

Treasury - Improving access to affordable and quality financial advice

2 May 2025

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2 May 2025

Dear Mr Moore,

Improving Access to Affordable and Quality Financial Advice

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation on Improving Access to Affordable Financial Advice.¹

About ASFA

ASFA, the voice of super, has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers. We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

We unite the superannuation community, supporting our members with research, advocacy, education and collaboration to help Australians enjoy a dignified retirement. We promote effective practice and advocate for efficiency, sustainability and trust in our world-class retirement income system.

Introductory Comments

ASFA supports this legislative package, also known as Tranche 2 of the *Delivering Better Financial Outcomes* (DBFO) reforms. To be unequivocally clear, this legislative package should pass as soon as possible and without further delay. However, the recommendations in **Attachment A** are designed to help ensure the legislation most effectively achieves its objectives of providing more high quality, affordable financial advice to Australians when they need it most.

ASFA notes this legislation is the product of extensive prior consultation and discussion, including:

1. The Final Report of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (the Royal Commission), which recommended that a process like the Levy Review should be undertaken in [February 2019](#).
2. The Quality of Advice Review (the Levy Review), which was the basis for these reforms was provided to government on [16 December 2022](#) and publicly released on [8 February 2023](#).
3. The passage of Tranche 1 of the DBFO package in [July 2024](#).²

¹ Treasury, Improving Access to Quality and Affordable Financial Advice ([21 March 2025](#)).

² *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

The original terms of reference of the Levy Review noted that the underlying objectives of the reforms proposed were:

*[To] consider how the regulatory framework could better enable the provision of **high quality, accessible and affordable financial advice** for retail clients.*

The Terms of Reference also highlighted the need to ‘simplify regulatory compliance obligations’ and the need to consider the importance of providing high quality and accessible retirement advice, in connection with the Retirement Income Covenant (RIC).³

ASFA strongly supports these principles. The superannuation sector stands ready to assist in the drastic expansion of high quality, affordable, accessible advice. Superannuation funds are especially equipped and willing to help consumers when it comes to advice related to circumstances immediately before and during retirement. We are uniquely able to help in these circumstances, because we have strong existing relationships with our members and a deep understanding of the relevant retirement products.

We further wish to note the Assistant Treasurer and Minister for Financial Services’ (the Minister’s) statement in [4 December 2024](#), which ASFA publicly supported.⁴

On [21 March 2025](#), the Minister outlined the draft legislation’s focus on the following topics:⁵

1. clear rules on what advice topics can be collectively charged for via superannuation (**Schedule 1**)
2. allowing superannuation funds to provide targeted prompts to members to drive greater engagement with superannuation at key life stages (**Schedule 2**)
3. replacing the statement of advice with a more fit-for-purpose client advice record (**Schedule 3**)

The Minister went on to indicate the Government is still developing legislation on the following areas, which will be introduced into Parliament at the same time as the other elements of the draft legislation subject to this consultation:⁶

4. reforming the BID and removing the safe harbour steps to provide advisers advisers with confidence to deliver appropriately scaled advice
5. introducing NCAs, which the Minister described as ‘vital to allowing life insurers, financial advice licensees, superannuation funds and other institutions to expand the supply of quality and affordable advice to consumers.

ASFA welcomed the proposals in the draft legislation, saying on the day they were [released](#).⁷ Our CEO, Mary Delahunty said then:

³ Treasury, Quality of Advice Review – Terms of Reference ([11 March 22](#)). See [2.1] and [4.6] respectively.

⁴ ASFA, ‘ASFA Welcomes Reforms to Make Quality Financial Advice More Affordable and Accessible’ ([4 December 2024](#)).

⁵ The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), ‘Improving access to affordable and quality financial advice’ ([21 March 2025](#)).

⁶ The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), ‘Improving access to affordable and quality financial advice’ ([21 March 2025](#)).

⁷ ASFA, ‘Good advice leads to a good retirement, so ASFA welcomes progress on government reforms to make quality financial advice more affordable and accessible’ ([21 March 2025](#)).

The second tranche of the DBFO reforms are a meaningful investment in the financial wellbeing of Australians. By creating opportunities for more people to access high-quality financial guidance, the Government is building a stronger foundation for all Australians to be able to achieve dignity in retirement.

ASFA supports the reforms in the draft legislation, which will help provide high quality and affordable financial advice to more Australians who need it. Our recommendations are provided to ensure the proposals are implemented in such a way as to ensure the underlying objectives of the reforms, as outlined above, are achieved as effectively as possible.

We also look forward to seeing more information in relation to changes to the BID and removal of the safe harbour, and the introduction of NCAs. We will work constructively with the Government and across industry to reach consensus on these issues, once the details are released.

To be as clear as we possibly can, ASFA wants this package to be passed as soon as possible, to implement the recommendations of the Levy Review and help more Australians access financial advice.

ASFA's detailed comments and recommendations on the specifics of the package are outlined **Attachment A**.

All our recommendations are designed to help best achieve the objectives of the package. However, notwithstanding our recommendations, we believe the draft legislation should be passed without delay and with all deliberate speed.

We look forward to continuing to engage with you in relation to these matters.

Should you have any questions, please feel free to contact ASFA Senior Policy Adviser, Sebastian Reinehr at sreinehr@superannuation.asn.au or on 0474 704 992.

James Koval

Chief Policy and Advocacy Officer

Attachment A – ASFA’s Detailed Comments on the Package

General Comments on the Draft Legislation

As expressed above, ASFA supports the package and calls for it be passed as soon as possible, notwithstanding the recommendations expressed in **Attachment A**.

Our recommendations are intended to ensure the proposals most effectively achieve their objectives, of providing affordable, high-quality advice to more Australians who need it.

For the avoidance of doubt, ASFA’s submission is written with reference to the following materials:

1. The Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes ([‘the draft bill’](#)).
2. The accompanying Explanatory Memorandum ([‘the explanatory memorandum’](#)).
3. Treasury’s consultation document in relation to ‘Advice through Superannuation’ ([‘the consultation document’](#)), which outlines:
 - the list of ‘allowed topics’ for collectively charged advice, which will later be included in regulations made under clause 99F(1A) of the draft bill.⁸
 - the list of ‘allowed circumstances’ for collectively charged advice, which will later be included in the regulation made under clause 99F(1C) of the draft bill.⁹
 - The list of ‘disallowed topics’, will later be included in the regulations made under clause 99F(1B) of the draft bill.¹⁰

The draft legislation is structured in the following way:

- **Schedule 1** – relates to extending collectively charged advice through superannuation.
- **Schedule 2** – relates to targeted superannuation prompts.
- **Schedule 3** – relates to the changes to client advice records.

Sections 1 to 3 of this submission will first outline the changes proposed in each of the three Schedules of the draft bill in turn. It will then detail ASFA’s recommendations and comments in relation to each topic.

In terms of commencement, ASFA also notes that Schedules 1 and 2 are outlined as commencing the day after the legislation receives Royal Assent. Whereas Schedule 3 commences 12 months after Royal Assent.

Sections 4 and 5 of the submission will then deal with the issues which have not been included in the draft bill, but are intended to be included in the bill when it is introduced to parliament, these are as outlined below:¹¹

Section 4 - reforming the BID and removing the safe harbour steps to provide advisers advisers with confidence to deliver appropriately scaled advice

Section 5 - introducing NCAs, which the Minister described as ‘vital’ to allowing life insurers, financial advice licensees, superannuation funds and other institutions to expand the supply of quality and affordable advice to consumers.

⁸ Treasury, *Advice Through Superannuation* (21 March 2024), 2.

⁹ Treasury, *Advice Through Superannuation* (21 March 2024), 3.

¹⁰ Treasury, *Advice Through Superannuation* (21 March 2024), 3-4.

¹¹ The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), ‘Improving access to affordable and quality financial advice’ (21 March 2025).

Schedule 1 – Advice Through Superannuation

1.1. Summary of the Proposals

Schedule 1 relates to extending the provision of collectively charged advice under s 99FA of the *Superannuation Industry Supervision Act 1993* (Cth) (the SIS Act).¹²

These changes relate to recommendation 6 of the Levy Review.

The draft legislation would allow three topics lists, as outlined below, to be made pursuant to regulations under s 99F(1A)-(1D).

While the full regulations have not yet been released, the Government has provided a consultation document on [Advice Through Superannuation](#).¹³ This document proposes that ‘three lists included in the regulations’ will cover the following:

1. advice taken to relate to a financial product that is a beneficial interest (‘the allowed topics list’)
2. kinds of circumstances that may be considered when providing advice on the allowed topics list (the ‘allowed circumstances list’); and
3. advice taken to relate to financial product that is not a beneficial interest (the ‘disallowed topics list’).

For the avoidance of doubt, the Government has explicitly stated that:¹⁴

*The lists are **not intended to be exhaustive**. Where a topic or circumstance is not specified in the regulations, **trustees are expected to exercise their judgement** in relation to their existing legislative obligations, such as the Sole Purpose Test.*

The Government’s proposals further state that:¹⁵

For clarity, the lists do not supersede the existing requirements trustees must abide by when collectively charging for personal advice, including:

- *existing restrictions on collective charging in 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, as set out in regulation 5.02 of the SIS Regulations.*

The details of each of the three topics lists can be found in full [here](#).

The draft bill also outlines the settings in relation to ongoing advice for superannuation funds to provide advice on the implementation of advice that funds members have already received.¹⁶ Clause 99F(1D) of the draft legislation provides that advice on implementation of does not constitute ongoing advice under the existing section 99F(1)(c)(iv).

Schedule 1, items 1 to 6 of the draft legislation also amend the definition of advice fee and charging rules in such a way as to align the *My Super* charging rules with the general charging rules for advice fees in section 99FA of the SIS Act.¹⁷

¹² Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 9-13.

¹³ Treasury, *Advice Through Superannuation* (21 March 2024).

¹⁴ Treasury, *Advice Through Superannuation* (21 March 2024), 1.

¹⁵ Treasury, *Advice Through Superannuation* (21 March 2024), 1-2.

¹⁶ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 11[1.31].

¹⁷ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 12[1.32]-[1.35].

1.2. ASFA's Recommendations

Recommendation 1 – ASFA strongly supports the expansion of collectively charged advice. We support the three lists of topics proposed in the consultation documents.

In addition to the topics currently included in these lists, ASFA recommends that the allowed topics list should make clearer reference to the ability of funds to provide advice regarding:

1. super contributions related to the First Home Super Saver Scheme (FHSSS)
2. information regarding beneficiary nominations.

The allowed circumstances list should also be amended so that funds can consider:

1. social security and Centrelink benefits
2. consideration of other superannuation funds held by the member.

In relation to the disallowed topics list, ASFA also wishes to clarify if estate planning will be an allowed topic insofar as it relates to superannuation – for example regarding recontribution strategies. Our assumption is that advice on this topic would be allowed.

Recommendation 2 - ASFA recommends that the specific draft language of the regulations made under clauses 99F(1A)-(1C), as outlined above, should be released before commencement for consultation. Further, this consultation should be public and include a call for written submissions.

Schedule 2 – Targeted Superannuation Prompts

2.1. Summary of the Proposals

Schedule 2 relates to targeted superannuation prompts (prompts).¹⁸ These prompts are intended to:¹⁹

[F]acilitate meaningful communication between superannuation funds and their members, to encourage members to engage with their superannuation, at or near, key decision points.

This proposal relates to the discussion of nudges in the Levy Review.²⁰

The bill allows superannuation funds to:

- deliver prompts targeted to groups of members, rather than being delivered to the fund at large.²¹
- prompt those classes of members to consider receiving personal advice, especially at key life stages or decision points.²²

Schedule 2 also makes clear the following:

- A recommendation or statement of opinion that is contained in a targeted superannuation prompt that meets all the legislative requirements, is **not classified as personal advice** under clause 766B(3B) of the *Corporations Act 2001* (Cth)(Corporations Act).²³
- The definition of an Applicable Superannuation Entity (ASE), who is entitled to provide targeted superannuation prompts is contained in clause 949C of the draft bill.²⁴

¹⁸ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 13-28.

¹⁹ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 6-7[1.11].

²⁰ Michelle Levy, *Quality of Advice Review – Final Report* (December 2022) 91, 94 and 132.

²¹ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 7[1.14].

²² Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 7.

²³ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 13[1.38]-[1.39].

²⁴ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 14[1.40]-[1.41].

Prompts under these proposals are limited in the following ways:

1. They can only be provided in relation to the defined term 'superannuation-related advice'²⁵
 - Examples of the types of prompts that may be sent to fund members under these new provisions, without being considered personal advice, are provided in the Explanatory Memorandum.²⁶
2. Prompts **cannot** include:
 - Notifying super fund members they do not have a death benefit nomination and informing them of the benefit of making one, does not contain financial advice and therefore would not have to comply with these rules.²⁷
 - Any 'excluded advice', as defined in clause 950(3)
 - Any advice which is not 'appropriately targeted', in accordance with the requirements of clauses 950A and 950C
3. The classes to which prompts are sent must be assessed on an 'ongoing' basis to ensure that the information is continuing to be sent to a recipient whom the superannuation fund reasonably believes is part of the class and that the advice remains appropriate to them. They must also give recipients the ability to rectify incorrect information.²⁸
4. Further limitations on prompts included in the draft bill are outlined in clauses 950D-K of the draft legislation.
5. Prompts also remain subject to anti-hawking provisions in the *Corporations Act* and the *Spam Act 2003*(Cth)(the Spam Act), where prompt satisfies the conditions of an 'commercial electronic message', or the prohibited communications captured by the *Spam Act*.²⁹

2.2. ASFA's Recommendations

Recommendation 3 – subject to the recommendations below, ASFA wishes to be unequivocally clear that we strongly support the extension of prompts, which will allow superannuation funds to better assist their members, especially as they reach key life milestones, and crucially as they near retirement. However, we seek greater clarity as to how these interact with existing member communications, such as current contact made to members approaching retirement.

Recommendation 4 – ASFA recommends that greater clarity needs to be provided in relation to the terms 'appropriate advice' and 'reasonable basis', as articulated in clause 950C(1)(b)-(c), and associated provisions. These terms are open to various plausible interpretations and would benefit from greater definition through provision of both examples in the explanatory memorandum and regulatory guidance from ASIC.

Recommendation 5 – ASFA recommends that the legislation and explanatory materials should be amended to clarify the ongoing requirement to ensure that a member remains part of the class to which prompts are being sent.³⁰ Presently, this requirement could be interpreted as requiring verification of every recipient of

²⁵ As defined in clause 950A(1)-(2).

²⁶ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 16[1.50].

²⁷ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 16-7[1.51].

²⁸ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 22-3[1.70]-[1.75]. See too clauses 950A(4), 950B(c) and 950H.

²⁹ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 17[1.54].

³⁰ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 19[1.59]-[1.60].

every prompt before it is sent. Instead, ASFA recommends that once the assessment obligation in clause 950B has been conducted, the members of the class should be reviewed every twelve months.

Recommendation 6 – ASFA recommends that the bill and explanatory materials should be amended so that, in certain specific circumstances, prompts can request action from members in specified time periods. This is currently prohibited by the definition of ‘excluded advice’ under clause 950(3)(b).

- An example where this may be appropriate include when it is in the members best financial interest to undertake a certain action before the end of a given financial year.
- In this circumstance, it would be appropriate for the prompt to call for the action to be completed before 30 June.
- Other relevant deadlines may relate to a member’s age, date of retirement, or account balance, particularly concerning contributions.

Recommendation 7 – ASFA recommends that the reference to other legislation that restricts prompts should be removed from the draft Explanatory Memorandum.³¹ To provide clarity, both the legislation and the explanatory materials for this legislation should exhaustively exclude the circumstances in which prompts can be sent and specifically exclude other legislation, to evince an intention to ‘cover the field’ in relation to the regulation of this area of law.

Recommendation 8 – ASFA recommends that clause 950J should be amended. As currently drafted, it allows members to opt out of prompts for a period of 5 years. This period should be reduced to 2 years, given the pace at which members circumstances can change.

- Whatever timeframe is adopted in the final legislation in relation to clause 950J should also be applied in relation to the requirements for ongoing verification of the recipients in a given class receiving these prompts (**see recommendation 5**), to ensure there is consistency in timeframes across the legislation.

Recommendation 9 – ASFA recommends that clause 950K should be amended so that ASIC’s power to declare that a trustee cannot send prompts should be amended, so it is clearly restricted to cases where a court has previously found that a given trustee has contravened the relevant Division of the legislation. As this clause is currently drafted, it could be read as allowing ASIC to prohibit the sending of prompts by a trustee in case where they form the opinion the Division has been contravened, even where there is no judicial finding of misconduct, which would be an overly broad approach.³²

Recommendation 10 - Treasury should consider creating an optional regulatory sandbox, like the existing Enhanced Regulatory Sandbox ([ERS](#)) administered by ASIC, to be used in the context of these advice reforms. This would allow regulated entities to market test new concepts (with ASIC oversight and appropriate guardrails). New concepts could then be greenlit by ASIC. This may ameliorate regulatory uncertainty about how the new laws will be enforced in practice. One area where this would be particularly useful for is allowing for testing of how the new targeted superannuation prompts might work in practice.

³¹ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 17[1.54].

³² Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 26[1.88]-[1.90].

Schedule 3 – Client Advice Records

3.1. Summary of the Proposals

Schedule 3 implements the change from Statements of Advice (SoA) to a Client Advice Record (CAR) to be provided to clients after the provision of financial advice.³³

The purpose of this reform is to implement recommendation 9 of the Levy Review.³⁴ The Explanatory Memorandum outlines that the Levy Review found that:³⁵

*SOA requirements are onerous and **complicated resulting in overly legalistic SOAs that are not specific to a client's advice needs**. While SOAs are intended to be flexible, the Review found that **advisors often provide clients a large volume of information** to demonstrate that they had met their legislative obligations. The document is therefore **often too lengthy and complex to be useful for the client, and the time to prepare such a detailed document adds significantly to the cost and regulatory burden of providing personal advice**.*

As the Explanatory Memorandum concedes, the draft bill **does not** adopt in full recommendation 9 of the Levy Review, which was to replace the requirement to provide SOAs with:³⁶

*[A] requirement for providers of personal advice to retail clients to maintain complete records...and **only provide written advice on request by the client**.*

Instead, this package replaces SOAs with:³⁷

[A] requirement for advisers to give the client a clear, concise and fit-for-purpose advice record.

The rationale for this simplification, is that it will:³⁸

*[R]educe the cost of providing advice while ensuring clients **receive helpful and accessible information that allows them to make informed financial decisions**.*

3.2. ASFA's Recommendations

Recommendation 11 – ASFA recommends that paragraphs [1.115] and [1.116] of the Explanatory Memorandum on page 31 should be amended. There is a repeated typographical error, whereby these paragraphs refer to **clauses 947B(8)-(10)** of the draft bill. However, it is clear from context that the discussion intended to reference clauses **947C(8)-(10)** of the draft bill. This typographical error should be rectified in the final bill, to avoid confusion in the interpretation of the legislation with reference to the Explanatory Memorandum.

Recommendation 12 – ASFA recommends that ASIC's power to vary the content requirements for CARs is too broad, as currently expressed in clause 947C(8)-(10) of the draft bill. We therefore recommend it should be either, in order of preference:

- removed, so that the relevant content requirements are exhaustively defined in legislation, or
- amended, so that ASIC has the power to remove a requirement, as articulated in clause 947C(10)(a), but not the power to require additional content be included in a CAR (per clause 947C(10)(c).
- In any event, all powers granted to ASIC under clause 947C(8)-(10) should be amended so that prior to any variation by ASIC of the content requirements in clause 947C, they must undertake extensive public consultation with industry on the proposed variation, including calling for written submission.

³³ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 28-39.

³⁴ Treasury, Final Government Response to the Quality of Advice Review (7 December 2023) 3.

³⁵ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 8[1.16].

³⁶ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 8[1.17].

³⁷ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 8[1.118].

³⁸ Ibid.

Recommendation 13 – ASFA welcomes the moving of the recording-keeping requirements from ASIC Class Order 14/923 into the primary legislation, in section 912G of the *Corporations Act*, noting this reflects our previous advocacy.³⁹

Recommendation 14 – ASFA recommends that Treasury consider ways to further simplify the CAR requirements. We note for example that:

- As outlined on page 13 of this submission, and in the Explanatory Memorandum, the proposed shift from SOAs to CARs does not implement in full recommendation 9 of the Levy Review.⁴⁰
- As outlined in the explanatory memorandum, despite the change in name from SOA to CAR, the definition of a CAR remains the same as that of an SOA in the primary legislation.⁴¹
- The new content requirements outlined on page 14 of this submission and in clause 947C-E of the draft bill may not lead to major simplification of requirements.⁴²

Therefore, ASFA recommends that further simplification of CAR content requirements may be appropriate, to better align with recommendation 9 of the Levy review.

Recommendation 15 – ASFA recommends that there should be an annual review of the new CAR requirements, to ensure they are operating as intended.

Recommendation 16 – If the approach to the modernisation of the Best Financial Interest Duty outlined in section 4 of this submission is adopted in the bill as introduced, Treasury should consider whether the product replacement requirements outlined in s 947C(5)-(6) of the bill remain appropriate. In that case, a provider would then be under an overarching obligation to ensure that any advice provided led to the client being in a better position overall.

Section 4 – ASFA supports reforming the BFID and removing the safe harbour steps to provide advisers with confidence to deliver appropriately scaled advice

1.1. Scoping and Scaling of Advice

While we understand it is outside the scope of this draft legislation, ASFA strongly supports the ‘scoping’ and ‘scaling’ of advice under the modernised best interest duty. We note this would implement aspects of recommendations 4 to 5 of the Levy Review.⁴³

In relation to this proposal, we recommend that, for the purposes of what is considered a material circumstance regarding scaling, it should be clarified that this should only include ‘circumstances which are material to the scope of the advice.’ A broader definition than this may undermine the purpose and benefits of scalability.

ASFA specifically seeks further regulatory guidance and worked examples on how firms can go about excluding certain topics from the scope of the advice, as outlined in [RG 175](#).⁴⁴ At present, there is concern that regulated entities may avoid using the benefits of scaling to their maximal effect due to uncertainty in existing regulatory guidance.

ASFA recommends that the term ‘agreed scope of the advice’ should be used to define the scope of an advice.

³⁹ ASFA Submission, Submission to ASIC on the Extension of Three Legislative Instruments ([4 September 2024](#)), 4.

⁴⁰ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 8[1.16]-[1.119].

⁴¹ Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 28[1.197].

⁴² Explanatory Memorandum, Treasury Laws Amendment Bill 2025: Delivering Better Financial Outcomes (Cth), 29-30[1.107].

⁴³ Michelle Levy, *Quality of Advice Review – Final Report* ([December 2022](#)) 6. Treasury, Final Government Response to the Quality of Advice Review ([7 December 2023](#)), 1.

⁴⁴ ASIC, RG 175 on Licensing: Financial product advisers—Conduct and disclosure ([15 June 2021](#)). See also ASIC’s RG 244 on Giving information, general advice and scaled advice (13 December 2012).

ASFA recommends that when informing the client of what has been excluded from the scope of the advice, regulated entities should be able to make such disclosures at a ‘product’ or ‘strategy’ level, not at a more granular level of analysis.

1.2. The modernised best interest duty

ASFA also strongly supports the ‘modernising of the best interest duty’. We note this implements aspects of recommendations 4 and 5 of the Levy Review.⁴⁵

ASFA supports-in-principle an outcomes focused best interest duty, which includes the following elements:

The provider must act in the best interests of the client in relation to the advice, by providing advice:

1. *which leaves the client in a better position;*
2. *is fit-for-purpose given the client’s relevant circumstances; and*
3. *where the scope of advice must not exclude a material issue from consideration.*
4. *The existing requirement that advice ‘must prioritise the client’s interests if there is a conflict’ (under 961J) will be preserved.*
5. *Failing one component would result in failing the best interests duty.*

In broad terms, the advice industry has operationalised the requirements of the BID, to ensure they have appropriate processes in place. Simultaneously, the obligation to provide ‘appropriate advice’ under the Corporations Act, ensures that the BID process steps lead to good outcomes for those receiving financial advice.⁴⁶

ASFA’s believes adding new elements to the existing best interest duty have the potential to cause uncertainty about the standard which needs to be met when advice is provided. This lack of clarity may become a barrier to achieving the underlying aspirations of the package, were it to pass, as the legal uncertainty around new elements of the best interest duty might take significant time to be clarified through subsequent case law.

While, in principle, ASFA is supportive of the modernised best interest duty, as outlined above, there is an alternative approach to this issue which may lead to greater legal certainty for regulated entities and their customers, as it does not require the definition of previously undefined legal concepts by new case law.

That is, the following, which ASFA defines as *Option 2*

- retaining the current best interest duty, in section 961B(2)(1).
- removing the safe harbour in section 961B(2)(except subsection (e), as outlined below).
- retaining all other advice standards in the legislation, including the requirement that the advice is ‘appropriate’, as defined in section 961G.

1.3. ASFA’s Comments

In relation to the modernised best interest duty, ASFA makes following comments:

Comment 1 - In addition to our comments above, that item [3] on materiality should be limited to issues ‘material to the scope of the advice’, we also note that the term ‘better position’ should be clarified. The legislation should unambiguously adopt the definition of the term as it is understood in [RG 175](#).⁴⁷ This should also be confirmed in the Explanatory Memorandum. This approach will provide certainty for regulated entities who are already compliant with the existing understanding of ‘better position’.

⁴⁵ ASIC, RG 175 on Licensing: Financial product advisers—Conduct and disclosure ([15 June 2021](#)). See also ASIC’s RG 244 on Giving information, general advice and scaled advice (13 December 2012).

⁴⁶ See sections 961B and 961G of the *Corporations Act*.

⁴⁷ ASIC, RG 175 Licensing: Financial product advisers—Conduct and disclosure ([15 June 2021](#)) 67-71.

Comment 2 - It should also be made expressly clear in both the legislation and the explanatory materials that all the requirements of the modernised BID are contained within this section of the Act. Any inconsistent provisions or alternative definitions of 'best interest' which are not relevant to this provision should be amended accordingly to indicate that they are not relevant for the purposes of this provision.

Comment 3 - We support the removal of the safe harbour, in section [961B\(2\)](#). Notwithstanding our broad support for the removal of the safe harbour, we recommend that the protections in subsection [961B\(2\)\(e\)](#) should be maintained in the legislation after the removal of the other elements of the safe harbour. ASIC has interpreted this subsection as requiring that advice to switch is appropriate in the circumstances. So, this provides an important consumer protection.⁴⁸

Comment 4 - We seek detailed case studies in the explanatory materials and regulatory guidance, illustrating the difference between how outcomes would vary between the existing BID, as compared to the modernised BID (including the removal of the safe harbour). ASFA would be happy to work with government on providing example scenarios.

Comment 5 - If the approach to the modernisation of the BID outlined in **Comments 1-4** above is not adopted, we suggest that our alternative proposal – deemed 'Option 2' above, should be implemented.

Section 5 - introducing NCAs to allow life insurers, financial advice licensees, superannuation funds and other institutions to expand the supply of quality and affordable advice to consumers.

5.1. ASFA supports the creation of the New Class of Advisers (NCAs)

ASFA supports the creation of NCAs. We favour the introduction of NCAs, because it is consistent with recommendation 3 of the Levy Review and would help to improve the affordability and accessibility of advice by increasing the supply of individuals who can provide certain forms of advice.⁴⁹ Further, the Government's response, released on 7 December 2023, supported implementing this recommendation.⁵⁰

Key issues for further consideration in relation to this recommendation include:

- the fee and commission prohibition
- the education requirements. ASFA supports AQF 5-level qualifications being required.

ASFA also seeks confirmation that superannuation funds can include advice provided by NCAs in advice that is collectively charged under [section 99F](#) of the SIS Act.

If NCA fees and commissions are further considered, ASFA may work with the Government and our members to consider an appropriate framework for charging models to meet the needs of providers and their members. In this context, consumer protection should be paramount.

⁴⁸ ASIC, REP 781 - Review of superannuation trustee practices: Protecting members from harmful advice charge ([9 May 2024](#)) 2-3, 16.

⁴⁹ Michelle Levy, *Quality of Advice Review – Final Report (December 2022)* 5 and 78. Note, this submission and the Government response refer to as NCAs was designated as 'non-relevant providers' in the Levy Review.

⁵⁰ Treasury, Final Government Response to the Quality of Advice Review ([7 December 2023](#)) 2.

5.2. ASFA's Comments

In relation to NCA's, ASFA makes the following comments:

Comment 6 - If NCAs were permitted to charge a fee, consumer protection would be paramount. Treasury should consult further on what the appropriate consumer protection measures might be in this regard. ASFA also wishes to note the existing consumer protections that are in the *Corporations Act* covering advice fee deductions and all forms of advice provision.⁵¹

Comment 7 - ASFA further notes that the following additional consumer protections should be applied to NCAs:

- in relation to the education requirements, it has been ASFA's consistent position that an AQF 5 level qualification is the appropriate standard
- the licensee should be recognised as wholly responsible for the NCA
- NCAs should be subject to appropriate supervision arrangements, including closer supervision of the NCA by a relevant provider or executive manager, as proposed by Treasury
- NCAs should be subject to record-keeping and reporting requirements – including providing NCAs details to ASIC via the Financial Adviser Register.
- NCAs advice capabilities should be restricted to a certain class or classes of products in certain circumstances

⁵¹ For example, the following sections of the Corporations Act -- ss 99FA on charges, 961B on the best interests duty, 961G on providing 'appropriate advice' and 962Y on consents.