Quality of Advice Review Proposal:

"Response"

Prepared by:

Financial Adviser Daniel Jackson (Modern You Financial Planners & Central Queensland University)

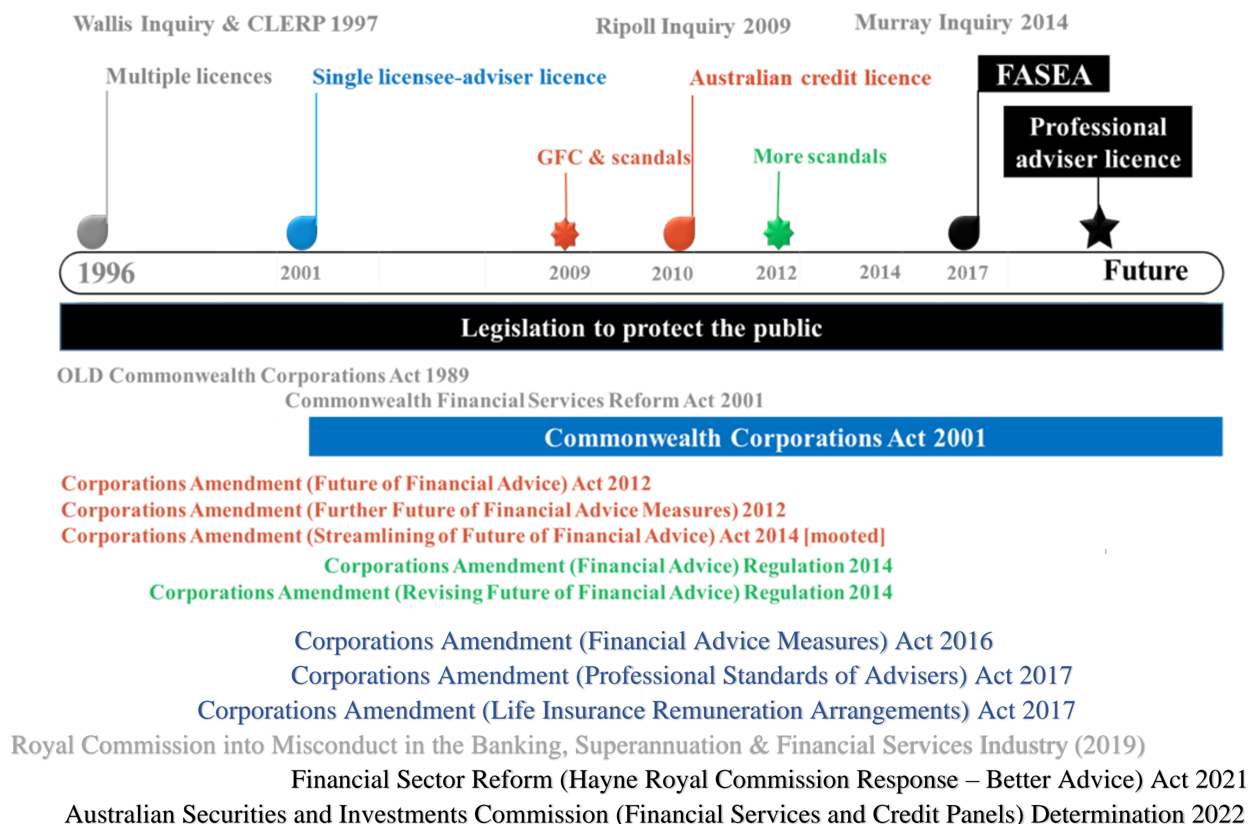
Financial Planner Andrew Lane (Money and Wealth Management & Central Queensland University)

Dr Angelique McInnes (Central Queensland University)

Introduction

Prior to reading this response, it is important to note the history of the financial services in this century. Taking into consideration all the regulation governing the profession since 1996 (refer to Figure 1), it is evident that the industry has been transitioning from Australian Financial Services Licensed product providers (AFSLs) to an emerging profession of ASIC registered individual advice providers.

Figure 1 Regulation of Financial Planning Emerging Profession Timeline



(Source: With consent adapted from McInnes, A. N. S. (2020). The regulation of financial planning in Australia: Current practice, issues and empirical analysis (1 ed.). London: Routledge.)

First evidence of this transition was noted by some Financial Advisers in 2005 when we read an article by Money Management titled: *Sweeping changes riding the conflicts controversary.* In this article, the Financial Planning Association outlines their stance on conflicts of interest based on their principles of ethics at the time. It is our view that financial planning advice should be independent from, and not tied to product providers (AFSLs) and related product recommendations. The QAR excludes the term independent financial advice, by making claims consumers want 'good advice". QAR preliminary recommendations is suggesting the return to conflicted product Financial Advisers (product sales) as well as ASIC registered Financial Adviser advice as falling under the same definition of 'good advice', but compliance of the code of ethics and adviser standards applied differently to different providers of advice.

This article further outlines, as per *Regulatory Guide 181 Licensing: managing conflicts of interest* a concern that permitting ASFLs Trustees to provide advice, particularly when it comes to “super switching”, or not, poses significant conflicts of interest (COI) risks for the client or super member. There will be no independence when AFSL Trustees of product providers review or consider the superannuation needs of their client/member.

Frank C Bearden in his PhD study in 2015 titled *Conflicts of Interest in Financial Planning: A Sequential Study of Recognition* when applying agency theory to his research confirmed that if COI is not addressed it will impair professional judgement. Agency theory is based on an agreement in which one or more persons, known as principal(s), engages another individual, known as the agent, to perform a service, delegating some decision-making authority to the agent (Jensen, M. C. & Meckling, W. H. (1976). In the application to financial planning, we are speaking of the client as the principal and the adviser as the agent. This theory is useful in understanding COI by examining what is known as the agency problem. Sitkoff (2014) explained that an agency problem arises when the agent has information superior to that of the client which cannot be easily monitored. This can tempt agents to favour their own interests rather than the client’s interests. Interests strongly held by the agent would qualify as a COI with the client’s interest. Conflicts of interest is what got us here today in the first place. How is good advice from product conflicted AFSLs going to be separated from independent good advice? Is this going to be left to the consumer to work out based on the marketing efforts of those who offer ‘Good advice”?

It is important when reading this response, that by allowing AFSL Product Distribution Trustees to provide advice with the freedom of reduced compliance and documentation, and recommendations paid for by collective fees charged at the discretion of the trustees, we are going back to the model that brought about the outcomes of conflicts of interests and financial scandals. This negates all the work that has been done as per Figure 1 above to get us to where we are now.

QAR preliminary recommendations puts into question whether the financial planning industry is transitioning into a true profession like accountants, lawyers, and doctors. During the AFA Thrive 2022 the invited influential speakers addressing QAR have referred to financial advice as an ‘industry’. Obvious terminology missing in the debates and presentations around QAR is ‘professionalising’, ‘independence’, and ‘conflicts of interest’. The focus is the removal of ‘BID’, but what about independent financial advice free of conflicts of interests (McInnes, 2020). Is the QAR suggesting that affordable accessibility would be via digital advice, where algorithms do the data collection and analysis, and create a ‘cookie cutter’ solution for the client given the limitations of algorithms? It appears we are back in 2009 when the Ripoll Inquiry Report recommended an independent board for Financial Advisers, but it was considered impracticable at the time after strong lobbying by AFSLs and others with vested interests during the consultations led instead to further scandals and a long path of FSR and FOFA reforms. We advocate a Principles Based approach. The devil is in the detail when it comes to the preliminary QAR recommendations.

Feedback from the industry

Prior to formulating this response, we have informally surveyed advisers, paraplanners, support staff and the consumers to get a clearer understanding of their interpretation of the QAR.

Based on this, the common feedback of the proposal include:

- This takes us back over 25 years on how we did things. We could provide advice and sign up on the same day with a customer advice record (CAR) which was a few pages long with the advice provided and the fee to be paid. It was a tick and flick document. It didn't work then, and it won't work now. You need to provide documentation for the client to sign. PI insurers will not allow advice to provide advice with no documentation. I used to provide an executive summary which was 2-3 pages explaining in bullet points the clients background, the goals and objectives and the recommendations, then disclosure of fees. That's all you need.
- PI insurers will not allow advisers to provide advice with no documentation.
- There's no sense in having a 2-tier advice system where you don't need to be a relevant provider to provide personal advice. This is for the Intrafund and digital advisers. This effectively means that these advisers don't have to meet the education & code of ethics etc., if they provide simple advice (which isn't defined) and they don't charge a client fee directly).
- I don't believe we could be a profession if we have some advisers qualified and others not. This is what we had 5 years ago before FASEA.
- You need to keep BID. This good advice that is reasonably likely to put client in better position diminishes consumer protection. It would mean the existing code of ethics would need to be modified. If an adviser doesn't have to do an SOA, then there should be more than enough time to cover BID.
- My gut feel is that risk commission will remain. However as mentioned any risk advice would need to meet BID still. Therefore, this creates a 2-tier system where some advice is subject to BID and others are only covered by “Good Advice”.
- Will we still have a career? Most of us chose to be paraplanners and support staff and have no intentions of becoming advisers, but love what we do.
- What if we do not want advice from our super fund? Do we still have to pay for this?
- How will I know if the advice is suitable for me if it is not in my “best interest”?
- How much fees are the super funds going to charge now? Aren’t we paying enough?
- If a trustee has advisers, wouldn’t this be manipulating the markets by pushing their “in house” investments.

Good advice

The term "Good Advice" as per page 8 of the QAR 2022, is defined as: *'Good advice' is advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided.* This has been interpreted to "advice that is provided with the intention to assist the client with their specific needs. This understanding can be supported with the following: *The obligation to provide 'good advice' would replace the best interests duty, the appropriate advice duty, the duty to warn the client and the duty of priority in Chapter 7 of the Corporations Act.*

Therefore, we conclude that, "Good Advice" equals good intentions, especially when we quote page 22 of the QAR: *The change from 'Be good. Do the right thing' to 'provide good advice' is I think one of substance.* For which, "the road to hell was pathed with good intentions" (Bohn, 1855). This quote is the basis in which modern day ethics have been taught and is included in most syllabus on ethics taught in the financial service profession under the current requirements.

An advice client example of this would be John contacts his super fund to discuss rolling over three (3) funds into one, the adviser, under good advice, assists John into rolling his super into their product. Therefore, the advice has provided John with "good advice."

As the adviser is no longer required to follow the best interest duty and fails to determine that John has had past medical issues, by rolling over his super, John loses his current insurances. As his circumstances may change, i.e., he purchases a new house, John applies to replace the insurances that he has lost only to be now declined. As a result, John can no longer increase his insurances and will be under-insured. Should he be able to make a claim if he needed to, John will be financial impacted. However, if John had retained his current super funds, John would still have these insurances.

In this example, the question then becomes "Would the advisers' recommendations be considered as "Good Advice" in a court of law and the public court?" As well as "Is the adviser exposed to a conflict of interest?" as per the definition provided by Frank C Bearden in his thesis mentioned earlier.

It is also important to note: For as long as BID is incorporated into the law, relevant providers (assuming this to be registered Financial Advisers providing personal advice) will continue to be bound by the FASEA Code of Ethics, which requires them to act in the best interest of clients. So therefore, "Good Advice" will only be acceptable for advisers authorised by an AFSL trustee. This is referenced in the QAR page 35 *This is because only relevant providers will continue to have a best interest's duty under the Code of Ethics.*

Further extending on this, the interpretation of "Good Advice" is already available to consumers via website resources such as the ATO and MoneySmart. There are resources available to consumers through financial coach's as well as platforms such as MyGov and the complying super funds. They all have the means to allow implementation of "Good Advice." Therefore, it raises the question whether *it is necessary for trustees to provide this service for a monetary benefit?*

Intra-fund advice and paying for advice through superannuation

As noted at the start, over a 22-year period, the financial advice services sector has been transitioning away from product providers in providing advice to the public. This is due to several reasons such as:

1) This allows the AFSL provider to capitalise on their members.
2) This allows the AFSL trustee to act with a "conflict of interest"
3) This can allow AFSLs to charge unnecessary fees by "collectively charging the many, to benefit only the few"

To quote the industry super fund advertising campaign slogan "*Will you allow a fox into the hen house?*" 2017 when they were pointing a finger at the banks providing advice/ products on superannuation and *"putting the pressure on our federal politicians to let them in"* The Guardian (2017). The industry super fund campaign was implying that a bank will have vested interest that is not in the "best interest" of their clients, compared to industry funds which claims to have the "best interest" of their members.

This can be said about all AFSL Trustees in general providing advice. Especially as trustees "excluding SMSF" oversee a financial product. If a trustee has an adviser providing "Good Advice," we can assume that "Good Advice" will entail in-house products and investments. As a result, this will further create a conflict of interest. Any recommendations for in-house investments can drive an increase in unit prices to make "returns" look more attractive, despite the fact that they may not be suitable to the member's needs.

Collective costs charged by trustees

According to Statista (2022), the medium age for an Australian is 37.9 years old. The average annual income for a person in that age group is $78,192 per annum, according to Brown (2021). Based on the current mandatory employer super contribution rate of 10.5% per annum, we can conclude that the average employer contribution will be $8,210.16 pa for an average Australian aged 37 earning the average income. According to Australian Super (2022). The average super fund balance for a male within this age group is $130,700 and for a female is $92,800.

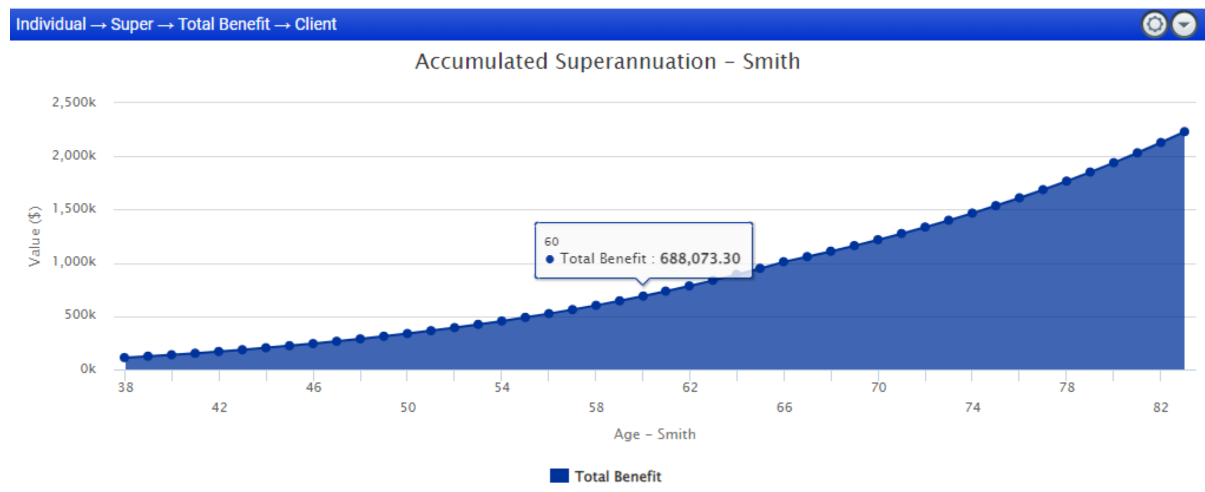
Although there has been no indication on the amount that would be charged to a client in the QAR, given "*Superannuation fund trustees should have discretion to decide how to charge members for personal advice they provide to members and the restrictions on collective charging of fees should be removed."* **Levy Page 9,** using AMP's former Adviser Service fee of 0.44%, we can determine a base cost of the "Good Advice" service on offer by a trustee. Is Levy assuming AFSL Super Trustees are more trustworthy when it comes to charging fees, than for instance AMP and other AFSLs?

Case Study:

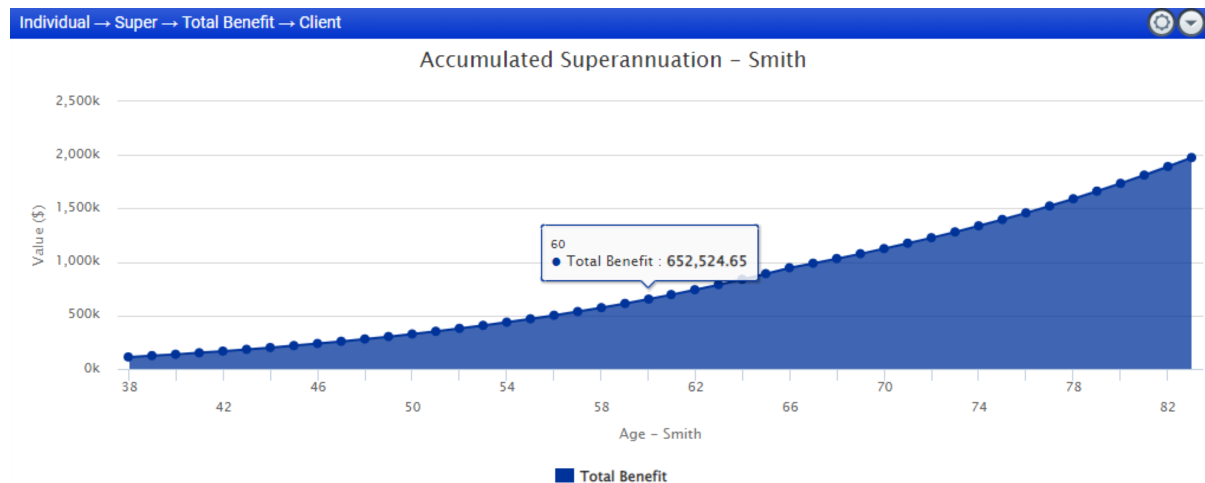
Age	37.9 years
Income	$78,192.00 pa
SG Contributions	$8,210.16 pa
Account balanced	$111,750.00
Account details	Popular Industry Superannuation fund Balanced (MySuper option) No Insurances Investment fees and administration fees remain equal in each case

Using two key dates for the above client to receive advice: Age 60 when they are eligible to begin to Transition to retirement:

Current Super projection



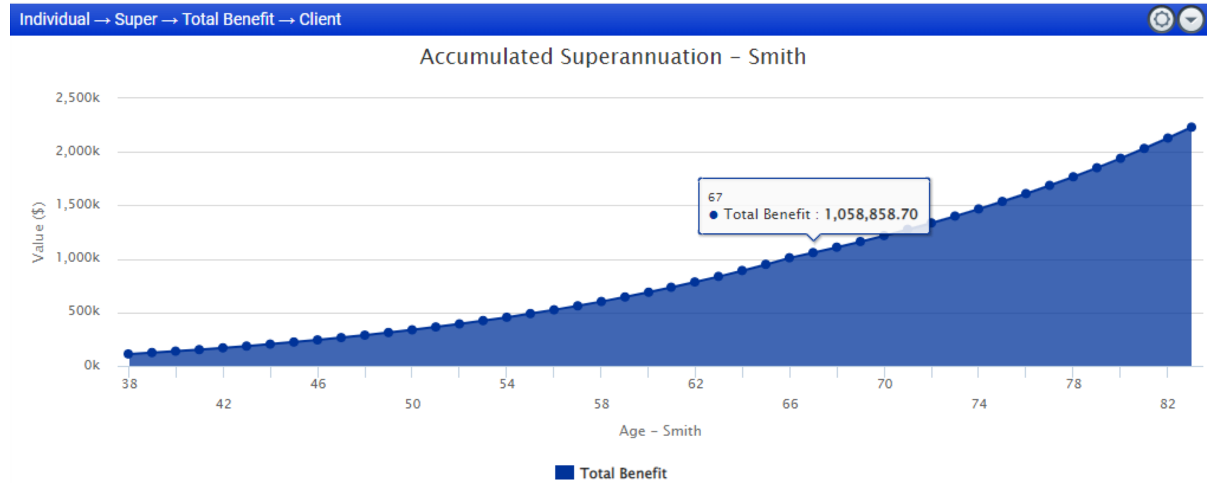
With a trustee "Collective adviser fee"



Based on a collective fee of 0.44%, the difference between the super balance at age 60 is $35,548.68.

Age 67 at age Penson age:

Current Super projection



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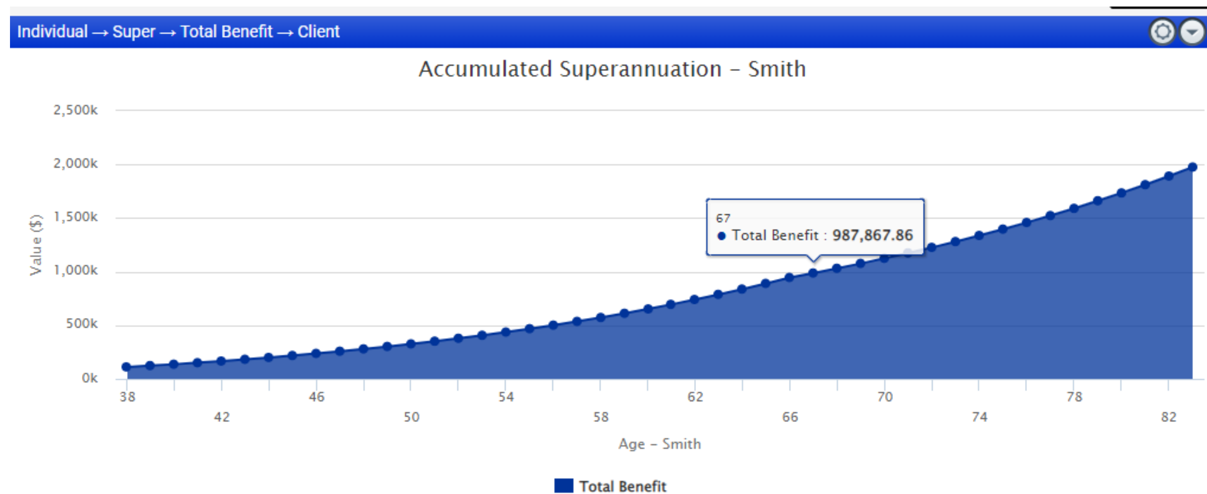


(Source of charts: IRESS XPlan Software)

Based on a collective fee of 0.44%, the difference between the super balance at age 67 is $70,990.84.

According to The Adviser Ratings 2022, the Financial Advice Landscape Report has found the *median fees charged to consumers increased from $3,256 to $3,529 a year*. Allowing for CPI, we can expect this fee to be $6,075 by age 60 years and $7,222 by age 67.

Therefore, in our case study above, we can determine that:

Age 60 – Transition to retirement

	Under the current model	Under the proposed model
Scenario	Client has requested advice from a licensed professional	Client has requested advice from a trustee adviser
Fee	Has not paid a fee until advice is required	Has been paying a fee via a collective arrangement.
Costs of advice:	$6,075.00	$0.00
Amount already paid	$0	$35,458.68
Difference in costs	$29,383.58 in favour of the trustee	

Age 67 – Retirement (no previous advice provided)

	Under the current model	Under the proposed model
Scenario	Client has requested advice from a licensed professional	Client has requested advice from a trustee adviser
Fee	Has not paid a fee until advice is required	Has been paying a fee via a collective arrangement.
Costs of advice:	$7,222.00	$0.00
Amount already paid	$0	$70,990.84
Difference in costs	$63,768.84 in favour of the trustee	

Therefore, based on the three reasons why the industry has been moving away from a model associated with AFSL product providers in providing advice, this raise concerns that the proposals in the QAR:

- Allows the AFSL provider to capitalise on their members based on the results of the difference of fees between our scenarios
- Permits the AFSL Trustee to act with a “conflict of interest”, compared to registered ASIC Financial Advisers given there is a potential for a large monetary profit for them when providing “Good Advice” for their member to move into their fund
- may have a detrimental monetary effect for the superannuation member for their retirement.

Furthermore when we review the outcome of a model where collective fees are charged by trustees for the opportunity to provide advice, in a recent article from the IFA (2022) in response to the new statistics released by ASIC, “*Six of Australia’s largest banking and financial institutions have paid or offered a total of $3.6 billion in compensation as at 30 June 2022 to customers who “suffered loss or detriment because of fees for no service misconduct or non-compliant advice”, ASIC has confirmed”.*

By returning to this type of fee model, surely it will eventually lead to the same financial outcomes and scandals as the financial services sector has witnessed and have had to deal with over the past few decades. Who will then cover the costs of compensation -The AFSL Trustees, investors (if applicable), the members of the fund, and or taxpayers?

Therefore, a collective fee charge arrangement will not be suitable.

This then further raises questions in relation to Self-Managed Super Fund Trustees and whether they can provide advice to their members.

Advice fee charges to products under the supervision of trustees

Under the current arrangements, it is at the discretion of the AFSL Trustee to allow an adviser to charge fees to a member's super balance, and the member has the choice whether they will use the fund adviser or go to a more independent adviser.

The option to access super fund advice, and who provides that advice, and the fund advice fees should be in the control of the member or client of the adviser and not the Trustees to direct. Trustees will always have a vested interest that might not be in the member or client's best interest.

It should be common practice that the member gives their free prior and informed consent as to whether they permit AFSL Trustees to charge a fee for fund advice It gives the client/super fund member a fair opportunity to have choice of adviser and seek the services of a professional who is not at higher risk of breaching conflicts of interest in relation to their superannuation and retirement needs under the sole purpose test.

Sole Purpose test

In recent years, it has become apparent that superannuation savings can be accessed prior to retirement and used to assist members in the form of the Covid-19 pandemic relief as well as with opportunities via the First Home Super Savers Scheme, compassionate grounds scheme and severe financial hardship.

Under compassionate grounds:

Super fund members have been legally allowed to withdraw some of their super on compassionate grounds. Compassionate grounds include needing money to pay for:

- medical treatment and medical transport for themselves or their dependant/s
- palliative care for themselves or their dependant/s
- making a payment on a home loan or council rates so they do not lose their home
- accommodating a disability for themselves or their dependant/s
- expenses associated with the death, funeral, or burial of their dependant/s.

Under severe financial hardship:

Severe financial hardship is not administered by the ATO. The member needs to contact their super provider to request access to their super due to severe financial hardship.

They may be able to withdraw some of their super if they meet both these conditions of release:

- They have received eligible government income support payments continuously for 26 weeks.
- They are not able to meet reasonable and immediate family living expenses.

If they withdraw their super due to severe financial hardship it is taxed as a super lump sum. The minimum amount that can be withdrawn is $1,000 and the maximum amount is $10,000.

If their super balance is less than $1,000, they can withdraw up to your remaining balance after tax. They can only make one withdrawal in any 12-month period (ATO, 2022).

Therefore, as noted by Pam Roberts, Senior Technical Services Manager, in the IOOF news and insights {insert date}, "*Under section 62(1) of the Superannuation Industry Supervision Act 1993 super funds must be maintained 'solely' for the purpose of providing 'core' benefits on retirement and death and/or an ancillary purpose, such as disability benefits. This 'sole purpose test' is part of ancient super lore which goes back to the earliest days of super regulation. Its design was to refocus super on its retirement purpose, stop funds being used for tax avoidance and clean up the industry so it could accept compulsory super contributions. The sole purpose test hasn't changed much in over 30 years and, although there have been strong arguments for a review[1], at this stage the Government has no plans to change it". T*he article further says, "*The basic principle is that any payments from a super fund must meet the sole purpose test, including fees for financial advice. The sole purpose test does not mean that fees for financial advice cannot be charged, instead, for fees deducted from a super account or fund, the purpose of those fees must meet the sole purpose test."*

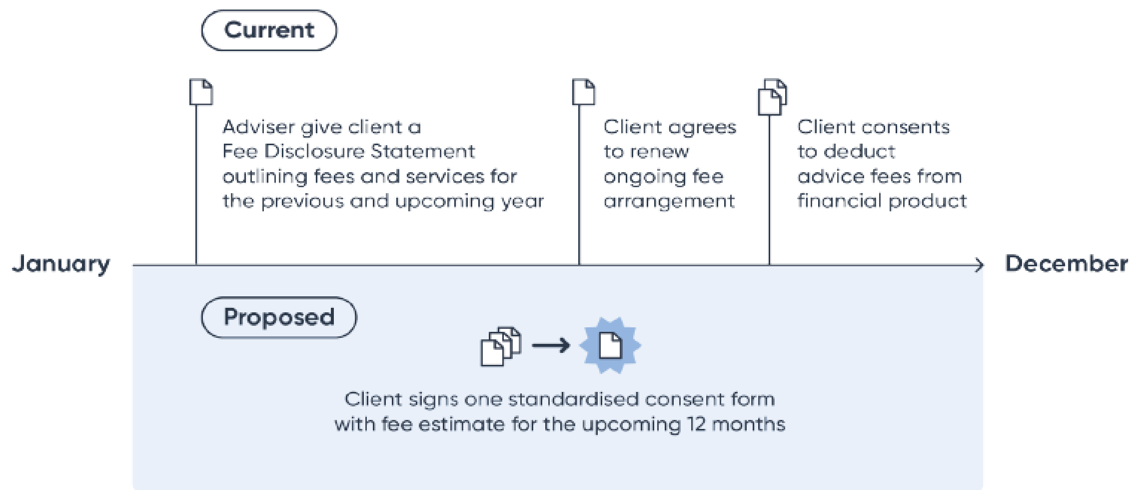
Although in his final report, Commission Haynes (2019) notes: "*(It) is limited to advice about particular, actual or intended superannuation investments. This may include such matters as consolidation of superannuation accounts, selection of superannuation funds or products, or asset allocations within a fund. It would not include broad advice on how the member might best provide for their retirement or maximise their wealth generally. Any practice by trustees of allowing fees for these latter kinds of financial advice to be deducted from superannuation accounts must end." Un*der the current framework, advisers must consider the broader long-term effects of advice (Standard 6) as well as they must act within the client's best interest (Standard 5).

To make advice more affordable for the average consumer, taking into account the acknowledgement retirements savings serves as a means to fund one when required, whilst complying with the code of ethics, if a consumer has a low net wealth or surplus of income and requires immediate advice, the question becomes *"should the sole purpose test be reviewed to allow for all forms of advice being charged to the ones retirement savings if the advice can place them in a better position for the longer term, which will have further benefit for their (the clients) retirement?"*

Fee disclosure and ongoing fee arrangements

As pointed out in section 5.1 of the QAR, it highlights what a Fees Disclosure Statement (FDS) letter is and the basis it is sent to the clients. However, it notes multiple documents are used to achieve this.

Figure 2 Ongoing fee arrangements and consent requirements



(Source: QAR page 30 2022)

The proposed changes as outlined in Figure 2, which is Diagram 4 in the QAR.

In practice, most licensees have reduced this to a single document referred to as an Annual Advice Agreement or Annual Fee Agreement. The only additional document is a consent form to the AFSL Trustee to deducted fees from the members account or for a direct debit agreement with a bank.

The QAR proposes that these documents remove past services provided. However, if we review the look back audits conducted by Licensees in more recent years, we can determine that the current model ensures there is no misunderstanding between the adviser and the client/super fund member. As per Standard 8 of the Financial Adviser or FASEA Code of Ethics, where an adviser must keep up to date and accurate records, the addition of services provided is approximately an additional two pages within the document. It takes a minimal time to complete and is a means to confirm that the service/s was provided to the client as agreed. It further creates opportunities for a client to enquire about the fees and charges as well as resolve any misunderstandings.

The removal of reporting past services provided will have no benefit of reducing the burden for the adviser as well.-This will only be a benefit to those who are intending to charge a fee for the preceding 12 months who have not provided a particular service and wishes to conceal this from the client.

Statements of Advice and Financial Services Guides

Statements of advice

A statement of advice is a written formal document, or contract, which explains to a client:

- What goals have been identified
- What position the client is currently in, including:
  - Tolerance to risk
  - Insurance needs analysis
  - Their current assets, liabilities, income, and expenses that has been disclosed at the time of advice.
- What is being recommended to them
  - Benefits
  - Features
  - Risks
- The fees and charges associated with the recommendations
  - Advice fees
  - Product fees
- The steps required to complete the recommendations
- Expectations of advice
- Authority to proceed.

In addition to being a formal document, it also an educational aid for the clients and serves to reduce any misunderstandings.

Proposal 9- QAR Page 33 2022, as below, is to reduce the need for a Statement of Advice and is replaced with "accurate record keeping".

Statement of advice
Providers of personal advice to retail clients would be required to maintain complete records of the advice they provide and to provide a written record of advice to a client on request. This would replace the existing requirement for advisers to provide a statement of advice or record of advice.
Outcome: This proposal is aimed at reducing regulatory complexity and burden. This is intended to reduce the cost of providing advice and subsequently increase the accessibility and affordability of financial advice without consumer detriment.

However, if you refer to the *CAMEO within the QA*R report, and adviser aka relevant provider, is still required to conduct themselves as per the Code of Ethics, which states, as per Standard 4 that *You may act for a client only with the client's free, prior, and informed consent.*

Standard 4 is achieved using a Statement of Advice and this document will still be required.

However, as per the Cameo's, an AFSL Trustee is not bound by the code of ethics, nor are their (the trustees) advisers as they are not considered relevant providers – therefore, this proposal will have minimal merit to the current financial service professionals and only benefit those who are providing advice under an AFSL Trustee.

Furthermore, as this document will not be provided to the client, this provides raises a question on who will be held accountable should the "Good Advice" be determined to not be in the client's interest and who will be responsible for any claim's payments, the AFSL Trustees who charge at their discretion, or the members of the fund or someone else. Will there also not be implications for professional or product indemnity insurance for the AFSL Trustees?

Financial Service Guides (FSG)

The FSG is designed to provide clients with enough information to decide whether to obtain financial advice (or any other financial service) from you.

Along with other financial services disclosure obligations, the FSG aims to ensure that your clients receive good quality advice and are able to make informed decisions (ASIC, 2022)

The Financial Guide outlines the terms, rights, and expectations that a client can expect prior to any advice services have been offered. This gives the client an opportunity to have informed consent prior to engaging any further with an adviser before they will begin to charge for fees.

In proposal 10: the QAR proposes that this document should be provided at the time of advice is provided with the outcome aimed at allowing advice providers more flexibility in the way they provide information to their clients - this will only be beneficial for AFSL Trustees as they are not bound by the FASEA or Financial Adviser Code of Ethics. Relevant providers, however, will still be required to conduct themselves as per this code of ethics and will still be required to provide these prior to any advice being offered to a client as per Standard 4.

Design and Distribution Obligations Reporting

DDO offer additional information which provides an insight the investment and the intension of the investment. Reporting investments outside of their target market allows the relevant provider to support their decision to advice beyond the target market determination (TMD). Especially when options are limited based on the client's needs and investment style. This is relevant during downturn markets as we have been observing in recent times.

However, stronger regulations for AFSL product providers to report their investments and the TMD would be more beneficial. Mainly for AFSL Trustees that do not disclose their specific investment options to the general public. This is in reference to many industry funds that provide their asset allocation and, at most sector allocation. However, they fail to disclose, even requested, the specific portfolio. By failing to do so, this allows for risks such as investment overlaps as well as raises concerns when reporting returns.

Digital advice

Although there is a growing demand for technology in the advice profession, the topic of Robo advice, or digital advice remains controversial and has yet to stand the test of time. Robo-advice uses modern technology where digital advice is written as a mixture of algorithms and analysis from experts working behind the scenes to create financial plans automatically for clients. Robo-advice has been touted as the holy grail to less expensive, more affordable financial advice. We argue that this might be the case at the front end when clients pay for the online platform service and gets the advice. However, it can be an expensive undertaking long term for the client if the robo-advice turns out to put the client in a worse financial position than before the advice, because it was not personalised enough for the client's circumstances. It might make financial advice accessible, but it does not promise that it will put the client in a better financial position after the advice has been paid for. Robo advice is limited in that it cannot consider the impact of the investment advice on for instance taxation, and estate planning. All they can do is provide an investment portfolio, which it manages and rebalances automatically based on the client's investment goals, timeframe and risk tolerance.

Digital advice is written as an algorithm by a coder and can be coded to be bias towards the AFSL preferences that might not be "Good Advice" for the client, but good business for the AFSL.

During the AFAThrive 2022 Conference AFCA provided examples of cases of misconduct highlighting how the lack of a Statement of Advice documents in all the cases led to hurting a client financially. Indeed, digital technology like video recordings of providing evidence-based advice or a SOA presentation instead of a signed Ms-Word document seems to be a trend being promoted presently. If something should go wrong which leads to a legal event, it is worthy to note that it takes longer to search for evidence in a video than read a document or use a search function on specific terms.

Personal and General Advice

In more recent years, it has become evident the role consumer biases have regarding their investments and the outcome these biases could have on a consumers decision making process.

Unlike traditional financial Theory, which includes beliefs such as:

- Both the market and investors are perfectly rational
- Investors truly care about utilitarian characteristics
- Investors have perfect self-control
- They are not confused by cognitive errors or information processing errors

Behavioural Financial Theory identify the following traits in an investor:

- Investors are treated as "normal" not "rational"
- They actually have limits to their self-control
- Investors are influenced by their own biases
- Investors make cognitive errors that can lead to wrong decisions

Understanding these theories and the biases a vital role in the current legislations surrounding the difference between personal and general advice, in particularly, adverse effect on investor's decision-making abilities based on the views of behavioural finance theory as " Normal" but subject to decision making biases and errors based on the following:

Self – deception: The concept of self-deception is a limit to the way we learn. When we mistakenly think we know more than we do, we tend to miss information that we need to make an informed decision.

Emotion: emotion in behavioural finance refers to our making decisions based on our current emotional state. Our current mood may take our decision-making off track from rational thinking.:

Heuristic simplification: Information-processing errors.

Social Influence: Our decision-making is influenced by others.

An example of how the concepts of behavioural finances can have a negative impact on investors is the recent example in Luna Crypto, where investors who were caught in the hype lost 99% of their investment in 24 hours business insider 2022.

With the increase popularity of FinInfluencers and unsolicited "financial advice" being provided to the public, especially with items on social media such as *"why you should pay a tradie in cash to save from the tax they don't pay"* it is important that we retain a high level of regulation surrounding the difference between personal and general advice and we retain the current laws to protect consumers.

Another reason to retain high regulations around providing general and personal advice is to protect consumers from fraudulent actives from so called "experts" such as Melissa Caddick, activates "cost 72 investors approximately $23 million, maybe even more" (Money Magazine, 2021)

Professional Indemnity Insurance Implications

Good advice model will have implications for professional indemnity insurance and product liability insurances for providers of advice. Although the impact of this is yet to be determined, there is a growing concern amongst advisers who provided feedback, especially regarding the increasing costs of insurance premiums.

The basis of the justification of this concern is based on the four of six main areas of claims identified by Everest Risk Group in 2020:

- Incorrect or inappropriate financial advice for the client's circumstances
- Inappropriate estate planning
- Deceptive or misleading conduct
- Failing to recommend or arrange appropriate risk insurance

With the remaining two being

- Privacy breaches
- Employee fraud and dishonesty

With a relaxed compliance approach and procedures under the good advice framework (as opposed to the current "Best Interest Duty" requirements and Regulations regarding disclosure of documents), should advisers expect an increase in Professional Indemnity Insurances, and will this potential increase become a contributor to the rising costs of advice remains the questions?

Once again, the devil is in the detail.

Vertical Integration and practical application

'Good advice' model will promote vertical integration by product distributors to sell product under the disguise of financial advice.

The practical application of consumer protection when something goes wrong and lands up with AFCA and due diligence through mainly good recordkeeping is questionable, because records do get destroyed or created retrospectively when a misconduct is discovered. Once again, the devil is in the detail of how 'Good advice' will be implemented.

Conclusion

In concussion, although there are some sections of the QAR that will be beneficial for clients seeking advice, overall,

- With the recommendations, as per past concerns, the recommendations for AFSL Trustees to provide advice under "Good Advice" could have future concerns around conflicts of interest. Especially with the recommendations to remove the best interest duty and reduction of compliance documents.
- There is a justifiable concern of financial detrimental to clients via collective fees, which as per the recent look backs, could be in the billions.
- The Statement of Advice and Financial Service Guide serves a purpose. It should continue to be supplied to a client prior to implementation of the advice. However, a simplified version of current SOAs would be welcome.
- There are minimal benefits to the current advisers as they are still obligated to provide advice as per the FASEA Code of Ethics.
- Clients of AFSL Super funds are at risk to benefit even less than the status from highly product conflicted advice they would receive from the AFSL Trustees and their advisers as the impact of the advice on the overall financial position of the client will be ignored. This could have costly ramifications for the client, and scandals will return to the financial services sector as a result.
- The QAR proposals do not permit a level playing field within the Financial Services Advice sector, which could hamper fair competition.
- Due to the greater understanding of consumer biases, the trends we are observing with certain markets as well as the content being promoted on social media, it is important that we retain a high level of regulations when providing personal and general advice as well as protect consumers from being exposed to criminal activates.
- Like the Consumer groups we maintain these proposals are not promoting protection of consumers
- Where practices may reduce their costs in their compliance obligations, there is a potential of an increase in costs in other aspects such as their Professional Indemnity insurance premiums. As a result, there is a potential that there will be little to no benefit to the consumer with the QAR proposal, with increased costs to serve these clients.

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