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Promoting access to affordable advice for consumers

ABOUT US

Super Consumers Australia (Super Consumers), formerly known as the Superannuation Consumers' Centre, is an independent, not-for-profit consumer organisation formed in 2013. Super Consumers was first funded in 2018. We work to advance and protect the interests of low and middle income people in the Australian superannuation system.

During its start up phase Super Consumers has partnered with CHOICE to deliver support services. CHOICE is the leading consumer advocate in Australia, established 60 years ago, it is an independent voice, ensuring consumers get a fair go. Super Consumers' establishment funding is set to run out in December 2021.

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Introduction

The recent Retirement Income Review again confirmed what we have known for some time: the current financial advice regime is clearly not meeting the needs of the majority of Australians. The solution to this problem does not lie in tinkering with the existing regime to make it more commercially viable for industry participants. We see a strong need for a new business model that can provide people with conflict free, affordable and scalable advice.

We understand that ASIC will be using this consultation to identify steps it can take within the regulatory regime to improve the quality and affordability of advice. We also understand that some of the feedback may fall outside of ASIC's existing responsibilities and may require legislative reform. We have provided feedback which fits into both of these categories.

ASIC should treat with caution any feedback from industry which suggests that improving access to good quality, affordable advice depends on cutting costs by weakening existing consumer protections, such as the obligation on advisers to meet the best interests duty. We agree that current financial advice business models aren't cost effective and that the regulatory framework that sits over them can be strengthened. Unless and until the fundamental problem of conflicted advice is addressed, the case for regulatory 'relief' is extremely weak.

Even if the issue of conflicts is set aside, it is difficult to see how a less robust regulatory approach would deliver the cost savings needed to close the gap between what people are willing to pay for advice, and what industry says it costs to deliver advice. More people may be incentivised to seek financial advice if the associated cost decreases, but the reality is that a significant number of low and middle income earners will continue to find it prohibitively expensive or simply poor value for money. ASIC's own research shows that affordability is only one barrier. Many people are discouraged from obtaining financial advice because they don't trust advisers, and/or don't believe their circumstances warrant the need for advice.

The Financial Services Royal Commission recommended a comprehensive review no later than December 2022 to look at the effectiveness of measures to improve the quality of financial advice, and to examine whether further reforms are needed.[1] Now more than ever, this review is needed to ensure the full range of relevant issues can be thoroughly considered. These issues have not been examined in any forum since the Royal Commission. The Retirement Income Review highlighted some of the problems but recommending solutions was out of scope. The

[1] Financial Services Royal Commission, *Final Report*, 2019, p178.

feedback obtained from ASIC in response to Consultation Paper 332, together with related research undertaken by the regulator (e.g. about consumer understanding of the difference between general and personal advice) would usefully inform such a review.

We note that ASIC is planning to hold a series of roundtables with industry and other stakeholders in early 2021. Super Consumers would be happy to participate in this process and to provide further information about anything contained in our submission to assist ASIC.

Summary of Recommendations

Recommendation 1: The Federal Government should ensure that:

a) ASIC is appropriately resourced to fulfil its expanded role following the transfer of functions from FASEA
b) there are no changes to the existing professional requirements for advisers or the timeframes for compliance.

Recommendation 2: The Federal Government should commission an independent review, to take place in 2021, of measures to improve the quality of financial advice, as recommended by the Financial Services Royal Commission. The review should focus on removing persistent inherent conflicts in financial advice business models and regulatory steps to encourage new, conflict free, affordable business models. The review should be informed by the findings of ASIC's Unmet Advice Needs project, including the feedback provided in response to Consultation Paper 332.

Recommendation 3: The independent review of financial advice should examine the potential benefits of establishing an independent, accessible financial advice model in Australia similar to the UK Money and Pensions Service.

What is 'good quality, affordable financial advice'?

It is helpful to unpack what is meant by the term 'good quality, affordable financial advice' to clarify what is at stake for consumers in discussions about improving access to financial advice.

We have seen report after report from ASIC demonstrating a deep and ongoing issue with the quality of financial advice in Australia. This can be traced back to conflicts, with advisers prioritising their own financial gain through conflicted payments or acting on pressure from the company that owns their business.

The ongoing failure of advisers to meet the basic standard of acting in a clients' best interests is unacceptable and leading to poor outcomes for Australians. For example, research by ASIC in 2018 on the quality of advice provided to people about setting up a self managed super fund found that 86% of advisers had not demonstrated they had prioritised the client's interests, 91% had not complied with the requirement that advice be appropriate, and 62% of advice had not demonstrated compliance with the best interests duty and related obligations. In 10% of 250 randomly selected SMSF client files reviewed, ASIC found the client 'risked being significantly worse off' and a further 19% of clients were at an 'increased risk of suffering financial detriment'.[2]

Competence

Good quality advice is delivered by an appropriately trained, qualified and licensed professional. The reforms enacted by the *Corporations Amendment (Professional Standards for Financial Advisers) Act 2017* aimed to lift the competence of financial advisers by establishing the Financial Adviser Standards and Ethics Authority (FASEA) to set the education, training and ethical standards of licensed financial advisers in Australia. New professional requirements for financial advisers commenced on 1 January 2019. As part of these requirements, existing advisers have until 1 January 2022, to pass the Financial Adviser Exam and until 1 January 2026, to reach an education standard equivalent to an Approved Degree.

The government recently announced that FASEA will be wound up and its functions transferred to ASIC and the Treasury. We understand that there will be no changes to the existing professional requirements for advisers, or the timeframes for compliance. This is reassuring. However, it is essential that ASIC's Financial Services and Credit Panel, which will take on key tasks previously executed by FASEA (including administering industry exams) is appropriately resourced to fulfil its expanded role.

Recommendation 1: The Federal Government should ensure that:

[2] ASIC, REP 575: *SMSFs: Improving the quality of advice and member experiences*, June 2018, pp62-63.

a) **ASIC is appropriately resourced to fulfil its expanded role following the transfer of functions from FASEA**
b) **there are no changes to the existing professional requirements for advisers, or the timeframes for compliance.**

Independence

Good quality advice is independent, meaning that it is provided free of any actual, potential or perceived conflict of interests and therefore, with the interests of the consumer as the sole consideration. We know that conflicts - including asset-based fees or a big bank placing pressure on advisers in their network - leads to advisers recommending products that are poor value or even harmful to their clients. We have also known the solution to this problem for decades: remove the conflicts.

The FoFA reforms introduced in 2012 included establishing a best interests duty for advisers and banning some, but not all, forms of conflicted remuneration. While an improvement on the status quo, the reforms did not eliminate conflicts in financial advice.

As part of ongoing service arrangements, consumers are often required to pay asset-based fees which are calculated as a percentage of funds under management. Asset-based fees bear no relationship to the work actually done by the financial adviser or the quality of that work. However they do incentivise advisers to recommend some strategies over others. An advice network that includes asset-based fees creates a conflict which continues to lead to bad financial advice. For example an adviser is well aware that recommending a client pay down an external debt will not lead to their business making money from an asset based fee. They are incentivised to instead recommend investing in platforms or assets that will lead to ongoing payments. Once established, asset-based fees also do not provide an incentive to provide quality ongoing services to the client, or update advice based on changed circumstances, because the financial adviser is paid regardless.

Another source of conflicts for advisers is business relationships or ownership by large institutions with an interest in pushing products. Research by ASIC in 2018 on vertically integrated institutions and conflicts of interest found that advisors typically favour in-house products. In ASIC's sample, two-thirds of investments made by clients (both existing and new customers provided with personal advice) were made in in-house products. This was despite there generally being a good mix of both in-house products and external products on Approved

Product Lists.[3] In 75% of advice files reviewed by ASIC, the regulator found that the adviser 'appeared to have prioritised their own interests – or those of a related party of the adviser – over the customer's interests'. In none of the 75% of files judged by ASIC to be 'non compliant' did the adviser demonstrate that the advice would leave the client in a better position.[4] ASIC found that the high level of non-compliant advice suggested that the advice licensees it reviewed 'may not be appropriately managing the conflict of interest associated with a vertically integrated business model.'[5]

A further 2019 review by ASIC of advice provided by superannuation funds found that only 49% of the files demonstrated full compliance with the best interests duty and related obligations. In 15% of the files, there was an indication that the member was at risk of suffering financial or non-financial detriment as a result of following the advice provided.[6] The superannuation fund business model is built on growing the size of the fund, and for some, extracting profit from charging percentage based fees on invested capital. Therefore, there is a strong disincentive to give advice which sees this capital move elsewhere, for example to a better performing fund or what might be a more suitable investment option outside of superannuation (e.g. paying down a mortgage).

In concluding the Financial Services Royal Commission, Commissioner Hayne observed that "the law, as it stands, has not resulted in conflicts being managed successfully. It has not seen the client's interests being preferred over the interests of the adviser and the entity with which the adviser is aligned."[7] For this reason, he recommended a review no later than December 2022 to look at the adequacy of measures already taken or in train to improve the quality of advice (eg. enhanced adviser training and design and distribution obligations), and to assess whether further reform is needed.[8] For example, Commissioner Hayne also recommended that ASIC should consider further reducing the cap on commissions in respect of life risk insurance products - and ultimately reduce them to zero in the absence of a clear justification otherwise.[9] The use of Approved Product Lists is another area that warrants further review.

This review, which must be independent, should be a priority for the Federal Government in 2021. It should focus on removing persistent inherent conflicts in financial advice business models and regulatory steps to encourage new, conflict free, affordable business models. The

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[3] ASIC, REP 562: *Financial advice: Vertically integrated institutions and conflicts of interest*, January 2018, pp167-169.
[4] ASIC, REP 562: *Financial advice: Vertically integrated institutions and conflicts of interest*, January 2018, pp167-169.
[5] ASIC, REP 562: *Financial advice: Vertically integrated institutions and conflicts of interest*, January 2018, p36.
[6] ASIC, REP 639: *Financial advice by superannuation funds*, December 2019. p7
[7] Financial Services Royal Commission, *Final Report*, 2019, p169.
[8] Financial Services Royal Commission, *Final Report*, *2019,* p26.
[9] Financial Services Royal Commission, *Final Report*, *2019,* Recommendation 2.5.

review should be informed by the findings of ASIC's Unmet Advice Needs project, including the feedback provided in response to Consultation Paper 332.

Relevance

To be relevant, financial advice should be accessible to people at times in their lives when they would benefit from it most. Consultation Paper 332 refers to previous research by ASIC which shows that people tend to get or consider getting financial advice at specific junctures e.g. having recently reached a financial goal and wanting to take the 'next step'; starting or ending a particular life stage; or wanting advice to inform a specific decision.[10] These junctures may or may not coincide with when people have the knowledge or financial means to acquire personal financial advice.

Relevant financial advice must also be informed by a competent fact find. The context in which someone seeks personal advice may be 'simple' in that it is limited to one particular aspect (e.g. superannuation or a mortgage), but the consequences of personal advice that steers them towards a particular product or strategy may have much more far reaching implications. As ASIC has previously put it, "the long-term financial impact of seemingly small financial decisions can be significant."[11] It is difficult to see how these implications can be anticipated and weighed by a financial adviser without an adequate consideration of a person's circumstances and goals. This is relevant to the issue of 'limited advice', discussed later in our submission.

Affordability

The question of what is 'affordable' financial advice is less straightforward to answer than the question of what constitutes good quality advice. Research shows there is a significant gap between what people are prepared to pay for advice, and what industry says they need to charge to be viable. For example, Rice Warner research cited by the Retirement Income Review found that on average, people are willing to pay no more than $500 for comprehensive financial advice, whereas the stated cost of comprehensive retirement advice is $2,500-$5,000 - a significant gap.[12] It is far from clear that the gap can be closed via the measures that industry has so far proposed, such as extending relief to enable advisers to prepare more Records of Advice instead of Statements of Advice and eliminating the obligation to comply with the best interests duty when providing 'simple' personal advice. We look forward to reviewing any

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[10] ASIC, *Consultation Paper 332: Promoting access to affordable financial advice for consumers*, November 2020, p6.
[11] ASIC, REP 224: *Access to financial advice in Australia*, December 2010, p22.
[12] Retirement Income Review, 2020 p449.

quantitative data provided by industry participants in response to ASIC's targeted questions about affordability, as to date this has been lacking.

Some people may be willing to pay more for financial advice if they placed a higher value on it. This might be achieved through industry rebuilding community trust in financial advisers and better communicating the benefits and relevance of financial advice. In both cases, eliminating conflicts in advice is the key. However, the affordability of advice will always be relative. Just as there is an affordability barrier to accessing other kinds of professional services (e.g. lawyers), the likely reality is that the business model of paying for individual personal financial advice in a private market will always be out of reach for a significant proportion of people.

This reality needs to be accepted and appropriate solutions sought if making financial advice more universally accessible is a genuine policy goal. For example, we have previously recommended that consideration should be given to the benefits of establishing a model in Australia similar to the UK Money and Pensions Service.[13] The service is funded out of a small levy on everyone's pension savings, but then costs nothing extra to access. It provides answers to common financial questions people have throughout their lives, from saving for a first home to planning for retirement. The Pension Wise service gives people access to free, impartial, specialised guidance - delivered face to face or over the phone - about their pension options. It also provides a free, online tool to help people choose how to access their pension money, including a product comparison tool.

The Retirement Income Review briefly noted the UK model, but did not examine it in depth or having regard to relevant contextual issues, such as the limited length of time the service had operated when the Financial Conduct Authority reviewed its impact. Options for alternative models for the delivery of conflict free, affordable financial advice (including but not limited to the UK Money and Pensions Service) should be thoroughly examined as part of the independent review of financial advice that we are calling on the government to commission.

The Federal Government has already understood the need for greater affordable, independent guidance over the superannuation accumulation stage. The Your Future, Your Super legislation would give the Australian Taxation Office (ATO) the obligation to create a product comparison service for accumulation stage superannuation funds. Given much of the financial advice currently sought relates to retirement phase products and that many people have sizable balances at this point, we see significant value in extending a similar tool to assist people at this life stage.

[13] Super Consumers Australia, submission to the Retirement Income Review, February 2020, p29.

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Limited advice

In light of previous research by ASIC which "highlighted that many consumers preferred receiving piece-by-piece or limited advice rather than comprehensive advice",[14] Consultation Paper 332 has a particular focus on eliciting feedback from industry participants about the barriers they face in providing 'limited advice' to consumers.

The problem of conflicted advice

Accepting at face value that there is substantial demand for limited advice, it is important to understand why industry "struggles" to provide it in a way that is affordable.[15] To this end, we look forward to seeing the quantitative and qualitative evidence that ASIC has invited industry participants to bring forward and in particular, industry's feedback on "the issues or impediments that are within ASIC or industry's control to act on."[16]

The recent Rice Warner paper *The Future of Financial Advice*, commissioned by the Financial Services Council, gives an indication of at least some of the feedback that ASIC is likely to receive. The paper positions affordability as the primary barrier to more people accessing advice and suggests that driving down the cost to consumers requires reducing the 'burden' of regulation. It proposes that personal financial advice should be divided into the categories of low-risk ('simple') and high-risk ('complex') and that financial advisers should be able to provide

[14] ASIC, *Consultation Paper 332: Promoting access to affordable financial advice for consumers*, November 2020, p6.
[15] ASIC, *Consultation Paper 332: Promoting access to affordable financial advice for consumers*, November 2020, pp10-11.
[16] ASIC, *Consultation Paper 332: Promoting access to affordable financial advice for consumers*, November 2020, p7.

the simple advice without having to comply with the best interests duty.[17] Simple and complex advice are primarily distinguished according to the subject matter of the advice sought, rather than, for example, also taking into account the potential for advice to be conflicted.

We view the recommendation to exempt some advice from the best interests duty as only benefiting industry. It will harm customers. Arguments to limit a best interests duty are not new - we saw them from the same industry bodies during the establishment of the Future of Financial Advice reforms and during the unsuccessful attempts to wind-back that law. This Rice Warner paper is another attempt by industry bodies to wiggle out of a very basic standard for advisers to act for their clients.

Leaving aside for a moment the merits of the solution proposed in the Rice Warner paper, it is important to make clear that cost is not the only barrier to people obtaining financial advice. In REP 627 *Financial advice: What consumers really think*, ASIC reported on research which found that 35% of participants thought advice was too expensive. However, almost another one third of participants (29%) thought their financial circumstances were too limited for it to be worth getting financial advice, and almost one in five (19%) indicated that they do not trust financial advisers. Almost half of all participants (49%) agreed that financial advisers were more interested in making themselves rich than in helping their customers, and more than one-third (37%) agreed that financial advisers did not generally have the customer's best interests at heart.[18] These views are reasonable given the advice industry's overall track record of prioritising their own interests and causing extreme customer harm.

The Rice Warner paper claims, without explanation, that "if advice is delivered in a cost-effective manner, this will improve trust in the sector".[19] Based on the above mentioned research, it is much more credible to suggest that the trustworthiness of financial advisers depends on the extent to which they can legitimately reassure the community that they provide independent financial advice that is in the best interests of their clients and no one or nothing else. The paper is largely silent on the issue of conflicted advice and ultimately, this is the elephant in the room that needs to be addressed in the debate about how to achieve a financial advice regime that meets the needs of the majority of people. As long as it is not addressed, it is misguided to place too much weight on limited advice being the solution.

A more rigorous analysis than that contained within the Rice Warner paper is needed to demonstrate the robustness and appropriateness of the proposed approach to different

[17] Rice Warner, The Future of Financial Advice, August 2020.
[18] ASIC, REP 627 *Financial advice: What consumers really think*, August 2019, pp7-8.
[19] Rice Warner, *The Future of Financial Advice*, August 2020, p3.

regulatory standards for 'simple' and 'complex' advice. This is something that the review of financial advice recommended by Commissioner Hayne could consider.

What terminology should be used?

The Consultation Paper seeks feedback on the terminology used to distinguish limited advice from comprehensive advice and in particular whether 'limited advice' is preferable to 'scaled advice'.

The choice of a preferred term should be based on an assessment, via consumer testing by ASIC, of usefulness and comprehensibility for consumers. The Consultation Paper lists reasons why ASIC prefers 'limited'; in addition to these, for consumers the term 'limited' may be more intuitive and descriptive than 'scaled'. For these reasons, we support the use of the term 'limited advice'.

However regardless of the term that is used, the onus rests on the adviser to clearly explain the scope and limitations of the advice that is being provided. Ultimately, the degree to which this onus is met and the robustness of other consumer protections attached to the provision of financial advice, is much more important than whatever terminology is used to distinguish between different types of advice.

Strategic advice

Strategic advice is defined in the Consultation Paper as advice that does not make a financial product recommendation, or only makes a recommendation about a general class of financial products. It could include advice on topics such as budgeting, cash flow management and repaying debt. Strategic advice that is not about financial products is not regulated as 'financial product advice' under the Corporations Act.[20]

However, there is still the potential for poor quality strategic advice to cause harm to consumers. Rather than defining advice as an activity linked to financial products as it does currently, the legislation could instead define advice as a larger activity, designed to guide consumers through financial decisions. At times, this could involve product recommendations but the best quality advice may instead be to take no action or to behave in a different way (save or reduce spending, for example). Consumers deserve the best quality strategic advice. This is likely best

[20] ASIC, *Consultation Paper 332: Promoting access to affordable financial advice for consumers*, November 2020, pp23-24.

achieved by extending the definition of advice to capture strategic advice. However, proper consideration needs to be given to whether the licensing regime is best placed to ensure that parties providing strategic advice can apply and comply with any new obligations. This should be explored in detail by the independent review.

Digital advice

There is clear scope for digital advice to reduce the cost and improve the accessibility of financial advice, particularly to those consumers who have a preference for digital engagement.

The Consumer Data Right (CDR) regime has the potential to create sales channels through which new financial advice business models can access customers. In our submission last year to the Inquiry into Future Directions for the Consumer Data Right, we stressed the potential benefits of the CDR, while also calling for better adapted financial advice laws to ensure these benefits flow to consumers.

We anticipate that businesses may use the CDR to create digitised and streamlined 'robo advice' in place of traditional one-on-one advice between advisers and clients. This could make advice more affordable and efficient, but without properly adapted protections, it could increase the ability of self-interested advisers to take advantage of this new market.[21] Recent history provides many examples, uncovered by the Financial Services Royal Commission, of business models which seek to exploit ineffective consumer protections and erode the value that would otherwise be delivered to consumers by innovative approaches. For this reason our earlier comments about conflicted advice are just as relevant to digital advice.

Advice has its limits

Finally, we note that high quality default products offer important protection for people who are unable or unwilling to make active financial choices, including obtaining personal financial advice. In the superannuation context, Super Consumers is a strong advocate of extending the benefits of default product design from the accumulation phase to the decumulation phase. People find retirement planning decisions complex and lack confidence navigating the system.

It is clear from the Retirement Income Review findings that people are not optimally drawing down their retirement savings or selecting appropriate financial products to assist. This is in part

[21] Super Consumers Australia, Submission To The Inquiry Into Future Directions For The Consumer Data Right, May 2020.

due to the lack of a retirement covenant, which would direct superannuation funds to have greater regard to consumer needs in the retirement phase. We support the findings of the Retirement Income Review and the need for default product design to anchor consumer decision making in retirement planning.

For example, the Centre for Excellence in Population Ageing Research (CEPAR) has suggested that mandated annuities which are a feature of the retirement system in the Netherlands and convert an investment into an income for a period of time, may be more cost-effective in providing for people in retirement and simplify decision making. They have also proposed a ‘MyPension default’ option that could meet the needs of the majority, while allowing for people to ‘opt out’ into a choice product.

While we welcome the current focus on improving access to financial advice, we encourage the regulator and Federal Government policy makers to also prioritise work that recognises the role high quality default financial products can play in delivering good outcomes for consumers.