

21 September 2022

Quality of Advice Review Secretariat  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [AdviceReview@treasury.gov.au](mailto:AdviceReview@treasury.gov.au)

## Quality of Advice Review Consultation: Proposals Paper

AustralianSuper is Australia's leading superannuation fund and is run only to benefit members. Almost 2.9 million Australians are members of AustralianSuper, and we invest over \$260 billion of their retirement savings on their behalf.

AustralianSuper's purpose is to help members achieve their best financial position in retirement. To do this we deliver top long term investment performance and low fees, as well as quality help, guidance and advice to members over their journey to and through retirement.

### Quality of Advice Review Consultations

We continue to welcome the Quality of Advice Review (Review) and the opportunity to participate in consultation as Treasury refines its policy recommendations to government. As part of the Review consultations AustralianSuper has:

- Provided a written response to the first round consultation in June 2022. In that paper we set out AustralianSuper's approach to providing quality information, help and advice and highlights areas and actions that we believe will improve access to quality affordable advice for members. We ask that this submission be read in conjunction with our earlier submission (Attachment 1).
- Participated in a stakeholder roundtable with Treasury officials ahead of the release of the Proposals Paper.
- Provided feedback to peak bodies (ISA, AIST and ASFA) in relation to their submissions.

### AustralianSuper position

As set out in our first round submission in response to Treasury's Issues Paper, AustralianSuper believes that superannuation funds have a critical role to play as the custodians of a major financial asset for many working Australians. AustralianSuper's scale, operating model and understanding of member needs, means we are well placed to offer quality information, help and financial advice. This often complements other advice sought by members from external parties.

Supported by our statutory obligations to act in the best interests of members and our purpose to ensure members achieve their best financial position in retirement, AustralianSuper is confident the information, help and advice we provide to members is of high quality.

It is clear to us that the quality of information, help and advice provided to Australians will make the most material financial difference to their lives. Increasing access to, or reducing the cost of, advice where the advice itself is not of sufficient quality may indeed pose a detriment to Australians' financial outcomes.

As such, we see the opportunity for the Review to make the most meaningful impact is to determine how to best improve the affordability and accessibility of quality advice to all Australians who seek it. In our first-round submission we noted that we support the statement in the Issues Paper that 'the starting point for the Review is that quality advice can be accessible and affordable'.

We also believe the financial advice regulatory framework should support access to quality financial information, help and advice to Australians across the continuum of their lives. From the perspective of the Fund, this means through the accumulation phase of superannuation, into preretirement planning and then into retirement (decumulation phase). We note there is significant demand from consumers across all parts of the help and advice spectrum and this is increasing.

In summary, our view is the Review should put forward options to Government for regulatory and legislative reform to improve affordability and accessibility, without compromising quality and consumer protection.

## Issues Paper recommendations

In response to Treasury's Issues Paper, AustralianSuper recommended that:

- Recommendation 1: Revise and update definitions for factual information, general advice and personal advice to ensure clarity and certainty. As part of this define what is not personal advice.
- Recommendation 2: Review and expand the range of advice topics classified as intra-fund advice, to better support people considering their retirement income.
- Recommendation 3: Review the purpose and form of SOAs, with a view to the industry better 'right-sizing' disclosure requirements to the scope of advice being provided. Review how advice is scaled based on the 'know your client rules'.
- Recommendation 4: Customise the regulatory framework for digital advice.
- Recommendation 5: Review the differing fee charging regimes between MySuper and Choice products, with a view to consolidate to a single consistent set of rules.
- Recommendation 6: Clarify that advice fees relating to retirement income advice can be deducted from a members superannuation account.

We are pleased to see that Treasury has attempted to respond to the majority of our recommendations and we provide additional commentary and responses on those issues below. Disappointingly, the Proposals Paper does not adequately, address Recommendations 5 and 6 and we ask that Treasury ensures the Review appropriately considers these prior to finalising any recommendations to government.

## Proposals Paper

Treasury has now sought feedback on 15 specific questions in response to a Proposals Paper, grouped under eight themes. Our response to the broad themes is below. On these, and all matters covered by the Review, we reserve our final position until draft legislation is circulated for consultation by Treasury.

Our responses to the Proposals Paper are set out below. We have also included this information in the Treasury template at **Attachment 1**.

### **1. Intended outcomes (question 1)**

We reiterate the points made in our submission and above that the intent of the Review should be to put forward options to Government for regulatory and legislative reform to improve the affordability and accessibility of advice, without compromising quality and consumer protection.

The Proposals Paper includes initiatives that would improve the accessibility and affordability of advice, particularly in relation to the principles-based approach proposed by Treasury. However it is less clear whether these will come at the expense of advice quality and consumer protection. For example:

- Appropriately structuring the 'good advice test' to ensure the focus on consumers receiving quality advice is not lost. The absence of legislative precedent for 'good advice' will mean uncertainty in how it will be interpreted, and consideration should be given to whether there are alternative obligations already in use that can be applied.

- Clearly delineating between ‘non-relevant provider’ and ‘relevant provider’ and ensuring simplicity for consumers as to what they can expect from each.
- Deregulating general advice, while ensuring the provision of that advice is appropriate and, where it is not, consumer redress is available.
- Ensuring the advice system operates to promote appropriate competition between providers, noting superannuation funds will continue to be bound by additional regulatory and transparency obligations not applied to other providers of advice services.

More detail will need to be provided by Treasury to allow the industry to understand how various initiatives will intersect and work in practice to deliver accessible, affordable *and* quality advice.

## **2. What should be regulated – personal advice and general advice (questions 2 and 3)**

In responding to the Issues Paper, AustralianSuper recommended: *Recommendation 1: Revise and update definitions for factual information, general advice and personal advice to ensure clarity and certainty. As part of this define what is not personal advice.*

We welcome Treasury’s attempt to clarify the definitions of personal and general advice, however we ask that further work is undertaken to refine the proposed definitions to address the recommendation above.

- Personal advice

AustralianSuper would welcome more opportunities to provide opinions and recommendations to help more members. Currently AustralianSuper provides quality information, help, guidance and advice to members in a range of ways, as set out in our response to the Issues Paper. Where personal advice is provided, we believe that advice being documented in some form is an important requirement to help protect the interests of consumers. As such, the definition of personal advice must be considered alongside other requirements and proposals including whether written documentation is required to be provided.

- General advice

Education seminars (communication of superannuation issues in a one to many format) are an important and cost-effective way to communicate with superannuation fund members and currently provide a bridge to the provision of personal advice. We ask Treasury to clarify:

- Whether questions received during an education seminar (attended by multiple participants) would fall within the definition of personal advice or would be considered to be general advice (including whether a different definition would apply to questions from members and non-members) given the proposed definition of ‘personal advice’ as discussed above;
- How consumers will be protected under a deregulated advice model, including why the Australian Consumer Law is appropriate protection for financial advice;
- How other regulatory regimes would apply and intersect with the proposed definitions, including the Financial Accountability Regime (proposed to be applied to superannuation funds from 2023) and Design and Distribution Obligations.

## **3. How should personal advice be regulated (questions 4-8)**

We restate our position that the Review should put forward to Government options for regulatory and legislative reform to improve affordability and accessibility of financial advice, without compromising quality and consumer protection. AustralianSuper’s position is the regulatory regime governing the provision of ‘personal advice’ must appropriately address both of these considerations.

To this end:

- We support process simplification where it results in organisations being able to more easily and affordably provide quality advice to consumers, including through leveraging technological solutions. However from the information in the Proposals Paper it is unclear how the proposed initiatives would work in practice, or ensure these outcomes.
- Appropriate qualifications, experience or training are essential to the provision of quality advice. However, as with other services, the level required will depend on the nature of the advice being provided and the applicable regulatory, review and enforcement regime.
  - Minimum standards should be required of 'non relevant providers'.
  - Certain advice topics should only be able to be provided by fully qualified financial advisers (whether 'relevant providers' or 'non-relevant providers'). A person who doesn't meet certain professional standards should be appropriately constrained in the topics they are able to provide advice on.
  - The title of financial adviser should be heightened over time and only used by a fully qualified individual. We ask Treasury to confirm our interpretation that the proposed initiatives would not change current requirements for this.

#### **4. Superannuation funds and intra fund advice (question 9)**

AustralianSuper reiterates our comments in our previous submission to the Issues Paper. We believe that it remains to be seen that in practice the initiatives in the Proposals Paper would address our previous recommendation that advice in relation to retirement income could be provided as intra-fund advice. While the proposed amendments to the SIS Act would clarify that the existing practices of applying fund assets to meet the cost of providing personal advice to members can occur, it is not clear that the changes would encourage Trustees to interpret the sole purpose test less conservatively when it comes to retirement income advice.

We believe:

- Intra-fund advice should be retained, and it should be unambiguous that retirement income be provided within it
- Subject to legislative drafting, the removal of restrictions on collective charging should support the provision of retirement advice by superannuation funds without creating further regulatory uncertainty in relation to funds' sole purpose obligations.

We believe, given demographic trends and the purpose of superannuation, the Review should expressly recommend to government that retirement advice can be collectively charged by superannuation funds.

#### **5. Disclosure documents (questions 10-12)**

Please refer to our response to the Issues Paper for detail on how we provide advice.

We note Treasury's attempt to consider options for reducing cost and complexity in the provision of financial advice, however we do not consider the current proposals fully meet the needs of consumers or providers.

In relation to ongoing advice, we consider the most important consent and disclosure documents are:

- the agreement between the financial adviser and their client, in relation to the services that will be provided in that year and the fee for the provision of these services; and
- product consent forms, where part/all of that advice fee will be charged from a financial product/products.

These are important, but separate, documents and we would not support the consolidation of the two documents. We recommend they are retained as requirements and separate documents.

In relation to Fee Disclosure Statements (FDS), it is unclear that removing this requirement would substantially reduce the cost of providing advice, however if this can be demonstrated, and the agreement and consent forms retained, then that may provide an opportunity to reduce paperwork and cost.

In relation to proposals regarding Statements of Advice, we support consumers receiving a written document that clearly explains the advice in terms they understand when advice is provided to them. We also see the Review as providing opportunity for innovation in the sector in the provision of documentation to meet consumers' needs. It is important that advisers continue to be required to articulate the compliance of their advice (in the adviser's records).

Members should be made aware of where to find other important information, such as is currently contained within general financial services guides. There is an opportunity for the Review to consider how this information can be provided in a simple and meaningful way.

## **6. Other matters**

- From the information provided we do not believe the proposal in relation to the reporting requirements under the design and distribution obligations would make a material change to the design and development of financial products, nor to TMDs.
- We support appropriate transition arrangements.
- As set out above, we ask Treasury give consideration to the recommendations in our response to the Issues Paper, specifically:
  - *Recommendation 5: Review the differing fee charging regimes between MySuper and Choice products, with a view to consolidate to a single consistent set of rules.*
  - *Recommendation 6: Clarify that advice fees relating to retirement income advice can be deducted from a members superannuation account.*

Thank you for the opportunity to make a submission and we look forward to continued dialogue with Treasury ahead of a final report being provided to government in December this year. If you require any clarification or further information, please contact James Bennett, Policy and Government Relations Adviser at [jbennett@australiansuper.com](mailto:jbennett@australiansuper.com)



**Sarah Adams**  
Group Executive  
Strategy, Reputation & Corporate Affairs

**Attachment 1: Proposals Paper Template**



Australian Government  
The Treasury

**TSY/AU**

# Quality of Advice Review

Template for 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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<b>Enquiries</b>	Enquiries can be initially directed to <a href="mailto:AdviceReview@TREASURY.GOV.AU">AdviceReview@TREASURY.GOV.AU</a>

## Appendix 1: Consultation template

Name/Organisation:

### 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?

We reiterate the points made in our previous submission that the intent of the Review should be to put forward options to Government for regulatory and legislative reform to improve the affordability and accessibility of advice, without compromising quality and consumer protection.

The Proposals Paper includes initiatives that would improve the accessibility and affordability of advice, particularly in relation to the principles-based approach proposed by Treasury. However it is less clear whether these will come at the expense of advice quality and consumer protection. For example:

- Appropriately structuring the ‘good advice test’ to ensure the focus on consumers receiving quality advice is not lost. The absence of legislative precedent for ‘good advice’ will mean uncertainty in how it will be interpreted, and consideration should be given to whether there are alternative obligations already in use that can be applied.
- Clearly delineating between ‘non-relevant provider’ and ‘relevant provider’ and ensuring simplicity for consumers as to what they can expect from each.
- Deregulating general advice, while ensuring the provision of that advice is appropriate and, where it is not, consumer redress is available.
- Ensuring the advice system operates to promote appropriate competition between providers, noting superannuation funds will continue to be bound by additional regulatory and transparency obligations not applied to other providers of advice services.

More detail will need to be provided by Treasury to allow the industry to understand how various initiatives will intersect and work in practice to deliver accessible, affordable *and* quality 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?

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?

### ***What should be regulated – personal advice and general advice (questions 2 and 3)***

In responding to the Issues Paper, AustralianSuper recommended: *Recommendation 1: Revise and update definitions for factual information, general advice and personal advice to ensure clarity and certainty. As part of this define what is not personal advice.*

We welcome Treasury's attempt to clarify the definitions of personal and general advice, however we ask that further work is undertaken to refine the proposed definitions to address the recommendation above.

- Personal advice

AustralianSuper would welcome more opportunities to provide opinions and recommendations to help more members. Currently AustralianSuper provides quality information, help, guidance and advice to members in a range of ways, as set out in our response to the Issues Paper. Where personal advice is provided, we believe that advice being documented in some form is an important requirement to help protect the interests of consumers. As such, the definition of personal advice must be considered alongside other requirements and proposals including whether written documentation is required to be provided.

- General advice

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- Whether questions received during an education seminar (attended by multiple participants) would fall within the definition of personal advice or would be considered to be general advice (including whether a different definition would apply to questions from members and non-members) given the proposed definition of ‘personal advice’ as discussed above;
- How consumers will be protected under a deregulated advice model, including why the Australian Consumer Law is appropriate protection for financial advice;
- How other regulatory regimes would apply and intersect with the proposed definitions, including the Financial Accountability Regime (proposed to be applied to superannuation funds from 2023) and Design and Distribution Obligations.

#### **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?**

**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)?**

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

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

**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?

**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?

***How should personal advice be regulated (questions 4-8)***

We restate our position that the Review should put forward to Government options for regulatory and legislative reform to improve affordability and accessibility of financial advice, without compromising quality and consumer protection. AustralianSuper's position is the regulatory regime governing the provision of 'personal advice' must appropriately address both of these considerations.

To this end:

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  - The title of financial adviser should be heightened over time and only used by a fully qualified individual. We ask Treasury to confirm our interpretation that the proposed initiatives would not change current requirements for this.

**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?**

AustralianSuper reiterates our comments in our previous submission to the Issues Paper. We believe that it remains to be seen that in practice the initiatives in the Proposals Paper would address our previous recommendation that advice in relation to retirement income could be provided as intra-fund advice. While the proposed amendments to the SIS Act would clarify that the existing practices of applying fund assets to meet the cost of providing personal advice to members can occur, it is not clear that the changes would encourage Trustees to interpret the sole purpose test less conservatively when it comes to retirement income advice.

We believe:

- Intra-fund advice should be retained, and it should be unambiguous that retirement income be provided within it
- Subject to legislative drafting, the removal of restrictions on collective charging should support the provision of retirement advice by superannuation funds without creating further regulatory uncertainty in relation to funds' sole purpose obligations.

We believe, given demographic trends and the purpose of superannuation, the Review should expressly recommend to government that retirement advice can be collectively charged by superannuation funds.

**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?**

**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?

**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?

***Disclosure documents (questions 10-12)***

Please refer to our response to the Issues Paper for detail on how we provide advice.

We note Treasury's attempt to consider options for reducing cost and complexity in the provision of financial advice, however we do not consider the current proposals fully meet the needs of consumers or providers.

In relation to ongoing advice, we consider the most important consent and disclosure documents are:

- the agreement between the financial adviser and their client, in relation to the services that will be provided in that year and the fee for the provision of these services; and
- product consent forms, where part/all of that advice fee will be charged from a financial product/products.

These are important, but separate, documents and we would not support the consolidation of the two documents. We recommend they are retained as requirements and separate documents.

In relation to Fee Disclosure Statements (FDS), it is unclear that removing this requirement would substantially reduce the cost of providing advice, however if this can be demonstrated, and the agreement and consent forms retained, then that may provide an opportunity to reduce paperwork and cost.

In relation to proposals regarding Statements of Advice, we support consumers receiving a written document that clearly explains the advice in terms they understand when advice is provided to them. We also see the Review as providing opportunity for innovation in the sector in the provision of documentation to meet consumers' needs. It is important that advisers continue to be required to articulate the compliance of their advice (in the adviser's records).

Members should be made aware of where to find other important information, such as is currently contained within general financial services guides. There is an opportunity for the Review to consider how this information can be provided in a simple and meaningful way.

**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?

**Transition and enforcement**

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

**General**

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

**Questions 13 - 15**

- From the information provided we do not believe the proposal in relation to the reporting requirements under the design and distribution obligations would make a material change to the design and development of financial products, nor to TMDs.
- We support appropriate transition arrangements.
- As set out above, we ask Treasury give consideration to the recommendations in our response to the Issues Paper, specifically:
  - *Recommendation 5: Review the differing fee charging regimes between MySuper and Choice products, with a view to consolidate to a single consistent set of rules.*
  - *Recommendation 6: Clarify that advice fees relating to retirement income advice can be deducted from a members superannuation account.*