



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

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Advice and Investment Branch
Retirement, Advice and Investment Division
The Treasury
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Review of the quality of financial advice – Draft Terms of Reference

In brief

AIST welcomes the release of the draft Terms of Reference for the Quality of Advice Review and notes its broad support for the scope of the Review.

However, AIST proposes five recommendations that would broaden the scope of the Review to have explicit regard to guidance in superannuation, consideration of previous findings by ASIC of consumer confusion between general and personal advice, consideration of the hawking prohibition and internal dispute resolution regulations, and educational standards in the advice industry.

About AIST

Australian Institute of Superannuation Trustees (“AIST”) is a national not-for-profit organization whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.6 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

Executive Summary

AIST welcomes the opportunity to make a submission to Treasury and provide feedback and commentary on the Draft Terms of Reference for the Review of the quality of financial advice. In this submission we outline the following five recommendations to broaden the Terms of Reference:

- The Review should include an explicit focus on what can be done to improve the quality of advice, including consideration of guidance that superannuation funds can provide to members outside of personal advice.
- The Terms of Reference should explicitly include a review of how the issues identified in ASIC Report **REP 614: Mind the Gap** have been addressed by the regulatory changes implemented since its release and explore the existing labelling of advice.
- The Review should explore the merits of expanding the scope of intra-fund advice.
- The Review should explicitly consider the hawking prohibition (RG 38) and the interaction of advice with internal dispute resolution (RG 271).
- The Review should have regard to educational standards in the industry and the impact to the quality of advice.

Discussion

Quality of advice and guidance

The Draft Terms of Reference highlight that the Review will consider the regulatory framework and how it can enable the provision of high quality, accessible and affordable advice¹. We support this and consider that the Review must also have regard to what can be done to improve the quality of financial advice, including how trustees can provide guidance and assistance to members outside of a personal advice framework.

Having regard to these alternatives aligns with parallel proposals like the Retirement Income Covenant that in fact require trustees to provide guidance and assistance to members. In particular, the enhancement of tools like superannuation calculators and retirement estimates, and the increased data collection that will occur for the design of retirement income strategies means that fund trustees will be in a position to enhance the use of these tools and provide better access to safe alternative channels outside of personal advice.

REP 614: Mind the Gap

ASIC's **REP 614 – Financial advice: Mind the gap (REP 614)** highlighted poor conduct in relation to general advice distribution models, including the “use of general advice to sell complex products [which] increases the risk of consumer loss”². The report identified key issues for advice, and we consider these issues must be explored as part of the Review, including how they have been addressed since the release of the report in 2019.

Further findings from this report indicate that difference between general advice and personal advice is broadly undistinguishable and misunderstood by the average consumer, and consumers in general do not see a difference between these two types of advice³.

Recent regulatory and legislative change seeking to address some of these risks have come into effect since 2020 and 2021. For example, new obligations such as design and distribution obligations, the hawking prohibition, changes to internal dispute resolution regulations, and

¹ Treasury (2021). Review of the quality of financial advice. *Draft Terms of Reference*, p. 2. https://treasury.gov.au/sites/default/files/2021-12/c2021-224992_qar_draft_tor_final.pdf

² ASIC (2019). Financial advice: Mind the gap. *Report 614*. <https://download.asic.gov.au/media/5054882/rep614-published-28-march-2019.pdf>

³ *Ibid*, pp. 9-10, 12.

future proposals to expand heatmap and performance testing to other products must be taken into consideration when assessing the quality of advice.

It is for these reasons that we consider the Review should have regard to REP 614, both from how consumers approach general advice and a labelling of advice perspective.

Intra-fund advice

New obligations for trustees under a proposed retirement income covenant highlight the need for the Review to include consideration of intra-fund advice. In particular, the Review should have regard to the extension of intra-fund advice to allow the provision of advice in relation to retirement. This scope would also incorporate consideration of household wealth and Government benefits like the Age Pension or Centrelink payments, which would align it to the framework, scope, and obligations under a retirement income covenant.

The Financial Services Royal Commission (FSRC) found no evidence that intra-fund advice had been misused and did not identify any misconduct on this front⁴. Clarifying the provision of intra-fund advice on how the member might best provide for their retirement may provide a model for accessible, quality advice that has not been prone to misconduct.

Furthermore, including this as part of the Terms of Reference would align it with the objectives of the retirement income covenant and would contribute to a more effective operation of the covenant. It would also contribute to a holistic approach to the broader framework in which advice in superannuation takes place.

The hawking prohibition and internal dispute resolution

The Terms of Reference should expressly consider anti-hawking legislation and its interaction with advice, in particular with regard to retirement strategies or retirement product information. This is a grey area that should be specifically addressed, and the Review is an optimal opportunity for this to occur.

AIST acknowledges the Draft Terms of Reference highlight that the Review should have regard to key regulatory developments like the Consumer Data Right, the Retirement Income Covenant and the Design and Distribution Obligations. In addition to the hawking prohibition, we consider it appropriate that the Review should explicitly have regard to internal dispute resolution regulation and its interaction with advice.

⁴ Hayne, K. (2019). Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report Volume 1, 242-243.

Educational standards

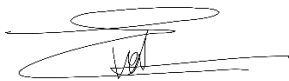
The Draft Terms of Reference note that the Review should have regard to structural changes and professionalisation of the sector. This is likely to include education standards; however, we consider it appropriate to include this explicitly, particularly in light of the Government's proposal to, in effect, lower education requirements for financial advisers⁵.

The educational requirements reforms had a time horizon spanning to 2024⁶. Crucially, the FSRC highlighted that a structural shift of the financial advice sector to a professionalised industry must settle before consideration of whether the quality of financial advice has improved, and whether behaviours in the financial advice industry have improved⁷.

In light of these findings, we consider it appropriate that the Review must consider this as part of the Terms of Reference, and any proposed changes to educational standards must be put on hold until the Review is finalised.

For further information regarding our submission, please contact Carlos Lopez, Policy Adviser, at clopez@aist.asn.au.

Yours sincerely,



Eva Scheerlinck
Chief Executive Officer

⁵ Treasury (2021). Education Standards for Financial Advisers. *Policy Paper*, p. 2.
<https://treasury.gov.au/sites/default/files/2021-12/c2021-234068.pdf>

⁶ Hayne, K. (2019). Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. *Final Report*, Vol 1, p. 133.

⁷ Ibid, p. 218.