AIST

Quality of Advice Review

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AIST Submission to Treasury

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The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector 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 their 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.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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Submission

Meeting the advice needs of ordinary Australians and protecting them from harm must be front of mind in the review.

Most Australians do not pay financial advisers for comprehensive advice as part of their wealth management strategy. What they want and need is simple, straightforward assistance in managing their financial affairs in which they trust and have confidence, and which is readily accessible to them. What this review should do is suggest improvements to the regulatory framework to achieve this aim, while reducing the potential risk of advice that is poor and not aligned to consumer needs.

Simplification of the regulatory framework is important but it is not an end in itself. With apologies to Commissioner Hayne, to what extent can the law be simplified so that its intent of improving consumer outcomes is achieved, rather than merely its terms being complied with, and how can this be done?

The review should address its terms of reference from the perspective of consumer needs. The focus of this review should be on the provision of affordable and accessible financial advice to the largest possible number of Australians, and on the types of advice that facilitate this.

There is enormous demand for budgeting advice, support for planning for the future, and making the most of superannuation, which is not - and will not - be met be comprehensive financial advice, but which may be met by alternate forms of advice.

That is why AIST's submission concentrates on the types of advice that should provide the biggest benefit to the largest number of people and recommends the removal of obstacles to this objective.

Recommendation 1	As the regulatory framework is intended to provide consumer protections, the review should cast all of its recommendations from the perspective of improving consumer outcomes, and show how each proposal for change will achieve this.

Quality Financial Advice

1. What are the characteristics of quality advice for providers of advice?

2. What are the characteristics of quality advice for consumers?

3. Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?

4. What are the factors the Review should consider in deciding whether a measure has increased the quality of advice?

The Review seeks to consider the characteristics of quality of advice, and what this looks like for providers of advice. The Issues Paper acknowledges the different ways in which quality can be viewed, depending on whether it is viewed as a consumer, as an adviser, or indeed a regulator.

AIST submit that quality can be assessed having regard to:

- Consumer outcomes;
- Compliance;
- Service to and comprehension by consumers; and
- Relevance.

Outcomes

In jurisdictions like the United Kingdom (UK), for example, there is evidence that indicates that consumers who received advice assess quality based on the performance of their investments. This is similarly applicable in the Australian context based on research by ASIC showing that consumers would only feel equipped to assess the quality of the advice after seeing results from acting on that advice.

Nevertheless, the same research by ASIC shows that consumers do not “feel equipped to judge the expertise of a financial adviser and instead relied heavily on factors that could be easily observed, such as the interpersonal skills of the adviser”.

This indicates consumers are only comfortable relying on post-advice outcomes without fully understanding what they are purchasing. Indeed, it indicates the need for improving financial literacy and education amongst the general population to ensure there is an understanding of what financial advice is, and in the context of superannuation, how the regulatory environment can enable funds to innovate and scale the provision of guidance and advice for the benefit of members.

There is an opportunity for people to better understand how they can benefit from advice, and super funds should be able to facilitate this through providing useful guidance and advice to start members on an advice journey

Overall, financial literacy standards are low. This has been well established by ASIC when in 2019, for example, it found that consumers are not familiar with the concepts of general and personal advice and were unable to distinguish between the two types of advice. The report highlighted perception as an important factor in how a recipient consumes advice, whether general or personal.

This indicates that there is an opportunity to shore up the consumer's understanding of advice, financial terminology, and basic financial concepts. This would be assisted by uplifts in labelling standards, and this submission will talk to this point later on.

However, objective outcomes-based assessments would go a long way in helping members who sit outside of a comprehensive advice framework to make an informed decision about products. This approach is already applied to superannuation fund performance of investments (albeit not for all products). We consider a similar approach should apply to advice. The approach would take into account risk factors based on cohort analysis.

This would be facilitated by existing cohort analysis which superannuation funds undertake for various purposes (eg, insurance) and which will be further supplemented as part of their retirement income strategies from 1 July 2022 onwards.

The review should recommend adopting an objective approach to assessing performance of implemented advice (including capturing the proportion of advice that is implemented and tracking outcomes over a time horizon). While AIST presumes there would be widespread support for the objective of getting the client into the best possible position, there is a need for further community, industry, and government discussion about how this should be calibrated. Is a good, better or best outcome sought? While the best outcome would be sought in a perfect world, this has to be balanced against the cost of providing the most comprehensive and thorough advice.

Compliance

Another way of viewing quality is through compliance. This approach is not necessarily one preferred by providers but has been the adopted approach in part because of how the regulator itself assesses quality of advice. In 2019, ASIC undertook a project to examine the ways in which funds provide advice to members and the overall quality of personal financial advice provided by those funds. The focus of the quality review was on compliance with the best interest duty and related obligations.

ASIC found that in about a third of the instances of non-compliance identified, the obligations were not met because of operational deficiencies, and around 15% of non-compliant findings where the member was at risk of suffering financial or non-financial detriment as a result of the advice provided.

This approach to quality assessment by the regulator, conditions how advice is provided by superannuation funds. For example, a survey of our member funds indicates that one of the main drivers of cost is regulatory compliance. Extensive compliance requirements have the potential to limit productive capacity in the context of advice provision; instead, providers are more likely to follow a tick-box approach to meeting compliance requirements as this is how the regulator has in the past assessed whether the provider of advice is meeting the best interest duty.

While this approach may be considered as meeting quality standards, the findings by ASIC clearly show that it does not fully address risks of adverse outcomes arising from poor advice.

An objective performance assessment should be designed that includes the provision of advice in retirement. This way, coupled with the best interests duty, the assessment framework is likely to encourage better practices and, ultimately, better quality advice. This assessment framework could be applied to different types of advice, including limited, intra-fund, and comprehensive advice.

Service and comprehension

Finally, it is important to recognise that quality is also good service. AIST acknowledges that a good advice journey is not automatically equivalent to better outcomes; nevertheless, service should focus on providing members with an experience of accessing guidance and advice that is straight-forward, easy to understand, and accessible.

In this context, we consider that the introduction of retirement income strategies address this to an extent. This would be enhanced even further with the rolling out of the Consumer Data Right (CDR) to superannuation, which will allow the industry to better cater for the needs of members outside of a comprehensive advice model.

Improved consumer financial literacy must be enhanced to maximise the delivery of advice.

Recommendation 2	Quality of advice provided to consumers should be assessed on the basis of the relevance to the consumer, advice provider compliance, and service to and comprehension by consumer.
Recommendation 3	The review should recommend the development of a framework to measure the quality of advice, including minimum and optimum outcomes (separate from assessment of fee charging regimes).

Affordable financial advice

[Issues relating to affordable and accessible advice, and types of advice are dealt with together]

5. What is the average cost of providing comprehensive advice to a new client?

6. What are the cost drivers of providing financial advice?

7. How are these costs apportioned across meeting regulatory requirements, time spent with clients, staffing costs (including training), fixed costs (e.g. rent), professional indemnity insurance, software/technology?

8. How much is the cost of meeting the regulatory requirements a result of what the law requires and how much is a result of the processes and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?

9. Which elements of meeting the regulatory requirements contribute most to costs?

10. Have previous reforms by Government been implemented in a cost-effective way?

11. Could financial technology (fintech) reduce the cost of providing advice?

12. Are there regulatory impediments to adopting technological solutions to assist in providing advice?

Accessible financial advice

13. How should we measure demand for financial advice?

14. In what circumstances do people need financial advice but might not be seeking it?

15. What are the barriers to people who need or want financial advice accessing it?

16. How could advice be more accessible?

17. Are there circumstances in which advice or certain types of advice could be provided other than by a financial adviser and, if so, what?

18. Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?

19. What is preventing new entrants into the industry with innovative, digital-first business models?

Types of advice

20. Is there a practical difference between financial advice and financial product advice and should they be treated in the same way by the regulatory framework?

21. Are there any impediments to a financial adviser providing financial advice more broadly, e.g. about budgeting, home ownership or Centrelink pensions? If so, what?

22. What types of financial advice should be regulated and to what extent?

23. Should there be different categories of financial advice and financial product advice and if so for what purpose?

24. How should the different categories of advice be labelled?

25. Should advice provided to groups of consumers who share some common circumstances or characteristics of the cohort (such as targeted advertising) be regulated differently from advice provided only to an individual?

26. How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?

27. How does applying and considering the distinction between general and personal advice add to the cost of providing advice?

Consideration of affordable and accessible financial advice cannot be in isolation from consideration of types of advice the way in which advice is delivered, and the tools and disclosure available to consumers. Therefore, much of the commentary about these questions is also germane to those other topics.

While AIST shares the widespread concern that consumers often find it difficult to access good-quality affordable personal advice, we also point to the fee-for-service (and of course, no commission) financial advice model offered by many profit-to-member super funds. This model has been in place for over 25 years and has provided value-for-money personal advice for many tens of thousands of fund members in that time.

While it is also the case that many consumers – including those with unmet advice needs - are reluctant to pay for personal advice, these same profit-to-member funds have pioneered the development and promotion of innovative personal advice models. This includes widespread use of intra-fund advice.

Any consideration of finding affordable advice within super must also have regard to the many deficiencies identified by the Financial Services Royal Commission in relation to culture and incentives, conflicts of interest and role confusion.

Promote greater use of existing affordable advice solutions and remove obstacles to their use

Greater use of existing and affordable options by providers using member-focused advice models will have the benefit of diverting consumers from other conflicted providers.

AIST calls for the removal of obstacles to the use of alternatives to comprehensive personal advice. This includes factual information, general advice and intra-fund advice, and should include consideration of strategic advice.

A good starting point would be clearer, unambiguous and dynamic guidance about what constitutes general advice *vis-a-vis* personal advice. Despite this being the subject of endless debate, and extensively canvassed in the 2012 *RG 244 Giving information, general advice and scaled advice* and the more recent *RG 90 Example Statement of Advice: Scaled advice for a new client*, differing views about this persist and the issue has seemed intractable.

Court decisions have further muddied the water and this needs to be addressed. ASIC should update their guidance about the boundaries between the provision of factual information and general advice in light of this and continuing ambiguities, and this should also be dynamic: regularly updated and responding to actual developments in the market.

Factual information

The provision of factual information not a financial service does not require the provider to be licensed. While there should be no limitation on the provision of factual information, as the disclosure regulator, the regulators should nonetheless be alert to ensure that it not involve conduct that is misleading or deceptive or is likely to mislead or deceive. For example, this could be by giving a client factual information with the intention that the adviser is also making an implied product recommendation.

Issue guidance on the provision of pre-retirement factual information

Consideration should also be given to the specific advice needs of retirees and those approaching retirement. While this has always been a key part of promoting members best interests, the pending publication of fund Retirement Income Strategies (in fulfilment of the Retirement Income Covenant) means that this is becoming even more important.

There are legitimate concerns about trustees' ability to gather the additional information required under the Retirement Income Covenant legislation without crossing the boundary into personal financial product advice. These issues are exacerbated by the anti-hawking provisions (for example anti-hawking raises open questions of follow up communications sent to members).

Under existing provisions, advice is counted as 'personal' if the member believes that a request for information has been made to provide them with a personal recommendation. The existence of such a belief is understandable from a member's perspective, in a situation where their super fund is actively eliciting additional information, which in turn likely proceeds to some form of cohort-based product solution or drawdown/spending strategy.

In the absence of guidance from the regulator some form of specific exemption for trustees should be introduced. The exemption provided by the legislation implementing the Design & Distribution Obligations (DDO) provides a relevant comparison. As a subset of factual information, there should be a recognition of the need for people approaching retirement to obtain information about retirement considerations, including the relationship between superannuation benefits and age pension eligibility, and issue guidance on the provision of pre-retirement factual information.

AIST recommend that ASIC should issue guidance to promote the provision of such pre-retirement information by super funds as means of increasing member awareness. Increased awareness and understanding also acts to provide additional consumer protections.

This information can be extensive and provide case studies of retirees in different circumstances, while not providing a financial product recommendation. This factual information will need to be supported by tools and other guidance to help members understand their own personal situation. This should not be assumed, as many members struggle to relate generic information to their own circumstances.

Issue guidance on the provision of post-retirement factual information

The financial and personal situation of people in retirement changes over time, and people may be in retirement for over thirty years. Retirees benefit from the provision of updated information about the current and future cost of living, budgeting, changes to age pension entitlements, and drawdown arrangements. Compared to the amount of information about people in the accumulation stage and those approaching retirement, there is less information for people in retirement.

There should be greater regulatory guidance to promote the provision of such post-retirement information by super funds as means of increasing member awareness. Increased awareness and understanding also acts to provide additional consumer protections. This would be consistent with the objective of the Retirement Income Covenant.

General advice

- **Offer a private ruling service on the status of new advice offers**
- **Support the deduction of one-off advice fees from superannuation balances**

The value of general advice to consumers as an affordable and accessible form of advice cannot be overstated. While consumers do not often understand the difference between general and personal advice – and may care even less – this does not reduce the value of general advice in serving the best interests of consumers on a widescale basis.

While the provision of factual information may be perceived as advice by consumers, the risk of general advice being received by consumers as personal advice is even more pronounced. However, the level of uncertainty about the boundary line can stifle the development of new advice offerings. As mentioned above, AIST believes this has been made more difficult by recent reforms such as DDO, anti-hawking and the retirement income covenant – even though each of these reforms are supported by AIST.

While increased and ongoing guidance by ASIC can assist, AIST also supports ASIC to offer a private ruling service to enable financial advisers to consult and seek certainty during the design of new advice offers.

Currently, the cost of general (and personal) advice can be deducted from members superannuation accounts, and - consistent with AIST's submissions to Government – this should be able to continue to be the case for one-off advice. This encourages members who would otherwise be reluctant to obtain advice relevant to their circumstances to seek relevant advice that should improve their financial outcomes.

AIST also supports a level playing field for charging arrangement between MySuper and Choice products. The deduction of one-off advice fees from superannuation balances should be allowed on the same basis for both MySuper and Choice products. This is further developed with a recommendation in our comments on charging arrangements.

Intra-fund advice

- **Extend intra-fund advice to a household's retirement adequacy and pension eligibility**

Intra-fund advice is a cost-effective way for super fund members to obtain advice as a part of their fund membership. The Financial Services Royal Commission found no evidence that intra-fund advice had been misused or was related to misconduct. On the contrary, intra-fund advice provides mass-market advice widely and successfully.

The value of intra-fund advice has not however been fully or consistently utilised. There are two areas where this should be remedied.

First, clarifying the provision of intra-fund advice on how the member might best provide for their retirement may provide a model for accessible advice that is not prone to misconduct. Such a model should also reflect that people commonly seek pre-retirement advice as couples/household, and that this (including consideration of a spouse's super) should be allowable within an intra-fund advice topic on retirement and paid for via existing intra-fund advice models.

Second, AIST members report that one of the main advice strategies for members in the accumulation phase leading up to retirement is increasing contributions and managing contributions for a couple's best interests.

Therefore, intra-fund advice should be extended to include a household's retirement adequacy and pension eligibility. This theme is further developed and is the subject of a recommendation in the section on Intra-Fund Advice below.

Promoting access to affordable personal advice

- **Consider improving affordability of personal advice by standardising back-office arrangements**

AIST agrees that the cost of comprehensive personal advice is an obstacle to accessing advice for many consumers and that direct steps should be taken to address this.

The collection of data from clients is an expensive part of the process, as is research and paraplanning.

AIST proposes an industry-lead and ASIC-supported enquiry into the feasibility and possible effectiveness of obtaining greater consistency by market participants co-operating to solve and leverage technology across all providers and data sources. This should include identification of areas of inconsistency and where this results in inefficiencies (e.g., different authorisation processes).

Increased operational efficiency should result in cheaper and more accessible financial advice. The enquiry should be explicitly tasked with recommending steps to improve affordability, and the measures of success that that should be adopted.

ASIC should also consider the use of templated Fact Finds and Statements of Advice for single-issue advice. This could commence with the establishment of an ASIC-lead industry working party to draft, pilot and phased implementation of such documents over a reasonable period (perhaps two years). Ultimately, this could also involve further standardisation of terms and data standards.

Strategic advice

Strategic advice is about financial planning and budgeting in order to achieve personal and financial goals over the medium- to long-term and is not about specific financial products.

Separating strategic advice from product advice, and allowing them to be delivered together or separately, will align with the needs of many consumers and make it possible to scope (and charge for) the exact advice a consumer wants or needs at a particular moment – addressing both affordability and accessibility concerns.

Any further development of strategic advice should be undertaken with a concomitant commitment to simplifying the provision of advice. While consumers may regard "advice as just advice", the addition of new advice types may result in complexity, additional cost and provider reluctance to innovate for fear of non-compliance.

Digital personal advice

Digital personal advice has the potential to lower costs and increase accessibility. It is a vehicle that will facilitate the development of mass-market personal advice and is increasingly being developed and deployed by profit-to-member super funds. The risk is not that the quality of advice will be compromised by digital advice, but that regulation does not provide sufficient consumer protections.

However, some regulators and inquiries have been attracted to and encouraged the development of new digital advice services delivered by new entrants, without perhaps having corresponding regard to the need to ensure they provide robust consumer protections. While digital tools are useful, there also needs to be protections from those promoters of new products and digital advice services who are engaged solely in marketing exercises aimed at directing consumers towards products that superficially meet the needs of millennials, women or the tech-savvy – and not the best interests of their customers. Some of these products may be high-cost, under-performing products that have vanilla investment structures, and regulatory oversight should be able to identify and proscribe them.

There is value in facilitating digital personal advice, but it must proceed hand in hand with vigilance to ensure consumers' interests are being protected. While use of technology may support greater accessibility, consistency and comprehension, high regulatory standards should also apply to digital personal advice. The risks are the same regardless of the medium.

Superannuation calculators and retirement income estimates

Superannuation calculators and retirement income estimates are important tools assisting consumers plan for retirement, and their use should be facilitated, and obstacles to their use removed.

AIST supports the current relief provided by ASIC from requirements associated with providing financial advice but recommends that the relief should be made enduring in government regulations. AIST notes the consumer benefit and low risk of consumer harm associated with use of these tools. The tools should also be able to include age pension amounts in static retirement estimates.

AIST also supports recent ASIC proposals to align the requirements for superannuation calculators and retirement estimates. This will result in greater consistency and improve outcomes for consumers.

Other issues

- **ASIC should require advisers to provide and explain disclosure and comparison tools they use to their clients**
- **APRA should review the methodology of product dashboards**
- **ASIC should prioritise the extension of dashboards and heatmaps to other products and ensure their methodology is in members best interests**

There are a range of other tools that support access, affordability and utility of advice, and should be explicitly identified by ASIC as necessary concomitants to accessible and affordable advice. Financial advisers should be required to bring these tools and comparisons to the attention of their clients.

This would assist consumers to understand the relative position of products in relation to key metrics. For example, this may prompt a customer to ask why an adviser is recommending a MySuper product with relatively low net-net returns as shown on a MySuper product dashboard.

However, there are changes that should be made to these tools to improve their value:

- Review of MySuper product dashboard methodology and requirements. In particular, the Standard Risk Measure should be completely redesigned.
- Prioritise the extension of product dashboard requirement to all accumulation products, including closed products, single-asset class products. This process needs to be properly resourced, involve

increased expert industry consultation on purpose, methodology, and ensure that measurements of success are aligned with members best interests

- Extend the Your Super Comparison Tool to include all accumulation products issued by APRA-regulated super funds. This process also needs to be properly resourced, involve increased expert industry consultation on purpose, methodology, and ensure that measurements of success are aligned with members best interest
- Continuous improvement of fee and cost disclosure, especially in relation to consumer comprehension.
- Ongoing development and refinement of the APRA MySuper Heatmap, including an improved tool for dissemination and interrogation of product data (similar to that initially envisaged by APRA's Data Dissemination Tool).
- Prioritise the extension of APRA Heatmaps to all accumulation products, including closed products, single-asset class products. This process must be properly resourced, involve increased expert industry consultation on purpose, methodology, and ensure that measurements of success are aligned with members best interest and should also involve grouping of products by type and according to the growth/defensive ratios of their investments to improve comprehension.
- Noting that retirement goals are different to accumulation goals and must be measured differently, commence a process (led by Treasury and supported by regulators and industry) to determine:
    - appropriate measures of success for the assessment and comparison of retirement income products, in the context of the objectives set out in the Retirement Income Covenant; and
    - Whether and how it is appropriate to include retirement products in the above consumer-facing tools and comparisons.

Having these and other easy-to-understand tools to meet members' needs and help them understand their current product, and compare it with other products, provide a critically useful point of reference for financial advice.

Recommendation 4	The review should further clarify the definition of personal advice, limited advice, intra-fund advice, general advice, and factual information, with the objective of removing obstacles to effective and appropriate use of alternatives to comprehensive personal advice.
Recommendation 5	ASIC should issue guidance to promote the provision of pre-retirement factual information to assist decision-making by people approaching retirement and to supplement the efficient operation of the Retirement Income Covenant.
Recommendation 6	ASIC should offer a private ruling service on the status of new advice offers to provide certainty during the design of new and improved advice offers.
Recommendation 7	The review should propose an exploration of the feasibility and possible effectiveness of obtaining greater consistency by market participants co-operating to solve and leverage technology across all providers and data sources, and consider the use of standardised Fact Finds and Statements of Advice for single-issue advice.

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Recommendation 9	The government should issue regulations providing enduring relief from licensing and personal advice obligations for providers of super calculators and retirement estimates.
Recommendation 10	The Government and relevant superannuation regulators should undertake a review of product disclosure and comparison tools to ensure they are comprehensive, consistent, aligned with members best interests and their measures of success are fit for purpose.

Intra-Fund Advice

28. Should the scope of intra-fund advice be expanded? If so, in what way?

29. Should superannuation trustees be encouraged or required to provide intra-fund advice to members?

30. Are any other changes to the regulatory framework necessary to assist superannuation trustees to provide intra-fund advice or to more actively engage with their members particularly in relation to retirement issues?

31. To what extent does the provision of intra-fund advice affect competition in the financial advice market?

The new obligations in the SIS Act for super funds to develop a retirement income strategy for members who are retired or approaching retirement - the Retirement Income Covenant - highlight the need for the review to include consideration of intra-fund advice.

Intra-fund advice is a cost-effective way for super fund members to obtain advice as a part of their fund membership. The review should recommend 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 in relation to its use. Clarifying the provision of intra-fund advice on how the member might best provide for their retirement provides a model for accessible, quality advice that has not been misused or subject to misconduct. On the contrary, intra-fund advice provides mass-market advice very widely and successfully.

The value of intra-fund advice has not, however, been utilised. We consider that there are two areas where this could be remedied.

First, clarifying the provision of intra-fund advice on how a member might best provide for their retirement may provide a model for accessible advice that has not been prone to misconduct. Such a model should also reflect that people commonly seek pre-retirement advice as a couple/household, and that this (including consideration of a spouse's super) should be allowable within an intra-fund advice topic on retirement and paid for via existing intra-fund advice models. This is particularly pertinent given that other relevant retirement income and government supports such as the Age Pension are assessed based on whether someone is in a relationship.

Second, AIST members report that one of the main advice strategies for members in the accumulation phase leading up to retirement is increasing contributions and managing contributions for a couple's best interests. Therefore, intra-fund advice should be extended to include a household's retirement adequacy, Age Pension eligibility, non-superannuation assets, and income.

This approach is a natural fit with the approach outlined in the Retirement Income Covenant, where a fund is required to have regard to these criteria in developing cohorts for the purposes of a retirement income strategy. While the retirement income solution recommended for the various cohorts may be suitable for a broad cohort of members, this would be appropriately supplemented by accessible intra-fund advice for members who are unclear about the suitability of the cohort for their needs, or who may have different needs.

This position is supported by the Retirement Income Review (RIR). It points to superannuation funds being "uniquely placed to provide to provide advice and guidance because members have to contact their fund to commence a retirement income product". While we don't consider product advice to be necessary to help members with retirement planning, the principle behind the RIR's statement remains in support of an expansion of intra-fund advice into retirement planning.

AIST notes that superannuation is a long-term proposition, and that younger, lower account balance members become older and higher account balance members over time, and that this should justify the expansion of intra-fund advice to retirement planning. While there may be some increased costs associated with the expansion of intra-fund advice and concerns about conflict of interest, trustees must ensure this complies with the sole purpose test and best financial interests duty to which they are bound.

Recommendation 11	The scope of intra-fund advice should be extended to allow the provision of advice on retirement adequacy, household wealth and Government benefits including the Age Pension and Centrelink payments.

Limited Scope Advice

32. Do you think that limited scope advice can be valuable for consumers?

33. What legislative changes are necessary to facilitate the delivery of limited scope advice?

34. Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?

Digital Advice

35. Do you agree that digital advice can make financial advice more accessible and affordable?

36. Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?

37. Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?

38. Should different forms of advice be regulated differently, e.g. advice provided by a digital advice tool from advice provided by a financial adviser?

39. Are you concerned that the quality of advice might be compromised by digital advice?

40. Are any changes to the regulatory framework necessary to facilitate digital advice?

41. If technology is part of the solution to making advice more accessible, who should be responsible for the advice provided (for example, an AFS licensee)?

42. In what ways can digital advice complement human-provided advice and when should it be a substitute?

Digital tools can be useful in several scenarios when considering an advice framework that does not necessarily involve advice as it stands in the Corporations Act. The regulatory environment must allow funds to harness technology to deliver scalable, quality advice and guidance. This is important as there are existing frameworks that would allow funds to leverage data and existing technology to assist members, like the Retirement Income Covenant and the proposed rollout of the Consumer Data Right (CDR) into super.

Leveraging digital tools for the provision of guidance or digital advice requires regulatory conditions to support this type of innovation. The first step towards a clearer regulatory environment that allows for innovation would be to crystalise the scope of digital advice. There is a lot of uncertainty in relation to digital advice that limits the commitment of trustees to innovate.

First, we consider that ASIC should provide additional guidance and set out a sandbox approach that would allow superannuation funds to innovate within the safe scope of this framework.

Next, there should be consideration of how different forms of advice are regulated. AIST believes that digital advice is an appropriate channel to explore, define properly, and establish regulatory guidance alongside a regulatory sandbox. This will:

- Provide certainty to superannuation fund trustees
- Enhance transparency
- Assist ASIC to identify potential systemic issues early on
- Enhance the member experience in seeking guidance or non-comprehensive advice

ASIC's consultation paper *CP 351 – Superannuation forecasts: Update to relief and guidance* highlighted the interaction between digital tools and frameworks like the Retirement Income Covenant. For example, its proposals to adopt a common framework for setting economic and financial assumptions and to allow funds to provide access to retirement estimates through online portals provides an opportunity for tying in these principles into a broader advice framework that sits between general advice and comprehensive advice. ASIC made explicit its position, however, that the use of these tools by trustees to assist members in making a decision is forbidden.

The requirements under the Retirement Income Covenant, along with the expectation by ASIC that funds provide tools to assist members, is incongruent with the existing limitations of what can be done through digital advice tools.

While digital advice may not necessarily mean that an algorithm will show a specific recommendation, it can provide information based on cohort characteristics. This would in fact enhance the information that funds must provide to members in a retirement income strategy. As such, we consider that digital advice should specifically be allowed to be used for:

- Retirement product selection
- Provision of specific recommendations that are based on equal cohort characteristics
- Guidance about retirement planning

This approach will allow fund trustees to scale their advice offering. This would particularly benefit those members, the majority, who do not seek comprehensive advice but still seek and require more concrete guidance beyond general advice and would be able to access it at little or no cost.

The Retirement Income Review referenced ASIC research which suggests that take up of digital financial advice is low. However, evidence sourced from a May 2022 survey of our member funds indicates that engagement for general advice and intra-fund advice via web-based tools such as calculators and retirement forecasts is proportionally high. For example, evidence from our survey of AIST member funds indicates that use of such web-based tools is as high as 91.5% of members who engage with the fund to access any type of advice.

Consideration of digital advice in the regulatory context requires clear guidance on where the responsibility of advice lies, and future-proofing the Corporations Act to account for the best interests duty within digital channels of advice. This should involve defining digital advice as separate to financial product advice and include relevant regulatory guidance (as noted above).

Member Data

Another aspect of digital advice that can provide leverage for scalability and cost-efficiency is the use of member data for retirement income strategies. We have in the past highlighted the need for a streamlined approach to data sharing for superannuation funds to best identify the needs of their members and tailor their advice approach accordingly, including identifying when and which cohorts require additional guidance, or are more likely to want comprehensive advice.

We have consulted extensively with our members funds and received feedback pertaining the collection of data. These concerns were also raised in our previous submission, where we outlined the challenges of collecting accurate and comprehensive data in a short time frame for the purposes of a retirement income strategy that is appropriate for a class of members or sub-class.

For example, outside of personal advice, superannuation funds do not receive, and are unable to easily collect, much of the information that is outlined as being required for a retirement income strategy. Aggregated, de-identified data for the Age Pension is not available to trustees, and HILDA data, for example, while useful, has “significant gaps […] which would improve the understanding of retirees’ income needs”.

We consider that establishing a robust data-sharing framework for bodies like the Australian Taxation Office (ATO) to release de-identified data would assist trustees with their obligations. Having access to other de-identified data sets, including those from Services Australia (e.g., Centrelink payment statistics, Child Support statistics, etc.) would provide a clearer stream of information that will assist trustees to determine their membership and any sub-classes or cohorts within it.

This would be in addition to the proposed expansion to superannuation of the Consumer Data Right (CDR). AIST supports this expansion but notes that its rollout to superannuation is yet to be determined, with consultation to occur later in 2022.

AIST recommends that in the lead up to the introduction of the CDR into superannuation, that a data-sharing framework be established that will allow trustees to access data such as a member’s Age Pension or a member’s other superannuation accounts. This could leverage existing SuperMatch infrastructure, which would require a minor legislative amendment to allow SuperMatch data to be used for retirement income estimates.

Recommendation 12	ASIC should issue further specific guidance on the use of digital advice.

Recommendation 13	A data-sharing framework should be established that will allow trustees to access data such as a member's Age Pension or a member's other superannuation accounts.

Best Interests and Related Obligations

43. Do you consider that the statutory safe harbour for the best interests duty provides any benefit to consumers or advisers and would there be any prejudice to either of them if it was removed?

44. If at all, how does complying with the safe harbour add to the cost of advice and to what extent?

45. If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal advice?

46. To what extent can the best interests obligations (including the best interests duty, appropriate advice obligation and the conflicts priority rule) be streamlined to remove duplication?

47. Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?

AIST strongly supports the best interest obligation being enshrined within the law. However a duplication exists between the *Financial Planners and Advisers Code of Ethics 2019* and section 961B(1) of the Corporations Act, with the former stating that "You must act with integrity and in the best interests of each of your clients" and the latter stating that "The provider must act in the best interests of the client in relation to the advice."

At the time of the Financial Services Royal Commission, the FASEA Code of Ethics was a proposal yet to be established. While Hayne noted that "Codes of ethics are not laws.", the Code is now a legislative instrument, FASEA has since ceased operations and ownership of the Code has transferred to the conduct regulator ASIC. The Code holds advisers to a higher standard of conduct than that provided by the safe harbour provisions of the Corporations Act best interests duty.

Hayne noted that "the present safe harbour model does not prevent interest from trumping duty" as it "has the effect that, in practice, an adviser is required to make little or no independent inquiry into, or assessment of, products. By prescribing particular steps that must be taken, and allowing advisers to adopt a 'tick a box' approach to compliance, the safe harbour provision has the potential to undermine the broader obligation for advisers to act in the best interests of their clients."

For this reason, AIST supports Hayne's view that the Best Interests Duty should be retained but the safe harbour steps should be repealed, in favour of the principles-based standards of the Code. A professionalised industry should always be focussed on the needs of the client rather than simply meeting a compliance and documentation requirement.

Recommendation 14	The best interests duty in the law is an important obligation and should be maintained, but the safe harbour steps should be repealed, in favour of the principles-based standards of the Code

Conflicted Remuneration

48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?

49. Has the ban contributed towards improving the quality of advice?

50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

51. What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.

52. Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?

53. Has the capping of life insurance commissions led to a reduction in the level of insurance coverage or contributed to underinsurance? If so, please provide data to support this claim.

54. Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.

55. What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be Retained?

Recommendation 2.5 of the Financial Services Royal Commission was that:

> *When ASIC conducts its review of conflicted remuneration relating to life risk insurance products and the operation of the ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, ASIC should consider further reducing the cap on commissions in respect of life risk insurance products. Unless there is a clear justification for retaining those commissions, the cap should ultimately be reduced to zero.*

AIST understands that ASIC has been collecting data since 2018 as part of a review program but that progress was delayed by Covid, and that responsibility has now been transferred to Treasury.

While the outcome of the review may impact on distribution arrangements in the life insurance sector, this does not displace longstanding and ongoing concerns that life insurance commissions has contributed to poor outcomes for consumers. Both ASIC's 2014 review of life insurance advice (REP 413) and the FSRC found commissions to be linked to poor advice. The introduction of capped commission has not solved the problem.

No justification has been provided for retaining commissions, and so Commission Hayne's recommendation that they be prohibited should now be implemented.

Recommendation 15	The review should recommend that commissions on life risk insurance products should be prohibited forthwith.

Charging Arrangements

56. Are consent requirements for charging non-ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?

57. To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?

58. How could these documents be improved for consumers?

59. Are there other ways that could more effectively provide accountability and transparency around ongoing fee arrangements and protect consumers from being charged a fee for no service?

60. How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?

61. To what extent, if at all, do superannuation trustees (and other product issuers) impose obligations on advisers which are in addition to those imposed by the OFA and FDS requirements in the Corporations Act 2001?

62. How do the superannuation trustee covenants, particularly the obligation to act in the best financial interests of members, affect a trustee's decision to deduct ongoing advice fees from a member's account?

AIST supports the deductibility of advice fees from super accounts as this can serve to encourage members who would otherwise not seek advice to do so from their fund. AIST is, however, not supportive of ongoing advice fees being charged to members as this can obfuscate the actual service being paid for and risks charging fees for no service.

In its response to the Financial Services Royal Commission, the Government ultimately maintained the ability of funds to deduct fees for intra-fund advice but prevented the charging of ongoing advice fees from MySuper, offering greater protections for superannuation members with these accounts.

By contrast, ongoing fees can still be deducted from choice accounts where the adviser has provided disclosure of what services will be provided in the following 12 months for which fees will be charged and the client has given consent. AIST submits that this is still open to abuse and consumer protections should be strengthened.

Fees should only be applied on a one-off basis at the time of the specific service provision. This ensures that fees are transparent and accurate, the client has fresh awareness of what they are purchasing at the time of the purchase, and consent remains current and relevant if the client's circumstances change over the course of the contract.

Preventing ongoing fee arrangements will also level the playing field between MySuper and Choice products as there is an inherent risk of inappropriate product advice created by the contrasting fee models. When Choice products have been shown to underperform MySuper products, there should not be an incentive to nudge consumers into these products to leverage their fee arrangements.

AIST supports the position jointly expressed by ASIC and APRA to super funds on the controls trustees must have relating to the deduction of advice fees from member accounts and the payment of those fees to a financial adviser.

The controls required by the regulators seek to ensure that the member's consent has been provided, the services relating to the fees have been provided and the advice provided complies with the sole purpose test (and to verify services have been provided and that they are within the scope of the sole purpose test). AIST believe superannuation funds can deploy a range of advice models that meet the sole purpose test and that changes to the test are not needed to facilitate advice provision.

Recommendation 16	Prohibit the deduction of ongoing advice fees from Choice products and permit one-off fee deductions by APRA-regulated superannuation products.

Disclosure Documents

63. How successful have SOAs been in addressing information asymmetry?

64. How much does the requirement to prepare a SOA contribute to the cost of advice?

65. To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information they need to make an informed decision? *66. To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?* *67. How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?* *68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?* *69. Has recent guidance assisted advisers in understanding where they are able to use ROAs rather than SOAs, and has this led to a greater provision of this simpler form of disclosure?* *70. Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?*

An ongoing challenge with Statements of Advice (SoA) and many other disclosure documents is to ensure that they provide meaningful and comprehensible information to clients, and are more than just compliance tick-boxes.

As well as being the primary consumer-facing disclosure document related to advice, SoA are also evidentiary records that also must meet a range of regulatory requirements whose rationale may not be clear or apparently relevant. The tension between these two purposes does not always serve the consumer well. This tension has become more apparent in recent times as, on occasion, ASIC and AFCA have expressed different expectations about SoAs.

The solution to this conundrum may be to more clearly separate the key information a client should and must know from the more detailed compliance components of a SoA. We realise this is easier said than done, but the review should recommend a review of advice disclosure documentation, including SoAs, to prioritise the information that is most important and meaningful to clients.

Recommendation 17	There should be a specific review of advice disclosure information, including SoAs, to prioritise the information that is most important and meaningful to clients.

Accountants Providing Financial Advice

71. Should accountants be able to provide financial advice on superannuation products outside of the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why? *72. If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?* *73. What effect would allowing accountants to provide this advice have on the number of advisers in the market and the number of consumers receiving financial advice?* *74. Is the limited AFS licence working as intended? What changes to the limited licence could be made to make it more accessible to accountants wanting to provide financial advice?* *75. Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?*

From 1 July 2016, all accountants must be covered by an AFS licence to give advice about acquiring or disposing of an interest in an SMSF to their clients. This replaced a limited exemption that allowed “recognised accountants” to give this advice.

This reflected the Government’s decision that financial product advice about acquiring or disposing of an interest in an SMSF should be within the scope of the AFSL regime, regardless of who provides that advice.

The AFSL regime provides consumers with protection against unlawful and unethical behaviour, and while not requiring accountants to have an AFSL to provide this advice may provide them with a commercial benefit, there is no demonstrated case that it would provide a consumer benefit.

Recommendation 18	Accountants should continue to be covered by an AFS licence to give advice about acquiring or disposing of an interest in an SMSF to their clients.

Consent Arrangements for Wholesale Client and Sophisticated Investor Classification

76. Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?

77. Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client? *78. Should there be a requirement for a client to be informed by the adviser if they are being classified as a wholesale client and be given an explanation that this means the protections for retail clients will not apply?*

The distinction between sophisticated and retail investors is often arbitrary, and has become more so with the fixed dollar eligibility not having changed in twenty years.

High-worth consumers may well have low financial literacy and are at risk of larger losses than other consumers. If a consumer needs the consequences of being a sophisticated investor spelt out to them, they should not be sold a sophisticated investment. Being certified as a sophisticated investor may simply mean that a high worth consumer's accountant is keen to sell them a wider range of more expensive products.

By way of comparison, AIST notes that assertions that members of SMSF have greater financial literacy than members of other superannuation funds are not supported, particularly in relation to people who are not the primary driver for the SMSF.

Recommendation 19	AIST recommends that exemptions and lesser consumer protections for sophisticated investors be removed.