

Quality of Advice Review Secretariat
Financial System Division
The Treasury

Via Email: AdviceReview@treasury.gov.au

10 June 2022

Issues Paper: Quality of Advice Review

Thank you for the opportunity to provide a submission to the Quality of Advice Review (the Review) issues paper.

Australian Retirement Trust was formed through the merger of Sunsuper and QSuper on 28 February 2022. We are one of Australia's largest superannuation funds, proud to take care of over \$200 billion in retirement savings for more than two million members.

Australian Retirement Trust continues the focus of both heritage Funds on working for members, aiming to deliver strong, long-term investment returns, and providing the tools and advice to help members feel on top of their superannuation and to retire with confidence.

Australian Retirement Trust fundamentally believes that quality, affordable and accessible financial advice has a positive impact on the financial wellbeing of our members and all Australians.

The introduction of tertiary education requirements rightly shifts financial advice from a financial product sales industry to a profession. However, the current regulatory settings are out of step with the professional obligations of an advice practitioner in 2022.

As Australia ages, and superannuation matures, Australians will need more advice professionals to service their needs. It is critical to avoid an unintended consequence of disincentivising the next generation of advice professionals from joining the financial advice profession.

In compiling this submission, Australian Retirement Trust has chosen to respond to the questions in the issues paper where we believe we can provide the greatest insights to the Review.

We reinforce in this submission that:

- A less prescriptive, principles-based approach to regulatory guidance will assist in addressing affordability issues caused by years of layered regulation to enable practitioners the ability to apply professional judgement;
- Specifically, in relation to the regulatory framework surrounding advice documents, we recommend that:
 1. Where consumers seek personal advice about a financial product they currently own, the requirement to provide a Statement of Advice (**SOA**) be replaced with a simpler advice document such as a Letter of Advice (**LOA**).
 2. ASIC provides further examples (including a minimum, legally viable SOA and a 'best practice' SOA) to provide the advice industry with clear advice disclosure guardrails.
 3. The current small investment advice threshold of \$15,000 be increased and the associated record keeping requirements be adjusted to enable more consumers with

This information and all products are issued by Australian Retirement Trust Pty Ltd (ABN 88 010 720 840, AFSL 228975) (Trustee) as trustee for Australian Retirement Trust (ABN 60 905 115 063) (Fund).

lower levels of investible funds to access personal advice from a financial adviser, at a reduced cost.

- To improve advice accessibility, the sole purpose test and restrictions on the collective charging of advice fees in the *Superannuation Industry (Supervision) Act 1993 (SIS Act)* should be adjusted to allow superannuation funds to provide basic advice on foundational personal finance issues (e.g. Centrelink, debt management and budgeting) as these relate to superannuation and retirement advice. This adjustment does not diminish from, but rather complements, the role of external advisers offering more complex, comprehensive advice.
- To improve advice affordability and accessibility it remains critical that consumers can pay for advice services from their superannuation. We see an opportunity to simplify and streamline the governance attached to this payment form of advice services, in particular the obligations of trustees to ensure compliance of sole purpose test and the conflicting concerns of AFSLs to meet their privacy obligations in providing advice documentation; and
- The enhanced breach reporting requirements may inhibit the regulator from identifying material breaches due to the current high volumes of reportable matters submitted to the regulator. Therefore, we recommend that in addition to the current definition of deemed significant breaches, that a materiality filter also be applied to mitigate technical breaches of law needing to be reported where no likely or actual consumer harm has occurred.

We trust this feedback will be beneficial to the Review's considerations and would welcome the opportunity to discuss our submission in further detail.

Chris Ramsay, Senior Manager Policy and Government Relations is the primary Australian Retirement Trust contact regarding our submission and can be contacted on 07 3029 9666 or Christopher.Ramsay@australianretirementtrust.com.au.

Yours sincerely,

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Australian Retirement Trust

About Australian Retirement Trust

Australian Retirement Trust (ABN 60 905 115 063), of which Australian Retirement Trust Pty Ltd (ABN 88 010 720 840) is Trustee, was established upon a merger of QSuper and the Sunsuper Superannuation Fund on 28 February 2022.

Australian Retirement Trust has two Divisions: the legacy QSuper products are within the Government Division and the Public Offer Division reflects the legacy Sunsuper products.

As a superannuation fund, Australian Retirement Trust provides intra-fund advice to members via its wholly owned licensees, internal financial advisers and digital advice solution.

Sunsuper Financial Services Pty Ltd and QInvest Ltd are wholly owned subsidiaries of Australian Retirement Trust and provide general and personal intra-fund advice services to Australian Retirement Trust members for the two respective Divisions.

The Australian Retirement Trust Group employs approximately 60 internal financial advisers and supports circa 4,000 registered external financial advisers.

Financial advisers employed by the Australian Retirement Trust group can only provide advice to existing members on their Australian Retirement Trust accounts: this is not a channel to acquire new members.

The intra-fund advice offered by our financial advisers and digital solution is not in competition with the role external financial advisers play in providing complex, comprehensive advice services to our members, or where members otherwise choose to have a relationship with an external financial adviser.

We have not sought to respond to each question included in the issues paper however have provided commentary on many of the matters raised.

Quality of Advice Review Issues Paper – Australian Retirement Trust responses

Section 3.1 Quality Financial Advice

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

What are the characteristics of quality advice for consumers?

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

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

From an advice provider perspective, quality advice characteristics include:

- Consumable – the advice is clear, easily comprehended, contains the right balance of information to enable consumers to make informed decisions, and can be digested by consumers so they take action.
- Channel agnostic – advice can be provided digitally, over the phone, or in person.
- Compliant – meets legislative, regulatory and the Financial Planners and Advisers Code of Ethics (**Code of Ethics**) requirements thereby mitigating potential for downside risks including consumer complaints, notifiable breaches, enforceable undertakings, and consumer remediation costs.
- Cost effective – the process is commercially viable and can be done at scale, while remaining bespoke to consumer needs, circumstances, and objectives.

From a consumer's perspective, the quality advice characteristics include:

- Consumable – the advice is clear, easily comprehended, contains the right balance of information to enable consumers to make informed decisions, and can be digested by consumers so they take action.
- Confidence – the advice engenders trust and instils confidence that the consumer's interests will be or have been put first and foremost.
- Timely – the advice is available when required to meet their needs, whether the need is urgent, or they are simply planning for the future.
- Fit for purpose – the advice is relevant to the consumer's individual needs, circumstances and objectives and clearly articulates how their personal and financial aspirations can be achieved.

Overall, progressive legislative and regulatory change since the Future of Financial Advice (**FOFA**) reforms in 2012 has broadly improved advice quality, as subsequent advice process change has become habitual and embedded by AFSLs and financial advisers. The following reforms are primary examples of legislative change positively influencing advice quality:

- The FOFA reforms with mandatory Best Interest Duty and related obligations created clear requirements to place consumers needs first, to prioritise their interests and retain proof that the advice provider had indeed acted in the consumer's best interests.

- The *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* increased the barriers to advice industry entry for new participants, introduced a Code of Ethics, enhanced financial adviser education requirements, and uplifted the financial adviser occupation status from one of perceived financial product sales to a profession.
- The *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* has created a level playing field amongst insurers in relation to commissions payable to financial advisers, thereby ensuring greater emphasis on product differentiation to attract new business and has greatly assisted with reducing bad actors 'churning' life insurance products for self-interest purposes.
- *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019* removed a potential disincentive for financial advisers to support consumers to replace legacy financial products due to the receipt of ongoing trailing commissions.

When assessing whether there has been an improvement in advice quality over time from a consumer outcome perspective, it is tempting to consider factors like:

- External dispute resolution – Measuring the volume of advice related complaints received by the Australian Financial Complaints Authority (AFCA) from consumers and measuring the average remediation amounts paid to consumers over time.
- ASIC surveillance outcomes – Measuring the volume of adverse financial adviser actions (e.g. banning) as a proportion of the total financial adviser population.
- ASIC breach reporting – Measuring volumes of reported matters to ASIC that have involved material consumer harm.
- Confidence – Measuring the willingness of consumers to receive finance advice due to improved trust in financial adviser capabilities and character.

However, the use of some advice quality factors proposed above would need careful consideration to account for changes in approach that has occurred over time and to examine the point in time in which the advice was given (for example, in 2019, AFCA was permitted to investigate complaints reaching back 10 years, leading to a large increase in matters escalated to AFCA. Additionally, changes to the breach reporting regime from October 2021, has led to a material uplift in reportable matters across the financial service industry).

Section 3.2 Affordable Financial Advice

What are the cost drivers of providing financial advice?

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

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

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

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

Australian Retirement Trust recognises that affordability is an impediment for many Australians seeking advice. One of the factors contributing to affordability pressures on the supply side are layers of regulation built upon over time to solve for inappropriate financial adviser conduct causing detrimental consumer outcomes.

The regulatory requirements for SOAs in their current state, overlaid with the requirements in demonstrating best interests through the safe harbour provisions, significantly contribute to the cost of financial advice.

The other significant cost associated with the provision of financial advice is the level of supervision and monitoring required by the AFSL, with very prescriptive regulatory and legal obligations attached to issues like breach reporting, Design and Distribution Obligations, complaints/dispute resolutions etc.

There is some ambiguity in the governing legislation which could lead to unnecessary deliberation, processes and costs for consumers, for example the 'take any other step' requirement of s961B(2)(g) within the *Corporations Act*. Financial advisers may feel they need to identify, discuss the risks and agree on the next steps for further or obvious advice needs that are outside the client's agreed subject matter and/or scope of advice or advice services provided. While in practice this process can create consumer awareness of other advice needs, it can also create uncertainty about how far a financial adviser must go to appropriately meet this obligation.

We understand and support the reforms successive governments have introduced to protect vulnerable consumers from a small number of unscrupulous financial advisers seeking to profit inappropriately through actions such as overcharging, selling unnecessary financial products, insurance product churning and fraud.

However, these measures have unintentionally and disproportionately impacted all participants in the advice ecosystem with undue costs and complexity to solve for the lowest common denominator. The reforms implemented have increased costs for financial advisers and AFSLs, which ultimately adds to the cost of advice for consumers.

We believe that digital advice can help solve the affordability and accessibility of advice for Australians. We are optimistic that simple advice needs, such as non-complex investment and contribution and modelling can be solved through digital advice solutions.

Section 3.3 Accessible Financial Advice

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

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

How could advice be more accessible?

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

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

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

Australian Retirement Trust believes that most Australians need personal financial advice at key life stages or event such as when buying a house, experiencing redundancy, experiencing significant health events, starting a family, getting married, separating or divorcing, and when planning for retirement. It is also likely needed at stressful times in life such as during investment market downturns and the Covid-19 pandemic.

We know that while every Australian experiences such events, research from 2019 indicates only 27%¹ have received advice. There are several drivers for this, including low levels of financial literacy, a cultural avoidance of talking about money, distrust of financial advisers, and the accessibility and affordability of attaining financial advice.

The increasing cost of advice delivery, whether an explicit direct cost or collectively charged, is a barrier to meeting consumer advice needs. Neither advice costing model benefits markedly from scale where in-person resourcing is required.

There are two logical circuit-breakers to solve for accessibility. The first is the appropriate use of technology to simplify advice delivery in the back office or through using consumer-facing digital tools. The second is the ability to deliver more advice via an adjustment to the small investment advice provision in s946AA, by increasing the current threshold and simplifying the record keeping requirements. In the case of consumer-facing technology, it is increasingly important to have the capability of seamlessly moving into and out of digital/in-person channels to support the consumer.

Our belief is that the provision of general advice by superannuation funds is significantly beneficial in guiding members to better outcomes and improving their financial literacy and well-being. Intra-fund advice is also valuable for members who would otherwise not be prepared to (or have the cashflow ability to) pay a direct cost for advice, although we recognise the limitations of the intra-fund model.

Fintech can be a valuable enabler in reaching more members by providing additional channel options.

Data gathering (both initial and ongoing) and advice compliance are key input costs in the advice chain and digital solutions in these areas can enable the financial adviser to spend more time with their client rather than performing back-office duties.

Solutions that facilitate simpler aggregation of client data from multiple sources, as well as AI-enabled software which can monitor real-time adviser and contact centre representative conversations as well as assuring compliant recommendations to match identified needs within SOAs are areas of opportunity.

The overseas experience has seen greater use of digital tools which facilitate a hybrid advice approach between consumer, adviser and software and this appears to be increasing engagement with positive outcomes.

Technology is developing in Australia to support digital-first, as well as digital-supported solutions for superannuation members, however it is relatively expensive to both configure and to provide on an ongoing commercial basis. Therefore, investment in technology may not always lead to the intended reduction in cost to provide advice.

Australians' expectations on the cost of financial advice against the reality of the cost of providing the advice is widely disparate, and it is therefore very challenging for new entrants to generate a profit without significant backing to attain scale, with the current low take up rate of advice by consumers.

¹ <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-223mr-consumers-see-value-in-financial-advice-but-lack-of-trust-remains-an-issue/#:~:text=According%20to%20the%20research%2C%20while%2041%20per%20cent,Australians%20received%20advice%20in%20the%20past%2012%20months.>

Section 4.1 Types of Advice: General and Personal Advice

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?

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?

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

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

How should the different categories of advice be labelled?

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?

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

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

Australian Retirement Trust is supportive of all financial advice being regulated to address specific risks. Australian Retirement Trust is also supportive of the current educational and professional standards obligations for all financial advisers.

As previously outlined in our submission, scalable advice documentation, the increase in the small investment advice threshold and suggested changes in record keeping requirements would maintain consumer protections yet reduce undue costs on advice providers to provide consumers with lower balances with advice.

One of the main impediments to consumers accessing financial advice is cost. As noted above, if basic advice about Centrelink optimisation, budgeting and debt management relevant to a consumer's superannuation account were permitted within intra-fund advice, more consumers could access advice on a wider range of topics. The additional cost on fund members to provide this extra basic advice in conjunction with existing intra-fund advice would likely be marginal.

Australian Retirement Trust is supportive of a clearer delineation between personal advice and general advice and believes to avoid the impression that the 'advice' takes into account the consumers personal circumstances.

Additionally, in the wake of the ASIC v Westpac case, it has become more difficult to delineate between general and personal advice by advice providers. This has resulted in more Legal and Compliance resource involvement in the provision of general advice. If the lines between general information and personal advice were clearer, the provision could be streamlined which would drive down costs to consumers.

We see an increasing number of Australians turning to alternatives for information to help them solve their personal financial needs due to the issue of accessibility and affordability of advice. Many of these

channels are not regulated or licensed, for example social media “influencers”, and we do not believe this is in consumers’ best interests.

Section 4.1 Types of Advice: Intra-fund Advice

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

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

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?

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

From 1 July 2022, trustees will be required to meet the obligations of the Retirement Income Covenant (**RIC**). This includes offering appropriate financial products, education, guidance and advice associated with those products so that members are supported to maintain an adequate income in retirement.

We recommend expanding the type of personal advice that can be collectively charged (intra-fund advice) if connected with superannuation and retirement planning to include advice on basic budgeting, debt management and Centrelink optimisation which we consider is intrinsically aligned to the provision of retirement advice.

Funds, such as Australian Retirement Trust, could potentially provide trusted basic education, guidance, and advice services to members on topics like Centrelink optimisation, budgeting, and debt management as these interrelate with superannuation and/or retirement planning advice as part of their membership fee. Ultimately, this would be beneficial to members’ financial wellbeing. Today, however this ancillary advice type is not permitted under collective charging arrangements without charging a direct advice fee.

We recommend that the sole purpose test under s62 of the SIS Act and restrictions on the collective charging of advice fees under s99F of the SIS Act be amended to allow superannuation funds to provide basic advice on Centrelink optimisation, budgeting, debt management, and other foundational personal financial issues that are interrelated with superannuation and retirement advice.

Further, this adjustment would better support the objectives of the Retirement Income Covenant that requires funds to take into account the personal circumstances of members when designing retirement products.

We do not believe this adjustment would challenge the important role external advisers play when providing complex, comprehensive advice. Prior to the merger with QSuper, Sunsuper had established a mature advice network across the retail advice industry. A core learning from the establishment of this network is that advice services complement the superannuation industry and enable more members to obtain quality advice, through **their** channel of choice.

The former Sunsuper fund also maintained a National Advice Panel of external Advice providers, to which members requiring comprehensive financial advice were referred. Referral to this panel occurred where it was established that a member had needs that exceeded the scope of intra-fund advice. This strategy demonstrated the symbiotic relationship between intra-fund and comprehensive advice.

Section 4.1 Types of Advice: Limited Scope Advice

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

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

We believe the ability to solve point-in-time issues for consumers via episodic, limited-scope advice supports better financial outcomes and supports accessibility and affordability of advice.

Specifically, in relation to the regulatory framework our comments above regarding intra-fund advice apply equally to limited scope advice.

The regulatory requirements for providing comprehensive or scoped advice are equal. As such, the cost to provide single issue, limited scope or intra-fund advice can be similar to comprehensive advice.

We recommend that s961B(2)(b) in the Corporations Act 2001, i.e. 'subject matter' be defined at law in the same way 'reasonably apparent' is defined within s961C. This could assist the advice industry have greater certainty in meeting 's961B(2)(g) 'take any other step' if it is not removed from the safe harbour steps, as it would clear up the extent to which this 'catch all' step reaches in relation to the limited advice.

Section 4.1 Types of Advice: Digital Advice

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

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?

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

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

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

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

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)?

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

Australian Retirement Trust's experience with the provision of a digital advice solution is that it has led to a significant increase in the number of members who receive personal advice, and that the cost to provide this advice is lower than financial adviser-led channels.

The cohort of members who have used the digital advice channel tends to be skewed to the younger demographic, indicating a likely propensity of the younger demographic to engage earlier in seeking advice than the cohorts of members who seek adviser-led channels.

In our view the topics best suited to the digital advice are those limited in scope, such as intra-fund investment choice and contributions advice, as opposed to broader retirement planning and insurance advice. Current advice platforms do not cater well to broader or more complex advice where dialogue or clarification from an adviser is likely needed.

Human financial advisers are better equipped to verify inputs being received from consumers (e.g. making reasonable inquiries to obtain complete and accurate information), to tease out and identify broader objectives, and assess the level of financial literacy and understanding of the consumer and any vulnerabilities they may face.

While the risks associated with financial adviser error may be avoided, digital advice has other risks. Digital advice platforms should triage out consumers for whom the advice may not be appropriate at the outset and/or during the advice journey however ultimately consumers are self-assessing whether the scope and limitations of the digital advice offering will meet their needs. The lack of a human financial adviser who would likely be better at identifying further advice needs and considering broader issues increases the likelihood that pertinent issues may not be addressed.

To address this, the risk of poor-quality digital advice can be reduced by including triaging and validation rules within the advice platform and by limiting the scope of advice provided to simpler topics until such time that artificial intelligence can be utilised at a reasonable cost.

Ideally, digital tools are part of an omnichannel advice ecosystem where consumers can receive further support from a human financial adviser where appropriate. A hybrid model whereby elements of the advice process are facilitated via the digital channel (e.g., data collection, modelling) with a financial adviser ultimately providing the advice may result in higher rates of implementation when compared to digital advice alone. The opportunity lies more in using digital tools in the overall provision of the advice experience rather than as a 'one stop shop' for personal financial advice.

We support the consistent regulation of advice whether it be provided through both digital advice tools or financial advisers. This may support consistent advice quality regardless of channel however it is noted that demonstrating that all safe harbour steps have been met can be difficult in the context of digital advice.

We view the current regime holding the AFSL licensee responsible for the advice provided as appropriate.

Section 4:2 Best Interests and Related Obligations

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?

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

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?

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?

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?

The safe harbour steps have played a pivotal role in the evolution of quality advice over the past decade. When correctly applied, they provide AFSLs and financial advisers with a proforma checklist of matters to be considered in order to arrive at the desired outcome of providing quality advice that is in the consumers' best interests.

Given the introduction of the Code of Ethics, the value of retaining the safe harbour steps in their current form is questionable. The safe harbour steps do have some benefit in providing a framework for financial advisers to consider as a minimum standard, however given the rapid professionalisation of the advice industry a principles-based approach is more appropriate to focus on substance over form.

It is difficult to allocate a specific cost to complying with the safe harbour steps. Many of the safe harbour steps are required as part of the standard advice process (e.g. collecting information on a consumer's needs, financial situation, objectives, subject matter, investigating suitable financial products etc.) regardless of whether or not the steps continue to exist. The step of greatest ambiguity that can lead to uncertainty and therefore additional cost is s961B(2)(g): "take *any other step*".

Removing or amending the 'take any other step or 'catch all' provision would greatly assist to reduce this ambiguity, which can lead to unnecessary deliberation and overly conservative compliance approaches by licensees and thereby adding to the cost to provide personal advice.

Standard 6 of the Code of Ethics (which requires advisers to take into account the broad effects arising from the client acting on the advice and to actively consider the client's broader, long-term interests and likely circumstances as would also be necessary) also creates uncertainty as to how far out one must consider the broader, long term interests in a rapidly changing world.

There is an opportunity to streamline advice obligations by combining elements of the various requirements under Division 2 of Part 7.7A of the Corporations Act.

For example, consideration should be given to combining the Best Interests Duty (s961B), the requirement for advice to be appropriate (s961G) and the obligation to give priority to the client's interests (s961J) into one principles-based provision.

To genuinely act in a consumer's best interests, a financial adviser must naturally place the consumer's interest first and provide advice that is appropriate for the consumer given their needs, circumstances and objectives which is the outcome desired when following the safe harbour steps.

Generally, we do not consider that financial advisers must consider the target market determination (TMD) for a financial product before providing personal advice about the product. Financial advisers already have a higher duty under the Best Interest Duty and related obligations to consider a consumer's needs, circumstances and objectives when selecting a financial product that is fit for purpose to recommend. While TMDs maybe a useful tool for financial advisers to better understand who the financial product is designed for, they are not currently bound to stay within the parameters of the TMD.

We therefore do not consider that there is a general need for financial advisers to be bound to a TMD as part of the advice process for most financial products. There are however some quite complex financial products designed for niche consumer markets where a TMD should be considered by financial advisers as best practice.

Section 4.3 Conflicted Remuneration

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

Has the ban contributed towards improving the quality of advice?

Australian Retirement Trust believes the ban on conflicted remuneration has had an overwhelmingly positive impact on aligning the interests of advisers and consumers which has had a flow-on effect to the quality of advice provided. For example, the removal of trail commissions means there is no longer a potential financial disincentive for a financial adviser reviewing a client's legacy financial products to recommend a contemporary financial product advice that is in the client's best interests.

We see no positives for consumers in removing the ban on conflicted remuneration and do not advocate for any alternative arrangements.

Section 4.4 Charging Arrangements

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

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

How could these documents be improved for consumers?

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?

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*?

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?

Australian Retirement Trust believes it is very important to allow advice to be paid for by members from their superannuation account as it relates to the fund, to support affordability and accessibility.

Inconsistent interpretations of Sole Purpose Test obligations by trustees can lead to inefficiencies and friction in processes for financial advisers, the funds, and ultimately fund members.

Furthermore, recent legislative changes related to advice fees in superannuation have created more complexity for members with an ongoing advice relationship with their financial adviser, increasing the cost for trustees to administer without consumer benefit. A recent example related to the merger between Sunsuper and QSuper to form Australian Retirement Trust, which was executed by way of a Successor Fund Transfer (SFT) of the interests of the Sunsuper beneficiaries into QSuper and a transfer of Sunsuper assets into QSuper. As a direct result of the *Financial Sector (Hayne Royal Commission Response No. 2) Act 2021*, all members who consented to deduct an ongoing advice fee

from their Sunsuper membership after 1 July 2021 were required to consent again for their fee to continue to be deducted from their Australian Retirement Trust account. From the members' perspective, the merger had not changed their relationship with their financial adviser and ~95% of the impacted members consented.

While attaining a consent was made relatively simple for members, it was another point of regulatory overlay which added cost to the fund (and therefore members) for little to no member benefit.

We support the intent of the legislative reforms to protect consumers against fees for no service, resulting in superannuation balance erosion. However, we believe a more simplistic approach is available by shifting to one-off or non-ongoing fees (i.e. fixed term fees). This would meet this objective and remove regulatory complexity. This change could negate fee disclosure statement (**FDS**) requirements, removing duplication of different consent mechanisms for advice fees from superannuation accounts.

It remains difficult to protect consumers from unscrupulous financial advisers with business models seeking to profit from inappropriate "boiler room" superannuation consolidation and insurance advice, to the consumer's detriment. The regulatory framework should not be constructed on a 'lowest common denominator' basis, rather, this should be the role of enforcement and disciplinary and professional standards bodies to continue to promote professionalism and good consumer outcomes.

Superannuation trustees have received guidance from ASIC and APRA, via joint letters dated 10 April 2019 and 30 June 2021, which highlighted the need for trustees to have robust governance and assurance arrangements for advice fees deducted from member accounts. Relevantly, the oversight of the advice fees included:

- a. Ensuring services have been provided for the fees deducted;
- b. Ensuring the advice fee is consistent with the sole purpose test; and
- c. Ensuring the deduction is in the best interests of members.

While not commenting on the appropriateness of these obligations for trustees, they create a flow on impact for financial advisers where trustees need to:

- a. Review SOAs to ensure advice fees are apportioned appropriately and the advice meets sole purpose test obligations;
- b. Review FDSs to ensure services have been provided for fees deducted; and
- c. Impose advice fee caps to reduce balance erosion impacts.

Ultimately, financial advisers have a number of obligations to clients regarding advice fee arrangements, including annual opt in and FDSs. Imposing trustee obligations on financial advisers is another example of the layers of regulation imposed on financial advisers, impacting on affordability and accessibility of financial advice.

Section 4.5 Disclosure Documents

How successful have SOAs been in addressing information asymmetry?

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?

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?

How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?

Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?

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?

Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?

We believe SOAs still play a critical role in the provision of advice, particularly in relation to change of product recommendations that materially impact consumer outcomes. However, SOAs can be overly complex due to the interpretation of s947B(3) of the Corporations Act and the need to meet the criteria of the “level of detail about a matter that is required is such as a person would ‘reasonably require’ for the purpose of deciding whether to act on the advice as a retail client”. Due to the low-risk appetite of Licensees, and the opaque nature of the term ‘reasonably require’, AFSLs and financial advisers may feel that they are required to provide advice documents that cover all bases and scenarios in the event of litigation. We see benefit in additional regulatory guidance setting out the parameters of what constitutes ‘reasonably require’.

We strongly consider that SOAs in their current form fail to assist the consumers understanding of the advice and therefore the member’s informed consent (if required). In support of our consideration, we note the previous advice ‘failures’ (for example, in the matters of Storm Financial and Yes FS) occurred despite technically compliant SOAs. In our view, the presentation of the SOA assists in reducing information asymmetry, rather than the SOA content itself.

We support the current requirement that an advice document be provided to a consumer with personal advice needs. While we do not believe that wholesale changes are necessarily required to existing laws in relation to SOA and ROA requirements, we do advocate for the following:

1. **Provide additional example SOAs.** The ASIC example SOA in Regulatory Guide (RG) 90 provides an ideal advice document but may not be overly pragmatic for the advice industry to adopt. Given the heavy level of customisation necessary to produce such a tailored document, it is unlikely practical for advice providers to mirror the ASIC example SOA as it could be cost prohibitive, especially when providing simple, limited personal advice to consumers. We believe it could be beneficial to the advice industry if ASIC provided at least two SOA examples,
 - a basic, simple, yet legally compliant example SOA, based on legislation only which potentially uses incorporation by reference; and
 - an example SOA that includes ASIC desired expectations or ‘should haves’ and ‘best practice’ tips and suggestions.

The provision of at least two example SOAs would provide the advice industry with clear guardrails, with AFSLs then able to determine based on their own risk appetites where they wish to position their advice disclosure documentation.

- 2. Implement simplified Letters of Advice where appropriate.** A simplified Letter of Advice may be appropriate for strategic, limited scope and intra-fund advice. A simplified letter will support affordability and accessibility of advice through enabling consumers to understand and implement advice more easily. Therefore, we recommend that for consumers seeking personal advice on products that they currently own, that the requirement to provide a SOA be replaced with a simplified, Letter of Advice.
- 3. Increase the threshold of small investment advice.** Section 946AA of the Corporations Act allows small investment advice (less than \$15,000) to be provided to consumers without an SOA. The small investment threshold was set many years ago however has not kept pace with the increased wealth of many Australians. The documentation obligations should be streamlined or scaled down in line with our previous recommendations. These adjustments would enable more consumers with lower investible funds to access personal advice from a financial adviser, at a reduced cost.

These adjustments if implemented, would enable more consumers with lower investible funds, to access personal advice from a financial adviser, at a reduced cost, yet provide the same consumer protections.

New scalable advice documentation obligations could be applied to limited personal advice. The use of a simple Letter of Advice under s946AA with associated reduced advice documentation obligations could enable quite short advice documents to be delivered to consumers for relatively simple and straightforward personal financial advice with SOA obligations under s947B required to be met when the advice is more complex in nature.

These shorter advice documents could be presented using PowerPoint, video delivery, interactive digital pages etc. to boost readability and engagement.

ASIC recently published Information Sheet 266, which has provided greater clarity about when an ROA can be used. The provision of intra-fund advice does not permit ongoing advice relationships and as such ROAs are unable to be used except for in limited circumstances. We believe a simplified Letter of Advice to cover small investment advice and further advice would be of greater benefit to Australians by providing greater access to affordable high quality financial advice.

All professions are obliged to comply with their relevant Code of Ethics. Financial advisers as an emerging profession, should be extended sufficient trust to enable them to rely on their professional judgement.

Contingent to the above recommendations being implemented, Licensees should also re-consider internal SOA requirements. AFSLs should work intensively with industry associations to develop advice document examples that are clear, concise and effective using the legal framework, with AFSLs also re-assessing their risk appetite and whether their advice documents remain fit for purpose. We believe that the advice industry has an opportunity to further explore incorporation by reference options to shorten SOAs. There may also be an opportunity at law to adjust s947B(2)(b) of the Corporations Act in relation to outlining in the SOA, information about the basis on which the advice was given. It is possible that this information could just be held on the consumers' file and referred to in the SOA, thereby reducing the length and complexity of the SOA.

Australian Retirement Trust intra-fund advisers did not rely on the COVID-19 regulatory relief provided under *ASIC Corporations (COVID-19 – Advice Related Relief) Instrument 2020/355* and subsequent relief instruments.

Section 4.7 Consent Arrangements for Wholesale Clients and Sophisticated Investor Classification

Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?

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?

We believe the current thresholds for being classified as a wholesale/sophisticated investor are too low and need to be revised in line with inflation and overall household asset growth etc. It would also be worthwhile considering whether a financial knowledge or literacy test would be preferable rather than a simple income or assets-based test.

We also believe clients should be fully informed and agree to be treated as a wholesale investor, understanding the risk, before being treated as such.

Section 5 Other measures to improve the quality, affordability and accessibility of advice

What steps have professional associations taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?

Have ASIC's recent actions in response to consultation (CP 332), including the new financial advice hub webpage and example SOAs and ROAs, assisted licensees and advisers to provide good quality and affordable advice?

What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice?

Australian Retirement Trust recognises the important role that industry associations play in advocacy, information provision, education, and professional development of financial advisers. We believe that where there is a common view among associations, the effectiveness of advocacy can be enhanced by the integration and co-ordination of activities.

Continuing the record of our heritage funds, Australian Retirement Trust has strong supervision and monitoring processes in place. More broadly across the industry, we have observed an increased focus on compliance, supervision, and monitoring following the introduction of FOFA and the conclusion of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

We have concerns that the enhanced breach reporting requirements since October 2021 may inhibit the regulator from identifying material breaches, due to the current high volumes of reportable matters being received by the regulator. Therefore, we recommend that in addition to the current definition of deemed significant breaches, that a materiality filter also be applied to mitigate technical breaches of law needing to be reported where no likely or actual consumer harm has occurred.

We recognise that ASIC's recent actions in response to consultation (CP 332) have been beneficial in clarifying expectations around the provision of good quality and affordable advice.

To assist further, ASIC could revise regulatory guides to incorporate the Code of Ethics. Specifically, RG 244 is helpful in providing guidance on how to meet regulatory obligations under the *Corporations*

Act when providing limited advice, however it has not been updated with reference to the Code of Ethics. It is unclear whether the guidance and examples in RG 244 remain fit for purpose and how regulatory requirements have changed with respect to limited advice post implementation of the Code of Ethics.

Updated guidance and case studies reflecting the Code of Ethics would be useful, particularly to reflect the impact and practical application of Standards 3, 5 and 6 on a financial adviser's ability to provide advice that is targeted to one or more specific issues.

It would also be helpful if examples included consideration of a spouse or partner, and included examples for strategic advice recommendations (e.g. recommending a class of financial product rather than a specific financial product).

Finally, it would be beneficial if ASIC could arrange more opportunities for licensees to interact and ask questions directly of the regulator, for example by using in-person or online forums.