

# Proposals for Reform Consultation Paper: Mercer response

Organisation: Mercer

## 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.

The obligations that currently apply to the provision of personal advice create an environment where advice is complex and expensive to produce. This complexity is not inherent to the advice needed by the consumer, but substantially caused by the regulatory obligations that apply to personal advice. The complexity creates an environment where advice is only profitable at higher cost levels. This inherently means that advice is primarily provided to people with a higher ability to pay.

Superannuation funds that provide collectively charged advice under SIS act S99F (Intrafund Advice) have made some progress in providing advice to people with simpler advice needs. This has created a dichotomy where very simple and limited personal advice on superannuation is addressed freely by funds that provide Intrafund Advice. Complex advice needs of wealthier consumers are addressed via paid advice. Other segments of the population may receive no advice at all.

The QAR proposals provide effective mechanisms for non-superannuation advice needs to be addressed simply by other product issuers, and alleviate some of the regulatory complexity in providing advice, which will hopefully expand the amount of advice provided to categories of consumers with lower means, including by superannuation funds.

## 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) While the proposed changes would help to reduce some current regulatory uncertainty, we are concerned that an additional element of regulatory uncertainty may be introduced by the change in the definition of Personal Advice. Previously, a General Advice conversation between an advice provider and an individual could be held in circumstances where the advice provider possesses information about the individual, but is not in a position to consider that information. For example, at a General Advice Seminar, the general advice is being provided to a possibly large number of people simultaneously. In such circumstances, it is impossible to consider the needs or circumstances of any particular individual in relation to the General Advice being provided.

Similarly, if a one-to-one conversation is held after that seminar, the advice provider may technically be in possession of information about that person. But the information may be stored within physical files or client management software. In such circumstances, the advice provider may have no way to access that information at that specific point in time. So despite the fact that the advice provider may possess the information, it would be prudent for them to remind the person that they are speaking with that there is no way they can reasonably tailor their general advice comments to that individual's circumstances. The general advice warning is suitable for this purpose.

The changes to Personal Advice seemingly require such an interaction to be personal advice, or to refrain from giving any opinion about any product or class of product. This would seem to impose further restrictions on this type of interaction, that we expect would be an unintended consequence as it would diminish the value that consumers obtain from these seminars. We think it is important the proposed regime accommodate and encourage the continued provision of helpful advice to consumers in these circumstances.

It remains unclear the extent to which simple personal advice interactions would require reasonable enquiries into the circumstances of the consumer during such a conversation. Benefits to the consumer can be obtained by taking conversations that might currently be general advice and requiring them to be personal advice. However if this creates a significant obligation to make enquiries into the circumstances of the individual and collect complete financial information, this may

create a disincentive to providing advice at all. Instead of making advice conversations more common, this could take interactions that are currently general advice and create a disincentive to providing advice to that consumer at all.

b) Theoretically, any employee of a provider (a superannuation fund, for example) could provide personal advice and this should increase the total amount of personal advice provided. The challenge for the industry participants will be to ensure that adequate training and supervision occurs such that these staff can provide advice confidently.

c) If the issue raised in a) can be resolved (where information is held about the consumer, but the actual individual involved in the conversation is not in a position to access or consider that information in the moment) then many conversations that were previously general advice, will be able to be held much more freely and using natural language, as personal advice. The removal of the need for the general advice warning will do much to improve communication and understanding by the consumer.

**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) Yes, the general consumer protections (particularly including the removal of conflicted remuneration) are sufficient protection.

### **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) We do not see the proposed “good advice” requirement as being significantly different to the “best interest” obligation, in principle. The regulator has stated that as part of the Best Interest obligation, “a reasonable advice provider should believe that the client is likely to be in a better position if the client follows the advice” (RG 175.245d). Similarly, the QAR proposal suggests that “‘Good Advice’ is advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided”.

The substantial difference in these obligations is that the Best Interests obligation includes Safe Harbor steps, while the Good Advice obligation does not yet require any specific steps. It is our opinion that each of the requirements of Safe Harbor may situationally be relevant to the quality of the advice being provided. However if they are relevant, they would also be required implicitly, by the Good Advice obligation. Conversely, if they are not relevant to the quality of the advice, then they add nothing.

Overall, the Good Advice obligation should not impact the quality of Financial Advice provided to consumers.

- b) We have noted in a) that the removal of Safe Harbor as an explicit requirement will mean that those steps are only performed as part of the advice process when actually relevant to the resulting quality of advice. Inherent within this answer is the idea that in some circumstances this will not be necessary and ceasing to perform them will not impact the quality of this advice. In such circumstances, the removal of the obligation to address these steps will reduce the time and cost required to produce the advice.

It would perhaps be prudent for any replacement Safe Harbor-like provision to simply be structured using wording similar to S961B(2)(g) – that any step required to ensure that the advice is Good Advice be required. If such a requirement exists, then no further steps are necessary to define, as they would either be a lesser inclusion of that step, or irrelevant. For this reason, S961B(2)(a)-(f) has always involved work that is inherently redundant, as if it wasn’t redundant, it would be captured by (g).

**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) We would expect limited advice to remain unchanged.

b) The proposal does provide some further clarity around the requirements when providing advice using technology instead of a person providing the advice. This is useful although the primary obligation in such cases (Good Advice) does not present substantial change from the existing arrangements.

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

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

a) Limited advice has always been a complex issue. For example, a client may want simple advice about whether they should contribute to super.

In order to investigate the client's circumstances appropriately to provide advice that is in the client's best interest, the adviser should lead the client through a discussion about setting appropriate retirement goals. To assess retirement goals properly, the adviser may need to discuss their non-super assets as they may contribute to achieving the relevant goal. They may also need to discuss appropriate insurance, as this may prevent them from achieving the retirement goal that has now been established.

Clients may wonder why a seemingly simple question ("Should I contribute some money to super?") can balloon out into a comprehensive investigation of their entire personal circumstances and their long term future financial plans. However it would be imprudent of an adviser to be overly forward in telling

a client not to worry about these related topics, as such statements may be cause for complaint if a negative outcome occurs in those areas, having been discouraged from receiving advice on such topics.

The above chain of events leave advisers often hesitant to provide advice unless the client insists strongly that certain issues be ignored. For limited advice to be more practical, it should be possible for advisers to limit their investigations and discussions with the client more to a more narrow focus – with client agreement. This may allow the provision of limited advice more frequently.

- b) Digital Advice is hampered by the requirement to produce a Statement of Advice and the regulatory requirement to make all reasonable enquiries into the client's circumstances prior to the provision of that advice.

There are several calculators that exist, that provide excellent resources for understanding the likely outcomes of the consumers existing arrangements and hypothetical changes they may wish to make. For example, superannuation projection calculators that can project a balance based on their current investments and contribution arrangements, which then allow them to examine the impact of changing intended retirement date or choosing different investments. Based on a given set of circumstances, these tools could reasonably provide on-screen guidance to the effect that based on the financial information entered, they should take certain steps to achieve the goals that have been entered. Such guidance could very reasonably be "good advice", but in the current arrangements this would constitute a breach of regulatory obligations, both for not making sufficient enquiries about the data that the consumer may not have yet bothered to enter, nor providing a written SOA to confirm the advice.

Digital Advice would benefit significantly from a regulatory environment that allowed for advice to be provided based on the information available, as long as it was good advice. This would allow a digital system to provide an evolving and updating financial plan for the client to achieve their goals, as the information is being entered, such that the client can immediately see the impact on both the expected outcomes and the effort required on their part to achieve those outcomes, as they update variables used for the calculation.

This form of evolving guidance however is not possible as it may only be good advice relative to the information entered. It may be informative to the client, without being the appropriate final strategy. It also cannot reasonably produce a written document every time the strategy might be updated as more information is entered.

Such systems would be more user friendly and do a better job of educating the advice consumer, but are not possible due to the requirement that comprehensive enquiries are completed before any advice is provided and that when the advice is provided it is done so in a fixed written form that should not be subject to revision.

**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) We do not think the quality of advice will be affected. Complex advice will largely be delivered by relevant providers (as it is delivered by qualified advisers now). To the extent that advice can be delivered in future by non-relevant-providers, this will largely be simple in nature due to the restrictions on charging fees, which we believe will make it easier to ensure quality.
- b) Allowing non-relevant providers to provide personal advice as long as no fee is charged should lead to the creation of simple advice opportunities within existing service structures. For example, the super fund staff member identifying that a member aged over 65 should probably be in pension, or a bank teller suggesting a higher interest rate savings account. These examples are currently quite difficult to provide in a cost effective manner, but would become much more prevalent under the new advice provider model.

**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?**

Yes, we believe that the existing license obligations will provide sufficient incentive to ensure that representatives are adequately trained and competent. A further significant incentive is provided by the Australian Financial Complaints Authority (AFCA). Clients of the Financial Advice industry have shown themselves more than willing to engage AFCA if they perceive their advice service to be substandard. As this incurs expense for the licensee (both time and money) regardless of the substance of the complaint, licensees will be likely to take steps to ensure that providers of such advice be adequately trained and competent.

## 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) Within proposal 5, there is a statement that “trustees would be required to take into account the member's personal circumstances, including their family situation and social security entitlements if that is relevant to the provision of the advice”. This represents a significant expansion of the service offered by many Intrafund advice providers today. This mandatory expansion of Intrafund Advice is likely to increase the cost of providing the service and may lead some funds to reconsider whether it should be offered without charge of a direct fee to the member. As Intrafund Advice cannot be sought from a third party provider, funds ceasing to offer such a service would directly remove this advice option from the members of that fund.

Furthermore, if the increased cost is borne by the fund, this will further increase the disparity inherent in the collective charging mechanism, where some members’ costs are borne by all members’ funds. This disparity is not significant at present, but increasing the cost of Intrafund advice services would inherently increase this disparity, unless a fee is charged.

b) Removing the limitation on collective charging has the potential to widen the advice that members can receive from their fund about that superannuation interest. Changes to anti-hawking restrictions may also be required to facilitate the ability of funds to proactively contact members and advise them to move to retirement income products if it becomes apparent that remaining in accumulation is no longer in their interests.



## 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) Yes. Sending out Fee Disclosure Statement forms are a duplication of information that the client already receives when they sign Service Agreements and Fee Consent forms.
- b) No. Consumers don't want this paperwork and only accept it because it is a regulatory requirement that they do so.

### 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) Yes. A large amount of the work inherent in creating a statement of advice, is the work of figuring out what advice is actually right for the individual. This will still be required. However the creation of a Statement of Advice requires us to then go on to make extensive written records of the detail of this advice that consumers frequently do not read. This takes time and money. Beyond this wasted effort, the creation of the Statement of Advice also delays the time when the clients can act on the advice, because of the timing requirements of Corporations Act S946C.

It is worth noting that the vast majority of the time will still be spent, in order to determine the advice and record it accurately within internal files. However the removal of the requirement to provide a client facing written document every time advice is issued could create significant efficiency and cost savings that can be passed on to the consumer.

- b) No. Most consumers don't want this paperwork and only accept it because it is a regulatory requirement that they do so. The majority of consumers rely on the verbal advice of the adviser as the primary method for having the advice communicated to them. We think the preferred secondary means of communicating it would be to access the information online.

**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) Yes. The information in the Financial Services Guide should be freely available. The most flexible means of providing such information is for the information to be available online and accessed as needed. This has the advantage of being updated for all consumers as the information changes. Provision of a point-in-time document that can become out of date over time is not reasonable in the modern age of internet communications.
- b) No. Consumers do not necessarily even want the information provided by the Financial Services Guide at the time that it is provided. Instead, they would prefer to know that it is always available, and refer to it at the time of their choosing. Forcing them to accept a written document at a specific point in time is not catering to their needs.

## 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) There is very limited experience to date, however we think it is unlikely that the reporting required of Financial Advisers acting as a distributor for a financial product would provide any significant value to product issuers. It is inherent in the nature of Personal Advice, that the product must be appropriate for the client and as such, highly likely to align to the Target Market as described in the TMD. As such, instances of product take-up outside the TMD based on personal advice would be expected to be rare and in unusual circumstances. Hence reporting of such information is likely to be of little value to the product issuer.
- b) The proposed amendments will be unlikely to affect TMDs themselves.

## Transition and enforcement

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

Many of the reform proposals allow flexibility in the advice process and associated documentation. As such, the existing arrangements used by advice providers may be generally compliant with the new regulatory obligations. This would allow transition processes to be managed internally on a time line chosen by each advice provider.

However the provision of personal advice by individuals that are not relevant providers would require significant training as these people may never have provided personal advice previously. In addition, the removal of the general advice definition and the change of personal advice to include any statement of opinion where information is held about the consumer may mean that they have to restrict their communications further until the training can be completed to have them

prepared to provide personal advice. As a result, these changes would need significant lead time, to allow organisations to train staff appropriately – especially where they currently provide general advice.

Advice by Superannuation fund Trustees (Intrafund Advice) would similarly require some lead time for training. While this advice is currently provided by qualified advisers, the expansion of the advice that will be provided in such circumstances will have an impact on processes used internally, which may take some time to develop. This will be particularly the case due to the amount of data that needs to be gathered about Spouses, and to assess likely Centrelink entitlements.

All that will be necessary for this to occur is to have a reasonable lead time between legislation being formally put in place and the date of effect. This will provide the certainty required so that we can train staff and redesign processes in advance of the changes being implemented.

## General

### 15. Do you have any other comments or feedback?

Please see cover letter dated 23 September 2022 for further details regarding Mercer and contact details.