

22 May 2026

The Treasury

Email: FinancialAdvice@treasury.gov.au

Dear Treasury,

Consultation – Curbing lead generation activity

The Financial Advice Association of Australia¹ (FAAA) welcomes the opportunity to provide feedback to Treasury on the *Curbing lead generation activity* consultation paper.

The FAAA strongly supports actions to prevent inappropriate lead generation activity, based upon social media capture, cold calling and aggressive sales tactics. The FAAA and predecessor associations have for many years reported misconduct in this space to ASIC and sought for it to be stamped out.

We need to commence this exercise with a clear definition of what lead generation is and what elements of it are problematic. Businesses need to market their services and find new clients. This we understand, however Shield and Frist Guardian have highlighted where this activity can become significantly detrimental to consumers. Defining the attributes of this misconduct and addressing it is important in protecting consumers.

Cold calling and aggressive sales tactics

In our view, lead generation activity based upon cold calling and aggressive sales tactics, will always be inappropriate conduct and is particularly the case in professional services and financial services. We also believe that the use of social media to get consumers to opt-in to being contacted by a lead generator is problematic. We further consider that businesses that are solely being run for the purposes of lead generation and using high pressure sales tactics are unlikely to focus on the best interests of clients and therefore pose an unacceptable risk for financial services consumers. It is appropriate to carefully consider how these lead generators are paid and what the risks are for consumers as a result of conflicts of interest that may exist.

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

We also believe that it is totally unacceptable for product providers to pay for lead generators to provide leads to financial advisers. The conflicts of interest in this situation are substantial. We do, however, accept that it is not inappropriate for product providers to be able to refer their existing customers to a financial adviser to address an identified need that they are unable to assist the customer with. This referral should be on the basis that there is no obligation to keep them with that product provider or for anything to be provided in return.

Defining lead generation

The consultation paper on page 4 appears to define lead generation as marketing activity designed to create consumer interest in a product or service with the goal of persuading consumers to purchase the product or service. This could easily be a definition of marketing. Whilst we appreciate that this and like definitions are designed to capture the type of activity that has been seen as part of the Shield and First Guardian disasters, this does not appear to achieve that. The definition is important. We do not want to see genuine referral arrangements or standard marketing activity being unintentionally captured.

It is not uncommon for professional firms to have referral arrangements with other firms. A financial advice firm which does not provide risk advice, may refer their clients to an insurance specialist. Equally a lawyer or accountant may refer their clients to a financial adviser for financial advice. We recognise that page 25 provides some clarification - "This definition is not intended to capture one-off referrals or referrals made in the course of other businesses that are not lead generation". It goes on to note - "Consumers may frequently be referred to financial advisers when engaging with related services such as accountants or real estate agents". These professional arrangements are genuine referrals, on the basis of an appreciation of a real client need, that is done to achieve an outcome that is in the interest of the client and one where the referring party maintains an ongoing relationship with the client. In some cases, such referrals may involve the sharing of some income and/or the payment of a referral fee (which must be disclosed to the client). Where such referrals are done in the best interests of the client, they should not be banned and these reforms should not seek to unnecessarily interfere with these arrangements. It is critical that any legislative response is focused on the elimination of the identified misconduct.

Reforms must not prevent financial advice firms from legitimately marketing the services that they provide. As long as they are meeting their legal obligations, then this should not be limited or prevented as a result of these reforms.

Thus defining the problem clearly is very important, although we acknowledge that this is a difficult exercise. We have made various suggestions throughout this paper including looking for clarity on what is acceptable conduct, as well as what is not.

Fact find by lead generators

Another attribute of inappropriate lead generation is the prevalence of lead generators doing the fact find exercise with clients. This initial data gathering exercise is a critical part of the financial advice process.

We do not believe that it is appropriate for another party to undertake this exercise on behalf of an adviser. It potentially means that the adviser misses out on key discussions that help to reveal the goals, needs and objectives of the client. We are aware of cases related to Shield and First Guardian where the lead generator did a very short fact find, and then a Statement of Advice was provided to the client by a financial adviser who did not even meet or talk to the client. This is totally unacceptable. Lead generators should not be doing the fact find process. Lead generators should not be discussing potential products with clients either. This is another disturbing practice that seems to have emerged in the Shield and First Guardian matter.

Remuneration models for lead generators

A further point of concern is the payment of ongoing fees to lead generators by financial advice practices. In examples that we have seen, we saw the payment of not only initial fees, but also ongoing payments to lead generators for these clients. In some cases it was a material proportion of the total advice fee. We believe that where genuine lead generation activity by a business, that is a pure lead generator, is permitted, the payment should be limited to an initial payment and such businesses should be prevented from receiving an ongoing fee, in the financial sector at least.

Lead generation in a financial advice context

The FAAA does not believe that cold calling or high pressure lead generation activity is appropriate or needed for financial advice businesses. Most members tell us they already have sufficient clients and unprompted demand from new consumers to avoid any need to rely upon lead generators. There are some exceptions, including new businesses in their start up phase, and advisers changing business and/or licensee in circumstances where they are unable to retain clients.

Multiple legitimate marketing opportunities exist, such as building relationships with other advice firms, building referral arrangements with other professionals such as accountants, lawyers and mortgage brokers, and referrals from existing clients (which is the major source of new business for the vast majority of our members).

In this context, and at a time when the average financial adviser services 115 clients, lead generation arrangements that resulted in small advice practices with multiple thousands of clients were clearly inappropriate.

FAAA recommendations

The FAAA has five key recommendations:

- **Licensing lead generation.** We recommend that the Government introduces licensing requirements for lead generators in financial services.

- **Social media advertising and lead generation.** We recommend that the anti-hawking laws are modified to ensure that responding to social media posts does not get treated as unsolicited contact.
- **Retain financial advice anti-hawking exemption.** We do not believe that there is any justification for altering the financial adviser exemption from the anti-hawking laws and recommend that this be retained.
- **Extending conflicted remuneration laws.** We recommend that the Government consider further extensions to the conflicted remuneration laws to ensure that product providers cannot pass paid-for leads to financial advisers and payments cannot be made by product providers to entities associated with financial advisers.
- **Advertisements.** We support further investigation of limitations on advertising financial products through social media and the provision of greater powers to ASIC to stop these advertisements. We also believe that the role of social media platforms needs to be considered.

The scale of Shield and First Guardian

The [concise statement](#) in the November 2025 action that ASIC is taking against Interprac Financial Planning with respect to Shield and First Guardian clearly demonstrated the scale of the consequences that lead generators working with financial advisers can have in a short period of time. It suggests that just two financial advice practices were responsible for “around 6,843 retail clients [who] invested about \$677 million in the Funds”. This was all done over a two or three year period. It goes on to explain the apparent motivation, referring to how the lead adviser in this matter “admitted that companies he controlled had received more than \$19 million from entities associated with First Guardian and \$500,000 from an entity associated with Shield”. This appears to suggest that this activity was orchestrated between the funds, lead generators and the two advice practices.

It is important to keep in mind that in the Shield and First Guardian matters, a huge amount of damage was done by a very small number of lead generators and advisers in a very short period of time. Fixing this problem is not going to be easy when rogue conduct, that is intentionally outside the law, can cause so much damage so quickly.

The Shield and First Guardian failure places a spotlight on some of the practices that have existed in the market place and which need to be stamped out.

FAAA Feedback

We have responded to each of the consultation questions below.

Curbing lead generation activity

1. What types of lead generation activities within the financial services sector provide consumer benefit?

Whilst we would not define it as lead generation, we continue to strongly support referral arrangements between professional firms and other models where a referral is done on the basis of an identified client need directly to a financial advice firm or individual adviser. Referrals by accountants, lawyers, real estate agents, existing clients and other financial advice practices to a financial adviser, in almost all cases, will be done on the basis of the best interest of the client, seeking to address an identified need of the client.

We also believe that referral arrangements might be appropriate in other contexts, such as referrals by Aged Care homes for Aged Care advice, or from sporting or community clubs for people who need financial advice. We also support the ability of product providers referring existing customers to an adviser, provided this is being done with no strings attached or incentive for the adviser to leave the client with the existing product. Further we note that Australian Financial Services Licensees may have referral arrangements where they transfer the servicing of existing clients who have lost their financial adviser to another adviser within the group.

For those advice businesses that do use lead generation services, this might have a legitimate purpose where it is restricted to identifying potential clients who align with the practice's target market. They can use this type of service to filter out clients who do not fit the required attributes. This process should only involve the collection of suitable names and some indicator of attributes that suggest that they are within the target audience. This is likely to be limited to a small number of advice practices that need to grow and will benefit from the receipt of warm leads for potential clients they are likely to be able to assist.

We are not aware of any circumstances where cold calling and high pressure lead generation activity intended to funnel consumers into a particular financial product could be seen to be in the interests of consumers.

2. How should lead generation activities be defined to target consumer harm without capturing legitimate marketing or information services?

The definition of lead generation that is to be used for the purposes of preventing this type of activity is really important. It should not be extended to include activity that is in the best interests of clients. Neither should it capture genuine marketing activity. The attributes of lead generation that we would suggest should be incorporated in the definition include all of the following:

- A stand-alone lead generation business that operates solely for the purpose of finding leads.
- It includes cold calling of potential leads and high pressure sales tactics.

- Leads are generated based upon the use of social media advertisements to attract interested consumers where a one-click response is assessed as being solicited contact under the anti-hawking laws.
- Where the leads are transferred to a financial advice business or another third party for a fee, including potentially an ongoing fee, where there is a potential conflict.

3. Does the business model used in the Shield and First Guardian cases raise any potential for unintended consequences in relation to any aspect of the Delivering Better Financial Outcomes reform package?

At this stage in the investigation of what happened with Shield and First Guardian, we do not fully understand the business model that was used in all cases. Neither do we completely understand what payments were made and how each participant in the process was remunerated for the services that they provided. We do have enough background to have some appreciation for where things went wrong with the Shield and First Guardian matters, however more understanding would be better.

We do not believe that what happened with Shield and First Guardian presents the risk of any material unintended consequences for the Delivering Better Financial Outcomes (DBFO) reforms. It seems clear that much of the conduct that was observed in the Shield and First Guardian lead generation activity and financial advice process was already in breach of the law. Nothing that is proposed in the DBFO reforms would change that position. Of the seven remaining key elements of the DBFO Tranche 2 reforms, changes to advice documents, the Best Interests Duty and the repeal of the safe harbour would not be impacted. Clarifying what types of advice can be provided by super funds on a collectively charged basis and providing more certainty with respect to the provision of limited scope advice are also unlikely to be impacted.

That leaves super nudges and the new class of provider. Super nudges can only be used by super funds, which is a very different proposition to what occurred in the Shield and First Guardian matters. The Government have already proposed some limitations on the new class of provider, including restricting this to providing advice on prudentially regulated products. This is the area where there is some potential exposure, however we would hope that in the final design of this reform, appropriate controls can be put in place.

We do not see any reason for the Shield and First Guardian matters to derail the DBFO reforms.

Reform 1: Enhance accountability for the conduct of lead generation activities

It is our view that lead generation activity should not include any activity related to the fact find process, discussing specific product options, nor anything that could be classified as dealing, including arranging for clients to acquire products or the completion of application forms. We would like to see these reforms ensure that this is the case.

Licensing

4. Would reforms to require licensing for certain lead generation activities be an effective and proportionate way to curb harmful lead generation activities?

The FAAA would support the inclusion of lead generators into the AFSL regime, however this would be dependent upon the development of a clear definition of lead generation that did not capture genuine referrals from other professionals, product providers, community groups and others in a manner that is entirely peripheral to their core activity. The implementation of this reform should not lead to the unnecessary capture of those involved in reasonable referral arrangements.

Being required to be licensed, either through obtaining a licence or through being authorised by someone who does have a licence will place greater obligations on them, including the core obligation in Section 912A to act efficiently, honestly and fairly. Requiring lead generators to be licenced will also make it much easier for ASIC to have oversight over their operations and to intervene should any concerns emerge.

For parties that are determined to break the law and would continue to operate without a licence, ASIC would have greater powers to take action and would have access to seeking material penalties.

5. What is the scope of activities that should be captured under the licensing reform? Should this be limited to activities in relation to superannuation?

The FAAA does not support the limitation of scope to just superannuation. The Shield and First Guardian matters have been focused on the superannuation space, however future collapses of this nature could occur elsewhere. Therefore, we do not support a proposal that would only serve to protect the interests of consumers when acquiring superannuation products, when they would not be protected in the case of other products. Any changes such as a new licencing obligation should apply with respect to all financial products. Limiting this to superannuation would only serve to encourage those willing to do the wrong thing to focus their efforts on other financial products. This would achieve very little.

6. How should lead generation activities be defined to target consumer harm without capturing legitimate marketing or information services?

As noted previously, this definition of lead generation activity is really important to ensure that it prevents the type of conduct that has led to client detriment and does not limit the type of conduct that is appropriate and advantageous to consumers, such as in the case of professional referrals.

It is our view that the definition should capture the exercise of finding leads through both phone and social media for the purposes of selling these leads to a third party. It should specifically exclude referral models, even where remuneration is involved in those referral arrangements.

This reform should not prevent firms, either product providers or financial advisers from using marketing vehicles (including social media) to promote their own products and services. The intent of the reforms is to tighten the rules with respect to businesses focussed on practices that are designed to capture leads for the purposes of selling to another party, not to prevent businesses from promoting the products and services that they provide.

7. What would be the implication of banning all unlicensed communication about superannuation for commercial purpose? What exceptions or carve-outs would be required?

We think that there is merit in consideration of this option for the purposes of preventing lead generation activity, however it would need to be carefully framed as it should not prevent the promotion of the following:

- Education programs that cover superannuation.
- Superannuation as a type of advice by a financial adviser.
- Other services that are provided in relation to superannuation, including by accountants, auditors, lawyers and administrators of SMSFs.

It is important to ensure that any banning of this nature is carefully targeted and is not a means to eliminate or reduce competition and choice that is in the interests of consumers. A further question is whether any intervention of this nature should be limited to just superannuation, when it could be equally applicable to other forms of financial products.

Licensee accountability

8. Would reforms to impose additional obligations on AFS licensees using lead generators be an effective way to curb lead generation activities?

This is a reform option, however we are concerned it might not be effective. There are already strict obligations that apply to licensees in terms of their general obligations and the requirement to supervise and monitor their advisers. They are also bound by conflicted remuneration provisions, and need to ensure that their adviser are not receiving unlawful remuneration. It is our view that the existing obligations should be sufficient.

Most advice AFSLs do not permit their advisers to use lead generators, and few advice practices now actually use lead generators. Thus, any additional obligations would be limited to a relatively small proportion of the advice market.

Our concerns with respect to the effectiveness of this proposal relate to the risk that a particular licensee chooses to ignore these obligations and is involved in conduct causing a huge amount of damage, as we have seen with respect to the two Interprac practices, who have put so many clients into Shield and First Guardian in a short period of time. For those who are determined to break the law, additional obligations

of this nature are unlikely to have any material impact upon what they choose to do. It is clear that a lot of damage can be done by a small number of operators in a short period of time. Framing the response to Shield and First Guardian needs to take this into account.

We are further concerned as to whether financial advice practices would be able to have sufficient visibility over the lead generators businesses they use in order to be able to easily identify potential grounds for concern. In reality, if it is a lead for financial advice and the advice business otherwise meets its obligations under the Corporation Act, in terms of the provision of that advice, then the consumer risk is much lower. The exposure is much greater when the conduct is done on the scale of the Shield and First Guardian matters, where product providers, lead generators and financial advisers were seemingly working in a coordinated manner.

It is our view that there are better ways to address the risk of client detriment as a result of lead generation activity.

9. What additional obligations (if any) are appropriate to place on advice licensees using lead generation services to strengthen accountability and support effective enforcement?

It is not unreasonable to expect that financial advice businesses who do choose to use the service of a lead generator would do careful due diligence on them and seek to fully understand the basis that they are remunerated under. These practices should also seek to do ongoing due diligence in the form of understanding the lead generators process and to listen to some tapes from conversations with potential leads. Whether law change is required to enforce this would be another matter. Regulatory guidance and ongoing surveillance might be all that is required.

10. What penalties would be appropriate and effective in deterring misconduct?

A penalties regime is important, although not always entirely effective in avoiding misconduct. This is evidently the case where the person responsible for the misconduct is well funded to defend legal action or has been successful in transferring assets to put them out of reach of the regulator.

The penalties regime would depend upon the proposed solution, however if lead generators were to be captured under the AFSL regime, then the same penalties should apply to them as apply to similar cases of misconduct under the Corporations Act. A stronger penalties regime and ongoing oversight and early enforcement intervention should make a meaningful difference.

Design and distribution obligations

11. Would reforms to clarify and specifically extend the DDO obligations to lead generators be an effective way to curb lead generation activities?

It is the view of the FAAA that the DDO regime is unlikely to be the most effective means of addressing inappropriate lead generation activity. The DDO regime is primarily focused upon product providers and the parties they use to distribute their products. Lead generation activity often occurs at a point in the process where there is no identified product, making the DDO regime difficult to leverage for this purpose. Where lead generation activity is undertaken with respect to a product, by a third party, as opposed to the product provider, then it is more likely that this is otherwise in breach of the law, so additional DDO obligations might not be enough to prevent the conduct. We believe that it is easier for the lead generator to separate their lead generation activity from the DDO obligations, making this a less effective solution.

12. What would be the implication of specifically extending the application of DDO to lead generators?

As noted above, this would only be a workable proposition if the lead generation activity was specific to a particular product. Otherwise, the connection to the responsible party is removed. It would be too easy for these lead generation models to be positioned as outside of the distribution chain and thus only apply from the point that a financial adviser becomes involved.

The experience with Shield and First Guardian is that these products were positioned as suitable for a broad section of consumers, rather than being treated as higher risk products. As a result, even applying the DDO obligations more directly to the lead generators may not have had any material impact.

13. What issues would arise from clarifying that certain lead generation activities constitute retail product distribution conduct for DDO purposes?

As noted above, there would be significant challenges in ensuring that lead generation activity could be captured under retail product distribution conduct. It seems to us that it would be relatively easy to avoid this capture and in any case, where the conduct was deliberately seeking to break the law, or avoid the application of the law, the product providers would be unlikely to change their approach as a result of potential capture of lead generation under the DDO regime.

We believe that there are more effective means of addressing inappropriate lead generation activity. We do not believe that the DDO regime is the best way to address this.

Reform 2: Extend anti-hawking requirements

It is the view of the FAAA that the anti-hawking laws are an important part of the consumer protection regime, however may not be effective in countering the threat posed by social media lead generation in

financial services. However, it is appropriate for these requirements to be reviewed in the context of the Shield and First Guardian collapses.

The FAAA is strongly opposed to any proposal to remove or scale back the existing exemption for financial advisers, which is a critical measure to ensure that financial advisers can contact their clients when there has been meaningful change in circumstances that would warrant the adviser recommending to the client that they make some change to their existing portfolio, or to pursue a new opportunity that is in their best interests.

14. Would reforms to the Hawking prohibition be an effective way to curb harmful lead generation activity?

It is our view that the focus of changes to the anti-hawking laws should be on ensuring that lead generators cannot work around the anti-hawking provisions by getting consumers to click on a box that enables them to be contacted on the basis that this is classified as solicited. This pathway should be closed - it should be necessary for consumers to proactively contact a product or service provider on the basis of responding to social media advertisements. In our view, this is a more appropriate response, rather than the alternative proposal that additional protections be provided to ensure that the consumer is aware of what they are consenting to. Unfortunately, many people click those consent declarations without fully reading them or understanding them. However this area is enhanced, it is unlikely to be as effective as might be intended. This should not prevent a person from going onto a product or service provider's website and completing a form to be contacted. This is different to responding to a social media advertisement (although of course it should contain appropriate disclosures).

Placing greater obligations on the product provider to ensure that the enquiry complies with the anti-hawking obligations and to check the validity of the consent is going to be problematic. Further, this provides little protection in the case where a product provider is happy to disregard the law, or pay only peripheral attention to it.

15. How would a ban on non-consumer initiated real-time contact impact the offer of financial products and the provision of financial advice?

We assume that this question relates to the issue of non-consumer initiated contact by a third party about the provision of financial advice, as opposed to direct contact by a financial adviser.

There is likely to be some impact as a result of the application of this proposal for product providers, however if a consumer has a need for a product or a service, then it is not unreasonable that they should be the one to initiate the contact with the relevant party. Product providers have other options for contacting their existing clients, including via email or messages on their portals.

16. Would enhancing the consent disclosures made during the real-time contact with consumers ensure that engagement with lead generators and financial advisers is genuinely informed and voluntary, or are additional safeguards necessary?

We are responding to this question from the perspective of real-time contact with consumers by lead generators as opposed to financial advisers (where we do not think any changes are necessary). We do not feel that enhancing consent disclosures would be particularly effective. There is enough evidence, including reports issued by ASIC, that suggests that disclosure alone is not effective in protecting consumers. No matter how these consent requirements are modified, we still feel that a lot of people will still click on the box, without having read the significance of it or understood it. Regrettably, in society today, people are too often required to provide consent to something without paying attention. This could include signing the form when they check in at a hotel, signing a new mobile phone contract or accepting an update to the software on their phone or computer. This is simply not an effective way to force people to read what they are consenting to or to make them understand what it means.

We do, however, support further work to ensure that appropriate standards apply across the board to the seeking of consumer consent.

17. How would the removal of the personal advice exemption impact the provision of financial advice?

Possibly the best way to respond to this is to highlight the implications of the removal of the personal advice exemption for a client who holds a product, such as Shield and First Guardian, if their adviser could have recommended that they sell these products before they collapsed. Maybe a financial adviser picked up a client who already had a reasonable, but not excessive allocation to Shield and First Guardian. They may have reviewed the client's situation, noted reservations about the product holding, however in the absence of definitive reasons, put a watch on this product rather than a sell recommendation. If they had later discovered more about these products and formed a view that they were no longer appropriate for their client, then they would need to be able to contact them and quickly advise them to move.

Financial advisers need to be able to contact their clients where they need to provide urgent or timely advice about their investment portfolios, either in terms of selling something or buying something. Advisers also need to be able to contact their clients in a range of other circumstances where a change to their financial products is required. As a further example, where a client who is still working, reaches the age of 65, it might be timely for their adviser to prompt them to consider commencing a pension. Also, an adviser may need to contact their client when one of their investments has been reassessed as a sell recommendation by the licensee's product research committee. Where a client has changed their job, or bought a new house, it might be appropriate for them to consider changing their insurance arrangements to reflect the change in their circumstances, and their adviser needs to be able to raise this with them.

It would be entirely counterproductive for advisers to be constrained from contacting their clients with respect to advice about products that may be urgent and clearly in their best interests.

18. Would limiting the operation of the exemption to existing clients or non-superannuation products provide appropriate protection for consumers?

Whilst the anti-hawking exemption is most important with respect to existing clients, there are circumstances where an adviser may need to contact consumers other than their existing clients. This might include potential clients who are in the process of considering seeking advice, or referrals, such as family or friends of existing clients where the client has asked the adviser to contact them. We think there are much better ways to address the problems with lead generation, rather than limiting the anti-hawking exemption for financial advisers to contacting existing clients.

In terms of limiting the exemption to non-superannuation products, we see no merit in doing this either. As noted above, it may be important for an adviser to talk to their client about a concern that they have about one of their superannuation assets, as much as it is to talk to them about any non-super assets. It would presumably be easy to work around this by contacting the client initially about a non-super asset and then allowing the conversation to transition into superannuation products. Equally importantly, if it was felt that advisers contacting their clients about their super was a risk, then why would it be less relevant if they were contacting their clients about their other financial products?

19. Of the approaches canvassed under reform 2, which approach, or a combination of approaches, would be most effective in reducing unsolicited contact while preserving legitimate advice provision?

It is our view that the most effective reform would be to prevent a consumer who provides details in response to a social media post and clicks a button, from being classified as having consented to further contact, and to have this treated as solicited.

We do not support any changes to the anti-hawking exemption that applies to financial advice clients. We feel that this would serve to disadvantage many more clients than it protects. In fact, to the extent that financial advice is a protection for clients from fraud and poor financial decisions, it would only serve to reduce that benefit. Financial advisers need to be able to proactively contact their clients and the law should not prevent them from doing this. Removing this exemption for people other than existing clients or for non-super products only would also be inappropriate.

Reform 3: Target remuneration structures that may incentivise poor conduct

We are not entirely familiar with all the remuneration structures that exist with respect to lead generation, however as noted above, we are aware of the concise statement in ASIC's November 2025 action against Interprac, stating that one of the advisers responsible for a significant amount of clients impacted by Shield and First Guardian was paid \$19 million from entities associated with First Guardian and

\$500,000 from an entity associated with Shield. This suggests very substantial flows of money, presumably for lead generation, which to us is a very disturbing situation. These payments on the face of it should be classified as a breach of the existing conflicted remuneration laws. We suspect, although we don't know for sure, that these payments might have been made to a separate lead generation business that this person owned. Even so, we don't understand why a payment to a related entity controlled by a financial adviser would not trigger the existing conflicted remuneration laws. We believe that it is essential that the issues with respect to the effectiveness of the conflicted remuneration laws are assessed and addressed as part of the response to the Shield and First Guardian collapses.

In terms of the potential payment of fees related to lead generation, we recognise that financial advisers could pay lead generators for leads. Where this is a lead for a person who is seeking financial advice, and where there are no product connections, then this is less of a direct concern, provided that the payment does not represent a substantial proportion of the adviser's fees.

Alternatively, a product provider could pay a lead generator for providing supportive leads to a selected financial advice practice. It is this form of conflicted payment that we believe represents the greatest risk to consumers.

We have commented above about a small number of financial advisers who were revenue sharing with lead generators, including sharing substantial proportions of both initial and ongoing adviser fees with them. We strongly oppose any sharing of ongoing fees as there is no ongoing benefit that is being provided to the client by the lead generators. This is seemingly more a matter of them asserting ongoing ownership, which we think is a totally false proposition.

20. Would reforms to the conflicted remuneration provisions be an effective way to curb harmful lead generation activity?

The area of the Shield and First Guardian matters related to conflicted remuneration that most concern us, is the notion that a product provider could pay a lead generator for the provision of leads to a financial adviser, where there is a clear expectation that this financial adviser will favour the product provider who has paid for the leads. We believe that this could be addressed by a complete ban on product providers paying for any leads. This should be banned by Section 963C of the Corporations Act (ban on non-monetary benefits).

We are also concerned about how it might have been possible for First Guardian to pay an entity, presumably related to an advice licensee, \$19m without breaching the conflicted remuneration provisions. Why wasn't the payment to a related entity caught by the conflicted remuneration provisions? We are also concerned that the direction of payments through a third party could be used to avoid the prospect of prohibition under the conflicted remuneration rules.

21. What lead generation remuneration arrangements or practices may create incentives for poor conduct or circumvent existing conflicted remuneration provisions? Are there remuneration practices associated with lead generation that pose a low risk of influencing financial advice, and should not be captured by reforms?

As discussed above, we are most concerned by the provision of paid leads by a product provider to a financial advice practice, where there is a clear expectation that they will use the product provider's product. This seems to be what has happened in the Shield and Frist Guardian matters.

From what we have seen, we are also concerned by a financial adviser sharing initial and ongoing financial advice fees with a lead generator. Evidently some of these fee splits were very substantial amounts, which would serve to force the advisers to cut costs in the advice process and overly rely upon information obtained by the lead generator, rather than do their own enquiries. It is our view that any payment for a lead (where permitted) should be a fixed amount, and an initial payment with no ongoing payment.

Our least level of concern is with respect to a financial advice practice paying for genuine leads for people who want financial advice where they have used this to identify potential clients who reflect their target market where there has been no positioning about any specific product.

22. Would a broad prohibition that captures transactions beyond those that directly involve advice providers, product issuers/sellers and lead generators, be appropriate to curb misaligned incentives?

We are uncertain as to what this question is addressing and what types of payments it is referring to. If this is with respect to a complete ban on any payment for lead generation, then our view is that we would see some merit in this, however it may prove to be unfair for advice practices in start-up phase who need to grow client numbers in a non-organic manner in order to achieve necessary scale. Otherwise, in the current environment we see little need for cold calling or social media based lead generation activity.

23. How would broadening the definition of 'benefit' impact remuneration practices?

We would support clarity that the provision of paid-for leads by a product provider to a financial advice practice should be treated as a 'benefit' under the conflicted remuneration provisions, particularly if the leads came with an expectation that their products will be acquired. This would need to be done carefully as the provision of internally generated leads by a product provider, that are shared with a financial adviser on a basis other than where this would be expected to influence the advice that they provide, should not be prevented.

We note the discussion on the bottom of page 37 of the consultation paper about the 'benefits given by the client' exemption under the conflicted remuneration laws (Section 963B of the Corporations Act). This seems to suggest that advisers who accept leads and receive ongoing advice fees would not continue to

provide services. Failing to provide contracted services on an annual basis would be in breach of the Corporations Act, under the ongoing fee arrangements provisions in the Act. We do not believe that there is any need to make any changes with respect to the provisions related to benefits given by the client, although we appreciate that this could be one means of preventing the payment of ongoing fees to lead generators. This might be difficult to legislate via this mechanism as the payment to the lead generators can be separated from the receipt of fees from clients.

24. Of the approaches canvassed under reform 3, which option or combination of options would achieve the best balance between consumer protections, while facilitating consumer choice and minimising regulatory burden?

As discussed above, we would like to see leads provided by product providers, where they have paid lead generators for these leads, to be treated as conflicted remuneration.

We would also like to see greater clarity in how the conflicted remuneration provisions apply to the payment of fees for leads, particularly with respect to any payments to entities related to a financial adviser. We are certain that there must have been a breach of the conflicted remuneration rules and we would like to understand why this hasn't been addressed already with respect to Shield and First Guardian.

We are open to legislative change to prevent the splitting of advice fees to lead generators including the payment of ongoing fees for lead generation.

Finally, we would like to suggest an additional measure for consideration – banning financial advisers and their associates from owning a material share of, or being a director of, a lead generation firm. We understand that at least some of the lead generation firms associated with the Shield and First Guardian matters had ownership links to at least some of the advisers and advice firms which have been implicated. Such links are potentially beyond the scrutiny of licensees, which typically control revenue from financial advice operations only.

Reform 4: Target advertisements for earlier intervention

We recognise that advertisements, particularly those on social media, have become a major risk to consumers. This is an area where we believe that further deliberation on regulatory reform is appropriate.

25. Would requiring superannuation advertisements to display an AFS licence number, be an effective way to curb lead generation and improve transparency for consumers?

We believe that this would be an effective way to limit lead generation activity, however it would need to carefully provide exemptions for those parties which provide education on superannuation or provide services to superannuation funds, all of which do not need to be licensed. This should not prevent genuine parties, which have a valid reason for advertising, from promoting their services.

It would be important to provide clarity on whether this is proposed to be a ban on advertising about specific superannuation products, a class of superannuation products, or just superannuation in general. It is our understanding that many of the adverts that have been used as part of lead generation are more broadly related to superannuation, including comparing performance. It might be necessary to consider how any such prohibition could be narrowed down to a focus on advertisements encouraging super switching.

26. What practical implementation issues or costs would arise for advertisers, publishers and licensees?

This is primarily a question for advertisers, publishers and those licensees who promote their superannuation products via the media. It could reduce the revenue generated by advertisers and publishers. It might also increase their costs in needing to more carefully check advertisements before they are published, however checking is something that they should already be doing.

It is unlikely that it will have a major impact on licensees. They will simply need to ensure that their licence number is included on any advertisements they promote.

27. Would a broad prohibition on advertisements in relation to superannuation without an AFS licence unduly constrain legitimate advertising?

As noted above, we do believe that any prohibition should exclude entities that have a genuine basis for advertising the products and services that they provide which are related to superannuation. For example, we would not expect to see this ban apply to entities that provide education on superannuation or who provide services to superannuation funds (including SMSFs). To use a specific example, we would not like to see this prohibition prevent the promotion of books that refer to superannuation.

A prohibition on advertisements in relation to super has merit if it can be used to block the numerous social media adverts that are encouraging people to switch their superannuation. We do however pose the question as to why any such ban should only apply with respect to superannuation?

28. In relation to ASIC's stop order power, what threshold test would be appropriate to ensure that ASIC's stop order powers are exercised proportionately and do not unduly restrict legitimate advertising?

We support expanding ASIC's stop order powers to prevent the publication of misleading advertisements about superannuation and other financial products. In terms of defining the threshold test, it is worthy of having a look at how much damage has been done through the Shield and First Guardian matters. The adverts that were issued via social media that encouraged these people to engage with a lead generator have caused huge losses. This is important to take into account. Very substantial numbers of clients can be drawn into these products in a very short period of time through the utilisation of social media. This

justifies a moderate threshold that is not overly difficult to demonstrate and would not unnecessarily delay ASIC in taking action.

29. Are there any other changes to the regulation of financial advertisements that would better address emerging risks associated with lead generation practices?

We believe that there is merit to a careful prohibition of advertisements on superannuation (and other financial products), particularly in regards to social media and enhanced stop-order powers to prevent misleading advertisements. The greatest risk in this space is coming from social media advertisements which can be targeted at specific groups on the basis of algorithms. They can be used to target people and as a means of convincing them to do things that they do not understand and are not in their best interests. It is sensible to place greater limitations upon this type of advertising.

We understand that a number of social media platforms were involved in advertisements in the Shield and First Guardian matters. These platforms have made substantial amounts of money pushing predatory 'clickbait' ads to consumers, and have not as yet made any contribution to helping those consumers - who in many cases have lost their entire super balance as a direct result of this advertising.

We believe it would be appropriate to investigate the involvement of social media platforms in these failures, and give consideration in these reforms to the responsibilities of these platforms - both to check the legality of ads that they promote, and to make restitution if they have promoted illegal ads. There could also be merit in requiring platforms to provide an "opt-out" feature that would allow consumers to turn off ads of a particular nature or class. We have heard from victims of Shield and First Guardian who continue to be relentlessly pursued online by 'compare your super' style ads, retraumatizing the victims while the platforms continue to profit. These platforms are the key reason these failures affected so many people in such a short time, enabling a few bad actors to reach a huge number of consumers quickly. We believe this channel must be explicitly addressed as part of preventing future failures.

Conclusion

The FAAA welcomes the opportunity to provide feedback on curbing lead generation activity. There are a range of changes that could be made to better protect consumers, as we have addressed above, however changing the anti-hawking exemption for financial advisers would be a very counterproductive measure as it would restrict advisers from helping their clients.

If you have any questions about our submission, please do not hesitate to contact me on (02) 9220 4500 or sarah.abood@faaa.au.

Yours sincerely,



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