

Terms of Reference

Purpose and scope 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 clients. 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 simplify documentation and disclosure requirements so that consumers are presented with clear and concise information without unnecessary complexity;
 - 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, specifically:
 - 3.1.1. Key concepts such as 'financial product advice', 'general advice', 'personal advice', as well as how they are used, how they are interpreted by consumers, and whether they could be simplified or more clearly demarcated. The Review should also consider the role and bounds of advice that is scaled, intra-fund or limited in scope;
 - 3.1.2. 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recommendation that 'unless there is a clear justification for retaining (the safe harbour provision), it should be repealed';
 - 3.1.3. Financial advice documentation and disclosure requirements, including statements of advice;
 - 3.1.4. Fee disclosure and consent requirements, including reforms to introduce annual renewal of 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, including 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.
 - 3.2. Whether consent arrangements for sophisticated investors and wholesale clients are working effectively for the purposes of financial advice;
 - 3.3. Actions undertaken by ASIC, including regulatory guidance and class orders; and
 - 3.4. The role of financial services entities and professional associations.
4. As relevant, the Review will have regard to:
 - 4.1. Structural changes and professionalisation of the sector;
 - 4.2. 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 as they apply directly to financial advice.
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.
6. The Review will not make recommendations on:
 - 6.1. The professional standards for financial advisers;
 - 6.2. The new disciplinary and registration systems for advisers (Royal Commission Recommendation 2.10), the reference checking and information sharing protocol (Royal Commission Recommendation 2.7), the obligation on licensees to report serious compliance concerns (Royal Commission Recommendation 2.8) and to take steps when they detect an adviser has engaged in misconduct (Royal Commission Recommendation 2.9);
 - 6.3. Changes to the definitions of 'retail client', 'wholesale client', and 'sophisticated investor', including the income and asset thresholds;
 - 6.4. Financial services redress arrangements; or
 - 6.5. The application of taxation and privacy laws to financial advice.

Process

7. The Review will be led by an independent reviewer and supported by a secretariat based in Treasury.
8. 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.
9. The reviewer will provide a report to Government by 16 December 2022.

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.