Quality of Advice Review

Aware Super Submission

June 2022

Issued by Aware Super Pty Ltd ABN 11 118 202 672 AFSL 293340

Contents

Executive Summary

Aware Super welcomes Treasury's *Quality of Advice Review* (the Review). We are pleased to have the opportunity to provide feedback on the topics raised within the issues paper.

This submission provides our views on the matters raised in the Issues Paper from Aware Super's perspective as both a superannuation trustee and a financial advice licensee.

Providing the best advice and guidance to members is a key element of Aware Super's strategy, by enabling members to obtain the help they need at the right time to achieve the best possible outcomes.

We support the Review's objectives of enhancing the regulatory framework to ensure more Australians can access financial advice that is both affordable and of a high quality.

To achieve this, it is necessary for the regulatory framework to be considered through a consumer lens, and for the Review to consider the impacts of changes on how consumers receive, and move between engaging with, information, guidance and advice.

Our recommendations centre on enabling Trustees to more effectively meet member needs for education, personalised insights and guidance, delivered in an affordable and seamless way, as they navigate a range of needs and preferences in how they access help. We believe Superannuation funds are well positioned to stimulate member engagement with their super and support educating members who may not otherwise seek financial advice.

The recommendations in this submission align with Aware Super's ongoing advocacy for reforms that will help us support our members to make good financial decisions and achieve their retirement outcomes. This includes previous submissions in relation to the Retirement Income Covenant, ASIC CP 351 Retirement Projections, and the Australian Law Reform Commission review into corporations and financial services law.

We would be happy to meet with Treasury to discuss the material included in this submission, in particular the member testing that has informed elements of our response, as well as our digital advice offering which has the capacity to provide advice at scale to our members.

About Aware Super

Aware Super has been the fund for people who value the community since 1992. We're one of Australia's largest funds and we're continuing to grow.

We merged with VicSuper and WA Super in 2020 and manage approximately $150 billion in savings, including $32.6 billion in retirement assets at 30 June 2021. Our members—including teachers, nurses, public servants, and emergency services officers—work in roles that support our community, and they expect us to do the same by investing in ways that do well for them, and good for all.

Aware Super's commitment to advice

Providing the best advice and guidance to members is a key element of Aware Super's strategy, by enabling members to obtain the help they need at the right time to achieve the best possible outcomes. Our advice services are provided by Aware Financial Services Australia Limited.

We are the largest member owned financial planning network in Australia delivering an extensive range of advice services to Aware Super members, including general, intra-fund and comprehensive advice for retirement planning, estate planning, aged care and insurance. Aware Super has comprehensive financial planners based in communities across Australia, in capital cities such as Perth and Sydney, in suburban centres such as Penrith and Parramatta, through to regional locations such as Wollongong, Ballarat and Ballina.

Recommendations

1. The Review should consider the advice regulatory framework from the perspective of consumer needs and engagement, using cameos and modelling to understand consumer impacts of regulatory change, rather than focusing only on streamlining existing regulation.

2. The advice regulatory framework should be designed with the goal of facilitating consumers to:
   - move as seamlessly as possible up the scale from information to advice; and
   - move out of personal advice without sacrificing personalised experiences, allowing a provider to build on insights provided in prior engagements.

3. Review advice definitions in order to:
   - realign the boundaries of what is considered information, guidance and advice;
   - separate strategic advice, which does not involve recommending a new product, from financial product advice; and
   - ensure advice labels are meaningful to consumers.

4. Provide a clear avenue for engagement for existing AFSL holders to ratify proposed operations, an avenue to obtain 'approval' from ASIC. This could be similar to the Enhanced Regulatory Sandbox for existing industry participants.

5. Amend the advice legislative framework to expand the ability of trustees to provide personalised information to members outside of personal advice rules, including:
   - elevating current ASIC relief for retirement projections and calculators to a legislated exemption; and
   - expanding the scope of this relief to include a broader range of projections, calculators and risk information that encourages engagement and good decision-making.

6. Clarify the scope of advice that can be collectively charged by superannuation trustees, including:
   - providing a clear, expanded list of topics that a fund can advise on; and
   - explicitly allow advice to be provided on an ongoing basis where the cost to serve is negligible, such as through digital tools.

7. Create specific disclosure and prompts to preface any advice provided by trustees in relation to underperforming products, to protect members holding these products without restricting the ability of other funds to provide guidance and advice to further improve member outcomes.

8. Ensure the Consumer Data Right extends to personal information held by Government agencies, to reduce costs and streamline the fact-find process.

9. Simplify the delivery of advice by:
   - repealing the safe harbour steps, retaining the simple, principles-based 'better position' test in the best interest duty; and
   - providing guidance on the better position test, including how intangible benefits of advice (including strategic advice) can contribute to meeting the test.

10. Make disclosure documents shorter, more consumer-friendly and less costly to produce by:
    - ensuring the regulatory framework prioritises information that is meaningful to the consumer;
    - improving regulator alignment in relation to expectations of disclosure documentation; and
    - considering alternative ways to provide information that is currently duplicated in multiple documents, such as single standardised disclosures.

11. Ensure the advice regulatory framework creates clear accountabilities, including advice providers retaining single point accountability for the advice services they provide.

12. Create consistent approaches to the provision of regulator guidance to avoid the complexity, confusion and compliance costs created by multiple layers of overlapping regulation and guidance.

Financial Advice in context

1. What do consumers need?

The need for Australians to access help, guidance and advice to support financial decision-making is increasing.

At Aware Super we place members first and we have undertaken considerable member testing to determine how to best meet our members' needs across many areas, including help, guidance and advice.

The variable level of consumer engagement in superannuation, and the importance of superannuation as an asset for most Australians, means that it is vital all superannuation members are able to receive the right information, help and guidance at the right time.

Low levels of engagement, combined with the impossibility of universal access to comprehensive advice, means that superannuation trustees are often the only organisations in a position to provide this support to members. The regulatory framework for advice should support trustees to fulfil this role (with appropriate consumer protection).

Our member testing has shown that:

- members don't distinguish 'advice' needs from their broader needs for information, help and guidance;
- members find it difficult to apply general information and concepts to their personal circumstances;
- members generally want targeted information, help and guidance on a single topic or small areas of advice when it's most relevant to their lives;
- most members aren't sufficiently engaged to participate in the full advice process (i.e. fact find to Statement of Advice (SoA) to implementation of recommendations) regardless of whether it is a scaled form of advice or 'comprehensive' advice.

Over the past few years, we have seen significant shifts in the type of services members are accessing, for example:

- growth in digital advice usage;
- moves from ongoing advice offers to more flexible arrangements which enable clients to access and pay for advice when they need it;
- growth in intra-fund advice.

Uptake of comprehensive advice will always be limited to members who are sufficiently engaged, but is also limited by our capacity to deliver that advice. It would simply never be viable to help every Australian through comprehensive personal advice. Even improving the regulatory framework of advice in a way that doubles the existing capacity of advice providers won't meet the need that exists.

The need to deliver help, guidance and advice at scale has resulted in Aware Super adopting a strategy focused on extending the help available to members through scalable, low cost and digitally enabled offers.

The Review should consider how changes to the regulatory framework for financial advice could streamline access to the spectrum of help, guidance and advice for consumers throughout their lives.

Recommendation
1. The Review should consider the advice regulatory framework from the perspective of consumer needs and engagement, using cameos and modelling to understand consumer impacts of regulatory change, rather than focusing only on streamlining existing regulation.

The member journey

As a superannuation trustee and an advice provider, we can only deliver the best experience for superannuation members seeking help, guidance and advice when we are able to provide members with the right help at the right time, and provide a coherent journey as members consider their needs.

Consumers may dip in and out of different levels of guidance and advice, or they may move up and down the spectrum from information to full comprehensive advice, according to their needs at a particular point in time. The regulatory framework should be designed to make it easy for the providers of guidance and advice to create low-friction experiences for members exploring their advice needs.

From the perspective of designing a regulatory framework, there is an existing conversation around how we remove the frictions for consumers moving up the scale from information toward comprehensive advice.

While this is important, we also see a further goal in relation to how we provide help, guidance and advice for our members.

In addition to a seamless journey up the scale to the appropriate level of advice, the best outcomes would be facilitated if we could also help members move back down the scale without sacrificing the additional information and context they have provided. Examples of this are provided in Section 5 below, in relation to retirement estimates.

From a consumer perspective, it makes sense that once you've given additional information about your circumstances to a provider, whether your super fund or another organisation, they will continue to take this into account. Under the current regulatory framework, this is not possible.

Changes proposed in this submission (and by other industry participants) around improving disclosures and reframing advice definitions would likely make it easier to develop solutions that allow for members to have a more seamless experience on an ongoing basis.

This is a significant shift in how we think about advice, and we acknowledge that strong consumer safeguards would be required to provide this kind of service without the potential for compromising consumer outcomes. However, we believe that this should be the end goal of a system that truly allows for help, guidance and advice to meet consumer needs at all stages of their lives.

Recommendation
2. The advice regulatory framework should be designed with the goal of facilitating consumers to: • move as seamlessly as possible up the scale from information to advice; and • move out of personal advice without sacrificing personalised experiences, allowing a provider to build on insights provided in prior engagements.

2. Types of advice

The current advice definitions do not allow for trustees or advisers to provide the seamless, consumer-focused journey described above.

The key questions that should be considered when viewing the financial advice regulatory framework through this consumer journey lens are:

- what should be considered "financial advice" (as opposed to information, help, guidance or some other label)?
- how do the different types of information, guidance and advice fit together to allow consumers to access the right support, at the right time, to make good financial decisions?

Information, guidance and advice

Advice services as they are defined today will almost always be provided to engaged individuals as there is a time and effort commitment from the consumer required to complete any advice process. Engaged individuals represent a small portion of the total number of consumers that would benefit from advice and guidance.

The spectrum of information, help and guidance that will benefit consumers includes advice as is it defined today, but it goes beyond those definitions and does not sit neatly within them. Guidance and Information are not (and should not be) considered advice, but are also very important in helping members to make financial decisions. For clarity:

- **Guidance** can include tailored information and calculations provided to members to make it relevant to their circumstances without a specific recommendation – for example, retirement estimates.
- **Information** includes factual information and generic calculations provided to members to educate them about a specific topic – for example, salary sacrifice arrangements.

In this context, it is important to consider what kinds of assistance fall into each category, and where the boundaries should be drawn between them. Overall, we support broadening the level of guidance that can be provided outside of the personal advice regime, in order to provide more useful and accessible personalised information to members who are not sufficiently engaged to seek out advice (or who may not need advice).

Advice definitions

We support the review of current advice definitions to provide a clearer and less confusing experience to consumers.

Current advice definitions are not meaningful to consumers, and not reflective of the way they want to engage with help and guidance. The current definitions create roadblocks that make it onerous for consumers to seek out personalised information that will help them make good financial decisions.

In particular, allowing the separation of strategic (non-product) advice from product advice would enable consumers to have the conversations they want and need at specific times in their financial journey.

Many moments of choice will include a product decision, for example moving into retirement which in future may increasingly involve solutions comprising multiple products, and this is still an important part of financial advice.

However, there are many instances where a product recommendation or comparison will not be sought or required by an individual, and appropriate scoping of advice to reflect this will improve affordability as well as ensure consumers are receiving only the advice they need.

Recommendation

3. Review advice definitions in order to:
    - reconsider the boundaries of what is considered information, guidance and advice;
    - separate strategic advice, which does not involve recommending a new product, from financial product advice; and
    - ensure advice labels are meaningful to consumers.

3. Uncertainty and inconsistency in the regulatory environment

The pace of change and ongoing regulatory uncertainty in financial advice has created challenges in relation to responding to this Review.

We acknowledge that broad sections of the regulatory landscape have either recently changed, with implementation often still underway and impacts not fully understood, or are currently under review. For example:

- new regulatory changes such as the Best Financial Interests Duty and the Retirement Income Covenant, which make trustees consider how they offer help, guidance and advice to members;

- upcoming changes in development, such as the Consumer Data Right, the ALRC review of financial services legislation, and ASIC's review of retirement projection and calculator relief; and
- court decisions arising from ASIC legal action, such as the Westpac matter, which change the view of what may or may not be considered as personal advice.

The ongoing uncertainty about what will be considered acceptable under current and future regulatory settings also creates significant risk for organisations seeking to pursue new, innovative solutions.

ASIC's enhanced regulatory sandbox is useful for new entrants to road-test innovative solutions, but does not assist existing advice providers (either as trustees or advice businesses).

In our submission to ASIC Consultation Paper 332 we argued for greater clarity on what is permitted under the intra-fund provisions. Our research on intra-fund advice services offered by Trustees indicates there are differing interpretations of what can be provided under the provisions (see Section 7 below).

This is an issue for intra-fund advice however this lack of regulatory clarity extends beyond intra-fund, and a solution is needed to provide certainty more broadly and allow organisations to explore ways to provide better advice and guidance outcomes.

Recommendation
4. Provide a clear avenue for engagement for existing AFSL holders to ratify proposed operations, an avenue to obtain 'approval' from ASIC. This could be similar to the Enhanced Regulatory Sandbox for existing industry participants.

Providing help and information outside advice

4. Tailored information and guidance

As a superannuation fund, one of the most important factors in engaging our members is providing them with consistent and comparable information, which is as personalised as possible, across multiple forms of communication.

Where information is too generic or inconsistent, it is less likely to engage a member, and less likely to lead to good decision-making.

For example, if we offer a personalised retirement projection through a calculator, but then can't duplicate that information on another communication and instead provide a different, generic projection, this may result in confusion and reduce engagement.

Ultimately, whether a member actively engages or is being nudged to engage with their retirement savings, a trustee should have the ability to:

- tailor assumptions to what they already know about the individual member;
- make the information relevant to the individual's product and investment options; and
- use information gathered at previous points in the journey to inform future information and interactions (with appropriate disclosures and explanations, allowing members to validate information with a mechanism for them to update if anything has changed).

These principles should apply in a technology-neutral and format-neutral manner, whether information is being provided in annual statements, by email, through member portals or other digital interactions.

We know that this kind of tailored information, when delivered well, is likely to result in not only higher levels of engagement but also a higher demand for advice (including scalable advice and triage for members who really need comprehensive advice).

For example, member testing of our retirement calculator showed that the education components embedded in that journey helped members understand the key questions they needed to answer, and made the potential value of advice more apparent to them.

This broad principle of allowing clear, tailored, and consistent information to be delivered to members, which maximises the trustee's ability to engage with members to understand their journey to and through retirement, informs the recommendations throughout this submission.

5. Limitations of current regulatory approach

The current regulatory framework discourages superannuation funds from providing good-quality, relevant information to members to guide their decision-making, because of the risk of financial advice obligations coming into play when personalised information or scenarios are provided.

The compliance risk associated with this uncertainty creates significant costs for trustees, due to additional processes, training and controls specifically aimed at managing regulatory risk rather than improving member outcomes.

The fund can choose one of two approaches:

- reduce or eliminate the specific member details, which are what makes the information meaningful to members, and provide generic, high-level information; or
- attempt to engage the member through a full financial advice process – requiring additional time and financial cost for the member and reducing both the likelihood of engagement and the accessibility of personalised help.

Case study: retirement estimates

Our VicSuper brand has been providing retirement estimates under current ASIC Class Order [CO 11/1227]. Both Aware Super and VicSuper brands provide superannuation calculators under the *ASIC Corporations (Generic Calculators) Instrument 2016/207*.[1]

However, the limitations of the relief have led us to develop more sophisticated calculators under personal advice regulations to allow us to provide more appropriate estimates that are less likely to mislead members.

A key difficulty with this approach has been an inability to use the additional information gathered through these tools to provide consistent information to members receiving a retirement estimate under the existing relief after going through a digital advice journey.

For example, while we can provide a retirement projection developed through a personal advice tool, we can't then provide that same projection in a member portal or on an annual statement – we would need to provide a more generic projection in those non-advice communications.

This is a poor member experience, because once members have provided their fund with more detailed information about their circumstances, they will expect this to be reflected in future communication.

We are also unable to provide members with an updated retirement estimate to reflect a change to their balance, even if, all other factors including their retirement goals stay the same. In essence, this should just be a recalculation of their retirement estimate to reflect their latest balance but based on the same personal information collected through the advice tool.

This means that retirement income projections provided to members under ASIC relief may be at best confusing, and at worst actively misleading, to members seeking to engage with their superannuation.

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[1] Link to Aware Super Calculator: https://aware.com.au/member/forms-and-resources/calculators/super-projection

Link to VicSuper Calculator: https://www.vicsuper.com.au/forms-and-resources/calculators

As a result, moving to a personal advice model has limited our ability to provide a consistent, meaningful retirement narrative over time. Being unable to provide useful retirement estimates to members in other contexts has impacted member take-up of more sophisticated tools and has unnecessarily constrained broader member communications.

This is concerning, given academic research demonstrates how effective tools like retirement projections can be in promoting engagement.

While updated ASIC relief may provide more flexibility for trustees to provide this kind of information, ideally, this would be addressed directly through the advice regulatory framework by carving out retirement projections and calculators, and the information they provide. This will ensure trustees can provide meaningful personalised information and calculations to members at significant moments, both in accumulation and pension phase, to improve their decision-making.

Helping members understand risk

Another key opportunity for superannuation funds to improve financial outcomes is by proactively helping members understand risk and volatility. We know that:

- most members are poor at understanding and judging investment risk, and many will end up with worse outcomes through trying to actively manage their super through market volatility than they would have by staying the course with their investments.
- many members tend to underestimate how long they are going to live and the length of time their retirement savings need to last – they have difficulty understanding longevity risk.
- members can over-estimate the impact of short-term market volatility on their retirement savings, selecting investment options and reacting to market volatility without fully appreciating the longer-term implications.

Combined, these forces can lead members to forego the lifestyle they could afford, and yet still face significant risk of outliving their savings. Members simply don't how much they can afford to sustainably draw down in retirement without help.

In our submission in response to CP 351, Aware Super argued that it would be helpful for retirement estimates to include not just a single point figure, but an indication of the level of risk (or certainty) associated with that figure.

Currently, we would only be able to provide this information through a personal advice interaction (either digital or directly with a financial adviser).

Without the ability to communicate risk, consumers find it difficult to contextualise the information provided. If they only ever see the 'expected' results from a calculator or interactive retirement estimate, then it may appear to them that it only pays off to take more risk.

Providing more context around risk will help consumers use these tools to better understand the trade-offs associated with different decisions. This is also critical to fulfil the requirements under the Retirement Income Covenant to assist members achieve and balance the three key objectives.

For members earlier in their career, this will help them stay the course in higher growth investments by showing that the long-term impact from switching to cash is likely to be more significant than the impact of short-term market volatility.

For example, Aware super members receiving advice were 4.3 times less likely to switch to cash during the volatility resulting from COVID-19 in 2020, and those who did switch were likely to move a much smaller amount into cash.[2] This shows that additional support and guidance can positively impact member decisions. Follow-up research showed that, without appropriate support and guidance, members may make decisions around risk and volatility that lead to worse retirement outcomes – even when they increase their level of engagement and contribution rates.[3]

For those nearing retirement, additional context around risk will help them to understand the potential upside and downside implications of investing in higher growth assets and when changing their investment options as they approach retirement.

Providing this broader level of information around an estimate may also help to provide the context members need to not place excessive confidence in a single number or rely on a calculator as their only decision-making tool.

In many cases, only a superannuation fund is in the position to provide this kind of prompt to a previously disengaged member.

However, this guidance can only be provided in the form of personal advice which limits its significant potential benefit. Given the trustee has responsibility to manage risks for members, it should be easier for them to provide guidance on risk management to all members.

While ASIC may provide broader relief to allow trustees to provide this kind of support to members outside a personal advice context, there is also an opportunity for the advice regulatory framework to specifically recognise the important role of trustees in proactively providing personalised information and calculations to members.

Recommendation

5. Amend the advice legislative framework to expand the ability of trustees to provide personalised information to members outside of personal advice rules, including:
    - elevating current ASIC relief for retirement projections and calculators to a legislated exemption; and
    - expanding the scope of this relief to include a broader range of projections, calculators and risk information (including investment risk, longevity risk and behavioural risk) that encourages engagement and good decision-making.

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[2] Retirement Income Review, page 192

[3] How superannuation members respond to market volatility, presented at the All-Actuaries Summit, 2022

The role of superannuation trustees in providing advice

As a superannuation trustee, Aware Super is committed to providing the best possible help, guidance and advice for our members.

A key element of this is creating logical journeys for our members as they consider their superannuation and retirement needs.

The Retirement Income Review noted that super funds are well placed to help meet the needs of members with relevant low-cost advice. The challenge is in being able to do this at low cost to the member, while ensuring a better outcome than if the member had not sought advice.

Currently, delivering advice to fund members is operationally complex impacting both affordability, scalability and accessibility. We are focused on helping members to navigate the transition from information, education and help to advice.

6. Retirement and the need for advice

Retirement is a key moment of financial choice for Australians.

With 320,000 Australians expected to retire each year over the next five years we know that it will be impossible to provide comprehensive financial advice to support all individuals who have advice needs at this moment of choice, let alone other Australians seeking financial help and advice.

Our data shows that member engagement in superannuation does increase meaningfully as members move toward and into retirement. This includes:

- web logins
- investment switches
- inbound service centre enquiries
- participation in educational webinars offered by the fund.

We observe this engagement peaking around Age Pension age but remaining high through much of retirement.

The core questions for most members are:

- how much do I need?
- will I have enough?
- how much should I draw down?

- how long will it last?

Member testing has shown a strong desire for personalised help, particularly in the lead-up to retirement. These members tend to contact us seeking help with issues like personal contributions, beneficiaries and withdrawals, and we see an increase in calls about income streams as members approach preservation age.

This demonstrates the need for appropriate help for members as they approach and enter retirement.

We know that it is not possible to provide comprehensive advice to all Australians at retirement, but we also know that many superannuation members will have needs that can be met without providing, and charging for, a full suite of financial advice.

7. The role of intra-fund advice

Scalable advice models improve the accessibility and affordability of advice. Not all members can access comprehensive advice, and many don't need a full suite of advice to meet their needs.

From a member perspective, intra-fund advice is one of the most accessible forms of advice for many members and can provide a painless introduction to an advice journey. From a system standpoint, the intra-fund model is a vital part of the advice landscape, and the only viable way to deliver accessible, affordable and high-quality advice to superannuation members at scale.

The limited scope of intra-fund advice also lends itself to a digital advice application that addresses simple yet common advice needs of members, in a way that members can easily comprehend. The simple, narrowly-scoped approach leaves members confident to act on the recommendations.

At Aware Super, our intra-fund advice team speak to more than 10,000 members annually about their personal advice needs related to their interests with the fund, and over 32,000 members annually receive advice through our digital channels.

The limitations on intra-fund advice are framed around two key principles:

- avoiding inappropriate cross-subsidisation of advice that is collectively charged; and
- ensuring compliance with the Sole Purpose Test.

These principles remain appropriate, but the intra-fund advice model currently has significant shortcomings which, if overcome, could unlock additional value in the trustee advice model.

Aware Super's member research indicates that consumers wish to access advice as needed at key decision points in their lives or on a discrete topic. As they move through their lives this may mean accessing multiple pieces of single topic advice, or accessing comprehensive advice. However, super fund members find it confusing when they bump into the legal demarcations of intra-fund advice.

Trustees would like to continue to invest in services and provide more advice under intra-fund provisions, however there is a lack of clarity on the scope of advice which often leads trustees to take an overly cautious approach, limiting the help that can be provided before members must pay the cost of advice.

For example, an internal review of the offerings of several funds, undertaken in 2021, noted a significant variation in the topics covered, with funds appearing to have differing views on whether issues such as Centrelink entitlement advice could be covered under the model.

At a minimum, it is necessary to clarify and broaden the topics that can be covered under intra-fund advice. For example, retirement topics including Centrelink eligibility and retirement budgeting should be specifically included in the advice able to be collectively charged by trustees.

Expanding the role of superannuation funds

Rather than stopping at expanding or clarifying the list of topics considered in scope for intra-fund advice, it would be useful to consider more broadly the role of superannuation trustees in providing help, guidance and advice to members as part of reconsidering advice definitions and the broader regulatory framework.

For example, current restrictions on collectively charged advice currently do not allow for any advice that may be ongoing – that is, any recommendation likely to require review.

While we understand the desire for regular ongoing advice to not be collectively charged, as this would not be an appropriate cross-subsidisation, this restriction is less relevant for forms of advice that do not carry material per-use costs, such as digital advice.

Given the potential to improve member outcomes, digital tools should be explicitly allowed to be integrated into a collectively-charged model in a way that encourages repeated use and check-ins by members to ensure their needs are still being met.

Recommendation

6. Clarify the scope of advice that can be collectively charged by superannuation trustees, including:
   - providing a clear, expanded list of topics that a fund can advise on; and
   - explicitly allow advice to be provided on an ongoing basis where the cost to serve is negligible, such as through digital tools.

8. Protecting members in underperforming funds

Aware Super strongly supports having consumer protections in place to ensure that members remaining in underperforming funds are not disadvantaged by advice provided by trustees.

Where a product has failed the Your Future Your Super performance test, it is appropriate that this be disclosed up-front to a member seeking guidance or advice from their fund, and that a recommendation be made that the member should consider whether their product meets their needs.

This recommendation would need to be carefully worded and ensure that members consider their full circumstances, including insurance coverage.

While disclosure alone is not an adequate consumer protection, providing this disclosure at a point of active engagement should allow members to factor this into their decision-making process.

Ultimately, the continued existence of poorly performing superannuation products should be dealt with by the regulators. The issue cannot be solved through advice legislation, or by advisers, and advice legislation should not prevent trustees from supporting members to make decisions that could materially improve their retirement outcomes.

Aware Super analysis has shown that support and guidance at key points in the superannuation journey, provided to a member of a top-quartile fund, could have an even greater lifetime impact than the move from the median fund to a top quartile fund.

In this context, it is important to balance the risk of allowing superannuation funds to provide targeted guidance and advice to members, with the risk of consumers not receiving this guidance at all.

It is possible to protect members in poor products from additional detriment without constraining the ability of funds with high-performing products to provide advice and support for their members to improve retirement outcomes.

A blanket approach to restricting fund activity based on potential poor performance will not create the best outcomes for all consumers, and any restrictions or additional disclosures should be appropriately targeted.

Recommendation

7. Create specific disclosure and prompts to preface any advice provided by trustees in relation to underperforming products, to protect members holding these products without restricting the ability of other funds to provide guidance and advice to further improve member outcomes.

Improving the personal advice process

Our overarching observation of the current advice regulatory regime is that very little of the structure or content meets the needs of consumers, even though much of the current framework was designed to protect the consumer.

The advice landscape has changed significantly, and the needs of consumers continue to evolve.

We have provided recommendations below to improve the affordability, accessibility and simplicity of advice, without compromising consumer outcomes.

9. Streamlining information gathering and validation

Enabling process efficiencies is a critical factor in reducing the cost of advice. Collecting, validating and comparing information relating to a client's existing product holdings.

An example of this process is set out below, together with the challenges and sources of time delays. Product research can range from 30 minutes to 3 hours depending on the number of products being considered, with the cost of this time being borne by the end client.

Standardisation and digitisation of these processes could significantly improve the affordability of advice and reduce the workload for both the adviser and the client when gathering information.

Step 1: client authorizes research into existing products	• Completion of Third Party Authority (TPA) Form • Usually needs physical signature (some product providers only accept originals) • Restricts virtual / digital advice processes
Step 2: adviser posts TPA to provider/s	• Some providers only accept originals – may need multiple forms • Each provider has their own SLA for processing – no process standardisation • Commonly wait 5 days before follow-up for relevant information
Step 3: adviser calls product provider for product details & data	• Adviser / assistant often on hold for 20-60 minutes • Second call often required to validate information before completing plan • Input to product recommendations – accuracy is important • Time consuming – adds to cost to client
Step 4: adviser re-enters info to software solution for product comparisons	• No guarantees by solution providers on quality of data for product comparisons • Industry relies on third party providers keeping relevant data up to date • Time consuming & costly

The Consumer Data Right

Aware Super supports the extension of the Consumer Data Right (CDR) to superannuation, and we look forward to being closely involved in the development of the scheme.

The fact-find process is a significant cost driver for the provision of advice, as well as a friction point for consumers. Having the ability for members to provide direct access to personal data, rather than undertaking a manual fact find, has significant potential to reduce the cost of advice provision and make it easier to offer personal advice.

We expect significant cost and time reductions along with improved data quality and privacy management from a standard information-sharing approach such as the CDR.

However, the biggest opportunity in relation to extending the CDR to superannuation would be the inclusion of key Government data.

Access to appropriate MyGov, ATO and Centrelink data with members' permission could present an efficient means for sourcing relevant member data to feed into the retirement planning process, reducing both frictions for members and the cost of fact finds in advice settings.

Time and cost efficiencies for both members and funds could be achieved by allowing data to be accessed by funds, with consent, in a safe and seamless way.

In addition to being used for personal advice fact-finds, this information could also feed into digital tools and be accessible to call-centre staff to ensure the delivery of better, more relevant information to members.

Recommendation
8. Ensure the Consumer Data Right extends to personal information held by Government agencies, to reduce costs and streamline the fact-find process.

10. Best Interests and Related Obligations

The Best Interest Duty Obligations were a positive step for the advice industry and important in the transition towards professionalism. However, our view is that the combination of the Best Interest Duty obligations, the safe harbour steps and ASIC Class Order 14/923 have resulted in advice providers directing a greater proportion of their total effort not toward consumer outcomes and their best interests, but to compliance and documentation.

This compliance framework creates a culture of risk-aversion and over-documentation which increases the cost and complexity of the advice process for consumers, without necessarily improving consumer outcomes.

While safe harbour steps on their own are not difficult or negative, combining them with conduct, disclosure and record-keeping requirements creates an expensive and legalistic process.

The key issue with the safe harbour steps is that you can meet the best interest duty (prioritise the client's interest, provide appropriate advice and place the client in a better position) but if you do not follow the prescriptive process of the safe harbour steps and document them to the requirements of the class order, the advice can still be deemed unsatisfactory and breach the law. From a consumer perspective, this is nonsensical. In the context of a professionalized industry, with legislated fiduciary duty and a Code of Ethics, advice that places clients in a better position should be the requirement.

The safe harbour steps were implemented prior to the transition of the industry to professionalism, and the introduction of education standards with an increased focus on ethics. There has been considerable uplift in the industry, and this is conducive to simplification of applicable legislation, including the repeal of the safe harbour provision.

We support the proposal in the Review's Terms of Reference to repeal the safe harbour steps and recommend shifting the focus back to consumer outcomes by retaining the simple, principles-based test through the best interest duty, of evidencing better position and prioritising the client's interests.

We would also encourage the Review to consider recommending further guidance on what constitutes 'better position'. Our long experience in dealing with clients through the advice process has shown us that consumers experience both tangible and intangible benefits of advice.

Advice should improve outcomes for clients, but this does not always mean increasing the quantum of their savings. Services such as providing reassurance around the amount a member needs to save, or advice on how much they can comfortably spend, are also clear benefits.

Intangible benefits should not be attained at a cost to a consumer and should not be used to defend otherwise poor advice outcomes. However, they should be explicitly considered as part of the advice process – particularly in a regulatory framework that separates strategic and product-related advice.

One of the questions in the issues paper is 'what are the characteristics of quality advice for consumers?' Our answer would be that quality of advice for consumers incudes both tangible and intangible benefits.

Recommendation

9. Simplify the delivery of advice by:
    - repealing the safe harbour steps, retaining the simple, principles-based 'better position' test in the best interest duty; and
    - providing guidance on the better position test, including how intangible benefits of advice (including strategic advice) can contribute to meeting the test.

11. Disclosure Documents

Statements of Advice

There has been substantial and ongoing commentary within the advice industry that Statements of Advice (SoAs) are a significant issue in the cost of providing advice.

The primary driver of this outcome is the multiple purposes and audiences that advice documentation is attempting to serve. SoAs are the primary consumer facing disclosure document related to advice, however they also serve as the primary evidentiary point for compliance requirements and processes.

This means the consumer receives a document containing large quantities of information intended to protect the advice provider, rather than communicate to the client.

Evidentiary requirements are extensive because of a combination of factors including:

- Regulatory uncertainty and different interpretations of regulator guidance
- Best Interest Duty obligations,
- Safe harbour steps; and
- ASIC Class Order 14/923.

In addition to consumers, advice disclosure documents are serving the need to document specific information to satisfy auditors, ASIC and AFCA. Differing expectations between ASIC and AFCA add to complexity and over-documentation due to risk-aversion from advice providers.

Ultimately, this results in a document which is difficult for clients to understand, fails to demystify the advice process to the average Australian, and costs the client more to produce than the value they perceive from it.

As an indication, our SoAs for comprehensive advice can be expected to run to 30-60 pages, with intra-fund advice SoAs up to 15 pages. This is before other documents including Financial Services Guides, product disclosure and consent forms.

Noting that AFCA is outside the scope of this review, we have observed that AFCA's lack of documented requirements lead to a 'learn as you go' approach for advice providers, and with any adverse finding from AFCA a new documentation requirement or advice process is added.

Improving disclosure

In addition to SoAs, consumers will also be provided multiple lengthy disclosure documents, which most consumers are unlikely to read.

While product disclosure has been a long-term issue that has proven difficult to resolve, improving documentation for consumers should be considered as part of improving the advice experience.

Shorter, standardised disclosure documents could cover information relevant across products, for example:

- general information about investment risk (which would otherwise be incorporated into every SoA and PDS); and
- internal complaints processes and External Dispute Resolution information, with contact details included specific to the AFS Licensee.

Recommendation

10. Make disclosure documents shorter, more consumer-friendly and less costly to produce, by:
    - ensuring the regulatory framework prioritises information that is meaningful to the consumer;

- improving regulator alignment in relation to expectations of disclosure documentation; and
- considering alternative ways to provide information that is currently duplicated in multiple documents, such as single standardised disclosures.

12. Advice provided by superannuation funds

Aware Super provides comprehensive personal advice through our financial planning business.

This is a valuable service that we are able to offer to our members, and our members see significant value in this service being available to them in circumstances where they are making significant financial decisions, have complex needs or value the broader financial advice experience.

There is significant opportunity to make the comprehensive advice process more cost-effective and streamlined to improve consumer outcomes.

We also see significant opportunity in the ability to separately scope strategic and product advice to provide members the level of advice that suits their needs at a particular moment.

Undertaking product comparison is an essential part of the advice process where a client seeks a recommendation on products, but important to note it can be an expensive and time consuming part of the process. To meet the needs of members who seek advice but are satisfied in existing product and that product aligns to their strategy, removing this cost burden would be beneficial. The scope of the advice is always directed by the client.

Where members of a superannuation fund seek advice from their existing fund, and where this is clearly labelled, it may be useful to consider allowing a more tailored approach that allows consumers to:

- choose to scope product comparison out of advice entirely if it is not required (because they are happy with their current product and it aligns with their strategy); or
- scope advice on a more limited suite of products (for example, where they are an existing member and wish to compare a whether another product offered by the fund is more suitable to their needs).

Separating strategic and product advice will allow a member's needs to be more clearly scoped, and make it easier to ensure consumers understand the scoping process and are not receiving (and paying for) product advice they don't want or need.

It would allow advisers to draw a clear line between the strategic advice they are providing, and what that would look like in relation to particular products – allowing a more consumer-focused conversation and creating a natural point in the discussion to allow a consumer to seek independent advice if they want to know about other products.

Consumer protections, such as Design and Distribution Obligations, as well as the professional judgement of advisers, would ensure that this approach did not direct members into unsuitable products.

13. Trustee supervision of advice providers

Recent guidance provided to trustees by ASIC and APRA has had the effect of placing responsibility on trustees to supervise advice provided to superannuation members, where advice fees are deducted from member accounts.

The regulators' letter to RSE Licensees on 30 June 2021, titled *Further guidance on oversight of advice fees charged to members' superannuation accounts*, effectively creates responsibilities for trustees around the content and delivery of advice which substantially duplicate the existing responsibility of advice providers.

This creates confusion and ambiguity for trustees, and dilutes the responsibility of advice providers to comply with existing regulatory requirements.

While it is important to ensure that advice is appropriate and only charged to superannuation accounts in line with the sole purpose test, the level of oversight set out by the regulators creates a significant additional compliance cost for trustees. This cost is ultimately passed through to all members (not just those paying for advice from their superannuation savings).

It should not be the role of superannuation trustees to police the activities of advice providers, and this cost should not be borne by superannuation members.

In addition, detailing the expectations in a letter format adds an additional layer to the existing complexity of the regulatory environment, making it more difficult for trustees to understand and manage their obligations. This has been an increasing source of frustration for trustees, as these letters affectively create new obligations but are often difficult to interpret and implement.

Recommendation

11. Ensure the advice regulatory framework creates clear accountabilities, including advice providers retaining single point accountability for the advice services they provide.
12. Create consistent approaches to the provision of regulator guidance, to avoid the complexity, confusion and compliance costs created by multiple layers of overlapping regulation and guidance.