24 May 2022

Quality of Advice Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

e: advicereview@treasury.gov.au

Dear Sir/Madam

Please find FYG Planners Pty Ltd (AFSL 224543) feedback in response to Quality of Advice Review Issues Paper dated March 2022.

We have responded to each question in the order they appear in the discussion paper.

Yours sincerely

Peter Mancell
Managing Director
**FYG Planners Pty Ltd**

**Quality of Advice Review (Australian Government – The Treasury)**

**FYG Response - May 24th, 2022**

1. Advice that:
   - Is delivered according to the five Code of Ethics Values.
   - Is understood by the recipient of the advice.
   - Addresses the needs of the client as determined by the client.
   - Has a very high probability of placing the client in a better position over the time frames determined during the client engagement.
   - Has a fair and reasonable cost.

2. Identical to question 1.

3. Regulatory changes since 1980 have improved the quality of advice provided to Australian consumers.

   - Disclosure is better.
   - Investor costs are lower.
   - Range of available products is wider.
   - Single licensee regime placed responsibility and liability "at one doorstep".
   - The regulator ASIC is better resourced and more active in pursuit of poor behaviour.

   But some regulation has had unintended or poor consequences:

   a) Best Interest Duty should have been a true fiduciary standard; Best Interests allows too much product/advice conflict to exist.
   b) Safe Harbour provisions have merit (i.e: an adviser and/or licensee knowing if advice meets legislated standards) but also provides for advice to meet minimum standards and not necessarily community standards.
   c) FDS and Renewal Consent legislation was drafted with no materiality clauses included and this has made using technology to assist virtually impossible, especially where fees paid by a client and fees received by an adviser/licensee are different and subject to RITC taxation law.
   d) Implementation of FDS and consent laws have significantly added to the cost of providing advice. With FDS and consent forms needed to be generated in different systems, with superannuation trustees insisting on their list of available services which do not match what the adviser has offered in the ongoing fee arrangement. The administrative burden on adviser businesses has increased and that cost is being borne by the client.

4. Does the factor under consideration in the review promote:

   - Advice being delivered according to the five Code of Ethics Values.
   - Advice being understood by the recipient of the advice.
   - Advice addressing the needs of the client as determined by the client.

- Advice that will have a very high probability of placing the client in a better position over the time frames determined during the client engagement.
- Advice having a fair and reasonable cost.

**5.** As the CEO of an AFSL, and an adviser of over 42 years, I can say with authority, that the range of fees required to be paid by a new client for comprehensive can range anywhere from $2,000 to $30,000 depending on the complexity of the clients' circumstances.

For a mum & dad with little complexity researching, producing, delivering, and implementing a comprehensive financial plan may only take 6-7 hours. At $300 per hour for a highly skilled planner, a fee of $2,000 would seem reasonable.

For wealthy clients, with multiple structures, complex tax affairs, international assets and international tax considerations requesting comprehensive advice, the initial comprehensive advice could take well over 2 whole weeks; hence a $30,000 fee may be fair.

Across our AFSL and nearly 6,000 client groups, an average fee figure of $5,000 has been our experience.

**6.** Complexity of the client's circumstances, the research required, the analysis undertaken, and the advice production & delivery are the key drivers. Technology to access research, modelling etc.

Regulatory and compliance costs are less significant but not at all insignificant. These have more of an impact in the provision of ongoing advice to existing clients.

**7.** Apportioning the costs identified across the delivery of advice varies from initial advice to ongoing advice. It also varies from practice to practice. e.g: larger firms have greater wages costs. One person advice firms have none.

As a "rule of thumb", a quality and successful larger firm that operates at a 35% EBIT, might see regulatory costs make up around 5% of the total client fees; staffing costs would be around 30% and another 30% would be operating costs such as accommodation, technology, licensing, PI cover, utilities, etc.

That said, the percentages quoted above could be quite variable because we've seen little evidence of firms tracking how much time staff spend on regulatory compliance separately from time spent on client service and advice. Following from Q3 we do see this time increasing in the coming 12 months

**8.** Speaking as one licensee, every single compliance requirement we put in place for advisers to meet is so that adviser meets his or her legal obligations, trustee requirements or ASIC regulatory Guidance.

The systems we put in place (largely driven by technology purchased for the whole group) are designed to make compliance with the law more functional, reliable, and cheaper for every adviser we license.

As such, our view is that 100% of compliance related costs is due to meeting legal requirements or obligations.

**9.** PI insurance is now 2.6% of total adviser revenues and has increased from 1.1% just 3 years ago!

Complying with the 2019 FDS and Consent Notices Legislation would have a similar cost.

Oversight of compliance would also be similar.

**10.** No because Fintech solutions to meet the regulatory needs have not been available and cannot be delivered due to legislative hurdles or conflicts. e.g: FDS & Consent Notices being conflicted by RITC Taxation Law and financial institutions creating systems before new laws are passed, whereby those systems do not cater for the new legislation, nor integrate to allow (for example) an FDS and consent form to be generated through one process, requiring multiple systems, and tracking processes.

**11.** Yes, if Fintech solutions could be developed, but history has shown that Fintech development has generally lagged the need imposed by the Legislation passed.

And the dominant IT players in the Australian Financial Advice market have shown little appetite to develop solutions at anything like a cost-efficient outlay.

**12.** The sheer information volume required to successfully obtain consents for complex clients is enormous and fraught with risk of providing inaccurate information. The differing data related decisions taken by platforms and institutions regarding what they will or will not provide is a major impediment to Fintech solutions.

For example, one of the largest investment platforms (owned by a major bank) will not provide licensees with reports across the licensee that show fees collected for each client and the date fees were deducted. This unwillingness to provide client fee data means only manual calculations are possible for each client.

**13.** A difficult question, but we do know advice demand outstrips supply comfortably. Today advisers more regularly turn away potential clients for a range of reasons, ranging from viability to suitability for an advice relationship.

We also know, from your own review document, adviser numbers have reduced dramatically in the past 3 years.

**14.** There are too many instances to list, but it’s across the spectrum from a lack of investment and technical knowledge, buying insurance cover off the TV that isn’t suitable, all the way to making decisions that people may not understand later affect their age care costs.

We believe the problem starts with financial literacy not being part of the national education system. The lack of education is filled in by things like the ASX sharemarket game, which encourages short-termism, likely leading to poor experiences and resentment.

The heavy focus on investing also distracts from valuable technical and legislative guidance or having a seasoned advocate to work through an insurance claim at a traumatic time. Overall, it's hard to appreciate advice if you don't know what you don't know. Good advice changes people's lives, not having access to advice disadvantages many Australians.

**15.** Lack of one-off advice services because providing such a service is a very risky business model. It also costs to provide ongoing services and the imbedded cost to provide ongoing services means smaller clients are be excluded.

By way of example, if it costs a firm $1,500 in non-advice staff costs per client each year to "open their doors", then each client needs to cover those costs, the advice staff costs and an acceptable profit to the firm owners. This precludes services being offered to many people and makes satisfying FASEA Standard 7 all but impossible.

**16.** Earlier education is a good start, while making the delivery of general financial information and financial education services available outside the Corporations Act framework achievable without Corporations Law liabilities being imposed.

**17.** See question 16.

**18.** Absolutely, if such systems existed and could be purchased by advice firms at a reasonable cost. However, this easier said than achieved. The dominant player in the Australian Financial Advice IT market commands annual fees of around $10,000 per adviser (with support staff included in this number) and they provide very little in the Fintech advice solution space.

**19.** The initial costs are huge, and the pay-back period is likely to be long. It explains the lack of any serious competitor to the Australian market leader in Integrated Financial Planning IT systems in the past 15 years. Since 2002, we've seen many bit players develop single applications, which are impressive, but only do a small amount of what a licensee or adviser truly needs.

**20.** Yes, there is a big difference and no they should not be treated the same.

Clients can be provided with, and benefit from, great strategic advice that includes no financial product advice whatsoever. It is our view that such strategic advice should be encouraged by the law and not discouraged by issues like "class of product" impositions. We also believe "strategic advice" can be offered with far simpler disclosure and can be well aligned to episodic advice being sought by clients.

**21.** No

**22.** All advice should be regulated to ensure the focus is on client best interest and the fiduciary standard. Advisers need to be able to give strategy and product advice at the same time should they decide. Although advisers that have an interest in any product they are recommending should have additional steps to ensure the client is fully informed of the relationship.

**23.** Yes, financial product advice should be further separated to identify those that have an interest in the product they are recommending

**24.** We believe General Advice should be labelled "General Information". Financial Advice could be split to then allow for "Strategic Advice" and "Product Advice". Strategic Advice should be able to address a class of financial products, i.e provide strategy advice on superannuation. Whilst product advice should be the specific advice provided on products recommended to be acquired. In addition, advisers that "own" or are owned by product providers should be clear in their advice, similar to the Independence Disclosure required in an FSG.

**25.** No

**26.** We agree with the recent announcements from ASIC ensuring coaches and influencers understand their obligations. They could quite conceivably be useful to explain topics such as market factors, diversification, volatility, how bonds work etc. without mentioning any financial product, but they often jumped straight into reviewing products such as ETFs and telling people why they should use them, which they have no authority to do.

**27.** Consideration should be given to how general advice is provided. We agree that the word "advice" should be removed, the phrase General information appears to be more relevant, and in line with the provision of factual information.

The distinction is important, based on recent court decisions. It is evident that it is becoming impossible for an adviser to provide a client with general advice. This is increasing the cost of delivering information to clients and in almost all circumstances it needs to be personal advice.

**28.** No. Intra fund advice if allowed to continue should be clear that it is not covered by best interest duty and will only look at the relevant retirement account help by that fund.

**29.** No, they will do so if they see value in it.

**30.** See comments in Q27.

**31.** It can affect consumer outcomes being that advice is limited to only reviewing one fund. Too many examples of clients losing insurance in super that they cannot replace because of intra fund advice.

**32.** Yes it can be.

**33.** The code of ethics in particular Standard 6 impacts the ability of an adviser to provide limited advice. This would need to be changed. Consideration should also be given to the replacement product and alternate strategies. Replacement product advice should be simplified and streamlined, whilst alternate strategies considered should eb removed for limited advice. Best Interest Duty is also impacted, as sometimes it can be in the client's interest to not limit the advice, or at least expand it beyond what they are asking.

**34.** No.

**35.** Yes.

**36.** Robo advice can be best suited to specific topics in simple cases, i.e. super strategy, insurance.

**37.** They shouldn't be.

**38.** No.

**39.** Potentially, depending on who provides it, A product provider of robo advice is unlikely to recommend a client move to another fund or insurer, even if cheaper and in the client's best interest.

**40.** No.

**41.** An AFS licensee should be responsible.

**42.** Digital advice can and should be a substitute for human advice in relation to simpler advice issues and complimentary to human advice where advice needs are more complex and require human assessment of financial planning trade-offs. eg: risk profile versus risk appetite versus risk needs as each apply to portfolio construction or short term versus long term taxation outcomes.

If appropriate technological platforms existed (and in our view they do not yet), human advice should be delivered digitally for every client capable of receiving and understanding digitally delivered advice.

**43.** See our comments at 3(b).
The Safe Harbour provisions provide "some certainty" for advisers but it is hard to document how they benefit consumers in any way, other than providing for minimum inclusions: a low bar to clear.

If they are repealed, advisers will never have any genuine certainty that their advice will meet legislative obligations because advice legislation will be 100% principles based with no assessment being black or white. All advice will be subject to interpretation and hence risk, as most interpretations will occur after the advice is delivered and in some cases, multiple years after!

**44.** The safe harbour provisions require advice documentation to be set out in particular ways and include the items a licensee determines are needed for Safe Harbour compliance purposes. Once designed, created and understood by advisers, those documentation requirements probably have only minor ongoing costs; after the initial costs of creation and training.

**45.** Very little. Only minor documentation changes. The tension in producing advice documents is always the trade-off between simple, clear advice, and providing clients with all

information to make informed decisions. The safe harbour provisions provide advisers with some protection with regard to this tension point.

**46.** We have seen examples of SOA's that include a detailed fee disclosure for the client's current portfolio; an alternate fee disclosure for a different product or platform with same asset allocation; another fee disclosure for the existing product with a different asset allocation and a fourth disclosure for the new product or platform with the new asset allocation.

The result is four tables of figures in one advice document. Hours of work for support & adviser staff and a substantial challenge for the average Australian to understand.

Licensees choosing these requirements do so because of how their legal departments or legal advisers interpret the best interest law, and no-one can be certain. Clear guidance on the need to only disclose the current and the proposed costs would be helpful and advice production reduce costs.

**47.** Yes and no.
If a single product is to be recommended, then yes. If a combination of products, via a wrap service, SMA or MDA, are being used for a client portfolio then the TMD's are effectively irrelevant; it's the aggregate of all products recommended that should be assessed in relation to appropriateness of products offered to the consumer. Sadly, there is no service (technological or other) available in the Australian marketplace that provides such a service.

We are of the view that for most adviser delivered advice, TMD's provide no value and only serve to make delivering advice more complicated and costly.

**48.** The principle of banning conflicted remuneration is something we support 100 per cent! We do not believe conflict elimination has gone far enough and rather than Best Interests, we would have preferred a true fiduciary standard applies at law.

It is our view that advice providers should not be able to have any interest in a product, platform, SMA, MDA whatsoever. We believe in the UK and US advice models, whereby an adviser is free from all conflicts, or they are a financial product salesperson.

**49.** Yes, higher cost products with built in margins to reward advisers have ceased to be offered. As a result, it has certainly improved disclosure to consumers and reduced investment costs which is a good thing.

**50.** It has resulted in a lot less people getting advice. There are many examples where clients were paying for access to an adviser who knew the client, and their circumstances, by way of commissions from products that are now banned.

Many of those client relationships have been terminated because the client could not pay an adviser's minimum annual fee and so the client no longer has access to advice from a known source. Advice firms who had a commission income stream certainly had their revenues reduced and hence profitability reduced. But at the same time, their service obligations reduced too.

We've seen evidence that the number of staff needed within larger firms has reduced, as the commission paying client relationships were terminated. This has increased as advice costs

as we've seen many firms invoke minimum annual fees for clients as a consequence of losing a commission income stream.

**51.** The only conflicted remuneration exemption we would support is allowing a Corporate Authorised Representative of a Licensee to offer employed advisers variable compensation as part of their employment.

Requiring an adviser to hold equity before enabling variable compensation is anti-free enterprise and ridiculous when a non-adviser can have variable compensation. We believe banned conflicted remuneration, except as noted above, has been a good community outcome and led to better quality advice.

**52.** After 42 years in advice, 31 years as an AFSL licensee, and employing salaried advisers for 30 years, I have never seen an example where an employed adviser's behaviour occurred in a way that was detrimental to a client because of an adviser incentive or variable compensation package.

Variable compensation for an employee adviser should be able to form part of their employment terms, provided the licensee or CAR has no interest in any product, platform, SMA or MDA offered via the licensee (or any associated entity).

**53.** Yes. New insurance business volumes have reduced by 54% in the past 3 years at our AFSL. Accounting for commission reductions (100% dropping to 60%), the new business reduction is still 25%. Over the same period, non-insurance revenues have grown substantially, by more than 30%.

**54.** Under insurance is more of a community problem as the more people underinsured the more people who will need Government support when life's hazards strike unexpectedly. Underinsurance, where a family or individual are unlucky, creates terrible financial pressures and poor social outcomes. As for insurers; as new policy purchases reduce and through policy attrition, their in-force books erode, their staff numbers reduce, customer and adviser service impairs, premium rates increase and claims handling becomes more harsh.

Overall, the quality of service and product offerings from Australian insurers has markedly declined over the past 5 years as LIF has truly taken hold.

**55.** If such an exemption resulted in any unintended consequences or possible adverse consumer outcomes. If so, do not proceed.

**56.** We believe they are working effectively. From our own perspective, as a licensee, we have made their sole purpose test obligations clear to all our advisers and observe reliable adherence. As for the practicality of charging one-off fees to super accounts, we are of the view that most funds handle this matter well and some even allow digital signatures, which is even better.

**57.** Documenting separate disclosure and consents for multiple accounts adds to complexity and cost. This should have been considered in the original legislation. e.g: why two disclosures and two consents for a client with a pension and accumulation account in the same fund?

Clients with two funds (generally for very good reasons, such as pre-existing insurance) having to execute two sets of consents because each trustee wants their own form signed off. Why was a universal consent form not designed (with a digital signature option) and imposed on all funds? That would have been far more consumer friendly and reduced costs for advice firms.

**58.** All funds should be required to make digital signatures available via secure two factor authentication apps. All consent forms should have been uniform and able to handle more than one fund.

**59.** Our view is the current system, where:

(i) an annual review (at minimum) must be held with the client to support the charging of an annual fee and
(ii) for an annual (or other) review to be deemed validly complete, an advice document (SOA or ROA) must be produced and given to the client
(iii) for the client to formally renew the ongoing service agreement and give consent to future fees each year
(iv)

provides for excellent accountability and transparency.

Clients know what they have received and are to receive.

Clients know what they have paid and are expected to pay.

Clients must actively choose to re-engage each year.

The big issue we have with the disclosure and renewal law is the inability (or unwillingness) of platforms and institutions to provide electronic data on all clients in relations to fees paid and dates paid. This leads to far more manual and expensive processes that could be avoided if data on all clients were provided in standard form. With technology we should be eliminating human error and human cost for what is just data transfer.

**60.** We estimate the cost to be between $100 to $500 per annum, in staff time alone, depending on the complexity of the client and the number of follow ups required.
The above includes pre-preparation, document production, document delivery, follow ups with clients & institutions plus scheduling for the following year. Additionally, one would need to add cost of IT systems used, printing & postage - where applicable, managerial oversight, etc. Across our AFSL with 6,000 clients, if the cost is $200 per client per year, the overall cost is $1,200,000 per annum.

**61.** Under the new consent laws superannuation trustees are insisting on using their own consent form through their platform, limiting the selection of services to a defined list they have created. This results in the services listed on the consent form being different to the ones the client has signed in the OFA. Adding confusion and cost to the process. It is also worth noting that there is no consistency between trustees on the list of services.

**62.** Refer Q61.

**63.** There has not been any significant positive or negative impact.

**64.** As noted in previous responses, the preparation of the SOA as a document is reasonably straightforward. The cost is mostly borne in the cost of accessing data and research to complete the required analysis of any replacement of product, along with comparing alternate strategies.

**65.** Whilst technically and legally possible already, it is impractical to present 1 SOA in multiple formats, as a result 99.5% of advice documents are proposed in a paper form. Streamlining how advice can be delivered and evidenced would go a long way to improving cost while ensuring consumers have the information they need. A principles-based approach runs the risk of being more complex and costly. Different advisers, AFSL's, lawyers, industry bodies will all take different views on how to apply the principles. This is already evident in the current regime and any changes would need to reduce ambiguity not increase it.

**66.** Almost entirely. Within legislation, regulatory guides, ASIC reports, etc there are incontinences in how disclosure is required. For example, disclosing fees/costs where a replacement of product is recommended and a like for like replacement is not possible. The additional requirements on disclosure are confusing for advisers and completely counterproductive to consumers.

**67.** Remove the inconsistencies and provide specific and direct requirements. A disclosure of fees format and style should be consistent and regulated across the industry.

**68.** Less complex advice or single-issue advice should be simpler and easier for disclosure.

**69.** Yes the recent release by ASIC of the FAQ's has been a good improvement. Whilst not providing any changes or enhancements to the ROA laws it did provide much better and clearer understanding of the requirements and obligations around when an ROA is and isn't appropriate.

**70.** Not really, although maybe in relation to single issue advice, allowing the use of an ROA for a new client that, for example, wants to just review and assess their insurance needs or retirement savings. Some thought needs to be provided around compliance with the Code of Ethics in this cases, specifically Standard 6 however this would be a good start.

**71.** No, not unless they are authorised and properly qualified. Having a two-tiered authorisation structure would add to confusion for consumers.

**72.** N/a

**73.** N/a

**74.** N/a

**75.** Meeting qualification standards.

**76.** Yes.

**77.** Yes, consumers should be required to read and sign on to agree to be a wholesale or sophisticated investors. This statement should clearly set out the consequences of this change or decision: being as loss of protections.

**78.** Yes, see responses above.

**79.** Good licensees can deliver better access to technology, products, and support. This allows advisers to focus on meeting the needs of their clients and helps keep the cost of advice lower.

**80.** Professional bodies have only recently appeared to be interested in this area. While the work has not come to any completion, there are positive signs that they may play an important and proactive role in improving quality, accessibility, and affordability of advice.

**81.** As noted above, the ROA work and examples have been very positive, the SOA less so. The example SOA continues to be a very simple and basic strategy, using that example for the more complex clients and entities is difficult. We would like to see ASIC address example SOA's that deal with more complex situations.

**82.** Yes it has.

**83.** See answers to previous questions.