



TREASURY CONSULTATION: CURBING LEAD GENERATION ACTIVITY



Thank you for the opportunity to provide input to this consultation process.

About Equity Trustees

Equity Trustees (EQT Holdings Limited) was established as an independent trustee and executor company in 1888. EQT Holdings Limited is the ASX listed holding company of the group. EQT Holdings Limited owns and operates six licensed trustee entities comprising two Responsible Entities (REs), two Registrable Superannuation Entity Licensees (RSEs) and two traditional trustee entities.

Equity Trustees is now Australia's leading specialist trustee company. We offer a unique vantage point within the financial services system in our role as trustee supervising ~\$283bn of assets in thousands of trusts, managed investment schemes (MISs) and superannuation funds. We help private individuals and families, fund managers and other corporate and superannuation clients grow, manage and protect wealth.

Superannuation is a cornerstone of Australia's financial system and plays a critical role in supporting the long-term financial wellbeing of individuals. As a mandatory retirement savings scheme, it ensures Australians accumulate savings throughout their working lives to fund retirement and reduce reliance on the Age Pension. Given this central importance to individuals' financial security and dignity in retirement, it is essential that any regulatory changes carefully consider impacts on members and preserve confidence in the entire system, including Platforms, SMSFs and Small APRA Funds (SAF's).

Our company was established to help people take care of their future, and we see this Review as aligned to our purpose. We welcome the opportunity to provide input into consumer protections in the financial services sector. We are encouraged to see the broader regulatory change agenda currently in progress across Treasury and ASIC. In particular, we strongly support regulation of Lead Generators as well as ASIC's consideration of increasing the Net Tangible Asset requirement for responsible entities and the proposal to enhance independence of responsible entities.

Shield and First Guardian Master Funds

Equity Trustees welcomes the Government's consideration of options to address factors behind the collapse of the Shield and First Guardian Master Funds. The collapses of the two managed investment schemes have disappointingly resulted in significant loss to a large number of members of various superannuation funds. It is important in considering options to address the collapses that the Government addresses the root causes of the losses.

ASIC has commented that there has been a misconduct that is systematic and large scale committed in respect of Shield and First Guardian. ASIC is acting on and investigating multiple parties such as lead generators, financial planners, Responsible Entities, fund managers and superannuation platforms and trustees.

It is Equity Trustees contention that multiple points in the value chain failed.

- **Responsible Entities** - the most critical point of failure in the value chain was the two Responsible Entities (REs). The liquidators report into Shield indicated the RE's misled the superannuation trustees and their members including by:
 - utilising a material amount of scheme assets for payments to lead generators and not investment and
 - investing the remaining scheme assets in a manner that was not aligned with the Product Disclosure Statement.

The misuse of scheme assets for purposes other than investment as disclosed to investors - as the liquidators' reports have revealed - is clearly fraud or theft causing loss to the superannuation funds and their members. ASIC's actions in seeking both RE's be placed in liquidation indicates ASIC saw the REs as a critical point of failure.



- **Fund Managers** - the fund managers utilised by the RE's and connected to the RE's were also a critical point of failure. It is clear they made investments that were not sound. ASIC's actions in seeking both fund managers be placed in liquidation indicates where ASIC saw a critical point of failure.
- **Lead Generators** - the lead generators, some which were licensed by ASIC and some were not, were integral to the failures
- **Financial Advisors** - the financial advisers and the licensed dealer groups that authorised the financial advisers failed in their duties. ASIC's actions against many advisors and dealer groups have shown those parties to have provided advice that was conflicted, not based on fact -finds by the advisor and in any event of unacceptable quality.
- **Superannuation Trustees** - ASIC also contends that the Superannuation trustees of platforms failed in certain duties. Given Equity Trustees, through its subsidiary Equity Trustees Superannuation Limited is involved in legal action taken by ASIC, we will not comment on this, suffice to say there are no allegations of fraud being made against any superannuation trustee.

It is apparent that the major investment failures in the Australian market over the recent decades, including those involving superannuation, have primarily stemmed from failures of REs. We therefore welcome the reform of REs and Managed Investment Schemes that was the subject of Treasury's first consultation and ASIC's consultation in respect of the Net Tangible Asset capital requirements for RE's.

It is encouraging to see Treasury consider options regarding superannuation platforms and their trustees, particularly given the importance of this market (when also including its aligned SMSF market) represents some \$1.8 trillion of superannuation assets and has not been the subject of any meaningful focus from either regulator – to the point that a platform has not been defined in any legislation, prudential standard or regulatory guide. Equity Trustees does not believe the action of superannuation trustees in respect of Shield and First Guardian bears any semblance of proportionality to that of the failures of the Responsible Entities, fund managers, lead generators and financial advisors.

Overview of our position

Equity Trustees agrees that the conduct which led to consumer loss in relation to the Shield and First Guardian matters involved a chain of entities, which includes Superannuation trustees (RSEs), Responsible Entities (Falcon Capital Ltd and Keystone Asset Management) and numerous financial advisers (such as Venture Egg, MWL Financial Services, Interprac Financial Planning) but began with lead generators (such as Imperial Capital, Aus Super Compare, Atlas Marketing).

While there are existing laws to regulate the provision of financial services, these are not fit-for-purpose nor effective in enabling enforcement to prevent consumer harm in relation to lead generation activities. It is timely and appropriate to consider improvements to the regulatory framework in light of recent failures.

Our submission only addresses those issues where it has a strong view on reform.

Accordingly, Equity Trustees strongly supports enhancements that:

- Option 1a – Require licensing for lead generation activities to provide certainty around when lead generation becomes a financial service, and to ensure the same protections in place for existing AFS licensees apply in relation to lead generators:**
 - Requiring lead generators to hold an Australian Financial Services Licence would constitute an effective means to prevent consumer harm from occurring in the first place, by setting clear requirements for the conduct of lead generators in ensuring they must meet the general obligations under s 912A of the Corporations Act 2001, and other obligations that apply to AFSL holders. It will also enable ASIC to take steps to prevent harm where unacceptable conduct is identified earlier.



- This would also create clarity in relation to when lead generation becomes a ‘financial service’. As noted by Treasury, lead generators largely operate on the fringes of the financial services definition in the Corporations Act. Some lead generation activities may constitute ‘dealing’, and some may constitute ‘financial advice’. However, many lead generators carefully avoid being captured by these definitions in order to avoid the need to hold a license and comply with the licensing requirements. Clarifying that lead generation activities are required to be licensed will add certainty for both industry and consumers and enable ASIC to more effectively enforce consumer protections.
 - Equity Trustees submits that lead generation activities should be defined broadly as including the following activities, where not merely incidental to the ordinary course of the person’s business:
 - Activities through which the person collects or assesses consumer information which would reasonably be expected to be sold or passed on to a licensee, their representative, or a related body corporate
 - Selling or passing on consumer information to licensees, their representative, or a related body corporate, that results in the acquisition of a financial product by the consumer
 - Referring consumers to licensees, their representative, or a related body corporate
 - Equity Trustees agrees that the definition should not capture one-off referrals or referrals made in the course of other businesses that are not lead generation (such as being referred to a financial adviser by an accountant or real estate agent). However, the definition should capture the broad lead generation process, from the initial consumer engagement to the provision of information and referral to a licensee.
- b. Option 1c – Require AFS licensees to take reasonable steps to ensure that any leads or referrals they obtain are sourced in compliance with the relevant regulatory requirements:**
- This should not be implemented as an alternative to requiring licensing for lead generation activities. While existing licensees should be accountable for taking reasonable steps to ensure referrals they obtain are appropriate, ultimate accountability for the conduct of a lead generator should sit with the lead generator themselves. Section 912A already requires licensees to operate in this manner. Accordingly, Equity Trustees supports Option 1c in conjunction with Option 1a, and not as an alternative option.
- c. Options 2a & 2b – Expand the anti-hawking requirements to restrict inappropriate lead generation activities:**
- Equity Trustees welcomes Treasury’s suggestions to reform anti-hawking requirements to curb harmful lead generation activities. We support enhancing requirements for consent to mitigate the risks of harm from cold calls and certain real time contact; and limiting the exception for financial advice to only apply to advisers where they are offering products to existing clients.
 - Equity Trustees submits that a ban on non-consumer initiated real-time contact requiring consumers to positively initiate contact with the lead generator or financial adviser would be too strict and would unnecessarily restrict the provision of financial products and services that do not involve the use of lead generation activities.
- d. Options 3a & 3b – Target remuneration structures that may incentivise poor conduct:**
- Equity Trustees strongly supports capturing lead generators under the conflicted remuneration ban. This includes both clarifying that lead generators are considered a representative of the product issuer/seller for the purpose of conflicted remuneration provisions; and prohibiting remuneration for lead generation activities which could reasonably influence the advice provided to a retail client.
 - This would be an effective way to curb harmful lead generation activity by preventing licensees from circumventing the conflicted remuneration provisions through the use of lead generators and uphold the integrity of advice provided to consumers.



- Equity Trustees submits that the remuneration practices associated with lead generation that pose a higher risk of influencing financial advice include:
 - Where the lead generator receives a percentage-based fee where the consumer purchases a financial product or service
 - Where the lead generator receives a volume-based fee where the payment increases based on how many consumers pay for financial products and services
 - Where the lead generator receives a benefit from the product issuer and is incentivised to push clients to advisers who recommend these financial products and services
 - Fee structures involving a combination of the above
- e. Option 4a – Require superannuation advertisements to display AFS licence numbers:**
 - Equity Trustees supports requiring superannuation advertisements to display an AFS licence number as an additional consumer protection measure. However, we do not believe that this will be an effective way to curb harmful lead generation practices, if it is operating in isolation.
- f. Option 4b Expand ASIC’s stop order power to take down financial advertisements**
 - Equity Trustees supports providing ASIC with power to issue a stop order to apply to advertisements by lead generators.

Equity Trustees is not supportive of the following proposed reform options:

- a. Option 1b – Banning unlicensed communication to consumers about superannuation:**
 - As noted above, Equity Trustees is supportive of Option 1a, which would require lead generators to hold an AFS licence. If this option is implemented, the risk of harm from unlicensed communication to consumers would be significantly reduced, as lead generators would, by definition, not be communicating to consumers without a licence. Accordingly, we do not consider this proposal to be necessary.
- b. Option 1d – Clarify and extend the application of design and distribution obligations to lead generation:**
 - Equity Trustees is not supportive of this option on the basis that lead generators are typically outside of the distribution lifecycle, i.e. they are neither issuing nor distributing a product. As noted by Treasury, this proposal would also create confusion where lead generators direct consumers to financial advisers, who are also excluded from the DDO regime.

We welcome the Minister’s initiative to seek consultation in respect of lead generation activities. We also note this is one part of the Government’s broader agenda to strengthen consumer protections in the superannuation and financial services sector following the collapse of the Shield and First Guardian Master Funds.

We trust that these observations are useful in informing Treasury’s considerations to prevent harmful lead generation activities in the future and welcome consultation with Treasury in respect to this submission or any other aspect of reform.

Sincerely,

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