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Dear Andre

Curbing lead generation activity

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and wealth management firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and provide wealth advice and portfolio management services.

The history of the stockbroking profession in Australia can be found [here](#).

Thank you for the opportunity to provide feedback to the consultation paper on curbing lead generation activity.

Executive summary

- There is a comprehensive framework of laws that provides important consumer protections and applies to a broad range of participants involved in promoting or facilitating engagement with financial products or services, including lead generators.
- The misconduct in the Shield and First Guardian cases could have been addressed by enforcing existing laws against the lead generators and financial advice licensees without the need for additional regulation.
- We do not agree that additional laws are required to regulate this behaviour and we caution against adding to the regulatory burden.

- Licensing lead generators is not an effective and proportionate way to curb harmful lead generation activities. On the contrary – licensing lead generators may result in consumers giving them greater legitimacy.
- SIAA is strongly opposed to changes to the hawking prohibition that could impact the ability of our member firms to provide their clients with factual information and financial advice.

Policy problem

Question 1

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

SIAA does not support the use of high-pressure sales tactics. The conduct that led to the Shield and First Guardian investor losses was primarily product driven and involved a chain of entities across the financial services ecosystem.

As we stated during our meeting with Treasury on 8 May 2026, SIAA members do not typically engage in lead generation activities and we are unable to provide examples of any that provide consumer benefit.

However, SIAA members have formal, documented referral arrangements with third parties such as lawyers and accountants. These arrangements benefit those clients who require specialist services that our member firms do not provide. Unlike the activity undertaken in the Shield and First Guardian cases, these referral arrangements do not involve high-pressure sales aimed at funnelling clients into one product. Our members also engage in legitimate commercial activities such as advertising and the provision of factual information about financial products.

We consider that the activity undertaken by the lead generator firms and financial advice licensees involved in the Shield and First Guardian cases was a breach of existing laws. The consultation paper sets out the several ways in which lead generation activity may be regulated including:

- General consumer protection obligations under the Corporations Act which prohibit false or misleading claims in relation to a financial product or service.
- Licensing conduct obligations which require persons who provide financial services to be licensed by ASIC.
- Financial advice obligations, which provide additional protections when personal financial advice is provided.
- The hawking prohibition which ensures consumers are protected from unsolicited and high-pressure sales tactics in relation to financial products.

Aside from the Corporations Act and ASIC Act obligations, lead generation activities may also be regulated under a range of economy-wide legislative frameworks that may apply to advertising, marketing, privacy and consumer engagement such as the consumer law and privacy regime.

We note that the government is currently progressing legislation to amend the Australian Consumer Law to introduce unfair trading practices protections for consumers, which includes a general prohibition targeting conduct that manipulates or distorts consumer decision making causing harm.

This is a comprehensive framework of laws that provides important consumer protections and applies to a broad range of participants involved in promoting or facilitating engagement with financial products or services, including lead generators. We do not agree that additional laws are required to regulate this behaviour and caution against adding to the regulatory burden.

Question 2

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

We consider that the misconduct in the Shield and First Guardian cases could have been addressed, by enforcing existing laws against the lead generators and financial advice licensees without the need for additional regulation.

Where the lead generator's conduct is misleading or unconscionable or goes beyond providing information and is intending to influence the decision of the consumer, protections are provided by the Corporations Act, ASIC Act and Australian Consumer Law. Financial advisers are subject to a range of stringent regulatory requirements, including the overarching responsibility to act in the client's best interests, intended to ensure that the consumer is appropriately protected where they make a decision regarding a financial product as a result of that advice. Various financial advice licensees involved in the Shield and First Guardian cases also appear to have breached the Corporations Act by receiving conflicted remuneration and breaching their conflict management obligations.

SIAA does not recommend regulation that would impose new or enhanced obligations on financial advisers. We are concerned that, unless carefully worded, any new laws to address lead generation may capture legitimate referral arrangements our members have with third parties with the expertise their clients require such as accountants and lawyers.

We are concerned that any legislative change may negatively impact existing relationships that advisers have with their clients and impede the ability of SIAA's members who are online brokers to communicate with their customers and provide them with factual information and general advice. Clients of brokerage firms value the opportunity to participate in capital raisings. We caution against any changes that may impact the ability of our members to communicate these offerings to their clients in a timely and effective manner.

SIAA recommends that any proposed solution be appropriate to the problem and only addresses the specific legislative gap, if any exists. It is important not to create more regulation than necessary.

Question 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?

Draft legislation for the complete DBFO reform package is yet to be released. However, we do not consider that the business model used in the Shield and First Guardian cases raises any potential for unintended consequences in relation to those aspects of the DBFO package relating to financial advisers due to the retention of the best interests duty.

The business model used in the Shield and First Guardian model relied on financial advisers recommending the products irrespective of whether they were appropriate for the clients who were referred to them. The financial advisers failed to consider whether the products were suitable for the clients and were in breach of their best interests duty.

The Shield and First Guardian business model did not involve the 'new class of adviser'. This aspect of the reform package does raise a potential for unintended consequences in light of the Shield and First Guardian business model that will require careful consideration when consulting on this part of the draft legislation.

Enhance accountability for the conduct of lead generators

Licensing

Question 4

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

SIAA does not agree that reforms to require licensing for certain lead generation activities would be an effective and proportionate way to curb harmful lead generation activities.

The lead generators involved in the Shield and First Guardian cases engaged in misleading and deceptive conduct in breach of the law. The financial advisers breached their best interests duty when providing advice.

We do not consider that licensing lead generation activities would curb this harmful behaviour. On the contrary – licensing lead generators may provide them with legitimacy from the consumer point of view.

Question 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?

SIAA does not agree with licensing lead generators.

Question 6

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

SIAA does not agree with licensing lead generators.

Question 7

What would be the implication of banning all unlicensed communications about superannuation for commercial purposes? What exceptions or carve-outs would be required?

SIAA considers that the implication of banning all unlicensed communications about superannuation for commercial purposes would be significant as it would potentially capture advertising and

information provided by the media. For example, news items on the impact of the recent budget on superannuation would be banned under such a proposal.

SIAA does not support a ban on unlicensed communications about superannuation for this reason.

Licensee accountability

Question 8

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

SIAA does not support reforms to impose additional obligations on AFS licensees using lead generators. Licensees are already subject to a comprehensive framework of obligations and liability for the services they provide. **SIAA does not support** making AFS licensees responsible for the actions of these third parties.

Question 9

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

SIAA does not agree that additional obligations should be placed on advice licensees using lead generation services. SIAA does not consider that it is reasonable to make advice licensees the pseudo regulator of unlicensed lead generators.

Question 10

What penalties should be appropriate and effective in deterring misconduct?

SIAA does not support imposing additional obligations on AFS licensees.

Design and distribution obligations

Question 11

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

SIAA does not support extending DDO obligations to lead generators. We are unsure how this would work.

Question 12

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

SIAA does not support extending DDO obligations to lead generators.

Question 13

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

SIAA considers that many issues would arise from extending DDO retail product distributor obligations to lead generators including whether they are able to provide advice as part of their activities.

Extend anti-hawking requirements

Question 14

Would reforms to the hawking prohibition be an effective way to curb harmful lead generation activity?

SIAA strongly opposes changes to the hawking prohibition. The proposal to enhance the conditions around consent would substantially broaden the scope of the hawking framework and introduce complexity for financial advisers. The anti-hawking provisions are already very strict. SIAA strongly opposes any proposal that would impose additional regulatory burden as it could impact the ability of our member firms to provide their clients with factual information and financial advice.

Question 15

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

SIAA strongly opposes a ban on non-consumer initiated real-time contact as it would have a significant impact on the ability of our members to offer financial products and provide financial advice. Our members were not involved in the Shield and First Guardian related misconduct and should not have to bear a higher regulatory burden that will significantly impact their ability to communicate with their clients. Member firms send non-consumer initiated information to their clients all the time, particularly around the end of the financial year, transition to retirement and market events. A ban on initiating contact could limit the ability of our personal advice members to comply with their best interests duty.

Question 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?

SIAA strongly opposes any changes to the anti-hawking provisions that makes it harder for them to communicate with their clients. Our members should not have to suffer from an increased regulatory burden as a result of the misconduct of a small number of financial advisers.

Question 17

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

SIAA strongly opposes removing the personal advice exemption. The anti-hawking provisions are very strict. We caution against increasing the regulatory burden on firms who were not involved in the Shield and First Guardian collapse.

Question 18

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

SIAA strongly opposes limiting the operation of the personal advice exemption to existing clients or non-superannuation products. Consumers need access to more financial advice on superannuation. Implementing such a proposal would result in consumers receiving less advice.

Question 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?

SIAA recommends that the anti-hawking provisions remain unchanged.

Target remuneration structures that may incentivise poor conduct

Question 20

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

SIAA does not agree with proposals to change the conflicted remuneration provisions.

There are wide ranging prohibitions on giving or accepting benefits that could reasonably influence advice given to a retail client. The ban applies to licensees and their financial advisers as well as issuers or sellers of financial products. The provisions on conflicted remuneration are complex.

We consider that the existing law captures the harmful lead generation activity that took place in relation to the Shield and First Guardian matters and that the relevant financial firms should not have paid conflicted remuneration to the lead generators. We caution against making the conflicted remuneration provisions more complicated than they currently are and increasing the regulatory burden on firms that were not involved in Shield and First Guardian. We recommend that the focus be placed on those who were in breach of the Corporations Act not on those who operate compliant advice businesses.

Question 21

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

SIAA does not support changes to the conflicted remuneration provisions as an effective way to curb harmful lead generation activity. The conflicted remuneration provisions are comprehensive and captured the harmful behaviour involved in the Shield and First Guardian collapse.

Question 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?

SIAA does not support changes to the conflicted remuneration provisions.

Question 23

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

SIAA does not support changes to the conflicted remuneration provisions that make the law more complicated than it already is.

Question 24

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

SIAA does not support any of the reform options.

Target advertisements for earlier intervention

Question 25

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

SIAA does not agree that displaying an AFS Licence number would curb lead generation activity or protect consumers from misconduct.

Question 26

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

The proposal would increase compliance costs with no benefit for consumers.

Question 27

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

SIAA agrees that a broad prohibition on advertising in relation to superannuation without an AFS license would unduly constrain legitimate advertising and does not recommend the proposal.

Question 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?

ASIC already has powers to issue stop orders and take down websites which it currently exercises.

Question 29

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

SIAA disagrees with proposals to change the law to account for a small number of bad actors whose misconduct was not detected by ASIC. Over 11,000 people invested approximately \$1 billion in the Shield and First Guardian funds. The lead generation activity was effective in attracting large numbers of Australian investors and could have been detected by way of a desk top review. Had ASIC investigated the lead generation activity this would have led them to the advice firms and the product issuers. The regulator then had the tools to issue a stop order against the issuers of the funds well before large numbers of investors were impacted.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Kind regards

A handwritten signature in black ink that reads "Maria Lykouras". The signature is written in a cursive, flowing style.

Maria Lykouras
Chief Executive Officer