

4 February 2022

Director
Advice and Investment Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: advicereview@treasury.gov.au

Dear Director,

Review of the quality of financial advice - Draft Terms of Reference

CPA Australia represents the diverse interests of more than 168,000 members, working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia strongly supports the Government's intention to conduct a review of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice, as recommended by Recommendation 2.3 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

The review is a welcome opportunity to take stock of the impact and effectiveness of the many reforms and measures, such as the Future of Advice reforms, that have been implemented since the commencement of the Financial Services Reform Act 2001.

We strongly believe that this review should have been conducted before many of the reforms recommended by the Royal Commission, such as the introduction of a single disciplinary body, were introduced. However, the timing of the review will now provide the opportunity for a post-implementation review of several of these reforms to assess whether they have achieved their policy intent and whether there have been any unintended costs, complications or consequences.

Importantly, the outcomes of the review must be consumer centric. The majority of reforms and numerous reviews over the past two decades have introduced additional rules and regulations governing the participants of the financial services industry, which has demonstrably impacted the affordability and accessibility of financial advice for consumers. There is a perception by some industry participants that in making many of these reforms, little or no consideration has been given to consumers' needs and preferences or to maximising good financial outcomes for consumers.

We believe the draft terms of reference contained in the consultation paper broadly provide the framework which will allow a thorough examination of the many issues faced by the financial advice industry. We also welcome the review having regard to the interim findings of the Australian Law Reform Commission's Review of the Legislative Framework for Corporations and Financial Services Regulation.

However, to ensure that a more consumer-centric approach is taken and that the review aligns with Commissioner Hayne's intent in the Royal Commission recommendations, we suggest the following issues should also be considered as part of the review:

- The examination of the role and bounds of advice that does not involve a financial product recommendation, that may be considered strategic, structural or wholistic advice

- A post-implementation review of recent legislative and administrative reforms implemented in response to the Royal Commission recommendations
- The delineation between retail and wholesale clients and what safeguards should be provided to wholesale clients
- The role of emerging, alternative sources of 'general' advice and information, such as seminars, money coaches and social media influencers
- The role of Government tools and sources of information, such as the ATO superannuation fund comparison tool, ASIC Money Smart website and calculators, and the APRA superannuation fund performance test
- The role of Australian Financial Services (AFS) licensees. For example, whether the dual AFS licensing/ authorisation and individual financial adviser registration and responsibility requirements effectively balance the benefits for consumers with potential tensions between a financial adviser's obligations to their clients and their obligations to and set by the AFS licensee
- Whether established consumer protections adequately address risks to consumers and provide accessible avenues for restitution. In particular, whether the requirements for AFS licensees to hold adequate professional indemnity insurance (PII) cover are satisfactorily adhered to, whether product offerings are fit for purpose and whether PII coverage of the industry is adequately monitored by Government regulators.
- The education, qualification and experience requirements and pathways for professional financial advisers.

We support the proposal that the review be led by an independent reviewer. However, we recommend that the reviewer has the scope and authority to appoint a panel of experts to assist with the conduct of the review.

To assist Treasury, our recommended amendments are marked up in the attached version of the draft Terms of Reference.

If you have any queries about this submission, please contact Michael Davison, Senior Manager, Advocacy and Retirement Policy on 02 6267 8552 or michael.davison@cpaaustralia.com.au.

Yours sincerely



Dr. Gary Pflugrath
Executive General Manager, Policy and Advocacy

Draft Terms of Reference – suggested amendments

Purpose of the Review

1. The Government is committed to ensuring that Australians have access to high quality, affordable and accessible financial advice. Consistent with recommendations 2.3, 2.5 and 2.6 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission), the Government is commissioning this Review.
2. The Review will consider how the regulatory framework could better enable the provision of high quality, accessible and affordable financial advice for ~~retail~~ investors that meets consumers' needs and preferences and community expectations. In particular, it will investigate:
 - 2.1. Opportunities to streamline and simplify regulatory compliance obligations to reduce cost and remove duplication, recognising that the costs of compliance by businesses are ultimately borne by consumers and serve as an impediment to consumers' access to quality advice;
 - 2.2. Where principles-based regulation could replace rules-based regulation to allow the law to better address fundamental harms and reduce the cost of compliance;
 - 2.3. How to improve the clarity and availability of documents and disclosures so that consumers are presented with clear and concise information without unnecessary complexity. How financial advice can be delivered effectively to consumers;
 - 2.4. Whether parts of the regulatory framework have in practice created undesirable unintended consequences and how those consequences might be mitigated or reduced.
3. The Review will include examination of:
 - 3.1. The legislative framework for financial advice, including:
 - 3.1.1. Key concepts such as 'financial product advice', 'general advice', 'personal advice', as well how they are used, how they are interpreted by consumers, and whether they could be simplified or more clearly demarcated. It should also consider the role and bounds of advice that is considered scaled, intra-fund or limited in scope, and advice that does not involve a financial product recommendation ~~that~~ and may be considered strategic, structural or holistic advice;
 - 3.1.2. Consideration of the safe harbour provision for the best interests duty in line with Commissioner Hayne's recommendation that "unless there is a clear justification for retaining that provision, it should be repealed";
 - 3.1.3. Financial advice disclosure requirements including statements of advice;
 - 3.1.4. Recent reforms to introduce annual renewal for ongoing fee arrangements (Royal Commission Recommendation 2.1);

- 3.1.5. The life insurance remuneration reforms, and the impact of the reforms on the levels of insurance coverage;
- 3.1.6. The remaining exemptions to the ban on conflicted remuneration in life and general insurance (Royal Commission Recommendations 2.5 and 2.6);
- 3.1.7. The application of the advice framework to certain activities and professions including consideration of Recommendation 7.2 of the Review of the Tax Practitioners Board;
- 3.1.8. Recent reforms initiated by recommendations from the Royal Commission, including but not limited to the introduction of a single disciplinary body (recommendation 2.10), the wind-up of FASEA and the transfer of regulation of tax (financial) advice to ASIC (Recommendation 7.2 of the Review of the TPB) to assess whether these reforms have achieved their desired purpose and have been designed with a broad strategic outlook whereby their interactions with one another do not cause unintended costs, complications or consequences.
- 3.2. The processes through which investors are designated as sophisticated investors and wholesale clients, if the delineation between the two is appropriate, and whether the consent arrangements are working effectively, and what safeguards should be provided to wholesale investors.
- 3.3. The role of ASIC and Actions undertaken by ASIC, including regulatory guidance and class orders, and
- 3.4. The role of financial services entities including professional associations.
- 3.5. The role of emerging, alternative sources of 'general' advice and information, including seminars, money coaches and social media influencers.
- 3.6. The role of government tools and sources of information, including the ATO superannuation fund comparison tool, ASIC Money Smart website and calculators, and the APRA superannuation fund performance test.
- 3.7. The role of Australian Financial Services Licensees, including whether the dual licensing/authorisation and individual financial adviser registration and responsibility requirements effectively balance the benefits for consumers with potential tensions between an adviser's obligations to their clients and their obligations to, and set by, the licensee.
- 3.8. The established consumer protections and whether they adequately address risks to consumers and provide accessible avenues for restitution. For example, but not limited to, whether the requirements for holding professional indemnity insurance (PII) products are satisfactorily adhered to, whether PII product offerings are fit for purpose and whether PII coverage of the industry is adequately monitored by government regulators.
- 3.9. The education, qualification and experience requirements and pathways for professional financial advisers.
4. The Review should have regard to:
- 4.1. The level of demand for advice and the needs and preferences of consumers;
- 4.1.4.2. Structural changes and professionalisation of the sector;

4.2.4.3. Best practice developments internationally;

~~4.3. The level of demand for advice and the needs and preferences of consumers;~~

- 4.4. Enabling innovation and the development of technological solutions including the use of regulatory technology and digital advice. The Review should pay particular attention to how technology and digital advice might enable mass market adoption of low-cost advice, particularly by young consumers, those with low asset values and consumers who do not currently engage with the advice industry;
 - 4.5. Opportunities to reduce compliance costs on industry, while maintaining adequate consumer safeguards;
 - 4.6. Other key regulatory developments, including the Consumer Data Right, the Retirement Income Covenant and the Design and Distribution Obligations.
5. The Review may also have regard to the interim findings of the Australian Law Reform Commission's Review of the Legislative Framework for Corporations and Financial Services Regulation.

Process

6. The Review will be led by an independent reviewer, who has -the authority to appoint an independent panel of experts to assist in the review, and who is and supported by a secretariat based in Treasury.
7. The Review will invite submissions from the public and consult with stakeholders, including consumers, industry, and regulators. The Review will also be informed by data collected by ASIC and Treasury.
8. The reviewer will provide a report to Government by 16 December 2022.

Attachment A – Relevant Recommendations

Financial Services Royal Commission

Recommendation 2.1 – Annual renewal and payment

The law should be amended to provide that ongoing fee arrangements (whenever made):

- must be renewed annually by the client;
- must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and
- may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts that account given at, or immediately after, the latest renewal of the ongoing fee arrangement.

Recommendation 2.3 – Review of measures to improve the quality of advice

In three years' time, there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. The review should preferably be completed by 30 June 2022, but no later than 31 December 2022. Among other things, that review should consider whether it is necessary to retain the 'safe harbour' provision in section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed.

Recommendation 2.5 – Life risk insurance commissions

When ASIC conducts its review of conflicted remuneration relating to life risk insurance products and the operation of the ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, ASIC should consider further reducing the cap on commissions in respect of life risk insurance products. Unless there is a clear justification for retaining those commissions, the cap should ultimately be reduced to zero.

Recommendation 2.6 – General insurance and consumer credit insurance commissions

The review referred to in Recommendation 2.3 should also consider whether each remaining exemption to the ban on conflicted remuneration remains justified, including:

- the exemptions for general insurance products and consumer credit insurance products; and
- the exemptions for non-monetary benefits set out in section 963C of the Corporations Act.

Review of the Tax Practitioners Board

Recommendation 7.2

Having recommended the regulatory burden on tax (financial) advisers is to be reduced, the Review believes it is reasonable that a similar level playing field should be considered for accountants. The Review therefore recommends the Government initiate a specific review of what advice accountants can and cannot give in respect of superannuation and which accountants that might apply to. Such a review could perhaps be undertaken by the Productivity Commission.