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Quality of Advice Review Proposals Paper - Give people an independent retirement service

ABOUT US

Super Consumers Australia is the people's advocate in the superannuation sector. Super Consumers Australia advances and protects the interests of people on low and middle incomes in Australia's superannuation system. It was founded in 2013 and received funding for the first time in 2018.

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Introduction

Each year we put a significant portion of income into our compulsory super system. At retirement, we face a complex and uncertain puzzle that makes it hard to make choices about how to maximise our retirement income. Unlike the accumulation phase, the retirement system does none of the heavy lifting, nor does it support the disengaged with safe defaults and quality, independent, simple guidance. Instead, many are left to a financial advice sector that is inaccessible due to cost or lacks the independence people desire. This review is an opportunity to address the advice and guidance side of this problem and give people affordable, quality, independent options to guide them through the complexity of retirement planning.

The Quality of Advice issues paper acknowledges this problem and the need for change. We see scope for these proposals to be improved, so they better protect consumers. As it stands many of the proposals rely on undeveloped consumer protections, ignore how the majority of consumers approach retirement and embed conflicts into the system. Without addressing these conflicts, the review risks building a system that may well be cheaper, but favours the interests of product providers rather than consumers and falls well short of the mark on quality.

The review proposes allowing product providers to give 'good advice' and for professional financial advisers to give 'best interest' advice. This proposal divides Australians into two groups. Those that can afford advice will continue to get it from a professional who will act in their best interests and compare relevant products and options on the market. Those who can't afford professional advice will be forced to roll the dice on 'free' conflicted advice from product providers. Commissioner Hayne was critical of many of these product providers, describing them as pursuing short-term profit at the expense of basic standards of honesty.

At its worst the 'good advice' duty has the potential to make it easy for poor super funds to sell their products, with no obligation to consider or even explain other options on the market. The more prudent super funds may direct people to advice services they can't afford or decide to offer no advice at all. This approach still leaves people without affordable, accessible and quality advice. After decades of hard work and saving, this is not what people want or deserve.

Australia has the resources and expertise to strive for better. The review must focus on what consumers want rather than what conflicted product providers are willing to deliver.

Summary of recommendations

- That the Federal Government task an independent agency to connect Australia's retirement planning assistance services and tools through a single portal to provide quality, impartial guidance, delivered via digital channels with in-person/over the phone support as required.

- The single portal to provide quality, impartial retirement guidance be:
    a. Embedded on super fund websites and offered alongside super advice services; and
    b. used by super funds to direct people to when they cannot provide 'good advice.'

- That the Quality of Advice Review proposes legislative caps on super fund collective charging.

- That the Quality of Advice Review clarifies how the 'good advice' duty applies in a range of scenarios, including retirement. It should do this through clear examples that demonstrate the scoping process expected to be taken under the test.

Where do people go to get independent guidance?

The proposals paper states that ‘changes need to be substantial if financial advice is going to be widely accessible and truly affordable’. It perceives the best interests duty as a barrier to these goals.

The review proposes that a 'good advice' test replace the best interest duty to facilitate advice on a single product. This change would apply to all personal advice scenarios except for:

- where the provider is an individual and the client pays a fee for the advice,
- the provider (or the provider’s authorising licensee) receives a commission in connection with the advice,
- there is an ongoing advice relationship between the adviser and the client or the client has a reasonable expectation that such a relationship exists.

‘Good advice’ is defined as advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided. One of the key practical differences between the best interests duty and the ‘good advice’ test is that there is no requirement in the good advice test to have regard to the available products on the market when delivering advice. Instead, providers will have the responsibility to satisfy themselves that the advice they provide, including product recommendations, is reasonably likely to benefit consumers. This change would remove one of the core consumer protections, which ensured providers were made to justify their product against better alternatives when giving advice.

This model embeds conflicted advice, which we know in the super fund context can be particularly harmful. Commissioner Hayne identified conflicts as one of the primary causes of poor advice.[1] A likely result will be people being recommended in-house super products on the basis there is some form of minimal benefit to the consumer but well short of what may have been delivered if the advice considered other options in the market. The UK Financial Conduct Authority found: "the majority of consumers (60%) do not switch providers when they buy an annuity, despite the fact that 80% of these consumers could get a better deal on the open market, many significantly so.[2] The current proposals which rely on conflicted product providers giving advice would further embed this lack of demand side competition.

Before simply making it easier for product providers to deliver advice, it is important to consider what consumers actually want from advice. CHOICE’s Project Superpower research found that people ‘would like independent, unbiased advice, but they don't know where to turn for financial

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[1] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, p3
[2] Financial Conduct Authority, February 2014. At http://www.fca.org.uk/static/documents/thematic-reviews/tr14-02.pdf

help.'[3] Our nationally representative survey of pre-retirees and retirees (45-80 y.o.) found more than a third (37%) were looking to take a DIY approach to planning for retirement.[4] This group doesn't look for experts to make decisions, instead relying on themselves to track down useful information and guidance to help them plan. This group is unlikely to trust in a product provider's advice and their trust issues are likely to be further compounded if that provider's advice is influenced by their product offering.

In the context of the 'good advice' definition, we continue to see an independent resource that provides guidance and comparison tools as important complementary consumer protection. A service such as this would help foster competition, but also benefit the large portion of Australians who don't want to rely on conflicted retirement advice.

Super funds are conflicted and consumer protections are not mature

As we have highlighted in our previous submission, advice from product providers cannot be relied upon on its own to solve the issues facing consumers in planning for retirement. An example of the problem is the 'good advice' that would likely flow from a super fund that has a limited product offering. Mercer recently surveyed the super fund retirement product offerings. The survey found only 8% of funds in their sample offered a lifetime pension solution (i.e. a product with a feature that specifically protected against outliving one's savings).[5] Avoiding outliving retirement savings is a major risk consumers face heading into retirement. The need to better protect consumers against this risk has been identified by several independent inquiries, including the Financial Systems Inquiry (2014) and the Retirement Income Review (2020). These products are not appropriate for all consumers, but their near non-existence in the market despite nearly a decade of attention on their importance is striking. It also highlights the significant shortfall in relying on product providers as the primary source of affordable advice. A consumer seeking advice from their superannuation fund will only be offered the product fund offers. The majority of these products are account-based pensions that lack explicit longevity protection. As a result, more than 90% of Australian retirees currently have an account based pension. Many consumers will therefore miss out on the benefits that other better suited products on the market might have provided them.

Protections over product quality are limited in the retirement phase. For example the super fund performance test currently doesn't, and due to complexity, may never cover retirement products. There is a live consultation on whether and/or how the test should be applied beyond MySuper products into Trustee Defined Products (TDPs). Many in the super industry are expressing concern as to whether the test can be applied beyond MySuper. Even if the test is eventually applied to TDPs, there are many products, particularly in the retirement phase that fall outside of

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[3] CHOICE, 2016, 'Project Superpower' available at: https://www.choice.com.au/-/media/39a3a46234d64be398df0ebaba25c65d.ashx?la=en
[4] Retirement Planning Survey, February 2021, Super Consumers Australia and Fiftyfive5, N=1,541, https://superblog.netlify.app/2021/07/28/nationally-representative-retirement-survey-results/
[5] Retirement Income Strategies have been published – what now?, August 2022

this definition, including the aforementioned longevity products. As things stand today thousands of superannuation investment options are still untested, making up almost half of the funds in the market.[6] There are currently superannuation products graded red on APRAs heatmaps that are being freely distributed to people.[7] This is not a market in which we should be making it easier from conflicted super funds to deliver advice.

The Design and Distribution (DDOs) obligations are designed as a market level, rather than an individual consumer protection. As such they do not offer the same level of protection to an individual in helping them avoid poor products. The protections are also new and it is uncertain how successful they will prove. ASIC's recent review of DDO compliance found that some funds lack specificity and raised questions about the underlying arrangements that trustees have in place to ensure their products reach the right consumers.[8] One fund identified their target market as 'those wishing to save for retirement', which is so broad as to capture anyone invested in super.

Can a poor-performing super fund meet the good advice test?

The 'good advice' duty will open the door for super funds to more easily sell these products because there will be no obligation to consider or explain that other products may be preferable. APRA's recent heatmap found 60% of choice products underperformed a long-term benchmark.[9] Due to the uncertain nature of future performance, even these poor-performing products may be able to justify that they are a good future prospect, and therefore a recommendation to join or stay in these products may meet the good advice test.

Some super funds may rely on short-term product 'improvements' they have made, or the combination of other strategies to justify that going forward, their advice to stay in a fund with poor past performance will be 'reasonably likely to benefit' their members. For example, Colonial First State has temporarily reduced their administration fee to zero from 1 December 2021 to 30 June 2022 to avoid the consequences of the performance test.[10] They may rely on this temporary reduction, the belief that their fund will start to outperform and a tax-based contribution strategy to justify their advice being 'good' at the time it is provided. This advice is despite other lower fee and better performing products existing on the market. We would hope that under the test some responsible super funds would put aside their self-interest and direct people to independent advice services if they feel they don't have an appropriate product. However, there is no guarantee that these services will be affordable. This affordability issue is likely to be compounded at the retirement phase where the range of factors that need to be considered add to complexity and cost.

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[6] Information Paper Choice sector performance: improving outcomes for superannuation members October 2021
[7]https://www.ampcapital.com/content/dam/capital/03-funds-files-only/aus-funds/tmd/WNBF_A_TMD_AMP1685AU.pdf
[8] MR, Super trustees urged to improve effectiveness of target market determinations
[9] MR, APRA publishes MySuper and Choice Heatmaps
[10]https://www.cfs.com.au/personal/products/products-and-update/Temporary-fee-reductions-for-FirstChoice-Employer-Super.html

Capability of super funds to advise on government support

As people approach retirement many of their advice needs centre around accessing an income, whether that be via the government directly (e.g. age pension), their own assets via the government (e.g. home equity access scheme) or private assets directly (e.g. superannuation). Much of the advice required is in relation to eligibility under government policy to access these income streams (e.g. conditions of release, tax, pension eligibility). National Seniors Australia research found the current generation of senior Australians faces unnecessary hurdles in accessing the Age Pension entitlements.[11] LINK Group found 79% of future Age Pensioners want support to understand when they are eligible.[12] As such, we question why a conflicted super fund rather than the government itself is best placed to inform people on these matters. A government model would likely be more efficient and cost less for consumers/taxpayers than 150 super funds all attempting to develop and maintain similar services. Making the government responsible for advice in relation to its own services is also an important feedback loop to help it learn what the pain points are in its service delivery. Encouraging super funds to guide members through poor government service delivery is an unnecessary and costly overlay.

Recommendation

That the Federal Government task an independent agency to connect Australia's retirement planning assistance services and tools through a single portal to provide quality, impartial guidance, delivered via digital channels with in-person/over the phone support as required.

An independent portal complements the proposals

An independent guidance portal could be an important complement to the proposals as it would help people find appropriate products when their super fund offering is lacking. A consumer seeking a retirement product that manages longevity risk may be turned away by their super fund. Requiring super funds to direct consumers to an independent service would give people a place to consider the other options on the market and maximise their retirement savings. Without this, a person's only alternative is to pay for comprehensive advice or scour over a hundred fund websites to try and find a product that might meet their needs.

The model advocated for in the proposals paper has the potential to be particularly damaging to competition, as it relies heavily on vertically integrated businesses that have no interest in advising people to join their competitors' products. Dixon Advisory is a timely reminder of how poor, conflicted advice can be when a firm does not conduct the necessary reasonable investigations into the recommended financial product or any alternatives.[13]

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[11] The Centrelink Experience:, A report by National Seniors Australia and Retirement Essentials , June 2018
[12] [Retirement Reality: Advice and the Age Pension]
[13] 22-256MR Dixon Advisory penalised $7.2 million for breaches of best interest obligations

The consumer protection regime would have less heavy lifting to do if suppliers in the market were genuinely competing to meet the actual needs of consumers. An independent service can foster this type of competition by helping consumers understand their needs and matching them to the available options on the market. This consumer-led demand can send the right incentives to market players that if they want to capture market share then they need to develop quality products that are safe by design.

There is significant support for the government playing a role in the provision of guidance and advice. Industry Super Australia, Council on the Ageing and the Conexus Institute all recommend the review explore this idea further.[14]

Recommendation

The single portal to provide quality, impartial retirement guidance be:

- Embedded on super fund websites and offered alongside super advice services; and
- used by super funds to direct people to when they cannot provide 'good advice.'

Retirement collective charging risks 'fees for no service'

The review proposes that when providing advice, super funds will have discretion as to how they charge members. This proposal could include charging all their members for the cost of providing one retiree complex retirement advice. Giving this type of discretion for funds to provide conflicted advice is dangerous and risks harmful cross-subsidisation for a service that may not be widely used.

Providing certain types of retirement advice is likely to be costly. This situation arises because 'good' retirement advice tends to require the consideration of far more factors. Advice will often need to consider the Age Pension, household assets, debt, a partner and health to ensure it is quality. We are aware that under current delivery models this type of advice can cost thousands of dollars. Allowing super funds to charge these costs across their membership collectively is unlikely to prove equitable. This is especially so given those with relatively simple means may have less factors to consider than therefore be less expensive to service. The proposals paper leaves it to a trustee to decide on collective or individual charging. The best interests duty on super funds may offer some protection from inappropriate charging. However, it was previously ineffective in preventing billions of dollars worth of fees for no service being drained from people's retirement savings.

[14] ISA recommendation 11, COTA recommendation 4, Conexus Institute solution 3

ASIC and APRA have flagged concerns to trustees in recent years to ensure care is taken to avoid situations where an advice fee is functioning more as a disguised product fee rather than reflecting the provision of advice.[15] 0.5% charged across a lifetime could potentially seeing someone retire with $100,000 less. In order to restrict the ability for funds to excessively charge advice fees, we support the introduction of legislative caps on collective charging. These caps limit the harm collective charging will have and curb harmfully cross-subsidisation.

Recommendation

The Quality of Advice recommends legislative caps on super fund collective charging.

‘Good advice’ test needs further clarification

The proposals could be improved by giving greater clarity on what the ‘good advice’ test would look like in practice. One of our concerns is how providers would identify a consumer's needs and objectives, and what information product providers must rely on when deciding the scope of advice. ASIC’s 2012 shadow shop found the likelihood of an adviser providing high-quality financial advice is severely reduced if they do not adequately determine the client‘s personal circumstances.[16]

A narrow reading of the test would only require an adviser to cover what the *consumer self-identifies* as their needs and objectives. A wider interpretation could include a requirement to ask about additional information that the consumer has not identified, but the adviser knows is likely to be relevant in understanding the person's needs and objectives. It is important to recognise that consumers have a need for advice because they are not aware of the various factors that may be relevant to them. Basing a good advice test on the assumption that a person already understands their needs and objectives or how to balance them against other needs and objectives misunderstands what is involved in delivering good financial advice.

As an example, what would the review expect a super fund to ask as a matter of course for a member approaching retirement?

At a minimum we would expect a fund to ask about things like:

- whether a person rents or owns,
- size of mortgage,
- if they are in a couple,

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[15]https://www.apra.gov.au/further-guidance-on-oversight-of-advice-fees-charged-to-members%E2%80%99-superannuation-accounts
[16] Report 279: Shadow shopping study of retirement advice, p9

- the person’s objectives in managing risks like longevity, inflation, volatility, and
- balancing their current needs against their future needs.

The best interest duty is clear on the issue of scoping. For example, ASIC RG 244 states:

> *“a client visits their financial planner and requests advice about retirement planning. The planner asks the client a series of questions to determine what advice the client would like, because a request for ‘retirement planning advice’ may be an implicit request for advice on a range of topics, including whether the client will have enough income to retire at a certain age, consideration of a transition-to-retirement (TTR) strategy, what pension product the client should purchase, and whether the client should pay down debts before they retire. It is unclear from the client’s initial request what advice the client is seeking. For the planner to be able to identify the subject matter of the advice the client is seeking, they need to ask further questions to determine whether the client would like a more comprehensive financial plan for retirement, or whether scaled advice with a more limited scope could meet their needs (e.g. they want an answer to a specific question about retirement).”*[17]

This approach is clearly a better exploration and would help a person actually understand their circumstances before deciding on their needs and objectives.

In its Interim Report into Financial Services Legislation, the Australian Law Reform Commission proposed recasting the safe harbour provisions as ‘indicative behaviours of compliance’. The ALRC considered that this proposal would “promote more meaningful — rather than ‘tick a box’ — compliance, and help achieve a more principled and simpler legislative regime”.[18] There is merit to this proposal. This approach could help simplify the law to the original intent of Future of Financial advice reforms (‘FoFA’) to create a principles-based best interests duty

Recommendation

- That the Quality of Advice Review clarifies how the ‘good advice’ duty applies in a range of scenarios, including retirement. It should do this through clear examples that demonstrate the scoping process expected to be taken under the test.

[17] Regulatory Guide RG 244 Giving information, general advice and scaled advice, p23
[18] Australian Law Reform Commission, Financial Services Legislation: Interim Report A (ALRC Report 137), p.534

No evidence that general advice needs to be dismantled

Super Consumers Australia is concerned that removing the general advice model entirely without carefully considering the implications would create unnecessary risks for Australians and their superannuation. This proposal may expose people to product recommendations without appropriate consumer protections.

The current general advice model requires an entity that makes product recommendations to hold an AFSL. This rule provides a range of important protections, including the requirement to have an internal dispute resolution process and be a member of the Australian Financial Complaints Authority. Removal of general advice protections would give some consumers nowhere to complain if things go wrong and no access to the proposed Compensation Scheme of Last Resort. The general advice regime also allows ASIC to take a broader range of actions against unlicensed people who spruik products.

Deregulation of general advice would likely see a boom in distribution models such as superannuation advertisements, webinars and newsletters. People would have to rely primarily on misleading or deceptive conduct provisions which have not always proven effective in assessing claims in financial services. As a simple example, super funds that failed the performance test in 2021 used the high returns they achieved in 2020/21 to distract from their underperformance. The fact they delivered high returns in 2020/21 was true, but an extremely poor measure of their performance given that due to external market factors all funds in the market delivered high net returns that year. One year of performance is also a notoriously poor indicator of quality for a superannuation product that needs to deliver good consistent returns over a lifetime. Unlicensed people would be free to spruik products presenting all manner of irrelevant but true information about their quality.

The role for disclosure

The current disclosure requirements have proven ineffective in the financial advice industry. But it still has a role to play. We support amendments that balance the ability for consumers to access meaningful information about the advice and costs they are subject to and advisers maintaining complete records.

To achieve this, we support the recommendations made by the consumer groups which facilitate performance-based disclosure.