

2/05/2025

Director
Financial Advice and Investment Regulation Unit
Treasury
Langton Crescent
PARKES ACT 2600

Via email to FinancialAdvice@treasury.gov.au

Dear Treasury,

Improving access to affordable and quality financial advice

AustralianSuper welcomes the opportunity to provide a submission on Treasury's consultation on the draft legislation.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. AustralianSuper manages over \$365 billion of members' assets on behalf of over 3.5 million Australians. Our purpose is to help members achieve their best financial position in retirement.

AustralianSuper has been a continuing supporter the need for Australians to have access to quality, affordable financial advice, with appropriate consumer protections. Financial advice has significant potential to guide Australians to make the most of their retirement savings and household wealth. Superannuation funds have a critical role in assisting members to access financial advice, either by providing advice directly, or by facilitating access to third party financial advisers.

We strongly support the measures put forward in this consultation. Clarity on advice topics for collectively charged advice, the allowance of targeted superannuation prompts and the introduction of the Client Advice Record (together with proposed future changes to the Best Interests Duty and proposed introduction of a new class of adviser), are important measures that will support expanded access to affordable superannuation advice.

It is important that advice reforms continue to work together with reforms relating to the retirement phase of the system, such that members can be better guided towards retirement solutions that meet their needs. We look forward to continuing to engage with the government on changes that will support the ability of trustees to deliver on the objectives of the Retirement Income Covenant, and the future of the retirement phase of the system, to benefit members.

We would be pleased to provide additional information or to discuss this submission in further detail. If that would be of assistance, please do not hesitate to contact me or Dr Nick Coates, Head of Government Relations & Public Policy (ncoates@australiansuper.com).

Yours sincerely



Paula Benson
Chief Strategy Officer

Attachment: Key Issues

Overarching comments

Financial advice has a critical role to play in helping members achieve their best financial position in retirement.

With 2.5 million Australians expected to retire over the next decade, it is important that the industry can provide the guidance and advice needed to ensure members maximise their income in retirement and retire with confidence. Advice reform is key to ensuring superannuation funds can help to deliver this at the scale that is needed.

AustralianSuper is a strong supporter of the government's advice reforms – with the objective of improving access to affordable and quality financial advice for Australians. The Government's reforms should be progressed as a matter of priority, and we look forward to engaging in further consultation on the remaining elements of the advice reform package. It's crucial that the more complex parts of the package don't delay this draft legislation, as it benefits superannuation members by supporting the provision of affordable advice.

Advice through Superannuation

AustralianSuper strongly supports the role of collectively charged advice in delivering better member outcomes, and welcomes the clarity provided in the draft legislation, explanatory memorandum, and other material provided for consultation. The policy intent – to allow super trustees greater flexibility to provide members with simple and cost-effective advice about retirement, in addition to the intra-fund advice they already provide - is strongly supported.

The three lists on which Treasury is consulting - allowed topics, allowed circumstances, and disallowed topics - provide important clarification of acceptable practices for collectively charged advice, and we welcome the certainty that this provides to the industry and members. We note that the lists are not intended to be exhaustive, and that, where a topic or circumstance is not specified in the regulations, trustees are expected to exercise their judgement in relation to their existing legislative obligations, such as the Sole Purpose Test and requirement for costs to be shared in a fair and reasonable manner across members of the fund. We support this approach.

We offer the following feedback on the content of the lists provided for consultation:

- On allowed topics, we recommend that the Superannuation contributions topic should also encompass the First Home Super Saver Scheme (FHSSS).
- Also in the allowed topics list, the 'Retirement income' topic refers to drawdown strategies and lump sum withdrawals as examples. We recommend that the example notes that advisers can explain the purpose of drawdowns and lump sum withdrawals, provided they are not related to the purchase of another financial product. For example, using a lump sum withdrawal to pay down mortgage debt, before commencing an account-based pension.
- On allowed circumstances, 'Eligibility for government services' should allow for an adviser to not only consider eligibility for these services but also recommend that a member apply for, and provide estimates of, these benefits, as long as the recommendation supports and is relevant to the advice about the member's interest in their superannuation fund. For example, an adviser could be able to recommend a member apply for the government Age Pension, estimating it will provide them with \$20,000 per annum, which would impact the drawdown rate required from their account-based pension, reducing their longevity risk. 'Eligibility for government services', should also be included in the allowed 'retirement income' topic when it supports and is relevant to the advice provided about the member's interest in their superannuation fund.

- The ‘disallowed topics’ list includes an example of estate and tax planning, noting that ‘information on superannuation beneficiary nominations is not financial advice’. We agree with this. However, personal advice about beneficiary nominations is a critical part of a member’s superannuation entitlement and should be included in the ‘allowed topics list’ for clarity.

We note that, while the lists have been provided, the draft regulations implementing the lists are not currently available for consultation, and therefore look forward to participating in further consultation to ensure that the draft regulations clearly reflect the intent outlined in the material provided to-date.

We also appreciate the clarification that trustees can implement, or assist members to implement, the initial advice or any later advice, without breaching the prohibition on collectively charging for the provision of ongoing advice (s99F(1)(c)(iv) of the SIS Act).

Targeted Superannuation Prompts

We welcome the draft legislation amending the Corporations Act to provide a new exception to personal advice for superannuation trustees providing members with ‘targeted superannuation prompts’ (TSPs). If the requirements for the prompts are complied with by the trustee, personal advice given through the prompts will instead be subject to the relevant requirements in relation to the giving of general advice. This will enable trustees to provide more specific and helpful guidance to classes of members, and ultimately deliver better financial outcomes to members to and through retirement at the scale needed.

The importance of TSPs to guiding members towards appropriate retirement solutions and supporting their financial wellbeing in retirement, cannot be understated. The Government has separately announced reforms to improve the retirement phase of the system, building on the Retirement Income Covenant (RIC), focusing on more trusted information, better products and greater transparency. The use of TSPs to guide members to and through retirement will be an important tool to enable trustees to achieve the objectives of the RIC at the scale required to support the 2.5 million Australians that are expected to retire over the decade ahead.

In terms of specific feedback:

- We propose that the requirement for ‘assessment framework’ in the legislation be principles-based, setting clear objectives, but excluding the prescriptive detail as currently drafted (noting that there is the opportunity for guidance to be provided elsewhere). Our concern with a more prescriptive approach is that the ‘assessment framework’ combined with the significant consequences for non-compliance, even for minor and/or non-intentional breaches, could significantly constrain up-take, thereby limiting the potential for member benefit. We are satisfied this could be achieved without undermining the consumer protection framework.
- The legislation or the explanatory materials should clarify that reference to ‘settings’ in 950A(1)(b) means that the trustee can include a reference to the trustee’s investment options, drawdown strategies, or insurance offering in the TSP (so distinguished from 950(1)(a) which prevents discussing a specific product). For example, if a trustee ‘nudges’ a 25 year-old to reconsider their investment in ‘Cash’, it can mention the fund’s other, potentially more suitable, investment options (e.g. Balanced, High Growth, etc).
- The definition of Excluded Advice (clause 950(3)(b)) prohibits a prompt from requiring action on a recommendation within a specified period or before a specified time. While we agree that TSPs must not make members feel unduly pressured, the legislation needs to acknowledge that in certain specific circumstances there can be a need to act before a specific event or date – e.g. before the member reaches a certain age, or retires, or before their account balance reaches a particular level. This is particularly relevant for superannuation contributions. An example where this may be appropriate includes when it is in the members

best financial interest to undertake a certain action before the end of a given financial year. In this circumstance, it would be appropriate for the prompt to call for the action to be completed before 30 June.

- Clause 950J allows members to opt-out of receiving TSPs for up to five years. As member needs and circumstances can change considerably over time, in our view this period of time should be reduced.

We welcome the clarification provided in the Explanatory Materials that not all prompts that trustees send to members include financial advice, so would be outside the TSP regime (e.g. alerting members who do not have a death benefit nomination to the benefits of making a binding death benefit nomination, or pointing to tools and calculators that the fund provides).

The ability for trustees to effectively develop and define classes of members for the purpose of delivering TSPs is currently limited by the availability of relevant data. AustralianSuper has advocated for reforms to empower superannuation fund members to give their fund secure access to their relevant data held by government, including that held by the ATO and Services Australia, to better identify member circumstances and needs and guide them towards actions that would deliver better retirement outcomes.

Replacing the Statement of Advice with the Client Advice Record

The draft legislation is a positive step forward and should enable advisers to produce more streamlined and meaningful advice documents. We note that in practice, the effective implementation of the Client Advice Record (CAR) will also be impacted by any future changes to the Best Interests Duty (the detail of which is yet to be released for consultation), but note the CAR supports effective communication with members while ensuring an adequate record is kept should issues arise in the future.

There is one element of the draft regulations that would benefit from further clarity. Section 947C(2) of the draft legislation does not explicitly require the CAR to include information about the remuneration or benefits that the **providing entity** will receive that might reasonably be expected to influence or be capable of influencing the advice given. This is currently required for a Statement of Advice under sections 947B(2)(d)(i) or 947C(2)(e)(i) of the Corporations Act. While draft section 947C(1)(d) requires a statement of the cost of providing the advice be included in the CAR, it is not clear whether this encompasses all forms of remuneration paid to advice providers, such as insurance commissions. It seems that the dollar disclosure requirements under section 947C(8) do not extend to subsection (1) as currently drafted