requirement to be licensed or authorised under an AFSL, with the attendant minimum education, training and qualification (e.g. RG 146) and operating with appropriate licensee oversight and accountability should remain a key tenet of the market and consumer protections necessarily attached to such advice. We also see this as important means to preserve and make available to the public formal, independent, complaints handling and determination, such as provided by AFCA. Absent these important safeguards and protections, we fear that bad agents will continue to look for, exploit and profit from the relaxing of the general advice regime.

Beyond the above requirement, we have no issues with entities or their agents providing factual information to retail consumers in relation to financial products and services, and believe the existing consumer protections and remedies remain appropriate in this area.

We also believe that beyond the application of the existing general consumer protections, such as the prohibition against engaging in misleading or deceptive conduct, the conflicted remuneration provisions and other safeguards, general advice warnings and associated disclaimers remain critical regulatory requirements in the interests of consumers. For example, a superannuation fund may hold an information session, either in a format such as a face-to-face seminar or an online webinar, and invite members to attend to be provided with general information, guidance and suggested next best actions (ie, seeking personal advice) about preparing for retirement.

In such "one to many" circumstances and formats, and irrespective of the information, data and other insights the fund may hold about a member who has elected to attend this information session, it would be quite inappropriate and problematic for the fund not to emphasise to the audience that the session is of a general information nature and that no attendees' personal details or situation has been taking into account as part of their attendance (even if the fund has such data available to it). In such circumstances it would be most appropriate – indeed necessary – to provide the audience with a general advice warning, and that such a warning or disclaimer also be published on any specific materials provided ahead of, at or subsequent to the session.

This *positive* requirement, which goes beyond the mere *negative* prohibition of not misleading, is necessary to ensure ordinary consumers are informed of the nature and scope of the information they are receiving. That is particularly critical in circumstances where large cohorts of the public may not be appropriately engaged with the financial product, such as superannuation, which is being discussed, promoted or explained in a generalised setting.

We believe the above example warrants the retention of relevant proscribed requirements of the existing general advice regime.

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?

Hostplus does not believe the replacement of the existing and effective best interests duty, or the equally germane duty that an adviser prioritise the client's interests ahead of their own, with a universal obligation to provide 'good' advice, is appropriate. Nor does Hostplus agree with the implicit notion that the requirement to provide good advice is mutually exclusive from existing best interests covenants or other existing requirements. Hostplus submits that the removal of the best interest obligations, whilst potentially increasing the volume of personal advice provided, may necessarily result in a poorer quality of advice that is provided with less rigour, at a lower standard and with less accountability to the recipient of the advice.

As previously set out, whilst we agree with the Review's objective, and the Reviewer's proposal, to simplify the advice process and remove unnecessary or unwarranted requirements in order to provide advice that is good, compliant and prioritises the advice receiver's interests, financial welfare and outcomes above those of the advice provider's, we do not believe that objective and outcome will be achieved without the existing covenants remaining as formal duties associated with the provision of 'good' advice to retail clients. The best interests obligation is broader in scope than the "good advice" requirement. The broadness of its scope is necessary to account for the wide range of investigation, interrogation and analysis that informs appropriate personal advice. A requirement to simply provide advice that is "good" inherently lowers that standard of rigour and, by doing so, reduces consumer protections that are necessary to avoid acts of exploitation and other inappropriate behaviours by advisers who may be subject to competing interests and demands — for example, those who are employed by financial conglomerates who both issue and advice in relation to a multitude of products.

We do, however, agree that beyond the important requirements outlined above, other elements of the so-called safe harbour provisions could be relaxed or removed to reduce the cost and improve the timeliness of the preparation of personal advice.

That said, as was the situation which broadly led to the proscriptive settings and ASIC's guidance in respect of how advisers could, and been seen to be, meeting their best interests duty and obligations, we anticipate that a more subjective and principles-based regime could create uncertainty — which will in turn lead to greater regulatory enforcement and/or judicial intervention, which may well defeat the Review's objectives in seeking greater efficiency by walking-back the existing advice regime's checks and balances.

We also have a strong concern that the Review's Proposal to effectively determine and triage who is fit to provide personal advice to a retail client based on whether a fee-for-service is attached to the provision of that advice, is unsound and injudicious. However, in terms of this question, while the provision of personal advice by a Relevant Provider would continue to see that adviser be required to observe the best interests duty by dent of being professionally bound by the profession's Code of Ethics, that relevant standard would not necessarily apply to a provider of personal advice that did not charge a direct fee-for-service for what may be the equivalent advice, nor would such a provider be held to any minimum qualification or licensing requirement, other than those set by their employer or product provider. That dichotomy is unprincipled and in our submission without basis.

We therefore recommend that the important, and still presently necessary, additional consumer protections afforded by a combination of the duty to provide good advice, coupled with that advice being in the bests interests of the client and provided without conflict, be retained.

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)?

For the reasons outlined elsewhere in our submission, we do not believe that the removal of the current best interests obligations and requirements in favour of a simplistic requirement to provide 'good advice' is necessary or desirable in order to achieve the objective of making it easier and more affordable for advice providers to provide personal advice to consumers.

We reiterate that the objective of proliferating personal advice cannot come at the expense of ensuring that such advice is appropriately regulated and provided with the necessary rigour and analysis which the consumer and the community generally have come to expect following recent reforms and inquiry (such as the Hayne Royal Commission).

As touched on above, we believe everyone should be entitled to expect that the provision of personal advice and related recommendations made to them is procured from a person or entity that is sufficiently and appropriately licensed and qualified to do so, and is subject to certain minimum regulatory and consumer protection standards. The best interests covenant is such a necessary minimum protection.

That said, we generally agree that in the context of limited scope advice, including "intrafund" advice, which is simpler, narrowcast and episodically sought advice provided by superannuation funds, such as Hostplus, at no additional cost beyond the person's fund administration fee, the relaxation of certain proscriptive current advice due diligence requirements and obligations may make it easier to provide digital and 'hybrid' advice and likely allow the cost of delivering such advice to continue to be met by a universal charge rather than a direct fee-for-service.

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

a) limited advice?

b) digital advice?

We believe that, in relation to limited scope and/or intrafund advice, the proposal to relax of the requirements to mandatorily prepare and provide SoAs and RoAs, and replace those documents with more consumer-friendly and readable summaries of personal advice recommendations, will support the provision, cost-efficiencies and likely take-up and use of limited scope / intrafund advice.

We also believe a combination of appropriate advice due diligence and disclosure reforms will also likely support further and better digital advice solutions and technology investment in this type of advice delivery and support. As such, we support those aspects of the Reviewer's proposals, subject to further and more detailed considerations to maintain appropriate consumer protection objectives and requirements.

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?

We believe the proposed changes whereby existing professional standards and covenants are made subject to whether the adviser is charging a fee directly for that service is misconceived and unsafe. The proposed reform will in our submission lead to a 'two-tiered' personal advice regime and has the real potential to lead to sub-optimal outcomes for consumers.

Fundamentally, a consumer receiving personal advice, whether simple, scoped or comprehensive in nature, and whether paid for or not, should expect that advice is being provided by a suitably qualified provider.

As referenced earlier in our submission we support a case for their being tiers of Relevant Providers. For example, a consumer seeking simple, scoped or intrafund advice on a one-off basis, may authorise such 'simpler' personalised advice to be provided by an adviser who possesses and maintains a minimum level of education, training, licencing and regulatory oversight (ie, a "tier 1" relevant provider), whereas more manifold, comprehensive and complex personal advice would only be able to be provided by a fully qualified adviser who meets the existing FASEA-initiated professional standards (ie, a tier-2 relevant provider).

Importantly, in either case, either tier of relevant provider would be required to have sat and passed the industry' ethics exam, and re-sit this requirement periodically to maintain their contemporary understanding and qualification in this respect. We submit that this minimum requirement to be a relevant provider of personal advice remains an important consumer protection risk control and one that would instil and maintain the public's confidence in the provision of personal advice, irrespective of the nature of the entity for whom the relevant provider works for or is licenced to provide such advice.

We see this as also being an important tenet of a profession. The above structure would be akin to tiers of professionals operating in other professions, such as legal (legal associates, solicitors, barristers), medical (registrars, GPs, specialists, surgeons), dental (hygienists, therapists, dentists) and accountants (accountant, CPA, auditor). In these and many other professions practitioners (ie, relevant providers) there is a requirement to attain and maintain minimum levels of education, training and experience for the tier or scope of their professional work. Moreover, there is a requirement and duty of care to meet professional standards regardless of whether the service is provided for a fee.

In recent years the financial planning and allied advice sector has commenced its own transition and pathway to being considered and recognised as a profession, which the Review has recognised and considered. In our submission it is important for this evolution to continue to be supported, so that it will attract people to it as a vocation and profession, in time enjoy greater levels of principal-based regulation, governance and oversight and, most importantly be seen by the public at large as being both a sector of professional standing and one that instils confidence and trust.

In terms of the impact of the Reviewer's proposed changes to the application of the professional standards and the requirement for personal advice that attracts a direct fee-for-service, we do not believe this will in and of itself have a material beneficial impact on the affordability and accessibility of financial advice. Further, we submit that allowing non-relevant providers to provide personal advice that is not subject to a direct fee for service, and who would not be required to meet the current professional standards required of a relevant provider, would likely increase the affordability and accessibility of such financial advice. In any event, any perceived improvements in the affordability of advice achieved by the proposed reform, would be eroded entirely by the fact that under the proposed reforms non-relevant providers, including contact centre agents, bank tellers, product sales staff, 'finfluencers', etc) could provide personal advice without any or sufficient regulation.

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?

In our submission, existing licensing obligations relating to training is insufficient to ensure the quality of advice provided to consumers and to address the issues identified above.

Our position is established and reinforced by the many established cases of poor advice being provided to retail clients, notwithstanding the FOFA, FASEA and more recent training related reforms, such as those recommended by the 2018 Hayne Royal Commission.

Indeed, Commissioner Hayne made a finding in his final report that the prevention of poor advice begins, but isn't limited to, education and training:

> *"I said in the Interim Report, and remain of the view, that prevention of poor advice begins with education and training. Those who know why steps are prescribed are more likely to follow them than those who know only that the relevant manual says, 'do it'. I believe that, as they come into effect, the new education requirements will improve the quality of advice that is given, and improve the way that financial advisers manage the conflicts of interest with which they are faced. 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****".(emphasis added)*
>
> Source: p.171, Final Report, Volume 1, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

While much has already been done since 2018 to place financial advice on the pathway to professionalism, we believe it is demonstrably premature to relax the application of minimum prescribed professional standards on those that provide personal advice. In that regard, we believe Commissioner Hayne's above finding remains relevant and instructive today. As such, we do not believe that the reliance on the AFSL obligations and requirements on their own, and absent minimum prescribed professional standards for all personal advice providers, would provide the necessary professional footings, community-expected standards and behaviours and outcomes envisaged.

We also are concerned that some entities will restructure their advice and product distribution operating models to leverage and take advantage of proposed reforms — including reforms which do away with regulation of advice that is not provided for a direct fee.

This includes seeking to provide less more comprehensive or complex levels of personal advice, and instead have less qualified, experienced and professional staff or advisers, by simply avoiding the charging of a fee-for-service.

The risk of such approaches is greater in relation to conglomerate entities and financial groups (such as major banks). For example, a parent entity, platform provider or other related party may absorb the cost of the service and potentially seek to recover or offset this cost via ancillary fees, including asset-based platform or asset management fees.

In terms of what we believe are appropriate and necessary additional requirements to apply to providers of personal advice who are not required to be relevant providers, we reference our earlier comments in this submission. We see those outlined covenants and regulatory standards as an important consumer protection risk mitigations and controls that need to be carefully considered and addressed by the Review in determining its final Proposals.

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?

We believe that the current sole purpose test (section 62 of the SIS Act) provides a sufficient association between a trustee providing its members with appropriately scoped (intrafund) advice collectively charged and allowing appropriately limited payment for personal advice from their fund accounts where that conduct has an appropriate connection to the retirement income objective and interests of the member.

We therefore believe there is no requirement to amend the SIS Act to address such purposes and payments.

We also disagree with the Reviewer's contentions regarding the utility of s.99F of the Corporations Act and her proposal to rescind this section. Rather than removing the section, we would encourage amendment to s.99F to increase its clarity and practical application. That can be achieved by providing trustees with greater clarity and authority relating to not only what is out of scope for the provision of collective charging for intrafund advice (which we believe should be retained), but to also inform what subject matter or types of personal advice are permissible under such a charging regime and operating model.

In doing so, we believe this would both make it easier for trustees to be able to provide appropriately scoped personal advice to their members about their interests in the fund, as that relates to their retirement incomes objectives. This includes providing advice in relation to preparing for and transitioning to retirement.

In turn, we expect that this greater clarity in the regulatory regime will provide trustees with greater certainly and confidence to provide and charge either collectively or else allow reasonable payment from members' fund accounts to meet or offset the relevant costs of appropriate personal advice causal to their retirement income interests. This should encourage and increase the ease in which such an important and valuable service can be obtained by members.

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?

Hostplus does not support ongoing fee arrangements being applied to or satisfied from superannuation products.

Our view accords with that of Commissioner Hayne's. We note the conclusion in his final report, which states:

> *"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".*
>
> *Perhaps a superannuation member invested through a platform would benefit – or believe they would benefit – from ongoing financial advice in respect of their superannuation investments. But such benefits would be relatively modest, and would accrue to relatively few members. As I said at the outset, the invisibility of ongoing advice fees was a key element in the charging of fees for no service.*
>
> *As long as ongoing service fees are permitted, some risk of members being charged fees for no service will endure. It may be that the benefits of eliminating that risk, by prohibiting ongoing service fees from superannuation altogether, outweigh any limited benefits these arrangements may provide".*
>
> Source: p.241, Final Report, Volume 1, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

The current prohibition on ongoing advice fees applies to MySuper products (other than for intrafund advice), but does not extend for 'choice' superannuation products. We see this as a key issue and concern as it can, and we submit does presently, encourage and lead to consumers being advised to leave often well-performing, low-cost, superannuation funds for less-well performing, high-cost choice or retail funds and platforms, in part due to an intermediary's capacity to charge ongoing advice fees due to this change in superannuation product.

If the current regulatory latitude of allowing the charging of ongoing advice fees in respect of choice superannuation products continues, at a minimum we would strongly encourage the disclosure requirements for such arrangements to be maintained, if not improved. While it could readily be argued that any streamlining or relaxation of such requirements would reduce both the regulatory burden and cost attached to the provision of ongoing advice fee arrangements, we believe such relief is demonstrably outweighed by the need to maintain, strengthen, but preferably disallow, such arrangements, in members best interests. That is consistent with the findings of Commissioner Hayne, which findings were informed by identified and continuing instances of misconduct.

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?

Statements of Advice (SoA) and relatedly Records of Advice (RoC) are documents that sets out the advice given to a consumer by an adviser, a digital advice tool that provides personal advice or a licensee of either. Common to both are that these documents must include the basis on which the advice is given, details of the providing adviser, tool and/or entity, and information setting out how the adviser or entity is paid for the advice provided and/or any benefits the adviser or licensee will receive as a consequence of having provided the advice.

However, it is widely understood and accepted that SoAs have becoming increasingly voluminous in their size and content due to disclosure requirements rather than clear, concise and easily comprehended descriptions of the client's objectives and instructions, circumstances and the adviser's considered conclusions and recommendations.

While Hostplus recognises the need to address the increasingly incomprehensible nature and articulation of SoAs, due to their increasing complexity and compliance-related content that has weighed these statements down, we do not believe that making such important statements by and large optional, at the discretion of the advice recipient, is in the recipient's best interests. Principally, SOAs and ROAs play and important role and function — that is, by ensuring that the adviser is put to the rigour of documenting their advice and the basis of that advice, and by providing a documented, reliable and contemporaneous record of the advice provided. These are critical functions which protect the consumer and increase efficiencies by avoiding dispute as to the content and nature of the advice provided. Those functions in our submission must remain.

On that basis, to address existing issues, we would encourage reform whereby SoAs be made more akin to RoAs, in that key content as highlighted above remains, and is made the central element and purpose of such a document. This balances issues with regulatory burden and the need to maintain a comprehensive and reliable record of the advice.

In developing that reform, guidance can be taken from the way in which increasingly sizable and detail-dense Product Disclosure Statements (PDS) were recently distilled to short form PDS documents. Those short form documents must be no more than eight pages, use a certain font size and contain prescribed content and consumer warnings, with the more detailed material available via a 'full SoA'. The short form documents must contain a reference to where the client can find this extended information, or request they be provided a copy of it on demand. We believe this would strike an appropriate balance between lowering the cost and increasing provision of advice, while maintaining important and necessary consumer information and protections.

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?

FSGs were developed to provide retail clients with sufficient information about important matters such as how an adviser is remunerated, details of their licensee, actual or potential conflicts of interest in respect of the advice they may provide and setting out the advice recipient's rights in respect of complaints about the advice they receive.

These are important consumer awareness issues to assist a person to make informed decisions about whether to obtain financial advice from a provider. Such protections which should be retained. That said, we understand many providers have stated, and we generally agree, that the providing a full FSG to retail clients may provide limited consumer benefits given the prescriptive and technical nature of some of an FSG's requirements. We are also aware of issues associated with the document being required to be provided to a person prior to providing financial product or personal advice.

We therefore support the relaxation of the requirement to provide a written Financial Services Guide (FSG) at or prior to the point of providing consumers with advice as a means to (marginally) reduce regulatory burden on advisers. However, so as not to adversely affect or impact the consumer protections afforded to consumers, we believe providers of personal advice should be encouraged by way of regulatory guidance to still offer their clients a copy of their FSG prior to providing advice and make the FSG readily available on their website. The FSG should continue to include, at a minimum, details about who the AFSL licencee is, how the adviser is remunerated, and other benefits they, their employer and/or licensee might receive as a result of advice being provided, any conflicts of interest any of these parties may have, how the recipient's complaint is handles and the information relating to AFCA's services.

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?

Hostplus supports the Reviewer's proposal to simplify the current reporting requirements under the existing Design and Distribution Obligations (DDO) regime that would see relevant providers only needing to report to a product issuer instances of formal complaint they receive in relation to a product, as opposed to the current DDO reporting requirements of having to report nil complaints. Hostplus also supports product issuer's Target Market Determinations (TMDs) not being required to have relevant providers report other information, such as dealings outside the target market described in the issuer's TMD, to the product issuer.

While supporting these Reviewer's proposals in principle, as a matter of practice we believe these proposals will have a modest impact on reducing regulatory burden and will have an even lesser influence on increasing the accessibility and affordability of financial advice.

Hostplus finally submits that the Reviewer's DDO/TMD proposals should also be availed by non-relevant advisers, were they to continue to be subject to existing best interest requirements and duties as well as the code of ethics when providing any personal advice to a retail consumer.

Transition and enforcement

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

Hostplus agrees that appropriate transitional arrangements will be necessary for advice providers to implement reforms ultimately adopted.

In our view, transitional periods should be no more than 12-18 months from the date reforms come into effect, with advice providers being permitted to 'opt in' earlier than the end of the transition period.

General

15. Do you have any other comments or feedback?

In principal Hostplus supports the Review's ambition to improve the accessibility and affordability of financial advice, and as a consequence, improve the take-up of, and confidence in, such financial advice by consumers – and especially superannuation fund members.

While we support aspects of the Reviewer's draft proposals to achieve that objective, as summarised in our responses to the questions posed in this submission, we are concerned that some proposals as currently advised risk removing critical consumer protections and safeguards in a manner contrary to the best interests of consumers.

Critical to the adoption and increased prevalence of financial advice is community confidence in advice providers. Accordingly, the provision of 'good advice' in the best interests of recipients should continue to be the objective of all advisers, under relevant licence tiers, and subject to minimum levels of education, qualification, training and ongoing professional development relevant to the level and scope of advice provided.

As such, the best interests covenant must remain. We also recommend that non-relevant providers, (ie, advisers that are not fully 'FASEA' qualified advisers) should still be subject to a minimum level of industry standards, such as maintaining an RG146 qualification and passing the profession's ethics exam. Such non-relevant providers should also, in our submission, be restricted to providing simple, scoped/intrafund advice only, with more comprehensive and complex advice remaining in the realm of fully qualified relevant providers.

Importantly, we do not believe the Reviewer's proposed demarcation as to when personal advice is to be provided by a relevant provider (ie a fully qualified, trained and experienced adviser) versus a non-relevant provider (such as contact centre and other agents), is appropriate, sufficiently protects consumers or improves the likelihood of them receiving 'good' advice. Fundamentally, we do not believe the educational, professional qualification, training, and experience a person might rightfully expect from a person providing them personal advice should turn on whether the advice is paid for.

We strongly encourage the Reviewer to reconsider the need for all non-relevant advisers to hold a minimum industry standard level of qualification, have passed a suitably designed ethics exam and continue to be required to prioritise the client's interests ahead of the adviser's or their entity's, as key elements of providing 'good' advice.

In terms of addressing the current dearth of qualified advisers in Australia, which we believe is transitory and will improve as the evolution of the advice sector to a fully recognised and valued profession occurs, the above tiering for the provision of personal advice will both allow existing part-qualified advisers to provide simple/intrafund advice while also providing a career pathway for them and for new advisers entering the profession and aspiring to qualify as a fully-qualified adviser (relevant provider) with further education, training and experience.

The Reviewer also proposes that the definition of personal advice be extended, such that it would apply whenever a recommendation or opinion is provided to a client about a financial product and, at the time the advice is provided, the provider has or holds information about the client's objectives, needs or any aspect of their financial situation. We submit that such an inflexible definition is inappropriate. It may not always be relevant or prudent to base advice or recommendations on information held by the adviser, which may be stale, inaccurate or irrelevant to the subject matter relating to the advice or guidance engagement. The appropriately qualified, regulated and objective adviser must retain flexibility to determine what information to base their advice upon and to outline that advice in a SOA or ROA.

However, as set out in our submission, we believe general advice (or guidance-only) warnings are still necessary and desirable in "one-to-many" circumstances and situations, such as a superannuation fund presenting a pre-retirement seminar or webinar, which are generally attended by many members collectively and where recipients should be appropriately warned of the nature of the information they are receiving.

While we agree with the general proposals to reduce restrictions on advice providers, and especially superannuation fund trustees, so that they can best determine their advice-charging and cost-meeting operating models, we believe that the proposals are open to abuse. Relevant examples are outlined above and are particularly pertinent in the case of financial conglomerates or groups who may be able to fund non-paid advice — and thereby avoid the attendant regulatory requirements — through other business units or mechanisms without appropriate or sufficient reference to the needs of the advice recipient.

Finally, we generally support the Reviewer's proposals to reduce certain disclosure requirements as summarised in our submission.

Hostplus trusts that this submission assists the Review. We are happy to expand on or discuss our submission with the Reviewer if required.