



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

QUALITY OF ADVICE REVIEW PROPOSAL PAPER

Prepared for Treasury – Quality of Advice Review

26 September 2022



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Secretariat, Quality of Advice Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600
AdviceReview@TREASURY.GOV.AU

Dear Ms Levy,

Re: Quality of Advice Review – Proposals Paper (August 2022)

The Financial Planning Association of Australia¹ (FPA) welcomes the opportunity to provide this response to the Quality of Advice Review – Proposals Paper, released 29 August 2022.

The FPA supports the Quality of Advice Review 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.

The proposal paper addresses many of the disconnects - between being regulated as a product distributor but providing a personal professional service – and is broadly in line with the FPA's Policy Platform 'Affordable Advice, Sustainable Profession'.

For this reason, the FPA welcomes the Review's Proposals Paper and the practical solutions to improve the operation and structure of the financial planning profession to simplify and support the

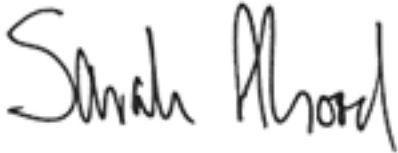
¹The Financial Planning Association (FPA) is a professional body with almost 12,000 individual members and affiliates of whom around 10,500 are practising financial planners and nearly 5,000 are CFP professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in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

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,

A handwritten signature in black ink that reads "Sarah Abood". The signature is written in a cursive, flowing style.

Sarah Abood
Chief Executive Officer
Financial Planning Association of Australia

Introduction

The FPA notes that the Review has effectively defined a whole new advice framework for the provision of financial advice. We appreciate this is both a bold framework and a difficult concept to understand unless a “blank piece of paper” approach is taken to understanding the proposed framework. It has been through the conversations, working groups, and stakeholder sessions with the Review that the FPA has come to better understand the proposals being put forward.

We note that other interested parties may not have fully embraced or understood the concepts proposed by the Review and would encourage the Review to consider ways to present the recommendations visually as part of the final recommendations. Further, there are still many questions in relation to how the proposals may work in practice, and our response below indicates where the review may wish to provide further details in the final recommendations.

The FPA welcomes that the Review has not remained constrained by the current operation of the financial services industry and financial planning profession and has looked to best practice internationally to develop a new framework to meet the needs of Australian financial advice consumers.

Intent of proposals

The FPA supports the overall intent of the proposals to move to a more principles-based approach to regulating the provision of financial advice, with a focus on the output rather than the inputs of the advice process.

The FPA’s overarching principles for considering QOAR Proposals Paper

- The definition of “Personal financial advice” must have the provision of financial advice at its core, and not be based around financial product(s)/class of product.
- There should be one standard for all personal advice providers with a principles-based approach to regulation:
 - The regulatory costs of providing personal advice must help improve the affordability of advice for consumers by ensuring there is a level playing field for the regulatory requirements and standards imposed on advice providers.
 - The regulatory environment should facilitate the provisions of simple personal financial advice to clients in an affordable manner by financial planners and financial planning practices, as well as non-relevant providers, to meet consumer demand.
- The law governing financial advice-related interactions between consumers and providers must effectively protect consumers while enabling them to access appropriate, quality, and transparent financial advice that can assist them in making informed decisions.
- Regardless of who is providing the advice, the priority must be to ensure that the regulatory environment facilitates the provision of advice that is the best for the client at the time the advice is provided.

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- The regulatory environment should facilitate consumer access to affordable quality financial advice by addressing multiple supply and demand side touch points. Regulatory requirements must:
 - Build consumer trust in the different types of advice services and benefits through high standards, appropriate education and training, effective requirements and accountability, and transparent regulation of the provider, applied consistently across the financial services sector
 - Reduce input costs into the provision of financial advice
 - Facilitate an increase in financial advice providers (through career pathways / education / PY / retention / etc)
 - Ensure active accountability for all financial advice providers
 - Maintain consistent consumer protections across the industry
 - Unify the industry
 - Be fair and equitable
 - The impact on competition in the financial advice market must be a key consideration when examining the current legal obligations and making recommendations for regulatory change.
 - The application of the requirements should be business model agnostic and not provide a structural competitive advantage to one type of provider over another.
 - Only 'relevant providers' who meet the professional standards should be legally permitted to use the terms financial planner and financial adviser and like terms.

FPA response to consultation questions

Intended outcomes

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

FPA position on proposed change:

- The FPA has long called for relief for financial planners from the regulatory burden created by the obligations that currently apply to the provision of personal advice, particularly in the context of advice provided by financial planners who operate in a professional standards framework.
- Yes. Financial planners should be able to provide personal advice to clients without having to comply with duplicative obligations, and compliance-focused requirements that deliver little to no benefit for clients and hinder the use of professional judgement.
 - The adherence to the Code of Ethics should be accepted as meeting the proposed 'good advice standard'. The proposed good advice standard should not be an additional requirement for financial planners.
- The FPA supports the overall intent of the proposals to move to a more principles-based, outcomes focused approach to regulating the provision of financial advice. The intent of the reform package has the potential to change the focus of the law from the inputs into the advice and the advice process (conduct, research, etc), to focus on the outputs (the quality of the advice). This is a positive outcome and in line with the regulation of professions.
- The application of the proposed requirements should be business-model agnostic and not provide a competitive advantage to any one type of provider over another.

Compliance culture

- The proposed reform package may require cultural change by licensees and ASIC who have been historically reliant on the current licensing system and a track-record of interpreting and implementing the obligations in the law using a prescriptive tick-a-box compliance approach, as it is viewed as being easier to monitor and demonstrate compliance with.
- The view from members, compliance consultants and licensees is that each ASIC notice, ASIC reports (such as 515) and statements made through the Royal Commission by ASIC has led to licensees imposing additional compliance requirements and tighter processes which go above and beyond the law.
- Additionally, in the past, licensees have created their own rules and additional requirements if they believed the legal requirements exposed them to too much risk, particularly in relation to potential consumer complaints, AFCA action or hardened professional indemnity insurance conditions.
 - There is no precedence in AFCA determinations, which creates significant uncertainty as to how the EDR scheme (and predecessor schemes) will interpret requirements.

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- PI insurance is the most significant business expense for small and medium sized financial planning licensees.
 - It is unclear how AFCA and PI insurers would adapt to principles-based regulation for the provision of financial advice.

Consumer protection gaps

- The package of proposals has the potential to create gaps in legislated consumer protections and may encourage avoidance behaviour:
 - Licensees, particularly product providers, will be able to determine their own requirements to protect consumers, including competency of representatives, while at the same time relaxing disclosure requirements
 - It is unclear how the new requirements will interact with the Code of Ethics.
 - There is a risk that the proposed reform package is solving one problem but creating another. It provides greater flexibility and professionalism for planners, but relaxes requirements for product providers who would operate under different rules and would not be assessed as stringently as more qualified financial planners are assessed, leaving consumers exposed.
- Improving consumer access to affordable financial advice must include appropriate consumer protections and provider transparency to ensure the opportunity for misconduct and consumer detriment is avoided.

What should be regulated?

2. In your view, are the proposed changes to the definition of 'personal advice' likely to:

- a) reduce regulatory uncertainty?
- b) facilitate the provision of more personal advice to consumers?
- c) improve the ability of financial institutions to help their clients?

FPA position on proposed change:

- **The FPA is disappointed** that the proposed change to the definition of personal advice is still based around financial product(s) / class of product and as such does not recognise the provision of personal financial advice as a stand-alone financial service. The definition of personal advice must have the provision of financial advice at its core, not financial products.

Regulatory uncertainty

- The proposed changes to the definition of 'personal advice' replaces "considers" with "has or holds information about":

'Personal advice' is a recommendation or opinion provided to a client about a financial product (or class of financial product) and, at the time the advice is provided, the provider has or holds information about the client's objectives, needs or any aspect of the client's financial situation.

- **The FPA supports this change** as it will provide a clear and definitive boundary of when personal advice is being provided and therefore **reduce regulatory uncertainty**.
- This change should reduce the provision of personal advice under the guise of general advice based on the claim that information held about a consumer was not considered and is clearer as to what 'advice services' are and should be captured.
- It will be important to ensure 'non-relevant providers' do not have relevant information hidden from them through subsidiary companies or structures in an effort to avoid consideration of information the licensee holds about the client.

Provision of more personal advice

- Whether the proposed definition would facilitate the provision of more personal financial advice to consumers should be considered in conjunction with the proposed removal of the requirement that any individual who provides personal advice to a retail client must be a 'relevant provider'.
- The FPA supports in principle a two-tiered personal advice model operating under a clear and appropriate framework for 'non-relevant providers', including education requirements. This must sit under and feed into the financial planner (relevant provider) professional standards and education framework. (See question 7 for details.)
- The combination of these proposals may increase the number of advice providers.
- The focus of reforms should be on removing the focus on the inputs to the advice process, to a focus on beneficial outcomes for the client.

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- Consumer protections that apply to the individual interacting with consumers must be maintained for all advice providers.

Improve financial institutions helping their clients

- The regulatory environment should be business model agnostic and not provide a competitive advantage to one type of provider over another. This is consistent with The Office of Best Practice Regulations' Competition and Regulation Guidance Note, which states:

If your proposed regulation would restrict competition, you must demonstrate that the only way of achieving the Government's policy objective is to do so.

- The Guidance Notes identifies, among other issues, that regulation that restricts competition can:
 - limit consumers' ability to choose who to buy from
 - significantly raise costs of production for some businesses relative to others
 - limit the ability of some types of businesses to provide a good or service.
- The regulatory environment must permit all personal advice providers to provide affordable simple personal advice to consumers to improve access to affordable quality advice.

Avoidance behaviour

- The FPA is concerned that the proposed personal advice definition may lead to avoidance behaviour such as reducing the client information asked and/or "held" on record so interactions between the provider and consumer would fall outside the proposed personal advice definition requirements. This would result in the consumer believing the advice is personal advice, but the provider has avoided the proposed personal advice definition and the obligations.
 - The current 'know your client' 'input process requirement' for providing personal advice could address this concern. However, the package of proposed changes is "output" focused. It is unclear how the proposed definition and a "good advice standard" would be implemented to sufficiently drive providers to ensure their "input processes" made certain that consumer information and interactions were appropriately captured and recorded.
- Anti-avoidance measures may be required.

Consumer warning

- There is a high risk that clients will perceive that they are receiving holistic personal advice (not limited personal advice, or information) and the representative interacting with them would be qualified enough and permitted to identify any areas or issues of their financial circumstances that the consumer may need to address.
- Regardless of the impact of current general advice warning, not having a warning that the provider is not giving financial advice will just exacerbate this issue.
- While consumers may choose not to heed a warning, it should still be the responsibility of the provider to give a warning. If no warning is given, it takes this choice away from the consumer and gives the power to the provider.
 - Consumers should be warned that:

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- the interaction they are having with a provider (licensed or unlicensed) is not holistic personal financial advice but restricted personal advice or the provision of information (whichever is the case);
 - the provider is not qualified or licensed to provide personal financial advice (if this is the case); and
 - they should seek broader personal financial advice from a financial planner (relevant provider). It must be clear that:
 - Holistic personal financial advice is not being provided
 - Who the person is representing – client or provider

Financial planners providing information

- It should be noted, there are many instances where a financial planner will provide a client with factual information, such as how a strategy practically works or the tax consequences of a strategy, without it being advice to the client, despite knowing information about the client.
 - This is part of the education process a financial planner will go through with their client and is an important part of the advice process which needs to occur without being considered personal advice.

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

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

FPA position on proposed change:

- Based on clarification provided by Ms Levy in stakeholder round table discussions, the FPA understands that under the proposed package of changes there would either be personal financial advice or information. General financial advice would no longer exist in regulations. The other existing laws (such as the CCA prohibition against engaging in misleading or deceptive conduct) would act as a safety net for consumers interacting with unlicensed providers.
- **The FPA supports** the removal of general advice; and the principle that interactions between consumers and providers be classified as either personal financial advice or information based on whether the provider "*has or holds information*" about the client/member.

Use of restricted terms

- As discussed above, s923C of the Corporations Act restricts the use of the terms "financial planner" / "financial adviser" and 'expressions of like import' to those who meet the requirements for 'relevant providers'. These provisions should be reviewed, strengthened, and enforced by the Regulator with both licensed and unlicensed providers.
- Similar to the UK model of "restricted advisers" and "independent advisers", an alternate term is required to differentiate non-relevant providers from relevant providers, but also from unlicensed providers such as influencers.

Oversight of unlicensed providers:

- While the FPA agrees existing laws can play a role in protecting consumers from unlicensed providers, we are concerned about the capacity of regulators to provide effective oversight in this space.
 - For example, as stated on the organisation's website, the ACCC's core remit is:

promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians.
 - Traditionally, the Competition Regulator has had minimal involvement in both financial services and misconduct.

How should personal advice be regulated?

4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide 'good advice' have on:
- a) the quality of financial advice provided to consumers?
 - b) the time and cost required to produce advice?

FPA position on proposed change:

- The FPA supports:
 - a principles-based regulatory approach focusing on output not input processes.
 - removal of duplication.
 - that financial planners' adherence to the Code should be accepted as meeting the good advice standard (i.e. Not create additional requirement for financial planners)
 - that all personal advice providers should meet the same standards

Quality of advice and consumer protections

- The FPA believes all advice providers must have an ethical duty to consumers.
 - The package of proposals suggests the removal of the best interest duty in the Corporations Act and introducing a two-tiered model of personal advice providers – relevant providers and non-relevant providers. This will remove the ethical based requirements within the law that apply to non-relevant providers.
 - The law must include an obligation on providers to act ethically towards consumers and put the consumer's interest first.
 - One of the current outcomes of the Best interest duty and safe harbour is that there are many examples of advice complying with the safe harbour but not being in the best interest of the client, and advice in the best interests of the client having been found to have failed the safe harbour (noting this should not have been how the safe harbour was meant to be applied).
- The changes in the SIS Act covenants, the DDO and breach reporting requirements are new and untested as to the role these obligations play in protecting consumers in relation to conflicts of interest and misconduct.
 - The proposed removal of the advice best interest duty should be considered and tested alongside the implementation of the new breach reporting, DDO and SIS Act / RI covenant obligations to ensure the COI and BI requirements in the law for licensees are sufficient protection for consumers, particularly in relation to personal advice provided by product providers.

Time and cost of providing advice

- The best interest duty duplicates the standards in the Code of Ethics, but with different input requirements for compliance purposes. This impacts the cost of providing advice.
 - Removing the best interest duty will permit financial planners to focus on adhering to their ethical obligations under the Code using their professional judgement. Using

professional judgement rather than inflexible input-based requirements will improve the efficiency, cost and experience for clients of providing financial advice.

- The proposed 'good advice standard', more broadly will benefit consumers, as licensees will no longer have the option to obviate the personal advice obligations (i.e., the current provision of 'general advice'). But additionally, because of the change from a prescribed process, the FPA agrees that advice providers will be able to determine the best process for providing advice.
 - Flexibility in information collection processes, flexibility in advice delivery, flexibility in disclosure all provide an opportunity to more efficiently, create a reduction in cost, and improve the engagement process with clients.

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- 5. Does the replacement of the best interest obligations with the obligation to provide 'good advice' make it easier for advisers and institutions to:**
- a) **provide limited advice to consumers?**
 - b) **provide advice to consumers using technological solutions (e.g. digital advice)?**

FPA position on proposed change:

- The FPA broadly supports the replacement of the best interest duty with the 'good advice' obligation.
 - The FPA is concerned however with the risk that different advice providers may pose to consumer interests.
- All personal advice providers should meet the same standards.
 - Financial planners' adherence to the Code of Ethics must be accepted as meeting the good advice standard (i.e. the good advice standard should not be in addition to the Code, in the same way the best interest duty currently operates).
 - The regulatory environment should permit financial planners to provide affordable, simple personal advice to consumers through the removal of input-based regulations required under the current advice laws.
 - The good advice standard should lead to non-relevant providers providing the same outcomes to consumers as they would if they engaged a financial planner (albeit on the specific, limited scope).
- While it is ultimately up to technology providers to work with advice providers to develop "good advice standard" digital advice solutions, it should be noted that it is sometimes easier to create a compliant advice process under a structured, input based regulatory model than a subjective outcomes based model.
 - The FPA also remains concerned that without professional judgement, advice provided by a digital only solution has the potential to make recommendations in situations where it is inappropriate to do so, despite the obligation for the provider to be 'reasonably certain' it is a good advice outcome for the client.
- The changes in the SIS Act covenants, the DDO and breach reporting requirements are new and untested as to the role these obligations play in protecting consumers from conflicts of interest and misconduct.
 - The proposed removal of the advice best interest duty should be considered and tested alongside the implementation of the new breach reporting, DDO and SIS Act / RI covenant obligations to ensure the Conflicts of interest and best interest duties requirements in the law for licensees are sufficient protection for consumers, particularly in relation to personal advice provided by non-relevant providers.

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

- a) **limited advice?**
- b) **digital advice?**

FPA position on proposed change:

- As noted above, the main concern of the FPA in relation to the success of these proposals is the compliance culture of licensees inhibiting their willingness to embrace these changes, based on a fear that ASIC and AFCA will test advice under the current laws rather than those proposed, and that a failure to ‘tick all the boxes’ despite a good advice outcome for the client will still lead to regulator and AFCA action.
 - The FPA has provided members with a number of best practice guidance tools over the years to improve advice delivery, efficiency and effectiveness for the benefit of clients, only for licensees to not allow them to be implemented. This has included in recent years ‘The Future of the SOA’ tool for the creation of digital advice, and more recently the release of ‘Video SOA’ toolkit. Member feedback has been that despite a willingness to invest in better client experiences and cost reduction that these would provide, licensees have blocked their implementation.

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

- a) **the quality of financial advice?**
- b) **the affordability and accessibility of financial advice?**

FPA position on proposed change:

- The FPA supports in principle a two-tiered personal advice model with the following features:
 1. Clear descriptive titles that consumers would understand – eg ‘restricted planner/adviser’ and ‘financial planner/adviser’.
 - Relevant provider and non-relevant provider are not consumer friendly terms
 - The consumer-friendly term for selected non-relevant providers should be set in law and protected.
 - Licensees should not be permitted to use alternative terms for representatives who provide this advice service to consumers.
 2. Common requirements across all providers where possible
 3. Restricted advice operating under strict enforceable framework that has:
 - a) Clear boundaries of the advice service that can be provided by restricted advisers:
 - limited to the provider’s product only
 - cannot provide strategy advice (eg advice on topics such as “should I pay my mortgage off or make a super contribution?” could not be given)
 - cannot provide super rollover advice
 - may consider consumer’s personal circumstances outside that product – eg social security, assets/liabilities, aged care needs (as it helps to provide good advice limited to that provider’s product) – but cannot provide aged care advice, or Centrelink advice
 - b) Good advice standard applies plus:
 - Subject to ethical duty to consumer
 - Licensee general obligations in Corps Act apply
 - Licensee supervision
 - Restricted authorisation
 - Consumer warning
 - Conflicted remuneration obligations apply
 - No ongoing fee arrangements permitted
 - Trustee director accountability obligations apply
 - Relevant provider requirements apply to responsible managers
 - Record keeping requirements apply

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- Anti-avoidance measures apply
 - DDO applies
 - SIS Act requirements apply, if relevant
 - Consumers must have access to redress
 - Standards must not hinder consumer redress
- c) An established competency framework:
- Must meet minimum education requirements set in law/by profession
 - These might not be to the same standard as the requirements for financial planners (relevant providers)
 - Should be linked to planner education standards to ensure they provide career path to help address the adviser shortage
 - It should not be up to individual licensees to determine competency requirements for their restricted advisers – there must be consistent minimum standard that apply across the industry.
- Further work and consultation is required to identify a clear and appropriate framework for ‘non-relevant providers’, including education requirements. This must sit under and feed into the financial planner (relevant provider) professional standards and education framework.
 - Care must be taken to ensure the two-tiered model does not result in carve outs from fundamental consumer protections and foundation education and training standards.
 - Foundation education is required to instil the minimum knowledge, skill and understanding of how the financial system works, financial laws, and importantly, consumers’ financial needs, risk tolerance and financial capability, needed to help consumers.
 - This level of skill and knowledge cannot be achieved through call centre scripting.
 - Returning to a similar system to the RG146 competency requirements and poor consumer outcomes should be avoided.
 - There is a significant risk to the quality of advice provided by individuals who do not adhere to ethical obligations and have not achieved the based level of education deemed necessary to provide advice.
 - There is a strong history of financial product providers using financial advice channels as distribution points for their products. Introducing a two-tiered personal advice provider system may increase the number of touch points through which consumers can access personal financial advice, but it comes with consumer protection issues
 - The FPA is concerned that this proposal is reliant on untested recent reforms for IDR/EDR, DDO, breach reporting, anti-hawking and SIS Act changes all operating effectively in all licensees.
 - The effectiveness of these new requirements are all untested at this point.
 - What has been evident to date on licensees’ implementation of the new requirements, particularly the DDO obligations is concerning.

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- Financial advice services provided by relevant providers should always fall under the professional and education standards in the Corporations Act, most importantly the Code of Ethics.

Affordability

- The excess costs involved in providing advice are the prescriptive input processes required by law.
- Changing to a principles-based regulatory system focused on the advice output under the following elements of the proposed package of reforms will have a significant positive impact on the costs involved in providing personal financial advice, improving affordability for consumers from all advice providers:
 - Broaden the personal financial advice definition
 - General advice should no longer be regulated
 - Personal advice providers must obtain annual written consent, but this should be standardised to a single form
 - The advice provider determines the appropriate form advice is provided in (remove mandatory SOA/ROA), and must maintain records of advice provided.
 - Increase flexibility in how FSGs are provided.
 - DDO reporting should be limited to complaints.
- Reducing the costs involved in providing advice for all advice providers will deliver the following benefits:
 - help to address the affordability of advice issues for all Australians
 - maintain consistent consumer protections across the industry
 - reduce regulatory uncertainty about which rules apply
 - facilitate a longer-term increase in the number of financial planners (career pathways / education / retention / attractive career option skilled migration visa program etc)
 - ensure active accountability for all financial advice providers.
- All individuals who provide personal financial advice to consumers should have an ethical duty to consumers

Accessibility

- Affordability and accessibility are intrinsically linked.
- Reducing the regulatory inputs and costs involved in providing personal advice will allow financial planners to provide simple and limited advice at a reasonable price.
 - Currently the cost of providing advice is too high to be able to charge a reasonable fee for simple advice at a rate that is affordable for many consumers. Hence financial planners generally do not offer such services, which reduces the availability of financial advice for consumers.
 - Financial planners spend a significant amount of time meeting regulatory requirements which reduces the time available to help clients. This impacts the availability of advice for consumers.

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- Removing regulatory duplication and the inefficiencies created by regulatory (or licensee driven) input processes, and implementing the above elements of the proposals, will significantly improve advice efficiency and time available to help clients.
 - As stated above, changing to a principles-based regulatory system focused on the advice output will have a significant positive impact on the costs involved in providing personal financial advice, which should improve the ability of all advice providers to provide advice services to meet consumer needs at a more affordable price.

Consumer warning

- A recurring theme in current limited advice complaints is that clients perceived they were receiving holistic advice and the person 'advising' them would be qualified enough and permitted to identify any areas or issues of their financial world that they need to address.
 - A restricted / limited advice warning with a suggestion the consumer seek further advice should be provided. This would be helpful for consumers and in line with Code of Ethics requirement around scoping the advice.

Use of restricted terms

- There are concerns that the current restrictions on using the terms financial planner / financial adviser and 'terms of like import' in s923C of the Corporations Act are:
 - not effectively reducing the use of the terms by non-relevant providers, particularly those providing general advice and individuals who fall outside the licensing regime
 - unclear and open to interpretation in relation to the meaning of 'terms of like import' resulting in many entities and individuals adopting terms that imply to consumers that the person providing the service has a high level of expertise
 - not being appropriately enforced
 - not promoted with the aim of helping consumers understand and clearly identify the difference between advice providers.
- Only relevant providers who come under the code of ethics and meet the education and training requirements should be permitted to use the terms financial planners, financial advisers or 'terms of like import'.
 - These provisions should be reviewed, strengthened, and enforced by the Regulator with both licensed and unlicensed providers.
 - Consideration should be given to restricting the use of the consumer-friendly term we suggest should be set for 'non-relevant providers'.

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

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

FPA position on proposed change:

- No, the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services are not sufficient to ensure the quality of advice provided to consumers. This was apparent during the RG146 framework where licensee interpretation was varied to the detriment of consumers.
- Historically, reliance on the licensee's general obligations to ensure that representatives are adequately trained and competent to provide financial services led to a 'race to the bottom' of substandard education courses that ticked the licensees' competency training box; and delivered poor consumer outcomes.

Ensuring competency of all providers

- To ensure all advice services 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 (see *FPA's submission to the Quality of Advice Review Issues Paper* for further details).
- This will provide flexible pathways to demonstrate competence for non-relevant providers and relevant providers and establishes a regulatory framework that facilitates consumer access to affordable quality financial advice by addressing the supply-side need to increase financial planner numbers (career pathways / education / professional year / retention etc) while ensuring active accountability for all providers.
- As stated above, further work and consultation is required to identify a clear and appropriate framework for 'non-relevant providers', including education requirements. This must sit under and feed into the financial planner (relevant provider) professional standards and education framework.

Who is a relevant provider

- This question must be also considered in the context of the package of proposals, particularly the following proposed changes to who must be a relevant provider.

A 'relevant provider' is an Individual who:

- Provides personal advice **AND***
- Whose client pays a fee for the advice **or***
- the provider (or the provider's authorising licensee) receives a commission in connection with the advice, **AND***
- there is an ongoing advice relationship between the adviser and the client, or*

v. *the client has a reasonable expectation that such a relationship exists.*

There are 3 elements - 1) personal advice, 2) client payment, and 3) ongoing relationship

- The proposed strict definition of 'relevant provider' could increase the risk of avoidance behaviour, particularly when packaged with other proposals. For example:
 - Ongoing relationship - the requirement for there to be a formal or ongoing relationship would exclude transactional only advice and strategic advice that does not require an ongoing relationship.
 - Eg aged care advice is a complex area of advice that is often one-off and does not require an ongoing relationship.
 - This requirement may also discourage all advice providers from offering an ongoing relationship which may benefit clients, if it is perceived as a means of avoiding the definition of 'relevant provider'.
 - Client pays for the advice - some advice fees may be hidden in other fees or arrangements to avoid falling under the definition of 'relevant provider' when personal advice is provided. This may particularly apply to high-risk strategies or products such as gearing. Anti-avoidance regulations will be essential.

Superannuation funds and intra-fund advice

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

- a) make it easier for superannuation trustees to provide personal advice to their members?
- b) make it easier for members to access the advice they need at the time they need it?

FPA position on proposed change:

- The FPA is not comfortable with the removal of collective charging restrictions.
- Opening up collective charging raises ethical issues and brings into question the equity and fairness of the system and its impact on competition.
- Collective charging distorts the advice market by creating the consumer illusion that the advice is free if it is provided by a superannuation fund versus paying for advice from a financial planner.
 - This provides a competitive advantage to one type of advice provider
 - The collective members of the fund have to pay for the advice fees for those members who are provided advice.
- Price is a strong driver in consumer behaviour.
- This is concerning given complaints evidence shows that consumers perceived they were receiving holistic advice and the person 'advising' them would be qualified enough and permitted to identify any areas or issues of their financial world that they need to address.

Disclosure documents

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

- a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, how and to what extent?

FPA position on proposed change:

- The FPA supports the proposed changes to streamline the disclosure requirements for ongoing fee arrangements.
 - Clients should only have to sign one form.

Regulatory burden and cost of advice impact

- As part of the profession's response to the Quality of Advice Review, the FPA along with nine other associations has engaged CoreData to do a deep analysis of all of the cost drivers of advice - from data collection to strategy development, SOAs, fee disclosure, and implementation. One of the issues with advice delivery and the regulations impacting it is that there is a lack of data on the actual cost to provide advice. Through this 'Cost of Advice' survey and analysis we aim to break down the impact each law, regulation and requirement has on the cost of providing advice to clients. The results of this study will be shared with the Review as soon as possible.
- However, from an anecdotal perspective, yes streamlining the disclosure requirements for ongoing fee arrangements will significantly reduce the time and costs involved in providing an ongoing service.
 - Members have in some instances added additional staff members to handle fee disclosure and authorisation processes with some quoting additional costs in the \$80,000 to \$120,000 a year vicinity.
 - A concern with the current model however is the inability for clients to renew an ongoing fee arrangement prior to the anniversary date, which must be addressed in any amendments to the framework. The normal practice for financial planners is to provide the review service in the current year of the ongoing fee arrangement, rather than at the beginning of the renewed ongoing fee arrangement.

Consumer impact

- Streamlining the disclosure requirements for ongoing fee arrangements will significantly reduce the inconvenience and confusion the current requirements have caused clients – eg signing multiple consents, over-disclosure, delays due to lack of standardisation.

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

- a) reduce the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, to what extent?

FPA position on proposed change:

- The FPA supports the proposal to allow the advice provider to determine the appropriate form the advice is provided in and the removal of the mandatory requirement to provide a SOA/ROA. This would be replaced with a requirement to maintain complete records of the advice provided and provide a record of the advice provided to the client on request.
- Advice documentation should be determined based on the client's personal circumstances, advice needs, the client's preferred learning style, and using the financial planner's professional judgement.
 - This position is in line with the intent of the Code of Ethics.
 - There must be a thorough record of the advice showing an understanding of circumstances and goals. The Code requires this, and all providers should operate under this premise.
 - Consumers should be given adequate documentation for recourse if necessary.
- While the FPA understands "written" now has a broad meaning in the law, the common understanding of written may have the unintended consequence of licensees requiring advice to be provided as words written on paper. The FPA recommends that the term "document" be used instead to allow video, audio, digital apps, infographics, tables and other new technologies as they are developed to be used where it is appropriate for the client.

Implementation

- The success of this proposal will be heavily influenced by how it is interpreted and regulated by ASIC, industry and used by AFCA and PI insurer.

Implementation and acceptance of the potential flexibility of documentation of this change would be required to ensure its cost saving and advice understanding benefits for consumers are delivered.

Cost of providing advice

- The Joint Associations Working Group (JAWG) 'Cost of Advice' survey and analysis will provide detailed data on the true cost of the current SOA/ROA requirements, which will assist in identifying the likely impact this proposal will have on the cost of providing advice.

Consumer impact

- This should significantly improve the accessibility of the advice for consumers.
 - The FPA has done a number of pieces of consumer research on the SOA²³ which demonstrate the impact of the SOA and the benefit of modern communication techniques to document advice in a form that clients better understand.

² FPA. The Future of the SOA – Initial Client Feedback. <https://fpa.com.au/the-future-of-the-soa-initial-client-feedback/>

³ FPA. FPA SOAP Box (Video SOA Project) - <https://youtu.be/3X-YpS9AQeU>

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- As discussed in FPA's previous submission, the purpose and usefulness of the SOA and ROA for the consumer have become tainted by the compliance and disclosure role they play for regulators, AFCA, PI insurers, and licensees.
 - This has impacted the accessibility and understanding of the actual advice for consumers.
 - However the advice is documented, whether in writing, video presentation or recorded electronically, advice should be provided in a manner and format that is appropriate to the client's needs and type of advice provided. For example:
 - Many clients don't necessarily want a written document. They want to be able to have a conversation with their adviser.
 - Diagrams and videos may be better options for clients with financial literacy or reading difficulties.
 - Many older Australians are not comfortable using technology and prefer written documents.
 - Younger clients have an increasing preference for advice to be provided via technology such as video.
 - The legal requirements should support the use of technology.

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

- a) **reduce the regulatory burden for advisers and licensees, and if so, to what extent?**
- b) **negatively impact consumers, and if so, to what extent?**

FPA position on proposed change:

- The FPA supports a review of the FSG to ensure it is fit for purpose and assisting consumers.
- The FSG provides information on the consumer's rights. At present the FSG content is lengthy, cumbersome and contains too much information to help clients make informed decisions.
- The FSG should answer the top 10 common questions clients have – not all the requirements which are in there now.
 - Key information, such as the consumer recourse and complaints arrangements, might be better provided in a proposal/engagement letter
 - Using incorporation by reference would also assist in making the document more consumer friendly.
 - Some information in an FSG needs to be brought to the consumer's attention before any fees are incurred.

Design and distribution obligations

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

- a) the design and development of financial products?
- b) target market determinations?

FPA position on proposed change:

- The FPA supports the proposal to remove DDO reporting requirements for relevant providers, instead requiring financial planner to only report complaints about the product to product providers.
 - Even though they are exempt from the DDO requirements, financial planners are required to collect and keep complete and accurate records of 'distribution information' and provide certain distribution information to the product provider.
 - Licensees and planners have needed to invest in systems and process changes, and associated training, to collect information about the implementation of the DDO regime, which they are exempt from.
 - The consequences for licensees and planners who may inadvertently breach the DDO record keeping and reporting requirements are costly, with significant civil penalties.

Impact on design and development of products, and TMDs

- Financial planners assist clients to invest in products either directly with product providers, or via a platform or wrap, for example.
 - The DDO applies to all other distributors and the product provider. These entities are in a position to ensure systems data is captured and reported when a consumer is investing in the product following personal advice and if the consumer is outside the TMD.
- Financial planners must ensure their product recommendations are appropriate for their client and are not required to meet the conditions set in the TMD.
 - Any information related to the product investment made under advice will taint the data about the product and the TMD
- With the exception of complaints about a product, financial planners' information is not relevant to the effectiveness of the TMD as the DDO regime does not apply.

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

FPA position on proposed change:

- Financial planners have experienced an extended period of constant and significant reform. This has required significant investment over many years, without any financial subsidy, which has impacted profit margins as planning practices have tried to minimise passing on such costs to clients and caused 'regulatory change fatigue' for businesses.
- These proposals, while potentially beneficial, will likely result in another period of disruption for the industry. Appropriate transition arrangements would be necessary to ensure the longer-term benefits of the move to principles-based regulation are realised.
- The timing of the changes and the transition arrangements should be appropriate for the reforms being implemented. For example:
 - Group 1 proposals - can be implemented relatively simply, quickly, and offer immediate efficiency benefits for both consumers and financial planners. These should be put in place as soon as possible:
 - consent form changes
 - the application of DDO distribution reporting requirements to financial advice licensees
 - the removal of the requirement to provide SOA / ROA, and
 - FSG provision.
 - Group 2 proposals – moving to principles-based regulation of personal advice would require more time and:
 - an appropriate period for consultation and parliamentary processes,
 - a 12 month transition period from royal assent to commencement of the new regulatory requirements
 - with a 'whole package' early opt-in

15. Do you have any other comments or feedback?

FPA position on proposed change:

- The FPA provided a number of recommendations in our response to the issues paper we believe are still important for the Review to address. Of particular benefit to improving access to advice for Australians:
 - There would be significant improvement in the ability for planners to collect data from clients if financial planners had access to the ATO Portals on a read only basis. This will provide accurate information on income and assets for the development and monitoring of strategies.
 - Additionally, financial planners are currently unable to help their clients deal with concessional, non-concessional and Section 293 contribution issues as they are not able to represent their clients with the Commissioner.
 - A long-standing frustration for members has been the lack of ability to assist clients with their Centrelink and DVA benefits, particularly when there are issues with the income or assets being assessed. There would be a benefit in financial planners being able to act as agents on behalf of their clients in relation to social security benefits.
 - While the Government is moving forward with the establishment of a compensation scheme of last resort (CSLR), the need for a CSLR is largely driven by problems in the professional indemnity market for financial planning licensees. An urgent review of PI solutions for financial planners is required to be conducted to ensure consumers are adequately protected when required. Further, the recommendations of the St John's Report (2012) should be implemented in full to manage the cost, operation and effectiveness of professional indemnity insurance.
 - In a similar way that open banking facilitates easy transactions between banks for consumers, there would be significant benefit to the Government introducing an open transaction framework across all of financial services to better support consumers efficiently engaging with all of their financial products.
- Finally, the FPA is disappointed that the Review has not considered the individual licensing of financial planners. The hallmark of all professions is the accountability of the professional to their client, to the profession, and to the country as denoted by the direct registration of the professional with the professions regulator (be it the Tax Practitioner Board for accountants; the Medical Practitioner's Board for doctors; or the Courts in the legal profession). Financial planners have embraced and met the Governments challenge to be considered a profession. The positive outcomes have been demonstrated through over 16,000 financial planners meeting the education transitions; the significant reduction in ASIC regulatory action against "relevant providers"; and the rapid reduction in complaint outcomes in favour of the complainant in AFCA in relation to personal financial advice. We would encourage the Review to recommend continued trust be placed in the professional financial planner by removing the Authorisation requirement by AFSLs.