22 May 2026

Director
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Treasury
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By email: FinancialAdvice@treasury.gov.au

Dear Director

RE: FSC Submission on curbing lead generation activity

The Financial Services Council (FSC) welcomes the opportunity to provide feedback on Treasury's consultation on reforms to address harmful lead generation practices in financial services.

About the Financial Services Council

The FSC is a peak body which sets mandatory standards and develops policy for more than 130 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 $4 trillion on behalf of over 16.9 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.

Consultation Response and Consideration of Policy Trade-Offs

The FSC acknowledges the significant consumer harm arising from the collapses of Shield and First Guardian, which resulted in around 12,000 investors losing more than $1 billion in retirement savings. These events exposed gaps in the current regulatory framework – particularly in relation to licensing loopholes, ineffective consent, and remuneration structures that incentivised poor conduct – and underscore the need for a targeted response.

In these cases, harm was driven by a common model: consumer data was commercialised by unregulated lead generators, consent was obtained through opaque disclosures, and individuals were funnelled through high-pressure sales pathways leading to advice and product outcomes shaped by conflicted remuneration. Much of this activity sat outside, or at the edges of, the existing licensing perimeter, constraining the effectiveness of current regulatory tools.

It is important to consider the proposals in this consultation paper in the context of Treasury's broader consultation package relating to Managed Investment Scheme oversight and governance, superannuation member protections and reform of the Compensation Scheme of Last Resort (CSLR). The FSC considers that the broader reform package should be understood as a set of layered and reinforcing consumer protections across the financial system – and, within this, curbing harmful lead generation is central to reducing mis-selling risk at the top of the value chain.

- **Layer 1:** Enhanced ASIC supervision and data collection in relation to Managed Investment Schemes supports earlier identification of poorly governed or higher-risk products, reducing the likelihood of inappropriate products entering the market at scale.
- **Layer 2 (this consultation):** Where inappropriate products do enter the system, targeted reforms to license lead generation and strengthen advertising and conflicted remuneration settings address the key pathway through which consumers are channelled into those products, reducing the incidence of mis-selling and high-pressure distribution before it occurs.
- **Layer 3:** Superannuation platforms provide an additional gatekeeping function under existing investment governance and adviser relationship governance obligations.
- **Layer 4:** Compensation and remediation mechanisms – including trustee compensation obligations and a sustainable CSLR framework – operate as a final safeguard where losses occur. The effectiveness of this layer is necessarily dependent on the strength of earlier interventions, with stronger upstream controls reducing both the frequency and severity of claims and therefore the reliance on retrospective compensation settings.

Against that backdrop, reforms in this consultation should remain tightly focused on the points where risk arises. Bringing high-risk lead generators within the licensing perimeter (Option 1a) would ensure they are subject to clear conduct obligations, oversight and enforcement. Strengthening licensee accountability (Option 1c) would complement this by reinforcing “reasonable steps” oversight within the AFSL framework and consistent responsibility across distribution chains. Strengthening consent requirements (Option 2a) would improve transparency around who consumers are engaging with, how their data is used and any associated benefits. A targeted extension of conflicted remuneration provisions (Option 3a) would address residual incentive risks outside the licensing perimeter. Finally, practical transparency and enforcement measures at the advertising stage (Option 4a and elements of Option 4b) would improve traceability and support earlier intervention in relation to higher-risk activity.

Taken together, these lead generation reforms would materially address the model observed in Shield and First Guardian. By contrast, broader alternatives proposed in the paper across the superannuation and advice ecosystem risk unintended consequences – including reduced access to advice, diminished consumer choice and weaker competition – without addressing the root causes of harm.

A summary of the FSC recommendations is included below:

FSC Recommendations	
Reform 1 – Enhance accountability for the conduct of lead generators	**Support: Option 1a (Bring prescribed lead generation activities into the regulatory framework)** • The FSC supports licensing high-risk, referral-focused lead generation activity under Treasury's "narrow" definition, as the most direct way to close the regulatory gap. • This captures the systematic, commercialised transfer of consumer information while excluding legitimate activity including incidental product-agnostic referrals, marketing, and general engagement. **Support: Option 1c (Enhance accountability of licensees for the conduct of lead generators)** • The FSC supports this as a complement to Option 1a, strengthening licensee accountability for oversight of third-party lead generation within a robust AFSL framework. • Effective reform requires both direct regulation of lead generators (Option 1a) and clear "reasonable steps" obligations on licensees to oversee third-party conduct across distribution chains. **These are preferred over:** **Option 1b (Ban unlicensed communication to consumers about superannuation)** • This is overly broad and risks capturing legitimate communication and consumer engagement. • A "broad prohibition plus carve-outs" approach would be more complex and burdensome than targeted perimeter regulation, relying on ongoing guidance and enforcement discretion to define the boundaries of permitted activity. **Option 1d (Clarify and extend the application of DDO to lead generation)** • This is unnecessarily complex and unlikely to be effective – extending the DDO into an upstream context where it is structurally misaligned.
Reform 2 – Extend anti-hawking requirements	**Support: Option 2a (Enhance the conditions for consent)** • The FSC supports stronger consent requirements through clear, prominent disclosure at the point of contact. • Consumers should be informed upfront about the purpose of contact, data sharing arrangements, and any associated benefits. • The FSC does not support overly restrictive variations of this option (mandatory consumer-initiated contact, imposed delays before adviser engagement) that limit legitimate referrals or access to advice. **This is preferred over:** **Option 2b (Limit the exemption for financial advice)** • This exemption is a critical feature of the regulatory framework, enabling consumers to access advice efficiently and in a timely way. • Financial advisers are already subject to extensive obligations; failures reflect non-compliance and enforcement gaps rather than any deficiency in the exemption itself. • This proposal would materially reduce access to advice in an already constrained market.
Reform 3 – Target remuneration structures that may	**Support: Option 3a (Capture lead generators under the conflicted remuneration ban)** • The FSC supports a targeted extension to prevent circumvention of conflicted remuneration rules through third-party or indirect arrangements. • This complements Option 1a by addressing residual incentive risks without duplicating existing obligations.

incentivise poor conduct	• This extension should not impact legitimate product-agnostic referrals and fee-for-service models where remuneration does not influence advice outcomes. **This is preferred over:** **Option 3b (Clarify and extend the scope of "benefits" captured under the conflicted remuneration ban)** • This risks capturing legitimate commercial arrangements (including platform services, distribution and administration functions) and increasing interpretive uncertainty across the advice and platform ecosystem without clear incremental consumer benefit. • Existing obligations already provide a robust framework for managing these conflicts.
Reform 4: Target advertisements for earlier intervention	**Support: Option 4a (Require superannuation advertisements to display AFSL numbers)** • The FSC supports this as a simple transparency measure linking advertising to the responsible licensed entity. • This improves traceability and supports earlier identification of unlicensed or higher-risk activity. • This also strengthens the role of platform gatekeeping and reduces reliance on ex post enforcement. **Partial Support: Option 4b (Expand ASIC's stop order power to take down financial advertisements)** • The FSC supports targeted expansion of ASIC's stop order powers to cover lead generator advertisements and disclosure omissions, including the absence of AFSL details. • The FSC does not support lowering the evidentiary threshold to permit stop orders based on broader predictive assessments of potential consumer harm. Stop order powers should remain sufficiently connected to identifiable non-compliance, misleading conduct or disclosure deficiencies.
Additional	**Support: Regulatory monitoring, enforcement and coordination** • Strengthened ASIC monitoring and enforcement would complement the broader reform package. • This should include improved intelligence-sharing with other regulators (e.g., AUSTRAC and AFCA).

Yours sincerely,

Bronwyn Allan

Policy Manager – Cross-Industry Regulation

Reform 1: Enhance accountability for the conduct of lead generators

The current regulatory framework gives rise to gaps in accountability for lead generation activities. Many consumer protections under the *Corporations Act* are triggered only where a regulated "financial service" is provided (e.g. "financial product advice", "dealing" or "arranging"). While lead generation interactions can materially influence consumer outcomes, they can be structured to fall outside of these existing definitions.

FSC Position: Support Option 1a and Option 1c (as a complementary measure) – do not support Options 1b or 1d.

The FSC supports Option 1a as the most targeted and effective reform. A licensing model – based on the "narrow", referral-focused definition – would bring high-risk lead generation within the regulatory perimeter, strengthening accountability and enforceability while preserving legitimate marketing, consumer engagement and referral practices.

The FSC also supports Option 1c as a complementary measure that reinforces licensee responsibility for "reasonable steps" oversight of third-party lead generation, strengthening consistent governance and accountability across distribution chains.

By contrast, Options 1b and 1d are either overly broad or insufficiently targeted at the underlying drivers of harm.

Option 1a: Bring prescribed lead generation activities into the regulatory framework.

FSC Position: Support (referral-focused definition)

Licensing is the most direct way to close the existing gap. Bringing lead generators within the AFSL regime would extend existing conduct obligations, ASIC and AFCA oversight, and enforceable record-keeping and compliance requirements. It would also improve supervision and enforcement across the distribution chain and give ASIC a clear regulatory hook to identify and act against unlicensed operators in this space.

The reform should target higher-risk entities whose core business involves monetising consumer data to drive downstream product or advice outcomes. Capturing these entities would strengthen accountability and evidentiary oversight through obligations such as record-keeping and call monitoring, while also addressing a gap in the conflicted remuneration framework that currently allows some lead generation activity to sit outside the licensing perimeter.

Scope and definition

The effectiveness of the reform depends on a clear and tightly scoped definition of "lead generation". The FSC supports Treasury's "narrower", referral-focused definition:

> *"A 'lead generator' that requires an AFS licence could be a person (or related entity) that engages in one or more 'lead generation activities,' which include any of the following:*
>
> - *selling or passing on consumer information to licensees that provide financial advice (their representative or related body corporate) that results in the acquisition of a financial product by the consumer*
> - *referring consumers to licensees that provide financial advice (their representative or related body corporate)."*

This appropriately targets the conduct underpinning recent consumer harm – namely, the systematic monetisation and transfer of consumer data to steer individuals into product or advice pathways that may not align with their interests.

The FSC does not support expanding the definition to capture lower-risk upstream activity such as general marketing, advertising or consumer engagement, nor limiting it to superannuation-specific activity, which would create fragmentation and new regulatory gaps.

As Treasury has acknowledged, the definition should explicitly exclude incidental, product-agnostic referrals made in the ordinary course of business, where the referrer has an existing relationship with the client for another genuine business purpose. These referrals are an important feature of the broader ecosystem and support appropriate access to advice.

For example, referrals between advisers and other professionals (such as accountants, mortgage brokers and banks – many of which already hold an AFSL), as well as referrals from superannuation trustees to advisers where member needs exceed the scope of intra-fund advice, should remain clearly out of scope. In these cases, referrals are incidental to the primary business relationship.

Consistent with existing conflicted remuneration settings, referrals should remain product-agnostic, with advisers receiving no benefit linked to any subsequent product recommendation or client outcome.

Accordingly, the definition of "lead generation" should explicitly exclude:

- superannuation trustee functions, including intra-fund advice, member guidance and engagement activities
- product issuer advertising, marketing and distribution activities, including public communications and participation in legitimate comparison platforms
- incidental referrals between financial advisers and other professionals (e.g., accountants, mortgage brokers and banks), where remuneration is not linked to product outcomes
- incidental referrals by superannuation trustees (or another person acting under an arrangement with the trustee) to licensed advisers where member needs exceed the scope of intra-fund advice
- other existing exemptions for referral activity under the Corporations Regulations (including reg 7.6.01)

Implementation of this reform would likely require amendments to the *Corporations Act* by deeming the specified conduct to constitute "dealing" in relation to a financial product under sections 766A and 766C.

While expanding the application of the established licensing regime is a significant undertaking, it is likely to be more coherent and ultimately less burdensome than attempting to retrofit lead generation conduct across multiple existing frameworks where it does not fit neatly. This is evidenced in our response to some of the alternative options.

Option 1b: Banning unlicensed communication to consumers about superannuation

FSC position: Do not support

This option would prohibit any unlicensed entity from engaging with consumers about superannuation for "commercial benefit".

While conceptually simple, the FSC does not consider the proposal proportionate. It would capture a broad range of low-risk activities that are fundamentally distinct from the predatory practices this consultation seeks to address, including consumer education, commentary, comparison services, and engagement by advocacy groups, industry associations and information platforms.

To avoid unintentionally restricting legitimate public information and consumer engagement, the proposal would require extensive exemptions. In practice, this 'broad prohibition plus carve-outs' model risks becoming more complex and administratively burdensome than targeted perimeter regulation, relying on ongoing interpretive guidance and enforcement discretion to determine the boundaries of permitted activity.

The proposal targets communication broadly, rather than the primary source of harm – commercialised lead generation and high-pressure referral pathways. Restricting the measure to superannuation would further contribute to fragmentation and inconsistency across the financial services framework.

By contrast, Option 4a provides a more targeted and proportionate response by focusing on transparency at the point of advertising. Rather than restricting communication itself, it enhances traceability by linking advertisements to a responsible licensed entity, enabling earlier identification of higher-risk activity without constraining legitimate information flows.

Option 1c: Enhancing accountability of licensees for the conduct of lead generators

FSC position: Support (complementary to Option 1a)

This option would require AFS licensees to take "reasonable steps" to ensure leads are sourced in compliance with legal and regulatory requirements.

The FSC supports this measure as part of a robust advice licensing framework that appropriately places certain responsibility and accountability on licensees for third parties

operating within their distribution chains. It reinforces consistent standards of oversight across the AFSL regime and strengthens expectations that licensees maintain appropriate systems and controls for outsourced and upstream distribution activity.

Consistent with this, the FSC's primary position remains support for Option 1a, which establishes direct licensing of high-risk lead generation activity as the most effective way to address conduct at its source. Option 1c should be understood as a complementary measure that reinforces downstream oversight within a licensed ecosystem, rather than a substitute for perimeter regulation.

Accordingly, the FSC supports Option 1c provided it operates alongside Option 1a. An effective framework requires both direct regulation of lead generators to ensure appropriate perimeter coverage, and clear licensee accountability for third-party oversight to ensure consistent responsibility across the distribution chain. Without Option 1a, Option 1c would place disproportionate reliance on licensees to entirely manage risks originating upstream that are often outside their direct control or visibility.

Option 1d: Clarifying and extending the application of design and distribution obligations (DDO) to lead generation

FSC position: Do not support

This option would extend the Design and Distribution Obligations (DDO) regime by bringing lead generators within the scope of "regulated persons" and "retail product distribution", requiring their activities to align with target market determinations (TMDs).

The FSC considers this approach unnecessarily complex and unlikely to be effective. Lead generation activity typically occurs upstream of product distribution and can often be structured in ways that fall outside the practical operation of the DDO regime, limiting its effectiveness as a regulatory tool. Even where DDO does apply, TMDs are unlikely to meaningfully constrain lead generation practices, particularly where promoters can rely on broad or generic target market descriptions without altering underlying conduct.

There are also significant practical challenges in applying DDO consistently to lead generation models, many of which are not product-specific and operate at a general consumer engagement level rather than as part of a defined product distribution process. In many cases, leads may ultimately result in referrals to financial advisers or other downstream interactions that sit outside the core distribution activities DDO was designed to regulate.

Extending the DDO framework in this way therefore risks blurring regulatory boundaries, capturing legitimate marketing and educational activity, and increasing compliance burdens for issuers, trustees and licensees without materially improving consumer outcomes.

Reform 2: Extend anti-hawking requirements

The hawking prohibition is intended to protect consumers from unsolicited real-time contact offering financial products, but its effectiveness is being undermined in practice.

Lead generators are obtaining "consent" through bundled or opaque disclosures, meaning consumers may not realise they are agreeing to contact from third parties or to be offered financial products.

FSC Position: Support Option 2a (targeted) – do not support Option 2b.

The FSC supports a targeted version of Option 2a focused on clear and prominent disclosure at the point of contact, including upfront transparency on the purpose of contact, data sharing, and any associated benefits.

The FSC does not support Option 2b. Limiting the financial advice exemption would be disproportionate and would reduce access to advice without addressing the underlying conduct driving harm.

Option 2a: Enhance the conditions around consent

FSC Position: Support (targeted)

This option strengthens consent requirements for unsolicited contact through clearer disclosures, alongside more restrictive alternatives such as mandatory consumer-initiated contact or delays before adviser engagement.

The FSC supports targeted reform focused on clear, prominent disclosure at the point of contact. Consent should be informed, specific and obtained in real time – not embedded in opaque terms and conditions. This should include upfront disclosure of the purpose of contact, any third parties receiving consumer data, and any associated fees or benefits. This would improve transparency, enforceability and evidence of valid consent.

It also addresses avoidance practices where high-pressure engagement is followed by immediate referral to a financial adviser, with reliance on the personal advice exemption to avoid the hawking prohibition. Stronger point-of-contact consent requirements would disrupt this pathway by ensuring consumers clearly and expressly agree upfront to both the contact and any onward referral, without restricting legitimate access to advice (as contemplated under Option 2b).

The FSC does not support more restrictive variations such as mandatory consumer-initiated contact or imposed delays before adviser engagement. These measures are disproportionate and risk capturing legitimate referrals and routine adviser–client interactions, including timely outreach in response to changing client or market conditions.

More broadly, limiting engagement to consumer-initiated contact would create regulatory ambiguity and operational complexity for advisers and superannuation funds, particularly in

determining when proactive or routine client engagement is permitted. This would increase compliance burden, reduce the efficiency of legitimate communications, and undermine effective ongoing engagement, without delivering commensurate consumer protection benefits.

Option 2b: Limit the exemption for financial advice

FSC position: Do not support

This option would remove or restrict the existing exemption that disapplies the hawking prohibition where personal advice is provided.

The exemption is a critical feature of the regulatory framework, enabling consumers to access advice efficiently and in a timely way. Financial advisers are already subject to the best interests duty (s961B) and related obligations, which require them to identify and consider the client's relevant circumstances, needs and objectives, and ensure advice (including its scope) is appropriate. This often involves holistic advice conversations – for example, where a client initially seeks superannuation advice and broader needs across insurance, retirement planning or investments are appropriately identified and addressed. Restricting the exemption would interfere with these legitimate interactions and risk placing advisers in tension with their existing obligations.

The failures observed in cases such as Shield and First Guardian reflect non-compliance with existing obligations, alongside gaps in oversight and enforcement, rather than any deficiency in the exemption itself.

Removing or narrowing the exemption would therefore be disproportionate. It would reduce access to advice in an already constrained market by limiting legitimate adviser–consumer engagement, including early-stage and evolving interactions needed to properly scope advice and respond to changing client circumstances. It would impose significant compliance burden on advice models that are already heavily regulated, without addressing the upstream conduct driving harm. It would also be inconsistent with the Delivering Better Financial Outcomes (DBFO) reforms, which aim to improve access to affordable advice and reduce unnecessary regulatory friction.

Targeted limitations would not resolve these concerns and would introduce additional risks:

- **Limiting the exemption to existing clients** would disrupt established referral pathways that are central to how new consumers access advice. Many Australians first engage advisers through referrals from superannuation funds, accountants, mortgage brokers or other professionals. This would add unnecessary friction, reduce advice uptake, and disproportionately disadvantage less financially confident consumers, while favouring incumbent advisers with large client bases over new entrants to the profession.
- **Limiting the exemption to non-superannuation products** would also be problematic and counterintuitive, given that superannuation is the largest financial

asset for most Australians. It would reduce access to advice where it is most needed and risk undermining long-term financial wellbeing.

Both limitations would increase regulatory fragmentation and uncertainty, without delivering a corresponding uplift in consumer protection.

Reform 3: Target remuneration structures that may incentivise poor conduct

Lead generation-linked remuneration can create misaligned incentives, particularly where payments influence advice outcomes through indirect or third-party arrangements outside the conflicted remuneration framework. While existing obligations address most risks, a residual gap remains where incentives can be structured to avoid existing settings.

FSC Position: Support Option 3a (targeted) – do not support Option 3b.

The FSC supports Option 3a as a targeted anti-avoidance measure to ensure lead generation arrangements cannot be used to circumvent existing conflicted remuneration provisions. It complements Option 1a by ensuring the framework continues to apply where incentives are structured through indirect or third-party arrangements.

The FSC does not support Option 3b. It would create uncertainty for legitimate commercial arrangements, increase regulatory complexity, and duplicate existing protections without clear incremental consumer benefit.

Option 3a: Capture lead generators under conflicted remuneration ban

FSC Position: Support (targeted)

This option would appropriately extend the conflicted remuneration framework to capture certain lead generation arrangements that currently fall outside scope. It would do so by deeming lead generators to be representatives of a product issuer (where necessary) to ensure the effectiveness of the regime, and by prohibiting remuneration that could reasonably be expected to influence financial advice outcomes.

The FSC supports this as a targeted anti-avoidance measure to prevent circumvention of existing conflicted remuneration rules. It addresses residual risks where incentives are structured through third-party or indirect payment arrangements outside the current framework.

This option should operate as a complement to Option 1a, which remains the primary mechanism for lifting standards by bringing lead generators within the AFSL perimeter and subjecting them to existing conduct obligations, including conflicted remuneration provisions where they act as representatives.

A residual gap arises where arrangements are structured outside the licensing perimeter or where payments are channelled indirectly (e.g. through intermediaries or service fees) to obscure their link to advice outcomes. Option 3a addresses this by ensuring the conflicted remuneration framework applies regardless of structure, thereby preserving the integrity of the broader regime.

Existing obligations – including the conflicted remuneration provisions, best interests duty, best financial interests duty, and investment governance requirements – already provide a

strong framework for managing conflicts at the point advice is provided. Care should therefore be taken to avoid unnecessary duplication or expansion that could add complexity and uncertainty without addressing the specific gap.

Implementation could be achieved by clarifying that lead generators captured under Option 1a are treated as representatives for conflicted remuneration purposes only where required to give effect to the prohibition. Alternatively, remuneration could be prohibited where it could reasonably be expected to influence advice to retail clients. This approach should be confined to lead generation arrangements within the defined scope of Option 1a.

Once again, legitimate arrangements should be preserved, including product-agnostic referrals and transparent fee-for-service models where remuneration is not linked to advice outcomes (e.g. platform service agreements linked to service provision rather than product direction).

Option 3b: Clarify or expand the scope of 'benefits' captured under the conflicted remuneration ban

FSC position: Do not support

This option could (i) broaden the definition of "benefits" to include indirect or non-monetary incentives (such as client flows), (ii) treat certain referral-based arrangements as conflicted remuneration, and (iii) potentially narrow the client-paid exemption.

While Treasury's intent is not to restrict legitimate platform or product recommendations, the FSC considers the proposal difficult to implement in practice. Any legislative provision would need to be highly prescriptive to avoid unintended consequences that could disrupt legitimate commercial arrangements and reduce access to advice. Compared to other options in the consultation, this is an overly blunt approach.

Adviser platform selection typically reflects a range of well-founded considerations including functionality, cost, client needs, service quality and system integration. It is therefore difficult to clearly distinguish ordinary commercial outcomes from conflicted arrangements under the proposed framework.

A broader definition would materially increase complexity and legal risk, encourage defensive advice practices, and risk reducing use of efficient industry infrastructure without a commensurate uplift in consumer protection. In particular, it risks capturing legitimate arrangements, including:

- where platform and investment infrastructure services receive fees connected to specific administration, reporting, custody and execution functionality which the adviser (and client) value as part of executing and managing the investment placement and overall advice strategy
- fund manager and platform distribution relationships, where a level of increased usage or fund flows reflect appropriate adviser recommendations rather than inappropriate incentive-driven conduct (noting existing platform duties relating to

investment governance and the identification and management of fund flow risk trends)
- ordinary commercial and support services such as education, product listing, and distribution enablement functions that do not influence advice outcomes

Existing obligations already provide a comprehensive framework for managing conflicts. The best interests duty, best financial interests duty, and *SPS 521 Conflicts of Interest* already require advisers, licensees, and trustees to prioritise client outcomes and manage conflicts appropriately. Expanding the definition of "benefits", as described in the first and second proposals under Option 3a, would duplicate these settings and increase interpretive uncertainty without addressing a clearly defined regulatory gap.

Treasury's third proposal within Option 3b would narrow the client-paid exemption to fees strictly tied to services actually provided, aimed at addressing fees for no (or defective) service. While such issues may have arisen in Shield and First Guardian to some extent, they were not a primary driver of harm and are not systemic across the advice sector. These issues were examined by the Royal Commission and have since been addressed through a combination of legislative and supervisory reforms.

Where a platform operator or trustee deducts advice fees from a client/member's account on their behalf, strict legislative requirements govern the consent required from the client/member before any deduction can occur, especially where fees are ongoing. These requirements were codified recently into the *Corporations Act* through the Delivering Better Financial Outcomes reforms and are highly prescriptive regarding the fees to be paid and services delivered on an annual basis. Even greater rigour is required in the context of superannuation, where trustees are required to exercise oversight over advice fee deductions (satisfying themselves that the fee deductions are authorised, relate to personal advice about superannuation, and are consistent with legislative requirements). It is also now common practice (and ASIC's expectation) that trustees impose advice fee caps to help protect members' superannuation balances. In addition to this, AFS licensees have substantially increased their investment in monitoring and supervision and are expected to continue to do so.

Regulating the detail of professional contractual arrangements for services provided in this way is already unusual and in any other profession would be considered onerous. In the current financial advice context, further narrowing the client paid exemption would introduce significant additional compliance costs into trustee/advice monitoring and governance processes. Within the regulations and obligations mentioned above, financial advisers and their clients should be broadly free to strike a commercial arrangement relating to fees paid for services rendered.

In considering the merits of this option, the FSC notes that the primary drivers of harm in the Shield and First Guardian cases were incentivised lead generation practices that channelled consumers to advisers, and the provision of advice that did not comply with the best interests duty and related obligations. We also observe that enforcement action in relation to this defective advice was largely absent and earlier supervisory intervention may have

reduced the scale of investor losses. Against this backdrop, the FSC considers that Treasury has not demonstrated a sufficient case for further narrowing of the 'client paid exemption'.

By contrast, Option 3a is more targeted, addressing the specific risk of circumvention through third-party structures without introducing broader uncertainty across established commercial arrangements. In combination with Option 1a – and the enhanced oversight and data visibility it provides for lead generation activity – it is a more appropriate response to the issues identified in these models.

Reform 4: Target advertisements for earlier intervention

Advertising is often the entry point to the lead generation funnel, with consumers increasingly exposed to financial promotions through digital channels. While ASIC has strong powers to address misleading or deceptive conduct, enforcement is necessarily reactive and occurs after consumers have been exposed to advertising. This creates a need for earlier-stage transparency and intervention at the point of first consumer contact.

FSC Position: Support Option 4a and partial support for Option 4b.

The FSC supports Option 4a as a simple, proportionate measure linking advertising to a responsible licensed entity. This improves traceability, accountability, and early identification of higher-risk activity, while strengthening digital platform gatekeeping.

The FSC has partial support for Option 4b where it addresses clear regulatory gaps and complements the broader reform package, including extending stop order powers to lead generator advertisements and certain disclosure omissions. However, the FSC does not support lowering the evidentiary threshold to permit stop orders based on broader predictive assessments of potential consumer harm.

Option 4a: Require superannuation advertisements to display AFS license numbers

FSC Position: Support

This option would require superannuation-related advertisements to display the AFS licence number of the responsible entity, clearly linking advertising to a licensed party.

The FSC supports this as a targeted measure that improves traceability and supports earlier identification and intervention in relation to unlicensed or higher-risk activity, particularly when combined with appropriately targeted stop order powers under Option 4b.

By increasing visibility at first consumer contact, the measure enables consumers, regulators, publishers, and digital platforms to more readily identify responsibility for advertisements and respond to potential harm. Unlike Option 1b, it is confined to the advertising layer and does not restrict broader forms of communication or information provision.

The measure would be relatively straightforward to implement, with limited impact on compliant firms already operating within the licensing framework, although publishers and digital platforms may need to update systems and templates. The FSC has consistently supported a stronger role for digital platforms as gatekeepers, including through ad-tech controls and verification processes to help prevent non-compliant advertising reaching consumers.

To remain effective over time, the requirement should be framed on a functional rather than purely terminological basis to reduce the risk of avoidance through re-labelling of promotions

(e.g. “retirement planning” or “future income strategies”) that effectively target superannuation consumers without using explicit terminology. A purpose-based test focused on whether an advertisement is reasonably likely to promote or induce engagement with superannuation products would better future-proof the regime.

Implementation should also seek to minimise the risk of consumers interpreting the presence of an AFSL number as an endorsement or indicator of product suitability, rather than as an identifier of regulatory responsibility.

Option 4b: Expand ASIC’s stop order power to take down financial advertisements

FSC position: Support in part

This option would expand ASIC’s stop order powers to enable earlier and more effective intervention where financial advertisements present a risk of consumer harm or non-compliance.

The FSC supports targeted enhancements to ASIC’s stop order powers where they address regulatory gaps and complement the broader reform package.

In particular, the FSC supports:

- **Extending the scope of stop order power to lead generator advertisements**: This would appropriately close a coverage gap, particularly where lead generation advertising is used to direct consumers into downstream advice or product pathways. While Option 1a would bring certain lead generators within the licensing perimeter, this would not necessarily, on its own, clarify the application of existing stop order powers to lead generator advertisements themselves. A targeted expansion would therefore provide ASIC with a clearer and more practical mechanism to intervene quickly in relation to non-compliant advertising activity at the point of consumer contact.
- **Expanding the types of omissions that may trigger a stop order (including absence of AFSL details):** This is a proportionate and practical enforcement complement to Option 4a. Without an efficient intervention mechanism, disclosure obligations risk operating primarily as transparency measures without timely consequences for non-compliance.

However, the FSC does not support lowering the evidentiary threshold to permit stop orders where ASIC “reasonably believes” an advertisement has resulted in, or is likely to result in, substantial consumer harm.

The FSC considers stop order powers should remain sufficiently connected to identifiable non-compliance, misleading conduct or disclosure deficiencies, rather than broader predictive assessments of potential consumer harm. ASIC already has broad powers to address misleading or harmful advertising conduct, and the key issue is generally the speed and effectiveness of detection and enforcement rather than the absence of available powers.

Lowering the threshold in this way risks creating uncertainty regarding the circumstances in which ASIC may intervene, particularly in relation to legitimate promotional, educational or brand advertising, and may result in disproportionate intervention in fast-moving digital advertising environments before factual issues are clearly established.

Overall, the FSC considers targeted enhancements to ASIC's stop order powers are appropriate where they remain clearly connected to identifiable non-compliance and operate as a practical enforcement complement to Options 1a and 4a. Together, these reforms would strengthen traceability, accountability and ASIC's ability to intervene earlier in relation to high-risk lead generation activity, while maintaining appropriate certainty and proportionality for legitimate market participants.

Additional: ASIC enforcement and resourcing

A key factor in the consumer harm observed in cases like Shield and First Guardian was not only gaps in the regulatory perimeter, but also constraints on ASIC's ability to detect and respond to evolving lead generation networks in a timely way. Even well-designed reforms will be more effective when supported by strengthened enforcement capability.

While not a specific option in this consultation paper, the FSC considers enhanced ASIC capability would support the broader reform package.

As described, the proposed licensing approach under Option 1a would be the most straightforward for ASIC to administer and enforce over time, despite initial implementation effort. A clear licensing perimeter would provide a single point of regulatory entry, enabling more consistent oversight and more efficient use of existing supervisory and enforcement tools.

This could be complemented by improved monitoring of digital advertising and lead generation ecosystems, alongside stronger intelligence-sharing between ASIC and other regulators (including AUSTRAC and AFCA).