6 May 2025

Andre Moore
Banking Review, Investment and Financial Advice Branch
Treasury
Langton Cres
Parkes ACT 2600

By email: FinancialAdvice@TREASURY.GOV.AU

Dear Andre,

Submission: Improving access to affordable and accessible financial advice
Tranche 2 Exposure Draft legislation

The Financial Services Council (**FSC**) appreciates the opportunity to engage with the consultation on the Exposure Draft (**ED**) of the *Treasury Laws Amendment Bill 2025: Delivering better financial outcomes* and associated consultation 'Advice Through Superannuation' (**Consultation Paper**), which covers the first part of the Tranche 2 reforms.

The FSC is a peak body which sets mandatory standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, financial advice licensees and investment platforms.

The financial services industry is responsible for investing more than $3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

The regulatory framework for financial advice has driven the cost of providing advice to over $5,000, placing it out of reach for most consumers. If implemented effectively, the Delivering Better Financial Outcomes (**DBFO**) reforms can meet the Government's objectives of simplifying regulation and expanding access to quality financial advice for more Australians.

The Tranche 2 reforms are central to the success of advice reform in Australia, including the potential benefit to consumers that the reforms can provide. Given the interdependency of the reforms currently being consulted on with the remaining components of the reform package still to be released, there are limitations on the extent to which industry can currently respond to the drafting provided. For example, the consultation seeks to clarify the scope of advice that can be provided under collective charging through superannuation, yet it does not offer guidance as to what parameters will be set for the advice to be provided by the New Class of Adviser (**NCA**), which can also charge through collective charging via superannuation. It is important for these two reforms to be reviewed together, and with the backdrop of increasing adviser numbers through the announced education pathway reforms, which the FSC strongly supports.

Within that context, and given the Government's intention to consult further beyond the submission due date, the FSC provides the following suggestions for improvement to the legislation. Further, this submission represents an initial position based on the drafts released, and the FSC reserves the right to provide further comments on these changes in the context of the full suite of Tranche 2 draft legislation once issued.

We support the focus on cutting red tape that adds to cost without providing a benefit to consumers and expanding access to financial advice about savings, retirement and insurance for all Australians. The FSC is committed to achieving the right policy settings for the final form of the Tranche 2 reforms to achieve industry consensus and ensure their swift passage through Parliament.

In this context, we recommend the following in response to the Exposure Draft legislation:

Advice through Superannuation

- Given the critical interaction between the various Tranche 2 measures, it is important to consider the full package of legislative changes holistically. The FSC's response may evolve with the release of further draft provisions.
- The FSC considers that the principles for collective charging for advice in superannuation should be further reviewed and finalised in conjunction with the advice parameters for the NCA and the modernised best interests obligations. Given the potential for overlap between relevant providers and NCAs where collective charging is concerned, it is challenging to comment definitively on the collective charging model without also understanding the parameters of the NCA.
- Before finalising draft regulations on what advice topics should be collectively charged, Treasury should clarify that collective charging excludes unavoidably complex advice topics that are unable to be delivered by trustees based on their existing legislative and regulatory obligations (e.g. the sole purpose test and members best financial interest duty). Trustees will need to decide what types of advice they provide to members based on these obligations regardless of the scope of the 'Allowed Topics', i.e. they may determine they will not provide collectively charged advice on all topics listed.
- Where more complex advice is required, beyond the scope of collective charging, superannuation trustees can use a fee for service model, and/or refer the member for comprehensive advice.
- To ensure transparency and clarity, entities should be required to advise members that collectively charged advice to members comes at a cost which is paid by all members. Entities should not be able to incorrectly market collectively charged services as being delivered at no cost.

Targeted Superannuation Prompts

- The draft requirements for providing a targeted superannuation prompt should be less prescriptive and proportionate to existing general advice obligations, encouraging trustee uptake of these communications for the benefit of members.
- The ED should clarify that the targeted prompt regime does not override or constrain a trustee's existing ability to provide general advice to members under existing laws.
- Where possible the framework should align with a trustee's obligations under the Retirement Income Covenant and proposed Best Practice Principles for retirement, acknowledging the need for an optimised retirement strategy for members under their statutory obligations. As part of this strategy the FSC considers that effective superannuation prompts should provide opportunities to direct members to the availability of advice through external advice partners where they need comprehensive advice.
- The ED should either exclude targeted superannuation prompts from the *Spam Act 2003*, or clarify that targeted prompts do not constitute marketing materials, to ensure that appropriate cohorts of members are not inadvertently excluded from receiving important prompts.
- The ED should align the requirement for trustees to implement an opt-out request with existing spam regulations (five days to act on a notice), instead of "the first business day after receiving the notice" as currently drafted.

Client Advice Record

- Reforms to introduce the Client Advice Record (CAR) must be accompanied by a concerted effort to realign regulatory expectations with the core statutory obligations, so that advisers are not penalised for producing shorter, clearer documents.
- CAR reforms must support shorter, clearer documents, prioritising consumer trust. A principles-based approach, whilst remaining supportive of flexible formats (e.g., digital tools), would enhance accessibility and support the use of professional judgement.
- Guidance for industry on 'technologically neutral' CAR delivery, covering record retention, consent, and verification, will be important to encourage innovative formats and ensure certainty for industry.
- The CAR requirements should remove redundant disclosures (e.g., related party information in FSGs, product costs in PDSs) to reduce costs and improve consumer understanding. Expectations relating to content requirements for the 'reasons for advice' provision should also be clarified.
- To avoid confusion with 'Corporate Authorised Representative,' replace 'Client Advice Record' (CAR) with 'Client Advice Summary' or 'Advice Summary Record' to ensure clarity and consumer accessibility.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

- The Record of Advice (ROA) framework should be harmonised with the CAR requirements and simplified by shifting the existing threshold from ‘significant change in client circumstances’ to ‘significant change in recommended strategy’ to reduce confusion and compliance risks.

We thank Treasury for consideration of our response as it finalises the design of these aspects of the reforms and would welcome the opportunity to discuss our responses further.

Yours faithfully,

Harvey Russell
Policy Director Financial Advice & Strategic Advocacy

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000

E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

Response to Exposure Draft legislation

This consultation covers the first three elements of Tranche 2, including reforms to:

- Provide clear rules on what advice topics can be collectively charged for via superannuation **(Advice through superannuation)**;
- Allow superannuation funds to provide targeted prompts to members to drive greater engagement with superannuation at key life stages **(Targeted prompts for superannuation members);** and
- Replace the statement of advice with a more fit-for-purpose client advice record **(Client Advice Records)**.

The exposure draft legislation does not address reforms to introduce the New Class of Adviser (NCA) or modernise the best interests duty. In this submission, the FSC has addressed the proposed drafting covering the three reforms mentioned above and, where relevant, pointed to the interaction with other aspects of the reform package where details have not yet been released and therefore have not yet been subject to consultation.

Advice through Superannuation – 'Schedule 1' of ED and Consultation Paper

The FSC acknowledges the approach taken in the drafting, which is largely to provide for legislative change to section 99F of the *Superannuation Industry (Supervision) Act 1993* (**SIS**) to allow for the creation of regulations that clarify the range of advice that can be collectively charged for members. The drafting intends to allow superannuation funds greater flexibility to provide members advice about retirement in addition to the collectively charged advice they already provide. Importantly, draft regulations are proposed but not yet issued for review. Instead, industry has received an additional Consultation Paper to respond to. The FSC provides a response to the substance of that document in comments below.

The FSC also provides its response to the consultation considering the following additional context:

- We understand that the proposal set out through the list of allowed topics and circumstances on pages two and three of the Consultation Paper is a draft position, and that Treasury expects there will be modification based on industry feedback.
- We note that when asked about the extent of the proposal with respect to retirement advice, the Minister stated publicly that it is not the Government's policy intent to allow superannuation trustees to collectively charge for comprehensive retirement advice.[1]
- In addition, the Minister clarified that the list in the Consultation Paper should not be viewed as the list of topics on which the proposed NCAs can provide advice[2] – and that this will be subject to a separate consultation.
- Given the interdependency of the Tranche 2 measures (some of which have not yet been released in draft), it is challenging to respond without the opportunity to analyse all reforms together. As discussed above, the FSC appreciates the opportunity to provide ongoing feedback and will continue to develop our response as we have the opportunity to review the package as a whole.

The FSC has welcomed the clarifications mentioned above.

Collective charging

The FSC supports the objective of this recommendation under the Government's response to the Quality of Advice review, to increase the supply of personal advice, making it more accessible and affordable for consumers, including advice in relation to retirement. Superannuation funds are uniquely placed to provide more advice to consumers. Collective charging through superannuation is an existing mechanism which can help fund the cost of advice, so long as that advice is not complex and relates to the member's beneficial interest in the fund.

[1] At an FSC webinar event, 27 March 2025
[2] ibid

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

As recognised in the Quality of Advice Review, and referenced in the Consultation Paper, there are existing legal limitations and guardrails for superannuation trustees to consider when deciding to what extent they can cover the costs of advice to members through collective charging. These include: the existing restrictions on collective charging under section 99F of the SIS Act, the Best Financial Interests Duty, the sole purpose test and the requirement to share costs in a fair and reasonable manner across members of the fund.[3] These requirements impose a natural boundary on the advice that can be collectively charged across a fund's membership, which need to be considered by trustees individually.

In clarifying the existing collective charging rules, restrictions on existing collectively charged intra-fund advice are proposed to continue under this reform, which we support. That is, the advice cannot be personal advice to a person who has not acquired a beneficial interest in the fund, it cannot be advice as to whether the member should consolidate their superannuation holdings, and the advice cannot be ongoing personal advice. However, by proposing a (non-exhaustive) list of topics and circumstances without providing further detail on the scenarios listed, the Consultation Paper may unintentionally broaden the scope of permissible advice topics beyond what is appropriate or practical for trustees to provide under collective charging.

An important guardrail of these reforms should be that the collective charging list should not inadvertently allow collective charging for complex retirement advice. Further careful consideration needs to be given to ensure that the list of topics and circumstances, while providing greater certainty to trustees, retains existing implied guardrails under current law. We would welcome the inclusion of examples in the Explanatory Memorandum to provide further detail on how trustees may practically implement the reform in terms of what advice is appropriate and practical to provide.

Relevant Providers and the New Class of Adviser

The proposal under the ED legislation and the Consultation Paper addresses the role of relevant providers under the collective charging rules. The FSC offers a number of comments about the current structure of the reforms as presented, which we discuss below. These are relevant for trustees as they consider an appropriate advice model to deploy, and may be considerations for the further development of the Tranche 2 reforms:

- Interaction with the NCA model – collectively charged advice provided by a superannuation trustee is designed as simple, single issue and low-cost advice about the member's interest in the fund. To date, personal advice of this nature has been provided by relevant providers. As the Minister has confirmed, a separate framework for the NCA will be consulted on in due course, potentially also under a new set of regulations. The proposed policy design of the NCA (finalised in December), including the option to collectively charge for the advice as well as through fee for service arrangements, means the NCA is also well-suited to support superannuation trustees with intra-fund advice provision. Given the potential for overlap, it is challenging to comment definitively on the collective charging model without understanding the parameters of the NCA.

- Cost considerations – it is envisaged that NCAs will also operate from a lower cost base than relevant providers, given, amongst other things, lower education and competency requirements for NCAs. Alongside the cost efficiencies delivered by digital advice tools and calculators to enable advice, we would expect the cost of standing up human advisers (whether a relevant provider or NCA) will be an important factor for trustees as they consider an appropriate advice delivery model. We would encourage Treasury to consider this as it develops the remaining reforms.

- Equity issues across fund membership – if a trustee uses collective charging for advice they will need to consider the extent to which member equity is affected, particularly where more complex advice is contemplated. Some models and risk appetites may justify it, but others may not and this will need to be factored into a trustee's decision-making. Trustees will need to ensure they continue to meet their

[3] Regulation 5.02 of the SIS Regulations

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

obligations to share costs in a fair and reasonable manner across members of the fund, irrespective of the scope of Allowed Topics. This will require funds to take into account the fact that some members will already be accessing and paying for advice on a fee for service basis, in addition to collective charging.

Financial Advice Through Superannuation – Proposed Allowed Topics and Circumstances Considered

The FSC supports the intent of the Government's response to recommendation 6 of the Quality of Advice Review, to clarify the topics that superannuation funds can charge for advice on and the circumstances they can consider when providing advice about a member's interest in the fund. As discussed above, the FSC reserves the right to develop its response further once it has the benefit of seeing the entire legislative package including the modernised best interests duty and the framework for the NCA. Alongside these changes, a review of the Adviser Code of Ethics should also be completed to ensure best interests duty obligations can be implemented consistently with these changes in practice.

Existing section 99F of the SIS Act sets out the rules for collective charging by superannuation trustees by effectively prohibiting certain activities (or what cannot be collectively charged). We mention these above. The framework in the Bill and proposed regulations aim to clarify the scope of the prohibition "and provide guidance to trustees about when advice is or is not taken to relate to a financial product that is a beneficial interest in the fund."[4]

Importantly, in statements supporting the relevant provisions in the Bill, confirmation is provided that "[T]his collective charging framework will work in conjunction with the framework in relation to charging against an individual member's interest in the superannuation fund for financial advice (member deducted advice)" implemented under Tranche 1 of the reforms.

Whilst there are restrictions on what a trustee can collectively charge for personal advice, subject to these restrictions, it is open to trustees to decide what types of advice they provide to members. It is generally accepted that intra-fund advice (non-ongoing collectively charged advice) can include advice to a member about: increasing contributions to a fund, changing investment options within a fund, and the extent of cover provided by the insurance arrangements that apply to the member's interest in the fund and the types of cover that may be suitable for them.[5]

Trustees cannot charge across the membership for types of advice that are unavoidably complex and ongoing in nature. This will depend on the inherent complexity of the topic and, importantly, the complexity of the member's personal circumstances. FSC members have indicated that 'retirement income' is more likely than other topics to introduce complexity into the advice than some other allowable topics in situations where the advice needs of the member require greater expertise and therefore the resource effort is beyond what is reasonable under the collective charging arrangement. Other members have raised that there may be situations where a person has simple circumstances and the efficiency gained by the provision of digital advice tools would justify the use of collective charging, though this would be subject to a trustee's legal risk appetite. But we note, in order to provide advice on an allowable topic, where the consideration of circumstances and the provision of the advice extends to material levels of debt and other assets held by the member outside superannuation, this is more likely to be too complex.

With respect to certain topics, including unavoidably complex retirement advice, and where the circumstances of the member are too complex for the trustee to consider under collective charging, the member should be referred to a relevant provider for comprehensive advice under a fee for service arrangement, as is practiced today.

---

[4] The Parliament of the Commonwealth of Australia, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes – Exposure Draft Explanatory Materials, p.6.

[5] Australian Securities and Investment Commission, Information Sheet 168: Giving and collectively charging for intra-fund advice, https://asic.gov.au/regulatory-resources/superannuation-funds/superannuation-guidance-relief-and-legislative-instruments/giving-and-collectively-charging-for-intra-fund-advice/#what

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

Enhanced general advice model

The FSC has previously raised with Treasury the enhanced general advice (EGA) model proposed by the Joint-Licensees Group, which could operate as an alternative to collective charging models. This is defined as a refined general advice model enabling fact-based, options-oriented guidance tailored to members' circumstances without specific recommendations, delivered by advisers with minimum education standards (e.g., Diploma of Financial Services) and supported by a transparent fee structure.

This model would enable superannuation funds and other product providers to deliver fact-based, options-oriented guidance that considers members' relevant circumstances, without making specific recommendations. By refining the general advice definition in the *Corporations Act* and introducing minimum education standards, this framework would increase access to affordable guidance while preserving consumer choice and supporting independent advice businesses. As the Tranche 2 reform consultation process progresses, and includes consideration of the proposed model for the NCA, it is worth considering the benefits of this proposal and whether a definition of 'enhanced general advice' can be achieved that allows the consideration of a client's personal circumstances and is limited in scope.

Below, the FSC provides observations about the topics listed in the consultation.

Superannuation contributions

FSC members agree that where a superannuation member contacts their fund requesting personal advice about making additional or extra contributions *to their superannuation fund*, this will be an appropriate topic for superannuation funds to advise on and collectively charge for the advice. That is, provided the advice can be safely scoped to limited advice about contributions to the member's fund under the modernised best interests obligations.

In this situation, it is reasonable to assume the relevant provider may be expected to make enquiries about: whether the member has a spouse, the member's employment status, estimated income, current superannuation contributions, available funds to contribute to superannuation and any debts. Provided the member's circumstances are relatively simple, that is, they do not have complex debts to consider or income from non-standard sources such as private trusts or significant investment income, advice on appropriate additional superannuation contributions should come within the parameters of this framework.

Where the member has a spouse, FSC members agree that the financial circumstances of the spouse should be able to be considered as part of the advice in order to be able to properly advise the member. However, advice to the member's spouse should not be permitted to the extent that the spouse is a non-member . This may make it difficult to offer superannuation-splitting contribution advice unless the spouse is also an existing member of the fund.

The situation mentioned above should be distinguished from a scenario where a member approaches their fund for personal advice about whether to invest a windfall into superannuation or pay off a mortgage (or invest in non-superannuation assets). This request for advice is broader in nature and therefore more difficult to limit in scope. Aside from this, it requires consideration of advice on financial products (banking products) held outside of superannuation. It may be open to the trustee to consider providing advice to the member on a fee for service basis. The trustee could also consider offering factual information or general advice to the member on such topics.

Finally, we observe that downsizer contributions are mentioned as an example of a topic to be covered by collective charging. We recommend that trustees be cautious in providing advice under collective charging for such contributions. As discussed above, advice on property or the purchase or disposal of assets outside of superannuation would not be an allowable topic, and therefore, the relevant provider will not be able to assist with the decision on the sale of the property in preparation for the contribution.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000

E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

Investment options

FSC members are broadly comfortable with the proposal to permit personal advice regarding changing investment options within the fund based on characteristics or goals of the member under this framework. Provided the member requests advice limited to their interest in the fund in question, or is comfortable limiting the advice in this way, and the relevant provider can scope the advice safely under the best interests duty, this should be able to be collectively charged as proposed. This type of advice can be provided by a fund under intra-fund advice at present.

Given that superannuation is not the only investment members may hold, any non-superannuation investments will be relevant to the overall financial situation of the member and would ideally be factored into the member/investor's overall portfolio asset allocation. It would be for the trustee to assess whether to consider non-superannuation assets as part of any advice, and what type and scale of non-superannuation investments would make the member's circumstances inappropriate for a collective charging model.

Insurance held through superannuation

FSC members consider advice on appropriate levels of insurance cover through a member's superannuation fund to be an important aspect of a member's financial circumstances. Superannuation funds are well-placed to provide limited personal advice to members about their cover, appropriate cover, and what cover is available for members within the fund. However, assessing insurance needs generally requires more in-depth enquiries about the personal circumstances of the member and their household than other topics considered as part of this consultation. This is because life and TPD cover are designed to provide for a member's dependents in the event of the member's death or disablement and therefore assumes the financial circumstances of a household are considered.

As part of an assessment of the member's required coverage within the fund, a financial adviser could be required to consider all of the following: existing insurance cover in the fund, superannuation balance, debts including mortgage, significant future outgoings (e.g. school fees, future allowance for medical expenses), income, spouse's incomes, savings and other assets.

There will be members with relatively straightforward circumstances in which only some of the above circumstances will apply and can be easily considered, including through the use of a digital tool. However there will be other situations where the personal circumstances of the member, as revealed to the adviser, may be too complex and costly for the trustee to include under collective charging. This is highlighted in the draft Explanatory Memorandum to the Bill at paragraph 1.27 where the trustee informs the member that the advice should be charged as member-deducted advice.[6] Unfortunately the example does not provide specific reasons outlining why the personal circumstances of the member were too complex. It is appropriate for trustees make this assessment, however, it would be helpful for industry if Treasury could provide more detail as guidance to understand why the member's advice needs are too complex in this example.

FSC members are also interested in understanding the extent to which insurance held by members outside of superannuation should be dealt with given this is cited as an example of a circumstance which can be considered when giving collectively charged advice to members. Again, a case study or example in explanatory material would be useful in guiding trustees as to the interaction of insurance cover outside of superannuation and advice on appropriate insurance coverage inside of superannuation.

Retirement income

One of the key aims of the overall package is to increase access to simple and cost-effective advice to members about retirement, including through superannuation funds. The DBFO package combines reforms to address this policy aim in a number of ways, including through clarifying the topics that relate to a member's

[6] The Parliament of the Commonwealth of Australia, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes – Exposure Draft Explanatory Materials, p.10.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

interest in the fund for the purposes of collectively charged advice.

As discussed previously, given the legislative restrictions placed on trustees in this area, collectively charged advice should not be complex or costly. Under existing rules, it is possible to provide collectively charged advice to members on related pension interests. However, detailed advice on more complex topics such as retirement income solutions and transition to retirement strategies, where the level of enquiry into a member's personal circumstances can extend beyond what is reasonable for a trustee, are hard to deliver in practice where charging for the higher costs involved in providing complex advice would not be in members' interests as a whole.

As noted above, there may be situations where a person has simple circumstances and the efficiency gained by the provision of digital advice tools would justify the use of collective charging for advice on retirement income. But given retirement advice will often require consideration of a member's broader circumstances, including income and assets held outside superannuation, a spouse's/dependent's needs and financial circumstances, and sometimes superannuation consolidation, there is a lower threshold before the advice becomes more complex and costly as a result of the level of enquiry required.

Within the framework as proposed by the consultation, we observe that advice on retirement can extend to multiple advice topics, or sub-topics, including contributions, investment options, retirement product selection and adequacy of retirement income and Centrelink eligibility. FSC members have suggested that in many cases, this will classify advice as complex, or even comprehensive, especially where a member's personal circumstances are not simple and the advice may need to be reviewed periodically.

Where the retirement advice topic is relatively discrete, such as advice to a member about the appropriate level of drawdowns from their existing account-based pension, and the member's circumstances are not complex, it may be appropriate for a trustee to collectively charge for the advice. Similarly, where a member requests advice on a lump sum withdrawal, the superannuation trustee may be well placed to provide advice that is collectively charged.

Targeted Superannuation Prompts – 'Schedule 2' of ED

FSC members are broadly supportive of treating targeted superannuation prompts as 'general advice', recognising their potential to improve member engagement at critical life stages such as approaching retirement. The exposure draft legislation seeks to enable superannuation trustees to send targeted communications that encourage beneficial member actions to improve retirement outcomes, without inadvertently triggering personal advice obligations.

Given the obligations superannuation trustees have under Retirement Income Covenant, the proposed Best Practice Principles for retirement and the increasing expectations from regulators, it is important that an efficient and practical superannuation prompts framework is established. This will incorporate an effective means by which funds can promote good member engagement using prompts, empowering consumers to make good choices and be directed toward the advice they need. The FSC believes that it is important to define what 'good' looks like for trustees in delivering an optimised retirement strategy for members under their statutory obligations. We consider that 'good' will represent a comprehensive range of solutions for members throughout their lifecycle, delivering optimal retirement outcomes aligned to their needs and goals. Therefore, as part of this strategy superannuation nudges delivered to cohorts of members should provide opportunities to direct members to the availability of advice through external advice partners to the extent they need comprehensive advice. This has the obvious benefits of promoting consumer choice and market competition.

However, as currently drafted, the proposed process for administering a targeted superannuation prompt is onerous and complex. Suppose the targeted superannuation prompt does not satisfy all of these legislative requirements. In that case, it is possible it will be treated as personal advice under the law and therefore incur significant penalties for breaches. Both the risk and the complex requirements are likely to discourage trustees from providing targeted prompts to members.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

The requirements for providing a targeted superannuation prompt should be modified to be more proportionate and reflect that only "general advice" is being provided. In this context the prompts framework is proportionately inconsistent with ASIC's no action position for personal advice given… "merely because you give general advice using personal information about a client's relevant circumstances to choose general advice that is relevant and useful to them."[7] While the advice is not significantly different in these two circumstances, the regulatory obligations on providers are starkly divergent.

Prescriptive requirements around superannuation related advice

The superannuation-related advice requirements, and in particular the assessment framework for targeted superannuation prompts, is noticeably prescriptive and may risk complicating, rather than addressing, the objective of making it easier for trustees to give general advice and reduce red tape.

The ED proposes the addition of Section 950C(2) to the *Corporations Act 2001*, defining the assessment framework as a written document which sets out:

(a) the superannuation-related advice the trustee or trustees intend to give;
(b) the class of members to which the trustee or trustees intend to give the advice;
(c) the basis on which the trustee or trustees selected the class of members;
(d) the basis on which the trustee or trustees are reasonably satisfied that the superannuation-related advice is appropriate for the class
(e) the trustee's or trustees' assessment of the likely objectives, financial situation and needs of the members of the class;
(f) both:
    (i) the trustee's or trustees' assessment of the risks for the class relating to the superannuation-related advice, including an assessment of the steps (if any) the trustee or trustees have taken or could take to manage the risks; and
    (ii) the steps (if any) the trustee or trustees have taken or intend to take to manage the risks;
(g) how the trustee or trustees intend to give the superannuation-related advice;
(h) when the trustee or trustees intend to give the superannuation-related advice;
(i) how the trustee or trustees intend to monitor the effect of the superannuation-related advice on the behaviour of the members to whom it is given.

This is an example of the high level of prescription in the ED. The FSC submits that the requirements for targeted superannuation prompts should be less prescriptive, in keeping with the policy intent to make it easier for trustees to provide general advice to cohorts. FSC members would welcome the opportunity to engage further with Treasury to clarify areas where the requirements could be streamlined to ensure the requirements match the policy objective in the context of broader trustee obligations and communication mechanisms under existing regulations.

Clear boundaries between general advice and targeted superannuation prompts

Under the current legal framework, superannuation funds can provide targeted information to their members without it constituting personal advice but can be deterred by the risk that such prompts might be deemed personal financial advice, inadvertently triggering significant compliance obligations. Under the current regime:

- Funds can send general advice to members, however, this advice must:
    - not consider personal circumstances (such as a member's income, family situation, or financial goals); and,
    - be accompanied by a general advice warning, making clear that it doesn't take the member's personal situation into account.[8]
- If a prompt appears tailored, even to a defined group of members, it may be deemed personal advice under the law.

[7] ASIC Regulatory Guide, RG 244: paras 48-49
[8] AFCA, 'Superannuation Advice: Fact Sheet', https://www.afca.org.au/sites/default/files/2019-12/superannuation_advice_1.pdf

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

The ED effectively proposes a safe harbour for targeted prompts, allowing certain communications to be classified as general advice, even if they are directed at a specific cohort, so long as they meet the strict criteria.

There are real concerns that, as drafted, the proposed regulatory framework could inadvertently extend to, or influence, the treatment of existing general advice communications already being undertaken by some superannuation funds. That is, communications that are currently regarded as general advice may be considered personal advice. Without clear boundaries between the two regimes, there is a risk that trustees may face increased compliance expectations or feel compelled to apply the more onerous assessment and documentation requirements intended for prompts, even when providing general advice communications that do not constitute personal advice. To avoid this regulatory creep, the final legislation and regulatory guidance must make explicit that the targeted prompt regime is a distinct pathway, and that it does not override or constrain the current ability of trustees to provide general advice to members under existing laws.

Given the strict obligations attached to the use of targeted prompts, including the need to prepare and maintain an assessment framework, monitor cohort appropriateness, and comply with record-keeping requirements, the FSC anticipates that trustees will adopt a cautious and strategic approach to their use. Trustees are likely to prioritise prompts for cohorts where there is a strong alignment with their Retirement Income Covenant (**RIC**) obligations and a clear case for improved member outcomes. This means prompts may initially be reserved for high-priority segments, such as disengaged pre-retirees in unsuitable accumulation products. It is also important to recognise that trustees are unlikely to have the resources to prompt all members who may benefit from some form of prompts. Trustees should not suffer regulatory consequences in circumstances where a cohort of members would benefit from being prompted, but the trustee did not do so. Over time, the FSC expects that uptake of targeted superannuation prompts will broaden as funds develop internal processes and confidence in applying the framework.

FSC members have also raised a concern about a potential unintended consequence of the definition of superannuation-related advice, as described in s950A of the ED. The definition of "superannuation-related advice" can include a recommendation or statement of opinion about the benefits of obtaining personal advice about existing interests in the fund. As a consequence, there is a concern that the targeted prompts regime could potentially inhibit a trustee's ability to tell members about services which are available to them (and which members may already pay for as part of their collectively charged fees) e.g. intra-fund advice.

Members who have opted-out of marketing communications

The draft Explanatory Memorandum for the proposed reforms makes it clear that targeted superannuation prompts are subject to anti-hawking provisions under the *Corporations Act 2001* and, where applicable, the *Spam Act 2003* (Spam Act), particularly when the prompt constitutes a 'commercial electronic message.'[9] These provisions are designed to prevent unsolicited commercial communications, and in this case, if a prompt were to be sent to a member who has opted out of marketing materials, it could inadvertently trigger a breach of the *Spam Act*. Given that a significant portion of superannuation members may have already opted out of receiving marketing communications, FSC members are concerned that only a small proportion of members will reap the benefits of targeted communications.

FSC members would support either:

- that targeted prompts be explicitly excluded from the requirements of the *Spam Act*, or if that is not possible,
- that targeted prompts be treated as separate from traditional marketing communications. The ED should be explicit in affirming that targeted prompts do not constitute marketing materials. Practically, this would require trustees to offer a separate opt-out choice specifically for members who wish to exclude themselves from receiving targeted prompts.

[9] The Parliament of the Commonwealth of Australia, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes – Exposure Draft Explanatory Materials, p.17.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

FSC members support the inclusion of the provision that opt-outs from retirement income prompts expire after five years, as it responds to concerns previously raised with Treasury about the risk of losing the ability to re-engage members who opt-out too early. Without an expiry mechanism, there is a risk that members who opted out in their 40s or 50s may never receive further communications as they approach retirement, when prompts are most relevant. However, the ED currently requires trustees to act on an opt-out request such that the election is in force by the first business day after receiving the notice. This creates operational challenges. Under spam regulations, entities have five working days to give effect to an unsubscribe (opt-out) request.[10] FSC members recommend aligning the draft legislation with this existing consumer protection framework by allowing trustees five business days to implement the opt-out, which would strike a balance between responsiveness and operational feasibility.

Consistency between Targeted Superannuation Prompts and the Retirement Income Covenant

FSC members expressed a preference that the framework for targeted superannuation prompts aligns with the RIC, particularly in relation to the development and use of member cohorts. Given that trustees are already required under the RIC, and Treasury's proposed Best Practice Principles for retirement, to segment their membership base into cohorts based on likely retirement needs, financial situations, and objectives, it would be unnecessarily duplicative and inefficient to require a separate or inconsistent cohorting process for prompts. FSC members support an approach where cohorts identified under the RIC can be directly used, or readily adapted, for targeted prompts, promoting consistency, and supporting more streamlined and practical implementation by trustees.

Clarity on who is providing prompts

We note that the obligations in relation to targeted superannuation prompts in the ED legislation are on the trustee. It is important that the law allows trustees to outsource management of targeted superannuation prompts to an AFS licensee or service provider.

Client Advice Record – 'Schedule 3' of ED

The FSC acknowledges and supports the intent to replace the current requirement for a Statement of Advice (SoA) with a more concise and consumer-friendly 'Client Advice Record' (CAR) through proposed amendments to the *Corporations Act 2001 (Corporations Act)*. This shift reflects a broader effort to reduce compliance burdens that add little value to the client experience. However, in our response, we note it is difficult to fully assess the proposed CAR requirements without having seen the requirements in relation to the modernised Best Interest Duty.

Under the existing legislative framework, financial advisers are required to issue an SoA where they have provided personal financial advice to a retail client (in most circumstances).[11] While this requirement is intended to promote transparency and informed decision-making, the practical outcome has been the production of lengthy and complex documents that are difficult for most clients to engage with.[12] The Quality of Advice Review observed that "while the [legal] content requirements are intended to be flexible in order to permit providers of advice to tailor the individual SoA to the needs of the client, they are often prepared by financial advisers with an eye to defending a complaint or claim."[13] As a result, SoAs have evolved into defensive legal documents rather than practical tools for client understanding, undermining their original purpose and reinforcing the need for a simpler, more consumer-focused approach to advice documentation.

The Quality of Advice Review made the recommendation to remove the legal requirement for financial advisers to provide an SoA to retail clients, instead proposing that advisers maintain complete records of the

[10] Australian Communications and Media Authority, Avoid sending spam, 29 November 2024, https://www.acma.gov.au/avoid-sending-spam#:~:text=send%20the%20message.-,Make%20it%20easy%20to%20unsubscribe,unsubscribe%20within%205%20working%20days

[11] Section 946A of the Corporations Act 2001

[12] KPMG, Cost Profile of Australia's Financial Advice Industry: Research Paper, 31 August 2021.

[13] Michelle Levy, Quality of Advice Review, December 2022, p.127

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

advice and supply written advice only upon the client's request.[14] This recommendation was not adopted by the Government. Instead, the ED replaces the SoA with a CAR that must be issued in the same circumstances, but with changes to the required content and presentation.

Whilst supportive of the introduction of a CAR, to maximise the CAR's impact, the FSC urges Treasury to prioritise consumer trust and accessibility. Complex, lengthy documentation increases advice costs and erodes confidence among retail clients, particularly those seeking affordable guidance. A principles-based CAR framework, supported by ASIC guidance on flexible formats (e.g., digital platforms, interactive tools), would drive innovation, reduce costs, and make advice more inclusive. This approach would support the government's goal of broadening access to quality financial advice while maintaining robust consumer protections.

Importantly, the problem of overly complex SoAs and CARs is not solely the result of primary law. A key driver has been regulatory scope creep, which has led to the inclusion of content in advice documents that goes beyond what is legally required. For example, advisers often include additional detail in SoAs because AFCA tends to rely heavily on the SoA itself, rather than the broader client file, when assessing advice complaints. Similarly, ASIC's guidance and informal expectations have, over time, influenced the structure and content of advice documents in ways that extend beyond the requirements set out in the law. Addressing these issues is essential to achieving meaningful simplification of the CAR. Without a concerted effort to realign regulatory expectations with the core statutory obligations, attempts to simplify documentation will likely fail. It is essential that advisers are not penalised for producing shorter, clearer documents, provided they still meet legal standards.

Circumstances under which a CAR must be issued

The obligation to provide a CAR remains fundamentally unchanged from the existing requirement to issue an SoA. Financial advisers must provide a CAR whenever personal financial advice is given to a retail client, subject to the same existing exceptions as the SoA.[15]

Importantly, the draft Explanatory Memorandum makes a clearer distinction between the CAR and the internal record-keeping obligations that licensees and their authorised representatives must meet. Advisers are still required to retain records that demonstrate compliance with legal duties under the *Corporations Act*, such as:

- the obligation to act in the client's best interests (s961B)
- the obligation to provide appropriate advice (s961G); and,
- the obligation to give priority to the client's interests (s961J).

The FSC supports that these internal records should be maintained for regulatory and licensee oversight and provided to a client upon request, in accordance with the *Privacy Act 1988*.[16] Further regulatory guidance should avoid conflating these internal records with the CAR and risk reintroducing the excessive complexity present in the SoA.

By streamlining the CAR obligation, Treasury can significantly enhance consumer outcomes. Simplified documentation reduces the compliance burden on advisers, lowering advice costs and making financial guidance more affordable for retail clients. Clearer, more concise CARs also foster greater consumer trust by presenting advice in an accessible format.

Required contents of the CAR

The content requirements for the CAR in the ED are largely unchanged from the SoA. This will likely mean in practice that it will make little difference to the way advisers provide advice or what clients receive by way of disclosure. The table below presents a high-level summary of the content requirements across the two

[14] Michelle Levy, Quality of Advice Review, December 2022, p.132.
[15] Section 946A of the Corporations Act 2001
[16] The Parliament of the Commonwealth of Australia, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes – Exposure Draft Explanatory Materials, p.8.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

documents:

Document	Statement of Advice	Exposure Draft - Client Advice Record
Content Requirements		**944** "Clear, concise and effective" added as intent of client advice records.
	947A The title "Statement of Advice" must be used on the cover of, or near the front of a statement of advice.	**947A** The words "Client Advice Record" must feature prominently in the CAR, whether the CAR is given to the client in writing or by other means.
	947B/C • A statement setting out the advice • Information about the basis of the advice • Details on who has provided the advice • Information about remuneration • Information about interests • Warnings (if required)	**947B/C/D** • Scope of the advice • The advice • The reasons for the advice (including how it meets client objectives, financial situation and needs) • Information about remuneration and costs • Information about interests • Information about who is providing the advice
	947D (if required) Replacement product disclosure	**947C (if required)** Replacement product disclosure

FSC members contend that there is scope for further simplification of the content requirements by removing redundant disclosures, such as related party information, detailed product comparisons already in Product Disclosure Statements (PDSs), and disclaimers on unprovided advice, to more meaningfully meet the objective of reducing advice costs while ensuring clients receive helpful, accessible information for informed financial decisions.[17] In particular, members made the following recommendations:

1. **Amend the requirement from a 'statement of the scope of advice' to a 'statement of the client's objectives being addressed by the advice.'** The term 'scope of advice' is technical and not easily understood by clients, whereas a clear statement of the client's objectives would be more appropriate.
2. **Clarify the 'reasons for advice' provision:** Section 947C(2)(a) of the *Corporations Act 2001* requires that the SoA include the "information about the basis on which the advice was given". This has historically been interpreted by licensees as requiring detailed justifications for the reasons for advice, and has been a large contributor to the length and complexity of SoAs. In an effort to satisfy the basis for the advice, it has led to advisers including excessive details around:
    - comparisons of product features (even if the alternatives were clearly inferior or outside the client's risk profile)
    - what was and wasn't considered (e.g. every product class, insurance type, or tax strategy)
    - disclaimers on what advice was not provided
    - the information from the fact find
    - the client's goals and financial situation

    The exposure draft and/or consequent regulation should curtail the extensive content requirements traditionally associated with this provision in SoAs. Rather, the "reasons for the advice" should be permitted to be expressed as a short, consumer-friendly summary; framed around the client's goals and how the advice is intended to help achieve them.

3. **Remove the requirement to include 'related party information' in the CAR:** Section 947C(3) of the exposure draft introduces a requirement for the CAR to include information about related party

[17] The Parliament of the Commonwealth of Australia, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes – Exposure Draft Explanatory Materials, p.8.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

arrangements that may influence the advice (carried over from similar SoA provisions). While transparency about conflicts of interest is essential, this requirement duplicates disclosures that are already mandated, and routinely provided, in Financial Services Guides (FSGs) (or in the format of Website Disclosure Information (WDI)).

Under Section 942B(2)(e) of the *Corporations Act 2001*, FSGs must disclose any relationships or associations that could reasonably be expected to influence the provider's advice. This includes ownership structures, product affiliations, and related party remuneration arrangements.[18] ASIC has consistently enforced this obligation, and licensees are well accustomed to embedding this information clearly in their FSG templates.

Requiring the same disclosure again in the CAR creates unnecessary duplication, increasing the risk of inconsistency and contributing to disclosure fatigue without enhancing consumer understanding. If the intent of the CAR is to streamline advice documentation and present information in a targeted, consumer-friendly way, it is counter-productive to replicate content that has already been provided at the initial stages of the advice process.

To the extent that a material change in related party arrangements occurs after the provision of the FSG, existing obligations already require an updated FSG/WDI or supplementary FSG to be provided.[19] Requiring the CAR to restate these disclosures adds little regulatory value and may inadvertently encourage a return to over-disclosure practices.

Accordingly, Section 947C(3) and (4) of the *Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Exposure Draft)* should be removed, with any necessary cross-reference instead directed back to the FSG/WDI. This approach preserves transparency while maintaining the intent of the CAR: to reduce duplication and support concise, client-focused advice.

4. **Clarify cost statement requirements for the CAR:** The exposure draft requires the CAR to include "a statement of the cost of providing the advice". However, in the case of the SoA, advisers typically enclose comprehensive information around product costs, which is already captured by the Product Disclosure Statement (PDS). The exposure draft should make it clear that what is required is a simple, high-level summary of the cost to the client of receiving the advice, such as advice fees or commissions, rather than a detailed breakdown of product-related costs.

Required presentation

The draft Explanatory Memorandum makes clear that a CAR, like the SoA, is technologically neutral, meaning the CAR does not have to be delivered in writing, but can be provided through alternative formats such as video, audio, or email, so long as the required standards are met.[20] However, most advisers continue to issue standard written documents, largely due to uncertainty around what constitutes compliance when using alternative formats. Detailed ASIC guidance on 'technologically neutral' CAR delivery, specifying standards for digital signatures, client consent protocols for non-written formats, and secure record retention for formats like video or audio, would provide clarity and encourage advisers to adopt innovative, accessible delivery methods that enhance consumer engagement. Without this, the flexibility intended by the reforms will likely go under-utilised.

The term 'Client Advice Record'

The FSC shares concerns that the term 'Client Advice Record' (CAR) may cause confusion with 'Corporate

[18] ASIC, Information Sheet 291 (INFO 291), FAQs: FSGs and website disclosure information, January 2025, https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/faqs-fsgs-and-website-disclosure-information/

[19] Section 941F of the *Corporations Act 2001*

[20] The Parliament of the Commonwealth of Australia, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes – Exposure Draft Explanatory Materials, p.29.

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000
E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

Authorised Representative' (also CAR). To enhance consumer clarity and avoid misinterpretation, we recommend alternative names such as 'Client Advice Summary' or 'Advice Summary Record.' These terms, or similar, can better reflect the document's purpose as a consumer-friendly tool and align with the broader goal of improving access to clear, affordable advice.

Records of Advice

The FSC supports simplifying the Record of Advice (ROA) framework and harmonising it with the CAR to enhance consumer trust and affordability. Retaining the existing ROA alongside the CAR risks ongoing confusion among advisers about when to use an SoA/CAR or ROA, increasing compliance costs. To address this, the CAR should become the sole advice document, with verbal advice permitted for further guidance where the original CAR's strategy remains unchanged. In addition, shifting the existing ROA threshold from "significant change in client circumstances" to "significant change in recommended strategy" would provide clarity and reduce errors.[21]

Harmonising the existing ROA framework with the CAR could significantly reduce compliance costs for advisers, lowering advice fees and enabling more Australians to access financial guidance. This reform would also enhance efficiency by minimising documentation errors, allowing advisers to focus on client engagement rather than administrative burdens.

[21] Australian Securities and Investment Commission, Regulatory Guide 175: Licensing: Financial product advisers – conduct and disclosure, June 2021, p.49

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000

E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163