FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

10 June 2022

Ms Michelle Levy
Reviewer
Quality of Advice Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

via email: advicereview@treasury.gov.au

Dear Ms Levy,

Re: Quality of Advice Review – Issues Paper (March 2022)

The Financial Planning Association of Australia[1] (FPA) welcomes the opportunity to provide this response to the Quality of Advice Review – Issues Paper, released 25 March 2022.

The FPA supports and has long been calling for a similar review of the legal and regulatory framework for financial planning to improve Australians' access to affordable, high quality, professional financial advice. In our view, the regulation of financial advice as a financial product has never sat well with the professional financial planning services provided by FPA members. While financial planners use the financial products otherwise regulated under financial services law, financial planners themselves provide a professional service, assisting their clients to understand and articulate their goals and objectives, recommend strategies in the form of a financial plan so their clients can live their best lives, and keep them on track to achieving their goals as life throws up challenges and opportunities.

This disconnect - between being regulated as a product distributor but providing a personal professional service - has been made all the more difficult due to financial planners being required to comply with four

[1] The Financial Planning Association (FPA) is a professional body with almost 12,000 individual members and affiliates of whom around 10,500 are practising financial planners and nearly 5,000 are CFP professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of the Future of Financial Advice reforms.
- The FPA was the first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices.
- We have an independent Conduct Review Commission, chaired independently, dealing with investigations and complaints against our members for breaches of our professional rules.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC 'gifted' this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.

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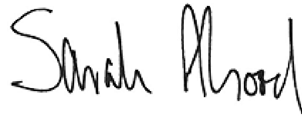
laws, and regulated by eight regulators and a variety of oversight and complaints bodies including AFSLs, professional associations, two ombudsman services and the courts.

For this reason, the FPA welcomes the Review's work to identify and provide practical solutions to improve the operation and structure of the financial planning profession to simplify and support the professional services provided by the financial planning profession for the benefit of Australian consumers.

The FPA would welcome the opportunity to discuss with the Review the issues raised in our submission. Please contact myself, or Ben Marshan CFP® (Head of Policy), on 02 9220 4500 or policy@fpa.com.au to further discuss the suggestions raised.

Yours sincerely,



Sarah Abood
Chief Executive Officer
Financial Planning Association of Australia

Encl.

FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

QUALITY OF ADVICE REVIEW SUBMISSION

RESPONSE TO ISSUES PAPER

Financial Planning Association of Australia
10 June 2022

INTRODUCTION

Who is the FPA?

As Australia's leading professional association for financial planners, the Financial Planning Association (FPA) represents the interests of the public and almost 12,000 members, including nearly 5,000 CFP® professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in Australia and globally with our policy and advocacy work focusing on three pillars, that reflect our fundamental goals of ensuring policy is:

- **CONSUMER-FOCUSED**
  It should support access by all Australians to affordable and professional financial advice and ensure consumers' interests are advanced when accessing financial advice.
- **PROFESSIONAL**
  It should enhance the professionalism of financial planning and promote the health of the financial planning profession as a whole.
- **ASPIRATIONAL**
  It should reflect best practice and the aspiration of members of the Financial Planning Association of Australia to set and meet higher standards of professional competence and conduct.

These are the core issues that formed the foundation of the FPA's policy platform - Affordable Advice, Sustainable Profession[2], released in June 2020 (see Appendix 1).

Our regulatory environment

To provide financial advice services to consumers, financial planners are currently required to comply with four laws regulated by eight regulators, additional oversight from Australian Financial Services Licensees and professional associations (such as the FPA), additional consumer complaint mechanisms through two ombudsman services and the courts, and potentially subject to five disciplinary processes.

The legislation includes:

- *Corporations Act 2001*
- *Tax Agent Services Act 2009*
- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
- *Privacy Act 1988*

The regulators include:

- Australian Securities and Investment Commission (ASIC)
- Tax Practitioners Board (TPB)
- Office of the Australian Information Commissioner (OAIC)
- Australian Transaction Reports Analysis Centre (AUSTRAC)
- Australian Prudential Regulatory Authority (APRA)
- Australian Taxation Office (ATO)
- Australian Competition and Consumer Commission (ACCC)

[2] 'Affordable Advice, Sustainable Profession', FPA Policy Platform, 3 June 2020, https://fpa.com.au/financial-planning-advocacy/fpa-policy-platform/.

- The Treasury through powers conferred on the Minister for Superannuation, Financial Service and the Digital Economy (previously administered by the Financial Adviser Standards and Ethics Authority)

The ombudsman services include:

- Australian Financial Complaints Authority (AFCA)
- Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

Additionally, the same piece of advice will have oversight and interpretation by:

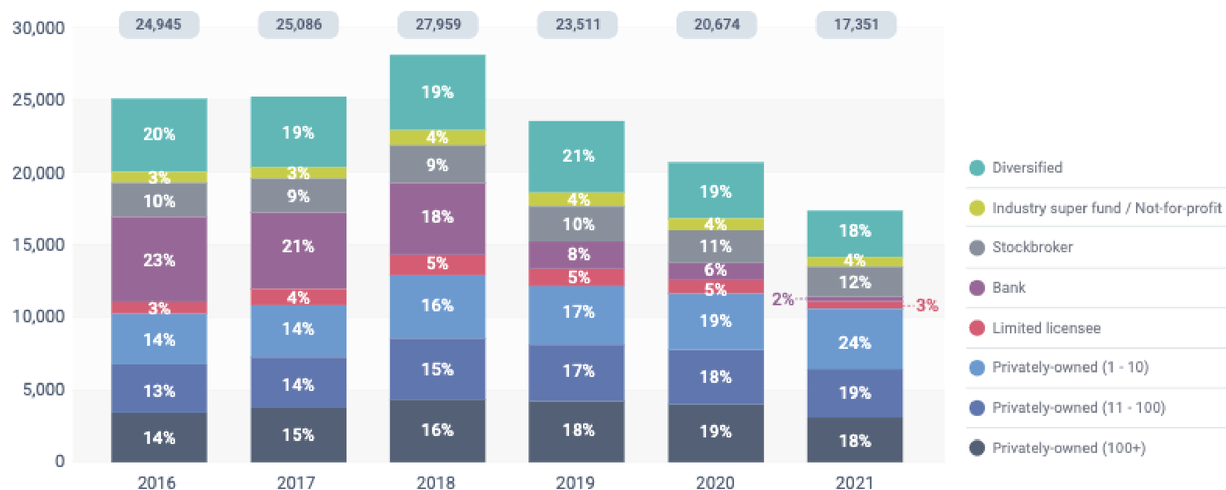
- Australian financial service licensees,
- ASIC,
- The Financial Services and Credit Panel (FSCP),
- The Courts, and
- Professional bodies such as the FPA.

Each law, regulator, ombudsman and oversight bodies' interpretations and decisions have an effect on the advice process and therefore the cost and efficiency of providing advice to Australian consumers. This is also all before considering the technical aspects of the strategies and products being recommended to clients to implement their financial plan.

The challenges facing financial planning in Australia

According to the most recent data, there are 16,634[3] registered financial advisers, a 12.23% decrease in practitioners this financial year (and a more than 40% decline since the profession's peak). Given 1 July 2021 marked the first time since 2015 that adviser numbers had fallen below 20,000, the trend shows that the profession will struggle to meet market demand. The constricting supply of financial planners in our profession is making it more challenging for Australians to access financial advice and raise the financial literacy of the nation. This has been coupled with a significant shift in licensee ownership profiles with the exit of large institutional ownership over the last 5 years.

Chart 4.1: Adviser population by licensee ownership / affiliation 2016-2021



Source: ARdata, ASIC Financial Advisers Register

Source: Adviser Ratings 2022 Australian Financial Advice Landscape Report – Chart 4.1

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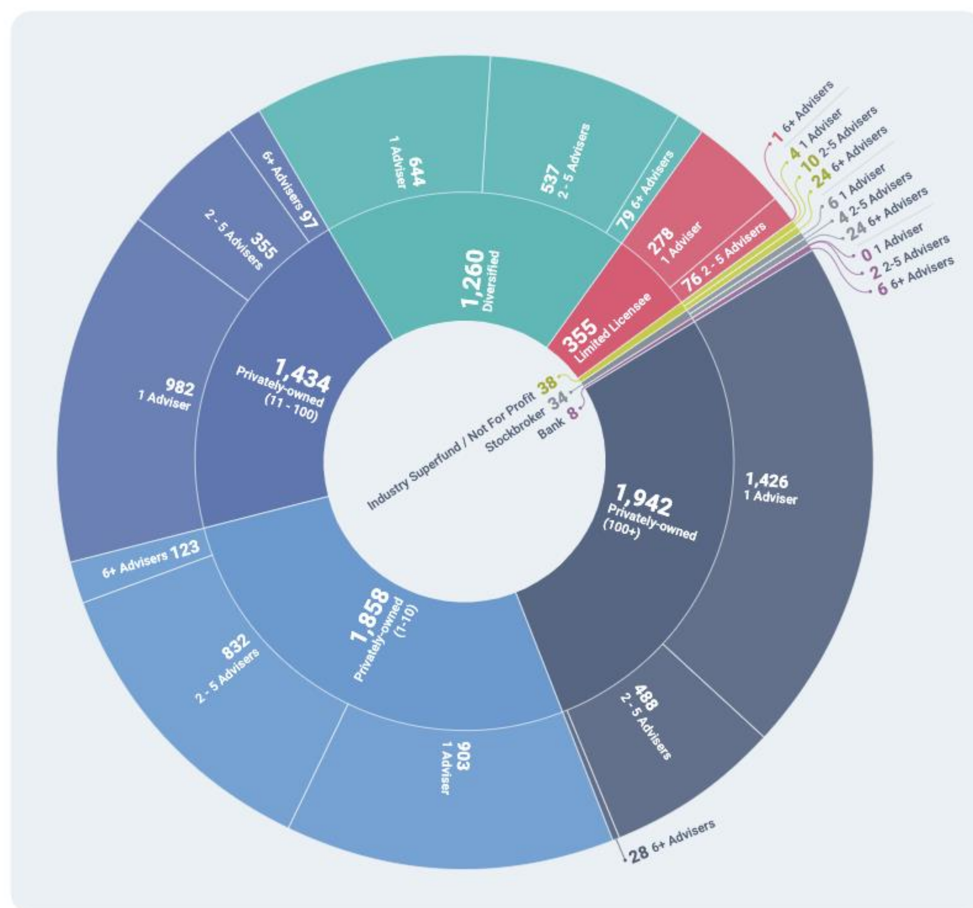
[3] Weekly Adviser Movement Statistics, Wealth Data, 2 June 2022, https://wealthdata.com.au/adviser-movement-fast-facts/.

Coupling this with the constant regulatory changes and increased costs, recent data indicates that the cost of producing a financial plan for new clients rose over 15% over the 2020 calendar year[4] off the back of a 10% increase during 2019[5]. Given both general industry trends, and the implementation of the Royal Commission recommendations since this data was collected, this figure has almost certainly risen significantly since, putting professional financial advice out of reach of many Australians.

Changing standards and regulations are being applied on top of an already complex regulatory framework that has evolved over many years. While the FPA has supported, in principle, a number of these reforms, we believe that the Government of the time gave insufficient consideration to their impact on the long-term viability of the financial planning profession; an opportunity, however, which is afforded by this review.

Many in the profession now work as sole traders or in a small or medium-sized practice (irrespective of licensing). Their capacity to absorb increased costs is extremely limited, particularly given the economic challenges caused by the COVID-19 pandemic. The ever-changing regulatory environment, conflicting and duplicative regulatory regimes, and increasing costs has resulted in financial advice becoming more unaffordable and inaccessible for many Australians at a time when many are recovering from the dual impacts of the pandemic and rising cost of living.

Chart 4.2: Practice distribution per segment



Source: ARdata, ASIC Financial Advice Register

Source: Adviser Ratings 2022 Australian Financial Advice Landscape Report – Chart 4.2

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[4] 2020 FPA Member Research, CoreData, March 2021.

[5] 'The National Opportunity that is Financial Planning', Dante De Gori CFP, FPA, 3 March 2020, https://fpa.com.au/news/the-national opportunity-that-is-financial-planning/.

	Lic Owner Count Dist	Adv per Lic Owner	Count of Active Licensees	% of Active Licensees	Cur Adv	% of Adv	Adv per Lic
Lic Owner 100 +	25	321	61	3.22%	8,028	48.19%	131.6
Lic Owner 20 to 99	75	43	83	4.38%	3,213	19.29%	38.7
Lic Owner < 20	1,724	3	1,753	92.41%	5,418	32.52%	3.1
Grand Total	1,824	9	1,897	100.00%	16,659	100.00%	8.8

Source: Wealth Data. Licensee Owners based on adviser number. 7 June 2022.

Licensees by Peer Group

Biz Model Type:

- ☐ (All)
- ☐ Null
- ☑ Accounting - Financial Planning
- ☑ Accounting - Limited Advice
- ☑ Financial Planning
- ☑ Investment Advice
- ☑ Other
- ☑ Other - Limited
- ☑ Super Fund Based Advice

	Count of Active Licensees	% of Active Licensees	Cur Adv	% of Adv	Adv per Lic	Adv Pre 2012.
Accounting - Financial Planning	210	11.07%	856	5.14%	4.1	60.3%
Accounting - Limited Advice	219	11.54%	814	4.89%	3.7	12.6%
Financial Planning	1,212	63.89%	10,955	65.75%	9.0	66.5%
Investment Advice	200	10.54%	3,087	18.53%	15.4	67.9%
Other	32	1.69%	155	0.93%	4.8	47.7%
Super Fund Based Advice	24	1.27%	795	4.77%	33.1	51.3%
Grand Total	1,897	100.00%	16,662	100.00%	8.8	63.0%

Licensees by Size

Band Adv Num:

- ☑ (All)
- ☑ A - Only 1
- ☑ B - Only 2
- ☑ C - 3 to 4
- ☑ D - 5 to 9
- ☑ E - 10 to 19
- ☑ F - 20 to 49
- ☑ G - 50 to 99
- ☑ H - 100 Plus
- ☑ I - Zero Adv

	Count of Active Licensees	% of Active Licensees	Cur Adv	% of Adv	Adv per Lic	Adv Pre 2012.
H - 100 Plus	35	1.85%	7,317	43.34%	209.1	65.3%
G - 50 to 99	27	1.42%	1,996	11.82%	73.9	61.8%
F - 20 to 49	65	3.43%	1,983	11.75%	30.5	59.7%
E - 10 to 19	91	4.80%	1,221	7.23%	13.4	57.5%
D - 5 to 9	266	14.02%	1,673	9.91%	6.3	56.9%
C - 3 to 4	369	19.45%	1,239	7.34%	3.4	63.9%
B - Only 2	413	21.77%	826	4.89%	2.0	67.7%
A - Only 1	631	33.26%	627	3.71%	1.0	68.9%
I - Zero Adv	0	0.00%	0	0.00%		
Grand Total	1,897	100.00%	16,882	100.00%	8.9	63.0%

Source: Wealth Data. Licensee by business model and Licensee by size. 7 June 2022.

The numerous factors contributing to increased costs of financial planning include the indirect expenses of complying with a changing regulatory landscape as well as the direct costs of fees and levies imposed by the Government on financial planners. Each of these factors affects the affordability and therefore accessibility of financial advice.

FPA KEY THEMES AND POLICY POSITIONS FOR QUALITY OF ADVICE REVIEW

The FPA has participated in an ongoing working group of key industry associations regarding the Quality of Advice Review, including:

1. Association of Financial Advisers (AFA)
2. Chartered Accountants Australia and New Zealand (CAANZ)
3. CPA Australia
4. The Financial Planning Association of Australia (FPA)
5. Financial Services Council (FSC)
6. Financial Services Institute of Australia (FINSIA)
7. Institute of Public Accountants (IPA)
8. Self-Managed Super Fund Association (SMSFA)
9. Stockbrokers and Investment Advisers Association (SIAA)
10. The Advisers Association (TAA)
11. The Boutique Financial Planning Principals Association (BFP)
12. The Licensee Leaders Forum (LLF)

The FPA supports the following key themes this group agreed upon as priorities for improving the affordability and accessibility of quality financial advice for consumers:

1. Recognising the professionalism of financial planners
2. The client
3. Regulatory certainty
4. Sustainability of profession and practices
5. Open data and innovation

The FPA has recommended priority policy positions the Quality of Advice Review must focus on to embed these key themes into the regulatory landscape and overcome the affordability and accessibility issues impacting quality financial advice for consumers.

1. Recognising the professionalism of financial planners

Explanation - what the issue is:

As the history of regulatory reform shows (see Appendix 2), since the introduction of the *Financial Services Reform Act 2001* there have been constant and significant changes to the laws and regulations applicable to the provision of financial advice. This has led to the regulations of today being an excessive set of requirements that are expensive to meet, compliance-driven, and difficult to navigate. It is this regulatory burden that continues to drive up the cost of providing advice. There is significant duplication, complexity, and gaps that contribute to the accessibility and affordability issues for consumers.

The current financial advice regulatory, consumer protection and affordability issues cannot be fixed by more band aid solutions.

By transitioning to a simplified regulatory regime that recognises the professional status of financial advisers and planners – who now require relevant tertiary qualifications, externally administered examination, individual registration, and 40 hours per year of Continuing Professional Development – we have the opportunity to significantly reduce the cost of financial advice to consumers, while maintaining quality and high standards.

Why it is an issue:

History has shown that every regulatory reform has layered additional requirements on top of the existing obligations, without removing or simplifying how the obligations work together. This view is supported by the Australian Law Reform Commission (ALRC):

> *"The architecture of Chapter 7 of the Corporations Act has struggled to adapt to new policy positions rooted in shifting regulatory philosophies. …...policymakers have rarely been willing to*

undertake the difficult task of reviewing and revising earlier policies and regulatory philosophies. Instead, new law has been built upon the old. This has been a significant source of legislative complexity — and one which, under the current legislative architecture, drafters alone can do little to reduce.

"For example, despite an increasing shift away from disclosure as the foundational regulatory tool, the vast majority of disclosure-related law remains unchanged. The continuing footprint of disclosure-related law in the Corporations Act, regulations, and ASIC legislative instruments, testifies to the reluctance of policymakers to review and simplify the fundamentals of existing legislation. This is despite disclosure having arguably been displaced or made less central by more interventionist policies, such as design and distribution obligations, bans on conflicted remuneration, and product intervention powers. The role of disclosure is ripe for simplification, both in terms of policy and legislative design. This Background Paper highlights the limits to legislative simplification that will exist unless there is a readiness to rationalise the policies and regulatory philosophies underlying the law and update the law and its architecture accordingly."

"Overall, this Paper underlines the importance of: a clear and consistent legislative hierarchy that can facilitate reform with minimal complexity; regular review of existing provisions rooted in older regulatory philosophies; and a recognition that the policy positions of today may not be the policy positions of tomorrow. Designing a legal architecture that recognises these three elements would make for simpler and more adaptive financial services legislation."[6]

The introduction of the Financial Planner and Financial Adviser professional standards that apply to the provision of financial advice as a professional service was a welcome change and long advocated for by the FPA and our members. However, it is extremely disappointing that these standards are tied to the historical definition of 'financial product advice' in the *Corporations Act 2001*, and that the existing obligations for financial advice in the Act were not reviewed when the professional standards were developed. This has resulted in duplicated requirements in the *Corporations Act 2001* applying to the individual planner, either directly or via obligations placed on the licensee. It has also resulted in the provision of advice by non-licensed entities that operate outside of 'financial product advice', which poses significant risks to consumers if unabated. As demonstrated in the following schematic, the obligations placed on financial planners under the *Corporations Act 2001* licensee obligations and the *Financial Planners and Advisers Code of Ethics 2019* are heavily influenced by the licensee and others who then apply additional requirements on planners.

[6] Australian Law Reform Commission, Risk and Reform in Australian Financial Services Law (FSL5), 21 March 2022, page 2

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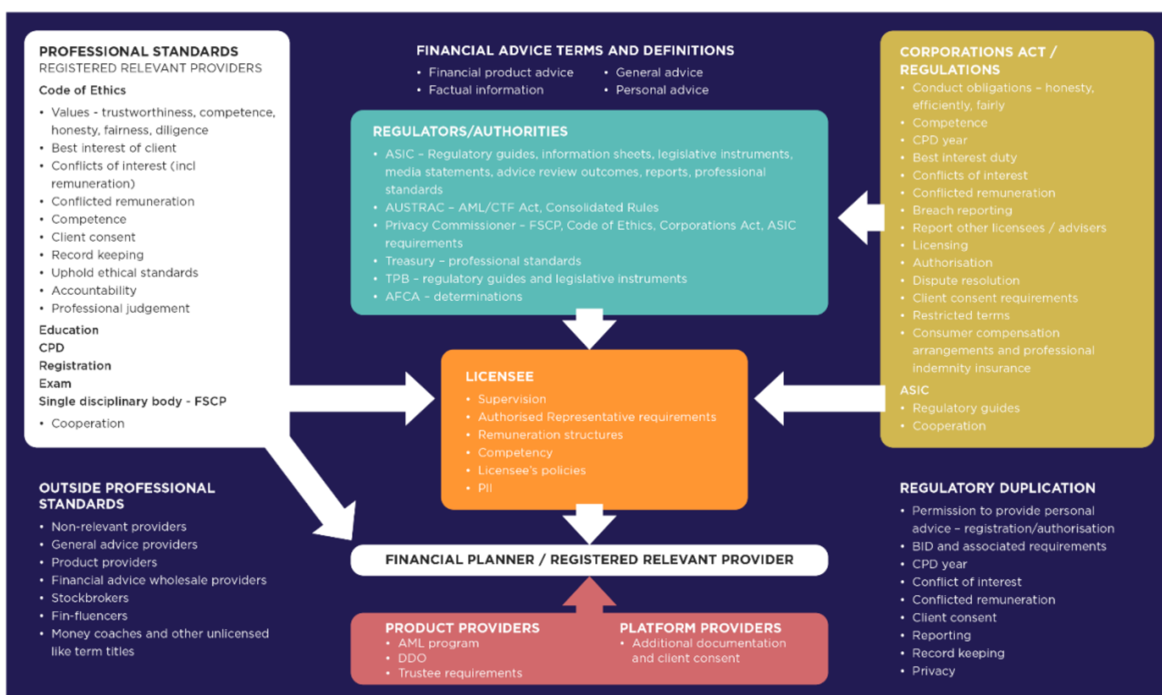
Current financial advice regulatory requirements



This structure and duplication highlight a fundamental flaw of the regulatory framework and the disconnect between the professional advice service and the regulation of financial advice as a financial product. This impacts the quality and cost of advice; and consumer understanding, engagement, and accessibility of a financial plan and the benefit of working with a professional.

The duplication of regulatory requirements has added significant additional costs in providing advice which are borne by clients. The current licensing system also adds multiple tiers of corporate identities between the client and the entity legally responsible and licenced for providing the advice under the *Corporations Act 2001*, bringing into question the transparency of ownership, conflicts of interest and influence. While disclosure requirements were introduced to address this issue, the unique and complex structure and licensing of the financial advice industry is generally not understood by those who do not work within it.

As an example, this issue drives up the premium of the mandatory professional indemnity insurance which is a core cost issue for licensees and practices which is ultimately borne by consumers. As detailed in *Appendix 3: FPA submission to ASBEO insurance inquiry,* FPA member research on the availability and affordability of adequate PI cover, showed that for small financial advice licensees, PI insurance premiums cost approximately 2 to 3 per cent of business revenue on average (with set minimum dollar amounts in place); and premiums were reviewed annually and in 99 per cent of cases, increased year on year regardless of the claims history of the business. As noted in the survey results:

- 44% of survey respondents reported premium increases of between 10% and 24%;
- 18% of respondents received increases between 25% and 50%; and
- 15% of respondents experienced an increase of 100% or more.[7]

Since this time, more insurers have withdrawn from providing PI cover for financial advice providers in the Australian market. Most recently AIG which currently accounts for around 20% of premium capacity in the

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[7]May 2020

market have announced they will leave the market from October 2022, stating a lack of appetite to continue providing solutions into such an uncertain market. This leaves little time to build capacity and reduces choice in an already difficult market.

The fundamental issues with the regulation of financial advice can only be overcome by starting with a 'blank canvas' and implementing a new regulatory regime that separates financial advice from financial products, based on a framework of professional standards for individuals requiring the use of professional judgement and registration as seen in other Australian (and global) professions.

Severing the financial advice professional standards that provide a framework of individual oversight of professional practitioners, from the historic requirement to be authorised by a licensee, is in line with the regulatory structure for tax agents under the *Tax Agent Services Act 2009*.

Maintaining the status quo in addition to the professional standards just adds to the regulatory complexity (as identified by the ALRC) by building new law upon the old without reviewing or revising earlier policies and regulatory philosophies. This is the main driver of the affordability and accessibility issues consumers face when seeking quality financial advice.

Recommendations:

The FPA recommends Treasury, in conjunction with key stakeholders, investigate the potential benefits of the following changes to the financial advice definitions in the *Corporations Act 2001* and the structure of the financial services law, to improve protections and the quality, affordability and accessibility of advice for consumers:

a. Remove Chapter 7 from the *Corporations Act 2001* to be a standalone Act
b. Restructure the corporations and financial services law as set out in the following box.

Stays in Corporations Act and Design and Distribution Act

FINANCIAL SERVICE

- Hold AFSL
- Breach reporting
- Complaints handling (IDR/EDR) process
- Record keeping
- Licensee and product disclosure / documentation
- Licensee competency
- General obligations
- Best interest duty for non-relevant providers
- Conflict of interest requirements

FINANCIAL PRODUCT

- Design and Distribution Obligations including Target Market Obligations Pt7.8A
- Provide 'financial product information' based on the TMD, PDS - point in time subjective information
- Product distribution BID
- PDS development and responsibility
- Product intervention
- Cash settlement
- Special provisions
- Anti-hawking provisions
- Represents product issuers' interest
- Representatives' authorisation / competency
    - Only registered relevant providers permitted to provide financial advice

Financial product information / factual information

Financial Planning Act*

FINANCIAL ADVICE

- Provide personal financial advice
- Regulation of Relevant Providers based on professional standards
- Registration of Relevant Providers
- Code of Ethics
- Single disciplinary Body
- Appropriate disclosure and advice documentation
- Give client appropriate product information if recommending product/ class of product
- Ongoing fee arrangement requirements
- Represents clients' interest
- Improve client's financial well-being
- Restricted terms
- Advice breach reporting
- Advice complaints handling (IDR/EDR) process
- Advice record keeping
- Client money rules

Personal financial advice

*New standalone Act replacing financial advice provisions in Chapter 7 of the Corporations Act (with appropriate and effective financial advice regulation)

Summary of recommendations:

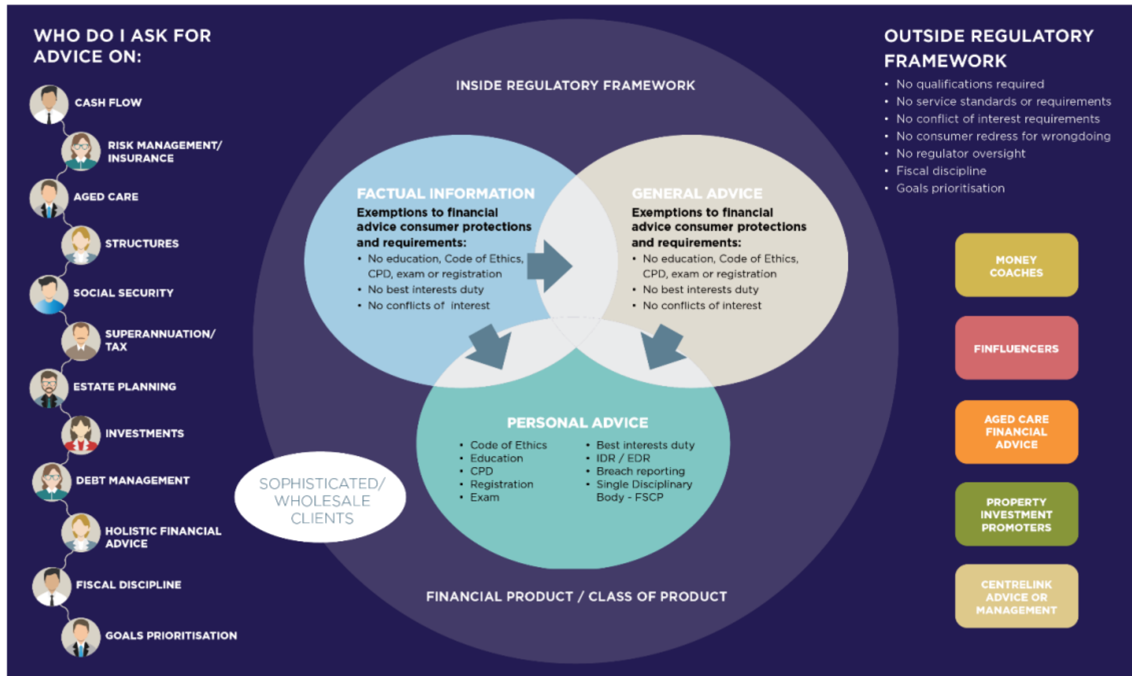
Quick wins	Medium term	Long term
• Best interest duty – 'Registered relevant providers' be exempt	• Remove Chapter 7 from the *Corporations Act 2001* to be a standalone Financial Planning Act	• Complete transition for removal of requirement

from all elements in the Best Interest Duty in the Corporations Act (as this is a duplication of the higher standard best interest requirements in the *Financial Planner and Advisers Code of Ethics 2019*.)
• Design and Distribution Obligations Act (DDO) - 'Registered relevant providers' be exempt from the requirements of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* as it conflicts with the advice obligations in the *Corporations Act 2001* and the *Financial Planners and Advisers Code of Ethics 2019*. (See FPA's response to question 47 of the issues paper.)
	• Remove the requirement for financial planners to be authorised by a licensee in order to provide financial advice to retail clients. This should be replaced by a professional registration and practice certificate. This should be conducted with appropriate transition arrangements.
	• Investigate solutions to professional indemnity insurance issues, taking into consideration professional standards and individual registration of professional financial planners. For example:
	  ○ limited liability solution
	  ○ discretional mutual solution.
		to be authorised by a licensee.
		• Recognition and operation as a profession.
		• Solutions to professional indemnity insurance issues successfully implemented.

2. The client

Explanation – what the issue is:

The current financial advice provisions in the *Corporations Act 2001* leave gaps in consumer protections that continue to facilitate the provision of financial advice by individuals offering services outside the definitions in the law with little or no protections for consumers. Consumers need to be confident that financial advice is provided by appropriately qualified people. Consumers also need flexibility in the advice services they can receive, with scalable advice regulation and disclosure obligations that allow the use of technology and client-led payment options.



Why it is an issue:

Consumers generally do not understand the difference between financial advice that is captured under the *Corporations Act 2001* and the associated consumer protections, and financial advice that falls outside this regulatory environment.

In practice, the primary service that 'registered relevant providers' give to clients is personal financial planning. This financial planning service includes: the identification of the clients' goals and objectives; the creation of a financial plan to assist the client with understanding the financial implications of what they want to achieve in their lives; the recommendation of strategies relevant to the client's current circumstances; the recommendation of products to implement (or specifically financial product advice) those strategies where appropriate; and review services as the client's life, financial position and objectives change. This is in line with ASIC's list of the features of good quality advice in RG175.248 and through the *Financial Planner and Financial Adviser Code of Ethics 2019*.

Depending on the client's circumstances and based on what is in the best interest of the client, the financial advice may also recommend a class of financial product, or specific financial products and financial services to achieve the financial goals and objectives of the financial planning strategies. The professional financial planning service is captured under the *Corporations Act 2001* definition of financial product advice, because of this single relatively minor component and output of the advice – namely the consideration of financial products or class of product. It is not captured because of the financial planning advice, that is the primary service provided. In saying this, the FPA does acknowledge that there are some financial advice providers who only recommend financial products – for example stockbrokers and superannuation intra-fund advice providers.

In contrast, there are some individuals who provide financial advice to a retail client that does not include a recommendation about a financial product or class of product (as defined in the *Corporations Act 2001)*. Areas of advice covering behavioural finance such as fiscal discipline and goal prioritisation, as well as

assistance with government financial services such as Centrelink, aged care or the NDIS fall outside the regulatory framework. As this service is not captured by the financial product advice definitions, such individuals do not have to meet the education and training requirements, the standards and values in the *Financial Planners and Advisers Code of Ethics 2019*, or the financial product advice obligations under the *Corporations Act 2001*. They are not required to act in the best interest of their clients, provide disclosure documents of any kind to their clients, or eliminate conflicts of interest. This would be akin to the law stating that the only part of a doctor's advice that requires qualifications and needs patient protection is the prescription of medication. Not the acts (or omissions) of taking of blood pressure, dietary recommendations and lifestyle coaching, referral (or not) to a surgeon, referral to diagnostics, for example.

As these providers do not have the expense of meeting the complex financial advice regulatory obligations, they are able to offer cheaper advice. This may appeal to consumers, but it puts those consumers at significant risk with no legal protections or access to redress for any wrongdoing. The current system has also led to compliance-focused disclosure outcomes, rather than consumer-focused advice documentation. Advice documentation that is focused on compliance and meeting legal obligations significantly diminishes the accessibility of the financial advice for the client. It has resulted in excessively long and complex documents that in many cases are not read by the client – defeating their ostensible purpose of disclosure. Our members are currently incurring significant costs in producing documents that are not read by their clients – driving up the cost of advice while producing no client benefit.

Under the current disclosure obligations for financial product advice, a provider of personal advice is required to give a retail client:

- a Financial Services Guide (FSG)
- a Statement of Advice (SOA)
- a Record of Advice (ROA) can be provided to an existing retail client in certain situations, and
- Product disclosure statement/s when a product is recommended.

Current disclosure and consent requirements include:

- Qualification/s to provide the service
- Authorisation and registration on ASIC FAR
- Statement of lack of independence
- Advice engagement arrangement (*Financial Planners and Advisers Code of Ethics 2019* Standards 4 and 7)
- Evidence of relevant circumstances, needs and objectives
- Conflicts of interest management
- Fee disclosure statement (FDS)
- Ongoing fee arrangements (OFAs) / opt-in – consent required
- Deducting fees from super / products – consent required
- Platform authority to deduct fees and pay to financial planner/Licensee - consent required
- Privacy – consent required
- AML/CTF ID Verification
- Incomplete or inaccurate information warning
- Time critical warning
- Product replacement disclosure
- General advice warning
- Complaints handling process
- Target market reporting

Additionally, there are a number of licensee-mandated documents such as:

- Authority to proceed
- Risk profile acceptance
- Mandatory minimum alternate strategy comparisons
- Mandatory minimum alternate product comparisons

- Advice pre-vet
- Advice post-vet
- File audit checklist

As highlighted earlier, the complexity created through the combination of laws, regulators, ombudsmen and disciplinary systems has led to SOAs which are significantly bloated by licensee-required additions which attempt to mitigate risk rather than comply with the law.

These obligations apply irrespective of the type, scale or complexity of the financial planning services being provided.

In comparison, the Financial Conduct Authority (FCA) (UK) has created two types of advisers - Financial Adviser and Restricted Advisers (including telephone sales) - with tiered Conduct of Business (COB) disclosure requirements in COB 6, which is similar in many ways to those required in the *Corporations Act 2001*.

In contrast, most professions simply require a client to understand and agree to the terms of the engagement (including costs or cost estimates) prior to a service being provided. The professional service (advice) is then set out in a separate document.

Recommendations:

1. *Financial advice definitions*

The introduction of the legislated financial advice professional standards and the new product regulations in the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* created additional consumer protection frameworks to allow a clear separation of financial advice from financial products.

As a next step, we recommend the terms 'financial product advice' and 'general advice' should be removed from the *Corporations Act 2001*.

In line with the Royal Commission and ALRC recommendations, the FPA recommends the term 'advice' only be used in association with 'personal financial advice', and 'general advice' be changed to 'financial product information.' This new term should be defined as the provision of information only - it should not permit the provision of an opinion, recommendation or opinion intended to influence the making of a decision about the product, and where information is provided about a product, it should be restricted to information on the providers own product, not other products in line with the anti-hawking and design and distribution obligations. A new strong and clear consumer warning must make it clear to a consumer when 'financial product information' is provided by a product provider's representative, the product provider's interests (not the consumer's) are being represented, to encourage the consumer to heed the warning regarding that information.

2. *Separate disclosure and advice documentation*

The financial advice disclosure and documentation framework should be updated to ensure it is designed with clients' best interests at the fore.

To achieve this, we recommend a separation of what is required to be disclosed to the client to meet regulatory and consumer protection requirements, and the documentation of the financial advice and implementation strategies and solutions. This will improve the readability of the documentation, and therefore the client's understanding of both the financial planner/client arrangement and the financial advice.

There must be sufficient flexibility in the requirements to allow for the variety of business models providing financial advice and to meet the needs of clients seeking limited scope advice.

It is also important to ensure that disclosure and advice documentation can be provided in a technologically neutral manner which best suits the outcome of ensuring that clients understand the services and recommendations being provided. This is not necessarily in a written document format.

Additionally, the advice document should be outcomes-focused through the development of outcomes-based regulation, rather than inputs-based regulation which currently leads to the inclusion of information

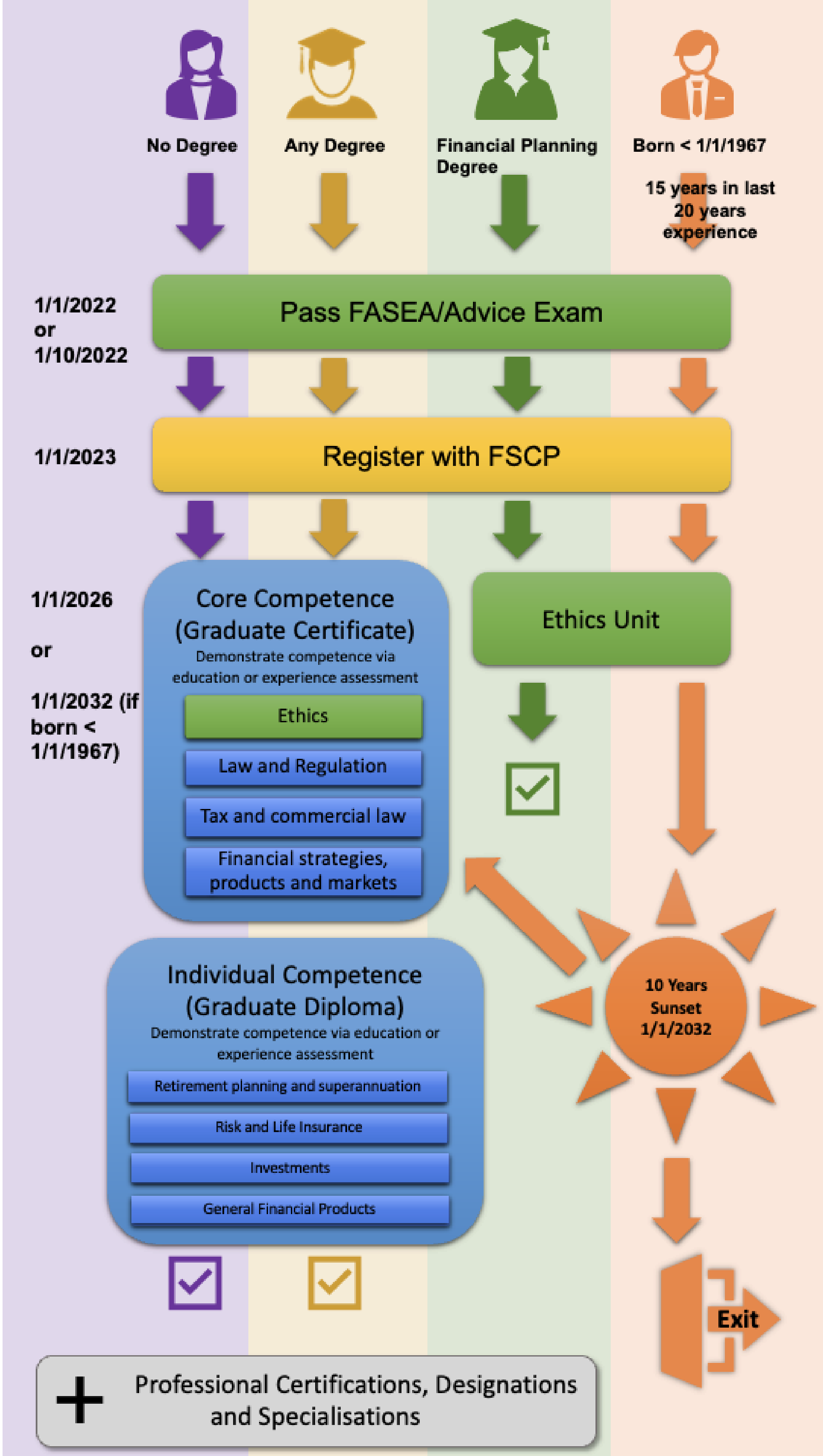
which is not relevant to ensure clients understand the recommendations being made. Simple advice should require simple advice documentation whereas complex advice will require as much or as little information as the client needs to understand the strategy and recommendations being made based on their level of financial literacy and the risks involved.

3. *Education competencies and specialisations*

The recommended change to the financial advice definitions in the *Corporations Act 2001* (above) will expand consumer protections to individuals receiving financial advice from individuals who are not currently required to meet the minimum education standards.

To ensure such services can continue to be provided for the benefit of consumers by appropriately qualified persons, education standards should be developed based on a framework of scalable competencies designed around core financial planning competencies and advice specialisations.

As depicted in the schematic below, the FPA recommends the Government adopt a competency framework for the financial planning profession that recognises both education and experience to demonstrate competence at AQF7+ level, replacing the existing education framework. This will provide pathways to demonstrate competence with flexibility of completing study or demonstrating competence, irrespective of the planner's years of experience. This will also benefit new entrants who will have more pathways through which to enter the profession from other careers or financial service education backgrounds, as well as provide migration competency demonstration pathways for foreign financial planners who are looking to move to the Australian profession.



No Degree
Any Degree
Financial Planning Degree
Born < 1/1/1967
15 years in last 20 years experience
1/1/2022 or 1/10/2022
Pass FASEA/Advice Exam
1/1/2023
Register with FSCP
1/1/2026
or
1/1/2032 (if born < 1/1/1967)
Core Competence (Graduate Certificate)
Demonstrate competence via education or experience assessment
Ethics
Law and Regulation
Tax and commercial law
Financial strategies, products and markets
Ethics Unit
10 Years Sunset 1/1/2032
Individual Competence (Graduate Diploma)
Demonstrate competence via education or experience assessment
Retirement planning and superannuation
Risk and Life Insurance
Investments
General Financial Products
Exit
+
Professional Certifications, Designations and Specialisations

This framework should be expanded to also consider appropriate specialist competencies (on top of core competencies) for providing personal financial advice on tier 1 and tier 2 products, and formal recognition of professional certifications, designations and specialisations which are not necessarily financial product linked.

It should be noted that the FPA does not support an experience exemption as consulted on by Treasury in late 2021[8], but the schematic does demonstrate an experience pathway with a sunset period of 10 years in the event this model is progressed. The framework would allow experienced financial planners to demonstrate they are competent to provide advice through a competency assessment framework similar to those used in the tertiary education sector already for postgraduate qualifications.

Quick wins	**Medium term**	**Long term**

Advice definitions
 	
• Strengthen general advice warning - remove the term 'advice' and substitute with 'product information' or 'factual information' – interim step only
 	
Disclosure
 	
• Remove overlap of information in FSG, PDS, SOA, and ROA
• Permit greater use of incorporation by reference
  ○ PDS/SOA/Service agreement, etc.
  ○ Working documents
	Change financial advice definitions
	
	1. The removal of the following advice terms and definitions from the *Corporations Act 2001*:
	  a. Financial product advice
	  b. General advice
	  c. Personal advice
	2. The *Corporations Act 2001* to include three terms and definitions only:
	  a. Financial product information
	    i. Documents – PDF, TMDs
	    ii. Anti-hawking provisions
	    iii. Represents product issuers' interests
	    iv. Clear consumer warning – it is not advice; describes the financial product or class of product
	  b. Personal financial planning - a client centric professional service (not a product or tied to product)
	    i. Professional standards
	    ii. Individual registration obligations
	    iii. Represents client's interest – advice in the best interest of client
	    iv. Appropriate advice disclosure documentation
	    v. Can incorporate advice on financial product information if appropriate
	  c. Factual information
	    i. Clear consumer warning – it is not advice; factual information (e.g., how salary sacrificing works)
	
	Remove general advice from product promotion – use of the term general advice is misleading in this context and not appropriate
	
	Separation of disclosure information and the actual advice must permit incorporation by reference:
	
	1. Financial Services Guide (FSG)
	2. Service/Engagement Agreement:
	• best practice, not compulsory;
	• does not repeat any information included in the FSG;
	• information scalable depending on scope of advice required; and,
	• to include client consent to cover all consents in one document and to be accepted by all product providers.
	3. Financial Advice:
		• A single set of rules (consistent across regulators) which are easily understood that govern how to deliver financial advice in a clear, concise and engaging way for clients, and is affordable to provide.

[8] FPA Submission – Treasury – Financial Adviser Education Standards. https://fpa.com.au/wp-content/uploads/2022/02/20220201_Treasury_Education-Standard-Proposals_FINAL-1.pdf

	• contains the advice only; • does not repeat any information included in the FSG or service/engagement agreement; • scalable depending on scope of advice required and professional judgement; o Including short, quick, appropriate, affordable advice for the benefit of the client; • consent that client understands / agrees to advice / that advice has been received; and, • use of technology-based delivery permitted. 4. Detailed advice considerations / working papers to be kept on file, available on request and use incorporation by reference in the financial plan if necessary. (See FPA's response to questions 44 to 51 for further detail) Adopt education standards based on a framework of scalable competencies with core competencies and advice specialisations to support change in advice definitions: • recognises both education and experience to demonstrate competence at AQF7+; • scalable competencies with core competencies and advice specialisations; • appropriate specialist competencies for providing personal financial advice on tier 1 and tier 2 products; and, • benefits new entrants and foreign migration.	

3. Regulatory certainty – what's achievable short term versus long term

Explanation - what the issue is:

There are many factors that impact regulatory certainty for financial advice providers:

- Regulatory build up – overlaying new laws on top of the existing, as discussed above.
- Duplication – significant duplication of requirements for financial planners required to meet the education and professional standards including the Code of Ethics, as well as the more prescriptive and duplicative financial advice requirements in the Corporations Act, as discussed above:
    - registration required on the Financial Adviser Register (FAR) as well as authorisation by a licensee
    - inconsistent education and training standards for 'registered relevant providers' and 'qualified tax relevant providers'
    - inconsistent CPD requirements for 'registered relevant providers' and 'qualified tax relevant providers,' as well as misalignment of registration CPD requirements and the licensee CPD year obligations in the law
    - applying professional judgement to meet the standards in the Code of Ethics, while still meeting the prescriptive best interest duty and associated requirements in the Corporations Act
    - confusing conflict of interest obligations in the Code of Ethics and the law
    - confusion as to whether the Code permits conflicted remuneration that is allowable under the Corporations Act
    - the conflict between whether advice is able to be scaled between the Code of Ethics (Standard 6) and s961B of the Corporations Act
    - disclosure of the same information to clients multiple times and in multiple documents

  - gaining client consent for client fees and services on numerous occasions (up to eight in the first year)
  - client consent forms for using third party suppliers
  - different forms and processes for lodging client consents for each product
  - requiring reporting of planners' own potential breaches, no matter how small, plus those of other planners and licensees under standard 12 and in s912DAB
  - record keeping obligations under both standard 8 and in the law
- Inconsistency of interpretation of the laws – there is a lack of consistency and certainty in how laws will be interpreted by those who have a significant influence on how financial advice must be provided, in order to be compliant. Regulators, licensees, the courts and AFCA all interpret the laws in a slightly different way, resulting in uncertainty over how the laws should be met:
  - AFCA and the courts - AFCA's interpretation of the law and the regulators' requirements often vary depending on the circumstances of the complaint being considered. The EDR scheme's decisions do not set precedent for future complaints, which results in inconsistency in the way AFCA may apply the regulatory requirements to a complaint. Licensees adapt processes, policies and the requirements they place on planners, to minimise the risk of any AFCA determination against them in the future. This creates another level of inconsistency in the regulatory environment that sits outside the provisions in the primary legislation. PI insurers also respond to these AFCA/court findings.
  - FSCP - The new single disciplinary body within ASIC creates further uncertainty as there is uncertainty as to the methodology and thinking of the FSCP, and level of ASIC influence over its interpretation of professional standards. Regulatory certainty is needed to ensure that if the FSCP sets a precedent, it will follow that precedent and not create different regulatory outcomes on the same issue. From a practical perspective, it is preferable to have peers sitting in judgement of peers.
  - ASIC:
    - Regulator enforcement over-reach - there is a disconnect between ASIC's regulatory guidance and the Regulator's enforcement action. Licensees have often tightened their requirements and implemented changes to processes and systems for financial planners which are not required under the law or in regulatory guidance because of enforcement action taken by the Regulator. For example, as detailed in Report 515, ASIC audited and reviewed the financial advice files of the largest five licensees. As a result of the review, the Regulator mandated additional training standards that went beyond the requirements in the law and their own regulatory guidance. There are also examples of ASIC action taken for a breach of s961B against financial planners even though they had complied with the best interest duty safe harbour steps as set out in regulatory guidance. Whether it is within the Regulator's mandate to impose such conditions on licensees is not the issue. It is the uncertainty that this enforcement action creates that is concerning and is having a significant impact on the profession. Additionally, in many circumstances, ASIC does not publish detailed explanations of their regulatory enforcement unless it is specifically captured in a report.
    - Lack of Regulator support – from the perspective of the 'regulated population', ASIC's regulatory approach differs significantly to that of other regulators relevant to financial services in Australia. For example, in the 2019/2020 financial year only $1.324m, or 3 percent of ASIC's estimated total operating expenditure of $36.329m (without adjustments) for regulating licensees that provide personal advice to retail clients on relevant financial products, was spent on industry engagement, education, guidance and policy advice. Given the positive, preventative potential of such proactive activity and the importance of and need for guidance and policy advice particularly to assist smaller licensees, the FPA suggests the expenditure and activity in these areas appears very low. Feedback from FPA members also indicates that ASIC will frequently tell planners and licensees to seek legal advice in response to enquiries seeking clarity on regulatory guidance that has been issued by the Regulator. This contrasts with

other regulators which frequently issue both public and private rulings on matters of regulatory interpretation.

- 'Scattered' legislative provisions – provisions related to financial advice are scattered throughout the *Corporations Act 2001* and Corporations Regulations, with changes, exemptions, clarifications, modifications and interpretations made through legislative instruments, regulatory guides, information sheets, and media statements. The resources required to keep up to date with the current and correct obligations are expensive to maintain, and expensive to implement and given the complexity, can be prone to misinterpretation or transcription errors.
- Regulatory disconnect of new and existing clients - changes to the regulatory environment over the past decade primarily focus on new clients, often disregarding the unintended consequences for existing clients. Forcing new obligations designed for new clients onto existing clients has created significant expense and workload for financial planners with little benefit for the existing client.

These factors all create a significant amount of complexity and uncertainty for those providing financial planning services. The more uncertainty, the more the profession - and particularly licensees - feel they need to cater for all possible regulatory outcomes to ensure they are not subject to enforcement action or a future complaint.

These factors, and the industry's response, increase the investment needed in an advice business to ensure its systems and processes can meet the uncertain requirements, and the time it takes to provide and document the advice, which drives up the cost of advice for consumers.

Why it is an issue:

Regulatory uncertainty creates significant risk, leading to significant cost, inefficiency, and complexity in the system. Risk drives up the operational costs for businesses and the time required to provide the services to the client, such as:

- Licensees mitigate against such real and potential risk by increasing the stringent requirements and processes financial planners must follow.
- Licensees must also create advice processes and risk mitigation frameworks (I.e., increase compliance and process) for the lowest common denominator which reduces the efficiency of professional financial planners to operate in the best interests of clients.
- Increased compliance and process drives up the time and cost of providing services to clients.
- The variation of interpretation means even if one compliance / Regulator / EDR scheme / court / professional association review finds that the advice process complies with their legal, regulatory, and professional obligations, the licensee and planner can still be penalised by another limb of the system.
- It becomes increasingly difficult for financial planners to move between licensees due to the complexity of how the advice process is designed at a new licensee. This also increases risk for licensees authorising an experienced financial planner as it takes time and significant monitoring to ensure the planner complies with the new process. Planners must also write new SoAs for every client when changing licensee, which is a very significant impost of cost and time even when the planner, advice, strategies and products recommended, or the client's circumstances have not changed. Additionally, unlike other professions, it is nearly impossible where needed to appoint a locum, to the detriment of clients and the mental health and lives of the planner, when required due to these issues.
- The number of professional indemnity insurers has recently substantially reduced, tightening the cover available for financial advice providers and making it extremely difficult to obtain a policy that meets the mandatory requirements at an affordable price.
- All these risks also require licensees to increase head count or external supplier cost to ensure they are mitigating as much risk as possible, even though this is impossible due to the complexity and uncertainty.

Consumers are most impacted by regulatory uncertainty. The intent of the Parliament when it makes laws is to provide protection to Australians when they receive services from businesses. However, it creates confusion and frustration for consumers when they are uncertain of the protections that relate to the

service they are seeking – when it is not clear as to the service they are receiving, why the documentation they are given is lengthy and complex, why they are being asked to sign another disclosure of repeated information, and whether they have access to redress if they need it. These are accessibility issues.

Regulatory uncertainty continues to drive up the cost of advice and impacts the accessibility of the services of a financial planner.

Recommendations:

Change is required to resolve the existing regulatory uncertainty. The multiple factors that contribute to the uncertainty must all be addressed if true regulatory certainty, accessibility and affordability is to be achieved for the provision of financial advice for consumers.

Quick wins	Medium term	Long term

• Align CPD year with FAR registration period / renewals or with the financial year (i.e., Not licensee CPD year)
• Make COVID-19 relief measures permanent:
  ○ Give planners longer to provide written advice to clients to act quickly when crisis occurs impacting large number of clients.
  ○ Make use of ROA instead of SOA irrespective of significance.
• Maximise the use of file notes and incorporation by reference.
• Increase 'small investment advice' no SOA threshold and extend to superannuation.
• Develop a list of simple strategies exempt from requirement to provide an SOA.
• Align collection of advice fees from superannuation to all advice collection obligations.
• Clear direction of law in relation to life insurance commissions to ensure certainty for profession.
• Consolidated client consents:
  ○ Remove duplication between ongoing fee consent, renewal notices, fee disclosure statements and individual product fee authorisation forms which duplicate the same information and client acceptance. Allow the renewal notice / FDS sign off to be the master copy for all product providers.
	• The medium-term recommendations detailed under Key Themes 1 and 2 above will also assist with improving regulatory certainty for the financial advice profession. Refer to these sections for details.
	• Remove the need for registered relevant providers to hold a credit license to provide debt management advice, Centrelink Pension Bonus Top Up advice (with confidence), and incidental credit advice.
	• Provide certainty and clarity around the Code of Ethics and safe harbour requirements to ensure they allow scalable, affordable advice to clients in a professional manner.
		• The long-term recommendations detailed under Key Themes 1 and 2 above will also assist with improving regulatory certainty for the financial advice profession. Refer to these sections for details.

4. Sustainability of profession and practices

Explanation - what the issue is:

The key issues impacting the sustainability of the profession and financial planning practices are the 'investability' of financial planning practices, the ongoing substantial drop in financial planner numbers, and, influencing this, the inequity in the financial advice ecosystem.

The Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies states:

> *"Regulation is an essential part of running a well-functioning economy and society, but must be carefully designed so as not to have unintended or distortionary effects, such as imposing unnecessarily onerous costs on those affected by the regulations or restricting competition."*[9]

The direct and indirect impacts individuals and households experience from regulation include:

- *Higher input costs for goods and services - regulation can increase prices through a range of effects, such as through stipulations on product design, marketing or distribution.*
- *Market intervention - restrictions on competition, market entry or access can have implications for supply and demand with detrimental impact on prices, choice, quality and availability.*
- *Increased compliance effort – the behaviour of regulators, whether in day-to-day dealings with the public or the design and delivery of services, can impose a range of costs on people who deal with government."* [10]

While these Government guides are produced to assist with the development of regulation, they are relevant for examining the current regulatory environment for financial advice.

The regulatory environment is the main cost driver for providing financial advice.[11] The factors creating regulatory uncertainty (discussed above) have escalated over the past decade and now more than ever place significant pressure on the viability of some financial planning business models. Significant sustainability issues contributed to the regulatory environment include:

- Supply and demand inequity - The regulatory environment creates unique supply and demand issues for the financial planning profession, and consumer protection risks for Australians. The factors that contribute to regulatory uncertainty significantly hinder the ability of 'registered relevant providers' to assist their clients with the financial advice service they are seeking. If qualified and regulated professionals are not able to meet the demands of Australians, consumers (who may not understand the difference) look for financial advice from non-relevant providers and 'like' services from unregulated and unqualified individuals allowable due to the gap in the application of the financial advice regulatory obligations.

  As the definitions in the *Corporations Act 2001* are tied to the recommendation of financial products, the obligations in the law do not apply to all individuals offering financial advice to consumers. Equally, there are exemptions from some requirements afforded to certain types of financial advice providers. This creates inequity in the financial advice ecosystem, which diminishes the attractiveness of practicing in and investing in regulated financial planning businesses.

- Business investment - Regulatory uncertainty drives the need to continuously invest in the financial planning practice, not for competitive differentiation and improving service delivery, but to ensure the business and its representatives can meet the requirements in the law and ASIC guidance and minimise the risk of future enforcement action by the Regulator or a negative AFCA/court finding should a complaint arise. Those whose service offerings are not captured by these definitions, have a cost and therefore competitive advantage.

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[9] May 2021, page 6

[10] The Australian Government Guide to Regulatory Impact Analysis, Commonwealth of Australia 2020, page 34

[11] The FPA is in the process of conducting a detailed 'Cost of Advice' study to collect updated data on the cost of providing advice for new clients, including a detailed breakdown of the costs of each stage in the advice process. This research will be provided to the Review in due course.

There is much talk about the 'cost of the Statement of Advice (SOA)'. Anecdotal evidence shows the main cost impacting the preparation of the SOA is the prescriptive input requirements of the document.[12] The amount of background work, information investigation and consideration of the financial planner that is required to be included in the SOA drives the cost and also reduces the readability of the document for the client and clouds the actual advice for the client.

- Licensing system - Historically, the oversight of financial advice has been conducted by the Corporate Regulator leveraging the structure of the licensing regime. The Australian Financial Services Licensing (AFSL) regime has facilitated significant inequity in the advice market as it advantages certain business models to the detriment of competition and consumers.
  - ASIC Cost Recovery - This issue is very evident in the inequity of the ASIC Cost Recovery model for financial advice. The FPA supports the cost-recovery of some regulatory expenses. We believe it is important for the financial services sector to contribute to the cost of regulating the profession and the broader sector as well as provide adequate protections for consumers. Industry and consumers benefit from a strong regulatory framework that promotes public confidence in the sector and encourages Australians to seek advice and raise their financial literacy.

    The Australian Government Cost Recovery Guidelines provide that the Government should consider a number of factors in deciding how to implement cost-recovery, including the impact on competition, innovation or the financial viability of those who may need to pay the costs of regulation.

    The FPA welcomed the freezing of ASIC levies charged for personal advice to retail clients at their 2018/19 level of $1,142 per adviser for two years, and the announcement that the Treasury will lead a review, in consultation with the Department of Finance and ASIC, on the ASIC Industry Funding Model to ensure it remains fit for purpose in the longer term. Ever-changing regulatory regimes and escalating regulatory costs contribute to the increasing cost of financial advice which in turn makes it less affordable and available for many Australians.

    There has been a tendency to apply charges to financial planners for ASIC's enforcement activities against unlicensed individuals or entities who are not a member of the profession. Whilst these individuals have engaged in conduct which has rightfully triggered a significant response from the regulator and other authorities, it seems incongruous that financial planners are then required to foot the bill for these actions, given the subjects of the enforcement are not in fact peers. Whilst these enforcement actions are necessary and important to ensure wrongdoers are brought to justice and consumers are protected, it is not equitable for the financial planning profession to be relied on by the Regulator to recoup the costs for ASIC to pursue those who are not financial planners.

    Similarly, the cost of ASIC's targeted enforcement action for wrongdoing by large licensees, including oversight of significant high profile and prolonged remediation programs, is also recovered from the members of the financial planning profession rather than directly from those entities involved.

    As many practitioners are sole traders or work in small and medium-sized practices, their ability to absorb any additional regulatory costs is extremely limited. To provide certainty to the profession and provide adequate notice of any change, which may require planning for business models to adapt, a review should be completed prior to the expiration of the ASIC levy freeze.

  - Penalty Regime - Consideration must also be given to the risk of running a financial advice business. The penalty regime introduced through the implementation of the Royal Commission recommendations has created an environment where there are catastrophic penalties applied for breaches of the law which might be appropriate for large vertically integrated financial services business, but punitive for the current makeup of the financial

[12] The FPA is in the process of conducting a detailed 'Time in Motion' study to collect updated data on the cost of providing advice for new clients, including a detailed breakdown of the costs of each stage in the advice process. This research will be provided to the Review in due course.

planning profession. These create a disincentive for, and significant risk for, licensees to consider efficiencies in their advice process. These are particularly concerning in areas of the new enhanced FDS regime, record keeping obligations and cybersecurity.
    - Professional Indemnity Insurance (PI) – The lack of regulatory oversight of the PI market for financial planning licensees has had two detrimental impacts. There is a disconnect between the risks currently present in the profession and the risk assigned through premiums by insurers due to the lack of engagement by ASIC in the efficient operation of the market. Secondly, many licensees take out inappropriate policies to reduce cost which creates a significant consumer protection risk in the event of a complaint, specifically the deductible is at a level where the financial planning licensee has insufficient capital to compensate consumers in the event of a claim, whether the policy responds or not.
- Financial planner numbers - Historically, it has been relatively easy to bring new financial planners into the profession. Education, experience, authorisation and supervision of new entrants was inappropriately low. As noted in the earlier sections, the introduction of the Professional Standards Framework has over-corrected this situation, leading to many experienced financial planners leaving the profession. Additionally, the inflexibility in relation to education requirements for new entrants is severely limiting the pool of those who are looking to enter the profession, and the regulatory burdens highlighted make it very difficult for licensees to spend the time and resources required to undertake professional year supervision. This has led to the number of relevant providers dropping from over 29,000 in December 2019 to below 17,000 today, with very few new entrants entering the professional year. The changeover from FASEA to Treasury in administering these requirements has also led to a suspension in data collection and as a result, little information is currently available on those studying for relevant qualifications.
- Investibility of the financial planning profession – investment in financial planning is at an all-time low. Most large licensees who traditionally invested significant amounts of capital into the profession, compliance and technology have left. Additionally, licensees and practitioners who remain struggle to afford investments other than those required to meet minimum regulatory compliance. While Australia was once seen as an attractive market for new financial planning technology, very little innovation or investment is currently being made. A case in point is that the SOA is still primarily delivered in paper format despite the improvement and availability of digital delivery technology becoming commonplace in other professions and industries over the last 10-15 years. Further, very little academic research is conducted in relation to financial advice due to the lack of ability to fund research grants. The FPA worked with the academic community for many years through grants facilitated by larger licensees, however this investment has all but ceased due to a lack of funding options. This will widen the gap between consumer expectations and what the profession is able to deliver.
- The significant reduction in financial planners has led to a significant number of formerly advised clients who are now disconnected from a professional relationship because their financial planner no longer practices or because it was uneconomical to continue providing them with a service.

Regulation should allow for a range of business models and improve the ability for the profession to invest in new entrants and efficiencies through innovation, technology and research.

Why it is an issue:

The issues impacting sustainability of the financial planning profession and financial planning practices directly affect the affordability and accessibility of financial advice for consumers.

As described in the Government guide, regulatory market intervention that restricts competition can have a detrimental impact on *prices, choice, quality and availability* for consumers.[13]

Addressing the factors causing regulatory uncertainty is vital to make financial advice attractive to invest in professionally and as a business. Ensuring the sustainability of the financial planning profession and financial planning practices is in the best interests of consumers and over time, future Governments,

[13] Page 34

whose need to support a costly social security system (especially the Age Pension) is reduced by effective savings and retirement advice provided to consumers.

The regulatory environment must be flexible to improve:

- Consumer choice - permit the financial planning profession to provide the advice services consumers need and want. The regulatory environment for financial advice should be scalable and allow all financial planners to use professional judgement to meet the advice needs of the client on a sliding scale/continuum model. It should facilitate the provision of very simple advice for simple client requests, to more detailed advice in response to complex client requests.
- Advice quality - there are some individuals who provide financial advice to retail clients that does not include a recommendation about a financial product or class of product as defined in the *Corporations Act 2001*. As this service is not captured by the financial product advice definitions, such individuals do not have to meet education and training requirements, the standards and values in the *Financial Planners and Advisers Code of Ethics 2019*, or the financial product advice obligations under the *Corporations Act 2001*. They are not required to act in the best interest of their clients, provide disclosure documents of any kind to their clients, or eliminate conflicts of interests. This puts consumers at risk of receiving advice that may not be suitable for their circumstances or prioritise their needs over those of the provider.
- Advice availability and prices - The cost associated with providing limited scope advice is excessive for the service provided to the client. While the cost of providing holistic advice is still very high, it is more in line with the level of service the client receives. These costs are driven in the main by the legal obligations for providing personal financial advice. The FPA's next step will be to commission a 'Cost of Advice' study, which will investigate the cost effectiveness of providing limited scope advice versus holistic advice.

The regulatory system must be flexible to stimulate competition and ensure all registered relevant providers have the ability to provide limited scope advice, regardless of the business model they operate under, for the benefit of consumers.

The Australian Government Guide to Regulatory Impact Analysis states:

> *Where your proposal leads to higher regulatory compliance burdens, you need to actively investigate opportunities to offset these burdens among the affected sector(s).*[14]

Tax deductibility of initial financial advice fees and additional certainty around the deductibility of ongoing advice fees would offset a proportion of the price differential between registered relevant providers and non-relevant providers and unregulated advice providers by reducing the cost of advice for consumers.

All financial advice should have tax deductible status to help make financial advice accessible and affordable for all Australians. This should be regardless of the stage in the financial advice process it is provided, and whether it directly relates to the creation of investment income.

Currently, tax treatments of financial advice occur in numerous ways, dependent on the nature of the advice sought and when it is provided. As an example, the Australian Taxation Office (ATO) has determined that a fee for service arrangement in the preparation of an initial financial plan, is not tax deductible. However, ongoing advice fees are treated as tax deductible as they are deemed to have been incurred in the course of gaining or producing assessable income. This determination is now over 25 years old and is not reflective of the current regulatory environment under which financial advice is provided.

Treating the creation of an initial financial plan in a different fashion to that of ongoing advice provides a disincentive for Australians to seek 'episodic' financial advice which will assist them to actively plan, save and secure their financial future. It also acts as a further barrier for Australians who have not previously sought or received financial advice.

[14] Commonwealth of Australia 2020, page 38

Increasing the accessibility and affordability of financial advice for all Australians, particularly for those on lower incomes, will provide for a more financially competent community, with Australians becoming more financially literate and better able to support themselves, especially during retirement.

Recommendations:

Change is required to address the inequity in the financial advice ecosystem that is caused by the regulatory environment.

Quick wins	Medium term	Long term
• Tax deductibility of initial and ongoing financial advice fees. • Treasury-led review of the ASIC Industry Funding Model should commence as soon as possible and conclude prior to the expiration of the freeze on ASIC levies charged for personal advice to retail clients. Indexation of the 'small investment advice' no SOA threshold and extension to superannuation. • Review the professional year framework to ensure it is fit for purpose and encourages a broader cohort of new entrants to consider a career in financial planning.	• The medium-term recommendations detailed under Key Themes 1, 2 and 3 above will also assist with improving the sustainability of the profession. Refer to these sections for details. • Improve clarity around the fintech sandbox to improve innovation in financial planning technology. • Any new levies or funding mechanisms must be sustainable and operate equally and fairly across the sector (e.g. Compensation Scheme of Last Resort). • ASIC regulatory settings and enforcement should more closely align. • Regulatory impact statements must be completed for all new legislation in relation to financial advice.	• The long-term recommendations detailed under Key Themes 1, 2 and 3 above will also assist with improving the sustainability of the profession. Refer to these sections for details. • Consider ways to encourage investment in research and innovation of the financial planning profession.

5. Open data and innovation

Explanation - what the issue is:

The significant waste in the system that leads to additional cost, time and resource requirements caused by the combination of laws, regulations, regulators, monitoring and supervision, and complaints handling is exacerbated by the waste in the system due to the lack of data and innovation in advice delivery. Much of this waste could be solved through allowing planners to access to up to date, reliable client data which is available within the financial services ecosystem already.

Financial planners currently must rely on clients to either provide such data on their financial affairs or give consent for planners to request it from product providers such as a superannuation trustee. This data is then entered into financial planners' advice systems, either manually or by data transfer. This creates an inefficient impost for both clients and financial planners, and a risk of data entry error or cybersecurity exposure, which impacts the accessibility and affordability of advice for clients. It also limits data collection to a point in time. The easier it is for clients to engage in the advice process, and with the data and documentation inputs and outputs, the more accessible financial advice will be for Australians.

Better access to data will allow financial planners to provide better, more efficient advice to clients, including the ability to proactively trigger services based on clients achieving or falling behind on goals, or achieving them ahead of time. The cost of accessing data will also go down significantly, allowing advice to be provided more cost effectively and quickly to the consumer. Access to data will also improve

innovation and alternative advice delivery models focused on technology to better assist those Australians who are not able to access advice services delivered by an individual professional.

In most cases the data is already available in the system, and the focus should be on making it more available in a secure and confidential manner for the benefit of clients. This will improve efficiency and attract and enable clients across all generations to take up timely and cost-effective advice services and solutions.

Enabling financial planners to access accurate, timely data in a secure manner will significantly improve the accessibility and affordability of quality financial advice for consumers.

Consumer Data Right (CDR) – The consumer data right offers an excellent opportunity to make clients' data more freely available and accessible to financial planners providing services to their clients. There are a number of issues at this point however with the current CDR. Firstly the registration process for professionals is not easy to find or undertake and there is little functional information on how data is obtained beyond having to engage third party tools (which increases cyber security risks). Secondly, there are many financial products which are not yet included within the CDR framework meaning it is only a part solution at this point. More assistance is required for the profession to implement CDR data feeds into financial planning technology. This will result in more efficiency, innovation and better service offers at an affordable price for clients.

ATO and Centrelink agent status - The regulation of government agency arrangements also creates inequity in the financial advice system and adds to the cost of providing financial advice to Australians. Clients often turn to their financial planner to help them interact with government agencies such as Centrelink and the Australian Taxation Office ('ATO'). Under current arrangements, financial planners can provide clients with advice on their rights and obligations with these agencies, however, engaging with the agencies directly on behalf of the client can be difficult or practically impossible.

The ATO allows tax agents to access its online services portal and act on behalf of their clients, but financial planners are excluded from this arrangement despite operating under the same regulatory framework with the Tax Practitioners Board. As only one tax agent is able to be registered per person and, as many people have both an accountant and a financial planner, the portal is not able to recognise a financial planner as a client's second tax agent.

Centrelink maintains a Provider Digital Access portal. However, the Centrelink portal has limited functionality and financial planners often have to conduct business with Centrelink on behalf of their clients over the phone or at Centrelink offices. This arrangement results in significant delays and additional costs to clients.

Centrelink and the ATO should develop their online services portals, and direct services centres (such as call centres) for professionals acting on behalf of consumers, to ensure financial planners, and other relevant professionals, have access to a full range of functions and can thus act effectively on behalf of their clients.

Improving online engagement with financial planners would reduce the administrative burden on Centrelink and the ATO, as consumers would require less assistance from agency staff in completing their requests and would be operating with professional advice on what they need to provide to, or request from, those agencies.

Data Standards – There is significant inefficiency in financial services resulting from the absence of consistent data standards. Not only in terms of usability for consumers, but also in terms of regulating the entire sector. We have recently seen the benefit of the creation of a data dictionary by ASIC for the purpose of internal dispute resolution complaints data reporting, and there would be significant efficiencies created by rolling this approach out more broadly. The lack of universal data standards makes it inefficient to complete applications, transfer assets and collect information from products to benefit consumers' understanding of their financial positions and engagement with the sector more broadly. Most importantly, benefits like "straight-through processing" become very difficult to implement.

As an example, the implementation of the fee consent authorisation requiring consumers to individually authorise the payment of financial advice fees from each of their products has been done in an ad hoc and individual way by product providers. As a result, it has become extremely burdensome for planners to

facilitate client consent as they must know and adhere to the different date, form and signatory requirements of every provider in the market. On the other hand, the universal acceptance of the FSC/FPA AML/CTF ID Verification forms has been an example of where consumer engagement with products has been able to be dealt with more efficiently due to a common standard. Regulated data standards have become common across many professions, from medical billing through the Medicare system, the ATO portal access data standards for tax agents, to the lodgment of documents through the courts in the legal profession. Other examples include single-touch payroll and superstream. These effective innovations have all required regulator support to help overcome the natural fragmentation that results from multiple providers (which otherwise facilitates effective competition).

Cyber Security – Another benefit of improving data standards and facilitating secure data transfer is an improvement in cyber security for consumers. At present there are significant risks that highly sensitive data is open to interception or hacking due to the ad hoc nature of data collection, storage and transfer through the financial services sector. However, more specific to financial planning, there are very few consolidated or useful tools or guidance provided by Government in relation to cyber security laws, regulations, risks or solutions. While recent ASIC cases have identified that even large and well-resourced licensees can still have issues with cybersecurity preparedness, there is significant risk with smaller licensees given the shift in licensing demographics which have occurred over the last 5 years (with the majority of planners now being licensed by micro and small licensees). Ultimately, good cyber security practices help to improve consumer trust engaging with the profession and the sector more broadly.

Why it is an issue:

Australians will benefit from having easy access to all of their financial data when and where they need it, aligning with the intent of the CDR. At present, lack of access to data creates a significant inefficiency in advice provision. Some licensees still require client data to be captured in paper-based fact finder documents, manually transferred into CRM/Modelling systems, transferred to SOA generation systems, copied to application forms and other systems largely because of the lack of a common data standard.

Solving the data issue will mean that data ceases to be the friction point it currently is in financial planning - for planners, consumers, and product and solution providers. This will also have the benefit of making the profession easier to deal with by clients and everyday Australians because standardisation will assist access to and affordability of advice. It achieves this by improving the quality (though innovative delivery and goal tracking technology), efficiency (automatic data syncing) and cost of providing advice, given data collection and use is one of the longer time costs associated with advice delivery. It will also allow scalability of advice services for the consumer, as scaled pieces of advice from one or multiple advice providers can be aggregated into a holistic financial plan and position tracking service for the benefit of the client. Additionally, “straight-through” implementation of all advice services aligns with consumer expectations of timeliness they should receive from all professional services providers they engage with today. Finally, a consistent and accessible data standard and easy, secure access to client data will drive innovation and investment in advice.

Recommendations:

Quick wins	Medium term	Long term
• Standardised data collection authorities. • CDR access for planners (professional authority and data feed into advice and product tech). • (limited) ATO portal/super data API. • The ATO and Centrelink to improve their online and phone access arrangements to enable financial planners to act on	• Creation of universal financial services data standard. • Roll out CDR to all financial products. • Legislative/Regulatory mandate to use data standards based on the CDR. • Centrelink/Aged Care data upload for financial planners. • Improve technology investment incentives for financial advice.	• Research access to data. • Universal straight-through implementation.

behalf of their clients with respect to their superannuation tax obligations and benefits administered by Centrelink. • Register of the provider of the advice to include digital advice providers. • Consolidated cyber security legal and regulatory obligations with clear obligations for small businesses (similar to ASIC financial advice hub but for cyber security).		

FPA RESPONSE TO QOAR ISSUES PAPER QUESTIONS

Framework for Review

Quality of Advice

1. **What are the characteristics of quality advice for providers of advice?**
2. **What are the characteristics of quality advice for consumers?**
3. **Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?**
4. **What are the factors the Review should consider in deciding whether a measure has increased the quality of advice?**

Advice and the assessment of its quality needs to be considered from two sides:

1. the subjective experience of the consumer. The consumer should have confidence that they are better off because of the advice.
2. an objective assessment, by peers, of the reasoning used by the adviser at that point in time.

This is the framework used by the FPA using the FPA Code of Professional Practice[15], which includes ethical standards, practice standards and rules to measure the quality of the advice provided by the professional financial planner to their client. The Code was developed from the international Code of Ethics[16] and Practice Standards[17] developed by the Financial Planning Standards Board, and the localised FPA practice standards and rules have been amended over the last 20 years as both the experience of living the Code, outcomes of conduct investigations, and changes to the law have resulted in a modernisation.

The FPA's experience in developing and measuring compliance with the Code has been that regulation can be either a facilitator or inhibitor of the provision of quality advice. Regulation cannot, of itself, improve the quality of advice. Regulation can only influence the environment in which advice is provided. Raising the minimum education standards and mandated ethics training are good measures if implemented appropriately. Whether the mere existence of these measures will improve the quality of advice is dependent on how they are interpreted and adopted by regulators, AFCA, licensees, and financial planners.

For example, the Statement of Advice was introduced as a consumer protection measure and has become a disclosure document, a compliance document, a financial planning advice document and a defense against consumer complaints and regulatory investigations. Its purpose has become muddled, resulting in the need to provide such a lengthy document, that it negatively impacts the client's advice experience and potentially their understanding of the advice and the rationale used by the financial planner to formulate this.

Another example is the best interest duty 'safe harbour' steps, which transformed from one method of demonstrating how the advice was in the best interest of the client and a protection mechanism for the financial planner, into a mandatory compliance obligation through the enforcement activities of the regulator.

These are clear examples and side effects of the approach to regulatory reform, previously discussed in this submission and supported by the ALRC, where historically new measures have layered additional requirements on top of the existing obligations, without removing or simplifying how the obligations work together, and resulting in discrepancies between the regulatory intent of the law and enforcement by regulators and EDR schemes. This approach makes it extremely difficult to assess, with certainty, whether a particular regulatory measure has impacted the quality of advice.

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[15] FPA Code of Professional Practice. https://fpa.com.au/wp-content/uploads/2015/09/FPA_CodeofPractice_July2013.pdf
[16] FPSB Code of Ethics and Professional Responsibility. https://www.fpsb.org/wp-content/uploads/2016/01/110000_pub_CodeEthicsProfResp-A4-LR.pdf
[17] FPSB Financial Planning Practice Standards. Financial Planning Practice Standards (PDF)

In professions, it is the professionals and peers who establish the framework for quality, not the law. This is the purpose of the FPA Code of Professional Practice.

Metrics to measure the quality of advice – FPA's primary position

- The FPA and its members believe the quality of financial planning advice has improved with the evolution of the profession over the past fifty years.
- Evidence of this evolution is the fact that advice today is focussed more on helping clients define their goals and objectives, create an understanding of their entire financial position, and develop strategies to achieve goals, rather than on product.
- Advice is also more likely to be provided on a continuum, rather than on an ad hoc basis, to clients of a financial planning business.
- Financial planners are today appropriately qualified individuals who provide a professional service to clients under an enforced Code of Ethics. Financial planning is a profession.
- Standard 12 of the Code of Ethics requires professional financial planners to:
    - *Individually and in cooperation with peers, you must uphold and promote the ethical standards of the profession and hold each other accountable for the protection of the public interest.*
- In line with standard 12, the entity to judge the quality of advice should be peers - the quality of the service provided by professionals should be assessed by other professionals.
- Assessment of the quality of advice should be peer review based on professional standards. Clearly this is not a cost-effective option for measuring the quality of all the advice service provided by around 17,000 professionals to the millions of consumers in Australia, particularly in an environment of significant regulatory inefficiency described above. However where there are complaints, or a formal audit obligation is introduced, these should be peer reviewed.

Metrics to measure the quality of advice – FPA's secondary position

- The FPA understands the government is considering developing metrics to measure whether the quality of advice has improved and continues to improve over time.
- We do not believe a simple metric is possible, given the subjectivity of the client experience and the nature of advice as it is provided today.
- We would also be extremely concerned about the cost and overall impact of implementing a metric. To minimise the risk of increasing the cost of advice, any assessment of the quality of advice should;
    - use existing professional compliance processes rather than involve an external party
    - avoid adding an additional overlay of complexity or additional regulatory or reporting requirements.
- Any metric used should recognise that financial advice has evolved and is a professional service, so should consider the advice given and the experience holistically for clients, not the output from a product point of view.

A measure of quality should meet the following guiding principles:

a) Quality financial planning advice must demonstrate the values and standards of the Legislated Code of Ethics using sound professional judgement
b) Quality financial advice should at least meet the minimum standards of professional advice services and must apply to the range of advice services available to, and sought by consumers, in an objective manner
c) Advice is a process – the quality of the financial planning advice cannot be assessed through a single Statement of Advice (SOA) alone. Any examination of the quality of the advice must take into account the complete client file, goals and objectives, experience, and whether the advice improves the client’s well-being or financial situation, both at the point of provision and over time.
d) The assessment of the quality of the advice should be simple, easy to measure over time, relevant, cost effective and leverage existing structures.

Metrics for measuring quality of advice

	Description	Rationale under guiding principles
Measurement	Assess the client file (not just the SOA) for the identified features of advice	Advice is a process – the quality of the advice cannot be assessed through the SOA alone. Test if the current position strategy will meet needs, goals and objectives. Consider the ongoing financial planning advice services and relationship: • not just SOA • progress reports towards goals and objectives • must keep people on track • act on changes to client circumstances The features checklist aims to provide a simple and consistent objective measure for the quality of the advice, applicable to all advice.
Delivery method	The FPA does not support the creation of a checklist, but we suggest a set of principles to guide a reviewer on features of good quality advice, possibly in the form of a template. If a checklist should nevertheless be developed, it should be based on the features of good quality advice (below) that would indicate the likelihood that quality advice has been provided. The checklist should be used in the compliance audit.	• Leverages existing structures and resources • Cost effective • Provides a consistent and ongoing measure over time • Based on professional standards
Delivery timing	Determined by business	• Provides a consistent measure to track changes over time • Cost effective

Features that will indicate the likelihood of quality advice should include ALL of the following elements:

1. *Features of good quality advice (based on ASIC RG175.248)*
    a. Clearly defined scope that is appropriate to the subject matter of the advice
    b. Investigation of the client's relevant circumstances
    c. Prioritised, specific and measurable goals and objectives
    d. Consideration of the impact of the financial advice – e.g. tax, social security and estate distribution consequences
    e. Good communication with client
    f. Strategic and/or product recommendations appropriate to the client's circumstances
    g. Financial planner has demonstrated the use of professional judgement

    ASIC's features of good quality advice in RG175.248 is simple and can apply to all advice types within existing processes to capture data.

2. *Advice is compliant – good quality financial advice*
    a. must be provided in line with the standards and values of the *Financial Planners and Advisers Code of Ethics 2019*

   b. must comply with all relevant legal obligations

3. *Complaints data / breaches reported to ASIC and the single disciplinary body.*
   a. Consideration given to provision of quality assessment by a single disciplinary body as part of the annual registration process (noting that technology solutions/data dictionary for efficient submission must be established).

As stated above, the method of delivery for any measure of quality must rely on existing processes and not be outsourced by the regulator. The current issues with the ASIC Cost Recovery model are a clear example of the impact regulatory costs have on the affordability of advice for consumers.

Cost of Advice

5. What is the average cost of providing comprehensive advice to a new client?
6. What are the cost drivers of providing financial advice?
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?
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?
9. Which elements of meeting the regulatory requirements contribute most to costs?
10. Have previous reforms by the Government been implemented in a cost-effective way?

The FPA is working with other associations and Coredata to conduct a detailed 'Cost of Advice' study with our members and licensees that examines in detail the costs involved in each step of the process of providing personal financial advice to clients. This study will be provided to Treasury to the Review in due course.

Broadly, however, as highlighted in the key themes section, there are many factors which have contributed to the significant increase in costs to provide financial planning services to consumers:

- Many pieces of legislation which lead to duplication; regulatory inefficiency; and a process which focuses on inputs (which are easy to inadvertently breach given the regulatory complexity) rather than the output-based regulation which focuses on providing consumers with certainty, practical solutions, and good quality advice.
- Too many intermediaries between the financial planner (provider) giving financial planning advice and the consumer including:
  - Licensees who set advice standards at a whole of organisation 'efficiency' level rather than a focus on the client/planner relationship.
  - Significant differences between regulators' guidance and the actions of the enforcement departments.
  - Unclear expectations set by regulators in relation to remediation programs that lead them to continue for excessive periods.
  - Differences in interpretation of the law between ASIC, TPB, AFCA, Courts, (across different types of) product providers and licensees leading to inefficiencies, duplication and over-compliance.
  - Platform/product provider control of implementation and fee collection/disclosure.
  - Professional Indemnity Insurer limiting the financial service by not insuring it or making it expensive to insure
  - Preparing a Statement of Advice which was designed in 2000 with the intention to inform the client in clear, concise, and effective manner information to purchase securities and products they were recommended, which has now been transformed by legal and compliance consultants into a document designed to indemnify the licensee.
  - Technology which is not fit for purpose and is unable to easily track the progress of financial planning advice.

- Product providers who do not permit the client's financial planner access to the member's account despite client authority.
- Regulators and government service providers which do not allow access to the client's information despite client authority, especially in relation to superannuation benefits and contributions and social security benefits.

It is worth highlighting two areas of regulation that do add significantly to administration and time costs to providing financial advice services to clients. Specifically, fee disclosure statements and advice fee consent authorisation. While disclosing annually to a client the actual fees that the client has paid to their financial planner, the collection of this information has caused significant issues since its implementation in 2013 due to the variety of reporting standards, time frames and information provided by product providers. This is in contrast to the simplicity of a financial planner disclosing what they have received. While the difference is subtle, the challenges described have led to significant challenges, for example, if a fee is paid by the client from a superannuation interest, there may be the ability for the super fund to apply Reduced Input Tax Credits that reduces the GST paid by the fund. Some funds will apply this when the fee is paid, some will apply it at the end of the financial year, some will do it on an ad-hoc basis, and some will not apply the credit (and some funds do a combination of all four). While the planner receives the same amount, the client can pay a different amount depending on when the credit is applied, and there is significant administration required by the planner to figure out which situation they are dealing with.

Similarly, there has been a broad spectrum of implementation of the new Fee Consent Authorisation framework by products, outside the differences between collecting fees from super and other products. Some products are requiring their own forms which otherwise collect only the information required in the legislation/regulation; some will accept forms created by the planner; some will accept their own forms for one product type but the planner's for other product types; some require additional information; some require more frequent authorisation (we are aware of one super fund which requires quarterly authorisations); some are requiring multiple forms for the same authorisation (i.e., product application forms and fee collection authorisations); and some are going so far as requiring the SOA to be provided in addition to authorisations (which require significant redacting to protect the clients' privacy). The development of a legislative required standard would significantly improve the operation of this provision by ensuring consumers provide authority to collect fees, but not be charged for unnecessary administration caused by the variety of implementation frameworks created by products.

These two examples demonstrate the complexity of the regulatory environment financial planners operate under for something as simple as disclosing how much the client has paid and getting their permission to collect it for the coming year.

Technology Solutions

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

- As highlighted above in the FPA key theme of open data, the issue is less the technology at this point but the access to data and standardisation of technology which unless solved will continue to lead to cost of advice increasing.
- While there are over 2,000 advice licensees and 6,000 financial service licensees setting their own technology standards and creating disparate tech stacks, this issue cannot be resolved. The entire financial services industry would benefit from a level of government mandated standardisation for the benefit of Australian consumers. Where this standardisation has occurred there have been significant improvements in services and access to information for consumers, for example superstream, single touch payroll, digital group certificates, and open banking/CDR.
- In saying this, there has been significant stagnation in the development of and implementation of technology solutions in financial advice since the initial investment made in technology in the 2000 – 2010 period. This has been caused by the compounding effects of the GFC, FOFA, Professional Standards and LIF frameworks and Royal Commission implementation which have required licensees to invest in compliance processes and technology to manage this aspect of the business, rather than investment in technology to improve client engagement.

- A case in point is the statement of advice. ASIC has documented in RGs, information sheets and in direct communication with the profession that there is no requirement to deliver a statement of advice based on paper as the technology, but very little progress has been made by licensees to invest in content delivery technology to document the statement of the advice being provided to clients.
- Additionally, this is another area where there is significant misunderstanding between the statements that the advice provided to a client should be bespoke to that client (meaning that the provision of recommendations should be tailored to the individual client to achieve their goals and objectives), versus the view that documenting the advice must be bespoke. Bespoke documentation of advice can never be affordably scaled.
- In summary, yes, technology investment and implementation have the potential to significantly improve the efficiency, cost and engagement in providing advice to consumers, but the profession needs time, certainty and access to data to allow this potential to be achieved.

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

- Firstly, it is incorrect to suggest financial advice is provided without the benefit of technology. Technology has been integral to the provision of financial advice since its infancy, and every financial planning process in the country relies significantly on technology, from use of CRMs, data recording, modelling, strategy recommendation, product selection, SOA documentation, record keeping, implementation services and client reporting.
- As highlighted through our response above, there are a variety of reasons, however, which have led to stagnation of technology and the bigger issue of data isolation which often requires either significant investment to connect or manual processes to move data through the advice process.
- ASIC, to their credit, have regularly and frequently stated they regulate the law in a technology neutral manner. Other regulators of financial advice such as AUSTRAC and the OAIC also take technology neutral approaches to meeting regulatory obligations. On the other hand, the ATO and Centrelink have made the decision as regulators to limit the ability for clients to share their data with their trusted professional, which has created a regulatory impediment.
- In contrast though, the entire financial services industry, financial planners in particular who act as a central repository of client information in relation to their entire financial position, would benefit from a data standard – such as the CDR – which makes all client data accessible in a live medium to improve the services they are able to provide clients.

Consumer Demand/Access

13. How should we measure demand for financial advice?

- The FPA does not have a specific solution to propose for measuring demand for financial advice, although obvious measures could be made by assessing google search queries on financial planner/adviser; surveying consumers; or working with financial planner matching sites (for example the FPA's Find a Planner directory) to understand demand.
- We would note member feedback has indicated there has never been a period where demand for their professional services has been insufficient for them to meet their capacity to service clients, but with the well documented reduction in planner numbers, demand has grown more than ever, and many members are in the unfortunate position of having to turn clients away due to an inability to service them. This is obviously exacerbated by the constant regulatory changes required to be implemented and inefficiencies this causes.
- Additionally, there have been a variety of demand assessments undertaken by research houses which highlight strong and constant demand for financial advice by Australians with the barriers being consumers uncertainty in how to access professional advice services, cost, and at various time negative sentiment due to media focus on the small number of bad actors who claim to provide financial advice.

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

- When they are in financial stress. Evidence shows that financial stress causes even more poor choices, depression and anxiety because they are unable to share their information and get financial planning advice.

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

- This has varied over time, however at present it is the lack of capacity within the profession due to planner numbers, the time required to provide advice, and the minimum cost required to meet regulatory requirements which prices out many Australians who would otherwise seek advice.
- There are additionally a number of myths in the community about the financial planning profession which lead to consumers not seeking out professional advice including a lack of investible assets, lack of clarity around cost, misconceptions around the types of services provided, an assumption that the bad actors highlighted in media and other forums are the norm rather than the exception, and many others.

16. How could advice be more accessible?

- The FPA has provided a number of recommendations to improve the efficiency, affordability and accessibility of advice to Australian consumers throughout this submission. Appendix 1 – FPA Policy Platform – Affordable Advice, Sustainable Profession - contains a consolidated list of recommendations which will make advice more accessible to more Australians.

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?

- There is a spectrum of financial advice services Australian consumers need which range from simple clarification on financial matters to holistic advice on the client's entire financial position. This is overlayed by consumer preferences in relation to self-managing their financial position to fully outsourcing all management where it is economic and affordable to do it.
- Services such as ASIC's MoneySmart website provide simple, accessible and timely information to consumers who need this level of education and assistance, but for many consumers, the interaction between different financial goals and objectives, and their financial assets to implement the strategies to achieve these goals creates a level of complexity which can only be serviced by a professional.
- A key issue in providing non-professional level financial planning services is the regulatory complexity created between the definitions of factual information, general advice, personal advice, tier 1 and tier 2 products, a separate credit licensing regime and the consumer protections regime required to protect consumers from financial service providers who seek to illegally profit from consumer confusion and misunderstanding.
- In summary, Australians would benefit from a spectrum of further financial literacy education from primary and secondary education levels, through to trusted sources of engaging adult education on financial concepts and products, to better tools to allow them to manage their financial position, to where required – affordable, accessible and professional financial planning services provided by a professional financial planner. To this end, a whole of country/industry strategy is required rather than the ad hoc solutions provided to consumers by government, regulators, the industry, the profession and consumer to consumers at present. The FPA would note these sorts of frameworks are being developed in other sectors such as the National Drought Agreement and the Emergency Management Australia.

18. **Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?**
    - As noted in questions 11 and 12, financial planners already use significant amounts of technology solutions. The FPA has developed a number of tools[18] to assist financial planners understand the technology solutions available to improve each part of the advice process through cost and process efficiencies and improved consumer engagement. Again, as noted, the issue is more the lack of a data standard, interconnection of fintech solutions and ultimately a lack of resources (time and money) to implement new technology solutions given the constant stream of regulatory change experienced by the profession over the last 15 years.

19. **What is preventing new entrants into the industry with innovative, digital-first business models?**
    - Innovative solutions are regularly being brought to market. However, the regulatory complexity of four laws, eight regulators, three consumer compensation frameworks and licensing make it economically challenging to make these solutions quickly scalable and profitable given the size of the Australian market and lack of investment opportunities provided.
    - We would note, that while ASIC provide a regulatory sandbox to allow new entrants (not existing providers) to test new technologies and service propositions, it is highly restrictive and unattractive for testing products.
    - Additionally, unlike other regulators (for example the ATO providing tax rulings, Social Services providing social security rulings, AUSTRAC engagement processes) ASIC will not provide regulated entities with any form of certainty that their processes or services are compliant with the law and will recommend that the provider seek their own legal advice. Further, it has been known for ASIC to later use these approaches to take regulatory enforcement activity against providers who have approached ASIC for guidance/advice/assistance.

Regulatory Framework

Advice Provisions

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?**
    - From a practical perspective no, there is no difference between financial advice and financial product advice. Advice is advice. In practice, the primary service provided is financial advice.
    - Financial Planning Standards Board Ltd (FPSB) defines financial planning as:
        - "A process of developing strategies to help people manage their financial affairs to meet life goals."
    - Financial planners:
        - review all relevant aspects of a client's situation across a breadth of financial planning activities, including inter-relationships among often conflicting objectives.
        - considers one or more strategies relevant to the client's current situation that could reasonably meet the client's objectives, needs and priorities.
        - develops financial planning recommendations based on the selected strategies to reasonably meet the client's confirmed objectives, needs and priorities, and
        - may identify appropriate product(s) and service(s) to meet the strategies.
    - In practice, the service 'registered relevant providers' provide clients can include the recommendation of strategies, products and services depending on the client's circumstances and based on what is in the best interests of the client.

[18] FPA Fintech Hub – https://fpa.com.au/fintech

- There is also no difference for a consumer. Consumers do not understand the difference between financial advice that is captured under the *Corporations Act 2001* and the associated consumer protections, and financial advice that falls outside this regulatory environment.
- The disconnect between the professional service of financial advice and the regulation of advice as a financial product is a fundamental flaw that impacts the quality, cost and consumer understanding/engagement/accessibility of advice.
- Financial advice is a professional service that involves:
    - assisting clients to understand and articulate their goals and objectives
    - recommending strategies in the form of a financial plan so clients can live their best lives, and importantly keep them on track to achieving them as life throws up a variety of challenges and opportunities.
    - Financial advice may or may not include a recommendation involving a financial product otherwise regulated under financial services law.
- The existing definition of 'financial product advice' is fundamentally flawed as it does not represent the service that consumers receive from registered relevant providers. This undermines the consumer protection the law aims to provide.
- Creating different types of advice - financial advice and financial product advice – shows a significant lack of understanding of the service the client is seeking, the process of financial advice, the requirements under the legislated *Financial Planners and Advisers Code of Ethics 2019*, and how consumers receive such advice. It will only serve to further complicate the regulatory framework and create loopholes in consumer protection.
- The current definitions exclude from the personal advice regulatory obligations common areas of enquiry by consumers, such as advice on (for example but not limited to):
    - budget management/cash flow
    - paying down debt
    - whether to lend money to family
    - property decisions such as purchasing versus renting
    - property investment
    - whether to renovate or buy a new house
    - how to fund children's education
    - social security.
- The provision of 'personal financial advice' should not be tied to financial products and must be provided in the best interest of the client by a qualified professional representing the client's interests.
- In practice, financial advice aims to achieve an outcome where clients are educated and empowers clients to help them make better, more informed financial decisions. To understand when they have enough to retire, enough to support their kids and enough to meet their goals. Financial product advice on the other hand is about recommending the right tools to implement strategies to achieve these goals.
- However, creating an extra definition of financial advice risks complicating the laws further as many providers, including existing registered relevant providers, would fall into both categories.
- In line with the recommendations from both the Royal Commission and the ALRC Interim Report, the term 'advice' should only apply to the provision of personal financial advice, regardless of whether a product recommendation has been made.

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?

- Yes. Cost is the most significant impediment to financial advisers providing advice about budgeting, home ownership or Centrelink pensions. The regulatory requirements make it excessively expensive to provide advice on this type of subject matter unless it is part of a broader financial plan.
- While the current advice definitions in the *Corporations Act 2001* do not cover advice about budgeting, home ownership or Centrelink pensions (as these are not financial products), financial

advice to retail clients provided by a 'registered relevant provider' must meet the requirements of the *Financial Planners and Advisers Code of Ethics 2019*.

- Under the legislated *Financial Planners and Advisers Code of Ethics 2019* financial planners are required to take into account the client's broader, long-term interests and likely future circumstances and consider whether their advice and recommendations will improve the client's financial wellbeing.
- In determining advice strategies in the client's best interests, a financial planner considers the client's existing circumstances including budgeting, home ownership and all income sources such as eligibility for social security payments. This is routinely completed as part of the financial planner's initial fact-finding process and during reviews of the client's financial plan. Home ownership and Centrelink benefits are key factors in determining the income and expenditure circumstances of the client. Budgeting strategies underpin the attainment of the client's financial goals.
- The legislated *Financial Planners and Advisers Code of Ethics 2019* applies to all advice provided to a retail client by a 'registered relevant provider'. The ambiguity in the law, particularly in relation to Standard 6 of the *Financial Planners and Advisers Code of Ethics 2019* and s961B of the *Corporations Act 2001*, results in financial planners avoiding the provision of scaled advice on these topics out of fear of ASIC/licensee/AFCA viewing it as non-compliant.
- Therefore, the provision of advice on these topics by a 'registered relevant provider' will incur the same regulatory costs as more comprehensive financial advice that includes a financial product recommendation, for example.

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

- The term 'advice' should only be associated with the provision of 'personal financial advice', which should be defined as a client centric professional service (not a product).
- The following existing terms and definitions should be removed from the law:
- Financial product advice
  - General advice
  - Personal advice
- The regulation of **'personal financial advice'** should include:
  - Professional standards
  - Individual registration obligations
  - Represents client's interest – advice in the best interests of the client
  - Appropriate disclosure and advice documentation
  - Can incorporate advice on financial product information if appropriate for the client and in the client's best interests
- Only 'registered relevant providers' permitted to make financial product recommendations under the provision of personal financial advice
- All 'personal financial advice' to a retail client must be provided by a 'registered relevant provider' who is qualified and operates under the *Financial Planners and Advisers Code of Ethics 2019*, including:
  - Intra-fund financial advice
  - Limited / scaled financial advice
  - Strategic financial advice
  - Financial advice with a product recommendation
  - Financial advice on either or both tier 1 and tier 2 products
- **'Factual information'** should be maintained.
  - Clear consumer warning – it is not advice, it is factual information (e.g., how salary sacrificing works)
- **'Financial product information'** should be defined in the law. The new term and definition should be drafted from the consumer's perspective of the type and intent of the information being provided and linked to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*. For example:
  - Documents – PDS, TMDs

    - Anti-hawking provisions
    - Represents product issuers interest
    - Clear consumer warning – it is not advice; describes the financial product; the individual is representing the provider’s interests
- A service provided by a representative of a product manufacturer with the aim of providing appropriate information about that entity’s financial products so a consumer can make an informed decision should:
    - not be labelled ‘advice’
    - be regulated through the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*
    - comply with the Target Market Determination for the product
    - comply with the anti-hawking provisions in the *Corporations Act 2001*
    - not be permitted to be provided with a recommendation or statement of opinion intended to influence the making of a decision about the product, unless under the provision of personal financial advice provided by a registered relevant provider
    - be restricted in the extent of the assistance provided
    - include a clear consumer warning that the assistance offered is restricted to the products of the product provider and does not include the consideration of the consumer’s financial circumstances, identify if that product (or type of product) will help meet the consumer's broader financial goals, or compare the product provider’s products with other products available on the market
    - require informed consent as to the limitations of the service being provided
    - recommend personal financial advice be sought by the consumer
    - be subject to the IDR / EDR requirements in the *Corporations Act 2001*

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

- No. This will only serve to further complicate the law, confuse consumers, and undermine consumer protection.
- The financial advice regulations, including the education and training standards, should be flexible so they can be scaled to the advice specialisation and subject matter sought by consumers.

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

- The introduction of the financial advice professional standards and the new product regulations in the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* create additional consumer protection frameworks to allow a clear separation of financial advice from financial products.
- The term ‘financial product advice’ should be removed from the *Corporations Act 2001*.
- The term ‘advice’ should only be associated with the provision of ‘personal financial advice’, which should be defined as a client centric professional service (not a product).
- The term ‘general advice’ should be removed from the law.
- ‘Financial product information’ should be defined in the law. The new term and definition should be drafted from the consumer’s perspective of the type and intent of the information being provided and linked to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*. A clear consumer warning must be given before the information is provided.
- While changing the name of ‘general advice’ is a positive step, this is not just about the label but also the defining of general advice and personal advice in the *Corporations Act 2001*, the current general advice warning, and the regulatory exemptions available to product issuers in the Corporations Regulations.
- Framing ‘general advice’ as advice plays into the behavioural aspects of financial decision-making by giving the impression that the ‘advice’ has a reasonable basis or is appropriate for the

client, and thereby exposes retail clients to decisions made under uncertainty about the regulatory framework for that advice.

- Under the current definitions of personal advice and general advice it is very easy for financial planners and other AFSL representatives, such as call centre operators, to inadvertently overstep the mark into personal advice. However, regardless of the legal boundaries of the personal and general advice definitions, it is the consumers' interpretation of the advice that ultimately determines whether they are being provided general product facts or information that relates to their own circumstances. Anecdotal evidence shows that it is common for individuals to interpret general advice as personal advice because it is relevant to their circumstances at the time it is provided.
- Commissioner Hayne seemingly shared the FPA's concerns about general advice as indicated in his summation of case study evidence presented at the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.[1]
- Under the current legislative framework there is 'factual information', 'financial product advice', 'general advice' and 'personal advice'. 'General advice' is factual information or opinion which includes a qualitative judgement about a financial product or a class of financial product that was intended to influence (or could have reasonably been regarded to have intended to influence).
- This makes 'general advice' confusing for consumers as it is not just a label but is a multi-faceted scenario dependent on a number of factors including:
    - The 'advice' provided – is it factual information about a product or the tax system, marketing material intended solely to sell a product, strategic information about financial matters, or is it just an opinion?
    - Who provides the 'general advice' to the consumer – is it an individual representing the interests of the product issuer, or a financial planner representing the interests of the consumer, for example?
    - The intent behind the provision of the 'general advice' – is it information intended to influence a person to buy a product (ie. the intent is to sell); or is it to help the consumer make an informed decision provided in the consumer's interest?
    - The context in which the information is provided – is the 'general advice' given in a setting which suggests to the consumer that it will be appropriate for their personal circumstances?
- Appendix 4 is FPA's feedback on alternative 'general advice' labels previously proposed by ASIC.[2]
- 'Financial product information' should be defined in the law.
    - The definition should be the provision of information only; it should not permit the provision of an opinion, recommendation or opinion intended to influence.
        - The Target Market Determinations (TMD) required under the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* should include clear and sufficient information about the suitability of the product for individuals with the common circumstances stated in the target market of the TMD. This could be provided as factual information for the individual to consider in comparison to their own circumstances.
    - The warning for 'financial product information' must clearly state that:
        - it is not 'advice', it is material which describes the financial product provided for the purposes of assisting any person to consider whether to acquire that product
        - the consumer's circumstances have not been considered in the 'financial product information' provided. The information is general and 'non-personalised' in nature.
        - the consumer themselves must consider whether the features of the product provided in the TMD are suitable for their circumstances, and
        - the 'financial product information' provided is about a complex financial product and the consumer should consider seeking professional financial advice provided in their best interest and

tailored to their individual circumstances by a registered financial planner to ensure the product meets their needs.

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?

- Yes. Targeted advertising is not advice. It is subjective information produced to entice consumers to implement a 'call to action' desired by the provider of the advertising material.
- Advice provided to an individual or single entity (or like) should be regulated as 'personal financial advice'
- Guidance/advice/assistance provided to groups of consumers who share some common circumstances or characteristics should be regulated as 'financial product information'. This type of information commonly uses subjective language to present selected facts in a favourable manner. Labelling and regulating such information as 'advice' is misleading and confusing for consumers.
- Financial product information is about a product or class of products.

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

- Financial coaches commonly provide personal financial advice to assist clients with managing their financial affairs including budgeting and cash flow. Budgeting advice, such as where, when and how to spend money, can have detrimental and long-term effects on an individual's financial well-being if it is inappropriate for the person's circumstances or not in their best interests.
- Financial coaches and influencers should be regulated under the 'personal financial advice on tier 2 products' regulations, with suitable requirements that reflect the risk of the advice provided to ensure all consumers are afforded the same protections.

Type, scope and scale of Advice

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

- As noted in the FPA's response to the Cost of Advice section, the FPA and other associations are currently collecting this information for the Review.
- For financial planners specifically however, this is generally not an issue. Personal advice is provided directly to an individual client(s); whereas general advice is only used in group communication formats such as seminars, webinars, newsletters and other forms of media. This ensures there is no issue with clients misconstruing when advice takes into account their personal circumstances and when it is intended for a group of consumers.
- This issue has traditionally been more of a problem for product manufacturers as seen through recent ASIC enforcement activity.

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

- As stated by ASIC:
    - *intra-fund advice refers to limited or scaled personal advice that a superannuation trustee can provide to a member about their superannuation account without an additional fee being charged to the individual member. The cost is typically covered by the collective administration fees paid by all members of the fund.*[3]
- The new Retirement Income Covenant obligations require super fund trustees to formulate, review regularly, and give effect to a retirement income strategy that sets out the trustee's plan to assist its members to achieve and balance three objectives:
    - Maximise retirement income,
    - Manage risks to the sustainability and stability of retirement income, and

- Allow some flexible access to retirement savings.
- Both the Covenant and the intra-fund advice model apply to 'members of the fund'; hence trustees can give effect to the retirement income strategy by assisting members under the existing intra-fund advice model. Expanding this advice model is not necessary to enable superannuation trustees to provide personal advice to 'members of the fund' about the fund's retirement income products.
- The intra-fund advice model should not be expanded to other financial products or to consumers who do not hold a superannuation account with the fund. It would be inappropriate to legislate cross-charging mechanisms to occur across financial products and services more broadly.
- It is appropriate to allow superannuation trustees to apply the intra-fund advice model to 'members of the fund' as all working Australians are compelled by law to invest in the superannuation system.

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

- As stated by ASIC:
  - *Generally, intra-fund advice refers to limited or scaled personal advice that a superannuation trustee can provide to a member about their superannuation account without an additional fee being charged to the individual member. The cost is typically covered by the collective administration fees paid by all members of the fund.*
  - *Accordingly, intra-fund advice is not a type of advice. Rather, it refers to the cross-charging mechanism, which can apply to both general and personal advice.*[4]
- Ideally, superannuation funds should make intra-fund advice available to all members to allow fund members to choose whether to seek that advice.
- However, the FPA strongly encourages Treasury to consider the cost to members for funds to offer intra-fund advice, versus the uptake of the advice service by fund members.
- Care should be taken to ensure that mandating trustees providing intra-fund advice does not create unintended additional costs for the majority of consumers for a service that is used by a minority of fund members.

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?

- It is important to consider this question in the context of the broader regulatory requirements that apply to superannuation products, including the new Design and Distribution Obligations.
- The new Retirement Income Covenant obligations require super fund trustees to formulate, review regularly, and give effect to a retirement income strategy that sets out the trustee's plan to assist its members to achieve and balance three objectives:
  - Maximise retirement income,
  - Manage risks to the sustainability and stability of retirement income, and
  - Allow some flexible access to retirement savings.
- It is appropriate that trustees must comply with the financial advice requirements, the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* and the anti-hawking measures:
  - *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* – supply-side intervention to address poor design and distribution practices at risk of causing consumer detriment. Superannuation trustees, as issuers, must make a TMD (for each financial product for which the trustee is required to prepare a PDS, other than MySuper products, defined benefit interests and interests in eligible rollover funds which are exempt).
  - Anti-hawking measures – to protect consumers from unsolicited contact from product providers and unsolicited offers of financial products, which often contribute to consumers purchasing products that do not meet their needs.

    - Financial advice requirements – to ensure advice is provided in the best interests of each consumer.
- The TMD must clearly describe the class of consumers that comprises the target market for the product and specify any conditions and restrictions on distribution. To satisfy the appropriateness requirements, the TMD must include:
    - a description of the likely objectives, financial situation and needs of consumers in the target market,
    - a description of the product, including its key attributes, and
    - an explanation of why the product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market.
- Importantly, ASIC's Regulatory Guide - Product design and distribution obligations 2020 (RG274) states the fundamental difference between the product information included in the TMD and personal advice:
    - *"The appropriateness requirements are objective requirements. They do not require an issuer to have knowledge about individual consumers. In contrast, personal advice involves consideration of an individual consumer's objectives, financial situation and needs (i.e. a consumer's personal circumstances)"* (RG274.65, page 26).
- The DDO appropriateness requirements set strong consumer protective requirements on the development of products and the information required to be disclosed in the TMD. A TMD should include:
    - a description of the likely objectives, financial situation and needs of consumers in the target market,
    - a description of the product, including its key attributes, and
    - an explanation of why the product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market.
- Hence, a quality and compliant TMD offers key financial product information that can be provided to consumers without the need for product providers to provide financial advice. That is, the TMD should include factual financial product information that clearly explains the key considerations for consumers to identify whether the product may be suitable for their circumstances, including in relation to retirement products.
- Superannuation funds' call centre representatives should be able to speak to consumers by providing financial product information based on the TMD and without the need for 'providing a recommendation or statement of opinion intended to influence a person in making a decision in relation to a particular financial product or class of products' – that is, financial product advice. This will ensure the information provided to consumers should meet the best interest obligations of the DDO.
- Consumers wanting a recommendation, or an opinion should be directed to seek personal financial advice.
- As the Covenant applies to 'members of the fund', trustees can give effect to the retirement income strategy by assisting members to seek personal financial advice under the existing intra-fund advice model.

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

- The ability of superannuation funds to provide personal advice to members where the cost of the advice is shared across the fund membership gives trustees a significant cost advantage in the advice market.
- As there is no consideration of the client's broader goals and financial position and recommendations are limited to the members existing fund interest, there are concerns as to whether recommendations are always in the best interests of the broader financial plan of the client.
- Intra-fund advice is a cross-charging mechanism whereby the cost is typically covered by the collective administration fees paid by all members of the fund with no (or a small) additional fee being charged to the individual member. Financial planners operate outside this mechanism and

charge a client directly for the advice services provided. Hence, the fees financial planners charge clients cannot be subsidised.

- This creates the perception that financial planners are expensive in comparison to the invisible fee charged by super funds.
- There must be transparency in all financial advice fees, regardless of the type of advice service offered or the business model under which the advice is provided.

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

- Yes. Personal financial advice is commonly sought by clients in the lead up to or during a 'trigger event', which can influence a client's financial attitudes and expectations. Some trigger events commonly occur at a certain age or life stage, while others may be more regular occurrences or even external to the client.

Table – Examples of trigger events that influence consumers' financial attitudes and expectations, and often result in seeking personal financial advice.

<table>
<tr><td rowspan="1">Common trigger events

(may occur at any age or life stage)</td><td colspan="4">A client may:
• achieve one or more financial planning goals
• have a change in attitude towards financial matters
• become anxious about their financial affairs – this could be influenced by an external trigger
• receive a tax refund / bill or bonus,
• receive an inheritance / windfall
• lose their job
• be given a redundancy
• change job and income
• become self-employed – starting or changing their own business
• start a business partnership – starting or changing business with someone else
• divorce or separation from a life partner
• lose their partner
• have a change in dependent
• get a pet
• change lifestyles e.g., hobbies / interests (which may be more expensive)
• have to deal with illness
• plan home renovations
• purchase a holiday house
• travel / holidays
• increase debt</td></tr>
<tr><td rowspan="2">Aged-based trigger events</td><td>20s to 40s

Career and family builder</td><td>40s to 50s

Mid-life</td><td>50s to 60s

Pre-retirement</td><td>65+

Retirement</td></tr>
<tr><td>• Buying a car
• Buying a home
• Getting married
• Starting a career
• Having children
• Increased debt
• Further study
• Change in career</td><td>• Children's education
• Family health care
• Becoming a carer of parents
• Thinking about future retirement</td><td>• Business / career exit strategy
• Employment payout
• Children move out of home
• Children get a job
• Paying off mortgage
• Assisting children to</td><td>• Children getting married / buying a house
• Grandchildren
• Relocating / downsizing / selling family home
• Considering aged care needs / moving into aged care</td></tr>
</table>

			• purchase property • Thinking about future retirement	
External / environmental trigger events	• Investment performance/economy • Changes in laws that may present new opportunities, cause confusion, or impact the existing financial arrangements, such as: o Financial advice regulations o Superannuation o Investment o Tax o Retirement income o Centrelink and social security o Product disclosure and development (particularly in retirement space) o Credit • Media coverage – that may raise questions or concerns for consumers			

- Outside of these events it can be challenging for consumers to identify all their financial needs that may fall outside of their current financial goals and that may be of value to them to consider. Even with the assistance of a financial planner, clients may struggle to identify medium- and longer-term financial needs as they may not be able to relate to the issues, trigger events and life stages that are beyond their current circumstances, interests and goals.
- The cost of providing holistic financial advice that considers the full range of issues that might apply to a client is substantial. The FPA is in the process of conducting a detailed 'Cost of Advice' study to collect updated data on the cost of providing advice for new clients, including a detailed breakdown of the costs of each stage in the advice process. This research will be provided to the Review in due course.
- Cost is a major obstacle to many Australians seeking financial advice. In particular, younger Australians are more likely to seek advice on a limited set of issues - for example, on the selection of an appropriate superannuation fund as they are starting a career – and would be prepared to pay a commensurate fee for that advice. Limited scope advice provides a valuable service to such clients.
- It should be noted for example, one of the challenges of intra-fund advice is that the scope of the advice is limited to that client's specific interest in that specific super fund. Where members have multiple funds, conflicting strategies and conflicting needs outside the super system, the limitations of intra-fund advice can lead to detrimental consumer outcomes. While it is beneficial for consumers to have access to cost effective (nil direct cost incurred under the intra-fund charging model) financial advice in relation to the compulsory superannuation system, there are many examples of where this has ultimately led to poor consumer outcomes due to the limitations created by the rules and sole purpose test. Fee transparency is critical to enabling consumers to make an informed decision about the intra-fund advice they are offered and receive.
- Whether the personal financial advice sought is holistic, intra-fund or limited in scope, the provider of the advice must:
  - be registered on the FAR as a relevant provider, and
  - meet the values and standards of the legislated *Financial Planners and Advisers Code of Ethics 2019*.
- The regulatory environment must be flexible to permit the financial advice profession to provide the advice services consumers need.

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

- The regulatory environment for financial advice is already and should remain scalable to allow the financial planner to use professional judgement to meet the advice needs of the client on a sliding

scale/continuum model. It should facilitate the provision of very simple advice for simple client requests, to more detailed advice in response to complex client requests.
- To this point however, there is a lot of regulatory uncertainty based on things like ASIC Report 515, action taken by the regulator and EDR schemes where inappropriate scoping has been identified but issues not clearly explained to the profession which has led to assumptions by the profession that it is not possible to scale advice. Licensees therefore take a conservative risk approach to allowing the scope of advice to be limited.
- Additionally, as noted above, because advice disclosure has traditionally been provided in a format which is unscalable and contains significant quantities of information designed to indemnify the licensee rather than provide advice to the consumer, it is difficult to economically provide limited scope advice to consumers.
- Whilst the current regulatory environment purportedly allows limited scope advice, the disproportionate risk involved for even the simplest piece of advice, makes it unsustainable and unviable to provide. For example:
    - Principally, a financial planner charging $5,000 per annum for 100 clients a year, develops a deep knowledge of their clients and only has a risk point of 100 different clients to receive their fee. This risk is reduced as the planner can afford to take the time to know almost everything about a client.
    - Whereas a provider who may deal with 1,000 episodic clients charging $500 has 1,000 opportunities a year to "slip up" in a huge compliance regime. The fee of $500 would not cover the cost of a holistic financial planner getting to know their client.
- Successful models ensure limited scoped advice is only provided to clients with appropriate financial goals and positions and can demonstrate that clients who are inappropriate for the service are referred to other services or other financial planning businesses.

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?
- Cost. The cost associated with providing limited scope advice is excessive for the service provided to the client.
- While the cost of providing holistic advice is still too high, it is more in line with the level of service the client receives.
- These costs are driven in the main by the legal obligations for providing personal financial advice.
- As recommended in the Key Themes above, the FPA has offered a number of recommendations which would assist in providing limited advice more economically, for example a quick win would be indexing the no SOA small investment exemption and extending it to advice on superannuation.
- Additionally, encouragement could be provided to ASIC to support innovative advice delivery methods like the Video SOA to significantly reduce the cost of producing advice which would make limited scope advice more economically viable.
- The FPA's 'Time and Motion' study will demonstrate the cost effectiveness of providing limited scope advice versus holistic advice.

Digital Advice

35. Do you agree that digital advice can make financial advice more accessible and affordable?
- Firstly, there needs to be a definition of what digital advice is referring to. There are three broad concepts which could be considered "digital" advice.
    - Firstly – there is what is generally thought of as "digital advice" which could otherwise be referred to as robo-advice. In reality, there is no robot and there is no advice. These tools

are automated product selection tools which run a client through a series of questions which will automatically make a product selection for the client. For clients who just want simple quick help selecting the right product, these tools provide an excellent service. But they don't provide advice in that the algorithms don't understand client's goals and objectives and assist the client to tradeoff between different goals to improve their financial position.
    - Secondly – there are digital tools which make the collection of data, analysis of strategies, selection of products, and documentation of disclosure obligations more efficient for financial planners through data feeds, calculators, databases and templates. These allow the creation of advice to take advantage of the efficiencies provided by automations and a single source of truth for data.
    - Thirdly – there is the digital delivery of advice to the client. Traditionally advice has ultimately been delivered to a client on paper-based technology (even if delivered as a PDF or word document as examples). In contrast, advice (the SOA) can be delivered in interactive documents with embedded charts, infographics, audio, video and interactive elements; in formats that range from paper-style, to presentation style, to web page style, to apps, to videos and (at this point) to an extreme in virtual reality experiences; and advice can finally be provided as a single point in time document, as an accumulation of advice over time, or as a live document which updates through data feeds and the clients changing goals and financial position over time.
- Secondly – while available for many years, there was also a marked shift in the process for engaging with the client during COVID-19 pandemic, namely the use of video, virtual and asynchronous meetings tools, rather than the traditional face-to-face (or at the extreme – telephone based) meetings undertaken by financial planners with their clients (i.e., digital advice meetings). This has opened up the ability for both clients and financial planners to move away from the previous geographical limitations that most financial advice practices previously operated under and therefore made advice more accessible and affordable to provide.
- In short, all of these three definitions of digital advice and additional digital meeting channels can significantly improve the accessibility and affordability of advice to clients, but more importantly improve the efficiency and engagement of the advice being provided. All of these are currently open to be used by financial planners under the current regulatory environment. Feedback from FPA members is that generally licensees are unwilling to allow their authorised representatives use alternate advice delivery methods, despite being legally allowable, because it doesn't fit in with their existing monitoring, supervision and compliance rules. This has significantly limited the uptake of "digital advice" (irrespective of which type you look at) to improve the accessibility and affordability of advice delivery.
- In noting this, there are still significant issues as highlighted above with the accessibility of data and the ability of digital systems to move data between them. It has also been difficult to invest in this kind of technology when most licensees are struggling to keep up with the regulatory change which has occurred over the last 5 years as the accessibility of new technology solutions and platforms have developed to the point where they could be mass implemented.

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?

- As noted above, there are a number of definitions for "digital advice" which could be used. For example, automated product selection tools are clearly better suited to consumers who are looking to make decisions on a single or limited number of investment decisions and will benefit from automated saving/contribution plans in a set and forget manner.
- On the other hand, when considering adult learning preferences[19] (visual [~65%], auditory [~30%], kinesthetic [~5%], auditory digital [1-2%]), only one learning style - auditory digital - has a preference to the way SOAs are traditionally delivered and makes up the smallest percentage of the population.

[19] FPA. The Future of the SOA – The four main internal learning systems. https://fpa.com.au/the-future-of-the-soa-the-four-main-internal-learning-systems/

- One clear preference consumers have is to be able to easily see how their finances are positioned when and where required. This significantly reduces a consumer's propensity to worry about their financial position. This is seen through the shift to provide consumers with "app based" access to internet banking and other financial investments. From this perspective, clients will benefit from an aggregated view of their financial position which their financial planner is in the ideal position to provide, particularly given this can be tracked against their goal achievement in an engaging and interactive manner.
- In terms of delivering SOAs, it needs to be understood what the benefit of an SOA is for the consumer. FPA research shows that consumers are primarily looking to reduce the information asymmetry[20] between their financial planner as a professional and they as the consumer of the advice service, and therefore have a preference to delivery methods which enhance their understanding and learning style preference, for example videos[21].
- In summary, all advice types will benefit from a move to digital first delivery as this is a more engaging, efficient and cost-effective way for advice to be delivered, is easier for clients to understand, and benefits from live data feeds which can show consumers how their financial position is tracking to their goals over time.

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

- Taking this question to define "digital advice" as automated product selection tools, it depends on the construction of the tool. In a like-for-like scenario, the benefit of a professional financial planner providing advice services under the *Financial Planners and Advisers Code of Ethics 2019* is that where a financial product is inappropriate or not in the best interests of the client to purchase, a professional financial planner will decline to provide advice or make alternative recommendations (be it strategies or products). Where a consumer has self-selected a product with an automated product selection tool, the quality of the tool will determine if it includes tests to recommend the client consider other strategies or products.
- To answer the question more broadly, a more engaging and informative advice delivery methodology which better assists the client understand their goals (including tradeoffs), financial position and the recommendations being provided, by providing content in their preferred learning style is going to reduce the risk for the consumer irrespective of who is providing the recommendations or the complexity of the advice being provided, because the client will always be in a better position to understand both the benefits and risks of the recommendations being provided.

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, there must be a technology neutral, provider agnostic, human or digital, regulatory environment under which advice is provided. Human financial planners have been relying on digital tools to assist in the provision of financial advice for over 20 years, be it spreadsheet-based modelling tools or SOA templates, to the more sophisticated algorithmic based tools available today to assist in advice delivery. From this perspective, both digital advice tools and humans must comply with the same professional obligations (in terms of the natural person responsible for the development and delivery of the advice be it a "programmer" or a professional financial planner) and the same obligation to ensure the algorithms or calculators are working and complying with all legal (advice provision and [financial products] technical) and regulatory rules and obligations. This is to ensure clients receive the same level of consumer protection irrespective of who is providing the services. The potential for conflicts and inappropriate advice provision remains, irrespective of whether the advice is provided by a human, a calculator or an algorithm.

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[20] FPA. The Future of the SOA – Initial client feedback. https://fpa.com.au/the-future-of-the-soa-initial-client-feedback/
[21] FPA. FPA SOAP Box Set – The Consumer View. https://youtu.be/3X-YpS9AQeU

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

- Again, it depends on the definition of digital advice provision being used. Broadly no, advice should be and can be of good quality irrespective of the provider or technology used to provide advice. There are some concerns (and clear examples) however, specifically in relation to automated product selection tools that there are no, or inappropriate mechanisms in place to decline to provide advice where the automated recommendations are not in the best interests of, or appropriate for the client. Because the client has generally self-selected the tool, there is little to stop the tool from always recommending a product, or that the recommended product may not actually be appropriate for the client due to the lack of robust information collection and goal/tradeoff considerations. Particularly in scenarios where the product will only get paid for the advice being provided through the investment of funds.

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

- In and of itself, no, there must be a technology neutral, provider agnostic, human or digital, regulatory environment under which advice is provided. Any changes required to better facilitate financial planning by a human would be of benefit to providing digital advice as well.
- In saying this, the FPA has previously expressed concern with the "regulatory sandbox" from both a product/advice development environment and from a consumer protection perspective and recommended significant improvements in this space. Additionally, as noted above, the lack of ASIC assistance and rulings makes it difficult and adds risk to the development of novel service delivery propositions. A more open and facilitative ASIC would broadly benefit the financial services industry, as well as the financial planning profession specifically.

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)?

- Yes, as highlighted in previous answers to this section.
- All advice provision should be the responsibility of an individual who meets the professional standards requirements and is a relevant provider irrespective of whether the advice is provided fully by a human, combined human and digital advice delivery, or fully through technology. The FPA has recommended that ASIC update RG105 to ensure that a registered, qualified relevant provider is responsible manager for all advice authorised AFSLs.
- Further, the FPA would point to both research which has demonstrated that clients have a preference for talking through their financial decisions and build better trust in their decisions with a professional financial planners' involvement[22]; and the relatively low take up of "robo-advice" even in mature, regulation lite robo-advice markets like the USA. US data shows consumers have entrusted under 3% of investible US assets with an average account balance of under US$2,500 to be "managed by" robo-advice services despite 10 years of hype and investment which indicates a low preference for this type of advice provision by consumers.

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

- All financial advice in Australia is complemented by technology already. Technology is used from everything from the CRM, to collection of information, to modelling and strategy development, to product selection, to SOA production and delivery, to client agreement, to implementation and

[22] Vanguard. Quantifying the investor's view on the value of human and robo-advice. https://advisors.vanguard.com/iwe/pdf/ISGHVD.pdf

finally reviews. There is, however, poor technology integration and automation due to a lack of investment and data standards across financial services more broadly.
- Where consumers prefer algorithmic delivery of advice without the engagement of a human, they should have access to this with the comfort that they are protected in the same way and advised in the same way as they would be by a human. As noted in previous responses however, there is little consumer demand for algorithmic delivery of advice and a preference to switch to human engagement with all but simple investment decisions.

Best Interest Duty

- The FPA is concerned that the issues paper poses questions in relation to the best interest duty obligations in the *Corporations Act 2001* and any impact on the quality of advice yet fails to consider the role and duplication of these provisions with the obligations individual financial planners must adhere to under the *Financial Planners and Advisers Code of Ethics 2019* (the Code).
- It is the individual financial planner practitioner that interacts with the client, holds a personal relationship with the client, and delivers the advice service to the individual client. That financial planner practitioner must use their professional judgement to meet the values and standards in the Code.
- Licensees put in place the behind-the-scenes processes to enable planners to meet the Code's requirements. Licensees do not have a personal relationship with the individual.
- The issues paper focuses on the provisions in the *Corporations Act 2001* that apply to the licensee.

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?

- Registered relevant providers must meet the *Financial Planners and Advisers Code of Ethics 2019*, which includes best interest standards that go further than the obligations in the *Corporations Act 2001*. Financial planners must use their professional judgement to ensure the client-planner conversations enable the planner to provide financial advice in the best interest of their client, in its totality, puts the client in a better position overall.
- Financial advice providers who are not relevant providers are not subject to the *Financial Planners and Advisers Code of Ethics 2019*. The safe harbour steps offer some additional consumer protection for clients of non-relevant providers.
- The FPA recommends:
    - 'registered relevant providers' be exempt from the safe harbour steps in the *Corporations Act 2001* as they must instead comply with the higher standards in the *Financial Planners and Advisers Code of Ethics 2019* (the Code of Ethics);
    - non-relevant providers should also be required to comply with the Code of Ethics
    - however if the law is not changed to oblige non-relevant providers to be required to comply with the Code of Ethics, the safe harbour steps should be maintained and non-relevant providers should be required to comply with these provisions.

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

- The safe harbour in the *Corporations Act 2001* creates a series of compliance type steps that the licensee must ensure its representatives adhere to when providing personal advice to clients.
- Licensee's compliance processes and systems are designed to show the advice provided on their behalf adheres to these obligations in the law.
- However, the standards in the *Financial Planners and Advisers Code of Ethics 2019* (Code of Ethics) apply directly to the individual financial planner practitioner and their services and professional interactions with each client. Planners are to use professional judgement to meet the

standards in the Code of Ethics. The Code of Ethics is an overarching requirement intended to go above and beyond the law.
- This creates a duplication of all the best interest obligations (including the best interests duty, appropriate advice obligation and the conflicts priority rule) for financial planners.
- The compliance-driven regulation placed on the licensee and professional judgement permission the Code bestows on the financial planner creates tension and confusion in the regulatory environment that impacts the cost of demonstrating adherence to the best interest obligations.
- The best interest duty and safe harbour steps in the *Corporations Act 2001* should not apply to registered relevant providers who must instead comply with the *Financial Planners and Advisers Code of Ethics 2019* (the Code).

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?

- Removing the safe harbour obligations for financial planners providing personal financial advice to retail clients would allow them to apply their professional judgement in the best interests of their client, as required under the *Financial Planners and Advisers Code of Ethics 2019*.
- It would remove the tension between the Act and the Code and clearly give financial planners legal permission to use their professional judgement in meeting the standards of the Code.
- However, licensees would also need to change their approach to planner oversight and remove compliance-based advice policies and procedures imposed on planners to meet the safe harbour steps, to be replaced with a professionalism approach based on financial planner professional judgement.
- Removing the tensions between the *Corporations Act 2001* and the *Financial Planners and Advisers Code of Ethics 2019*, and licensee compliance-based policies and the use of professional judgement, would reduce one element of the financial advice regulatory duplication and improve the accessibility and affordability of advice for consumers.

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?

- The standards in the *Financial Planners and Advisers Code of Ethics 2019* encapsulate and go further than the best interest obligations in the *Corporations Act 2001*:

Corporations Act 2001	***Financial Planners and Advisers Code of Ethics 2019***
s961B Provider must act in the best interests of the client	Standard 2: You must act with integrity and in the best interests of each of your clients.
s961G Resulting advice must be appropriate to the client	Standard 5: All advice and financial product recommendations that you give to a client must be in the best interests of the client and appropriate to the client's individual circumstances. You must be satisfied that the client understands your advice, and the benefits, costs and risks of the financial products that you recommend, and you must have reasonable grounds to be satisfied.
s961J Provider to give priority to the client's interests	Standard 3: You must not advise, refer or act in any other manner where you have a conflict of interest or duty.

- This creates a duplication in the best interest obligations that apply to 'registered relevant providers' via the licensing regime and directly to the individual practitioner under the *Financial Planners and Advisers Code of Ethics 2019*.
- The *Corporations Act 2001* should be amended to specifically include a provision that achieves the following intent:
  - a 'registered relevant provider' satisfies the duty in s961B, s961G and s961J as the relevant provider is required to meet the professional obligations in the *Financial Planners and Advisers Code of Ethics 2019*.

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. The FPA opposes applying the Design and Distribution Obligations (DDO) to financial planners as it ignores the higher standards of the financial advice regime and brings into question whether the DDO regime is fit-for-purpose.
- The application of the DDOs to financial planners ignores the requirement that planners must ensure their advice is appropriate for the client. This is a higher standard than the aim that products are 'likely to be' appropriate for consumers as set in the DDO.
- The DDO regime looks at consumers from the product perspective and the potential risk/harm posed to retail clients, as identified under the TMD, as a whole.
- In contrast, when providing personal advice, financial planners consider the appropriateness of each product recommendation in relation to that client's circumstances and as one part of that client's broader financial plan. The best interest obligations in the *Corporations Act 2001* and the standards of the *Financial Planners and Advisers Code of Ethics 2019* (Code of Ethics), oblige financial planners to undertake significant product research and comparisons to determine whether a financial product is appropriate for that client's circumstances. Under the Code of Ethics, the product must be suitable for the role it will play in the financial plan to achieve the client's immediate and longer-term goals and likely future interests. These obligations also require planners to clearly demonstrate that the client would be in a better financial position and that it would improve the client's financial well-being if the advice were followed. This will be different for each client of the financial planner.
- If the planner has recommended the product through the provision of quality personal advice in the best interest of their client, the planner has considered all risks of the product in relation to the individual client's circumstances and determined that the product is appropriate.
- ASIC's statistics show only 20 per cent of consumers seek personal financial advice. This means approximately 80 per cent of consumers access financial products via direct distribution channels. The requirement to monitor and assess the ongoing appropriateness of the target market determination was placed on product providers in the legislation to ensure consumers who are not protected by the personal financial advice best interest duty and the Code of Ethics, are monitored against the risk of harm from financial products.
- Sections 994B(5)(h), 994F(5), and s994F(3)(c) of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* create a loophole for product providers to obviate some of their product design and distribution responsibilities by allowing them to pass these obligations on to planners who service only 20 per cent of consumers, undermining the role of the new laws and putting consumers at risk of continued harm.
- This is also contradictory to the law as regulated entities who provide personal financial advice are exempt under the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* from the requirement to be consistent with the target market determination when distributing financial products. Financial planners are expected to report against TMDs, even though they are obliged under the *Corporations Act 2001* to meet their best interest obligations for each client, rather than meet the target market determination features indicated by the product provider.
- The DDO obligations ignore the legal requirements for financial planners to ensure the advice they provide including any product recommendations they make, are appropriate to meet their client's objectives, financial situation and needs, taking into account the client's broader, long-

term interests and likely future circumstances. Rather, it places the product providers TMD above these professional and licensing requirements by imposing additional requirements on planners to have in place systems to compare their recommendations to TMDs and report any inconsistencies.
- 'Registered relevant providers' should be exempt from the requirements of the DDO as it conflicts with the advice obligations in the *Corporations Act 2001* and the *Financial Planners and Advisers Code of Ethics 2019*.
- The FPA opposes mandating that financial planners be required to consider the TMD for a financial product before providing personal advice about the product. TMDs are one of many sources of product information which may be considered as part of the financial planner's product research and due diligence.

Remuneration

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

- The FPA had been calling on a ban on conflicted remuneration since the implementation of the FPA Remuneration Policy in 2009 because of the inherent conflicts created by financial advice providers being remunerated by products for distribution rather than for providing financial planning services in the best interests of the client.
- It is clear from both ASIC and AFCA data that the bans on conflicted remuneration and professional standards framework have significantly improved the conduct of financial planners. Both have publicly stated that there has been a change in the types of complaints and compliance concerns from general misconduct related to inappropriate advice, to issues more related with failure to meet the clients' services expectations (AFCA) and serious and deliberate misconduct (ASIC).

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

- Yes, as noted, both ASIC and AFCA have publicly stated and stated to Parliament that there has been an improvement in the quality of advice which has been contributed to by both FOFA and the Professional Standards framework.

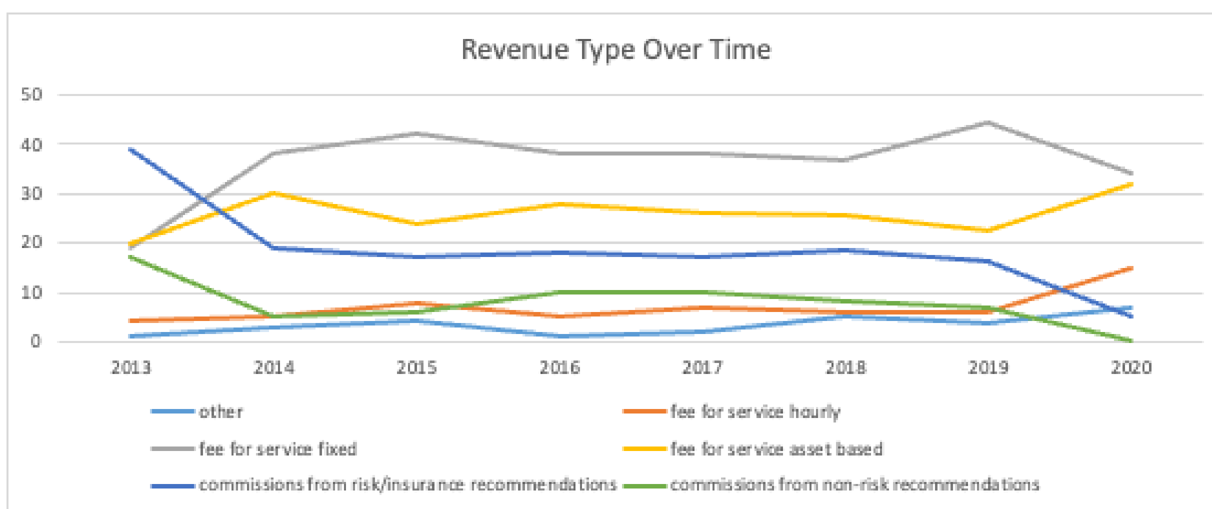
50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

- On a case-by-case basis, the ban has a significant effect on some financial planning practices. The FPA has data from members showing that at the time of the ban some practices still had the majority of their remuneration coming from commissions on investment products. But overall, FPA members only had limited conflicted remuneration left when it was fully removed at the end of 2020.
- The FPA on an annual basis surveyed members'[23] proportions of revenue from various sources with the following results – with particular relevance being "commissions from non-risk recommendations":

Revenue Type	2013	2014	2015	2016	2017	2018	2019	2020
other	1	3	4	1	2	5.1	3.6	7
fee for service hourly	4	5	8	5	7	6	5.9	15

[23] FPA Member Satisfaction Research 2013-2020

fee for service fixed	19	38	42	38	38	36.8	44.5	34
fee for service asset based	20	30	24	28	26	25.8	22.7	32
commissions from risk/insurance recommendations	39	19	17	18	17	18.3	16.4	5
commissions from non-risk recommendations	17	5	6	10	10	8.3	7	0



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.

- The FPA supports the removal of all exemptions other than in relation to life insurance commissions.
- In relation to life insurance specifically, Australians want financial advice to help them when they select life, total permanent disability and income protection insurance. These products involve complicated application processes, have complicated contractual terms, complicated and varied tax treatment (both in relation to premiums and benefits) and Australian's generally have little understanding of how to calculate an appropriate level of cover, particularly when cashflow may be impacted. However, the cost of this advice is often an obstacle and insurance advice is often most needed at a time of life in which people do not have excess cash flow with which to pay for it.
- The Life Insurance Framework (LIF) provides an opportunity for consumers to pay for financial advice indirectly, through commissions paid to financial planners by insurers. Many Australians would not be able to afford to pay for financial advice on insurance by paying an upfront fee and LIF commissions provide the only option for these consumers to access financial advice.
- As upfront and trail commission rates are closely regulated under the LIF, commissions no longer provide an incentive for a financial planner to recommend one insurance policy over another, and the combination of claw backs, the *Financial Planners and Advisers Code of Ethics 2019*, best interest duty and conduct oversight by the Financial Services and Credit Panel at ASIC provide considerable consumer protection benefits from inappropriate insurance policy sales. These measures have collectively deincentivised inappropriate cover recommendations and churning of policies and improved life cover outcomes for clients of financial planners as demonstrated by improvements in EDR claims through AFCA, conduct investigations by ASIC and the outcomes of

ASIC's review of life insurance advice and the few instances of regulatory enforcement taken off the back of this review.
- Importantly, the Life Insurance Framework has allowed consumers to choose how to pay for their life insurance advice in a manner which provides them with choice and flexibility and the professional standards framework has ensured there is clear disclosure and client acceptance of remuneration model.
- While the FPA believes Life insurance companies should provide consumers with flexibility in how financial advice is paid for by creating new fee collection options and new products that offer transparent and commission-free options, as highlighted below in our response to Question 53, there are significant issues with relying on the Group Super market and there has been a significant decrease in the advised life market over the period LIF has been in operation. This demonstrates that the increase in underinsurance has been impacted by the combination of policy measures (LIF and Protecting your super) to negatively affect the level of cover of everyday Australians.
- The FPA therefore supports the continuation of the existing exemption on life insurance commissions under the life insurance framework.
- We would note, we are unclear on the results of ASIC's life insurance advice review and are unable to comment at this point on whether the existing remuneration limits are appropriate or not. What we are able to comment on however is that many members have ceased providing life insurance advice to their clients at current commission rates as they do not remunerate the financial planner sufficiently for the work required to provide recommendations and implementation assistance to the client.

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

- There are exemptions which operate in the wholesale, sophisticated, institutional investment space where exemptions to a number of financial advice conduct and consumer protection leave consumers in vulnerable positions and can adversely affect the financial position of both consumers directly, but also where the investments are ultimately part of products sold in the retail space. In terms of direct sales however, there are many examples of where these conflicts have led to significant consumer detriment directly due to the conflicted remuneration arrangements.

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.

The retail advised life insurance market in 2021 was made up of:

- individual advised market made up 53% of premiums paid to the life insurers,
- group super market made up 37% (APRA Life insurance claims and disputes statistics).

Further, while the number of Australians who obtain cover through the group super market is higher, the levels of cover are substantially lower (on average $782k for retail advised Life (death) cover and $841k for TPD, versus $219k for Group death and $187k for Group TPD). Group super insurance plays an important role in ensuring that a greater proportion of the population have access to life insurance however it is rarely enough for average Australians in the event of an insurable event.

For example, financial planners will typically consider their clients debt and requirements to support the education and living costs of young children to reduce stress on the surviving spouse and minimise the risk of financial hardship. In comparison to the average group death and TPD levels noted above, the average mortgages in Australia are now over $500k meaning group cover would not be sufficient to meet the needs of the surviving family.

NMG Consulting do research on the level of new business volumes, and their research shows that retail advised new business volumes have declined from $638 million in 2016, before the LIF reforms

commenced, to just $317 million in 2021. This number is expected to fall further over the next few years, driven largely by the following factors:

- The significant exit of financial advisers from the profession and particularly those who are active in the life insurance advice market.
- The reduction in remuneration has made it economically unviable to provide life insurance advice to the bulk of the population.
- The APRA intervention in the Individual Disability Income Insurance market has led to substantial changes to Income Protection products, making it very difficult for generalist to come up to speed in terms of understanding these new products.

Overall, the number of financial planners who choose to provide life insurance advice has declined substantially and this has meant that it has become much more difficult for Australians to access life insurance advice.

The following table, based upon the APRA Claims and Disputes Statistics, highlights what has happened to individually advised clients in recent years.

Individual Advised Policy Holders – '000

Category	31-Dec-18	30-Jun-20	30-Jun-21	31-Dec-21	Cumulative % Change
Death Cover	1,994	1,717	1,653	1,621	-18.7%
TPD	1,177	996	968	972	-17.4%
Trauma	826	792	768	752	-9.0%
Disability Income	911	847	816	805	-11.6%

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

- The FPA does not provide a response to 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?

- As noted, the FPA does not support any existing exemptions other than in relation to life insurance commissions as per question 51.

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

- No. While the FPA supported the policy intent of ensuring advised clients consented to the collection of financial advice fees from their superannuation accounts and were provided the opportunity to give ongoing consent on an annual basis, the implementation of the measures by superannuation funds has caused significant additional paperwork to clients/members and a significant increase in administrative costs to financial planning businesses.
- The FPA called on Government, regulators and superannuation funds to create a consistent approach to fee collection authorisation processes for the benefit of the members who have undertaken financial planning services. Every super fund currently requires their own forms to be completed. There is no consistency in the information required to be provided. There are many funds which will not release fees unless the client's full statement of advice is provided which

creates a significant privacy risk for the client. And there are examples of super funds requiring consent renewal more frequently than on an annual basis, some as frequently as on a quarterly basis from the member.

- The FPA recommends that the review recommends the creation of a standardised information set through either the creation of a data standard for fee consent or at a minimum a standardised form which can be completed by clients and is accepted by all superannuation funds.

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

- As recommended above, the FPA recommends that the review recommends the creation of a standardised information set through either the creation of a data standard for fee consent or at a minimum a standardised form which can be completed by clients and is accepted by all financial product types.
- The FPA has attempted to work with the FSC on such an outcome and while the FSC has established guidance for members, there has been no consensus form established.
- Alternatively, the FPA recommends that products be required to accept any form of client consent provided by a financial planner which complies with the minimum legal requirements as set out in the *Corporations Act 2001* and ASIC legislative instruments.
- This is in contrast to the standardised AML/CTF ID Verification forms which have been accepted by all products for over 15 years and demonstrates the ability of such standards to be created when required.

58. How could these documents be improved for consumers?

- Ultimately, the creation of a data standard which allowed a client to securely and electronically sign a consent and be provided to the appropriate product using straight through processing would provide the optimal efficiency and transparency for both the client and the product providers.

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?

- At present, clients in a 12-month period will have the fees they will be charged for advice provided to them disclosed up to 10 times (minimum legal requirement is 7) and are required to provide consent up to 5 times (minimum legal requirement is 4) assuming the client pays for their advice through a single financial product. These include:
  - FSG (disclosure)
  - Engagement letter (disclosure)
  - SOA/ROA (disclosure)
  - Authority to proceed (disclosure and consent)
  - Ongoing fee agreement (disclosure and consent)
  - Product applications (disclosure and consent)
  - Ongoing fee consent form/s (disclosure and consent)
  - Fee disclosure statement (disclosure)
  - Ongoing fee agreement renewal (disclosure and consent)
  - Ongoing fee consent form/s (disclosure and consent)
- While not all of the documents listed above are legally required, the above list is the standard required of most financial planners by their licensees and products to collect fees. This causes clients significant confusion and administrative burden and in a regulatory environment which combines consumer protections against fee for no service in the forms of:
  - the professional standards regime code of ethics,
  - remediation obligations under the Royal Commission recommendation implementation,

- availability of AFCA, and
- discipline through the FSCP.

- The FPA recommends that at a minimum, the requirement for additional consent forms to the ongoing fee agreement and renewal adds little additional consumer protection benefit for a significant administrative cost on both the financial planning business and the client.

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

- The FPA will provide this data as part of the Coredata 'Cost of Advice' research.

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?

- Feedback from FPA members and evidence provided through forms demonstrates that superannuation trustees in particular ask for significantly more information, and in many cases copies of the client's SOA before accepting the client's fee consent authority.
- Non-super products in general require less additional information and are often more flexible in their approach to non-product created consent forms, but not in all instances.

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?

- The FPA does not offer an answer to this question but would observe the tone of the joint ASIC and APRA guidance to superannuation trustees in relation to release of financial advice fees which are recommended under the professional standards and discipline framework and consented to by the member.

Disclosure

The financial advice disclosure and documentation framework should be updated to ensure it is designed with clients' best interest at the fore and demonstrates the advancement of the profession.

To achieve this, it is suggested a separation of what is required to be disclosed to the client to meet regulatory and consumer protection requirements, and the documentation of the financial advice. This aims to improve the understandability and client engagement of the documentation, and therefore the client's understanding of both the financial planner/client arrangement and the financial advice.

However, there must be flexibility in the requirements to allow for the variety of business models providing financial advice and to meet the needs of clients seeking limited scope advice.

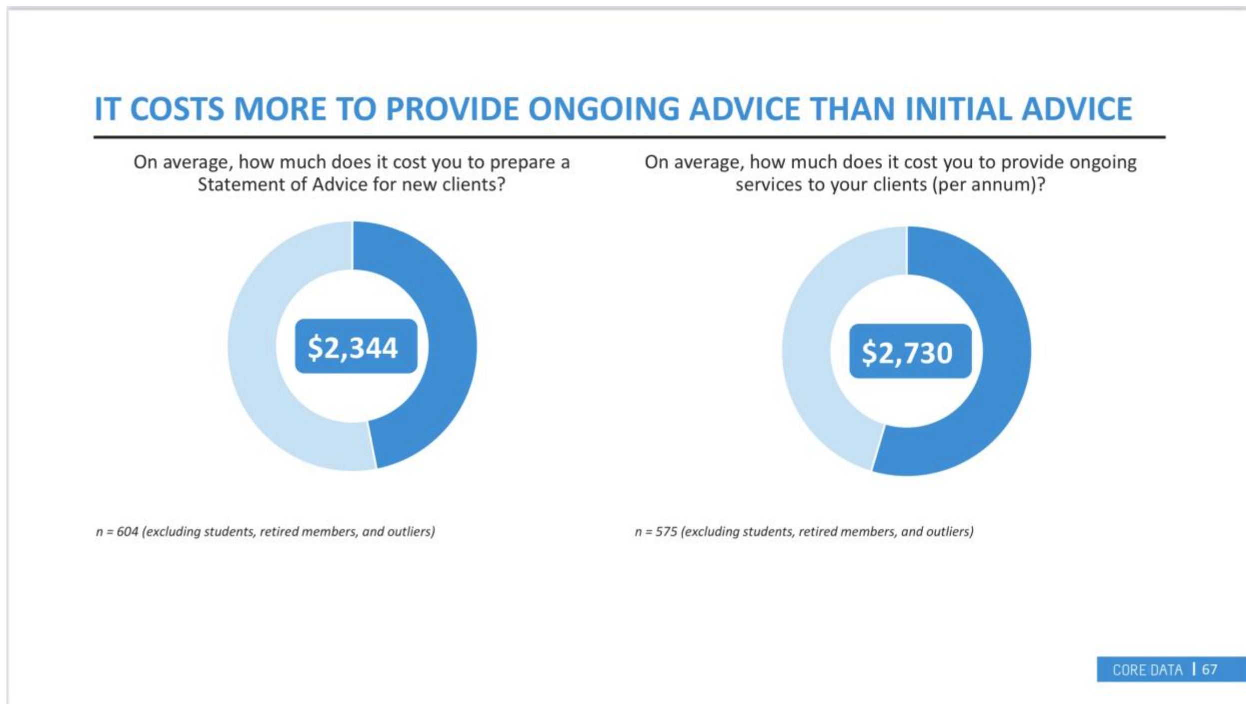
63. How successful have SOAs been in addressing information asymmetry?

- The success of SOAs in addressing information asymmetry between the client and their financial planner has been restricted by their size and the addition of generic and legalistic content requirements as interpreted by licensees to mitigate risks around consumer complaints and regulator action. Clear, concise and effective has been ignored for the perceived protection of 100 pages of mainly generic statements which don't address the client's goals and objectives.
- Combining in one document to the client the disclosure of information to meet regulatory and consumer protection requirements with the documentation of the financial advice stifles the readability of the SOA and subequently limits the ability of clients to understand the information being provided.

- The FPA has provided guidance to members on the use of both digital[24] (including a combination of scalable text, infographics, graphics, icons, video, audio and other engaging elements) and video only[25] (recording of advice delivery meeting covering regulatory requirement) formats to deliver SOAs to address the information asymmetry in a legally compliant document.

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

- The FPA is in the process of conducting a 'Cost of Advice' study which will provide a detailed breakdown of the cost elements of providing personal financial advice to a retail client. Existing data collected by the FPA shows the cost to produce an SOA is in 2020 was $2,344, while ongoing advice cost an average of $2,730.



Source: FPA Member Satisfaction Research 2020, Oct 2020.

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?

- This question highlights the muddled purpose of the SOA.
  - The SOA is the output of the advice process. The primary purpose of the SOA should be to help the client make an informed decision about the advice. However, due to the advice requirements, the SOA has become the advice presentation, a compliance document, and a disclosure document.
  - Streamlining, simplifying or making the SOA and ROA requirements more principles-based will not reduce compliance costs.
  - As discussed above, if the duplication of the financial advice requirements in the law with the *Financial Planners and Advisers Code of Ethics 2019* is not addressed, the cost to provide financial advice will likely not improve.

[24] FPA Future of the SOA Report. https://fpa.com.au/the-future-of-the-soa/

[25] FPA SOAP Box Set – Video SOAs (to be provided separately to Treasury)

- At a high level, the legal requirements should permit greater use of incorporation by reference and not repeat requirements of content already included in the PDS, FSG, or service agreement/letter if one is used by the financial planner.
- Disclosure must be scalable and in a form that best provides the information a client needs to understand advice in their best interests. Where advice can be provided over the phone and sufficient record of the advice be provided to the client to support their understanding with simple generic forms of additional information, the current requirements of an SOA should not be required.
- In summary, a shift to outcomes-based regulation to ensure the client understands the advice provided and is given a document which educates and informs the client in as much or as little detail as required would significantly improve the documented disclosure of advice from the current input (i.e. specific inclusions) based regulation required today.

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?

- As discussed in the first section of this submission, the FPA agrees with the ALRC's view that history has shown that every financial advice regulatory reform has layered additional requirements on top of the existing obligations, without removing or simplifying how the obligations work together.
- The SOA is a symptom of the historic development of the advice provisions in the *Corporations Act 2001*. In practice, the purpose of the SOA has become muddled as it tries to meet the competing objectives of the client, financial planner, licensee, regulator and the government.

  Key objectives of disclosure and advice documentation

  - For the client
    - Understand the relationship with planner
    - Understand and agree on services, time involved, and costs
    - Understand what client's responsibilities are / what they are committing to
    - Feel comfortable that the planner understands them and what they are wanting
    - Feel comfortable there are protections
    - Understand the advice process
    - Feel confident that there is transparency in the relationship and the services they will are receiving – no surprises!
    - Understand the advice and feel confident about the next steps
  - For the financial planner
    - It helps the client understand the advice
    - Facilitates positive client-planner relationship
    - Protect themselves from audit / regulator issues and potential future complaints
    - Effective and efficient, not onerous or costly
    - Enables evidence of the 6 steps in the advice process undertaken to be maintained in an efficient manner on file and provided to the client on request (as per accountants)
    - Utilise incorporation by reference
      - Maybe client directed - Could be included in first discussion – what information does the client want included in SOA?
      - Diary notes still time consuming – technology helps
  - For the regulator and licensee
    - Compliance document
    - Shows planner has not breached the law or licensee policies
  - Government
    - Consumer protection
    - Affordable advice
    - Accessible advice
- The SOA has become a disclosure document, compliance document, and client advice document. The result is lengthy SOAs that do not meet the needs or expectations of consumers.

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

- ASIC states:
  - *The SOA, among other financial advice disclosure obligations, aims to ensure that your clients receive good quality advice and are able to make informed decisions.*[6]
- The Tax Practitioners Board suggest (but do not mandate) a written agreement with the client setting out the terms and conditions of the engagement prior to services being delivered. Completed taxation documents containing relevant detailed client information is an example the output documentation provided by a tax agent to the client. Working papers that assisted the tax agent formulate the taxation document remain on file and are audited.
- In line with the TPB's approach, the FPA recommends consideration of the following personal financial advice disclosure and documentation framework. The aim of this framework is to make documentation more understandable for clients. It is doubtful that this change will have any bearing on the cost of advice as it relates only to the presentation of documentation and does not change the legal requirements or work involved in developing the advice.

  Documentation requirements guiding principles:

  - Must be client focused.
  - Should be flexible and scalable to cater for different types of financial advice and various business models.
  - No duplication in the information provided to the client - maximise incorporation by reference and be client focused.
  - Consolidate the number of consent forms required to be signed by the client into one or two forms that are accepted by all parties (including product issuers).
  - 'Documents' permitted to be given in a format selected by the client, including using technology.

  Documents to be given to the client:

  - **Financial Services Guide (FSG)** - disclosure information about the corporate entity
    - Generic disclosure
    - As per the requirements in RG175 – or amended if improvements can be made
    - Remuneration – e.g., fee schedule and fee methodology
    - Conflicts of interest
    - Disclosure of lack of independence
    - Service entity is authorised / competent to provide
    - Information about other documents to be provided to the client
    - Dispute resolution
    - Compensation arrangements
  - **Service agreement – Best practice only, not compulsory - initial and ongoing**
    - Specific disclosure about the planner/client engagement
    - Does not repeat information contained in the FSG
    - Disclosure specific to the services to be provided to the client
      - Clearly defined scope that is appropriate to the subject matter of the advice
      - Scope of advice engagement
      - Fees/remuneration for advice services to be provided -
        - Fees for initial advice
        - Fees for ongoing service if required
      - Timeframe for the provision of services
      - Third parties likely to be involved in the provision of the service
      - Privacy
        - disclosure of client information and use of it by third parties
        - Record keeping
        - Client consent to receive documents electronically

        - Client consent - client provides consolidated consent in one form for:
            - services to be provided
            - planner remuneration
            - advice fees to be paid through product – this consent to be accepted by all product providers and platforms
            - authority to collect information
            - AML forms
    - Include any ongoing engagement – services and costs
    - To be given prior to the provision of financial advice
- **Financial Advice**
    - Advice document (not disclosure)
    - Does not repeat information contained in the FSG or service agreement
        - Simple brief statement of incorporation by reference
    - Sets the advice
        - Scope - simple brief statement of the scope and of incorporation by reference
        - Client's relevant circumstances
        - Prioritised, specific and measurable goals and objectives
        - Strategic and product recommendations appropriate to the client's circumstances
            - Reasons why advice is in best interest of client
            - Benefits/disadvantages of advice
            - Product fees (if applicable)
                - Does not repeat information in the PDS – incorporation by reference
                - PDS to be given to the client at the time of the advice (if applicable)
        - Consideration of the impact of the advice
            - Tax or social security consequences
            - Broader long-term interests
            - Acting / not acting on advice
        - Authority to proceed
            - Fees to implement advice recommendations
            - Client consent to implement advice as presented
    - Financial plan is potentially a 'working document' updated overtime for:
        - Client review
        - Further advice
        - Changes in client circumstances
    - Easily maps to the features of quality advice measures.
    - Is scalable and provides as much or as little information as required by the client to understand the recommendations which have been made.

<u>Working papers - to be kept on client file</u>

- Fact find – relevant info only in SOA
- Alternative comparisons of products/platforms on file – clients want to know it has been done but not the detail of the information. This is confusing to them. The financial plan should focus on the advice and recommendations and why it benefits them
- Evidence that the planner has met the standards in the Code of Ethics and used professional judgement.
- Client consent.

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

- All advice documentation should be flexible and scalable to cater for different types of financial advice and various business models. Further, professional judgement should be used as to where the best provision of information is documented for the client rather than specifying it inclusion in specific documents.
- The FPA has worked with ASIC, licensees, compliance experts, lawyers, technology providers, financial planners and consumers to develop and encourage members to provide both digital[26] and video-based[27] statements of advice to their clients given ASIC's technology neutral regulation of advice disclosure.
- In saying this, a large part of the reason financial advice disclosure has become unwieldy relates to the prescriptive rules-based disclosure obligations. Simple advice should be able to be provided to clients simply without the need to produce expensive disclosure documents allowing a professional to diagnose a strategy and make a recommendation to solve the client's financial advice need.
- This requires a shift from prescriptive rules-based regulation to outcomes-based regulation. In this case ensure the client has sufficient, but not more, information to understand the recommendations including risks and make an informed decision on the right course of action for themselves.

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?

- On one hand yes, ASICs guidance was both clear and welcome. However, feedback received from FPA members indicates that very few licensees allowed the ROA measures to be used under the COVID relief and subsequently. The feedback suggests that licensees were unwilling to make short-term amendments to compliance obligations, particularly in an environment where there was already significant regulatory change being undertaken, uncertainty around the operation and time frames the measures would be in place, and the general disruption caused by lockdowns and stay at home orders which required significant amendments to the operation of financial planning businesses in general.
- Additionally, the culture of fear caused by regulatory enforcement being at odds with regulatory guidance around the provision of an incorrect disclosure document, or insufficient information in the document, has led in many instances ROAs to be nearly as long and costly to produce as an SOA.

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

- Yes. The coronavirus pandemic was an unprecedented event that significantly impacted all Australians, all facets of life, and all businesses. The financial planning profession was no exception.
- Important lessons should be learned from the pandemic to ensure the regulatory landscape can respond quickly to future crises that impact a large number of consumers who need to act quickly to protect their financial affairs. This includes situations that have a high impact on a large percentage of consumers in a small community such as natural disasters, as well as more widespread crises.
- The following relief should be made permanently available for financial planners to provide advice to clients to act quickly when a crisis occurs impacting a large number of clients:
  - targeted relief to financial planners to allow a Record of Advice to be given to existing clients, instead of a Statement of Advice, in certain circumstances
  - flexibility in the timeframe for providing an ROA/SOA to clients needing time critical advice

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[26] The Future of the SOA. https://fpa.com.au/the-future-of-the-soa/

[27] FPA will provide directly to Treasury.

- Relief from the Fee Disclosure Statement (FDS) and renewal notice obligations, such as ASIC's COVID no action position
- Clarity on the legal ability to accept client consent by electronic means, such as electronic signature, video meetings, verbal consent by phone
- Certainty that customer due diligence procedures, such as client identification verification for product providers for DDO and AML purposes, can be completed using electronic means.

Accountants

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?

- Professionals in financial services should be able to provide advice to their clients on any matter they are competent in. From this perspective, where an accountant has demonstrated and been assessed through education or experience as competent to provide financial advice on any aspect of a client's financial position, they should be able to. This extends from tax, business, trust structures through to classes of financial products and financial products. The same goes for all providers of financial advice in relation to tax, business, credit and financial advice.
- There are two issues limiting this currently:
  - Firstly, the education standards which only assess competencies through education.
  - And secondly, the AFSL requirements which are not fit for purpose for the provision of professional services to Australians.

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

- Exemptions should not be granted (as per Royal Commission recommendation 7.3). The entry, registration, conduct and consumer protection laws and regulations in relation to financial advice provision should be recast in light of the professional services being provided by financial planners to their clients. This is a direct professional service – which while supported by licensees – is a trust and fiduciary relationship between the individual financial planner and their clients.

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?

- It is not possible to answer this question without understanding the proposed model under which the exemption would operate.

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?

- The FPA has no evidence in relation to the operation of the limited license regime, but feedback suggests most limited AFSLs have been terminated which would suggest it has been ineffective in its intent.

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

- The FPA provides no response to this question. However, we do note we have provided a significant number of SMSF set up schemes to ASIC over the last few years which would suggest neither the limited, full or professional standards under which accountants operate are having a significant impact on the set up of or advice on SMSFs more broadly. This is a significant consumer protection concern given the risks, knowledge, skill and governance required by Australians to compliantly run their own SMSF.

Wholesale/Sophisticated 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. Informed consent should be required for a client to be treated as 'wholesale', with an opt-in requirement to reconfirm consent every two years.
- Wholesale clients are permitted to access more complex, sophisticated and higher-risk financial products and strategies. Current advice, disclosure, and consumer compensation requirements do not apply to the provision of financial advice to wholesale clients.
- Practitioners who provide personal financial advice to wholesale clients only are not required to meet the standards in the Code of Ethics. The Code applies to 'registered relevant providers' who are practitioners authorised to provide personal financial advice to retail clients.
- Many individuals who lack the necessary knowledge, understanding and experience of financial matters now fall into the definition of a wholesale client putting them at risk of being inappropriately classified as wholesale clients and unprotected by the law.
- There is currently no consent required by the client to be treated as a wholesale client and so no knowledge is required as to what the client is forgoing in terms of protections afforded to retail clients, regardless of the client's level of financial literacy. This results in greater risk being borne by the client not only due to the lack of retail protections, but as the products offered to wholesale clients are often riskier and time sensitive.
- The *Financial Planners and Advisers Code of Ethics 2019 Explanatory Statement* defines informed consent as "consent requires that the client understands and agrees to the arrangements. You will need to be satisfied of this and have reasonable grounds to be satisfied" [para 43].
- The informed consent should allow the financial services provider to be satisfied that the client understands the following matters, particularly in comparison to if they were treated as a retail client:
    - the disclosure documents the client will not receive.
    - restrictions on accessing dispute resolution schemes - consumer protections and compensation through AFCA and under the new breach reporting regime do not apply to wholesale clients.
    - the requirements of the *Corporations Act 2001* that the representative does not have to comply with.
    - the *Financial Planners and Advisers Code of Ethics 2019* does not apply unless the provider is a relevant provider also providing advice to retail clients.
    - the client has the requisite financial literacy and experience to make suitable financial decisions and understand the risks associated with the products available to wholesale clients.

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

- Yes. The following changes should be made to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client:

Sophisticated investor / wholesale client warning

- A sophisticated investor / wholesale client warning, clearly and specifically detailing the consumer protections that will be forfeited as a wholesale client, is to be provided prior to informed consent being given and the provision of a financial service.
- This warning, to be provided to clients prior to advice being provided / investing in a product should state:
    - Products offered to wholesale clients are typically more complex and maybe associated with higher risks.
    - It is assumed the client has the requisite financial knowledge and experience to understand the associated risks and products

  - The protections associated with being classified as a 'retail client', such as consumer redress and compensation through the Australian Financial Complaints Authority (AFCA) are not available to wholesale clients.

Consistent regulatory requirements across all financial services

- The *Corporations Act 2001* should be amended to ensure consistency between Chapters 6D and 7, so the wholesale test is applied uniformly across all financial products and services and securities.
- It is important that financial planners, brokers, intermediaries and issuers of securities are all operating from the same classifications and a client defined as 'wholesale' would be classified as such across all products and services.

Professional and ethical obligations

- Financial planners who are not relevant providers should be compelled to comply with the professional and education obligations that apply to financial planners providing advice to retail clients (relevant providers). The professional and education standards should apply to providers of financial advice to wholesale clients.
- The *Financial Planners and Advisers Code of Ethics 2019* only applies to those financial planners authorised to provide personal advice to retail clients ('relevant providers'); and the professional standards relating to education and training also do not apply if the financial planner is not a relevant provider.
- Hence, the professional and education standards do not apply to financial planners advising those investors that typically can access more complex, sophisticated and higher-risk products and strategies as a sophisticated investor / wholesale client. This puts these clients at significant risk of harm when the community expects a certain level of professionalism, ethics and education from their advice provider.
- Ultimately the provider of a wholesale recommendation should consider the sophistication and understanding of the client to make the investment and be accountable if and when it is shown that the client was not.

Restrictions on certain products

- The *Corporations Act 2001*/law should continue to treat individuals as retail clients for the purchase of general insurance products, superannuation products, RSA products and traditional trustee company services.
- Currently wholesale clients cannot be advised by wholesale advisers to buy, hold or sell and what to do with their retail super. Allowing superannuation and associated contribution strategies/ recommendations to be provided to individuals as wholesale clients may have significant unintended consequences for individuals' superannuation assets, including in relation to mandatory contributions. This should continue to occur under the regulatory framework for retail client personal advice to ensure consumers are appropriately protecting their retirement assets and being advised under the *Financial Planners and Advisers Code of Ethics 2019*.

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. In addition to the response to question 58, the advice provider should also be required to explain to the client why they are being classified as a wholesale client / sophisticated investor and the requirements the client satisfies to be classified as such.

- The FPA acknowledges the Term of Reference 6.3 states that the Review will not make recommendations on:
    - *6.3 Changes to the definitions of 'retail client', 'wholesale client', and 'sophisticated investor', including the income and asset thresholds*
- The lack of disclosure and conduct obligations that apply to services provided to wholesale clients / sophisticated investor puts clients at risk of inappropriately being classified and treated as wholesale, particularly consumers with a lack of the necessary knowledge, understanding and experience of financial matters, giving them access to more complex, sophisticated and higher risk financial products and strategies. This risk is facilitated by the income and asset thresholds for 'wholesale clients'.
- At the time of the implementation of the wholesale asset/income test in 2002, only 1.9 per cent of the population were eligible to be classified as wholesale clients. This figure has risen to 16 per cent in 2021 (3.25 million individuals) and if unchanged could rise to 29.1 per cent of the population by 2031 (6.78 million individuals) and by 2041, 43.6 per cent of the population (11.5 million individuals).[7]
- Due to the inclusion of a client's property (such as the principal residence) and a general increase in earnings over the years, with no increase in the legislated thresholds for client classification, many individuals now fall into the definition of a wholesale client, that would not have been the case at the time of the original drafting the legislation.
- The Review is urged to make a finding (in absence of a recommendation) that the income and asset thresholds for 'wholesale clients' and 'sophisticated investor' are woefully inadequate and should be reviewed to minimise the risk of consumer harm:
    - Amend the net assets test:
        - bring in line with the general Transfer Balance Cap (TBC), currently $1.7 million and associated indexation of this. Application of the TBC limit to the assets test should be to the individual (e.g., $1.7m); or double the TBC limit (e.g., $3.4m) for a couple.
        - exclude the net asset value of the home, and
        - exclude the value of a non-commutable defined benefit pensions/income streams.
        - determine (through consultation) appropriate transitional arrangements for existing clients being treated as wholesale
    - Increase the current income threshold to $350,000, indexed in line with AWOTE when the transfer balance cap adjusts and increased by $5,000 increments, and defined as 'adjusted taxable income'[8].
    - Increase the product value test from $500,000 to $1 million and clarify (through consultation):
        - whether the test should include the amount advised upon versus the amount invested
        - separate treatment for members of a couple, or joint investors
        - treatment of advice provided at different points in time.

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

Licensees, Professional Associations and Regulators

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?

- Licensees have tried their best to develop an efficient advice process within the constraints of the current confusing and rapidly changing regulatory regime. No business deliberately sets out to create inefficiencies and additional cost drivers.
- The challenges faced include onerous disclosure requirements, industry fragmentation (~2,000 licensees) and varying levels of capability to solve an issue that requires a re-write of the rules to properly solve for.

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?

- Outside of advocacy on behalf of members, the FPA assists its members in a number of ways to provide quality advice to their clients through best practice guidance, responding to enquires, and online member forums, as well as events, CPD and training opportunities on key issues, emerging risks, and regulatory reforms and requirements. Without providing a comprehensive list, the FPA has assisted members with the following initiatives:
  - FPA Code of Professional Practice
    - Ethical principles
    - Practice Standards
    - Rules
    - Contractual obligation with members to adhere to Code
    - Independent Conduct Review Commission to hear consumer, member and FPA complaints against members for alleged breaches of the Code.
  - FPA best practice guidance
    - Financial Planners and Financial Advisers Code of Ethics Information Hub
    - Understanding the FASEA Code of Ethics
    - Life Risk Advice Guide – Providing life risk advice under multiple codes
    - Mapping FinTech to the Financial Planning Process – Why FinTech is not a threat
      - Technology buyers guide
      - Advice process mapping and cost tool
    - Breach Reporting Obligations
    - Complaints handling obligations
    - Design and Distribution Obligations
    - Reference Checking
    - Ongoing fee arrangements
    - Best Practice Guidance – Putting your clients first
    - Taking other steps – Best interest advice in a strategic world
    - Delivering Excellence – Further advice solutions for a superior client experience
    - File Note Guidance – The importance of completing file notes
    - Fee for Service Toolkit
    - A guide to bulletproof financial planning (Future of Financial Advice reforms)
    - Future of Financial Advice Easy Reference Guides
    - Future of Financial Advice FAQs
    - Further advice guide
    - Example financial planning dashboard – Client review
    - TASA – A guide for FPA members
    - Prepare for TASA commencement fact sheet series
    - FPA Policy Platform - Affordable Advice, Sustainable Profession
    - AML/CTF
      - FPA / FSC Guidance note
      - FPA / FSC FATCA and CRS Guidance
      - FPA / FSC Customer Identification Forms (12 forms in total)
    - Member guidance on Managed Discretionary Accounts
  - Federal Budget Wrap (Annual)

- COVID-19 regulatory relief and Government rules portal
- Shortform Example SOAs:
  - Shortform SOA Guide
  - Retirement strategy
  - Savings plan
  - Transition to Retirement (TTR)
  - Life risk
  - FAQs
- Modern Disclosure:
  - The future of the SOA report
  - FPA SOAP Box Set – Video SOA production
- Elder abuse information hub (online)
- Other resources to help FPA members to understand and implement policy reforms:
  - Fact sheets
  - FAQs – regularly updated
  - Website information
  - Webinars – 60 hours of FPA delivered webinars in 2020/21.
  - Weekly newsletters
  - Money and Life magazine – monthly magazine publication covering best practice
  - Money and Life Professionals – fortnightly email newsletter covering best practice and thought leadership
  - Alerts for significant and urgent policy and regulatory announcements
  - Online forum - FPA Community is a secure, online discussion forum for FPA members to connect, collaborate and communicate with their peers. FPA Community is also our main channel for seeking member input into policy submissions and consultations. It also provides a platform for members to ask questions, start a discussion or share information. In the 2020/21 financial year, 6,737 members were active on FPA Community, with 2,384 discussion threads and over 10,900 discussion replies posted. Most threads relate to regulatory requirements and changes, and practical issues members may experience in relation to meeting their obligations.
- Continuing Professional development (CPD) - Each year, the FPA provides a comprehensive program of CPD via online learning, webinars, podcasts, events and articles. This program is made available through our online FPA My CPD portal. Our 2020/21 CPD webinar series enabled FPA members to access 56 plus hours of free online learning sessions across practice management, technical, regulatory and professional value capabilities. We also offer a CPD accreditation service that provides independent evaluation and accreditation of professional development activities outside the FPA, according to our CPD Policy and Accreditation guidelines. In 2020/21 we accredited 2,341 hours of CPD for the profession. In addition, our CPD partners accredited another 1,000 plus hours of CPD.
- Professional Year Tool - The FPA provides support to members and businesses conducting the Professional Year standard that all new industry entrants are required to complete before they are qualified as a financial adviser. To help members and businesses create and deliver a comprehensive training plan for the Professional Year, the FPA offers a Professional Year (PY) tool to simplify and streamline the PY process. The PY tool has helped to fill a gap in the market and includes a workflow tool for creating and tracking a PY training plan, as well as mentoring and coaching resources. The PY tool offers licensee, supervisor, and candidate views of each step on the PY pathway and a completion certificate is created automatically when a supervisor confirms all stages are complete for each quarter.
- Member enquiries - During the 2020/21 financial year, the FPA assisted members by responding to over 8,000 member emails and 5,000 member calls
- Ethicall - Ethi-call sessions are a private one-hour call with an ethics counsellor that offers independent and objective guidance to help you work through an ethical decision.

The counsellors are experienced in providing guidance to financial planners. This service is free and is provided and funded by The Ethics Centre, supported by the FPA.

- Events
  - Annual National Congress – regulatory matters are the predominate topic of the workshops and plenary sessions
  - Annual Road Show series
  - Master Class series
  - Over 100 local chapter events in over 30 locations around the country to bring together the professional community.
- Consumer Engagement:
  - Money and Life[28] - a consumer focused financial wellbeing information and education hub and publication.
  - Financial Planning Week – consumer education week on the benefits of financial planning
  - CFP Advertising campaign.
  - Find a Planner – professional financial planners directory
  - Match My Planner – matching consumers with professional CFP financial planners.

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?

- A long criticism of ASIC was the disparate nature of information and guidance in relation to the provision of financial advice. The FPA had encouraged ASIC for many years to consolidate guidance, information and FAQs into a single hub to improve the navigability of finding the right information to assist in the provision of compliant financial advice.
- While ASIC's implementation isn't complete, the Financial Advice Hub is a significant and welcome improvement on the ad hoc approach ASIC had taken to that point. ASIC is also responsive to suggestions for improvement and the creation of additional FAQs as new issues arise over time. The FAQs also assist in bursting a lot of myths which pervade the profession in relation to laws, regulations and ASIC's views on compliance.

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

- The FPA understands a study was undertaken after the implementation of Report 515 by ASIC to review the improvements in file audit practices. The FPA is unaware of the results of this research which has to date not been published by ASIC.

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

- It is imperative that AFCA be considered as a key influencer on the quality, accessibility and affordability of financial advice. AFCA's interpretation of the law and the regulators' requirements often vary depending on the circumstances of the complaint being considered. The EDR scheme's decisions do not set precedent for future complaints, which results in inconsistency in the way AFCA may apply the regulatory requirements to a complaint. Licensees adapt processes, policies and the requirements they place on planners, to minimise the risk of any AFCA determination against them in the future. This creates another level of inconsistency and uncertainty in the regulatory environment that sits outside the provisions in the primary legislation.
- FPA has identified a number of recommendations in its submission for the Review to consider that would improve the efficiency of regulatory oversight of financial advice providers and the

[28] Money and Life – https://moneyandlife.com.au

positive impact such changes offer to the practical way advice is provided to improve affordability and accessibility for consumers.

APPENDIX 1: FPA Policy Platform. Affordable Advice, Sustainable Profession

AFFORDABLE ADVICE, SUSTAINABLE PROFESSION

FPA's Policy Platform

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Foreword

A little over six months ago, I asked FPA members to contribute their ideas and hopes for the future of our profession. The response was overwhelming and reflected the energy, optimism and diversity of views that characterise our membership. We have done our best to reflect those contributions and create a clear vision that will guide our advocacy over the next five years.

This document is more than just a wish list of reforms and regulatory changes. For the first time we have set out a statement of principles on the importance of financial advice in the Australian community. This provides important context for why we do what we do.

The FPA Board also took the opportunity to review our policy pillars which underpin all the work we as an association undertake and specifically provides our policy work with three overarching goals. The FPA has always had a goal of advancing the interests of the financial planning profession and this remains the case. A second goal is to support all Australians to access high quality, meaningful financial advice and advance the interests of Australians as they seek to secure their financial future. Finally, we have a goal of continuing to set higher standards of professional conduct and supporting each other as we aspire to those standards.

We have naturally also made recommendations for specific reforms to advance these goals. Our recommendations cover a wide range of topics. They are both small and large, and include immediate opportunities as well as big-picture reforms for the future.

The FPA's last policy platform - our 10 point plan - was highly successful. Over the previous five years we achieved a lot and have had a significant impact on advancing the profession through a challenging period in its history. One of our biggest lessons during this time is that the way reforms are implemented is often as important as what they are. In setting this new policy platform we are not just committing to advocating for reform, but to working with the government to ensure reforms are implemented effectively.

I particularly wish to thank our policy team for their considered work in starting the conversation, engaging with not only our members but many of our stakeholders and collating the feedback that has resulted in this comprehensive policy platform.

I'm calling on all FPA members to help us make the new policy platform as successful as the last and to get behind our advocacy efforts. The strength of the FPA is in the dedication and professionalism of its members and it is your efforts that will transform this vision for the future of financial planning into a reality.

It is my pleasure to present the FPA's new policy platform – **Affordable Advice, Sustainable Profession**.

Warm regards,

Marisa Broome CFP®
Chair, Financial Planning Association
April 2020

FPA Policy Pillars

The FPA's policy and advocacy work focuses on three pillars, which reflect the FPA's fundamental policy goals. Policy should be:

CONSUMER-FOCUSSED

It should support access by all Australians to affordable and professional financial advice and ensure consumers interests are advanced when accessing financial advice.

PROFESSIONAL

It should enhance the professionalism of financial planning and promote the health of the financial planning profession as a whole.

ASPIRATIONAL

It should reflect best practice and the aspiration of members of the Financial Planning Association of Australia to set and meet higher standards of professional competence and conduct.

Principles

In promoting financial planning in Australia, the Financial Planning Association of Australia subscribes to the following principles.

Financial advice has value for all Australians regardless of their level of wealth or the phase of life they are in. Financial advice can help people meet their financial goals, achieve financial security and enjoy a better quality of life.

Access to financial advice allows Australians to better understand financial matters, become more financially independent and reduce their burden on public funds, including in retirement.

Access to financial advice should be universal. Australians should not be excluded from accessing financial advice because it is unaffordable.

In regulating the provision of financial advice, the government should focus on providing an environment in which consumers' interests are protected and the financial planning profession is able to prosper.

There is a role for both the financial planning profession and the government in improving Australians' access to financial advice.

Regulation should be simple, clear, consistent, and easy to interpret and apply.

The regulatory framework should minimise the number of responsible regulatory agencies, promote coordination and consistency between regulatory agencies, and ensure oversight of financial advice is delivered in the most cost-effective manner.

Australians should be able to access financial advice regardless of their background, where they live, what they look like and what they think or believe. Financial advice should be accessible regardless of a person's age, gender, sexual orientation, race or disability status.

Financial advice should be delivered in a manner that reflects Australians' preferences, including through culturally and linguistically appropriate communication, use of contemporary communication channels, and documents that consider accessibility for people with a disability.

Financial advice should be consumer-focussed. Financial advice should be provided by professional financial planners who have appropriate qualifications and competence to provide financial advice. Financial advice should be unbiased and delivered in the best interests of the consumer.

Consumers should have a clear understanding of their rights and confidence that their rights are protected.

Discussion

Financial planning in Australia is going through an unprecedented period of change. Financial planners are responding to a wide range of factors, including:

- changing market structures, with major licensees exiting or reducing their presence in the financial advice sector;
- significant new reforms that are changing the way financial advice is provided;
- rapid and exponential increases to regulatory costs;
- changes to how financial planners are remunerated for their services;
- clients with evolving expectations of how their financial planner interacts with them; and
- reduced public trust as a result of the Financial Services Royal Commission.

In its approach to regulating financial services, the government needs to consider the totality of these changes and how they are affecting the long-term viability of the financial planning profession.

Addressing misconduct and creating industry-wide ethical and educational standards is a necessary part of professionalisation. The FPA supports the regulators' work to achieve this and has long set higher standards for its members, called out misconduct and argued for higher standards to be universally applied to the profession. The Financial Services Royal Commission revealed practices which are inconsistent with a modern profession and these must change to restore trust in Australia's financial services sector.

However, new standards are being applied on top of an already complex regulatory framework that has evolved over several decades. In particular, rapid increases to the cost to practitioners of additional regulation are a serious risk for small and medium-sized financial planning businesses.

Major financial institutions, including Australia's big banks, are leaving the financial advice business or reducing their presence. Many practitioners are sole traders or work in small and medium-sized practices and their ability to absorb additional regulatory costs is extremely limited. Escalating regulatory costs will result in financial advice becoming more unaffordable and unavailable for many Australians.

While implementing its reform agenda in financial services, the government must have regard to the cost to practitioners and the impact this will have on Australians seeking financial advice. Unrestrained cost increases will force the closure of financial planning businesses, reduce employment in the sector and set back the development of the financial planning profession.

The government must investigate the recent increases to regulatory costs and carefully consider its reform agenda to ensure that, while it achieves its goals of enhancing the ability of consumers to access financial advice, promoting financial literacy and restoring trust in the financial services sector, it does not also damage the financial planning profession and make it more difficult for Australians to access qualified and independent financial advice.

1 REGULATION OF FINANCIAL ADVICE

The regulation of financial advice has evolved over the past two decades into a complex framework of laws, regulation and regulatory guidance. Multiple regulators are responsible for overseeing an industry that is structured with licensees and financial planners.

This complexity does not assist the government in achieving the goals of regulation, these being to protect consumers and support a healthy financial planning profession.

Complexity does not assist licensees and financial planners to comply with regulation. It does not assist government agencies in overseeing the provision of financial advice and enforcing regulation. And it does not help consumers understand their rights and how to manage their relationship with their financial planner.

Regulation should be simplified so that its intent is clear and promotes compliance by licensees and financial planners. The regulatory framework should be streamlined to improve the effectiveness of regulators and ensure consumers have confidence that their rights are being protected.

The regulation of financial advice should continue to be reformed to pursue the following goals.

1.1 Single disciplinary body

The Government should establish a single disciplinary body to provide discipline and set standards for financial planning. The single disciplinary body should have primary responsibility for government oversight of the conduct of financial planners, setting mandatory professional standards, investigating potential breaches of mandatory standards and law, and applying discipline.

To the extent that these functions currently exist in other government agencies, including the Financial Adviser Standards and Ethics Authority ('FASEA'), Australian Securities and Investment Commission ('ASIC') and the Tax Practitioners Board ('TPB'), the single government body should assume these functions.

Financial planners should only have to register with one government body to oversee their professional services. It should set a single minimum entry requirement (education, experience and mentoring), a single mandatory code of ethics and other regulatory standards, and be the sole investigator of potential breaches of those standards.

This will have the benefit of being a single source of truth for the profession which will reduce red tape and regulatory cost, improve consumer outcomes, and create a single professional advice community.

A single government body should be responsible for overseeing financial planners, including setting mandatory entry, professional standards, investigating breaches of mandatory professional standards and other legal requirements, and conducting disciplinary proceedings.

1.2 Single registration

Financial planners should be registered on a single government register, with this register being managed by the single disciplinary body. Responsibility for maintaining registration and entry on the register should rest with the individual practitioner.

The existing Financial Adviser Register ('FAR') currently maintained by ASIC should form the foundation for the single register. Should the single disciplinary body be established outside of ASIC, the FAR should be transferred from ASIC to this body.

A single register of financial planners should be established, based on the existing Financial Adviser Register, and should be maintained by the single disciplinary body.

1.3 Single set of fees

Financial planners should be subject to a single set of government fees which reflect the cost of regulating financial planners through a single disciplinary body and registration on a single register.

While it is appropriate that the government recovers the cost of regulating financial advice through these fees, it is incumbent on the government to do this in the most cost effective manner possible and reduce duplication.

Fees paid by financial planners to the government should be consolidated into a single schedule administered by the single disciplinary body, which removes duplication of fees and is limited to recovering the cost of efficient and effective oversight.

1.4 Single set of professional standards

Financial planners should have a single, consolidated set of professional standards with which they must comply. In the short term, duplication between different standards should be removed, such as between those set by the Tax Practitioners Board, the Australian Securities and Investment Commissions and those set by the Financial Adviser Standards and Ethics Authority. The government's ultimate goal should be to provide a single set of professional standards for the provision of financial advice.

A single set of mandatory professional standards should apply to financial planners and these standards should be maintained and enforced by the single disciplinary body.

2 EFFECTIVE CONSUMER PROTECTION

The primary goal of the regulation of financial advice is to protect the interests of consumers and promote confidence in the financial planning profession. Many recent reforms have focused on addressing consumer protection issues by layering additional regulation on top of the existing framework. However, there are significant improvements available through addressing known problems in the current law.

2.1 General advice

Evidence clearly shows that consumers are confused about the difference between personal advice and general advice and often misunderstand what they are receiving.

Multiple reports (including the Financial Systems Inquiry final report, the Joint Parliamentary Committee on Corporations and Financial Services inquiry into proposals to lift the professional, ethical and education standards in the financial services industry; and the Productivity Commission's Inquiry into Competition in the Australian Financial System) have recommended that the term "general advice" be changed to something that more accurately reflects what is being offered under this category - information that does not consider a consumer's specific circumstances.

ASIC has also reported on this problem (ASIC Report 614) and has started consulting on an alternative term to replace "general advice". The FPA strongly supports this work continuing and the term "general advice" being replaced.

Where general advice is given, the consumer must also be given a standard warning about the nature of that advice. In its current form, the warning has proven to be ineffective at protecting the consumer's interests. The warning should be amended to more specifically state that general advice does not consider personal circumstances and that the consumer might benefit from seeking advice that does consider their personal circumstances from a financial planner.

The law should be changed to rename the term 'general advice' to 'product information' and 'strategy information', which better reflects the definition and is less misleading to consumers. Any replacement must ensure that the term 'advice' can only be used in association with 'personal advice' — that is, advice that takes into consideration personal circumstances.

The general advice warning should be amended to include a statement that the recipient may benefit from advice which takes account of their personal circumstances and they should consider seeking advice from a financial planner.

At an appropriate point after renaming 'general advice' and amending the general advice warning, the Government should review the use of general advice to determine whether general advice is being provided in appropriate circumstances and if consumer interests are being protected.

2.2 Restricted and like terms protections

The government has created significant new consumer protections that apply to financial planners, including professional standards like a minimum education requirement, a professional exam and adherence to a Code of Ethics. While these standards will increase the quality of financial advice, they have also created an incentive for some people to pass themselves off as financial planners without complying with the relevant standards.

It is important that consumers are not misled about whether the professional they are seeking advice from is qualified to provide that advice and whether they comply with the FASEA standards.

The existing restrictions on using the terms 'financial planner', 'financial adviser' and like terms should be maintained. There is some evidence that incidence of people misusing these terms is increasing and the government should take action to ensure consumers can have confidence when they see those terms used.

ASIC should review the use of the terms 'financial planner', 'financial adviser' and like terms (including 'financial coach', 'financial mentor' and 'financial guru') to determine if restrictions on the use of these terms are effectively protecting consumers from unqualified financial advice.

2.3 Sophisticated investor

The current test to give a consumer the status of a "sophisticated investor" was set in 2001 at $250,000 per year of gross income or net assets to the value of $2.5 million. There is evidence to suggest that consumers are being classed as "sophisticated investors" as they meet these thresholds, despite having low financial literacy and little experience in investing.

FASEA has attempted to address this problem through its Code of Ethics and suggested that a financial planner cannot rely on the "sophisticated investor" test if they know that their client has limited financial capability. By laying this additional test on top of that which exists in the primary legislation, FASEA has created confusion and uncertainty about how the tests should operate.

While the FPA fundamentally agrees with FASEA's goal, it is more appropriate to fix the problem where it exists in the primary legislation.

The law should be changed to revise the test for a 'sophisticated investor' by increasing the dollar-value threshold to an appropriate and contemporary level, providing a method for indexation and introducing a financial capability measure.

2.4 Professional indemnity insurance

Professional indemnity insurance ('PII') provides an important protection for consumers and requirements for financial planners to hold PII should ensure that claims for loss caused by a breach of the law or professional standards can be paid. However, the operation of the PII market and the oversight and enforcement of PII requirements has undermined the effectiveness of this scheme.

Richard St John's 2012 report made a range of recommendations that would improve the operation of PII in financial services and ensure consumers could access compensation when required. The government has failed to implement these recommendations and the problems with PII identified by St John remain.

The recommendations of the St John report on 'Compensation arrangements for consumers of financial services' should be implemented in full to manage the cost, operation and effectiveness of professional indemnity insurance.

3 LICENSING OF INDIVIDUALS

Recent reforms to the regulation of financial advice have focussed on creating individual and professional obligations for financial planners. In particular, the government has imposed new standards for education, professional competence and ethics through FASEA that must be satisfied by every financial planner. These obligations are personal and move away from the historical practice of imparting regulatory obligations indirectly through a corporate licensee.

This is a welcome change. A focus on individual obligations promotes financial planners using their professional judgements and being held accountable for their own actions. However, this change in regulatory approach has also created duplication, inconsistency and, in places, conflicting duties. The government should address this problem by continuing to pursue registration, regulation and oversight at the individual level.

3.1 Professional registration

The government is establishing a single disciplinary body for financial planners that will require the registration of all financial planners. Responsibility for registering should rest with the individual financial planner and not their employer or licensee.

The registration of financial planners must include verification that they have complied with the professional standards for financial planners set by FASEA, including passing the professional exam, meeting the education standard and ongoing compliance with the ethical standards. This information should be provided by the individual financial planner and verified as correct by the single disciplinary body. In this manner, the register will become an authoritative source of information on each financial planner, including their qualifications, compliance with professional standards and disciplinary record.

By placing responsibility for registering on individual financial planners, the register will promote portability of qualifications between businesses and licensees, and promote financial planners taking responsibility for their qualifications and compliance with professional standards.

Additionally, registration can be more bespoke, based on the skill, education and experience of the individual providing the service, rather than their licensee.

Registering with the single disciplinary body and maintaining accurate information on the register should be the individual responsibility of each financial planner, not their employer or licensee.

Information on the register relating to a financial planner should be verified by the single disciplinary body and represent an authorised record of whether a financial planner has complied with their professional standards.

3.2 Separation of product and advice

The regulation of financial advice is currently tied to the recommendation of a financial product, reflecting a history in which a product recommendation was the core component of most financial advice. In a professionalised financial planning sector, this is no longer the case.

Contemporary financial planning is about a lot more than recommending financial products. There is a wide variety of topics that might be covered by financial advice and many may not include a product recommendation. Regulation of financial advice should reflect the variety of advice that can be provided, and not continue to be tied to financial product recommendations.

Existing requirements to deliver financial advice should be reviewed to ensure they apply effectively to financial advice that does not include a product recommendation. Future regulation of financial advice should focus on the broad nature of contemporary financial advice and not limit its focus to financial products.

The law should be changed to separate the regulation of financial products from the regulation of financial advice.

3.3 Future of licensees

The Australian Financial Services License ('AFSL') system plays an important role in regulating financial products and services. However, recent reforms have focused the regulation of financial advice at the individual practitioner level. This is an appropriate approach and acknowledges the relationship between a client and their financial planner is a personal relationship, not one between an AFSL and the client. Future reforms to the regulation of financial advice should occur through the professional standards framework and rely on individual registration of financial planners.

In this context, the continued use of the AFSL system to oversee the provision of financial advice duplicates regulation, creates significant additional regulatory cost and introduces potential conflicts between the views of the licensee and the professional judgement of the financial planner.

The AFSL system should be maintained to provide regulatory oversight of financial products and some services. The future regulation of financial advice should occur through individual registration and oversight, and not require an AFSL for a financial planner to provide financial advice.

The law should be changed to focus the AFSL system on the regulation of financial products and remove the requirement for an AFSL to cover the provision of financial advice.

3.4 Tax and Centrelink agent status

Clients often turn to their financial planner to help them interact with government agencies such as Centrelink and the Australian Taxation Office ('ATO'). Under current arrangements, financial planners can provide clients with advice on their rights and obligations with these agencies, but engaging with the agencies directly on behalf of the client can be difficult or practically impossible.

The ATO allows tax agents to access its online services portal and act on behalf of their clients, but financial planners are excluded from this arrangement. As only one tax agent is able to be registered per person and, as many people also have an accountant, the portal is also not able to recognise a financial planner as a client's second tax agent.

Centrelink maintains a Provider Digital Access portal. However, the Centrelink portal has limited functionality and financial planners often have to conduct business with Centrelink on behalf of their clients over the phone or at Centrelink offices. This arrangement results in significant delays and additional costs to clients.

Centrelink and ATO should develop their online services portals to ensure financial planners, and other relevant professionals, have access to a full range of functions and can act effectively on behalf of their clients. Improving online engagement with financial planners would reduce the administrative burden on Centrelink and the ATO as consumers would require less assistance from agency staff in completing their requests and would be operating with professional advice on what they need to provide to, or request from, those agencies.

The Australian Taxation Office and Centrelink should improve their online access arrangements to ensure financial planners are able to act on behalf of their clients with respect to their tax obligations and benefits administered by Centrelink.

4 TECHNOLOGY

4.1 Access to data

The introduction of the consumer data right (CDR) will improve the ability of consumers to access and manage their own financial data. As their own access is improving, consumers are also expecting their financial planner to access and analyse their financial data to improve the financial advice they are getting and better integrate the management of financial products.

To ensure that financial planners are able to satisfy their clients' needs and provide advice efficiently, the CDR should include accreditation arrangements for financial planners acting on behalf of their clients. Privacy and information security requirements should be designed in a manner that allows sole practitioners to become accredited.

The CDR should also be extended to cover superannuation products. As a compulsory investment, superannuation is an important financial product for all Australians and advice on superannuation and retirement is a critical component of most financial advice. Including superannuation in the CDR will improve the quality and efficiency of retirement advice available to consumers.

The consumer data right should be extended to superannuation products and be designed to allow financial planners who have been authorised by clients to act on their behalf by accessing their financial data.

4.2 Electronic disclosures and transactions

Electronic communication is changing how financial planners do business. It provides more flexibility for consumers in how they engage with financial advice and the ability for financial planners to provide better services to their clients. However, takeup of electronic methods of disclosure and transaction is inconsistent, with some industry participants continuing to rely on hardcopy documents and wet signatures.

For the financial services sector to take full advantage of the benefits of electronic disclosures and transactions, there needs to be better standardisation of forms and processes and acceptance of these standards throughout the sector. Standardised processes will promote efficiency and ensure consumers have confidence in electronic transactions. This is particularly important in consumer interactions with their superannuation, including providing authority to superannuation trustees in relation to their accounts.

The government should work with industry stakeholders to improve the takeup and effectiveness of electronic methods of disclosure, consent and transactions, including through standardised processes and forms and, where appropriate, by requiring industry participants to provide electronic options.

5 COST OF FINANCIAL ADVICE

5.1 Ability to receive the advice you want

The time to prepare and provide holistic financial advice that considers the full range of issues that might apply to a client is substantial.

Many Australians seeking financial advice require advice on a limited range of areas. In particular, younger Australians are more likely to seek advice on a limited set of issues - for example, on the selection of an appropriate superannuation fund - and would be prepared to pay a commensurate fee for that advice.

A key strategy in making advice more accessible for Australians should be enabling financial planners to provide a scope of advice that clients want to receive at a fee that reflects the value of that advice.

In the formal guidance for its Code of Ethics, FASEA has acknowledged that financial planners can provide advice on a limited scope engagement as agreed with the client. In doing this, financial planners cannot avoid their responsibility to act in the best interests of the client and must consider the client's need for advice overall. This is an important consideration as a limited scope engagement should not be used to abrogate a financial planner's professional judgement.

Due to the risks associated with providing advice on a limited scope engagement, many licensees do not allow their financial planners to provide advice in this manner. This significantly limits the ability for those financial planners to provide affordable advice on the topics needed by some consumers.

Regulatory guidance, including model Statements of Advice, should be provided to clearly articulate the circumstances in which a financial planner can provide advice on a limited scope engagement, with the aim of providing consumers with more options for how they receive affordable financial advice.

5.2 Small investment advice

The law currently allows for a financial planner to provide 'small investment advice' on investments of up to $15,000, although this advice cannot relate to a superannuation investment. This provision is intended to allow consumers to access simple and affordable advice on small matters that do not warrant a full Statement of Advice process.

While this is a useful provision in the law, the threshold has not been updated since it was introduced in 2007 and it specifically excludes advice on superannuation investments. An increase in this threshold and removing the exclusion on superannuation advice would improve the ability of consumers to access simple and affordable advice.

The law establishing 'small investment advice' should be changed to increase the threshold and allow for the provision of advice on superannuation. At a minimum, the threshold should allow for advice up to $50,000 per person to cover voluntary concessional superannuation contributions and similar minor investments. A method of indexing the threshold may be appropriate to ensure it remains aligned with contemporary values.

5.3 Tax deductibility of advice

Tax treatments are applied to financial advice in a variety of ways depending on the nature of the advice and when it is provided. The Australian Taxation Office ('ATO') has declared that a fee for service arrangement for the preparation of an initial financial plan is not tax deductible. This is different to the treatment of an ongoing advice fee, which is deemed to be incurred in the course of gaining or producing assessable income, and therefore is tax deductible.

Treating the creation of an initial financial plan differently from ongoing advice is a disincentive for people to get financial advice to help them actively plan, save and secure their financial future. It acts as a barrier to entry for people who have not previously received financial advice.

The benefits of tax deductions available for ongoing financial advice predominantly fall to people who can already afford financial advice and have established investment portfolios. These are predominantly people on higher incomes and with higher net wealth.

Increasing access to financial advice for all Australians, including those on lower incomes, will result in a more financially capable community, with individuals more financially literate and better able to support themselves including in retirement. Access to financial advice also assists the government to fulfil its obligation to address the substantial issues of financial and social exclusion by helping consumers gain access to expertise to help them navigate the financial marketplace and learn how to better manage their finances.

While providing a tax deduction for fees associated with the preparation of an initial financial plan would involve some additional costs to the government, these costs should be balanced against the long-term benefits in supporting a more financially literate community. To control the budget impact, the government could include caps on either the size of the tax deduction or an income cap on those able to receive a deduction.

All financial advice should have tax deductible status, regardless of what stage of the financial advice process it is provided and whether it directly relates to the creation of investment income.

5.4 Fees from superannuation

Superannuation provides an opportunity for many Australians to receive and pay for financial advice on their superannuation investment and preparation for retirement. In many cases this opportunity would not be available from other sources. For example, superannuation provides a favourable tax treatment that can reduce the cost of financial advice by as much as 40 percent. In other cases, clients do not have alternative cash flow outside of superannuation from which they can pay for financial advice upfront.

Superannuation should remain an option for all Australians when seeking financial advice on their superannuation and preparation for retirement. The FPA supports a single set of rules for the payment of financial advice fees from superannuation. The rules should apply equally to all superannuation funds, accounts and investment choices.

A single set of rules would ensure that no incentive is created for people to hold a particular investment choice, account or fund simply as it allows access to financial advice.

A single set of rules should apply to all superannuation accounts which allow the payment of fees for financial advice with appropriate requirements for renewal notices, disclosure and authorisation of fees.

5.5 Insurance advice fees

Australians want financial advice to help them when they select life, total permanent disability and income protection insurance. However, the cost of this advice is often an obstacle and insurance advice is often most needed at a time of life in which people do not have excess cash flow with which to pay for it.

The Life Insurance Framework ('LIF') provides an opportunity for consumers to pay for financial advice indirectly, through commissions paid to financial planners by insurers. Many Australians would not be able to afford to pay for financial advice on insurance by paying an upfront fee and LIF commissions provide the only option for these consumers to access financial advice.

As upfront and trail commission rates are closely regulated under the LIF, commissions no longer provide an incentive for a financial planner to recommend one insurance policy over another.

The Life Insurance Framework should continue to allow consumers to choose how to pay for their life insurance advice.

Life insurance companies should provide consumers with flexibility in how financial advice is paid for by creating new fee collection options and new products that offer transparent and commission-free options.

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APPENDIX 2: History of financial advice regulatory change

History of financial advice regulatory change

	Year	
	2004	FSR transition ends
	2005	FSR refinements
		Statutory conflict management obligation
	2006	Collapse of Westpoint
	2007	Simpler Regulatory System Reforms
		Enhanced fee disclosure
Global Financial Crisis	2008	
Ripoll Report	2009	
		Collapse of Trio Capital Group
		Collapse of Great Southern Group
		Collapse of Timbercorp
		Intra-fund advice commenced
	2010	Margin lending reforms
		Simple PDS reforms
		ASIC Act reforms

Cooper Review of Superannuation		
	2011	
	2012	FOFA reforms (best interests and remuneration for personal advice)
	2013	Limited AFS licensing for accountants
		Enshrinement of the terms ‘financial planner’ and ‘financial adviser’
Performance of ASIC Report	2014	
Murray FSI		
		Tax Agent Services Act applies to personal financial advice
		Simple corporate bonds reforms
	2015	Financial adviser register
	2016	
Ramsay Review of Consumer Compensation	2017	
Productivity Commission review of competitiveness in superannuation		
ASIC Enforcement Review		
FASEA established		

Review	Year	Reform
		Professional standards reforms
Productivity Commission inquiry into competition in the financial sector	2018	
		Life insurance commissions reforms
Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry	2019	
Australian Law Reform Commission Review of the Legislative Framework for Corporations and Financial Services Regulation	2020	
		End of grandfathered commissions
	2021	Royal Commission implementation: · Single Disciplinary Body · Breach reporting, investigation and compensation regime · Reference checking · Annual renewal of ongoing fee arrangement · Fee consents · Non-independent disclosure
Treasury Quality of Advice Review	2022	

Year	Event	Legislation	Changes	Reasons	Resources
1998	Twin Peaks	Australian Prudential Regulation Authority Act 1998	The Twin Peaks Model is based on ASIC and APRA being the two main regulators for financial services. ASIC's role is to ensure consumer protection through regulating the conduct of financial markets. ASIC regulates this conduct through a licensing and authorisation framework. APRA operates as a prudential regulator by overseeing authorised deposit-taking institutions, general insurers, life insurers, friendly societies, private health insurers, reinsurance companies and superannuation funds.	The Wallis Inquiry recommended the Twin Peaks Model for the regulation of financial services in Australia.	https://www.legislation.gov.au/Details/C2021C00278
2001-2	Financial Services Reform	Financial Services Reform Act 2001	This Act introduced chapters 7 and 8 of the proposed *Corporations Act* and outlined key definitions including wholesale clients, retail clients, financial products and financial services. **Licensing of financial service providers** This legislation outlined how a financial services licence can be obtained and the obligations that a financial services licensee must uphold. If an individual meets the criteria under section 913A (Subdivision A), ASIC must grant the licence). ASIC has the power to impose conditions on the licence under subdivision B. The licence may also be varied, suspended or cancelled by ASIC under subdivision C. This legislation also outlines the process of authorising a representative of the licence. The Act also outlines that licensees are liable for any loss or damage caused by a representative to a client. Other relevant sections include banning or disqualifying persons from providing financial services, restricting the use of terminology (e.g., independent, impartial), and	This legislation was introduced in response to the Financial Services Inquiry. The Inquiry found that the financial services industry had a complex and fragmented regulatory framework that increased compliance costs, reduced the efficiency of service providers and confused consumers. There were three main forces driving change including customer needs, technological driven innovation and significant regulatory change in the form of liberalisation of trade and capital. A single licensing regime that regulates financial sales, advice and dealings was needed. Further, there was a need for a product disclosure framework that was consistent and comparable.	Summary page: Financial Services Reform Bill 2001 – Parliament of Australia Second reading: ParlInfo - FINANCIAL SERVICES REFORM BILL 2001 : Second Reading Memoranda: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r1256_ems_086741c1-ddf9-4c92-b391-895cbd2a8504/upload_pdf/39202.pdf;fileType=application%2Fpdf

			protections when agreements are made with unlicensed persons. **Financial Service Provider Conduct and Disclosure** This legislation introduced a general requirement to provide a Financial Services Guide (FSG) to retail clients and details how a licensee or authorised representative can uphold the obligation of relating to an FSG. There were also additional requirements introduced when providing personal advice to retail clients including a reasonable basis for the advice, to warn the client when advice is based on incomplete or inaccurate, and giving a Statement of Advice. There are other disclosure requirements attached to the provision of financial services including general advice warnings or in prescribed situations. Civil and criminal penalties are attached to the failure to uphold these obligations. Licensees and authorised representatives have prescribed conduct that they have to uphold and there are restrictions on their conduct such as a prohibition on unconscionable conduct. **Financial Product Disclosure** This legislation deals with ongoing disclosure and periodic reporting obligations when selling a financial product. Product Disclosure Statement (PDS) must be provided at the point of sale.	The Australian financial services industry required reform to be globally competitive. This legislation sought to align Australian regulatory practices with global regulatory practice.	
2012	FOFA	Corporations Amendment (Future of Financial Advice) Act 2012 And Corporations Amendment (Further Future of Financial Advice	**Charging ongoing fees to clients** This legislation required financial advisers who charge ongoing advice fees to retail clients to discharge two new obligations. The first obligation is related to disclosure. An adviser who is charging ongoing fees for more than 12 months must provide a fee disclosure statement. The second obligation is related to renewal notices. If an adviser charges an ongoing fee for more than 24 months, they are required to provide the client with a fee disclosure statement and a renewal notice. If a client does not respond or opts not to renew, the	These changes are the implementation of the Parliamentary Joint Committee on Corporations and Financial Services Inquiry, known as the Ripoll Inquiry. This inquiry was a response to the collapse of Storm, Trio and Westpoint. The legislation was seeking to improve consumer protection and trust in the financial planning industry by improving the quality of financial advice and	Future of Financial Advice (FOFA) reforms 2012 Revised Memoranda - https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4689_ems_28e3cadf-6bf9-49e4-af60-5773bbf35af7/upload_pdf/36635

		Measures) Act 2012.	arrangement ceases and the ongoing advice fee cannot be charged. If these obligations are not fulfilled, the client does not have to pay the ongoing advice fee beyond the relevant 12 or 24-month period. The ability for the client to opt-out of an ongoing fee arrangement at any time has been turned into law. Whilst this is common practice to allow for clients to opt out at any time, there was no implied term under the old law that gave the client the right to opt out. **Enhancements to ASIC's licensing and banning powers** ASIC received five main changes to their licensing and banning powers. 1. The licensing threshold was changed so ASIC can refuse, cancel or suspend a licence where a person is likely to contravene its obligations. 2. The statutory tests were expanded so ASIC has the power to ban a person if they are not of g*ood fame and character*, do not have adequate training or are not competent to provide financial services. These are all factors that point to whether the individual is a *fit and proper person*. 3. If an individual has been convicted for an offence involving dishonesty and the offence is punishable by imprisonment for at least 3 months, ASIC can consider this information to determine whether a person is not of good fame and character. 4. The banning threshold has been lowered to allow ASIC to ban a person if they are likely to contravene a financial services law. Previously, the threshold was if they will contravene financial services law. 5. ASIC has been given the power to ban a person who has been involved or likely been	enhancing industry standards. These changes also aim to incentivise individuals to save more in their superannuation, giving them greater security in retirement. These changes were required as clients were unknowingly paying fees despite receiving little or no services. Also, advisers were believed to be prioritising their interests over the clients to receive conflicted remuneration. Specifically, consumers needed reassurance that their interests were being prioritised to ensure the integrity of the advice industry. ASIC needed greater powers to determine who could receive a licence and to remove unsatisfactory individuals. This is because the entry threshold to the licensing regime was low, and cancelling a licence was difficult. The previous law focused mainly on licensees rather than their representatives. This meant that ASIC had difficulties stopping unsatisfactory persons from entering the industry.	3.pdf;fileType=application%2Fpdf Second reading ParlInfo - BILLS : Corporations Amendment (Future of Financial Advice) Bill 2011 : Second Reading Supplementary memoranda https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4739_ems_5e775fba-dd50-410c-b6f4-aac1b0b91c54/upload_pdf/366293.pdf;fileType=application%2Fpdf 2014/2015 Supplementary Memoranda: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5208_ems_bec64dec-cad4-4485-8e43-35b38954b331/upload_pdf/504330sem.pdf;fileType=application%2Fpdf Second reading speech: ParlInfo - BILLS : Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 : Second Reading

			involved in a contravention of obligations by another person. **Best interests obligations** This legislation introduced many statutory obligations to ensure financial advisers are acting in the best interests of retail clients who receive personal advice. The adviser is required to act in the best interests of the client when giving advice. Within the legislation, several reasonable steps can be taken to uphold the obligation. If advisers satisfy these steps under section 961B(2), advisers have access to a 'safe harbour'. Further, advisers must prioritize the interests of the client in the event of a conflict of interests. A conflict of interest can occur between the client's interests and the adviser, the licensee or the authorised representative. This legislation also extends the obligation from the licensee to the adviser to ensure the advice is appropriate for the client and to warn if the advice is based on inaccurate or incomplete information. There are civil penalties for a failure to give appropriate advice and to warn the client. Previously, these penalties were criminal. Licensees now must take reasonable steps to ensure their representatives comply with the obligation to give appropriate advice only. **Conflicted remuneration and other banned remuneration** This legislation banned licensees from receiving conflicted remuneration i.e. remuneration that could reasonably be expected to influence the financial product advice or recommendations given to retail clients. The ban includes both monetary and non-monetary (soft dollar) benefits. The ban on conflicted remuneration does not apply to the monetary benefits from specific areas including certain insurance and execution-only services. The ban also does not apply to non-monetary benefits under a prescribed amount or from specific areas including certain		Future of Financial Advice

			insurances, execution-only services, education, training and information technology. Further, product issues or the sellers are not allowed to provide conflicted remuneration. This legislation has also impacted volume-based remuneration. Platform operators will be banned from providing volume-based rebates. Volume-based fees that are given to secure shelf space must not be accepted by licensee or platform operators. Asset-based fees on borrowed amounts must not be charged to retail clients by advisers.		
		Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 and Corporations Amendment (Streamlining of Future of Financial Advice) Regulation 2014	This Bill was not passed by Parliament. Many of the changes proposed by this Bill have been introduced through the regulations and the Corporations Amendment (Financial Advice Measures) Act 2016.	After FOFA was introduced, many reforms were passed through Parliament to reduce the burden of compliance on the financial services industry. These changes were made to reduce compliance costs whilst maintaining consumer protections. The government was seeking to reduce compliance costs as they believed FOFA put an unnecessarily high burden on the financial service industry. These amendments were made in response to the Dissenting Report by Coalition members of the Parliamentary Joint Committee (the Dissenting Report).	Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 – Parliament of Australia
		Corporations Amendment (Revising Future	This regulation made amendments to the area of conflict remuneration. Some of these amendments relate to stamping fees, education and training in conducting a financial service business and non-platform operator. For example, if a stamping fee is given to facilitate an		

		of Financial Advice) Regulation 2014	approved capital raising, the monetary benefit received is not conflicted remuneration.		Corporations Amendment (Revising Future of Financial Advice) Regulation 2014
		Corporations Amendment (Statement of Advice) Regulation 2014 (SOA Regulation)	This regulation made amendments to grandfathering arrangements, benefits permitted under conflicted remuneration and extended renewal periods for accountant certificates.		Revised explanatory memoranda: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5208_ems_beef5a10-bf35-477c-87b9-6280f39b61d0/upload_pdf/397884_Revised%20EM.pdf;fileType=application%2Fpdf
		Corporations Amendment (Financial Advice) Regulation 2015	This regulation made amendments to the best interest duty test. In particular, this amendment explained how the duty operates in relation to basic banking products and general insurance products.		https://www.legislation.gov.au/Details/F2015L00969
		Corporations Amendment (Financial Advice Measures) Act 2016	**Ongoing fee arrangement** This Act removed the opt-in requirement so that clients do not need to renew their ongoing fee arrangement with their adviser every two years. Here, the adviser does not have to obtain the client's consent to charge an ongoing fee. Fee disclosure statements only need to be provided to clients who entered into their arrangements after 1 July 2013. Advisers have 60 days to provide fee disclosure statements which is a longer amount of time. Previously, advisers had 30 days to provide fee disclosure. **Best interests obligations**		Corporations Amendment (Financial Advice Measures) Act 2016

			The 'catch all' provision in the list of steps that satisfy the best interest obligation has been removed. This provision was paragraph 961B(2)(g) which required providers to prove they have taken any other steps that would reasonably be regarded to be in the client's best interest. Further, this Act sought to better facilitate scaled advice through giving greater certainty of the adviser's best interest obligation. Here, clients and advisers can agree on the scope of scaled advice. Then, the adviser is only required to investigate the objectives, financial situation and the client's needs in relation to that scope. **Conflicted Remuneration and other banned remuneration** There is still a ban on conflicted remuneration on personal advice. However, this Act has clarified the definition of conflicted remuneration. For example, benefits on general advice now will not be considered conflicted remuneration in certain situations. **Statement of Advice** This Act also made changes to Statement of Advice requirements. These amendments require advisers to provide additional disclosure and information about the existing rights of the client and obligations of the adviser. There were also changes to the documentation requirements of advice. The Statement of Advice needs to be signed by the providing entity (or an individual on behalf of the providing entity) and the client. If a client seeks further or varied advice, the client's instructions		

			need to be in writing, signed by the client and acknowledged by the providing entity.		
2017	Financial Adviser Standards and Ethics Authority (FASEA)	Corporations Amendment (Professional Standards of Financial Advisers) Act 2017	**Education and training standards** FASEA (the standards body) sets the degree, professional year, exam and continuous professional development requirements for financial advisers. To provide personal advice to retail clients on financial products individuals have to satisfy 3 conditions. These three conditions include a bachelor or higher or equivalent qualification, an exam and at least one year of work or training. Licensees need to ensure their providers are complying with the continuous professional development requirements. This Act also detailed how individuals with overseas qualifications can satisfy the degree requirements and the meaning of a provisional relevant provider. A provisional relevant provider has met the qualifications and the exam conditions but is still undertaking their professional year. The use of the terms financial planners and financial advisers are restricted to individuals that have a degree, passed an exam and have completed their professional year. **Ethical standards** This Act required relevant providers to comply with the Code of Ethics. Previously, there were no ethical standards. ASIC approves schemes that monitor and enforce compliance with the Code. Monitoring bodies are in charge of monitoring and enforcing compliance with these schemes. These monitoring bodies conduct investigations and notify licensees and ASIC of failures to comply. An independent person must review the scheme and publish the review publicly (every 5 years).	These changes were made in response to the Financial System Inquiry and the Parliamentary Joint Committee on Corporations and Financial Services Inquiry. The Inquiries determined that the professional, ethical and education standards of the financial services industry needed to be lifted to improve competency and professionalism. The previous framework was problematic as many advisers lacked competence, transparency and accountability because advisers only provided advice that met the minimum standard. The aim of lifting the standards of the industry was to create an environment where customers are treated fairly when receiving financial advice. The industry has had many instances of inappropriate behaviour. This inappropriate behaviour hindered the provision of advice as consumers did not trust the financial industry. This lack of trust was demonstrated by only 1 in 5 Australians seeking financial advice at the time of the Bill being drafted. Further, when individuals were asked to rate financial advisers for being ethical and honest, only 25% gave a rating of high in a State of the Nation Report.	Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 – Parliament of Australia Second reading speech https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F9b169b3b-768b-49e5-aabb-ed05f3ce0ebb%2F0005%22 Memoranda https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5768_ems_c6b53b56-1756-4e41-8010-03cfca59ab6f/upload_pdf/605981.pdf;fileType=application%2Fpdf

			Register of relevant providers This Act required licensees to provide more information to ASIC when an individual becomes a relevant provider. This additional information includes the provider's principal place of business, education qualification, membership to a professional association with an approved scheme and the name of the scheme. The licensee also needs to notify ASIC if the provider is a provisional relevant provider and when they started their professional year. If a provider fails to comply with their continuous professional development or the code, the licensee must notify ASIC. Similarly, ASIC must maintain the register of relevant providers with the required information. **The standards body** The Act empowers the Minister to declare a Commonwealth company limited by guarantee to be the standards body. This body sets the educational standards and the Code through legislative instruments. The body will also approve foreign qualifications. The Minister may give the body written direction if it is not complying with its obligations. Further, the Minister may declare in writing that the nominated company is no longer the standards body. **Transitional provisions for existing providers** For providers that have provided personal advice to retail clients between 1 January 2016 and 1 January 2019, there is a special transitional arrangement. If an existing provider does not pass the exam or meet the degree requirements they can no longer be a relevant provider. These existing providers, like the new relevant providers, need to meet the continuous professional development requirement and comply with the Code.		
	Royal Commissio	Financial Sector Reform (Hayne	**Reference checking and information sharing**	This Act was introduced in response to the Royal Commission's	

2020-21	In implementation	Royal Commission Response) Act 2020	This legislation introduced extra obligations for financial services licensees to conduct references checks and share information. ASIC has the power to make legislative instruments to define the scope of reference checking and information sharing obligations. If licensees do not uphold these obligations, they are subject to a civil penalty. Qualified privilege can be invoked as a defence by the licensees if defamation or breach of confidence action is brought for the sharing of information. **Breach reporting and remediation** Previously, licensees only needed to report significant breaches or breaches that were likely to be significant. Investigations did not need to be reported. The changes have clarified and strengthened the breach reporting regime. These changes have expanded the situations that need to be reported to ASIC. Reportable situations now include investigations into significant breaches that have occurred or will occur which are taking longer than 30 days (and the outcome of those investigations), conduct that constitutes gross negligence, serious fraud or misleading or deceptive conduct. Another reportable situation is where there are serious compliance concerns about a financial adviser operating under a different licence. These situations add another test for significant breaches. Previously, the test for a significant breach was based on factors listed in the legislation. Therefore, there are now two tests for significant breaches. The legislation introduced a time requirement of 30 calendar days for the licensee to make a report when they first knew of the breach to ASIC. Further, the licensee must make a report to ASIC if they were reckless in recognising reasonable grounds to believe a breach had occurred. This legislation requires ASIC to prescribe the form of the reports and publish the report data. A failure to lodge a report within the 30-day timeframe is an offence with a maximum penalty of two years imprisonment and/or a fine. **Investigating and remediating misconduct**	recommendations and seeks to restore trust and confidence in the Australian financial system. This Act created protocols for reference checking and information sharing to ensure employers are made aware of a financial adviser's past misconduct. This means that a financial adviser's misconduct cannot be hidden when they change employment. Further, the Act seeks to strengthen the breach reporting regime for financial services licensees to ensure more conduct is reported promptly and ASIC has the powers to enforce the regime. Breach reporting was inconsistent as it is based on the licensee's judgement that the breach or likely breach was significant. Financial services licensees now are required to investigate misconduct of financial advisers and to provide remediation to clients who have been damaged by misconduct. This change was made as consumers were not receiving prompt and effective remediation.	https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6630 https://www.legislation.gov.au/Details/C2020A00135 Second Reading Speeches: https://www.aph.gov.au/Parliamentary%20Business/Bills%20Legislation/Bills%20Search%20Results/Result/Second%20Reading%20Speeches?BillId=r6630&Page=1 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2Fec2026d9-e105-4ff5-98da-5142f8424283%2F0011%22 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2Ffd2295d6-3f93-487a-95ba-ab6d5334b30f%2F0228%22

			There are two limbs to this change. Firstly, when misconduct is detected, the licensee must inform affected clients within 30 days and investigate the nature and full extent of the misconduct within a reasonable amount of time. This investigation should identify the loss or damages to the client that has or will occur. The second limb takes place after the investigation. The licensee must inform the impacted client of the nature and full extent of the conduct within 10 days and remediate the client's losses within 30 days. Licensees are now required to maintain records to demonstrate they have complied with their obligations to notify the client/consumer, investigate and remediate misconduct. Licensees who fail to comply with these obligations are subject to civil penalties. Significantly, licensees who fail to maintain records of compliance with the obligations are subject to criminal penalties.		
		Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021	This legislation has made amendments to: • *Corporations Act 2001;* and • *Superannuation Industry (Supervision) Act 1993.* **Ongoing fee arrangements** Under the new law, fee recipients who participate in ongoing fee arrangements must provide fee disclosure statements to their clients during the same period each year. Here, the renewal period begins and ends at the same time each year. The fee disclosure statement must include the fees that will be charged, the services the client is entitled to receive and must request for annual renewal of all ongoing fee arrangements. Importantly, the client's written consent is required before a fee under an ongoing fee arrangement can be charged. This means that renewal is required annually (rather than every two years under the old law). **Disclosure of lack of independence**	This Act was implemented to fulfil the Banking Royal Commission's recommendations of 2.1, 2.2, 3.2 and 3.3. Ultimately, these changes are seeking to restore trust and confidence in the financial system. The Commission highlighted the issues of fees being charged when no service was provided. These fees were charged due to the desire for profit and the ability to deduct fees invisibly. These practices were problematic as consumers were charged fees on an ongoing basis without their consent. Therefore, the Commission recommended an enhanced ongoing fee arrangement framework. Further, the new obligation for a financial adviser to disclose when they are not independent ensures consumers are better informed about their financial	Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021: Legislation: https://www.legislation.gov.au/Details/C2021A00019 Explanatory memoranda: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6654_ems_fbe7be0f-10c5-44d5-808c-c87ffb6b2960/upload_pdf/JC000726.pdf;fileType=application%2Fpdf Second reading speech: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhans

			Previously, there was no obligation to disclose when these entities were not acting independently. However, financial services licensees or authorised representatives who are not giving independent advice are required to give retail clients a written statement disclosing their lack of independence. This statement must be given before personal advice is provided and is a requirement in the Financial Services Guide. These entities are not acting independently if they are using restricted words improperly including independent, impartial and unbiased. **Advice fees in superannuation** Previously, superannuation trustees were allowed to charge a fee under an ongoing fee arrangement. Under the new law, there is a prohibition on superannuation trustees charging member fees for advice unless the member has entered into an agreement, consented to the fee being charged per the agreement, and the trustee has the consent of the member. This is known as the general fee rule. Advice that can be collectively charged does not require consent such as intra-fund advice. A fee charged under an ongoing fee arrangement cannot be charged to a MySuper product by the superannuation trustee.	adviser's conflicts. This new obligation was required due to some financial advisers being biased, not independent and not impartial when providing advice. The changes to advice fees in superannuation were made due to many providers charging fees when no service was performed. Clients also had little visibility of when the fees were charged. This means that members of these superannuation products were not aware and did not provide informed consent when fees were deducted. Therefore, these members needed greater protection to ensure they can make informed decisions.	ardr%2F8d35ad3a-06a6-4b15-b4bc-d5f91eeb30c9%2F0041%22 Reasons explained in-depth: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2021a/21bd046
		Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021	This Bill will reform: • *Australian Securities and Investments Commission Act 2001* • *Corporations Act 2001* • *Freedom of Information Act 1982* • *National Consumer Credit Protection Act 2009* • *Tax Agent Services Act 2009* **Single Disciplinary Body**	These changes have been made to fulfil the Banking Royal Commission's recommendation 2.10 which relates to establishing a new disciplinary system. The Commission made this recommendation because there was no effective system of professional discipline for financial advisers. This system was not effective as it was not cost-effective, provided too many pathways for consumer complaints, and ASIC's powers were limited to serious sanctions. As ASIC's powers were limited to only serious sanctions, less serious offences	Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021 Bill: https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6740_first-reps/toc_pdf/21081b01.pdf;fileType%3Dapplication%2Fpdf Explanatory memoranda: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6740

			ASIC's Financial Services and Credit Panel will operate as the disciplinary body for financial advisers. Here, ASIC is required to convene a panel if they reasonably believe a financial adviser has breached their obligations under the Corporation Act. The panel is given a broader range of powers. Previously, ASIC could only make banning orders for serious breaches. Under the new law, the panel has the power to give warnings or reprimands; take administrative action through making an instrument; make an infringement notice, or make a recommendation for ASIC to apply to the court for a civil penalty. **Registration of financial advisers** Previously, a financial services licensee would authorise a person to provide financial advice on their behalf. Under the new law, the registration of financial advisers has two stages. In stage 1, the financial services licensee is required to register their financial adviser through an application to ASIC. Stage 2 is completed by the financial adviser who registers themselves with the registrar on a yearly basis. **FASEA** Previously, the Minister could use a legislative instrument to establish a standards body (FASEA). This standards body determined the standards for financial planners and assigned the exam administrators. Under this Bill, FASEA will wind up and its responsibilities will be transferred to the relevant Minister. The Minister will perform the standard-setting function. ASIC will be responsible for administering the financial adviser exam. **Regulation of tax (financial) advisers** Previously, financial advisers who provided tax (financial) services had to meet many requirements under the *Tax Agent Services Act 2009* and *Corporations Act 2001.*	were not disciplined leaving consumers vulnerable to exploitation. These reforms seek to improve access to financial advice and make the oversight process more efficient.	_ems_83a55868-1aef-4604-8573-4d067ea31f74/upload_pdf/JC002757.pdf;fileType=application%2Fpdf Second Reading speech: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2Feb97f924-9ac6-4ef0-a3d7-0b15830be9b1%2F0039%22

			Under this Bill, tax (financial) advisers will only be regulated under the *Corporations Act* and not by the Tax Practitioners Board. This means that registered tax agents or a financial adviser that have met the additional education and training standards are the only people able to give tax (financial) advice.		

APPENDIX 3: FPA response to Australian Small Business and Family Enterprise Ombudsman Inquiry into Insurance. 28 August 2020

Overview of the financial advice profession

To understand the practices of the insurance industry impacting small financial planning businesses and whether insurance products are fit for the purposes of small financial planning business, the structure of the financial advice market and licensing regime must be considered.

Regulatory overview of financial advice

A financial planner (also known as a financial adviser) is a person or authorised representative of an organisation licensed by ASIC to provide personal financial advice.

Financial advice is regulated under the Corporations Act 2001 (Cth) as 'financial product advice'. A financial planner must either hold an Australian Financial Services Licence (AFSL) or provide financial advice as a representative of an AFSL holder (a licensee).

A financial planner is often referred to as a 'representative'. A 'representative' of an AFS licensee is:

- An 'authorised representative' of the licensee;
- An employee or director of the licensee;
- An employee or director of a related body corporate of the licensee.

AFSL holders are subject to general licensee obligations, conduct and disclosure obligations as well as additional obligations for providers of financial product advice to retail clients. There are also some obligations that apply directly to representatives.

Financial planning is also regulated under the Tax Agent Services Act 2010 as a tax (financial) advice service. A tax (financial) adviser must be registered directly with the Tax Practitioners Board (TPB) or an individual must operate within a registered business under the supervision of an individually registered tax (financial) adviser.

The financial planning profession is highly regulated. In the near future one piece of personal financial advice will be regulated by 9 regulators - ASIC, TPB, AUSTRAC, Office of the Australian Information Commissioner (Privacy), APRA, ATO, FASEA, the ACCC (under the consumer data rights framework) and the new statutory financial adviser disciplinary body[1] - all administering Acts and regulatory requirements imposing different compliance requirements on financial planners. In addition, the same piece of advice will have oversight and interpretation by the Courts, the Australian Financial Complaints Authority (AFCA), Australian financial service licensees and professional bodies such as the Financial Planning Association.

Market overview

The personal financial advice market consists of approximately 2,155 licensees and 21,743 financial planners registered on the ASIC Financial Adviser Register (FAR).[2]

The structure of the advice market is unique - it has a large number of small businesses who hold and operate under their own AFSL, however there is also a large number of small business financial planning practices that are authorised and operate under the AFSL of a large dealer group. Such dealer groups may also have employed advisers.

The following information on the concentration of the Australian financial planning industry shows the high proportion of small licensees operating financial planning businesses and changes in the market over the past three years.

	October 2017[3]	August 2020[4]
Percentage of advisers (both aligned and non-aligned) operating under a licence controlled by the largest 10 financial institutions;	44%	35%
Percentage of total (including aligned and nonaligned) advisers operating under a licence controlled by 6 financial institutions – the four major banks, AMP and IOOF Holdings	over 35%	21%
Percentage of the total number of financial advisers on ASIC's Financial Advisers Register who work for one of the major banks	30%	7%
Percentage of advice licensees operating a firm with less than 10 financial advisers.	78%	89%
Percentage of advice licensees with less than 50 advisers,	90%	96%
Percentage of advice licensees with less than 100 financial advisers.	95%	98%
Average number of financial advisers operating under an AFS licence	34 individuals.	20 individuals

Business models

The licensing regime has led to the development of a variety of business models in the advice profession.

Dealer groups

Financial planners can operate in advice groups (also known as dealer groups or licensees). Under this structure, a corporate entity in the group will hold an AFSL, permitting the financial planners who are members of the advice group to operate as its authorised representatives and provide financial advice to consumers on its behalf.

Such financial planners provide financial advice to consumers under both the AFSL and the commercial brand of the dealer group and/or their own business trading name. In return, dealer groups provide their members centralised back office services and support.

Aligned/non-aligned

Financial planners (and dealer groups) can be classified as either being independent, non-aligned, or aligned with a financial institution, such as a bank, financial product provider, or a wealth management services provider.

For aligned financial planners, the alignment can occur in various ways, including via vertical ownership structures, contractual relationships, and permitted benefits.

Business model examples

- Large licensees will have multiple (some as many as 60 or more) practices (small businesses) located across Australia operating under one licence; some large licensees have both employed planners and corporate authorised representatives operating under their licence.

- Corporate authorised representatives are authorised under a licensee and employ planners (authorised representatives) to provide advice under their corporate authorised representative status.
- Small or boutique licensees are often one or two financial planners or a collective of several corporate authorised representatives operating a small business under their own licence
- Authorised representatives are commonly sole traders operating a small financial planning practice under the licence of a large or medium licensee.
- Employed planners

Professional indemnity insurance

Issues related to professional indemnity insurance may be unique to the financial planning profession and other financial services.

Section 912B of the Corporations Act 2001 requires an AFS licensee providing financial services (including providing financial product advice) to retail clients to have arrangements in place for compensating clients for loss or damage suffered arising from breaches of the licensee's relevant obligations under the law, either by the licensee or its representatives.

To meet the client compensation arrangements under s912B, Corporations Regulation 7.6.02AAA states that the licensee must hold adequate professional indemnity insurance cover.

What is Professional Indemnity insurance?

Professional indemnity (PI) insurance is a commercial product available to financial services providers (amongst other professionals) to protect them against liabilities incurred in the course of operating their business. It has been described as 'a product that indemnifies professional people ... for their legal liability to their clients and others who relied on their advice or services. It provides indemnity cover if a client suffers a loss, material, financial or physical, that is directly attributed to negligent acts of the professional'.

There is a legal requirement for the professional indemnity insurance cover held by financial planning businesses to be 'adequate', including providing cover for liability under any awards by external dispute resolution (EDR) schemes.

The main policy objective for the 'adequate' professional indemnity insurance requirement is to 'reduce the risk that compensation claims to retail clients cannot be met by the relevant licensees due to the lack of available financial resources'. However, the structure, purpose and role of PI insurance is to cover the insured (ie. the financial planner), not the third party consumer (client of the financial planner). Licensees exiting the financial advice industry are also required to ensure adequate 'run-off' insurance is in place for the advice that was provided under their licence to cover for potential future claims.

Regulatory Guide 126 (RG126) sets out ASIC's view on the features a professional indemnity insurance policy should have in order for it to be adequate in terms of:

- minimum requirements and features including:
    - a limit of indemnity of at least $2 million and up to $20 million (based on revenue)
    - cover (and no exclusions) for breaches of obligations under Chapter 7 including liability: under external dispute resolution (EDR) scheme awards; for fraud or dishonesty by directors, employees or representatives
    - excess amounts at a level that the licensee can confidently sustain
    - cover of legitimate switching from funds or products that are not on an approved product list to another fund or product on the approved product list

  - defence costs (typically these are in addition to the limit of indemnity), and
  - retroactive cover.
- factors that licensees should consider when determining what is adequate for them including the nature, scale and complexity of the business and the licensee's financial resources, as well as the maximum liability that might be incurred.

Who holds the Professional Indemnity cover?

Traditionally AFS licensees have complied with this obligation by holding PI insurance cover for all the financial products and services provided under their licence, including financial advice provided by financial planner representatives. However, changes in the advice and PI insurance markets have seen the emergence of other mechanism for meeting the PI requirement including:

- Licensees requiring authorised representatives to take out their own PI policy – this means authorised representatives who operate a small financial planning business must hold a PI policy directly.
- Licensees charge a separate fee for PI cover on top of the licensee fee charged to authorised representatives operating a small financial planning business.

These emerging options that larger licensees are using to meet their legal obligations are exacerbating the PI insurance issues for small financial planning businesses.

Small financial planning licensees are continuing to grapple with the significant issues associated with PI insurance on an annual basis. As it is a condition of the AFS licensing regime to hold such a policy, issues with PI insurance arrangements mean that a small self-licensed practice owner faces the loss of their business, their licence and potentially their chosen profession if they cannot secure the legally mandated adequate cover.

Issues related to professional indemnity insurance

The excessive cost of PI insurance is intertwined with the availability of PI insurance for financial advisers in Australia, and policy exclusions.

Common PI insurance issues for small financial planning businesses include:

- High premiums
- Lack of market competition as insurers exit the Australian market
- Exclusions
- Increasing excess
- Claims experience and expenses
- Licensees excluding PI cover from standard licensee fees and charging it as a separate cost or requiring financial planning practices to secure their own PI cover

These issues are covered below in response to the Terms of Reference of the Inquiry.

Professional Indemnity Insurance and the Inquiry Terms of Reference

That the Australian Small Business and Family Enterprise Ombudsman inquire into and report on practices of the insurance industry impacting small business and whether insurance products are fit for the purposes of small business, with particular reference to:

1. the availability and coverage of insurance policies provided to small businesses including:

- **the impact of coverage denial;**

Financial planning businesses must hold adequate PI insurance as a condition of their financial advice licence and legally are not be permitted to provide financial advice to retail clients without such cover. A small self-licensed practice owner faces the loss of their business, their licence and potentially their chosen profession if they cannot secure the legally mandated adequate cover.

- **policy exclusions and how they are communicated to small businesses;**

Financial planning businesses generally purchase professional indemnity insurance through an insurance broker. The broker's role includes determining if the policy offered will provide adequate cover in line with the requirements in RG126 and for the risk of the business, and to help the financial planning business understand policy wording, definitions, exclusions and excesses.

Feedback from some FPA members indicates that brokers do not always explain the policy exclusions unless specifically asked to by the financial planning firm.

Concerns have also been raised about time pressures placed on small financial planning businesses by insurers to consider and agree to policy changes and pricing when taking out a new policy and at renewal in a restricted timeframe. Some small financial planning businesses have stated that they have agreed to renewal offers as it is a legal requirement to hold PI insurance even though the offer expiry time provided by the insurer did not allow adequate time to truly understand the policy given the complexity of the wording and definitions and the need to ensure exclusions do not put the business at risk of inadequate cover.

There is also apparent inconsistency across PI policies regarding defence costs – some policies include defence costs; others exclude defence costs.

- **the use of definitions in policy documents that create de facto policy exclusions;**

The complexity of the wording and definitions of PI policies can result in misunderstandings of the coverage with exclusions and issues only being clearly identified during the claims process.

- **the fitness for purpose of market offerings;**

When determining whether professional indemnity insurance for financial planning businesses is 'fit for purpose' it is important to consider the role PI insurance is mandated to play in relation to financial advice. Under s912B of the Corporations Act the primary purpose of requiring licensees to hold PI insurance is to ensure funds are available to pay compensation awarded by AFCA, or other jurisdiction, to a client of the firm should a complaint arise; or if a licensee provides compensation to a client directly as a result of an internal investigation.

However, there are significant limitations in using professional indemnity insurance as a consumer compensation mechanism, including:

- the total funds available under a policy may not cover all of the compensation awarded against the insured;
- the policy may not cover the conduct which gave rise to the order for compensation – for example, if the advice recommended a product that was excluded under the policy wording even if the advice and product recommendation was in the best interest of the client as required under s961B of the Corporations Act and the legislated Financial Planner and Financial Adviser Code of Ethics;
- the complex policy wording can lead to financial planning firms holding inaccurate expectations of cover being adequate for the risks of their business and the requirements in RG126, leading to claims being denied;
- the involvement of insurer's lawyers in the claims process can make it too costly and time consuming to pursue legitimate claims, particularly by small financial planning firms;
- the amount of compensation payable may be less than the policy's excess; and

- the claim is outside the terms of the cover – for example where a single claim exceeds the limit of the cover, or where a financial planning business experiences multiple claims in a single year of cover – this significantly undermines the performance of the cover and whether it is fit for purpose.

Policy exclusions can significantly impact the performance of the cover in terms of paying compensation to consumers and covering complaint costs of the small business.

Insurance premiums have been escalating rapidly, regardless of whether a practitioner has been subject to a complaint or a finding from an external dispute resolution process. Insurers are leaving the market. Some financial planning businesses are finding it very difficult to renew their professional indemnity insurance and taking out new cover has become problematic.

The role of PI insurance is to cover the cost to the financial planning business of compensation awarded to consumers by dispute jurisdictions. The substantial increases in excesses attached to PI policies particularly over the past two years, and the involvement of legal representation in the claims process (as discussed below), significantly undermine the value of the insurance for the business insured.

Relevant to the consideration of whether PI insurance for financial planning businesses is 'fit for purpose' is the identification and assessment by insurers of the risk to be covered.

There has been an increasing number of exclusions in the PI cover available to financial planning businesses, often with no reduction in premium. There is a concern that underwriters do not present a good understanding of how to assess and price risk in the financial advice industry.

Anecdotal evidence from small financial planning licensees indicates that there is a lack of explanation of how the insurer's assessment parameters work, with no clear guidelines on the risk levels or how to reduce the risk being underwritten. It is unclear what the insurers are looking for in determining the level of risk the business presents. The questions asked by underwriters commonly relate to product failures that are not the responsibility of financial planning firms; rather than the potential risk of breaches of financial advice laws, non-compliance with conduct requirements, and consumer complaints in relation to the financial advice provided.

It appears that insurers do not differentiate the risk presented by large licensees with large numbers of authorised representatives, and small financial planning licensees with one to five representatives authorised and providing financial advice under their licence. Small financial planning firms have been informed by insurers that large premium increases are due to the broader market.

Anecdotal feedback from FPA members also indicates that insurers focus on assessing risk and providing financial planning businesses with cover based on the financial product recommended to clients, not the appropriateness of the financial advice provided to clients. For example, recent exclusions include products such as managed investment schemes, mezzanine finance, unlisted or unrated securities, unsecured loans and property developments. The PI insurance exclusions can commonly contradict the licensee's Approved Products Lists, and ignore the legal requirement for financial planners to provide advice in the best interests of their client.

There have been significant changes to the regulation of the financial advice profession over the past decade including the introduction of a best interest duty to the client, the banning of commissions, and education and professional standards. It is unclear how these changes have been incorporated into insurers risk assessments for PI insurance for financial planning businesses.

A greater clarity of the risk assessment triggers used by insurers in relation to financial advice would encourage financial planning firms to adapt their business models and advice processes to lower the risk and streamline the insurance process.

2. other issues affecting availability and coverage including:

- **any impact of the current market's lack of diversity in insurance providers, underwriters and types of insurance;**

The most significant cost for financial planning businesses is professional indemnity (PI) insurance, as required under the Corporations Act. While PI costs vary significantly depending on the financial planning practice, prices are driven up by the lack of competition in the professional indemnity insurance market for financial planners and licensees in Australia.

It is difficult to ascertain how many underwriters currently operate in the financial advice PI insurance market in Australia. The FPA has been informed that across the globe all markets for all liability classes are very difficult at present, with PI insurance for financial advice providers particularly limited. There are mixed reports regarding the number of underwriters offering PI insurance for financial advice providers in Australian.

The insurance market for PI insurance to financial planners continues to be difficult and unprofitable for most insurers. As a result insurers/underwriters are leaving the space or increasing premiums to ensure this market segment is profitable. Consequently, many financial planning firms, regardless of their claims history, are being affected with the skyrocketing PI insurance premiums, policies with multiple exclusions, and high excess amounts.

As a result of the declining competition in the market, insurers are being selective in the risk they take on because there's more demand and restricted supply. Those providers that remain have been either increasing premiums, deciding not to renew, restricting coverage and/or increasing excess amounts.

The lack of diversity and competition in the financial advice professional indemnity insurance market significantly impacts the affordability and availability of appropriate cover. The small number of underwriters offering PI cover in Australia exacerbates the power imbalance between the insurer and the financial advice business seeking this mandatory insurance.

The impact of this issue will continue to be heightened for an increasing number of businesses due to the movement in the financial advice market away from operating under large institution licensees toward small AFS licence holders.

- **insurance policy affordability and its impact on availability, including increases in price that amount to denial of coverage;**

The Inquiry Terms of Reference refers to "insurance companies…..pricing insurance policies out of reach". This is not an option for financial planning businesses as it is a mandatory legal requirement for all financial planning providers to be covered by professional indemnity insurance, either by holding the policy directly or by being covered by a licensee's policy. This mandatory requirement creates a power imbalance in the negotiation of policy inclusions/exclusions, excess amounts, and price.

While the following APRA data is not specific to small licensees, it confirms significant year-on-year increases in PI insurance premiums relative to the number of insured, and continuously rising excess amounts, covering all financial advice licensees.

Premium, number of risks and excess data for professional indemnity insurance of financial advisors and planners by underwriting year

Underwriting year	Gross written premium ($)	Number of risks written	Average written premium ($)	Median excess/ deductable amount ($)
2014	35,678,775	1,070	33,345	10,000
2013	23,767,027	1,199	19,822	10,000
2012	17,833,362	1,172	15,216	5,000
2011	17,400,597	1,092	15,935	2,500
2010	21,279,681	1,868	11,392	5,000
2009	18,520,090	2,206	8,395	5,000
2008	14,578,441	2,216	6,579	5,000
2007	15,337,124	2,463	6,227	5,000
2006	16,439,948	2,428	6,771	5,000
2005	*	*	6,654	5,000

Source: Australian Prudential Regulation Authority (APRA), National Claims and Policies Database

Notes:

(1) More information about the APRA National Claims and Policies Database is available here: www.apra.gov.au/GI/Pages/national-claims-and-policies-database.aspx

(2) Data marked with * have been masked to maintain confidentiality and/or privacy

(3) Average written premium is gross written premium divided by number of policies

(4) Data for 2015 not available at the time this was produced, in August 2015

(5) See the notes page for a full explanation of the nature of the data provided

(6) See the glossary for an explanation of all terms used

For small financial advice licensees, PI insurance premiums cost approximately 2 to 3 per cent of business revenue on average. Premiums are reviewed annually and in 99 per cent of cases, increase year on year regardless of the claims history of the business.

In the past, the most common industry practice is for the licensee to hold the PI insurance policy as part of the service package provided to their authorised representatives, and charge for this cover via their licensee fee, as previously stated. However, there has been a shift in recent years to authorised representatives (who run their own small financial planning business) either paying a share of the licensee's PI insurance premium separately, or the licensee requiring the authorised representative to hold their own policy.

The following FPA member case study demonstrates the impact of this change:

> *My PI cost changed from being bundled within my licensee fee of $24,000 plus 3% of revenue, to a separate charge of $10,900 (ex GST) in May 2019. The licensee fee was not reduced with the removal of the PI cost, rather the licensee fee was increased and the additional PI cost charged separately. This year the licensee has renegotiated the PI charge to $5,824 pa. Next year will be negotiated again and may rise or fall depending on if any events occur during the year.*

In May 2020, the FPA conducted a PI insurance survey with our Professional Practices with 47% of respondents stating that they had changed insurer at renewal with a significant increase in cost given as the main reason for the change. For example:

> *Renewal is currently in progress. We haven't claimed in 13 years on PI, have no regulatory action or major issues in the licence, but first $10m layer is going up 25%, co-insurer on the first layer is currently wanting to go up 150%. 2nd layer wants to go up 400%. Currently in negotiation with other insurers to find a reasonable answer. I will probably drop a layer just to be able to afford it.*

44% of survey respondents reported premium increases of between 10% and 24%; 18% received increases between 25% and 50%; and 15% of respondents experienced an increase of 100% or more.

> *Our broker tried everywhere to obtain cover but said had no other option to pay over double of previous year ($21,000) to current year's premium ($45,622). We are a very small advisory firm with only three advisers and no MDA [managed discretionary account authorisation].*

In addition, 44% of respondents stated they were required to accept a higher excess to obtain PI cover in the last renewal period. Of those respondents who accepted higher excess amounts, 59% experienced excess increases of between 20% and 50%; and 24% of respondents had an excess increase of 100% and over.

Survey respondents offered examples of the excess in the PI cover held by some small financial planning businesses:

- *We initiated our own excess increase about 4 years ago to lower the premiums as they were becoming prohibitive. Our excess is presently $100k on a revenue of circa $3mil. No MDA, no adverse compliance history.*
- *Increased [this year] from $250k to $1m.*
- *Have had suggestions of excesses over $100 000 (current is $15 000) if we could find an insurance company to offer cover.*

- **current models of government support or control in Australia and internationally that facilitate affordable access to appropriate insurance for small businesses;**

There are no models of government support or control in Australia that facilitate affordable access to appropriate professional indemnity insurance for small financial planning businesses.

The financial advice PI insurance market was built for large licensees. This is symptomatic of the licensing regime and the bedding-down of the Australian Financial Services Licensing (ASFL) regime under the Financial Service Reform Act 2001, and the emergence of the financial planning profession in Australia.

Historically, AFS licences were held by large financial services institutions who authorised financial planners to provide financial advice to consumers under their licence. The authorised financial planners ran their own small financial planning business.

Due to this market structure and the FSR regime, the professional indemnity market and offering from insurers was primarily designed for large financial services institutions - the value for insurers was through the large licensee PI policy. It was not built for small businesses to hold their own policy. This legacy has continued to stymie the PI offering for small businesses.

Regulatory instability due to continuous reforms in the financial advice space since the implementation of the FSR in 2001, has added risk uncertainty for insurers and impacted affordable access to appropriate PI insurance for small financial planning businesses.

- **the role of brokers in getting the right coverage;**

A broker can assist in determining the appropriate cover for the specific needs of the business and ideally present alternative policies for consideration. Any exclusions would usually be specified in the policy schedule and the cover provided and not provided should be clearly explained by the broker.

Most small financial planning businesses rely on the advice of insurance brokers. Unfortunately, cover deficiencies can still come to light at claim time.

It is understood that of the hundreds of brokers in Australia who assist clients with PI cover, there are only a handful who specialise in PI for financial advice businesses.

The size of the financial advice PI insurance market means there are very few underwriter options for brokers to negotiate with. Brokers specialised in the PI market for financial planners tend to know the detailed risk each underwriter will or won't cover in relation to financial advice. This can occasionally lead to confusion about who the broker is acting for – the insured or insurer – as the broker will engage with the underwriter they know will cover the type of risk presented in each financial planning firm.

3. the use of contract changes that have not been agreed to and their potential treatment as Unfair Contract Terms;

The Unfair Contract Terms under the law do not apply to professional indemnity insurance.

Professional indemnity insurance does not meet the 'standard form contract' definition under s12BK of the ASIC Act 2001, as demonstrated by Example 1.4 of the Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019:

> *BBB Limited is a small business seeking professional indemnity insurance. BBB Limited requests that a broker recommend the best insurance policy. The broker, acting for BBB Limited, seeks quotes from several insurers. In preparing the contracts, the broker negotiates changes to a number of specific clauses to suit the nature of BBB Limited's business. These contracts would not be considered standard form contracts and BBB Limited, as the party to the contract, cannot take action under the unfair contract terms regime.*

4. the timeliness of payment of insurance payouts and the effectiveness of dispute resolution frameworks for insurance disputes;

The Australian Financial Complaints Authority (AFCA) is an ASIC approved external dispute resolution (EDR) scheme with the role of resolving consumer and small business complaints about financial firms. Small financial planning businesses are financial firms and are required by law to be a member of AFCA. AFCA does not consider disputes between financial firms.

Professional indemnity insurance is also excluded from the AFCA jurisdiction under its Rules as a small business insurance product.

Disputes between small financial planning firms who hold PI insurance, and the insurer or issuer of the insurance, are usually considered in the court system.

The purpose of PI insurance held by financial planning firms is to cover the cost of compensation awarded by AFCA, or other jurisdiction, to a client of the firm should a complaint arise.

A significant issue for financial planning businesses experiencing a complaint at AFCA is that the PI insurer takes over the management of the complaint on behalf of the business with seemingly mandatory involvement of lawyers. This significantly drives up the cost of the complaint and the resulting claim for the business, and can at times sour any misunderstanding between the financial planner and client.

Once the complaint is resolved by AFCA, the financial planning business files a claim in relation to compensation awarded by AFCA to the complainant in the complaint. Risks can arise for small financial planning businesses in the event of a claim, particularly in relation to policy exclusions, unclear policy wording, and the unclaimable costs of essential legal representation in the claims process.

This claims process is often drawn out and difficult, as demonstrated by the following case study (provided by an FPA member):

> *A claim for financial loss by an AFSL under a 'PI' policy. An AFSL lodged a 'fidelity' claim with the Insurer (via its insurance broker) with assistance of the AFSL's lawyers due to the complexity of the policy document. The claim resulted from the misconduct of an authorised representative which was discovered by the licensee. AFCA was not involved in this case and the licensee reported the breach to the relevant Regulator. The licensee arranged an independent investigation of the matter and provided full remediation to all affected clients.*
>
> *The insurer was domiciled overseas and responded through their Australian based lawyer after several follow-ups with the broker. The insurer responded through its lawyers that the policy does not cover the claim. The AFSL's lawyers disputed this assertion and responded appropriately.*
>
> *The insurer was again very tardy in responding and maintained its position and refused to indemnify under the policy. The AFSL's lawyers provided all necessary evidence and then positioned to seek a ruling on the policy definition in the Federal Court if the insurer continued to deny the claim.*
>
> *After many months of legal debate between lawyers, the AFSL was successful in its claim. Success was achieved only through perseverance and at significant legal cost in pursuing the claim (which was not recoverable under the policy).*

This is an example of unnecessary and significant costs incurred by an AFSL for a loss it believed would be covered by the PI policy. Insurers' tardiness and apparent methodology to delay claims create significant legal costs for the insured that can discourage small businesses and AFSLs from vigorously pursuing legitimate claims.

Claims experience case studies highlight the complexity of PI policies required by financial planning businesses.

5. the effectiveness of relevant codes of conduct and legislation, including the adequacy of applicable penalties; and

There are no codes of conduct that apply to professional indemnity insurance.

However, brokers are subject to the NIBA Insurance Brokers Code of Practice including when providing broking services to small financial planning businesses.[29]

The Code clarifies that insurance brokers who are engaged by the client are acting on behalf of the client, not the insurer.

6. any other relevant matters.

No comment.

[29] https://www.niba.com.au/codeofpractice/NIBA_Code_2014.pdf?v=2

Individual Disability Income Insurance (IDII)

What is individual disability income insurance (IDII)

Individual disability income insurance (IDII), commonly known as income protection (IP) insurance, provides policy owners with a reasonable chance for them to reset their lives and recover in the event of an injury or illness. IDII is often taken out by small business owners, sole traders, and those with family owned businesses such as farmers.

APRA made changes to the rules for IDII which came into effect on 31 March 2020. The changes included:

- Cease writing IDII policies that provide benefits based on an agreed value income and only offer new policies based on current income at the time of claim.
- Limit benefits under new IDII policies to 100% of current income over the first six months and 75% thereafter, and set a cap on payments of $30,000 per month.
- Limit IDII policies to an initial term of five years, with renewal only after considering occupational and financial changes.

The impact of these changes on policy holders include:

- For example, only offering IDII policies with benefits based on current income could substantially disadvantage consumers who have variable income from year to year and lead to these consumers not taking out IDII cover.
- Small business owners, farmers and contractors can have significant variations in their incomes and their IDII cover could be de-valued if a claim coincided with a low-income year, despite having paid premiums over the life of the policy.

The following examples demonstrate the impact of this change on small businesses.

Case study - small business:

For the last ten years, Jane has run her own tour guide business in Cairns. Jane's business is highly seasonal and subject to external shocks. She has had some good years with record tourist numbers boosting her income. She has also had some poor years, particularly in the aftermath of Tropical Cyclone Yasi, when few incoming tourists meant her business operated at a loss.

As a business owner, Jane is not covered by Queensland workplace compensation arrangements. Three years ago, she took out IDII cover to protect her income in the event of a workplace accident and has diligently paid her premiums for this policy. Jane had an accident at work that stopped her from working for six months while she recovers.

With an agreed value policy, Jane can be confident that she will receive sufficient benefit from her policy to cover her expenses while she recovers.

With a policy based on current income, Jane's benefit would be highly dependent on how well her business was performing in the period immediately before the accident.

- Any period of poor trading, including a broad tourism downturn caused by the coronavirus outbreak, could dramatically reduce the benefit that Jane would receive.
- If Jane had reduced her hours at work immediately after her accident, in an effort to continue working throughout her recovery, any later claim against her IDII policy would reflect her reduced hours and lower income.
- Finally, Jane would need to provide evidence for her income for that period for any IDII claim, which could be challenging if it does not align with personal tax returns.

Case study – farmer:

John owns and operates a broadacre farm near Dalby and mainly grows wheat and barley. John's income varies widely depending on the strength of that season's crops and the prices he gets. In a good year, John's farm is highly profitable. However, since 2017 the drought has caused below average rainfall and John's income has been limited.

As John's farm has low debt levels, he has been able to secure an IDII policy that will provide him with $3,500/month of agreed value cover. If John were to be injured and unable to work, he would be confident in the policy providing him with income support.

A policy based on John's actual income, instead of an agreed value, would provide a benefit that was highly dependent on whether the claim was made in a good or poor year for the farm.

- If the claim was made in a good year, the benefit would likely exceed John's average income by a considerable margin. If the claim was made in a poor year, it may not pay a benefit at all.
- Such variability would prevent John from adequately managing his risks and make him less likely to commit to paying premiums when the possible benefit is uncertain.

Premium increases

As the new restrictions have only recently commenced it is currently unclear how the APRA changes will impact IDII premiums and whether the cover is fit for purpose for small businesses.

However, the current COVID-19 pandemic and economic crisis is having an impact on the affordability of IDII products. For example, insurer Onepath has significantly increased premiums:

> *Having earlier this year ceased agreed value and level premium IP [Income Protection] cover and increased premiums for new customers, the insurer has gone a step further by foreshadowing a 25% increase in base premiums (both stepped and level) for existing customers.*
>
> *It has also announced a 12.5% increase in premiums for new and existing customers with respect to Total and Disability cover.*[30]

Cyber insurance

With the social distancing restrictions introduced to combat the COVID-19 pandemic and the move to working from home for a large number of Australian businesses, there has been media reports and warnings from governments and regulators of an increase in cyber threats to business.

The current environment has led to confusion about the different types of insurance policies offering to cover the risks associated with cyber threats and potential data breaches, and the value of such cover for small business on top of policies already held.

[30] https://www.moneymanagement.com.au/news/liferisk/under-pressure-onepath-increases-ip-and-tpd-premiums-existing-customers

APPENDIX 4: FPA response to alternative general advice labels proposed by ASIC (2019)

ASIC's proposed alternative label	Dictionary meanings	FPA comment on proposed alternative 'general advice' label
Choices/general choices/financial choices/product choices	Means there is a range of different things the consumer can choose from.	Oppose 'Choices' does not make it clear that the representative providing the "choices" has not taken into account the individual's circumstances. Rather, the word choices could imply that the representative has in fact limited the range of 'choices' based on the individual's circumstances. It implies there may be more 'choices' that the representative has assessed as not applicable to the consumer.
Options/general options/financial options/product options	One thing that can be chosen from a set of possibilities, or the freedom to make a choice. However it also means that a person has to do a particular thing because there is no possibility of doing anything else.	Oppose A consumer could interpret the 'options' provided by a representative as not being general in nature but have been purposefully selected based on the individual's personal circumstances.
Guidance/general guidance/financial guidance/product guidance	Something that provides direction or advice as to a decision or course of action The act of guiding or showing the way	Oppose The meaning and common/ lay person understanding of guidance has the same intent as the meaning of 'advice' and therefore will not resolve the issues with the term 'general advice'. To guide someone is to provide assistance. Assistance implies it is provided in the individual's interest to help them.
Information/general information/product information	Information means "*facts*" and "*knowledge obtained from investigation, study, or instruction*".	Support Information is a clear term that consumers understand does not take into account their personal circumstances.
Suggestions/general suggestions/financial suggestions/product suggestions	The process by which a physical or mental state is influenced by a thought or idea. An idea or plan that you offer for someone to consider.	Oppose This label is ambiguous. It implies that the 'suggestions' being provided are done so to help the consumer, without clearly describing to the consumer why the 'suggestions' are being offered. It is commonly understood that when a 'suggestion' is offered to a person, it is done so in order to help that person. Therefore, this label is misleading as it implies the 'suggestion' has been personalised in some way as it is intended to 'help' the consumer. It

		could lead the consumer to believe that the representative providing the ‘suggestions’ thinks the ‘suggestions’ are relevant to the consumer in some way and will help them, particularly as the representative would likely be more knowledgeable on the subject matter of the ‘suggestions’ than the consumer.
Tips/general tips/financial tips/product tips	A tips is: a piece of advice or expert or authoritative information a piece of advance or confidential information given by one thought to have access to special or inside sources a useful piece of information or advice, especially something secret or not generally known	Oppose To provide someone with a ‘tip’ implies that the person will miss out on something if they do not act on the tip provided; that the ‘tip’ is about an opportunity with a high probability of a positive and worthwhile outcome. It also implies that the ‘tip’ contains more detailed and specialised information that other people have not be privy to. This label could mislead and confuse consumers and does not appropriately or accurately represent what ‘general advice’ is.
Ideas/general ideas/financial ideas/product ideas	An understanding, thought or picture in your mind A purpose or reason for doing something. A formulated thought or opinion	Oppose The word ‘idea’ is ambiguous and can present slightly different meanings for different people. Its meaning is heavily influenced by the interaction taking place. For example, a consumer may believe an ‘idea’ is “an understanding, thought or picture in [the] mind” of the representative based on the consumer’s circumstances that the representative is aware of. It is the opinion of the representative that has been ‘formulated’ based on the consumer’s circumstances. Therefore, it may mislead consumers into thinking the ‘idea’ presented to them by a representative is about them and has been provided because it relates to the consumer’s circumstances.
Pointers/general pointers/financial pointers	A helpful piece of advice or information. A useful suggestion or hint about how to do or understand something better A pointer to something suggests that it exists or gives an idea of what it is like. A pointer is a piece of advice or information which helps you to understand a	Oppose The word ‘pointers’ is unusual and not commonly used by people. It could therefore be easily misunderstood and inconsistently interpreted by consumers and industry as to the purpose or limitations of the ‘pointers’ provided. As its meaning suggests, it could also be misinterpreted as ‘advice’ and whether the consumer’s personal circumstances have or have not been considered.

	situation or to find a way of making progress.	
Guidelines/general guidelines/financial guidelines/product guidelines	Information intended to advise people on how something should be done or what something should be. Official instruction or advice about how to do something. A standard or principle by which to make a judgment or determine a course of action. Something that can be used to help you plan your action or to form an opinion about something.	Oppose The word 'guidelines' is ambiguous. It has a specific meaning in business that it is sets official rules that must be followed; whereas outside the business context 'guidelines' may be seen more as fluid suggestions that may or may not be considered.
Hints/general hints/financial hints	Something that you say or do that shows what you think or want, usually in a way that is not direct. A piece of advice that helps you to do something.	Oppose Implies the representative is not providing all the facts. As 'hints' are provided "usually in a way that is not direct" it implies the 'hints' and the reasons they are provided may be secretive in some way, making it unclear that the consumer's circumstances have not been considered.
Opinions/general opinions/financial opinions	A view, judgment, or appraisal formed in the mind about a particular matter A belief stronger than impression and less strong than positive knowledge A formal expression of judgment or advice by an expert A belief not based on absolute certainty or positive knowledge but on what seems true, valid or probably to one's own mind. An evaluation, impression, or estimation of the quality or worth of a person or thing	Oppose As explained above, consumers will most likely disclose information about their personal circumstances to a financial services provider in all the interactions they have with the entity or person. An opinion applies to a conclusion or judgement about a particular matter. It is therefore reasonable that a consumer could misunderstand that a representative has consider the consumer's circumstances in formulating the "conclusion or judgement" in order to provide the 'financial opinion'.

Recommendations/general recommendations/financial recommendations/product recommendations/sales recommendations/marketing recommendations		Oppose The legal requirements for personal financial advice in the Corporations Act and ASIC's associated guidance, particularly in relation to the best interest duty in s961B, specifically rely on the provision of 'recommendations' about financial products explicitly in relation to the consumer's circumstances. It would therefore be inappropriate for this word to be used as an alternative label for 'general advice' which does not consider the consumer's circumstances.
Sales conversation/marketing conversation/product conversation	Talk between two or more people in which thoughts, feelings and ideas are expressed, questions are asked and answered, or news and information is exchanged. A discussion with someone about a particular subject Oral exchange of sentiments, observations, opinions, or ideas	Oppose 'Conversation' implies the representative is actively listening to the consumer and responding with comments directly related to the information disclosed by the consumer during that interaction. Hence it is highly likely consumers would interpret the 'product conversation' to be relevant to their individual circumstances and not general in nature.
Sales discussion/marketing discussion/product discussion	A conversation about something, usually something important. The activity in which people talk about something and tell each other their ideas or opinions. The formal examination or consideration of a matter in speech or writing Talk or writing in which pros and cons or various aspects of a subject are considered. If there is discussion about something, people talk about it, in order to reach a decision.	Oppose A discussion is defined as a conversation. Therefore it presents the same issues as the word 'conversation' as an alternative label for 'general advice'. However a 'discussion' is also considered more "formal" than a 'conversation' and "considers the pros and cons of the subject matter" by "tell[ing] each other their ideas and opinion", "in order to reach a decision". This implies that one party of a discussion is involved in order to help another party make a decision based on the opinions and ideas of the other party. That is, that one party, the consumer, is sharing information about themselves in relation to that subject matter. Hence it is highly likely consumers would interpret a 'product discussion' to be relevant to their individual circumstances and not general in nature.

Statements/sales statements/marketing statements/product statements	Something that is said, especially formally and officially An act or object that expresses an idea or opinion A piece of paper that lists financial details A declaration of matter of facts An expression of confidence or authority	Oppose Financial services providers have had long standing legal requirements placed upon them to provide consumers with ‘statements’ of their personal circumstances or assets as held or known by the entity. For example, a bank statement, credit card statement, loan statement, and in relation to financial advice, a Statement of Advice. These documents come with strict legal requirements which hold penalties if breached. Hence, consumers expect a ‘statement’ from a financial services provider to be a formal, official document relating to their personal circumstances. It would therefore be inappropriate for this word to be used as an alternative label for ‘general advice’.
Sales communication/marketing communication	The imparting or exchanging of information by speaking, writing, or using some other medium. The process of sharing information, especially when this increases understanding between people or groups.	Oppose The term ‘communication’ is inappropriate as it has specific and formal meaning in many industries and businesses and therefore is easily open to misinterpretation as to the meaning of the label.
Presentation/sales presentation/marketing presentation/product presentation	A talk to a group in which information about a new product, plane, etc., is presented An act of showing, describing, or explaining something to a group of people A formal talk in which you describe or explain something to a group of people	Oppose The word ‘presentation’ has limited application in relation to the breadth of situations in which consumers may be provided with ‘general advice’. It would be only be application to seminars as its meaning limits it application to one-on-one interactions a consumer may have with a representative, videos, newsletter, and articles, for example. This meaning is commonly understood.
Product advertising/product marketing	Advertising is the business of trying to persuade people to buy products Marketing is the organisation of the sale of a product, for example, deciding on its price, the areas it should be supplied to, and how it should be advertised	Support The FPA would support the label ‘product advertising or product marketing’ in relation to ‘general advice’ currently provided to sell products. However, we would prefer the label ‘product sales material’ as detailed above. It is well understood by consumers that advertising and marketing is general in nature, does not take into account an individual’s circumstance, is intended to sell a product, and does not represent the consumer’s interest.

For each of these options an additional alternative is adding either “non-personalised” or “non- tailored” in front of them. For example, an additional option for “choices” can be either “non-personalised choices” or “non-tailored choices”.		Support - “non-personalised” however, this must come with a clear explanation that it is general in nature, that the consumer’s specific circumstances have not been considered; that other options have not been considered as to whether they may better serve the consumer; as it is general in nature the ‘product sales material’ or the ‘strategy information’ may not be in their best interest or suit their specific and broader needs; the consumer must consider how and if the ‘product sales material’ or the ‘strategy information’ may suit their needs; and a suggestion to consider seeking personal financial advice to assist the consumer in making an informed decision. Oppose “non-tailored” - Consumers may not have a clear understanding of the meaning of “non-tailored”. “Tailored” may be industry jargon rather than a commonly and consistently understood term.