GUIDEWAY

Advice Review Response 2022

We thank you for the opportunity to respond to the Quality of Advice Review 2022.

Who is Guideway?

Guideway Financial Services is an Australian Financial Services Licensee and Australian Credit Licensee (licence number #420367). Our mission is to bring affordable and accessible advice to all Australians. Guideway is Australia's only non-product owned dealer group that is focused on industry, government and corporate superfunds.

Our team of in-house and external financial advisers provide high-quality advice to clients using a pure invoice-only, true to label fee-for-service model. We also work closely with some of Australia's largest industry, government, and defined benefit funds to provide affordable, quality advice to their members through the provision of AFS licensing and other licensee services.

Executive summary

The industry is facing change fatigue and has reached a critical tipping point. More Australians than ever before need high-quality advice and education, while financial adviser numbers are shrinking at a rapid rate. To ensure that Australia has a sustainable financial planning industry we believe it is critical to redefine the current regulatory environment. We believe it is equally important to ensure that this new regulation is actively enforced.

We have proposed a strawman model of a simplified licensing regime that we believe will promote access to affordable and quality financial advice, and assist the regulator with effectively overseeing the industry and conducting active enforcement. The simplified licensing regimes involves introducing two more financial product authorities (**financial coaching** and **financial provide information**), restricting general advice provision to stockbrokers and insurance brokers, and consolidates the legal requirements to provide 'advice'. Consolidating and streamlining legal requirements is essential to reduce the current onerous record keeping requirements and enable financial planners to provide personal financial product advice to more Australians.

We have summarily explained our rationale behind our proposed strawman in this summary and have expanded on it under relevant questions throughout our response.

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Background

We believe there was good intent behind the regulatory changes starting with the introduction of the Future of Financial Advice Reforms in 2012, however, the execution of these regulatory changes in many cases was less than ideal and led to duplication of regulation. For example:

- Best interests' duty and safe harbour were introduced in 2012, however in our experience, these are still not well understood by many financial planners and other industry professionals.
- Financial Adviser Code of Ethics introduced in 2019 to further improve the quality of advice. This created a higher standard than the best interests' duty and safe harbour. If the Best interests' duty and safe harbour provisions were more widely adhered to, additional regulation may not have been necessary.
- Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021. This was also aimed at improving the quality of advice via uplifting financial adviser education standards for new and existing providers. This is an expansion of Corporations Act s912A (e) & (f) – the requirement for licensees to ensure that their representatives are competent to provide the services they are licensed for, and to maintain this competency.
- The Future of Financial Advice reforms introduced Fee Disclosure Statements and Opt-in requirements in 2012. These requirements were poorly adhered to in the industry, as seen through the Royal Commission. Rather than focus on enforcement of the existing law, the standard was once again raised (changing two-year opt-in to be annual opt-in, and also requiring product issuers to receive client consent annually). Many large licensees now use fixed term service agreements that last less than 12 months, which do not trigger the requirement to provide FDS/Opt-in to the client. This signals that the new requirement is uncommercial. We also believe the previous requirement was also uncommercial, which is why it was not well adhered to across the industry.

We believe there are a wide variety of reasons as to why execution fell short, including:

- an under resourced regulator leading to a lack of timely enforcement,
- low levels of formal education and tertiary qualification at a degree or higher level in the industry due to previously low entry requirements,
- Inconsistent supervision and monitoring from licensees, which led to disincentives to work with licensees that strictly adhere to Corporations Act requirements due to the increased costs of compliance, and
- Inconsistent competency maintenance in response to legislative changes from licensees, which has contributed to varying levels of financial planner adherence to the Best Interests Duty through the Safe Harbour Steps.

We are delighted that Ms Michelle Levy and Federal Treasury are open to suggestions on how current problems can be addressed. We have proposed a strawman model that we believe simplifies the regulatory environment for industry stakeholders, as well as consumers. The following table outlines the strawman at a high level:

<table>
<tr><th>AFSL area / Information</th><th>Financial advice (personal only)</th><th>Financial product information (new AFSL authority, replaces general financial product advice)</th><th>Financial coaching (new AFSL authority)</th><th>New AFSL authorities for Stockbrokers & General insurance brokers</th></tr>
<tr><td>Providers of this service</td><td>Financial Planners / Financial Advisers (Financial Planners may also provide financial product information & Financial coaching)</td><td>Open to everyone</td><td>Open to everyone</td><td>Stockbrokers, insurance brokers</td></tr>
<tr><td>Education / entry requirements</td><td>• Current education standards remain in place for new entrants.
• Professional Year becomes less prescriptive to cater for different business models</td><td>• Updated RG146</td><td>• Exam</td><td>• Updated RG146
• Exam</td></tr>
<tr><td colspan="5">Simplified compliance regime</td></tr>
<tr><td>Provide a Financial Services Guide</td><td colspan="4">Yes</td></tr>
<tr><td>Take reasonable steps to ensure the service you provide is appropriate for the consumer</td><td colspan="4">Yes</td></tr>
<tr><td>Provide the service with due care and skill.</td><td colspan="4">Yes</td></tr>
<tr><td>Ensure that any benefits that you or related parties are disclosed to the consumer.</td><td colspan="4">Yes</td></tr>
<tr><td>Have reasonable grounds to believe that any benefits you, your employer, licensee, or other related parties receive from sources other than the client have not influenced you in a manner likely to be detrimental to the client.</td><td colspan="4">Yes</td></tr>
<tr><td>Is the advice likely to leave the client in an improved financial position</td><td>Yes</td><td colspan="3">No, personal advice only requirement</td></tr>
<tr><td>Is the advice likely to achieve the client’s goals and objectives</td><td>Yes</td><td colspan="3">No, personal advice only requirement</td></tr>
</table>

An individual may be an accredited Financial Coach and an accredited Financial Information Provider.

We recognise that some of the changes in the strawman may fall outside the scope of this review, however, we also recognise that this review is being used to inform other projects and work being undertaken by other bodies. For that reason, we have taken a broad view to the current state of AFS licensing.

Below we have summarised our thoughts behind the changes at a high-level, and have provided further information in response to the questionnaire in the appendix.

a) **Restricting Financial Advice to Financial Advisers**
As frontline advice practitioners, we believe the 'advice' terminology is not well understood by consumers. In practice, most clients do not differentiate between personal or general advice as their focus is simply getting their questions answered. For this reason, we believe it is important that general advice be renamed to 'financial product information' to reduce the risk to consumers.

We note that ASIC has previously reviewed the general advice terminology, however as frontline advice practitioners, our experience does not align with their findings (i.e. the review indicated that 'There was no evidence that a change in the label will change consumers' understanding of general advice'.

b) **Creation of new AFSL authority – Financial Product Information**
This new AFSL authority can be used by current general advice providers to provide financial product information and education about financial products to consumers. As outlined above, we believe it is critical that the term 'advice' is not used to reference what role of these individuals. We see the role of these individuals is to provide product information and education so that they can make an informed decision for themselves considering their own circumstance. Therefore, financial product information providers should be restricted to only stating the benefits of a product that have been identified by the product issuer (i.e. through the Product Disclosure Statement or Target Market Determination). They should not be allowed to form their own views or opinions on a particular product and then use this to influence a consumer's decision.

With these changes, consumers will be better equipped to understand that the information they are receiving is not 'personal advice,' but information and assistance with understanding how the financial product works, what it offers and what the risks are.

c) **Creation of new AFSL authority – Financial coaching**
How do we define financial coaching?
Financial coaching is education and assistance to retail clients who need help with financial matters that are not specific to a financial product, such as budgeting, saving for their first home, help with Centrelink and cash flow management.

Financial coaching should also be allowed to provide 'class of financial product advice'. E.g. A Financial Coach should be able to explain the benefits of super, ETFs, and other financial products.

Do we see there is demand for financial coaching?
Financial coaching is a vital service for many Australians and needs to be accessible at a far lower price point than financial advice. We often see the individuals seeking out and benefiting most from coaching are those that are under financial stress or

pressure (although not to the extent that they may need assistance from a financial counsellor).

We think financial coaching should be regulated
In the current regulatory environment, a financial coach may or may not be licensed for general financial product advice depending on the scope of services they are providing. For those that are unlicensed, consumers are provided with very minimal protection (i.e. there is no oversight of the quality of the 'coach', their background or education, and do not have access to AFCA). We believe it is in the consumer and industry's long-term interest to regulate financial coaching in a pragmatic manner.

We recognise that there is significant demand in the financial coaching space at present. We also recognise that those who choose to become financial coaches have varying backgrounds and engage with consumers by a wide array of means (including social media). Rather than introduce an education or qualification these individuals need to undertake, we would instead suggest a standardised exam to accredit them as a financial coach. We see the exam route being more favourable than the education route as it has a:

- Shorter lead-time to produce financial coaches for a service in significant demand.
- More consistent outcome (education standards can be vary by institution)
- Allows individuals from different background to become a financial coach and recognises the digital age we live in where traditional education methods are commonly being replaced by digital sources (Udemy, Wikipedia, Youtube, etc).
- Caters for influencers and others who are passionate about educating Australians to make informed financial decisions.

While we believe technology has an important role to play in our industry, we believe financial coaches are the most suitable option to address the current demand. We believe this can be seen through the number of Australians seeking education and advice through non-traditional (& unlicensed) means, such as Tiktok, Youtube and Reddit. There is no shortage of digital advice providers in the market, however, none of them have come close to providing the level of penetration these non-traditional means have achieved. In our response under question 19 we have explained why we believe digital advice without the involvement of an adviser driving the interaction has been unsuccessful to date.

d) Create a separate AFSL authority for stockbrokers and general insurance brokers who are not licensed financial advisers

As we have proposed to re-classify general advice as 'financial product information' and remove the ability for the representative to form a view on a particular product, a separate authority will be required for stockbrokers and general insurance brokers who are not financial advisers to continue to operate.

A simplified compliance regime

At present, we view the regulatory environment requirements as follows (ranked highest standard & most time consuming to lowest):

- Code of Ethics
- ASIC's Regulatory Guidance and Information Papers

- Corporations Act – Best Interests Duty, Prioritise the Client's Interests, Provide Appropriate advice

In our response, we have explained our rationale behind this ranking. We believe to remove replication, and promote advice accessibility and affordability it is paramount that requirements for personal financial product advice provision be re-defined to:

- Prioritise the client's interests (as per Corporations Act s961J)
- Does following the advice increase the likelihood of the client achieving their goals and objectives? (consolidates Best Interests Duty)
- Is the advice likely to leave the client in an improved financial position? (as per Corporations Act s961G

We believe most of these requirements can readily be demonstrated through the provision of a clear, concise and effective Statement of Advice. Our in-house financial planners can produce a compliant file along with a Statement of Advice for a 'retirement advice' in 5-8 hours. This is achieved through leveraging existing technology in the Australian market.

We note that some industry stakeholders are promoting the abolishment of the Statement of Advice. We feel this would lower protection for consumers, and ultimately not make advice more affordable as it is not a primary cost driver in the advice process. In our experience as a licensee who heavily invests in and leverages technology, the costly part in the advice process is the record keeping requirements to meet the Code of Ethics, followed by ASIC's Regulatory Guidance and Information Papers, i.e. Report 515. We have expanded on this in greater detail in our response.

It is important that once this simplified regime is implemented that it is designed to be 'set and forget'. Once the standard has been implemented that defines high-quality, accessible advice then that is the standard that advisers and other industry participants should be held to. If this standard is not being achieved, then greater enforcement action is needed from the regulator to address this. We hope the regulator has sufficient funding through the expensive adviser levy to execute this.

If effective enforcement does not occur, we fear that we will just repeat the cycle and end up where we started (i.e. in a state of constantly evolving rules and regulations to try and tackle issues, which ultimately increase the cost of advice, rather than focus on ensuring the existing rules are being adhered to).

Improving advice accessibility through superannuation (intra-fund)

We believe intra-fund advice has an important role to play in the financial advice process. We have highlighted areas where we believe augmentation is needed to improve intra-fund advice quality and accessibility under question 27.

Digital advice

We are strong supporters and users of digital advice tools that are driven by advisers or involve a human adviser in the advice process. Through the successful adopting of these tools, we have made the cost of advice provision more affordable, and assisted the financial planners we work with to more efficiently meet the onerous record keeping requirements.

To tackle the rising costs of advice provision, we have seen some industry participants turn to pure digital advice due to the high marginal costs associated with the provision of providing advice via financial planner. We consider pure digital advice to be clients self-serving advice from a robot without a human adviser. For example, when superfunds survey

members they will commonly say they are prepared to spend on average $700 to receive personal advice. As it stands at present, this client cannot be serviced commercially by a financial planner at this price point due to the record keeping requirements around personal advice provision.

We believe the industry has not seen success with pure digital advice tools to date as they do not involve a human adviser in the provision of advice. While pure digital advice tools have not penetrated the market, we have seen a substantial rise in consumers seek advice through digital channels such as Tiktok, Youtube and Instagram. We believe these digital channels have been more successful due to the human element in the process.

We also believe the true cost and consumer demand for pure digital advice is still being researched and understood. Through our own research into providers who use digital tools at present, we have found that pure digital advice tools have far lower SOA implementation rates compared to human-led advice interactions, some as low as ~5%. So while the cost of each SOA provided through the digital tool is lower, once taking into account the low implementation rate, the traditional human led advice process becomes more cost effective means to deliver value to clients (i.e. it is more cost effective to service the 1 in 20 who implement the advice they received from the digital tool with a human adviser instead). This once again underscores the point that providing advice via a human adviser needs to be made more affordable, as current digital tools in the market are not achieving their purpose.

Thank you for the opportunity

We hope our proposed strawman and information provided in our response assists with developing a new regulatory framework that promotes advice accessibility and affordability.

Thank you again for the opportunity to respond to the Quality of Advice Review 2022.

Appendix– Issue Paper question responses

Section 3 Framework for Review

1. **What are the characteristics of quality advice for providers of advice?**
   - Does the advice achieve the client's goals and objectives?
   - Will the advice result in or is it likely to result in the client being in an improved financial position?

2. **What are the characteristics of quality advice for consumers?**
   - Accessible – ability to receive advice when it is required, at an affordable cost
   - Valuable – the benefits gained outweigh the costs
   - Empowering – informs and improves financial decision making
   - Balanced – the client's interests are always prioritised

3. **Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?**

We believe there was good intent behind the regulatory changes starting with the introduction of the Future of Financial Advice Reforms in 2012, however, the execution of these regulatory changes in many cases was less than ideal and led to duplication of regulation. For example:

- Best interests' duty and safe harbour were introduced in 2012, however in our experience, these are still not well understood by many financial planners and other industry professionals.
- Financial Adviser Code of Ethics introduced in 2019 introduced to further improve the quality of advice. This created a higher standard than the best interests' duty and safe harbour. If the Best interests' duty and safe harbour provisions were more widely adhered to, additional regulation may not have been necessary.
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- The Future of Financial Advice reforms introduced Fee Disclosure Statements and Opt-in requirements in 2012. These requirements were poorly adhered to in the industry, as seen through the Royal Commission. Rather than focus on enforcement of the existing law, the standard was once again raised (changing two-year opt-in to be annual opt-in, and also requiring product issuers to receive client consent annually). Many large licensees now use fixed term service agreements that last less than 12 months, which do not trigger the requirement to provide FDS/Opt-in to the client. This signals that the new requirement is uncommercial. We also believe the previous requirement was also uncommercial, which is why it was not well adhered to across the industry.

We believe there are a wide variety of reasons as to why execution fell short, including:

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- Inconsistent supervision and monitoring from licensees, which led to disincentives to work with licensees that strictly adhere to Corporations Act requirements due to the increased costs of compliance, and;
- Inconsistent competency maintenance in response to legislative changes from licensees, which has contributed to varying levels of financial planner adherence to the Best Interests Duty through the Safe Harbour Steps.

We have touched on these in more detail under relevant questions as part of our response.

4. What are the factors the Review should consider in deciding whether a measure has increased the quality of advice?

We encourage the Review to look beyond standalone measures, and to conduct a broad review into financial product advice provision. We believe the path forward is to simplify regulation, and focus on the execution on the simplified regulation.

We believe the iterative approach taken over the past decade has not been as effective as it was hoped it would be (as evidence by the current state we are in with overlapping regulation, and the industry facing change fatigue, and many industry professionals suffering mental health issues). For this reason, we strongly believe a broad approach is required, which will evaluate the repeal and replacement of current measures with one unified and simplified regime.

We recognise that customers need to have trust, faith and protections that they will be provided with quality financial advice. We also recognise that it also needs to be affordable. Please refer to our response to question 16 for further information on the proposed simplification of existing regulation.

5. What is the average cost of providing comprehensive advice to a new client?

$3,320

6. What are the cost drivers of providing financial advice?

The main cost driver in the provision of personal financial product advice is the record keeping obligations. While some participants in the industry are focused on lowering consumer protections via disclosure document requirements (i.e. repealing SOA requirements), we feel the largest cost drivers in providing personal advice are:

- Record keeping to demonstrate safe harbour provisions in line with ASIC's guidance in Report 515, and
- Record keeping to demonstrate adherence to the Code of Ethics.

As outlined under question 3, we believe that safe harbour is still not well understood across the industry. This leads to industry participants focusing on the pain points in their process, such as Statement of Advice construction, to drive change. For industry participants who have an effective, compliant and client-friendly (i.e. less than 30 pages long) Statement of

Advice template, the main cost driver is the record keeping obligations to demonstrate adherence to safe harbour and the Code of Ethics.

To understand why these record keeping obligations are so time costly, we would encourage you to refer to ASIC Report 515 Appendix 3. In the report, table 12 outlines all the items ASIC expects that financial advisers will document on file to demonstrate they have achieved Safe Harbour. After meeting this requirement, there is then also the Code of Ethics, which is a higher standard and requires even more record keeping.

The investment required by the financial adviser to meet these record keeping requirements takes away from the time that they could spend working with the client to provide education, as well as other tasks such as advice strategy development. Client education and advice strategy development should not be subservient to record keeping, as they have a real and measurable impact on the quality of advice the consumer receives.

7. How are these costs apportioned across meeting regulatory requirements, time spent with clients, staffing costs (including training), fixed costs (e.g. rent), professional indemnity insurance, software/technology?

As a AFS licensee, our costs are apportioned as follows:

Item	Proportion of total cost
Time spent assisting advisers with meeting regulatory requirements and performing the supervision and monitoring required as a licensee	47%
Software/technology	24%
Professional indemnity insurance	19%
Rent	10%

Our employed financial planners' back-office costs are typically apportioned as follows:

Item	Proportion of total cost
Time spent meeting record keeping obligations	58%
Rent	15%
Software/technology	20%
Training / CPD	7%

8. How much is the cost of meeting the regulatory requirements a result of what the law requires and how much is a result of the processes and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?

We believe that the majority of costs stem from ASIC's expectations outlined in their Regulatory Guidance, followed by the legal requirements created by the Code of Ethics. On face value, the costs associated with complying with Corporations Act requirements are relatively low in comparison to the Code (for example, s961G – provide appropriate advice, and s961B – act in the best interests of the client). Where there are high costs with complying with s961B, we believe this is due to the overly conservative interpretation of the Safe Harbour steps (Corps Act s961B(2)) in ASIC's Regulatory Guidance, Reports and

Information Papers. This interpretation is best seen in Report 515 that outlines ASIC's supervision and monitoring checklist for compliance with Safe Harbour.

The Code of Ethics is very broad and relies on professional judgement as it is principle-based regulation. The issue is the adviser needs to keep sufficient records to allow others (ASIC, disciplinary panel, licensee, etc) to assess whether they have complied with the code. In practice, this creates the need for record keeping beyond ASIC's expectations for Safe Harbour in Report 515. We also saw FASEA identify this when they stated in their guidance 'just because you have complied with safe harbour, does not mean you will comply with the Code'.

9. Which elements of meeting the regulatory requirements contribute most to costs?

The primary regulatory requirement contributing to cost is record keeping obligations to demonstrate adherence to Safe Harbour (if you follow ASIC's Regulatory Guidance), and the Code of Ethics.

We note there are also other requirements contributing to costs such as the requirement for annual opt-in & FDS, as well as the requirement to get consent from the client to debit a fee from each product. While these requirements do not impact our licensee or our advisers as we use an invoice-only charging model, we believe this is leading to another industry issue as other licensees adopt practices to side-step these requirements (i.e. establishing fixed term service agreements that last less than 12 months).

10. Have previous reforms by Government been implemented in a cost-effective way?

No. We believe previous reforms have increased the cost to provide advice, and in turn the cost to clients to receive advice. Previous reforms have increased the costs of most factors involved in the provision of advice:

- Professional Indemnity insurance (as many insurers have exited the market or materially repriced due to perceived risks)
- Monitoring and supervision of Representatives (as increased legislative requirements means more to supervise)
- New legislation (creating additional training resources for licensees to train Representatives on these new requirements)
- Education standards (mandating advisers have minimum qualifications reduces the amount of time that many can spend working with their clients, which decreases revenue, and also increases costs due to the course costs.

All these increased costs must be passed on to the consumer to operate a commercial financial planning business.

11. Could financial technology (fintech) reduce the cost of providing advice?

We believe innovative fintech tools that are used by advisers with clients are crucial to run a commercial advice practice in the current operating environment. e.g. digital fact finds, risk profiles, etc.

Guideway

12. Are there regulatory impediments to adopting technological solutions to assist in providing advice?

No.

13. How should we measure demand for financial advice?

The potential demand for financial advice is immeasurable. The large majority of Australians would benefit from financial advice whether it be starting their first job and selecting a superfund, buying their first home, savings for kid's education or retiring.

14. In what circumstances do people need financial advice but might not be seeking it?

- Where clients perceive the cost of financial advice will outweigh its value.
- Where client perceive they can do it themselves, or receive unlicensed advice from other avenues (e.g. Tiktok, online forums).
- Where clients are not aware they require financial advice (e.g. those with no insurance & young families).
- Industry stigma due to previous "bad eggs" and the portrayal of financial advisers by media and in the court of public opinion.

15. What are the barriers to people who need or want financial advice accessing it?

The barrier depends on the segment of the market. Under current regulation, it is difficult to service clients with low net worth due to the back-office record keeping obligations. This means that the number one barrier for this segment is advice affordability due to the fee the adviser must charge to breakeven on this service.

The two primary barriers in other segments are value and trust; i.e. the client perceives that they will not get value out of the advice or does not trust the adviser.

16. How could advice be more accessible?

Advice can become more accessible by reshaping the industry. This starts with repealing current laws and replacing them with a simplified unified regime, followed by effective enforcement activities by the regulator.

Existing laws (including the Code of Ethics) should be reduced to 3 tests for personal financial product advice provision:

- Have reasonable grounds to believe that any benefits you, your employer, licensee, or other related parties receive from sources other than the client have not influenced you in a manner likely to be detrimental to the client.
- Is the advice likely to achieve the client's goals and objectives
- Is the advice likely to leave the client in an improved financial position

The record keeping demonstrating these requirements should be far lower than what is required at present. As part of this, we believe the Statement of Advice should serve as the primary source of truth as to whether these three tests have been achieved.

Effective enforcement of these new requirements is paramount to avoid the repeat of the past where new regulation is continually added.

Lastly, once the new regime is implemented it is important that the industry has sufficient time to embed these new requirements, and for technology providers to innovate. If we have a repeat of previous cycles where new and higher standards are continuously introduced, we will end up where we started (i.e. overly complex regulation that is not well understood or adhered too, and everyday Australians will be priced out of receiving personal financial advice).

17. Are there circumstances in which advice or certain types of advice could be provided other than by a financial adviser and, if so, what?

Financial product advice should be restricted to Financial Planners. We believe this creates an opportunity to reform other areas where advice is currently being provided in the industry. As part of this reform, we would suggest replacing general advice with 'Product information' and creating a new category for 'Financial coaching'.

- **Financial Product information** – replaces existing requirements for general advice providers. While ASIC's review of the terminology of general advice did not indicate the term was confusing for consumers, we believe as frontline practitioners that consumers often do not understand the difference between general or personal advice. We also do not believe consumers should need to be educated to understand the difference (i.e. if on face value the person they were speaking to told them they were going to provide them with 'product information' then there would not be an expectation of advice).

  We believe this change will allow product manufacturers and distributors to engage with existing and potential customers more effectively. This will be achieved through the ability to engage with customers with less 'compliance education', i.e. the emphasis will be on, "I can help you learn more about the product, but you'll have to decide if it is right for you or speak to a Financial Planner for advice."

  As part of this change, we would suggest the AFS licensee continue be responsible for ensuring that the 'Product information' providers have the relevant training, skills and experience to provide this service. We would also then suggest this be coupled with an augment to the Design & Distribution obligations reform, requiring product issuers to ensure that 'Product information' providers undergo an accreditation process with them. This accreditation process would test the knowledge of the provider to ensure they are competent to provide 'Product information' on the product. Lastly, we would also suggest reforming the RG146 education standard as part of this change.

- **Financial coaching** – new authority that covers advice provision outside financial products such as Centrelink, budgeting, saving to buy a first home, and financial therapy.

  This is currently an unregulated area of the market as it generally does not involve financial product advice. Given the types of consumers who may seek finance coaching include those who cannot afford personal financial advice in the current environment, it is important that these consumers have protection. I.e. if the

consumer receives incorrect information from the coach, there is little recourse for the consumer as they cannot complain to a licensee, nor can they access AFCA.

We believe financial coaching is important as it can be provided at a lower cost than financial product advice. We hope that this would continue even after it is regulated to ensure that consumers can continue to receive this valuable service, but also have protection.

We would suggest that financial coaches be registered under an AFSL, and new AFS licensee authorities created for relevant areas. We would also suggest that financial coaches sit an exam to gain accreditation similar to financial advisers. This accreditation should be achieved through sitting a standardised exam as the alternative, requiring the completion of a formal qualification will have a long lead time, i.e. to create new courses, accreditation of said courses, then the individuals undertaking these courses, etc. If an exam is used to assess competency in a standardised fashion, we believe this will be effective with bringing regulation to existing financial coaches as well as ensure pragmatic barriers to entry for those wishing to enter the space. We believe this pragmatic approach is important given the demand at present for affordable financial coaching.

An individual may be an accredited Financial Coach and a Financial Information Provider.

18. Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?

Yes, ylease refer to response 11.

19. What is preventing new entrants into the industry with innovative, digital-first business models?

We believe the three core issues are as follows:

- **Regulatory changes -** The main factor increasing prices of financial planning software is the frequency at which new and higher regulatory standards are introduced. These force software providers to re-design their tools and re-train users, which are material cost drivers. The Australian market for financial advisers is circa 17,000 advisers. This is not sufficient for multiple technology providers to operate commercial businesses with the frequency that new regulation is introduced. This has led to most providers materially increasing the cost of their advice software, which in turn has forced advisers to increase client advice fees to pay for the software.

  If an ongoing digital-first business model does not provide significant cost savings to a financial planner or financial planning practice, there is insufficient incentive to change from their current practices. Based on current technology pricing, we believe there is minimal financial incentive to implement a digital-first business model. Noting this, we and other licensees have still chosen to invest in a digital-first business model as:
  - There are risk management benefits (i.e. our digital solutions assist with ensuring clients are provided with high-quality compliant advice),

  - Over time, the market will need to naturally collapse given the number of technology providers and when this occurs, we hope to see a repricing from leftover providers. For this reason, we have selected the largest financial planning software Xplan, that is provided by the ASX listed company IRESS Limited, and
  - We believe it improves the client's experience and allows advisers to deliver client education and explain the benefits of their advice more effectively.

- **Client trust –** we have seen very low implementation rates for pure digital only advice businesses that do not have human involvement. We believe this is due to consumer's lack of trust in the 'robot' (or in some cases, the consumer does not trust what they have told the robot is correct, i.e. they did not input their information correctly). Despite changes and innovation in digital tools from several providers, client trust has continued to hold back the success of digital tools and digital advice.

- **Aging adviser population –** the average age of existing advisers who services couples is 58 in Victoria (see https://www.ifa.com.au/news/29479-adviser-numbers-to-plummet-by-30). Those in this age demographic are less likely to have high computer literacy skills relative to those of younger generations. Moderate to high computer literacy is required to run a digital-first business model.

  To assist with upskilling these advisers to use the latest technology, it is important the regulatory change frequency is substantially reduced. This will allow technology providers and licensees to focus on training advisers to one technology solution, rather than entering into another evolving cycle where new and complex advice compliance and legal requirements are continuously introduced.

Section 4: Regulatory Framework

19. Is there a practical difference between financial advice and financial product advice and should they be treated in the same way by the regulatory framework?

Yes, and we see an opportunity to reform the current licensing requirements and advice areas. Under our response to question 17, we proposed that financial product advice should be restricted to financial advisers to reduce consumer confusion and provide protection to them through clearer messaging. As for other 'financial advice' matters such as product information and financial coaching, we believe there these should be placed into new categories and subject to alternative regulatory requirements. Please refer to our response to question 17 and 25 for further detail.

20. Are there any impediments to a financial adviser providing financial advice more broadly, e.g. about budgeting, home ownership or Centrelink pensions? If so, what?

Generally, we do not believe there are regulatory impediments to financial advisers providing financial advice more broadly in the current regulatory environment.

We would note however, that most advice businesses are not focused on providing this type of financial advice. This is because, to the extent that advice on these topics is or

intersects with personal financial product advice, it is difficult to provide it in a manner which is both cost-effective and which represents value to the client. This difficulty is part of the justification for the introduction of our proposed Financial coaching category which would be able to deliver this service at a lower cost, in part due to the lower regulatory burden.

We would also note that there are impediments for some advisers we work with due to what a superfund can subsidise under the SIS Act. We have provided more detail in this regard under the Intra-fund questions.

21. What types of financial advice should be regulated and to what extent?

Yes, please refer to response 17.

22. Should there be different categories of financial advice and financial product advice and if so for what purpose?

Yes, please refer to response 17.

23. How should the different categories of advice be labelled?

Financial product advice & financial advice – provided by Financial Planners.

Product information – replaces existing general financial product advice.

Financial coaching – new area that covers home ownership, budgeting, Centrelink, etc.

Stockbroking – new area specifically for stockbrokers that are not financial planners/advisers.

Refer to response 17 for further information.

24. Should advice provided to groups of consumers who share some common circumstances or characteristics of the cohort (such as targeted advertising) be regulated differently from advice provided only to an individual?

We believe existing regulation in this space is sufficient.

25. How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?

Financial coaches (including influencers) should be regulated by ASIC, and be required to be licensed by an AFSL. New AFSL authorities would need to be created to cover financial coaching and the relevant areas authorised. Financial coaches should be required to:

- Provide a Financial Services Guide
- Take reasonable steps to ensure the service they provide is appropriate for the consumer

- Provide the service with due care and skill.
- Ensure that any benefits to them or related parties are disclosed to the consumer.
- Have reasonable grounds to believe that any benefits they, their employer, licensee, or other related parties receive from sources other than the client have not unduly influenced them.
- Ensure the service is likely to leave the client in an improved financial position
- Ensure the service is likely to achieve the client's goals and objectives

Further, as outlined under response 17, we have proposed that financial coaches undertake an exam before they can become a coach.

There is significant harm posed to consumers if these individuals are not regulated as:

- There will be no barriers to entry (e.g. anyone can call themselves a coach or finfluencer regardless of background or competency).
- There will be very low, if any, protections for consumers or recourse available (i.e. cannot complain to the licensee, and escalate to AFCA if required).
- The finfluencers and other coaches may be receiving incentives to promote certain products or schemes which are contrary to the interests of the client.

Please refer to response 17 for further information.

26. How does applying and considering the distinction between general and personal advice add to the cost of providing advice?

We believe that confusion around this distinction contributes to financial advisers spending time and resources providing general advice and related services that could be provided by a lower cost resource that is subject to a lower regulatory burden. **Should the scope of intra-fund advice be expanded? If so, in what way?**

At present, we understand Intra-fund advice is general or personal financial product advice that can be subsidised by a superfund under the SIS Act. Ultimately, this advice must relate to the product the client already holds, and their beneficial interest in said product.

In practice, we believe the current intra-fund scope creates the following challenges when providing personal financial product advice:

- **Provision of advice to members of the superfund at retirement**
  In the situation where a member of a superfund has reached retirement, and seeks advice from their superfund on whether they should move their super to the related party account based pension, there are conflicting views in the industry as to what intra-fund allows.

  These members will often need advice on how to repay their leftover mortgage (i.e. by taking a lump sum from the pension), funding one-off expenses like home renovations or a new car (i.e. by taking a lump sum from the pension), and making sure they get the most out of their Age Pension. There is inconsistent application of the SIS Act in the industry to this regard. For example, some trustees allow this advice to be provided under intra-fund, while others will say Centrelink and lump sum withdrawals to pay debt or other expenses from super are outside the intra-fund scope.

In our experience, this is one of the main sought after areas of intra-fund advice. It is also very valuable and important advice if it considers matters such as Centrelink, and repaying the member's home loan. If these matters are excluded, there is risk the consumer receives subpar advice or advice that does not address their needs appropriately. For this reason, we would suggest matters such as debt repayments and taking lump sum from super be captured within the intra-fund definition.

- **Advice to partners who are not existing members of the superfund**
  In our experience, fund members will often present seeking advice with their non-member partner (i.e. there super is with different superfunds). This is particularly true at retirement. The intra-fund definition does not allow the superfund to subsidise advice provided to the non-member partner. This is a major impediment to providing high quality personal financial advice.

  For example, at retirement it is important that the partner's financial affairs are considered. For those who are married or in de-facto relationships, it is often their financial arrangements are shared/joint. This means in practice they own their home together, both contribute to the cost of living, etc. In retirement, this arrangement would logically continue, i.e. they would use both of their supers to contribute to their cost of living. There are also advice strategies that can be put in place (such as Centrelink sheltering), which is in their best interests, but cannot be addressed under an intra-fund model unless the partner is a member of the superfund.

  While the superfunds we partner with do not use this approach, we note that there are some funds in the industry that will simply ask the partner if they want to join the superfund and rollover their existing super and in turn they can then receive intra-fund advice. We believe this approach may be contrary to the partner's best interests as their existing product may be better suited to their needs and they may lose features and benefits in the existing product that they require (e.g. loss of pension bonus, loss of insurance). This process does not appropriately deal with these issues.

  We believe there are a few options to address this issue:
  - Expanding on existing guidance to address this issue (asking the member to join the fund and perform a rollover to receive intrafund) to ensure that superfunds appropriately triage members, and that where high-quality advice cannot be provided under the intra-fund model, that these cases are referred to an external financial adviser for fee-for-service advice.
    or
  - Remove the ability to advise on account-based pensions under intra-fund, however, this restricts the fund from providing retirement advice to members.
    or
  - Allow the intra-fund definition to cover the partner as well, however, this will create situations where the membership of the superfund are subsidising advice on another product (i.e. where the adviser compares the partner's existing product to their employer's product and finds that the existing product is more appropriate).

- **New member advice**

  The Intra-fund definition does not allow superfunds to subsidise advice to individuals if they are not an existing member of the superfund. This creates the risk of potential harm to consumers as they may change products because of a 'general advice' conservation. From this general advice conversation, they may believe that it is in their best interests to change superfunds, when this may not actually be the case. We have already seen this occur in the industry (i.e. ASIC vs BT where social proofing was used).

  If superfunds were allowed to subsidise personal advice to potential new members on super consolidation, we believe this would address this issue. There are potential benefits to the entire member base from this, i.e. increasing member numbers and funds under management increases scale and with scale comes the potential benefit of lower costs to members.

  We note that if this were to be allowed, the advice provider must be required to provide advice that is appropriate and technically sound (i.e. if the client's existing product is better suited to their needs, than their SOA should say this and not recommend the rollover). We note that when individuals are recommended to stay with the existing product this creates the situation where the entire member base is subsidising advice to use another product, which is not in the member base's interest to do so. However, we believe there are avenues to effectively offset this:

  - There will be some situations where funds are rolled in, and others where funds stay with the external existing product, and
  - Financial advisers employed by superfunds have generally a good understanding of where their product is placed in the industry. This would allow them to triage members who use this service e.g. if you worked for a superfund that was ranked 17th, you would know that it is extremely unlikely that it is in the potential member's best interests to move from the product that is ranked #2. So, in these cases there is a natural incentive for the financial adviser to not promote this service to the consumer.

  After considering these two factors, we believe that there would be a net benefit to the entire member base when they are invested in a product that is competitive and high-quality (i.e. the more competitive the product is, the more likely the roll-in recommendation is). We also believe this will be simpler for the regulator to monitor and enforce where needed (i.e. it is more straightforward, transparent and less nuanced than 'social proofing' general advice conversations).

  Furthermore, we believe this can assist with moving Australians out high fee products that have a history of poor performance as they would be able to seek this service at no cost. We believe this is of particular importance, especially in a stapling environment. There is a risk that these consumers end up with significantly less in retirement if they do not move to a more competitive product. Therefore, this can act as an effective tool to address a key deficiency in account stapling, i.e. where the consumer was placed in the 'default superfund' at their first job that is high fee and poor performing.

- **Personal insurance –** providing intra-fund advice on this scope can be difficult in the current environment. In order to provide this advice, we understand the financial adviser needs to undertake a process to:
    - Check if the client has any existing insurance policies outside the superfund (if they do, they cannot provide intra-fund as per ASIC's best interests duty guidance which requires the consideration of a client's existing products, which conflicts with the SIS intra-fund definition).
    - Check if funding via super is an appropriate means, which involves:
        - Confirming that they do not need TPD with an Own occupation definition,
        - Confirming that the super definitions for Life, TPD & income protection are suitable for the client
        - Understanding the client's cash flow and affordability of funding the policies outside super, and
        - Ensuring that income protection within super is superior for the client, despite the possible income tax deduction that can be achieved if held personally.
    - Determine whether it is also appropriate that they receive advice on trauma, in which cases, most superfunds will refer the member rather than risk 'splitting up' the advice in the current regulatory environment.

  In our experience after undertaking this process, the majority of possible advice recipients are triaged out. This process is nevertheless valuable to the consumer as it can help them understand the types and sorts of insurance that they require (i.e. "It sounds like you may be better off speaking to an adviser on insurance policies outside of super, because you are after a TPD policy that allows Own occupation).

  We recognise that there is an underinsurance crisis in Australia at the moment, and also that many consumers have pre-conceived notions on personal insurance; i.e. in our experience consumers need to be sold policies, and very few actively seek out insurance. For this reason, we would suggest retaining the current intra-fund personal insurance scope to allow members of superfunds to continue to access this valuable service. We would also encourage ASIC to provide specific guidance that clarifies the process to provide intra-fund personal insurance advice that is in the member's best interests allowing for the above challenges.

- **Contributions advice to the member's superfund**
  Clarification is needed on whether advising a client to move funds from their bank account to super falls within the intra-fund scope. We note there is inconsistent application in the industry as a bank account is a financial product (i.e. the member is being advised to dispose of the bank account to acquire more interest in their superfund via the contribution, and therefore some interpret this as being outside the intra-fund scope).

Closing thoughts on intra-fund

We believe there are still Financial Advisers who provide personal 'Intra-fund' advice who still believe the Best Interests Duty and related obligations do not apply to this type of advice (on the basis the client already holds the product). Should the intra-fund landscape be changed, we would encourage the Government and Regulator to work closely with impacted industry participants to ensure that any change is well understood and executed. This is especially important in the intra-fund space, given there is increased risks associated with the vertical integration nature of the advice (i.e. the client is receiving advice from an

employee of the product issuer they have invested with, or appointed service provider who receives payment from the product issuer). Also noting that there is a wide array of participants in this space (retail, industry, corporate and government superfunds), and some participants have greater conflicts than others.

27. Should superannuation trustees be encouraged or required to provide intra-fund advice to members?

Superfunds should have the discretion to decide which additional services they choose to provide to their customers. Mandating that a voluntary service be required is incongruent with the free market philosophy. It will also prevent providers from devising innovative products and offerings, for example, a fund may choose to develop a 'bare-bone' offering to keep costs as low as possible and target this segment of the market. This bare-bone offering may involve members opting in / opting out of additional services. For example, opting out of intra-fund advice services if they have an external adviser supporting them, paying extra to receive paper statements so that Carbon Credits can be purchased to neutralise the environmental footprint, etc.

Noting that the trustee should have discretion to decide what is in the best interests of their members, we see intra-fund advice as a very valuable service to many Australians as it can provide them with education and information to assist them in making informed and sound financial decisions. We note that general financial product advice can be provided far more cost effectively than personal advice given the personal advice requirements. Personal financial product advice under intra-fund is also very beneficial, when supported by sustainable business practices. However, we believe that adjustments need to be made to the intra-fund scope to ensure that consumers are not at risk of receiving lesser quality personal advice under intra-fund (see response 27).

28. Are any other changes to the regulatory framework necessary to assist superannuation trustees to provide intra-fund advice or to more actively engage with their members particularly in relation to retirement issues?

Please refer to response 27.

29. To what extent does the provision of intra-fund advice affect competition in the financial advice market?

Intra-fund is important as it provides access to advice for a broad cohort of consumers who may otherwise be unable to afford it. Furthermore, given the demand for advice at present, we believe intra-fund is an essential service to assist with alleviating this demand on the industry.

Long-term, we believe intra-fund has a crucial role to play in promoting healthy competition in the industry. To ensure intra-fund continues to be a valuable service, we believe it is important to adjust the intra-fund scope to ensure that consumers are not at risk of receiving lesser quality advice. For example, there are strategic advice areas that should be addressed as part of providing product/investment advice, and many industry participants believe the strategic advice areas (such as debt repayment, taking a lump sum from super) are not possible under the current intra-fund scope. We have outlined this in more detail under response 27.

Lastly, we do not see intra-fund advisers replacing the role of other financial advisers. This is for a variety of reasons, including the costs to superfunds to build an intra-fund advice workforce to effectively service the needs of all their members. Given current adviser numbers, we also believe if a superfund pursued this strategy, they would have difficulty recruiting a sufficient number of financial advisers to achieve this.

30. Do you think that limited scope advice can be valuable for consumers?

Yes.

31. What legislative changes are necessary to facilitate the delivery of limited scope advice?

Under current regulations (INFO Paper 267, Code of Ethics), it is difficult to provide limited scope advice due to the record keeping requirements to establish that the adviser has limited the advice and in doing so hasn't excluded any critical issues.

Secondly, current regulatory guidance encourages advisers to investigate the client's overall situation to determine their advice need, and then to provide advice on these matters. This process is time intensive (& therefore costly) as a financial adviser must inquire broadly about the client's situation, receive this information from the client and then consider it. This can take a material amount of time as clients often won't understand why the adviser is asking more broadly beyond what they are requesting help with.

Once an adviser has understood the client's overall situation, many advisers feel in the current regulatory environment that all critical advice needs they undercover must be addressed (as per ASIC Info Paper 267 issued December 2021). Many are hesitant to allow a client to exclude a critical area, even with explanation of the risks, due to fear of recourse from the regulator or in an AFCA dispute.

For these reasons and more outlined throughout this document, under response 16 we have proposed a strawman to simplify current regulatory requirements.

It is important the regulatory environment allows advisers to provide advice in circumstances where a client's advice need is quite broad, but the client may only be willingly to pay to address 1 or 2 issues. In this circumstance, the advice that client will receive will be very valuable, but under the current regulation, we believe many adviser practitioners would be hesitant to advise the client given the risks involved.

Further, there is a natural incentive for advisers to advise on more issues (as the amount that can be charged to the client increases). For this reason, advisers would still strongly encourage clients to seek advice on all the important aspects, as it would be in both their and the client's interests to do so. This also provides protection as the client's and adviser's interests are clearly aligned. However, in circumstances where clients are not willing to pay, the client can still receive some advice, and walk-away from the process in an improved financial position.

32. Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?

There is a natural incentive for advisers to provide comprehensive advice as the marginal costs associated with this are lower than multiple limited scope advice interactions (i.e.it is more cost effective to have one complex interaction than two limited scoped interactions). The reason for this is the record keeping obligations required in the current regulatory environment.

We do not believe there is uncertainty with the record keeping required to demonstrate Safe Harbour as ASIC has issued several documents on the matter.

33. Do you agree that digital advice can make financial advice more accessible and affordable?

Yes, when coupled with a human adviser to assist the process.

34. Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?

We believe digital advice, in conjunction with financial coaching, can play an important role with topics such as:

- Buying a first home
- Budgeting and cash flow management
- Helping a client understand investments, and investment options that may be available to them.

35. Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?

We believe the risks are similar, however, after reviewing several tools in the digital advice space, we note that improvement is required in digital advice tool triage. Many digital advice tools we have reviewed do not have a process to determine whether or not the consumer should use the tool (i.e. is the consumer in the target market for the tool, is it addressing all the client's critical advice needs like a human adviser is required to).

There are also risks around the low implementation rate of digital advice. We believe the low implementation rate is due to a combination of factors, including consumer trust in 'the robot', as well as consumer understanding of the advice (i.e. a human can have a two-way conversation, read client cues, etc). In our experience, if consumers do not trust or understand the advice, they will not implement it. This may place the consumer in a state of decision paralysis, and as a result not seek-out a financial adviser or other resource to confirm the steps they should take to place themselves in an improved financial position.

Guideway

36. Should different forms of advice be regulated differently, e.g. advice provided by a digital advice tool from advice provided by a financial adviser?

Yes.

37. Are you concerned that the quality of advice might be compromised by digital advice?

We do not believe the digital advice is lower quality advice when it is provided to the appropriate consumers of the service. However, we note that there are many tools on the market that do not effectively triage consumers which places them at risk of receiving advice that does not address their advice needs appropriately.

38. Are any changes to the regulatory framework necessary to facilitate digital advice?

We do not believe there are regulatory barriers preventing digital advice at present.

41. If technology is part of the solution to making advice more accessible, who should be responsible for the advice provided (for example, an AFS licensee)?

AFS licensee.

42. In what ways can digital advice complement human-provided advice and when should it be a substitute?

We believe that a reasonable cohort of consumers will always prefer human-provided advice (whatever the topic(s)), and as such, would not advocate for instances of blanket substitution. We do however believe digital has an important role within the provision of advice (as outlined in Q35) alongside that of a Financial Coach. This is particularly critical when it comes to the point of implementation where, as previously pointed out, digital falls short. Digital advice can also be an effective and efficient tool for the purposes of data collection (and insights) both as part of the advice process and for future improvements and refinements to the advice service.

43. Do you consider that the statutory safe harbour for the best interests duty provides any benefit to consumers or advisers and would there be any prejudice to either of them if it was removed?

Please refer to response 8.

44. If at all, how does complying with the safe harbour add to the cost of advice and to what extent?

Please refer to response 8.

45. If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal advice?

We believe removing safe harbour will ultimately not make a material difference given the Code of Ethics is effectively a higher standard. To quote FASEA, 'just because you meet Safe Harbour, doesn't mean you have met the Code of Ethics'.

If safe harbour and Code of Ethics were removed, we would simplify the advice process to:

> Step 1. Get to know your client (understand what they are seeking help with, take reasonable steps to identify other areas where advice may be needed, identify what they would like out of the advice process [what do they want their financial position to look like i.e. goals and objectives])
>
> Step 2. Agree areas that the advice will address and, if an important issue is excluded, ensure that the consumer is marking an informed decision in doing so.
>
> Step 3. Prepare advice, and in doing so, ensure that each recommendation provided is likely to leave the client in an improved financial position and works towards achieving their goals and objectives. If a conflict of interests exists, the client's interests must be clearly prioritised in each recommendation.
>
> Step 4. Provide advice via an SOA to the client. Ensure the client understands how the advice will achieve their goals, as well as fees and risks of the advice and products.
>
> As part of this process, the record keeping obligations will be far lower, as we will place emphasise on ensuring that the contents of the SOA documents this process and advice in a clear, concise, and effective manner.

46. To what extent can the best interests obligations (including the best interests duty, appropriate advice obligation and the conflicts priority rule) be streamlined to remove duplication?

Please refer to response 8.

47. Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?

No, in the current regulatory environment a financial adviser is required to provide appropriate advice and apply their professional judgement. Requiring advisers to consider Target Market Determinations is effectively duplicating this requirement.

48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?

We have never received commissions or conflicted remuneration, and therefore are not close enough to the issue to comment.

49. Has the ban contributed towards improving the quality of advice?

We have never received commissions or conflicted remuneration, and therefore are not close enough to the issue to comment.

50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

We feel the ban has led to the rise of managed accounts and similar services. We note that some advisers receive % based remuneration based on funds invested via the managed accounts (i.e. where the firm or licensee has their own managed account product). We believe effectively these arrangements are 'commissions' and recommending an investment product where you or your personal firm benefit from it (regardless of the complex structure behind it) is incongruent with Corporations Act s961J and s961B.

For this reason, we do not believe the ban on commissions has ultimately impacted the profitability of advice firms as the market has evolved to replace the loss revenue through complex structures that allow licensees and advice practices to create their own managed accounts and receive % based revenue from investments. Licensee or practice run managed accounts are another form of vertical integration.

51. What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.

We strongly oppose conflicted remuneration on investments and believe that more regulation and regulatory action is needed to address this. For example, action against advisers and licensees that setup complex structures to receive % based revenue on funds invested in a managed account. This is important to ensure that there is transparency in advice fees charged to consumers, and that advisers are prioritising the client's interests.

If the personal insurance conflicted remuneration exemption is removed, there is a risk that less consumers receive insurance advice. This in turn will increase the levels of underinsurance in Australia. One of the biggest issues we see with personal insurance is that it needs to be sold, i.e. many clients do not seek out personal insurance. Further, consumers will often be attracted to the no fee upfront for insurance advice approach, even if this is contrary to their financial interest's medium to longer term (i.e. they end up paying substantially more for their insurance than if they had paid for fee-for-service advice upfront). We believe this is due to consumers not sufficiently understanding their options to make an informed decision.

We believe that there is opportunity to reform the personal insurance exemption by:

- Once the adviser has received $x,xxx amount in commission to cover the cost of providing the advice, then the commission is switched off*, and/or
- Require the adviser to present both options (with and without commission) in their Statement of Advice and the consumer can choose between the two.

*Insurance commissions could be left on where the adviser can demonstrate they are conducting regular reviews with the client to ensure the cover is appropriate (i.e. as their wealth improves, their needs for insurance decreases, so coverage amounts can be reduced and premium savings can be realised).

We believe these approaches will place the consumer in a better position to make a sound decision.

52. Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?

Refer to response 51 – we feel greater regulation and enforcement action is needed of managed accounts where there is remuneration that ultimately flows to the licensee (or related entities, advice practice or the financial adviser) is based on the % invested in the product. This is a form of vertical integration that needs addressing as soon as possible. In some circumstances, consumers are placed at risk as advisers have an incentive to recommend the affiliated managed account as it increases revenue to their licensee, employer and/or themselves if they do so.

53. Has the capping of life insurance commissions led to a reduction in the level of insurance coverage or contributed to underinsurance? If so, please provide data to support this claim.

We have never received commissions on insurances. We typically charge $3,000-$3,600 to a couple for a full personal insurance review, and in the current regulatory environment, this is provided at a loss or breakeven.

54. Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.

We do not have comment on this at this time.

55. What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be retained?

We would encourage that current bans be expanded to capture industry developments (i.e. managed account structures as outlined above).

56. Are consent requirements for charging non-ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?

Our in-house advisers charge clients via invoice only, with no ongoing advice fees. 97% of these invoices are paid via personal funds and not super. The reason for this is the complexity and time involved with charging it to their super account. We feel this process could be streamlined by requiring that trustees that allow advice fees to be deducted to have an electronic method (i.e. so that the customer can login, and instruct the trustee to make payment to their adviser, and not a paper form).

We also believe it would be more pragmatic to require trustees to accredit advice fee deductions from their product, rather than put a regime in place where trustees are required to actively monitor and supervise the conduct (which we understand includes reviewing Statement of Advice documents against Sole Purpose, requesting attestations from licensees, etc).

57. To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?

Refer to response 3 for background.

Ongoing fee arrangements should be simplified to require that financial advisers issue an SOA/ROA to an ongoing client each year that details the fees that they are currently receiving. And then, require that the client sign the SOA/ROA to confirm they wish to continue receiving the advice services.

Under this approach, the adviser is required to provide the client with advice each year (via the SOA/ROA), and therefore, the adviser must provide advice to continue receiving the fee. This then substantially reduces the risk of fee for no service, and makes things simpler for consumers to understand.

58. How could these documents be improved for consumers?

We believe that FDS/OPT-in notices will be used less and less frequently as they are replaced with fixed term advice agreements that last less than 12 months.

As outlined under 57, we believe adding additional requirements to existing disclosure documents can replace the need for FDS/OPT-in in a pragmatic way that still protects consumers.

59. Are there other ways that could more effectively provide accountability and transparency around ongoing fee arrangements and protect consumers from being charged a fee for no service?

Refer to response 57.

60. How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?

It increases the need for back-office support staff in the realm of 8-12 business hours per year per client.

61. To what extent, if at all, do superannuation trustees (and other product issuers) impose obligations on advisers which are in addition to those imposed by the OFA and FDS requirements in the Corporations Act 2001?

We operate on an invoice model only, and as such, do not have comment on this matter.

62. How do the superannuation trustee covenants, particularly the obligation to act in the best financial interests of members, affect a trustee's decision to deduct ongoing advice fees from a member's account?

We are not a trustee, and as such, do not have comment on this matter.

63. How successful have SOAs been in addressing information asymmetry?

SOAs are an effective tool when the infrastructure and template behind them focus on the clear, concise and effective obligation. We have seen great success with our SOA that is on average 30 pages with improving consumer informed decision making.

64. How much does the requirement to prepare a SOA contribute to the cost of advice?

On average $550.

65. To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information they need to make an informed decision?

We believe the current laws regarding SOAs and ROAs contents are sufficient.

66. To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?

A comprehensive SOA for us is on average 30-35 pages. A scaled SOA is on average 7-15.

We believe that other participants still using longer documents due to existing practices or perceptions that a shorter document carries greater risk.

67. How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?

We believe the electronic disclosure requirements should be reviewed (i.e. modernise the requirements under ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649 and ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647.

68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?

We believe the 'small investment advice' threshold for Records of Advice should be limited to $100,000 to assist with providing advice to consumers with lower investable amounts.

69. Has recent guidance assisted advisers in understanding where they are able to use ROAs rather than SOAs, and has this led to a greater provision of this simpler form of disclosure?

We do not believe ROA usage is well understood across the industry given the varying interpretations of what constitutes a change in a client's situation, and many advisers still using ROAs to correct disclosure or advice issues within SOAs issued shortly prior.

70. Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?

No.

71. Should accountants be able to provide financial advice on superannuation products outside of the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why?

No, accountants have a conflict of interest when the advice involves super, in particular SMSFs. The conflict arises from the fact that they will also receive money for setting up and providing tax services to the SMSF on an ongoing basis. Requiring that they be licensed is important to ensure that consumers have regulatory protection (i.e. that the client's interests are being prioritised).

72. If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?

N/A

Guideway

73. What effect would allowing accountants to provide this advice have on the number of advisers in the market and the number of consumers receiving financial advice?

All parties in the financial advice space must be on a level playing field. We believe if accountants are given an exemption, depending on the form it takes, it may be simpler and more commercial for a financial adviser to simply undertake study to become a registered tax agent and operate as an accountant going-forward.

74. Is the limited AFS licence working as intended? What changes to the limited licence could be made to make it more accessible to accountants wanting to provide financial advice?

We do not operate in the limited AFS licence space.

75. Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?

Not to our knowledge.

76. Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?

The issue with wholesale clients is not the agreement, but rather, the current classification requirements to become a wholesale client.

We do not believe asking the client to agree is effective protection as the adviser has an incentive to present this ‘ask’ in a manner that encourages the client to become a wholesale client (given wholesale clients have far lower protections, disclosures and no recourse to AFCA).

77. Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?

Yes,

- Increase the net asset position to $5 million, and
- Increase gross annual income to $500,000.

78. Should there be a requirement for a client to be informed by the adviser if they are being classified as a wholesale client and be given an explanation that this means the protections for retail clients will not apply?

Yes, this should be provided to the client in writing.

Guideway

Section 5: Other measures to improve the quality, affordability and accessibility of advice

79. What steps have licensees taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?

As a licensee, some of the steps we have taken to improve quality, accessibility, and affordability in advice are:

- Investment in technology, with internal software experts on payroll to foster innovation and best practice use of digital advice tools.
- Operating an effective supervision and monitoring program to ensure that adviser knowledge gaps are identified and addressed in a timely manner, and that adviser practices reflect regulatory changes.
- Charging clients for the services they need through a pay as you go approach (clients are invoiced for the adviser's time, as they require the adviser's services).
- Developing and investing in a financial coaching and education program to help address the Australian advice gap, i.e. service the unmet advice need for financial coaching services.
- Launched the Guideway adviser academy to support industry new entrants with becoming financial advisers.
- Led industry workshops and stakeholder groups to promote best practice, where industry participants can learn from others in a collaborative and innovative learning environment.

Speaking more broadly, without licensees we feel the industry would be in a more costly and potentially more fragile state and more consumers would be placed at risk of financial harm. In many adviser minds, they outsource their compliance requirements to licensees, and rely on them heavily. If licensees were removed, we feel the quality of advice would substantially reduce. Every adviser would be operating materially differently, without structure or infrastructure to provide rails to ensure quality advice. This would also end up ultimately increasing the costs of advice provision as advisers would be operating without structure and back-office processes to drive efficiencies through consistency.

We also believe it would take more time to address the 'bad eggs' in the industry as the regulator cannot possibly monitor and supervise 17,000 advisers cost effectively i.e. the regulator was under resourced to monitor, supervise and enforce the advice industry when half the industry was licensed through large licensees, this problem would be magnified 100 fold if they had to monitor and supervise each individual adviser. We also believe a market-centric approach is preferable for delivering better, more cost-effective consumer outcomes.

The key for success in the licensee model is effective and timely enforcement from the regulator against licensees who are not appropriately monitoring and supervising their representatives and ensuring that their representatives maintain competency. There also needs to be strong disincentives against poor practices from licensees (e.g. name and shame on MoneySmart financial adviser register like advisers are, prevent them from licensing further representatives until issues are addressed, require them to write to their representatives when poor monitoring and supervision is discovered by the regulator, etc).

80. What steps have professional associations taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?

We understand they have reduced the CFP annual membership fee recently by $100 p.a.

81. Have ASIC's recent actions in response to consultation (CP 332), including the new financial advice hub webpage and example SOAs and ROAs, assisted licensees and advisers to provide good quality and affordable advice?

We welcome ASIC consultation with industry participants.

82. Has licensee supervision and monitoring of advisers improved since the Financial Services Royal Commission?

We believe many licensees have taken steps to improve their monitoring and supervision of advisers. However, we also note that many advisers choose to secure their own AFSL and 'self-licence'. We believe the self-licensing approach is fraught with danger. Due to the frequency and complexity of regulatory changes that occur, we do not believe one adviser advice practices, or even practices with up to 10 advisers can commercially operate their own AFSL and comply with existing laws as well as all these changes. Through engagement with industry stakeholders, we believe many of these new licensees are "choosing to run the gauntlet", i.e. hope they stay off the regulator's radar.

83. What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice?

Adviser levy

Professional associations and ASIC should work with the Government to ensure that ASIC has sufficient funding so that financial advisers are not paying an annual 'adviser levy'.

If the financial adviser levy is not removed, it should be done on a risk-based approach (e.g. licensees where the regulator has observed insufficient supervision and monitoring should be levied a higher fee per adviser). We believe this approach is more fair as it ensures that hard-working, compliant licensees and financial advisers are not punished for the behaviour of others.

Initial advice tax deductibility

Professional associations should lobby the Government to have the cost of initial advice tax deductible up to $5,000.

Professional indemnity insurance affordability and availability

The Government and ASIC need to work with professional indemnity insurers to ensure that cover is affordable and encourage the return of insurers who left the Australian market. For example, our cost per Authorised Representative has doubled since the Royal Commission despite having a 10-year history with 0 claims on insurance and 0 AFCA disputes.

Australian Financial Complaints Commission

AFCA should assess the merits of a complaint by applying legal standards advisers are required to follow, i.e. Best Interests Duty, Prioritise the client's interests, etc. While legal principles are considered as part of AFCA's current rules around 'fairness', it extends beyond this and considers what is good industry practice and previous AFCA/FOS determinations. AFCA also applies a fairness test when the complaint is considered. It is difficult to effectively manage risks and costs with the uncertainty that this creates.

If a client has suffered a loss as a result of the adviser failing to follow a legal requirement then compensation is owed. There should not be uncertainty with this, i.e. what is 'fair' should not supersede legal requirements, nor should 'good industry practice' factor into the equation.

Role of consumers in good advice outcomes

Consumers have an important role to play in receiving good advice outcomes. Under current rules more responsibility than ever is placed on the adviser instead of the client. For advice to operate efficiently and effectively clients need to be engaged and take care to ensure their decisions are based on sound knowledge and understanding of the risks as well as benefits.

Thank you for the opportunity

Thank you again for the opportunity to respond to the Quality of Advice Review 2022. We hope our response assists with improving advice accessibility, affordability, and quality for consumers.