SUPER MEMBERS COUNCIL

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By email to: FinancialAdvice@treasury.gov.au

Delivering Better Financial Outcomes design proposals

About the Super Members Council

We are the collective voice for more than 10 million Australians who have over $1.45 trillion in retirement savings managed by profit-to-member superannuation funds. Our purpose is to protect and advance their interests throughout their lives, advocating on their behalf to ensure superannuation policy is stable, effective, and equitable.

Super Members Council (SMC) thanks Treasury for the opportunity to participate in this consultation and make this submission.

SMC recommends the Government expedite its advice changes based on the Quality of Advice Review while further developing improvements to the retirement phase.

The proposals made in the Treasury's Delivering Better Financial Outcomes design meetings are welcome steps towards the implementation of these advice changes.

The Government should progress sector-led initiatives to allow super funds to provide advice to members on a simpler, more affordable, and accessible basis.

Superannuation nudges

We support superannuation nudges to help members engagement with their superannuation and make informed choices about it, and their planning for retirement. Nudges may be particularly useful at certain ages and key life stages.

However, a clear definition that nudges involve trustee-initiated advice is essential. The objective of nudges should be to give trustees the opportunity to have a greater and more meaningful engagement with members than is permitted under the current advice regime.

The definition should make it clear trustees can initiate contact with their members to make nudges where certain conditions are met, and that this would not breach anti-hawking restrictions. SMC supports anti-hawking restrictions, and the explanatory materials should make it clear where the boundary between nudges and hawking lies.

Nudges should only be permitted under an AFSL to ensure accountability, recognising the different type and structure of AFSLs used by super funds (such as when another organisation acts as the licensee or authorised representative of the super fund). Nudges should not be allowed where an investment, product or fund switch is being recommended.

Super fund members benefit from retirement income projections, and projections should be allowed in nudges, and ASIC rules around the use of calculators should align with this use.

Option 2 is not supported as it may limit trustee ability to make targeted approaches to specific groups that may not align with RIC classes or sub-classes (e.g., retired women over 65 who have not commenced a retirement product).

Option 1 is preferred to Option 2 as it gives trustees more flexibility to provide advice relevant to a class or sub-division of beneficiaries, and act in their best interests. However, SMC recommends the following changes to the proposed conditions for Option 1:

- Trustees should be able to provide a nudge to members who are not at or approaching retirement. Younger members who may not be part of a RIC class or sub-class may benefit from small steps they could take to improve their retirement outcomes such as reminders regarding the impact extra superannuation contributions could make to their superannuation balance or options in relation to insurance in super.
- While a nudge may result in a referral to seek personal advice, this should not be a mandatory requirement but should depend on a trustee's best interest assessment of whether personal advice is required.
- The level of information needed to provide a reasonable basis for the nudge will vary depending on the complexity and circumstances of the nudge.
- There should be no constraints (including size) on the class or sub-class to whom the nudge is made, provided the trustee has a reasonable basis for its determination of the class or subclass, is able to assesses a nudge is in members best interest and other conditions are met. It should be allowable to nudge an individual member on this basis.

The proposed structure of nudges, including timing, process, and the above points, should be defined in legislation.

New class of advisers

SMC supports the creation of a new class of advisers to make the licensee accountable for the advice given by these advisers.

We agree with the proposed general prohibition on the new class of advisers being able to charge fees and commissions and for the minimum education requirements of AQF-5 diploma level.

While advisers in this class may stay in this class over their careers, consideration should be given to a pathway for the new class of advisers to build on their qualifications and become a degree qualified adviser.

Design features to prevent the new class of advisers straying into giving more comprehensive advice and ensuring they are subject to quality control for their training and advice are also required. Advice providers used by profit-to-member super funds already have quality controls, supervision and guidance in place.

There should be further consultation on the topics on which a new class of adviser is able to give advice.

Modernised best interests duty

SMC supports the stated objectives and proposed elements of a modernised best interests duty to apply to all advice providers.

The legislative framework should be supported by guidance in the explanatory materials, including examples, and clarification that scaled and limited advice is permitted under the modernised best interests duty.

The Code of Ethics should then be amended to ensure alignment with the modernised best interests duty.

Record keeping

Good record keeping is essential and must confirm that advice is compliant and, in the client's best interests. For example, a record of advice should include sufficient information to be able to assess if advice to switch products or funds is appropriate and, in a member's interests.

Advice providers used by profit-to-member super funds are already able to demonstrate the compliant nature of advice, and advised members already have access to their records, so the required changes will not be significant for many providers.

The proposed aim of record keeping is supported by there being a guiding statement in legislation. Ideally, this principles-based requirement would not be accompanied by a list of prescriptive obligations, as such a list would likely become the de facto requirements regardless of the circumstances of the advice.

Yours sincerely

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