

23 September 2022

Quality of Advice Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: advicereview@treasury.gov.au

Dear Sir / Madam

Thank you for the opportunity to provide this submission in response to the Quality of Advice Review – Proposals for Reform Consultation Paper released in August 2022 (the Proposals Paper).

FINSIA – the Financial Services Institute of Australasia – is the leading professional body in the financial services industry in Australia and New Zealand with a membership base of more than 10,000 members across the two markets. Our members operate in a range of sectors across the financial services industry including: banking, institutional markets, funds management, securities, and professional financial advice. Our purpose, since 1886, has consistently been to support the financial services industry by driving the highest levels of professionalism for the betterment of our community through consistent standards of competency and conduct.

FINSIA's response to some of the key consultation questions contained in the Proposals Paper is set out below.

It is worth pointing out that FINSIA is a participant in the Joint Associations Working Group (JAWG) forum that comprises a number of leading professional bodies who collectively represent a significant proportion of the financial advisory market across Australia. FINSIA supports the views of the JAWG in all representations made to this Review, as well as the separate – but related – work that is being undertaken by Treasury as part of the Financial Advisor Professional Standards Review.

Overall comments

Broadly speaking, FINSIA is supportive of the direction in which the proposals are moving as part of this Review. It is essential, in our opinion, that the Review continue to reflect on the current design of the policy and regulatory framework that surrounds financial advice in Australia, and to advance recommendations for reform that will deliver to consumers more affordable and accessible financial advice. In our opinion, the full suite of recommendations put forward in the Proposals Paper should, on balance, deliver to consumers wider access and improved affordability of financial advice.

We do not support the views of some in the market that the reforms set out in the Proposals Paper would lead to any diminution in consumer protections for those seeking financial advice. In fact, we believe that these reforms would likely strengthen the level of professionalism and conduct of the financial advisory market, and therefore lead to an improvement in overall consumer protections and outcomes for those who seek to access financial advice in Australia.

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Reforms in this area must continue to accompany broader efforts to continue to advance a high degree of professionalism and ethical conduct in the financial advice sector. The combination of well-designed regulatory and compliance obligations, alongside an unwavering commitment to professionalism, will ultimately establish the right recipe for consumers to be able to rely upon access to non-conflicted and appropriately tailored advice to meet their needs.

Whilst not strictly within the bounds of the Terms of Reference for this Review, it is worth considering how the concepts of 'accessible and affordable' financial advice align with the concept of the 'value' of financial advice. It is appropriate for this Review, once it arrives at a final set of recommendations to be presented to the Government, to consider the extent to which such efforts could be directed towards better informing the consumers of financial advice what 'value' can – and should – be derived from improving access to, and the affordability of, financial advice. Given the widespread need for financial advice across the Australian community as a direct result of the existence of compulsory retirement savings policy through the superannuation system, it is, in our view, a critically important aspect of the discussion around financial advice that is often overlooked. The Review can make an important contribution to consideration of this as part of the Government's work in assessing the recommendations that will be put forward through this work.

Proposal One – Regulation of personal advice

We are broadly supportive of the changes proposed in this area. It is worth considering whether the concept of 'personal advice' ought to be linked only to specific financial products (or classes of products), or whether the term should also extend to strategic-level advice that does not specifically encompass recommendations about specific products (or classes of products).

There should also be further consideration of precisely how the concept of *'has or holds information about the client's objectives, needs or any aspect of the client's financial position'* would apply in practice. Such a concept has the potential to be viewed in very broad terms, thereby presenting some degree of difficulty for advisers to demonstrate how they might satisfy their obligations in this area.

Proposal Two – General advice

The proposal to alter the regulatory obligations associated with the concept of 'general advice' is also change that we are broadly supportive of. In our view, it is important to consider how consumers can be better informed about the general consumer protections available under Competition and Consumer Laws (we do not believe that consumers have a well-informed understanding of this area of the law at the moment). It may be appropriate for the Review to consider how a recommendation along these lines might be accompanied by an associated recommendation for there to be a targeted information campaign led by the government in this area in order to ensure that any perceived 'winding back' of consumer protections is addressed.

Proposal Three – Obligation to provide good advice

A number of FINSIA's members have expressed a degree of concern with use of the phrase 'good advice' embedded within this proposal. Our members do not broadly see the merit of such an approach to replace the 'best interests' obligations within Chapter 7 of the Corporations Act. The concern primarily relates to the potential for such a concept (the 'good advice' concept) to be viewed in rather subjective terms, which stems from the fact that a literal interpretation of the meaning of the word 'good' lends itself to be interpreted in different ways in the hands of different people.

FINSIA's recommendation is that further consideration be given to whether the concept underpinning the concept of 'good advice' might be best served through adoption of less subjective terminology, such as, perhaps, 'appropriate advice'. The use of the word 'appropriate' in this context could be argued to be considerably more powerful at articulating the expectation that the relevant provider of

the advice is acting with the level of due skill and care expected of any professional adviser. At the very least, use of the term 'appropriate' would appear to be less subjective and more capable of being assessed, both legally and practically, on the basis of an objective determination of facts and individual circumstance.

We believe the Proposals Paper does an excellent job of articulating the inherent disconnect between the legal mechanisms and steps that are expected to be followed by a professional financial adviser. Those steps, ultimately, could be argued to place the emphasis and focus on matters that are separate from the ultimate objectives of ensuring that consumers receive advice that is both appropriate to their individual circumstances, and that consumers are protected from the provision of advice that may be harmful to their interests. The conclusions reached in this area of the Proposals Paper make a compelling argument in support of targeted changes to the current regime.

Proposal Four – Requirement to be a relevant provider

Our members have expressed some reservations about the broad principles embedded within the recommendations put forward in this area of the Proposals Paper. In principle, our members are of the view that a common and consistent set of expectations should be imposed on all providers of advice to consumers, and that such an approach would be more likely to minimise risks to consumers in the long-term and minimise the risk of system 'gaming' to avoid or circumvent the application of laws and regulations. That said, it is understood that there must be a degree of balance struck between circumstances where a consumer is paying a fee for advice and other circumstances where advice is obtained from an institution for which no fee is being paid. Achieving an appropriate balance in this context is fraught with challenges, and ultimately, the law and regulation should be formulated in a manner that seeks to protect the interests of consumers above all else.

There is an expectation, that the ultimate form of proposed changes in this area be defined with a greater degree of clarity and that further information be provided on the educational standards required of relevant providers (noting, of course, the separate review being conducted in this area).

Proposal Five – Personal advice to superfund members

We are supportive of the recommendation to repeal s99F of the SIS Act to provide greater clarity in respect of the type of advice that can be provided by the Trustee of a superfund to their members. Repealing s99F in order to remove ambiguity around the role of the Trustee in providing personal advice and their ability to apply fund assets in order to provide that advice is also a very important step forward, in our opinion. Alongside such a change, the embedding of principles around the need for a Trustee to act in the best interests of their member and to comply with the rules set out in SPS 515 is both appropriate and necessary.

Proposal Eight – Ongoing fee arrangements and consent requirements

It is important to note that it may not necessarily always be the case that financial advice is required to be provided on an annual basis. It is therefore important to ensure that any steps taken towards an easing of the regulatory burden associated with the existing regime requiring fee disclosure statements is de-coupled from any assumption that 'new' advice will be provided to a client on an annual basis. In this context, it may be appropriate for the Review to acknowledge in its final recommendations that professional financial advice may differ in some material respects from other forms of periodic professional advice such as, say, taxation compliance advice, which typically have a regular annual process associated with them.

Proposal Nine – Statement of advice

We are broadly supportive of the proposed changes here to alleviate some of the significant regulatory and compliance costs associated with the provision of financial advice. In keeping with any professional advisory relationship though, it should be made clear that the provision of advice does need to be accompanied by an appropriate record-keeping standard – which could be either in written or digital/audio form – to provide an evidentiary standard that ensures both consumers and advisers can draw upon a form of record that is definitive and conclusive in the event of any disagreement or dispute. There must be a careful balance struck between simplifying and streamlining compliance and regulatory obligations, whilst at the same time maintaining the standards of what is expected in the context of a professional relationship between an adviser and their client.

Closing

We trust that you find the points and recommendations made above helpful in your deliberations as part of the next steps in this Review. We look forward to continuing to provide input to you over coming weeks and months. If you have any specific questions in respect of the views set out in this submission please contact me on +61 2 9275 7900.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Yasser El-Ansary', with a horizontal line underneath.

Yasser El-Ansary
Chief Executive Officer & Managing Director
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