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## Introduction

We welcome the opportunity to provide feedback on the Quality of Advice Proposals Paper published on the Treasury website 29 August 2022. As an overall comment, our three companies are committed supporters of a well-functioning financial advice industry and see the proposal as a significant step forward in terms of encouraging autonomy and professionalism in our industry. Most of our feedback focuses on the practical implications and unintended consequences of the recommendations. We would also welcome the opportunity to discuss further in person, any aspect of our submission.

## A background to our companies

We have three independent consulting firms which are Australian owned and support the financial planning, wealth management and accounting industries. We regularly collaborate on industry issues and work together to support our clients. More specific background to our companies is as follows:

### 1. Encore Advisory Group

Since 2002, Encore has run industry leading business breakthrough programs, events, and consulting services to over 500 advice practices, licensees, and institutions.

Encore provides:

- Board and governance services to practices and licensees. This includes Directorships and sub-committee Chair roles in \$5-10 m turnover firms with their own AFSL.
- Consulting and implementation services to help practices to achieve long term, sustainable growth.
- Project management and consulting services to the larger institutions delivering financial planning and licensee services.

### 2. Finura Group

Finura is an independent wealth technology strategy consulting firm. We work with Advice Licensees, Product Manufacturers, Super Funds and FinTech's to optimise technology implementations and business model transformations.

The deep advice and technology experience of our team, and our broad exposure across the industry places us well to understand the problems industry participants face in improving the quality of financial advice using technology.

### **3. Tangelo Advice Consulting**

Tangelo Advice Consulting was established in 2019, with a team of specialised consultants to support Financial Services Licensees, advice and wealth businesses (of all sizes) by identify gaps as they pertain to People, Policy, Process and Governance and devising practical solutions to close these gaps. We focus on delivering complex projects, developing, and implementing advice policies and advice tools and processes, training advisers, and operationalising compliance.

## OUR RESPONSES TO THE QUESTIONS

### Intended outcomes

- 1. Do you agree that advisers and product issuers should be able to provide personal advice to their customers without having to comply with all the obligations that currently apply to the provision of personal advice?**

As a principle we absolutely agree with this. There are currently far too many obligations for advisers and licensees to understand, let alone build systems and processes to ensure compliance with them.

With seven regulators and multiple (often conflicting) guidance, we support treating financial advisers as professionals (especially following the FASEA education reforms) and leaving it to the industry to provide specific guard rails to support the provision of “good advice,” or to determine how best to meet Best Interest requirements.

It will be incumbent on the industry to provide a coherent and simple set of guidelines that complement the principle-based law, so we do not have unintended consequences such as clients not understanding the advice they were given. That is a challenge the industry is up for and advisers, we believe, will embrace a less process driven view of their role and more empowerment if:

1. It’s clear (to a reasonable degree) what they need to do; and
2. ASIC as the regulator, will support this approach when it comes to enforcement and remediation.

In reading the report we felt important to call out that although we fully support the large number of simplifications to the disclosure rules (FDS, DDO, greater self-determination in how best to document advice etc), we feel like more thought needs to be given around the guidance that either the regulator or the industry provides regarding meeting Best Interest/Good Advice requirements. We think the industry is so heavily influenced by the massive remediation issues we have had in the past that if we don’t get the guidance correct, many may fall back on over-disclosing and potentially exacerbate the issue, or not disclosing enough (or not disclosing the right things) thus creating further future remediation, which will erode the trust we have finally been able to establish in the industry.

In addition, while we appreciate the simplicity of the rules regarding personal financial, intra fund and advice given via superannuation providers, we are concerned that an unlevel playing field could create distortions in the advice provided.

### What should be regulated?

- 2. In your view, are the proposed changes to the definition of ‘personal advice’ likely to:**

- a) reduce regulatory uncertainty?**

Generally, yes. The one area we believe requires addressing is around the fact that there are fewer requirements for superannuation/product providers in terms of their requirements to demonstrate good advice. Whilst this could encourage a shift to simpler advice and therefore enable greater and more affordable access, on the contrary it will likely also lead to vertically integrated models which could mean the advice is distorted, as it is, narrow in focus.

In addition, it's important consumers clearly understand the distinction between different forms of advice. Clearly differentiated labelling will assist with this goal.

**b) facilitate the provision of more personal advice to consumers?**

Yes, per above. We believe that expanding the means of receiving advice, especially if it is simple/narrow focus advice, could facilitate the provision of more personal advice.

**c) improve the ability of financial institutions to help their clients?**

Yes, however as noted below if consumers were to have a widely dissimilar experience from advice given via a "relevant provider" versus limited scope advice (albeit slightly expanded) via a super fund, with far less regulatory requirements, this would not be a good outcome for consumers.

The better question would be how to simplify personal advice requirements overall and enable superannuation providers to compete on a fair and appropriate playing field with advice from relevant providers. Financial institutions could then focus on a narrower range of advice areas (e.g., contribution advice to their existing superannuation fund). It's important this service is clearly different to a full fiduciary service from a relevant provider. A similar model can be found in the UK where the adviser is clearly labelled independent or restricted.

**3. In relation to the proposed de-regulation of 'general advice' - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?**

No

**a) If not, what additional safeguards do you think would be required?**

We would support the other views in the industry and propose to relabel general advice to "product information" and then not regulate it unless scrutiny is required, to ensure that those providing factual product information do not fall into providing advice, whether it is inadvertent or not.

We think having advice in the name of the service is inaccurate as by definition they are unable to give advice.

**How should personal advice be regulated?**

**4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide 'good advice' have on:**

**a) the quality of financial advice provided to consumers?**

*If*, the industry can provide strong and tight definitions and guardrails to support advisers so they know in simple terms what they need to do in terms of appropriately summarising the advice given, it *could* allow us to get back to focussing on the actual advice given. Recent AFCA commentary suggests it is hard or impossible to find the actual advice in most SOAs. We do not support the current approach of lengthy documents that no one reads or understands.

However, what we will need is a definition of “good” or “quality” advice. We understand that high quality advice consists of:

- Advice that benefits the consumer
- Advice that is clear and is easy to understand
- Advice that discloses all costs and risks

Therefore, it would be beneficial to have a matrix that explains views on how good advice may impact these. These requirements may also be different for new consumers receiving advice for the first time versus existing consumers, or simple advice versus complex advice.

Having some form of structure to an advice document (regardless of its method of delivery), such as what is being recommended, why it’s being recommended and an outline of the fees and risks, will also allow a consumer to compare the advice between advisers and make better decisions.

**b) the time and cost required to produce advice?**

Reduction in the steps to demonstrate good advice and the replacement of tick-box advice process steps and more tailored and user-friendly advice documents (again, regardless of their method of delivery) should lead to a reduction in time and cost if the above issues are addressed.

**5. Does the replacement of the best interest obligations with the obligation to provide ‘good advice’ make it easier for advisers and institutions to:**

**a) provide limited advice to consumers?**

It does, but note our concerns in question 2c) and 4a). Further to that, we note that ‘relevant providers’ will still have best interest obligations via the Code of Ethics, so it would be prudent to ensure there is alignment across these requirements to avoid unnecessary complexity and confusion.

**b) provide advice to consumers using technological solutions (e.g. digital advice)?**

Yes, however we remain sceptical of the ability to provide any comprehensive personal advice digitally due to the complexity of advice and in particular superannuation rules and the need to have a human-to-human conversation around options, for example for insurance advice.

As mentioned previously, we are also concerned about consumers being recommended in-house products aligned to the product provider, which may not be a good outcome for consumers nor the industry. Where possible, we would want to avoid being in a situation where product failures or unsuitable product recommendations via digital advice is bundled with advice being provided by relevant providers, thereby impacting trust in the industry again.

We do however see the benefit of having digital advice for very narrow focused advice (such as simple investment only, simple insurance advice, or mere super contributions); beyond that, the opportunity is probably more around data capture and human/technology assisted advice due to the nature of regulations in Australia. These changes may however encourage more innovation and simpler advice models to emerge if they can navigate some of the remaining complexities. Having digital advice solutions can also lead to younger and/or unadvised consumers with ‘simple’ needs being introduced to financial advice.

**6. What else (if anything) is required to better facilitate the provision of:**

**a) limited advice?**

We believe limited advice definitely has the potential to be part of the solution in encouraging more access to affordability of advice. The challenge lies in:

- Ensuring the client *properly* understands the implication of limiting the scope versus holistic personal financial advice and as previously mentioned, clear labelling of the advice provider as well.
- Ensuring that as the advice process continues and the client considers the advice and becomes educated regarding implications, they may elect to change their mind and include other areas that previously were excluded. Note if the provider has a speciality in that area, there is a natural confirmation bias to keeping the scope limited.
- The advice for a limited scope engagement may meet Best Interest/Good Advice requirements on its own but not holistically looking at the client's overall circumstances *could* be detrimental.
- The misalignment of the requirements of the Code of Ethics, making it difficult to provide limited advice.

We think the changes discussed will encourage more limited scope, simpler advice but the above issues need to be addressed as part of this.

**b) digital advice?**

See above and 5b).

**7. In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:**

**a) the quality of financial advice?**

The advice given by the relevant provider should theoretically improve if there is a desire to focus on the actual advice given versus excessive disclosure per our current SOAs that do not really help anyone in the value chain. The two caveats to this are:

- The guard rail advice to advisers regarding how/when to give or not give documents (ideally endorsed by ASIC) to support the principle.
- There are certain elements of safe harbour and Best Interest that should and could actually be preserved to enable "Good Advice." Examples include consideration of alternative strategies and consideration of alternative products, especially where there is product replacement. Perhaps this is where licensee and/or industry guidance can assist, but we think this needs to be clear and not principle based. This could be done in the background and the documentation provided to the client simply explains the conclusion arrived at and why.

As noted previously though, we do still have reservations that consumers will be able to distinguish between personal advice provided by a 'relevant provider' versus advice provided by other institutions.

**b) the affordability and accessibility of financial advice?**

It should improve both, with the caveat that we support a fair and appropriate playing field between relevant providers and superannuation/product providers.

**8. In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?**

No

**a) If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?**

We would recommend these providers are required to have the same requirements as licensees and authorised representatives operating as relevant providers. They should have adequate resources, sufficient capital, established Supervision and Monitoring processes and be able to meet requirements under “efficiently, honestly and fairly.” If not, capital will flow to simpler regulatory requirements, and this will lead to advice which is conflicted and vertically integrated.

We also note that the industry has undergone considerable change in meeting the current education requirements (although we note this is now being considered separately). We believe that having standardised or base level education and training requirements across all advice providers (with the potential for additional modules for ‘relevant provider’s seeking to act as a fiduciary under the code), could also facilitate the development of the next generation of advisers and seamlessly allow for skilled and experienced professionals to transition between different advice models (e.g. shift from intrafund advice to ‘relevant provider’).

### Superannuation funds and intra-fund advice

**9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):**

**a) make it easier for superannuation trustees to provide personal advice to their members?**

Yes. We support changes to the SIS Act to enable greater choice for consumers to have fees deducted from super that relate to other areas of advice, if they authorise it. The current rules where advice deducted from super must be in relation to super adds unnecessary cost and complexity. The clients themselves should be the determinants of fees deducted.

**b) make it easier for members to access the advice they need at the time they need it?**

Yes, see 9a). There may need to be a standard warning regarding affordability and degradation of super balances, but in general terms we support this change.

## Disclosure documents

### 10. Do the streamlined disclosure requirements for ongoing fee arrangements:

#### a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?

Yes, significantly. Many licensees have moved to charging clients on a fixed term basis principally due to the cost of providing an FDS (often not valued or read by a client) which are often incorrect due to issues beyond the control of the adviser (timing of data feeds and different treatment of GST). Further to that, whilst fixed term agreements seem to be preferred, product providers often don't cater to them (or have inconsistent requirements across product providers), which creates unnecessary processes and control requirements for advice businesses.

This is particularly important for those clients who are retirees, who may be better off simply on ongoing service packages (which also reduces the risk that concurrent fixed term agreements be seen as an ongoing service). Plus, these clients already have opt-in requirements, so the risk of client detriment is actually very low.

#### b) negatively impact consumers, and if so, how and to what extent?

Negligible, see 10a).

### 11. Will removing the requirement to give clients a statement of advice:

#### a) reduce the cost of providing advice, and if so, to what extent?

Theoretically it will reduce the cost significantly as currently there is an entire industry of people who assist in the production of documents, as the information required in the SOA (e.g. research, replacement product information, alternative product comparisons etc) is where a significant apportionment of costs is dedicated.

This is subject to the caveat as per our answer to question 7a).

If the advice document could be in any format (e.g., video/email/letter), but had the 'core elements' (which would need to be determined), this would reduce the cost of providing advice but would also enable a better and more consistent consumer experience. We would therefore see a better balance of efficiency, whilst ensuring the consumer understands, receives, and accepts the advice they were given.

Further to that, as a "professional services industry," we would encourage the provision of some format of documentation to support the provision of advice.

In addition, if relevant providers had greater access to information from sources such as the ATO and super funds this would greatly assist the time-consuming task of data gathering at the point of initial advice and review.

#### b) negatively impact consumers, and if so, to what extent?

See 11a). We would encourage the provision of some format of advice documentation (which can be determined based on a consumer's preference) that outlines the core elements of the advice.



Where no advice documentation is provided, we would recommend that the timeframe for a client to request a copy of the advice, be capped in line with the current record keeping legislation of seven years.

**12. In your view, will the proposed change for giving a financial services guide:**

**a) reduce regulatory burden for advisers and licensees, and if so, to what extent?**

Yes, but only to a minor degree as many licensees have already introduced systems to provide an FSG electronically.

**b) negatively impact consumers, and if so, to what extent?**

None that we can think of. The only potential would be if older clients were not comfortable with online access to FSGs, but this issue is very solvable with the right guidance and flexibility.

### Design and distribution obligations

**13. What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:**

**a) the design and development of financial products?**

We don't think the sensible changes to DDO reporting will have a huge impact on product design, but they will add significant efficiencies for the wealth business and licensees in terms of reporting cost and complexity. The DDO changes were well intentioned, but in the current format they offer very limited, if any benefit to consumers (especially when they are receiving personal advice) and have added unnecessary cost to advisers and licensees.

**b) target market determinations?**

See 13a).

### Transition and enforcement

**14. What transitional arrangements are necessary to implement these reforms?**

We would recommend the following:

- A 3-year transition period (namely to make process and technology required changes).
- An industry association combined transition plan/team to engage treasury and ASIC.
- A position from ASIC stating their support for the changes and how they will be enforced and from which period.

### General

**15. Do you have any other comments or feedback?**

No further comments.