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3 July 2022

Ms Michelle Levy
Independent Reviewer
Quality of Advice Review Secretariat
Financial System Division
The Treasury

**By Email:** AdviceReview@treasury.gov.au

Dear Ms Levy

**Submission to the Quality of Advice Review**

Fiducian Financial Services Pty Limited (ABN 46 094 765 134/ AFS Licence 231103) (**Fiducian**) is a subsidiary of Fiducian Group (ASX code: FID) and provides financial planning services to approximately 15,000 clients across Australia.

Fiducian has a keen interest in the financial planning regulatory environment and we provide the following submission as the organisation's response to the consultation questions. When answering the consultation questions, and to minimise duplication, we have immediately provided our response rather than rewriting the question in a formal way.

**Section 3: Framework for Review**

**1. What are the characteristics of quality advice for providers of advice?**

(a) Quality advice for individual providers (not the Licensee who is also a provider) implies that the adviser:

(i) Has an ability to clearly understand the fundamentals of the advice being sought;

(ii) Has education, training and skills that can be applied to clearly understand the type of advice being sought;

(iii) Can apply education, training and skills to offer solutions that serve the client's goals and objectives;

(iv) Can use education, training and skills to address matters that may impact on the advice sought and in simple language explain these matters and potential consequences to the client;

(v) Deal with a client's aspirations and educate the client on what is possible, and what is not;

(vi) Can bring the clients to understand various consequences manually or through IT software systems and where required, have them alter their expectations into potentially achievable goals; and

(vii) Can explain the strategy in simple easy to understand language as well as the fees that will be charged.

(b) For Licensee providers, other features and services that are stipulated in law also apply.

2. **What are the characteristics of quality advice for consumers?**

(a) The relationship should be a special relationship between the person providing the advice and the recipient of the advice. It should be an adviser and "client" relationship which is built on trust and where the knowledge that the adviser possesses is conveyed to the client to improve the circumstances of the client. It should not be one of adviser and consumer which implies a one off transaction akin to buying a soft drink at a petrol station, never to return again.

(b) The advice strategy should be developed to satisfy the client's specific financial needs and as well, broader needs such as lifestyle, wellbeing, family issues, estate planning, longevity and investment solutions and risks amongst others that may arise.

(c) The client should feel that the advice can take them to a better position than before the advice and importantly, that their adviser will review and monitor their circumstances regularly and be there as a trusted adviser to assist them into the future.

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

(a) Yes they have. The Best Interests Duty obligations overcame conflicts that benefitted the adviser and not the client. Also it required a confirmation from the adviser that advice is in the interests of the client.

(b) The safe harbour steps have provided advisers with legislated guidelines that assist with ensuring consistency of the basic fundamentals that underpin quality advice are addressed across the industry. Unfortunately, there still needs to be greater clarity in respect of (i) the consideration of products and (ii) the any other measures to ensure the best interest of the client is achieved, would provide further certainty and set better expectations in the financial adviser/client relationship. There are thousands of products in the investment universe and each one delivers fluctuating investment performance through different means from year to year. Financial advisers are not fund or asset managers and while they should have a firm understanding of asset sectors, they can only have a basic appreciation and understanding of an investment product's underlying functioning and outcomes. Therefore, a more appropriate step should imply that "the adviser should recommend products that in his/her reasonable opinion will satisfy the requirements of the client". Other factors as per RG 175.346 are more appropriate in product recommendation. With respect to any other measures requirement, the FASEA code appears more appropriate which is to take a broader view and consider other matters that may impact their client.

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

(a) The number of genuine client complaints where improper advice has been provided contrary to the FASEA Code, the safe harbour steps and client best interest.

(b) Claims where clients have been defrauded.

(c) The number of claims arising for false and misleading statements.

(d) Education levels of the profession.

(e) Consideration of the consequences of non-compliance and the proportionality of criminal and civil penalties in the context of the errors that are made by the industry, whereby matters that are inadvertent and the Licensee has fully remediated to the satisfaction of the client should be considered differently to those in the industry who have blatantly chosen not to comply with the regulations.

(f) Greater focus on the capacity of Licensees to have adequate capital, insurances and resources to be able to adequately provide quality advice and respond to matters should claims for compensation arise.

(g) The growing trend to outsource compliance resources may cause the reduction in the quality of advice as they have no underlying responsibility to the Licensee or clients and provide a service that is 'all care and no responsibility', which may not provide sufficient scrutiny to identify deficiencies in the advice provide to clients.

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

This is the wrong question and for over thirty years has delivered the wrong answer. The real question should drill down to the lowest common denominator and work out what revenue is required to operate and manage a one man AFSL or adviser office profitably. In our estimate to run an office profitably, an adviser with a single support staff in a country or suburban office would expend at least $270,000 to $300,000 a year which would provide him/her a modest salary of $120,000 inclusive of SGC superannuation. What then would an adviser have to do to earn enough to build a new business or survive?

With a charge out rate of 0.6%p.a. for on-going fees, the entity would need at least $50 million funds under advice (ignoring insurance commission). Assuming an average client size of $400,000, the entity would have 200 clients, which is at the upper end of how many clients an adviser can satisfactorily service without having modestly efficient systems or cutting corners. If the client size was larger, then the number of clients to be serviced would drop to a manageable level. This would also determine whether the adviser will have the time to bring on new clients and what type of client. In a start up situation, an adviser charging $5,000 to provide a comprehensive financial plan would need 60 new clients, a mouthwatering result if achieved in the first year of operation. To simplify the quality and content of a financial plan to a $300 to $500 fee, which investors wish to pay, is ridiculous to say the least.

So it can be seen that there is no readily defined charge rate and depending upon the financial adviser's business, that prefers an on-going revenue to an up front revenue, the charge out rate will be varied.

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

(a) To fairly assess this question, a more fundamental question might be; how much does it cost to run a Financial Planning practice? Because it is the cost of the business that will determine what it costs to provide advice, but even within this there are many different models of how a business might be run. For the purpose of our response, we have assumed a fairly common model within our AFSL that might be dealing with predominately average retail type clients. Our best estimate is that it costs about $320,000 to $350,000 to run an urban practice allowing for a salary to the adviser of $120,000 (the industry average according to the Hays annual salary report). This figure is comprised of the following average costs:

| Rent | $ | 18,000 |
|---|---|---|
| Misc | $ | 1,500 |
| computing | $ | 3,000 |
| Printer/copier | $ | 3,000 |
| Training | $ | 3,000 |
| Education | $ | 1,500 |
| Travel | $ | 1,500 |
| Phone/Internet | $ | 2,000 |
| Marketing | $ | 3,000 |
| Para planning | $ | 15,000 |
| Franch Fee | $ | 35,000 |
| Staff | $ | 80,000 |
| Tax/accountant | $ | 5,000 |
| Salary | $ | 120,000 |
| Insurance | $ | 15,000 |
| Software | $ | 15,000 |
| Total | $ | 321,500 |

Adding in the current ASIC fee of $2,500, the cost would be $324,000.

Assuming an adviser works 35 hours per week, 48 weeks of the year, this equates to 1680 hours per annum.

However, from this an adviser will need to allow 50 to 60 hours of CPE each year, and up to 10 hours per week for time spent working and on the business that is not spent generating advice and the number of hours to generate advice each year reduces to 1,150 hours, or 115 pieces of advice.

This means an average cost of approximately $2,820 per piece of advice.

We would contend that there is actually more time spent on new clients, and potentially more risk in taking on new clients, so it would not be unreasonable to expect that a minimum cost of providing advice would be in the order of between $4,000 to $5,000 (incl of GST), simply to make an average income in the industry.

(b) The costs of running an AFSL licensee business are much higher, since a host of duties need to be fulfilled to comply with license conditions.

**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?**

Some of the items that can be quantified are indicated in question 6. Time spent with clients, managing staff, responding to compliance reviews, education, training and travel are difficult to quantify and depend on the nature of the client base and complexity of advice, but must be done by the adviser. There is an increasing amount of time spent on meeting compliance costs, as regulations change, this increases the time required for training, changing systems and processes etc. The enormous amount of regulatory change has impacted dramatically on a planners' time.

**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?**

Each entity, be it a Licensee, Trustee or Platform must comply with the Regulations set by ASIC and APRA or the Law. There can be no process established that is a requirement in addition to the law since all entities profess to improve efficiency and productivity for advisers. The sad fact is that new and cumbersome requirements are continuously being imposed on all entities and as and when a new regulation is imposed upon a Trustee or a Platform RE or a Licensee, the same condition is imposed upon the adviser. This just adds to the existing compliance and regulatory burden on financial advisers. The complex nature of the legislation and "open" definitions require legal input, review and implementation. Some Licensees and Trustees would have enhanced requirements, "just in case". They can over regulate in an effort to not potentially breach the law.

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

No regulatory requirement can be missed. Simple errors carry jail terms and hefty fines even if clients are remediated. Most time is spent in disclosure documents, compliance reporting with deliverables in accordance with legislation, complete documentation in SoAs that include all PDSs of products recommended and now a TMD, Fee Disclosure Statements, chasing up clients to sign and send in FDSs without which an adviser's income is turned off due to the laziness of a client that has received advice. So in short all regulatory requirements contribute to costs, but these are unlikely to be turned back without Parliament's involvement.

In determining the proportion of regulatory compliance in this cost, it is reasonable to consider that amount of time within the 10 hours allocated to advice that is consumed by regulatory compliance. This of course excludes the hours required to be spent on CPE and other training (including the current education standards required under FASEA guidelines).

Our best estimate is that up to half of the time spent in the developing a piece of advice is consumed by the regulatory requirements in constructing that piece of advice. This probably is evenly spread between the need to meet regulatory requirements and compliance issues imposed by regulators, dealers and platform providers/fund managers.

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

The simple answer is no. There are tremendous costs associated with any change, systems, training, policies and procedures all need to be reviewed and amended. The most recent "transitional FDS" process is a good example: taking an already time consuming and difficult task, making it more complicated, increasing costs to all in the industry with no benefit to the client at all.

Also, the experience of our advisers is that as new regulatory concepts are introduced and incorporated into the provision of advice, simply more requirements are added to the existing mix of regulatory requirements rather than reviewing the provision of advice in a holistic manner.

There appears to be no thought as to reviewing existing requirements in light of new requirements and they are just tacked onto what is already in existence, as such there would not appear to have been much thought around the effectiveness of new regulation, it has simply be summative, rather than being a formative process. This flows on to the implementation of the reforms in individual practices, which adds considerable costs as there is little regard for IT system changes, Disclosure document changes, training of administrators and advisers, legal oversight of the text in various documents and setting up compliance procedures when new reforms are made.

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

There are number of software systems that enable swift preparation of financial plans. They are being continually upgraded to provide alerts and act as client relationship management tools. Financial planning

software can improve the efficiency of managing a client's affairs, though financial planners in the main outsource the preparation of financial plans to para-planners. Improved productivity does not mean that advisers who are on the edge between losses and survival will reduce their fees. For every adviser that fails, many clients are orphaned without advice, let alone the risk of compliance failures that may have occurred.

Robot advice has been heralded as a cost reducer and provider of low cost advice. The provision of advice requires a clear understanding of a client's circumstances, their emotional challenges, personal goals along with financial goals, the human element of choices and values important to them. Robot advice simply collects five or six bits of data on an investor's attitude to risk and reward, models them and places their money in one or a group of index funds. This is not advice within the ambit of the FASEA code, safe harbour steps and the expectations of the Hayne Royal Commission. We either lift the word "advice" to a higher level or suffer as we have for years trying to explain what is really being provided.

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

No, there are no impediments. Most financial planning software can be used to augment the knowledge of an adviser who can model and prepare a strategy with projections of returns, tax and the like. However, the constant changing of requirements makes it difficult and expensive to maintain software, the more change to the laws the more changes needed to the software. A slower rate of change would be beneficial.

**13. How should we measure demand for financial advice?**

By undertaking a survey of those who are actually receiving advice, not those who have never received advice, like most regulators and politicians and the general population, we may get a better understanding of demand of financial advice. Most people don't want to pay a fee for advice which they don't realise is going to guide them and their finances for the rest of their lives. The demonising of advisers through negative advertisements and sensational reporting in the general media to discredit advisers has also belittled the value that an adviser can bring to their clients and this may have prevented people from seeking advice. The media and Government play on so called affordable advice that cheapens the value of advice and makes the public think that it is of little value. The common theme is "I need it, but I don't want to pay for it." When the public begin to believe that advice is as important as their doctor or lawyer, they will want advice. Until then, the measurements will deliver fake results particularly when only a small part of the population is seeking advice.

In contrast, most clients we have surveyed have thanked us for our services and the assistance that their adviser provides to better their lives. Publishing such positive data through Government channels and encouraging the population to seek advice can lift the perception of advisers in the community and people will be prepared to pay for it for the betterment of their lives.

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

Everyone needs either financial education or advice for example, when they are planning to save in their working life, or approaching retirement, or have a health issue, a divorce settlement, a handicapped child, moving to a retirement home or have a family conflict. Most people just don't appreciate the value an adviser can bring. It could be reluctance to pay fees or lack of trust to a profession that has been repeatedly maligned largely by people who have never sought advice.

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

See answer to question 14.

**16. How could advice be more accessible?**

Advice is accessible always, it is people who are not seeking it, that is the problem. There is no such thing as affordable advice or cheap advice that has been dumbed down. Financial Advice is generally accessible to most Australians, with the possible exception of those in remote locations. As such, the biggest issue

surrounding access is educating the public in the need to obtain advice and the affordability of receiving such 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?**

We believe that a person either provides advice to a client or does not provide advice. To that extent any financial advice should be provided by a suitably skilled financial adviser. Where no advice is provided and factual information is shared with a person, then any person would be permitted to undertake such an action.

The terminology of general, scaled/limited or personal advice confuses clients but also financial advisers. Therefore, our assessment that any advice is financial advice, whereby the applicable regulations should apply to such advice, would provide that clarity to the industry and community.

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

It is already being done through financial planning software.

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

I think it is a misconception in the minds of the media and Regulators of what technology can actually do to provide comprehensive advice. Artificial Intelligence that is equivalent to a human brain and can sense emotions, feeling and the values of an individual is many, many years away. The best we have now is machine learning and how humans can augment their processes with the aid of technology.

The best we can do at this time is to link financial planning software and its CRM modules to the administration platform and to on-line client account balance and transaction reporting that can be accessed by client and adviser. Unfortunately in Australia, financial planning software is coded differently to platform programs and are offered by different companies who have differing needs. So far, we at Fiducian are probably the only business in Australia to have planning, administration and reporting IT systems, connected and operating as one composite system that can be accessed by client and adviser.

**Section 4: Regulatory Framework**

**20. 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?**

There is a distinction between general and personal advice that can accommodate matters relating to product, that is, there are no advice recommendations as such. Once you provide a practical difference you make advice a commodity which you can get over the phone.

The years of legislative change and increased education requirements have been designed to lift the Financial Planning industry into a profession and to ensure it is client centric. Any deviation away from making advice about the client's circumstances and consideration of other impacts is not a desired result.

Financial Product advice may simply be general advice such as "a number of different investments can be held in an IDPS platform". Financial advice may also be general advice such as "superannuation contributions can be a tax efficient saving".

Whilst we note the consultation paper identified that the two terms are often interchangeable, we do see a significant difference. Financial Advice (**FA**) is strategic in nature, whereas Financial Product Advice (**FPA**) is more tactical in nature. At present FA requires less disclosure and is certainly easier to prepare in terms of compliance oversight, whereas FPA requires multiple comparisons and alternate offering to be considered and comes with a more complex and demanding compliance oversight.

It becomes difficult to provide clear lines of delineation and it can lead to the very issue that all of the regulations have attempted to remove, that is, clients being provided poor advice, which was narrow, limited to certain products and designed to benefit others ahead of the client. Any recommendation for a client to invest in a product should only come after the consideration of the client's position and their goals.

Again, we draw the difference between General Advice, which is more about stating facts and information, and Personal Advice, which actually involves providing advice and recommendations.

Where an adviser has some knowledge of the client's personal circumstances, which does not need to be all aspects of the client's circumstances, then any financial advice or product advice that causes a client to act, is considered personal advice and all disclosures and service provisions enshrined in Part 7.7 and 7.7A of the Corporations Act apply.

As we have stated earlier, the confusion arises with the use of the word "Advice". Greater clarity of what constitutes advice versus what is not advice would assist in the provision of quality advice.

**21. 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?**

No. There are no impediments. A financial adviser must consider all aspects of a client's circumstances. This is fundamental difference between providing holistic, strategy advice and product focused tactical advice. In our view, this forms part of Quality Financial Advice.

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

All advice, information or transaction implementation should be regulated. Proper rules need to be prescribed for different types of advice (information or guidelines) that we have discussed earlier. To open up the floodgates to all and sundry and leaving it to interpretation could be chaotic for clients and the Regulator.

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

No. Advice is advice and must be full and comprehensive advice that is provided by a qualified financial adviser/planner and for which there will be a fee charged that is sufficient to compensate the adviser for their education, specialized training, experience, skill, ability to develop of an appropriate strategy and successful management of their business and staff to help the client achieve their retirement and lifestyle goals.

Recently, Blake Briggs, CEO of the Financial Services Council said that "Advice should be treated with respect given to doctors and lawyers as the industry has improved itself to become a profession….and treated with a lot more respect than it is in Canberra."

**24. How should the different categories of advice be labelled?**

We have made suggestions in our response to a number of questions earlier.

**25. 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 that all advice should be regulated in a similar way. Again, the word "advice" is where the confusion exists as targeted advertising may not constitute advice. Greater clarity on what is advice will go a long way to formulate how it is regulated.

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

Anyone who wishes to provide advice of a financial nature should have completed the educational and training requirements. It will lift standards, the number of advisers and ensure quality advice is provided. **No education and training, no registration, no advice**. The Regulations should not be written or softened to appease groups or cohorts seeking lower standards, if we are to give the respect that the profession deserves. This does not occur in other traditional professions, so why should it occur in this profession.

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

General advice (information) with a disclaimer can be delivered on the internet or published, but should have an appropriate disclaimer that causes people to think about the consequences before they act. There is loads of information posted on the internet and it cannot be stopped, but it is not advice. The more we dumb it down with so called affordable or cheap advice, then an army of providers who do not have the education or skills to provide proper advice will emerge. People will eventually make up their own minds, but we need to raise the level of respect that the profession deserves, not provide low cost alternatives because in reality, what proper qualified advisers do is not a simple quick fix that the Government and regulators have been thinking for the last 20 years.

Personal Advice considers a client's specific needs as discussed previously, it requires thought and application of knowledge and experience, it is fundamentally different to "general advice" which as we've noted previously is not really advice. We don't see any cost issues in distinguishing between the two, but as noted would rather see a new terminology for general advice, omitting the word advice, which it is not.

**28. Should the scope of intra-fund advice be expanded? If so, in what way?**

We refer to our earlier submission that advice is either given to a client or no advice is provided. This differentiation adds to the confusion within the industry. Intra-fund advice should be assessed under the advice-no advice paradigm, and the relevant regulatory requirements would then follow.

Unfortunately, it is a convenient ploy by industry funds to retain members under the pretext of providing advice. Again the word "advice" is misused to give it credibility. All it does is review the internal investments of the superannuation fund member, their age, willingness to take risks and possibly allocate investments to another fund or investment option within the same superannuation fund. There is no consideration of the member's circumstances outside the industry superannuation fund, their goals and aspirations and family affairs. Indeed, APRA itself endorses that a member's investment within a superannuation fund should be considered as the only investment a member has and that investments outside of the superannuation fund should not be considered. Trustees are required to restrict member investments in certain riskier investments that promise higher returns, when it may be appropriate for younger members and those that have a large swath of defensive assets and cash outside the superannuation fund to invest in such assets.

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

We refer to our earlier submission at question 28. If greater clarity is provided in regards to what is and isn't advice, Superannuation Trustees can then determine whether they wish to provide advice within the required regulatory requirements.

Generally, we believe that superannuation trustees should not provide intra-fund advice, as it is currently termed. Their role is already clearly defined and making it a requirement or even encouraging it is counterproductive. We already have an advice industry more than capable of providing advice to clients which is in the client's best interest. The provision of intra-fund advice by a superannuation trustee can be inconsistent with the provision of acting in the client's best interest as there may be circumstances where

advice to roll-out monies to another fund would need to be provided, to comply and act in the client's interest, but the intra-fund model does not permit that to occur.

**30. 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?**

We refer to our earlier responses as question 28 and 29. Further, Trustees do not and cannot have a personal relationship with one million members and they should encourage members to leave and engage with qualified advisers outside their fund's control, where all the client's circumstances can be considered and specialised advice can be provided. While APRA is focusing on fees and returns, ASIC has suggested that Regulatory Guide 175.346 should consider other matters besides fees and performance.

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

It will clearly reduce competition as larger funds build up their own adviser networks and the number of funds diminish with forced mergers. We again refer to our responses at questions 28 and 29 in regards to the definition of advice. Encouraging larger and larger funds increases the risk of failure within the industry. People should be entitled (indeed encouraged) to engage and choose with whom, where and in what form they wish to obtain financial advice and which financial investments they wish to choose, whether fees are marginally higher or lower and investment performance varies.

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

We assume this question is discussing the concept of scoped advice, rather than limited advice. In our view scoped advice is certainly relevant as most clients attend a financial planner to seek advice around a specific issue. With appropriate questioning and fact finding this will likely expand the advice to be given, but it does not always lead to the provision of advice that covers all aspects of a client's financial circumstances in all cases.

In fact, we contend that this is norm rather than the exception. By facilitating greater scoped advice to be the accepted as the norm, we remove the onerous and overwhelming requirements to provide a full Statement of Advice in its current form that is often many times longer and more complex than is required for the circumstances that bring the client to seek advice in the first place.

This is consistent with our earlier submissions (question 17) in respect of the greater clarification of what is advice, and what is not advice.

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

All providers should be fully qualified and have the skills to deliver advice. As noted previously, a clear and concise single definition of what is advice would assist in the provision of all advice to clients. We believe a more realistic approach from legislators and regulators is to encourage the need for all clients to get comprehensive advice every time they see an adviser, is required.

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

We believe that advice must be comprehensive and consider all circumstances of a client if we are to give the services that advisers provide, their rightful respect. It is a false argument to suggest that advisers only give comprehensive advice because of legal obligations. Again, further clarity on the definition of advice will assist advisers in the communication of their services to prospective clients outlining that seeking out comprehensive advice is in their best interests.

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

No. All successful advisers use some form of digital support to develop strategies and financial plans for their clients. We have stated earlier that Robot advice is not advice in the true sense of the word. It is simply a piece of modelling software that directs a person to invest in a fund or security and may not sufficiently consider the personal circumstances of a client and causing detriment as a result.

**36. 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?**

At present, we do not believe that digital advice can replace the interaction between a client and their financial adviser, as the combinations and permutations surrounding a client's circumstances cannot be adequately replicated at this time. Technology can provider substantial assistance to financial advisers in the development and provision of advice once the client's circumstances have been assessed.

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

On the premise that digital advice is a viable form of advice, with which we disagree with, the same risk of capital loss is always the same but based upon an algorithmic solution, which is still a human construct. The developed algorithm may mistake a client's high risk profile to require a high return product, which becomes a "great" investment simply due to apparently high returns, which may be inappropriate if the personal circumstances of a client are not considered. We would argue the uncontrolled and unmonitored (until now) rise in Crypto currencies is a prime example of how this "advice" can go horribly wrong.

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

No. We believe all advice should be regulated in the same way.

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

Yes. The failure to consider the client's personal circumstances would considerably lower the quality of advice provided to clients.

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

Our views are expressed above in respect of the changes to terminology and laws that are consistent with the provision of advice to clients.

**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)?**

We believe that technology plays a part in the development of advice, not in the provision of advice, as we have noted in our previous responses. It does not replace the financial adviser providing advice to a client.

The current responsibility for the provision of advice rests with the AFS Licensee, which can range from an individual business to a large corporate. We do not believe that this requires amendment at this time.

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

This question is flawed as once advice is provided, any subsequent human involvement is too late, as any consequences from the digital advice will lie with the party providing that service, not the human. This applies whether digital advice complements human advice or as a substitute. Digital tools through financial planning software are already being used to augment or complement human provided advice.

**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?**

We have responded to this in Question 3. The safe harbour steps are a useful guide and provide consistency across the industry. Some modification would be consistent with widely accepted practice in the profession. Greater clarity in respect of the consideration of products and any other measures to ensure the best interest of the client, would provide further certainty and set better expectations in the financial adviser/client relationship.

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

It should not add to the cost of advice as it guides advisers to carry out tasks which should be carried out at a minimum anyway. Modification as noted in question 43 would be appropriate and assist in reducing costs of providing advice.

**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?**

There would no benefit to remove it entirely as it simply describes the steps a good financial adviser/planner should follow. It formalises the minimum requirements for what is in the best interest of a client, which if removed, would again be subject to interpretation.

Whilst it might be argued that the safe harbour guidelines provide a tick a box checklist, the removal would only ensure a replacement checklist, often even more extensive and onerous that would be imposed through dealer groups under the direction of legal advisers to ensure they are meeting another amorphous legislative requirement.

**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?**

We cannot see the duplication. When “advice” in its true sense is provided by an adviser to satisfy compliance with client best interest duty obligations, it automatically implies that the advice is appropriate and that conflicts are avoided.

**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?**

Yes, we believe that a TMD should be considered, however, there may have been overregulation in respect of distributors (like financial advisers) even though its intentions are good.

The reporting requirements for financial advisers can be onerous when a financial adviser may consider and combines multiple products to diversify client portfolios, rather than segregating each product, which can confuse clients. It would be better to focus on the composite nature of a portfolio rather than on individual products.

We consider that a review of these reporting measures is warranted to ease the burden on financial advisers.

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

Such remuneration would be conflicted if the client was not aware (undisclosed) that it was being deducted from their assets by an adviser or dealer group. This was particularly the case with volume bonuses and some shelf space payments.

In the case of genuine adviser service fees, the client receives a confirmation from the platform or fund of its deduction and payment and knows full well that it can be turned off at any time the advice relationship is broken. Unfortunately many people in larger super funds who were (often) unadvised were having commissions deducted and paid to the dealer group. Nevertheless, commissions have now been removed and in almost all instances where an adviser engagement has continued, the erstwhile commission has been converted to an ongoing adviser fee.

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

We believe there has been no impact as good quality and appropriate advice on a continuing basis to improve a client's welfare will always be good and bad advice will always be bad, irrespective of the fee payment methodology. Disclosure of fees and an understanding and approval by a client of such fees is important.

**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?**

It would have adversely affected the profitability of those groups that relied on receiving commissions without the need to provide ongoing advice.

Certainly dealer groups that were heavily reliant on volume bonus payments and product shelf fees have been impacted, but dealers that charged advisers a fair fee for the services provided and did not rely on these sorts of payments have not been unduly effected.

It has also impacted legacy products of the '80s and '90s that suggested a commission would be paid to an adviser from the administration fees, if an adviser was nominated. If an adviser was not nominated, it was presumed that the administration fee would be retained in its entirety. The platform operators being the banks and AMP failed to update their products and PDSs and continued to charge clients the full administration fee and kept the fee for themselves as per the original document. It appears that no one explained this situation at the Royal Commission. In that respect, the ban and increased emphasis on education has been a good thing. However, the cost of providing advice is affected by new compliance, additional procedures, disclosures, education and training costs, ASIC levies, higher insurance premiums that are difficult to obtain, increased staffing and huge amounts of documentation that are to be provided to a client, most of which is not read and meaningless to the client.

**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.**

A ban on conflicted remuneration should not be removed. As noted in our previous response at question 49, the ban of conflicted remuneration has not impacted the quality of advice.

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

All executives and small business operators in any industry look to receive incentives for hard work and improved profitability in a business. Otherwise why would anyone put in the extra effort. We at Fiducian have a balanced scorecard where incentives are based on a number of measurements. These include a range of non-sales measurements including: compliance rating, client retention rates, support to ones colleagues, attitude, culture, training requirements being met, adviser satisfaction levels of clients in surveys.

**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.**

Australia has always had a position of gross under insurance, this has been evident in many studies and numerous reports from Insurance providers. Life insurance has always been a difficult topic of discussion and clients now see less reason to seek a full review of their position. This is particularly true after a chat to the superannuation fund call centre who tells them they have insurance protection.

Anecdotally we have seen a reduction/reluctance to write life insurance. As our adviser numbers have changed significantly in recent years through acquisitions and the like our statistics in this area are not like for like in recent times.

The feedback we have received is that clients are generally not prepared to pay a fee for insurance advice, and for smaller clients the reduced commission makes such advice financially problematic for advisers. Whilst we continue to promote the provision of insurance as part of appropriate financial advice, this perception of the difficulty and cost in implementing this type of advice seems to have escalated in recent years.

**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 distribute general insurance products, so we are unable to answer this question.

**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?**

Retain the ban on commissions on investments. However, we believe that commission on insurance products should be reinstated to facilitate the greater take up of life insurance by clients.

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

They requirements are ensuring consents are received by superannuation trustees. I don't believe it has made any difference to clients at all, as it is just another form to sign. Obviously automation across the industry would assist.

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

The two matters impacting the provision of fee disclosure statements are the timely receipt of information from the product issues (from where fees are deducted) and the need, as communicated by ASIC that the FDS be 100% correct, where a 1 cent error is a breach of the legislative requirements.

An immediate measure would be to permit a reasonableness in the calculation of fees within the FDS. Alternatively, and in additional to financial advisers providing a fee disclosure statement, product providers would also clearly communicate in their statements the fees charged to a client's account and that they have the ability to communicate to the product provider to turn-off the fees.

If clients are unhappy or not receiving advice, the adviser's fee disclosure statement should remind them of their ability to turn off the fee at any time.

We also believe that the requirement to provide a written confirmation each year to a platform operator is an unnecessary and costly administrative burden. Clients can forget to return their acceptance and an adviser lose revenue even if advice has been provided. Lost revenue generally cannot be reinstated. Clients are confused and the adviser – client relationship that is so important to building trust is damaged. Written confirmation to a platform operator by a client to continue paying fees is unnecessary.

**58. How could these documents be improved for consumers?**

An agreement to pay a fee should be inserted in the application form of a PDS and signed off by the client. Advisers should document the fees in a fee disclosure statement and also confirm it in a RoA or SoA.

**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?**

The easiest way would be for an adviser to confirm in writing to a platform operator that an up to date fee disclosure statement has been provided and the annual consent has been returned by the relevant client. This can be done digitally. We need to trust advisers and if they confirm that a relationship exists with a client that should be enough.

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

On-going fees are paid only if advice is provided on an on-going basis, so that is a necessary cost of business.

However, preparation, follow up with platforms and product providers to confirm accuracy of fees charged, compilation of documents and mailing costs, and then again a repeat of the follow up process to provide confirmations from clients to platforms, is where the costs occur. We estimate that 15% of a support staff's time and 5% of an adviser's time including the distraction to normal day to day work would be spent on this activity. Computing the costs it would be in the region of $15,000 to $20,000 per adviser. However, the big ticket item is the distraction to an adviser's routine and ability meet more clients who need attention, cannot be fully quantified. The cost will reduce as system enhancements are developed but a large portion of time is spent understanding the obligations and ensure you are 100% accurate. ASIC has a zero tolerance with FDSs if they are not accurate and this places considerable strain on resources, preparing, checking and double checking statements to the exact dollar.

**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?**

Some superannuation trustees and product providers have requested advice documents to verify that advice has been provided with respect to their product. This raises legitimate concerns over client privacy and sharing of confidential information (intellectual property owned in the advice documents) with the superannuation trustee. Improved protocols need to be established to determine the circumstances that such a request can be made, and the responsibilities of the superannuation trustee when receiving such information.

**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?**

As we understand, the best financial interest duty imposed on Trustees was done to prevent unnecessary advertising on activities such as horse racing and rugby competitions and as well the production of politically motivated publications by the industry funds. These funds, followed by the private sector and prompted by the Regulators have taken this obligation to the letter of the regulation and not entirely its intent.

The provision of financial advice to a member will only enhance the retirement savings of the member by ensure that, but also the account balance held by the superannuation trustee. In that context, the advance of the client's retirement savings is in the interests of the member and any fee should be permitted to be deducted from the clients superannuation account.

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

The change from the old concept of a Financial Plan to the more regulated SoA has probably reduced this asymmetry of information knowledge, but probably to a more limited degree than would be expected. In fact, we would argue that the overcomplicating of advice through ever increasingly more complex and repetitive SoA's has increased the asymmetry by discouraging clients from wading through pages and pages of data and disclosures, and subsequently there has been less knowledge transfer than was initially envisaged.

It is no excuse for the regulator to say they expect a clear and concise document, but then penalise advisers who fail to include all the pages of supporting comparison and disclosures that create the client confusion!

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

This question requires some explanation of the background to a SoA. In the late 80s and early 90s, a simple two or three page letter was provided. It detailed what the client wanted and what was being recommended to satisfy that need. At that time only up front commissions were paid, sometime up to 6% of the investment made. There was no on-going service unless a product failed or the adviser wanted to switch assets and that resulted in another up-front fee. In time it was found to be deficient because appropriate disclosures or explanations were not being made. Meanwhile master trust evolved and trail commissions were being paid out of the management or administration fees of a master trust or retail fund, but only if an adviser was involved. This situation was also found to be deficient and FOFA came along which prescribed a best interest duty, an opt in obligation, a ban on commissions (that were initially grandfathered) and a Statement of Advice that had full fee disclosures. The FOFA act was repealed, but then amended and later introduced as another Bill and passed. There were still failures and non-compliant behaviour by some groups which were picked up in the Hayne Royal Commission. Meanwhile, the law required all matters that needed to be disclosed, to be disclosed to an investor. It gave rise to a mountain of paper with 70 page SoA describing alternative strategies and all the PDSs of the products recommended and sought client signoffs on fees which had to be disclosed in dollars and percent.

So whatever the cost, in our view, a SoA cannot and must not be avoided. It may however, be simplified. The physical input to preparing a SoA implies involvement of a para planner, two or three meetings between adviser and clients to develop the strategy and alternatives, receive the client's agreement to proceed and then preparation of the SoA and all supporting documentation to be compiled by support staff. In all some ten hours would be spent on para planning, ten hours by the adviser and five hours by the support staff. Meanwhile office costs are continuing including ASIC and Licensee fees etc. Costs being touted are $4,000 to $4,500 and the adviser may charge up to $5,000 or more depending upon the financial situation in the business and clients on hand. In special cases for example, financial advice on moving to an aged care facility, the work is extensive and $7,000 to $10,000 may be charged. Regulations must be followed in all cases not just for the sake of compliance, but for completeness of the advice provided.

### 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?

The development of standardised SoA template, which would include the following:

(a) Confirm the client's position;

(b) Their goals and Objectives;

(c) The Strategy – Include how it meet goals and objectives; and

(d) The costs.

The need to record pages and pages of information on risks, loss of benefits, tables of fees etc. These should be appendices used for clients who seek that level of detail. The industry is producing long SoAs which cost significant amounts to produce and the majority of retail clients read the first 4 or 5 pages only.

**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?**

The length is driven by attitudes towards risk and compliance. The penalties for human error can be onerous and start with the presumption that the error was made because advisers are definitely guilty of misconduct. The Regulator wants to see written evidence of what is done, not what the adviser says has been done. So the attitude within the industry is to disclose more and more, rather than what might be sufficient to explain a recommendation to client. In addition, advisers are required to evidence that alternate strategies have been considered, when it is the recommended one that will anyway be adopted by a client. Again it is the stigma that advisers have had to live with over the last 20 years and all regulatory and compliance oversight is driven behind the premise that an adviser is untrustworthy to start with. So if the public perception, which is driven mostly by people who have never been to an adviser is that all advisers are criminals, then the starting point for a review is that the adviser must have been trying to defraud a client.

The other matter to consider is that when a claim is made by a client to AFCA, it is AFCA's expectation that an adviser will settle the claim, no matter how outrageous it may be. This is what we are hearing from other practitioners. On top, an adviser has to pay money to defend against the claim and there is no cost to a client. Complaint settlement can take months on end and depend on when AFCA is able to hear the case. It appears to us that AFCA's role should be one of an impartial arbitrator, not an agency that exists to make an adviser compensate a client whose own misdoings may have resulted in their unfortunate position. If the costs of seeking involvement by AFCA be initially split 70% to the client and 30% to the advice, then frivolous claims might be avoided. If the loss to a client due to poor advice is proven, then the client's 70% share could be reimbursed by the adviser.

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

Where personal advice has been provided after discussion with a client, an SoA should sufficiently explain the financial and other goals of the client, the strategy to achieve those goals, the nature of investment products recommended, why they are recommended and details of the fees. There should be no need to include volumes of PDSs and research that mean very little to the client.

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

Where an instruction is given by the client to transact on behalf of the client, then a simple letter advising the client that advice has not been provided should suffice. Both adviser and client should sign off on the letter as evidence with a statement that the client takes responsibility for the consequences.

**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?**

At Fiducian we have already prepared RoA questionnaire templates to check client circumstances. At a minimum an annual client review is mandated for all advisers and an RoA is provided to the client. Where a major change of events has occurred a SoA is provided.

We hear that there is a practice developing where clients with SMAs are simply provided a record of the changes to the securities in a SMA portfolio and this is considered sufficient for a RoA. We disagree with this practice if this is what advisers are doing and recommend that SMA providers should consider the previous SoA and as well, the current circumstances of a client after which an RoA may be provided.

The guidance from ASIC is consistent with practices at Fiducian.

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

If COVID is not a pandemic anymore, then such relief is not necessary.

**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, they should not be allowed to provide financial advice without the necessary qualification. There should be a level playing field for all who provide "advice" in the true sense of the word.

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

No exemption should be granted.

**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?**

There should no exemptions. It dilutes all that has been done lift educational standards and raise the perception of advisers in the community.

**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?**

No it is not. It only serves to reduce the value of advice provided by a qualified financial adviser and gives rise to the perception that advisers are not to be respected in the same manner as are doctors and lawyers. Further, if advice is being provided by lesser qualified people, whatever the scope of the advice, people may take the cheaper way out and not be willing to pay for proper personal advice. Invariably, people with a limited AFSL will find it easy to delve into proper personal advice. If we are serious about raising the standard for advisers, we cannot show leniency when it comes to education and skill development. As an example, one cannot have a doctor who is not fully qualified, but can provide medical services in limited way.

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

The message provided by accountants should be termed as Information or Guidance which should have a disclaimer that it is not advice.

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

Yes, but there should be either a net asset, remuneration or knowledge qualification to be met prior to a client signing off that they are a wholesale client.

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

Not really. Sophisticated investors understand that they are responsible for their decisions. If there is a document that spells out what is presumed to be a sophisticated investor and the investor signs off on the document that they qualify, then that should be sufficient. Usually an accountant's certificate is provided for a sophisticated investor.

**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?**

No. A person who is authorised to provide personal advice will still be bound to not give defective or misleading advice with an intent defraud a person.

**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?**

Steps that have been taken as a licensee to increase productivity are to encourage greater usage of video conferencing to communicate with clients, improvements in our financial planning software to remove manual tasks, assisting advisers through our platform with alerts to take action, compilation of Fee Disclosure statements, enhancement of information technology modules for effective adviser communication. Steps to increase the quality of advice include training programs through professional development days, increasing the CPD hours above the minimum specified, guidance from our Compliance team to improve the advice process, guidance from our legal team to explain legislative requirements and closer contact with the investment and product teams to keep advisers abreast of financial market developments. As for affordability, we have no problems with our clients who are happy to pay for the advice and continuous management of their circumstances. Please also see answers to questions 13, 14, 15, 16, 17 and 18.

**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?**

They are doing the best they can through messages, conferences and webcasts etc to lift the perception of advisers and improve standards. Affordability is a subjective term depending on the client and unfortunately, advice should not have to be simplified to make it affordable.

**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?**

It has served to confirm that the practices our advisers follow are consistent with ASIC's message.

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

More matters now need to be reviewed, more files need to be checked and more people are being employed to ensure that all what our advisers do at Fiducian is compliant and in a client's best interest. In other words, existing monitoring was already sufficient, but since the Hayne Royal Commission, extra regulatory burdens has required additional staff to undertaken those tasks.

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

Greater education of the value of financial advice rather than demeaning the profession, would assist in communicating to clients that financial advice provides value for money.

Please call me on +61 2 8298 4650 or email me at paulgubecka@fiducian.com.au should you wish to discuss any of the matters raised in our submission above.

Yours faithfully

**Paul Gubecka**
General Counsel & Company Secretary