



**independence  
matters**

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Association of  
Independent Retirees

## **Association of Independent Retirees (AIR)**

### **Submission to Treasury**

#### **Treasury Laws Amendment (2024 Measures No. 1) Bill 2024 Quality of Advice Tranche 1**

#### **Delivering Better Financial Outcomes - Reducing red tape and other measures**

#### **Comments and responses on the Legislation and related Explanatory Materials**

**December 2023**

## **Background and Concerns of the Association of Independent Retirees**

The Association of Independent Retirees is the national peak body representing current and future partly and fully self-funded retirees. AIR works to advance and protect the interests of Australians seeking independence in retirement. AIR seeks to secure recognition for Australians who, through their diligence and careful management, fully or partly self-fund their own retirement needs.

Our members have a clear understanding of the need for ongoing management of the financial, health and longevity risks they face in retirement, but are concerned about economic and policy changes that affect their capacity to have an independent and fulfilling retirement.

There are now over 2 million Australians who either fully or partly self-fund their retirement. The greater majority of these are not “wealthy” individuals and unexpected financial impacts to their income streams may result in them needing Government support in the later years of their retirement. APRA predicts there will be another 3.6 million Australians who will move into the retirement phase of superannuation over the next 10 years.

Retirement planning has not only become more complex, but current volatile economic and financial conditions are making it more difficult for many retirees to develop a retirement plan that will last for the longer term. The government needs to ensure in the process of policy change, fully and partly self-funded retirees are not impacted by the unintended consequences of the changes.

### **Context of our Submission**

Significant proportions of fully or partly self-funded retirees have sought financial advice or are likely to seek financial advice during their retirement. To date many AIR members and fully and partly self-funded retirees in general have found that financial advice is mostly unaffordable and or unavailable. We hope that the reforms proposed by the Quality of Advice review will enable the benefits of good financial advice to meet the needs of retired advice consumers.

For more information on this submission, please contact:

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## Scope of Consultation

The proposed legislation includes amendments that will provide legal certainty for the payment of adviser fees from a member's superannuation fund account and remove onerous red tape that adds to the cost of advice with no benefit to consumers.

The draft legislation responds to several recommendations of the Quality of Advice Review including:

Recommendation 7: clarifying the legal basis for superannuation trustees reimbursing a member's financial advice fees from their superannuation account and associated tax consequences;

Recommendation 8: streamlining ongoing fee renewal and consent requirements and removing the requirement to provide a fee disclosure statement;

Recommendation 10: providing more flexibility on how FSG requirements can be met;

Recommendations 13.1 and 13.3: clarifying that monetary or non-monetary benefit given by a client is not conflicted remuneration along with the removal of consequential exceptions;

Recommendation 13.2: introducing a specific exception to the conflicted remuneration provisions that permits a superannuation fund trustee to pay a fee for personal advice where the client requests the trustee to pay the fee from their superannuation account.

Recommendation 13.4: removing the exception to conflicted remuneration rules for the issue of financial products where advice has not been provided in the previous 12 months;

Recommendation 13.5: removing the exception to conflicted remuneration rules for agents or employees of Australian Authorised Deposit-Taking Institutions (ADIs); and

Recommendations 13.7 to 13.9: introducing new standardised consent requirements for life risk insurance, general insurance and consumer credit insurance commissions.

## Schedule 1—Quality of advice

The proposed legislation responds to the recommendations with changes to the SIS Act, Income Tax Assessment Act and the Corporations Act in five parts as follows:

### Part 1- Superannuation

- Division 1 - Amendment of the Superannuation Industry (Supervision) Act 1993
- Division 2 - Amendment of the Income Tax Assessment Act 1997

### Part 2 - Ongoing fee arrangements - Corporations Act 2001

### Part 3 - Financial Services Guide - Corporations Act 2001

### Part 4 - Conflicted Remuneration - Corporations Act 2001

## Summary of Feedback from AIR

The Association of Independent Retirees (AIR) supports the recommendations 7, 8, 10 and 13 from Michelle Levy's final report. We acknowledge that the proposed legislation will remove some time-consuming red tape that adds to the cost of financial advice.

However, fully and partly self-funded retirees who have sought personal financial advice know that legislating **recommendations 5 and 9 will more significantly reduce the cost of providing personal financial advice.**

These two recommendations related to:

- Removal of the 'Safe Harbour' steps from the Best Interest Duty
- Replacement of Statements of Advice with a more fit-for-purpose Advice Record

On page 42 of Michelle Levy's final QAR report, she said, "*The safe harbour steps and the statement of advice requirements have been identified by stakeholders as the key barriers to providing more limited or episodic advice to meet the needs of clients*".

In his media release titled "Delivering Better Financial Outcomes - Roadmap for Financial Advice Reform" on the 13 June 2023, Mr. Stephen Jones (Assistant Treasurer and Minister for Financial Services) announced that recommendation 5 and 9 would be included in Stream One of the roadmap that was dealing with the removal of red tape.

It is particularly disappointing that after extensive consultation over many months with the Financial Advice and Superannuation sectors, that no draft amended legislation for the Best Interest Duty or the proposed new Advice Record is available yet.

### Consultation with Consumers of the proposed Advice Record

While Financial Advisors have been consulted about the proposed replacement of the Statement of Advice, consumers (like fully and partly self-funded retirees) have a number of serious concerns about how the current Statements of Advice have been received. Some of these concerns are reflected on page 127 and 128 of Michelle Levy's final QAR report as follows.

She reported that "*Consumers find SOAs to be too long. SOAs do not, in the main, provide advice in a form that consumers are readily able to understand*".

*"While SOAs are intended to be consumer focused documents (providing the information the client needs to decide whether to act on the advice) and while the content requirements are intended to be flexible in order to permit providers of advice to tailor the individual SOA to the needs of the client, they are often prepared by financial advisers with an eye on defending a complaint or claim"*.

*“In some cases, SOAs do not reflect the actual advice conversation between the adviser and their client. This is not only a breach of the law (which requires the SOA to record the advice given), but also means the SOA is not a reliable record of the advice provided”.*

*“In many cases, consumers do not read a SOA. Consumers rely on what they are told by their adviser. Industry research shows that approximately 33 per cent of consumers who had received advice from a financial adviser did not read the SOA thoroughly”.*

The Association of Independent Retirees supports the requirement of the QAR Final Report *“for providers of personal advice to retail clients to maintain complete records of the advice provided and to provide written advice on request by the client”.*

We would appreciate the opportunity to work with ASIC (or other government agencies) on guidance about what sort of records should be kept by providers on the advice they provide and the sort of written advice that should be provided to their clients.

## **Detailed Feedback from AIR**

### **Part 1- Superannuation**

#### **Division 1 - Amendment of the Superannuation Industry (Supervision) Act 1993**

AIR supports the changes to the SIS Act in respect of:

- replacing section 99FA with subsection 99FA(1)
- the new subsection 99FA(2)
- the new subsection 99FA(5)
- the changes under subsection 99FA(6)
- the commencement, application and transitional provisions

#### **Division 2 - Amendment of the Income Tax Assessment Act 1997**

AIR supports the amendments to the ITAA 1997 to ensure that financial advice fees charged under section 99FA of the SIS Act:

- are tax-deductible for the fund; and
- are not treated as superannuation benefits of the member
- the commencement provisions

AIR notes the application provisions applies the legislative changes ITAA 1997 retrospectively to the 2019-2020 income year. Given we are currently in the 2023-2024 income year, this retrospective application to over 3 years ago seems more than necessary.

## **Part 2 - Ongoing fee arrangements**

AIR supports the repeal of Subdivision B of Division 3 of Part 7.7A of the Corporations Act, which relates to the termination, disclosure and renewal of ongoing fee arrangements.

AIR supports updated Subdivision D of Division 3 of Part 7.7A of the Corporations Act to include the provision of a single fee consent form.

We note that the Corporations Act law is being updated to provide that the Minister may approve one or more forms for giving consent to enter into or renew an ongoing fee arrangement or authorise the deduction of ongoing fees under new section 962Y.

We also note that if the Minister approves a consent form under section 962Y, the use of that form is not mandatory.

AIR also supports the updates of Subdivision C of Division 3 of Part 7.7A of the Corporations Act to provide for additional streamlining requirements for deduction arrangements.

## **Part 3 - Financial Services Guide**

AIR supports the update of Division 2 of Part 7.7 of the Corporations Act is updated to enable FSG information to be publicly available on provider's website.

## **Part 4 - Conflicted Remuneration**

AIR supports the update of Division 4 of Part 7.7A of the Corporations Act related to conflicted remuneration to implement the Quality Advice Review recommendations 13.1, 13.2, 13.3, 13.4, 13.4, 13.5.

AIR supports the objective of these recommendations to clarify the law by giving effect to the intended outcome of the conflicted remuneration provisions and remove the need for unnecessary exceptions.

## **Part 5 - Insurance commissions**

AIR supports the standardisation of consent requirements for certain insurance commissions that relate to the implementation of the Quality Advice Review recommendation 13.7, 13.8 and 13.9.

We note that this provision will only apply to life risk insurance products purchased after the commencement of this recommendation.

We further note that this applies to life insurance, general insurance and consumer credit insurance commissions.

----- End of Submission -----