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Quality of Advice Review Secretariat
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Quality of Advice Review

1.1 Background

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. 2.71 million Australians are members of AustralianSuper, and we invest over \$261 billion of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

We appreciate the opportunity to comment in response to the discussion paper issued as the first stage of Treasury's Quality of Advice Review. Our submission has been prepared based on the insights of AustralianSuper members. The submission sets out our approach to providing quality information, help and advice and highlights areas and actions that we believe will improve access to quality affordable advice for members. We have not sought to address all the questions posed in the consultation paper.

1.2 Overarching position

AustralianSuper believes that superannuation funds have a critical role to play as the custodians of a major financial asset for many working Australians. AustralianSuper's scale, operating model and understanding of member needs, means we are well placed to offer quality information, help and financial advice. This often complements other advice sought by members from external parties.

Supported by our statutory obligations to act in the best interests of members and our purpose to ensure members achieve their best financial position in retirement, AustralianSuper is confident the information, help and advice we provide to members is of high quality.

It is clear to us that the quality of information, help and advice provided to Australians will make the most material financial difference to their lives.¹ Increasing access to, or reducing the cost of, advice where the advice itself is not of sufficient quality may indeed pose a detriment to Australians' financial outcomes.

As such, we see the opportunity for the Review to make the most meaningful impact is to determine how to best improve the affordability and accessibility of quality advice to all Australians who seek it.² We support the statement in the Introduction to Part 3 of the Issues Paper that 'the starting point for the Review is that quality advice can be accessible and affordable'.

We also believe the financial advice regulatory framework should support access to quality financial information, help and advice to Australians across the continuum of their lives. From the perspective of

¹ Our submission does not directly provide a definition of what constitutes quality advice, as this has been addressed elsewhere: ASIC (2012) Report 279, Shadow Shopping Study of Retirement Advice, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-279-shadow-shopping-study-of-retirement-advice/>.

² We consider accessibility and affordability as interrelated elements.

the Fund, this means through the accumulation phase of superannuation, into preretirement planning and then into retirement (decumulation phase).

To achieve this, AustralianSuper recommends that the scope of intra-fund advice be broadened to best provide Australians with access to affordable, quality advice, particularly at pre-retirement and retirement stages. This should also be supported by clarifying definitions of 'advice' and changes to fee deduction arrangements.

As set out above, AustralianSuper's purpose is to ensure members achieve their best financial position in retirement. In accordance with our purpose, the principles which underpin our approach to this Review are:

- Quality financial advice can make a material positive difference to the lives of Australians, including AustralianSuper members (see Appendix A for member case studies).
- Superannuation funds have played and will increasingly play an important role in the provision of affordable and accessible quality information, help and advice to Australians.
- There is significant demand from consumers across all parts of the help and advice spectrum and this is increasing.
- There are opportunities, through regulatory and legislative reform, to improve affordability and accessibility without compromising quality and consumer protection.

1.3 Summary of recommendations

A summary of the recommendations contained in our submission to this phase of the Review are as follows. We look forward to working with Treasury and other participants in the Review as the consultation progresses and recommendations to Government are developed:

Recommendation 1: Revise and update definitions for factual information, general advice and personal advice to ensure clarity and certainty. As part of this define what is not personal advice.

Recommendation 2: Review and expand the range of advice topics classified as intra-fund advice, to better support people considering their retirement income.

Recommendation 3: Review the purpose and form of SOAs, with a view to the industry better 'right-sizing' disclosure requirements to the scope of advice being provided. Review how advice is scaled based on the 'know your client rules'.

Recommendation 4: Customise the regulatory framework for digital advice.

Recommendation 5: Review the differing fee charging regimes between MySuper and Choice products, with a view to consolidate to a single consistent set of rules.

Recommendation 6: Clarify that advice fees relating to retirement income advice can be deducted from a members superannuation account.

2. AustralianSuper Approach

Part 3 of the Issues Paper discusses the characteristics of quality financial advice, affordable financial advice and accessible financial advice.

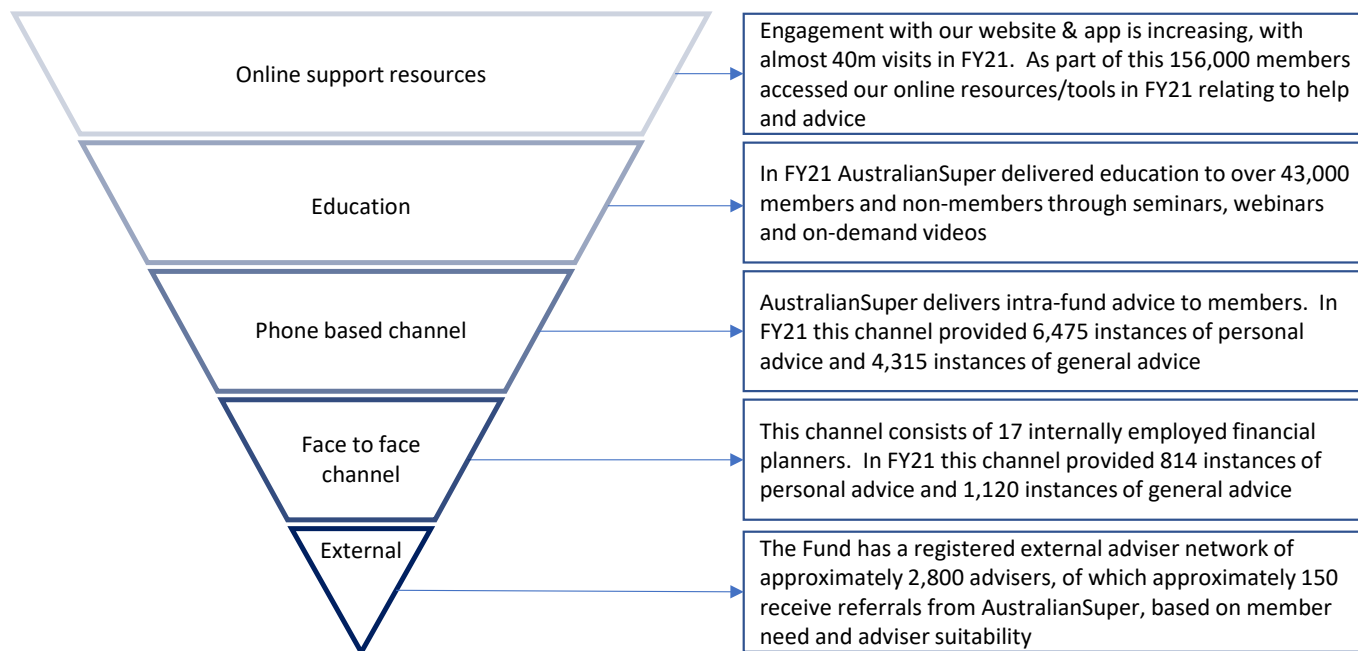
AustralianSuper provides quality information, general advice, and personal advice to assist members in making informed decisions about their superannuation and retirement planning.

There is strong demand for a range of advice from AustralianSuper members, which we meet through providing a scalable, cost effective and defined advice offering. We aim to deliver quality advice to members on topics and issues which matter most to them, in both accumulation and retirement.

We do this by delivering or facilitating information, help and advice across the spectrum of member needs:

- Providing factual information, education and general advice through a range of accessible channels, including digital channels;
- Delivering events-based personal advice services (including intra-fund and comprehensive advice), on a scalable model;
- Referring members with more specific or complex advice needs to qualified external advice experts; and
- Providing services and support to external advisers, to support them in providing quality advice to AustralianSuper members.

Figure 1: Volume and demand for information, education and advice



It is important that regulatory and legislative settings support the efficient provision of quality advice at all points along the help and advice spectrum. At the less complex end of this spectrum, members' financial needs and questions can be readily dealt with affordably and at scale. As the complexity increases, so does cost and we see fewer members accessing and receiving quality help and advice.

Figure 1 shows that demand for information, help and advice across all AustralianSuper members skews materially towards the 'light touch'/lower cost options. This reflects different levels of engagement and need across member cohorts. For younger Australians in the accumulation phase, their needs are likely to be lower and more general than members nearing retirement.

However, for members closer to retirement, we continue to see an increase in demand for advice with the number of members under advice from external advisers having increased by over 75% since 30 June 2020. However for members with reasonably simple circumstances, often simple, targeted advice (e.g. intra-fund advice) is more relevant and cost effective than high touch external advice.

We also expect to see an increase in demand for advice over the coming years as the superannuation system reaches maturity and the number of Australians retiring increases. It is estimated that around 250,000 Australians will retire next year, of which we estimate that over 30,000 of these will be members of AustralianSuper. Looking ahead, based on AustralianSuper member demographics, we expect an additional 670,000 AustralianSuper members will reach retirement in the next 15 years.

Many of these members would benefit from having access to quality information, help and advice to ensure they can achieve their best financial outcome in retirement. This includes ensuring risks are appropriately identified and managed, as well as providing confidence to spend appropriately in retirement.

3. Forms of help and advice and advice definitions

3.1 Clarifying definitions

Part 4.1 of the Issues Paper discusses different types of advice. We believe there is an opportunity to review the current naming conventions and definitions of the terms 'factual information', 'general advice' and 'personal advice'. We note the term 'factual information' is not included in the Issues Paper and we recommend Treasury ensure it is appropriately and expressly considered in the Review in due course.

Over time the boundaries between these categories have shifted through regulatory interpretation and litigation.³ Initially ASIC took an expansive approach to general advice and factual information through regulatory guidance and some minor regulatory relief. However, ASIC's subsequent litigation of Westpac Securities and BT Funds Management, resulted in a shift back to a more expansive interpretation of personal advice.⁴ This has created ambiguity, and has led superannuation funds to be more cautious over what can be done with member interactions that are not intended to be personal advice (particularly general advice).

Resolving this confusion and providing greater certainty represents a significant opportunity for the Review. Doing so will go some way to ensuring members have greater access to quality information, guidance and advice, because it will ensure organisations are clear about what type of information and advice can be provided in particular circumstances. Removing uncertainty will allow funds to invest in delivering greater volume and scale.

In addition, we suggest consideration be given to the role that general advice has in meeting the needs of individuals less inclined to receive personal advice. In particular, confirmation that general advice can be provided on a one-on-one basis (with appropriate warnings) would be beneficial.

The broad application of the Westpac/BT judgement (which is guiding the actions of many in the industry currently) and its focus on sales offerings is substantively different to a superannuation fund answering a member's question in relation to their superannuation and financial situation. Therefore clarification of what is *not* personal advice would also be helpful.

³ Regulatory Guide 244, ASIC (2012) [Giving information, general advice and scaled advice](#), RG 244 Giving information, general advice and scaled advice | ASIC - Australian Securities and Investments Commission

⁴ Westpac Securities Administration Ltd & Anor v ASIC [2021] HCA

Lastly, ASIC should not rely on classifying superannuation and retirement calculators as personal financial advice when providing relief. This will also help prevent confusion between whether calculators are personal or general advice.

Recommendation 1: Revise and update definitions for factual information, general advice and personal advice to ensure clarity and certainty. As part of this define what is not personal advice.

3.2 The potential for intra-fund advice to support retirement help and advice needs

Intra-fund Advice is discussed at pages 14 and 15 of the Issues Paper. This is a particular topic of interest for superannuation funds, including AustralianSuper.

A key advancement in expanding quality affordable and accessible advice has been the development of intra-fund advice. Implemented in 2008,⁵ and further formalised following the Cooper Review, intra-fund advice is advice about topics that are 'within' product (insurance, investment options, contributions).

The Issues Paper asks:

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

Intra-fund advice was developed when superannuation balances were lower and nearly all members were in the accumulation phase. The topics permissible were therefore focused on the accumulation phase. As set out above, the needs of AustralianSuper members shifts as they approach pre-retirement and retirement. As such we see an increasing demand for affordable, cost-effective advice for members in relation to their retirement.

Superannuation funds have strict regulatory and trustee obligations to act in the best interests of members. To help members achieve their best financial outcomes in retirement, and to meet their needs as expressed to us, we consider there is a strong requirement for AustralianSuper to be able to provide quality accessible help and advice to members in not only the accumulation phase, but also in relation to pre retirement and retirement.

Therefore, we believe that the scope of intra-fund advice be expanded to include additional aspects of a member's retirement planning, including consideration of government payments and how to structure their draw-down payments.

The provision of advice on these topics through intra-fund advice would allow AustralianSuper and other superannuation funds to better prepare members more directly for retirement, on a larger scale.

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

AustralianSuper has the experience and scale to provide quality intra-fund advice to members. As set out above, we consider the quality of information, help and advice provided to Australians will make the most material financial difference to their lives.

Different superannuation funds will have varying product offers, approaches to advice and capacity to provide quality accessible intra-fund advice. As such we suggest whether intra-fund advice is made available to members be left to individual funds to determine as part of their offer to members.

⁵ Financial Services Working Group (FSWG), 2008, *Simple advice on choice within an existing superannuation account*, https://download.asic.gov.au/media/1329026/Consultation_paper_97_Simple_superannuation_advice_1.pdf

- ***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?***

We reiterate our submission at 3.1 above that greater clarity in defining types of advice will support funds in the provision of quality advice in a more accessible way.

We also note recent changes to funds' expenditure in relation to members best financial interests duty has created some uncertainty as to categories of fund expenditures, including how funds provide information to members through various communication channels. Supporting funds to provide quality information to members through a range of channels, including where this supports greater awareness about the importance of superannuation, choosing a fund that delivers strong net performance and the like, also supports the intended outcomes of this Review.

- ***To what extent does the provision of intra-fund advice affect competition in the financial advice market?***⁶

In our submission, intra-fund advice is not an impediment to competition in financial advice. As set out above, AustralianSuper's 2.7 million members represent all walks of life, life stages and levels of wealth. Overall, the balances of AustralianSuper members are relatively modest, the advice need of members also relatively simple.

Meanwhile financial advisers tended to gravitate to clients who had more complex financial circumstances and investible assets. Intra-fund provided people with access to advice who previously would have received no advice. It also then provides a bridge to seeking further advice on more complex matters at later life stages. In this way intra-fund advice forms part of the consumer-focused approach to advice and enables consumers to easily move up and down the scaled advice spectrum.

While intra-fund advice is collectively charged from member administration fees, in 2018 it was estimated that intra-fund advice costs members 50 cents to \$1.34 per member, making it an effective and affordable advice model.⁷

Recommendation 2: Review and expand the range of advice topics classified as intra-fund advice, to better support people considering their retirement income

3.3 Further right sizing regulatory burden commensurate to consumer risk

It is important that the intensity of the regulatory framework be commensurate with risk and potential consumer detriment, depending on the type of advice which is provided and the delivery channel.

Comprehensive / limited personal advice

For comprehensive personal advice, the compliance focus tends to overshadow the advice process and add cost. Compliance teams that oversee advisers have become more conservative over time and

⁶ Treasury (2022), Quality of Advice Review (p15)

⁷ 9 Parliament of Australia, "Review of the Four Major Banks and other Financial Institutions – Superannuation Sector Documents"

compliance audits are heavily focused on meeting a large list of requirements that result in a 'pass' or 'fail', with little focus on the quality of the advice that was received by the consumer.

The regulatory requirements to provide quality advice should be commensurate to the scope/risk of the advice which is being provided. Limited scope advice has a more meaningful role to play in the industry than it does currently, though is currently constrained by being subject to regulatory burden akin to comprehensive advice.

In addition, the compliance requirements surrounding product advice have increased to a level that negatively impacts the provision of advice and lessens the member experience. For example, often a Statement of Advice is required to include pages of product comparison data that adds little value or insights for the consumer.

As the regulatory environment has strengthened, the cost to prepare Statements of Advice has increased materially, while simultaneously becoming less helpful for consumers, who often find it difficult to read.

There are opportunities to reduce the cost of advice production, through disclosure requirements being better able to be 'right sized' to the scope of advice being provided. This should support the provision of limited scope advice, which we believe has an important role to play in the range of services available to consumers.

Advisers and AFSLs would benefit from more guidance in this area, that is supported by existing requirements to be 'clear, concise and effective'. This would drive consistency across the industry and enable consumers to understand and compare advice more easily.⁸

Scaling advice (limited advice)

The regulatory framework that would benefit from further clarity on the definitions of scaled or limited advice. How much an adviser or superannuation fund knows about a member's financial circumstances is sometimes used as an argument for why scaled or limited advice cannot be given. Instead, it is argued that the member must be referred for more expensive comprehensive advice, even if the advice need is straightforward. This is a conservative view, but it is generated out of the ambiguity created by Westpac BT case.

At the same time, recent legislative reforms such as Member Outcomes, Design and Distribution Obligations and most recently through the Retirement Income Covenant has increased the obligation on funds to understand members. We believe, given this trend, that it is important to clarify how scaled advice can be provided in terms of the know your client rules and Code of Ethics.

Recommendation 3: Review the purpose and form of SOAs, with a view to the industry better 'right-sizing' disclosure requirements to the scope of advice being provided. Review how advice is scaled based on the 'know your client rules'.

Digital Advice

Digital advice has long been seen as a way to support more affordable and accessible advice. Despite this, there is an absence of highly developed solutions in the Australian market that cater for the needs of advice providers and consumers, while working within the confines of the legal framework.

We are supportive of efforts to review and potentially streamline or customise the regulatory framework for digital advice, subject to ensuring that quality advice is provided through digital channels. We see

⁸ We do acknowledge previous work of the Cooper Review in trying to reset SOAs back into their original intent as consumer documents, but there is room to further clarify the purpose and whether it needs to be the authoritative record of the advice process without compromising key consumer protections.

opportunities through the provision of digital advice in its pure form, but also (and potentially more importantly) through these digital advice tools augmenting the provision of human based advice.

We believe that a key barrier to the utilisation of algorithm-based tools has been that the legal framework is technology neutral and based on a regulatory framework for personal face to face advice.

Who is responsible for the delivery of digital advice and how that works in interaction with a hybrid advice model that includes human interaction is a key issue to address. Compliance teams currently take a reasonably conservative approach, placing responsibility for the advice with the human elements, thereby limiting the extent to which digital tools can be used to drive scale.

Recommendation 4: Customise the regulatory framework for digital advice.

4. Advice fees and accessibility

Part 4.4 of the Issues Paper discusses charging arrangements in the financial services industry.

We consider charging models are central to how the provision of quality advice can be expanded. In our submission the Review provides an opportunity to revise two aspects of the way that advice fees are charged to simplify the system and support the provision of more, quality advice. These are:

- The differing rules for advice fee deductions between MySuper and Choice products; and
- The advice topics for which advice fees can be deducted.

Fee deductions: MySuper versus Choice products

The Hayne Royal Commission focused primarily on retail wealth management groups deducting ongoing advice fees from member accounts where no advice had been given. The Royal Commission recommended that ongoing advice fees only be able to be charged from Choice products and not Mysuper products.

We believe the different advice fee deduction rules for MySuper and Choice products should be reviewed with a view to being removed for two reasons:

- The distinction can provide a structural incentive towards recommending Choice products rather than MySuper products which could result in consumers being diverted from high performing and low cost MySuper options; and
- The existence of separate rules creates compliance costs and inefficiencies as superannuation funds must actively monitor and ensure that ongoing advice fees are not charged from MySuper accounts.

Recommendation 5: Review the differing fee charging regimes between MySuper and Choice products, with a view to consolidate to a single consistent set of rules

Advice Fees

The joint letter from APRA and ASIC dated 10 April 2019 to all RSE licensees, addressed the lack of governance and oversight of advice fees being deducted from member accounts. Specifically, it addressed whether an advice fee deduction was consistent with the sole purpose test and discussed that these costs must relate to the member's superannuation interest with a fund.

In practice, this guidance has not fully addressed the ambiguities around fee charging and different interpretations have been formed on the basis of the regulatory guidance. As a consequence, AustralianSuper has adopted a more conservative or less permissive interpretation.

Where this can come into particular focus is through the provision of financial advice relating to retirement (in particular to couples), a critical advice area relating to ensuring superannuation fund members can achieve their best financial position in retirement.

In the interests of supporting the affordability and accessibility of advice to all members, we believe this matter should be clarified to enable members to be provided with quality advice regarding retirement income matters with the costs charged to their superannuation account.

Recommendation 6: Clarify that advice fees relating to retirement income advice can be deducted from a members superannuation account.

Thank you for the opportunity to make a submission to the initial consultation on Treasury's Advice Review. We look forward to working with Treasury as the review progresses and on recommendations to government.

Should you require any further information, please contact James Bennett, Policy & Government Relations Adviser at jbennett@australiansuper.com.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Sarah', written in a dark ink.

Sarah Adams

Group Executive

Strategy, Reputation & Corporate Affairs

Appendix A – Member case studies

Phone based advice

- **F**, one of the (intra-fund) advisers spoke to **W** who was quite concerned about recent market volatility. **W** admitted he had very limited knowledge of investments and was feeling ‘*quite stressed*’ not knowing what he should do. After taking through the basic characteristics of different asset classes, **F** went through a risk profile with **W** to identify the most appropriate investment choice for him. **W** was so happy with the call that he later wrote to **F**’s manager to share how positive the experience was saying that “*F really listened to understand my concerns, went through everything slowly and spoke in layman’s terms I could understand. He took it upon himself not to fob me off and really took the time to assist me with what I needed*”.

Comprehensive advice

- After attending a webinar presented by (adviser), **X** and **Y** decided to book a meeting for some advice. **X** is already retired but **Y** was on leave without pay not having the confidence to retire from her long-time job with company A. At the time **Y** was house/dog sitting to generate an income. With (adviser’s) help and advice, **Y** retired in April 2022, and they now have “*more income than they know what to do with.*” They are also currently in the process of booking a 3-month holiday overseas they previously thought they would never be able to afford.
- **A**, a Bank Manager, and his wife **B** initially felt financially confident and secure that they could handle setting up their own retirement income streams. However, after meeting with (Adviser) **A** admitted that there was much more to consider and **B** (who said she was usually financially disinterested) said they wanted to proceed with advice and even asked for an extra card to give to her friend. (Adviser’s) advice delivered a \$4,000 pa saving in product fees, tax savings of over \$2,000, Government Co-Contribution of \$500 x 2 and peace of mind their money will last comfortably throughout their retirement. Needless to say, **A & B** were thrilled with outcome and the advice experience.
- (Adviser) provided advice to clients **C** and **D** who needed help with their retirement planning. As a result of the advice (adviser) was able to increase **C**’s age pension by \$10,200 per annum, increase the longevity of their income by over 5 years and also reduce future super death tax by over \$100k.