FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Financial Advice and Investment Regulation Unit
The Treasury
Langton Cresent
PARKES ACT 2600

Via Email: FinancialAdvice@treasury.gov.au

2 May 2025

Dear Treasury,

Consultation – Improving access to affordable and quality financial advice

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to provide feedback to Treasury on the draft legislation for Delivering Better Financial Outcomes Tranche 2, Part A.

The FAAA welcomes the release of this draft legislation and the commitment by the Government to progress with the Delivering Better Financial Outcomes (DBFO) reforms.

The FAAA has long supported the goal of enabling more Australians to get access to professional financial advice. We recognise that at present there is only a small proportion of the Australian population who have access to and can afford quality financial advice. Quality financial advice can significantly improve the lives of Australians and we want to do everything we can to sensibly expand access to advice, to help more people. We support initiatives to address this and recognise that the DBFO reforms are seeking to achieve this.

The broader DBFO reforms are pursuing an expansion of advice that can be provided, including by increasing the range of providers of advice through a separate initiative that is described as a "New Class of Adviser". In the remainder of this submission, we will refer to this as a "New Class of Provider" or NCP. The name that will apply to this new class has been contentious from the outset, and it is our position that it should not include the term "adviser" or "planner", as these are controlled terms that can only be used by fully qualified and licensed professionals.

We note that this release represents only part of DBFO Tranche 2, and that the remaining part is critically important to achieving the overall objectives of the reforms. In many cases, there is a close interdependency between what has been released and what is yet to be released as part of Tranche 2. For example, the rationalisation of the Best Interests Duty and the repeal of the safe harbour steps are closely linked to the rationalisation of advice documents. Furthermore, clarifying

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

what is and is not 'simple advice' and the role of the New Class of Provider category will impact on the released measures. Without full visibility of all remaining elements of the DBFO reforms, it is difficult to provide complete feedback on the effectiveness of these measures. Hence, we request the opportunity to provide further comment on this Tranche 2 Part A draft legislation following the release of the Part B draft legislation. This will allow us the opportunity to assess the complete Tranche 2 reforms as they are intended to be implemented – as a package.

In this submission we have set out our response to some of the overall principles and each of the legislative proposals.

As a summary of our key recommendations, please see the following:

- Retirement planning advice will always be complex and costly advice and should not be provided on a collectively charged basis.
- Consumer protection is paramount in the provision of super nudges, particularly with respect to retirement planning, and members should be made fully aware of the implications of acting upon these nudges.
- Super nudges should not be provided to superannuation fund members with an external financial adviser, or at least should be subject to a notice to disregard the nudge if they have already obtained financial advice.
- The financial advice regulatory regime should be principles based and permit professional financial advisers to rely upon their professional judgement. ASIC guidance and enforcement must reflect this design principle.
- The opportunity to utilise a Record of Advice should be substantially expanded to better enable the use of this streamlined form of financial advice.
- Every effort must be made to sensibly rationalise what needs to be included in an advice document, including with respect to eliminating the prospect of additional obligations being added at a later time through regulation or ASIC guidance.

Overall Principles

Our support for increasing Australians' access to financial advice by further enabling super funds to provide personal financial advice, is contingent on the following key principles:

- Consumer protection must be at the forefront of the provision of financial advice.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

- The law must be competitively neutral across all the different types of providers of personal financial advice.

- Consumer protection measures must be appropriately strengthened for personal financial advice provided by a New Class of Provider employed within a product provider (such as a superannuation fund), due to the inherent conflicts of interest within this model.

- The provision of personal financial advice on a collectively charged basis should be limited to simple advice only and should not include transition to retirement or retirement advice, as these forms of advice are not simple.

Defining Simple Advice

Finding a solution for defining simple advice is critically important, particularly in the context of less qualified providers of financial advice. It is also particularly challenging given that no two clients are the same, and what might be simple for one client could be complex for another client who otherwise might appear to be similar. There are significant consequences in getting this wrong, particularly with retirement advice, where incorrect advice and lost opportunities often cannot be made good.

Some of the factors to consider in assessing whether advice is simple or complex include the following:

- Scope of Advice: Simple advice typically focuses on a single issue or a very limited number of topics, while complex advice tends to be more comprehensive, covering multiple aspects of a client's financial situation.

- Client Circumstances: Simple advice may require consideration of fewer client circumstances, while complex advice often involves a more detailed analysis of the client's broader or overall financial situation, goals, and needs.

- Product Complexity: Advice about straightforward and low-risk financial products might be considered simple, whereas advice involving sophisticated, high-risk, or multi-faceted products is more complex.

- Time Horizon: Simple advice might focus on short-term or immediate financial needs, while complex advice often involves long-term planning and strategy.

- Interdependencies: Simple advice may deal with issues that have fewer interdependencies with other aspects of the client's financial life. Complex advice often needs to consider multiple interrelated factors.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

- Risk Level: Advice involving lower-risk strategies or products might be considered simpler, while high-risk or specialised strategies would fall under complex advice.

- Expertise Required: Simple advice may be provided by advisers with general knowledge, while complex advice often requires specialised expertise in specific areas of finance and financial advice.

- Client Impact: Simple advice should not endanger a client's overall financial position if incorrect, whereas complex advice could be defined as advice that is highly consequential to the client's future situation and, once implemented, is difficult to undo.

In our view, retirement planning advice is always going to be complex. It involves many different aspects of advice and the client's circumstances, often complex products, a long time horizon, numerous interdependencies, multiple risks, with high levels of expertise required to deliver it. Retirement planning advice has a substantial and often irreversible impact on the client's overall financial position.

The FAAA recommends that transition to retirement and retirement advice be explicitly excluded from any definition of simple advice.

Recognising Professional Judgement

Enabling professional financial advisers to demonstrate professional judgement, and not be required to follow prescriptive and restrictive regulatory checklists in all cases, is a critically important change required to our regulatory regime. This is appropriate in the context of the obligations that apply to professional financial advisers – i.e. relevant providers registered on the ASIC Financial Adviser Register.

The financial advice profession has changed substantially since the Financial Services Reform Act was implemented in the early years of this century. Since then, a series of major reforms have changed the face of financial advice, including the Future of Financial Advice reforms, Professional Standards, the Life Insurance Framework and a range of further reforms following the Hayne Royal Commission. Financial advisers now have to pass an exam, achieve a degree level education standard, act in the best interests of their clients and operate under a ban on conflicted remuneration. Critically, professional financial advisers must adhere to the Code of Ethics, which includes a legal mandate for advisers to use their professional judgement to meet the standards.

Despite all of these reforms, the core obligations of disclosure in Statements of Advice have not changed to reflect the ability of and requirement for a financial adviser to demonstrate professional judgement. The time has come to closely review the obligations around disclosure to better reflect the professional status of financial advisers. In the absence of Part B of this package, it appears

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

that this fundamental adjustment to the regulatory regime has not been delivered in these Tranche 2, Part A changes.

A more principles-based approach and reliance on professional judgement in the law will legally put clients, not compliance, at the forefront of the provision of financial advice. This approach is in line with the following statement included in the draft Explanatory Memorandum (1.103):

> "These requirements are intended to bring a client-centred focus to the CAR and allow providers to have flexibility in providing it in a way that is responsive to the client's needs."

However, a move to a more principles-based approach and reliance on professional judgement in the law also requires a clear directive to ASIC. Historically ASIC and, in turn, licensees and AFCA, have interpreted the primary legislation by adopting a heavily prescriptive compliance focused approach to guidance, supervision and enforcement. This must change to allow a principles-based approach and enable reliance on professional judgement to be implemented in a client-focused manner.

The FAAA recommends the DBFO Tranche 2, Part A legislation clearly:

- **state the intent of the legislation to be principles-based, with clear discussion in the Explanatory Memorandum of the intent to move away from current prescriptive obligations.**
- **permit reliance on professional judgement for an adviser to determine what needs to be included in an advice document, specifically for professional financial advisers.**
- **Give clear guidance to ASIC that regulatory measures to enforce the legislation must be consistent with the objective to achieve the provision of clear, concise and effective information to consumers.**

Transition arrangements

Sufficient time must be allowed to adjust to major reforms. In the case of the proposed changes to advice documents, a 12 month implementation period is reasonable, however we note that ASIC's updated regulatory guidance being finalised, is also a key requirement for effective implementation. If this guidance is delayed, then 12 months from the date of Royal Assent might not be sufficient. This could be handled by ASIC adopting a facilitative approach to compliance that should apply until 12 months after commencement. At the same time, those who are ready to implement the changes sooner, should be able to do so. This staggered commencement option was available as part of the Future of Financial Advice reforms in 2012/13.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

Advice Through Super

The Minister's media release on 4 December 2024 regarding this draft legislation stated that it would "clarify the rules on what advice topics can be paid for through superannuation, including through collectively charged arrangements". This part of the draft legislation only addresses collective charging arrangements.

We suggest that the changes should include addressing the Sole Purpose Test. In recent years APRA removed critical guidance on the interpretation of the test that dated back to 2001. **We recommend that the Sole Purpose Test should be modified to enable all super members in pension phase to use their pension account to pay for all financial advice fees.** This recognises that members in the pension phase have already met a condition of release and can withdraw their funds from super whenever they choose to do so.

With respect to the Advice Through Super measure, the FAAA supports the provision of greater certainty to super funds and their members around what can be collectively charged. We also support the approach of defining lists of what types of advice are both included and excluded and what client circumstances can be considered. In addition, we support the statement that the implementation of advice, through putting recommended changes to products in place, should not be considered ongoing advice.

Whilst we support the legislative measures to provide certainty, we firmly oppose the proposal in the additional consultation paper on Advice through Superannuation to expand the scope of collective charging to include retirement planning advice. Whilst the form of retirement planning advice that may be provided under these proposals is restricted to the sale of retirement income products and associated strategies, it is nonetheless going to be complex and costly to provide. It is also critically important advice, in that it is setting a person up for the duration of their retirement. Those preparing for retirement only get one chance at getting this right. For example, certain products, such as annuities, cannot be easily unwound or are very costly to unwind, and should not be recommended in situations where the adviser cannot provide fully comprehensive retirement planning advice.

The FAAA supports the provision of simple financial advice on a collectively charged basis. We believe that to the extent this enables people who would not otherwise be able to access or afford financial advice, to access advice, then it is a good thing. However, retirement advice is not simple, and hence should not be collectively charged.

The proposed 'Allowed Topics List' for Advice Through Super includes: "Advice about planning for retirement through superannuation; transition to retirement products; retirement income solutions including products, drawdown strategies, lump sum withdrawals, and longevity protection". Personal advice on these topics is complex, inter-related, and overlayed with significant tax considerations, at a time in life when the consumer is preparing to make a fundamental change

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

from (in most cases) earning a regular income through employment, to deriving income from their super investment, usually with no certainty as to how long that will last. This is a significant and complex decision.

We oppose enabling retirement advice through collective charging for the following reasons:

- Retirement advice is complex and critically important. It should not be provided by people who do not have adequate qualifications and experience and in an environment where there are significant limitations, including with respect to the product options that are available. Although this point is not specifically addressed in this draft legislation, **it is important that retirement advice cannot be provided by the New Class of Provider**.

- The ALRC[2] highlighted the importance of ensuring the regulatory framework advances competition in the financial services sector. Enabling personal retirement planning advice to be provided on an intra-fund or collective charging basis, runs counter to this ALRC recommendation in two ways.

    - Firstly, the proposal provides a legislated cost advantage to super funds by allowing such entities to provide this advice at no additional direct cost. In contrast, professional financial advisers must meet all the personal advice regulatory requirements and charge each client directly to cover the true costs of providing such advice.
    - Secondly, the fund will only recommend its own products to its members via collectively charged advice – effectively removing their retirement income products from any competition, irrespective of whether their products are actually well-priced or providing a good level of service.
    - **Collective charging of retirement advice should not be permitted, because it gives a substantial anti-competitive price advantage to super funds compared with other providers of financial advice, and because super funds' retirement products would be substantially insulated from competition.**

- The cost of providing retirement planning advice will significantly increase the cost of running an intra-fund advice business, with flow on consequences for all members of the fund. This will result in significant cross subsidisation within the fund with younger members paying for the personal retirement planning advice of older members. **Collective charging for retirement advice should not be permitted, because it will require many members to pay for a service which they have no potential to benefit from for many years.**

- **Members who have already paid for their own professional financial advice should not be expected to pay for the provision of retirement planning advice to other**

[2] Review of the Legislative Framework for Corporations and Financial Services Regulation | ALRC

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

members of the fund via collective charging. That is a form of double charging and quite unreasonable.

Previously, the cost of intra-fund advice was separately disclosed to members of super funds. In recent years, ASIC removed this obligation from super funds. In the context of the potential broadening of the scope of advice that can be provided through a collective charging model, **we recommend that the separate disclosure of the cost of intra-fund advice should be re-introduced**. It would be beneficial for members to understand how much the fund is spending on financial advice being provided at no direct cost to the advised members, and this might prompt them to seek intra-fund advice themselves. We also recommend that **super funds should publicly disclose each year the number of members accessing intra-fund advice, including the types of advice being provided and the cost of this advice.**

Finally, we suggest that **the cost of any oversight by ASIC of the intra-fund or collective charging advice businesses, should be allocated to super funds for the purposes of the ASIC funding levy, not to financial advisers.** It is unreasonable for financial advisers to pay for this activity, which only happens as a result of regulatory relief offered to super funds.

Targeted Superannuation Prompts

Targeted Superannuation Prompts or super nudges was not a recommendation of the Quality of Advice Review. However, we do believe that there is merit in investigating this issue and the options available to better enable super funds (and possibly other product providers) to provide information to their members to assist them to identify the need to take action and to make financial decisions. We are supportive of this in principle.

The Minister's media release on 4 December 2024, stated that the Government would "allow superannuation funds to provide helpful 'nudges' to drive greater member engagement at key life stages". The proposed legislation in fact enables super funds to provide personal financial advice through nudges to classes of members, in a manner where the usual obligations of providing personal financial advice will not exist. **Further clarity is required on what recourse members will have, if they suffer a loss as a result of taking action based on a nudge.**

I**t should be mandatory that a super nudge include a statement that the prompt does not consider the member's individual circumstances, and that they should seek personal financial advice from a professional financial adviser before taking action.** This would be consistent with the approach taken in the Retirement Income Covenant under s52 of the SIS Act.

Section 950(1) refers to settings without defining what is meant by settings. We believe that **the term "settings" should be more clearly defined**. It is important to be clear whether the list of settings in Section 950(1)(b) is intended to be an exclusive list of "settings", although noting that it does allow for other settings to be prescribed. The interplay, in terms of what is permitted between

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

the higher level transfer of interests in the fund as referred to in Section 950(1)(a) and the more detailed reference to settings in Section 950(1)(b) is unclear.

Section 950(1)(a) seems to allow for this form of super nudge to be provided with respect to a transfer from accumulation phase to retirement phase. Consistent with our view stated above with respect to collective charging, we note that retirement advice is complex advice and it is advice where it is important to get it correct. Retirement prompts, on the basis of some high level assumptions about the individual, are in our view highly risky. We believe that a nudge that does not involve the provision of financial advice or an actual recommendation, in the context of members approaching retirement age, is much more appropriate. For example, a reminder to a cohort of members who are approaching retirement/preservation age and what this means in relation to their superannuation – i.e. that their superannuation could moves from accumulation phase into pension phase once a condition of release has been met – with a call to action to seek personal financial advice from a professional financial adviser. **We suggest that more consultation is required with regard to retirement prompts, including examples of prompts that are and are not permitted.**

We are supportive of the proposed limitations and controls on prompts, such as: not recommending a specific product, not setting deadlines for action and the exclusion of delivery through phone calls. However, concerns remain about how effective these controls will be if the super fund only has one option for the product type that they are recommending. For example, if a fund does not offer an annuity product, members would not be made aware that this type of product exists. To minimise this risk, **we recommend an obligation be placed on the fund to disclose to the member that there may be a more appropriate product available from other product providers, and to recommend seeking professional financial advice**.

Super nudges, in the form of a specific recommendation, should not be provided to the clients of financial advisers. This is because the nudge could be inconsistent with advice that was provided by a financial adviser who has much broader visibility of the client's objectives, financial situation and needs, and the ability to consider product options external to the fund. A conflict between the nudge provided by the super fund and personal financial advice provided by a professional financial adviser could undermine the member's confidence to proceed with either. **We recommend that advised clients should be excluded from nudges, or if this is not possible, that there should be a statement suggesting the member disregard the super nudge, or speak to their adviser, if they have already obtained financial advice from a professional financial adviser.**

Super funds currently hold very little information about their members' circumstances, and in many cases the information may also be out-of-date and/or incomplete. They will know the member's age, and they should be able rely upon this information. They might have other information that provides an insight into a person's employment, income, contributions and super balance, however

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

that may be incomplete as the member may have a second job and other super funds that the trustee is not aware of. The member may also have other sources of income such as through a business, in addition to a part time job. Having a binding death benefit nomination does not mean that the fund understands the member's family situation. Attributing a person to a class of member on the basis of such limited information is a risky proposition. **Trustees should clearly disclose to the member the reasons they have been included in a nudge, and include a statement that the nudge might not be appropriate if this information is incorrect.**

Consistent with our overall principle of a level playing field or competitive neutrality, in providing this measure to super funds, we believe that **financial advice practices should also be able to provide nudges to their clients, where they would need to comply with these same rules.**

We note that the penalty for a failure of the record keeping obligations in Section 950F could be two years imprisonment. This is an inappropriately harsh penalty for what would be a minor/administrative breach – it equates poor record keeping with offenses such as assault, and multiple high range drink driving convictions. **A lesser penalty should apply for record-keeping breaches.**

Finally, **it should be clarified that the cost of any oversight by ASIC of the super nudges regime, would be allocated to super funds for the purposes of the ASIC funding levy**.

Client Advice Records

For many FAAA members, rationalisation of advice documents was a critical element of the Quality of Advice Review and the DBFO reforms. This is something that they have been keenly awaiting since 2022, as having the potential to meaningfully reduce the costs of providing advice. The original QAR recommendation was to entirely remove the obligation to provide advice documents, unless requested by the client. However, the Government chose not to take that approach, instead announcing that SOAs will be replaced with a more fit-for-purpose, principles-based, advice record which must include the subject matter/scope, the advice, reasons for the advice, and the cost of advice to the client and/or benefits received by the adviser.

In our view, this draft legislation does not align with this objective, given that the level of prescription and inputs into the renamed "Client Advice Record" remain essentially unchanged compared with the current requirements for a "Statement of Advice". We note that this issue may be further addressed in Part B of this Tranche. However, as it stands, this draft legislation alone does not appear to achieve a material reduction in the size or complexity of advice documents. It will nevertheless require advice licensees to make expensive and time-consuming changes to a number of templates in their businesses, even if all they are required to do is replace the term "Statement of Advice" with "Client Advice Record", everywhere it appears, including with respect to financial planning software and CRMs.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

The requirements in the current law are not the only reason for the current extremely lengthy and impenetrable Statement of Advice (SoA) document. Regulatory uncertainty and additional obligations outside the Corporations Act have grown over time and have resulted in a prevailing sense of risk averse decisions and over-reliance on disclosure that have led to the current situation. ASIC and licensees have contributed to this through reference to and incorporation of additional obligations such as inclusions of projections, discussions on alternative strategies and products, and inclusion of extensive details on the client's current situation within the SoA. Another area that has contributed to the length of the document is the need to explain in detail why the advice is in the best interests of the client.

The FAAA have long said that to achieve meaningful benefits in this space, licensees and advisers need to have confidence to operate in a manner where advice documents are substantially more succinct. We have also argued that achieving this result is a significant change management exercise. **We recommend that ourselves, ASIC and licensees be deeply involved in developing guidance, on which licensees and advisers can confidently rely.**

We are also concerned that the opportunity to rationalise the advice documentation obligations has not been taken up, including largely rolling the existing Record of Advice and record keeping obligations into the law without examining options to rationalise these. **We recommend that the Record of Advice obligations be reviewed (detailed suggestions are provided below)**.

As we have highlighted above, what has been proposed with respect to CARs does not address the significant changes that have been made to the financial advice regulatory regime since the SoA obligations were put in place through the FSRA reforms in 2001. We believe that much more can be done to reduce the disclosure obligations and to better enable financial advisers to rely upon their professional judgement, rather than comply with extensive checklists.

We have included below some more detailed feedback.

- Prior to the FSRA reforms, advice documents were called Customer Advice Records. The abbreviated term for Corporate Authorised Representatives is a CAR. For these reasons, we think the use of the term Client Advice Record or CAR is problematic. Given the likely cost and effort involved in changing systems, templates, and training materials that reference what the advice document is called**, we recommend that it would be better to retain the current SoA term.**

- We support the clear intent to be technologically neutral and to provide flexibility in the way that the Client Advice Record is presented (paragraph 1.104 of the draft Explanatory Memorandum), however the proposed disclosure obligations and similarity to existing requirements do not suggest that it would be easy for the adviser to provide a Client Advice Record as an audio recording or an email. A less prescriptive advice document and greater

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

reliance upon an adviser's professional judgement will make it much more practical to deliver financial advice through an audio recording or email.

- We support the rolling of the record keeping obligations in ASIC Corporations (Record-Keeping Requirements for Australian Financial Services Licensees when Giving Personal Advice) Instrument 2024/508 (previously ASIC Class Order 14/923) into the Corporations Act, however it is our view that the opportunity to rationalise what records need to be kept has not been embraced. The proposed record keeping obligations in Section 912G(2)(a) lack specificity in terms of "records that appropriately demonstrate the provider's compliance with the requirements of this Act". We suggest it needs to be clearer that advisers can rely upon their professional judgement to decide what records need to be retained. Otherwise, more specificity is necessary. In addition, we are concerned by the open ended nature of any other information or documents prescribed by the regulations in s912G(2)(b). A careful review of the record keeping obligations and a sensible rationalisation could make a meaningful difference. Broad obligations about demonstrating compliance with the Act are ineffective in the absence of legal certainty regarding reliance on professional judgement.

- We do not accept that any breach of the record keeping obligations with respect to advice documentation for advice providers should be an offence provision. This seems to conflict with paragraph 1.95 of the draft Explanatory Memorandum that refers to encouraging a risk-based approach to keeping records.

- The Simplified outline of this Division in s944 is of limited benefit when it incorporates only two items including one that requires "other relevant information".

- We welcome the proposal to roll the main Record of Advice (RoA) provision in Regulation 7.7.10AE into the legislation in Section 946B, however we believe that the opportunity to extend the use of RoAs has not been addressed. Regulation 7.7.10AE and the new Section 946B(2) make reference to a significant change in the client's objectives, financial situation and needs or the basis of the advice. This is subject to a lot of uncertainty and could be modified to better enable the adviser to use their professional judgement. It may also be the case that despite a significant change in the client's objectives, financial situation and needs, that a Record of Advice is still appropriate. In this case, based upon the financial adviser's professional judgement, it should be appropriate to use a Record of Advice. We would argue that there are a number of other opportunities to extend the use of a simplified version of advice document through an RoA.

- We recommend significantly increasing the threshold for the use of an RoA when recommending a small investment from $15,000 to $50,000 (Regulation 7.7.09A). We also recommend that the limitation related to advice only on an existing interest in a

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

superannuation fund be removed (Section 946AA(1)(c)). RoAs should be able to be used for initial small investments into a new superannuation fund.

- In our view, the 'hold only' recommendation relief, where no further remuneration is payable in s946BB is not likely to be of material benefit. In most cases the RoA relief that is in s946B(1) and (2) would apply. Further, it makes little sense that an exemption based upon a hold recommendation and no specific remuneration, would require disclosure of the costs as per s946BB(2). There should be no additional advice costs.

- We propose that an RoA should be permitted in the case of strategic advice, including where class of product advice is provided and no specific product is recommended.

- We propose that an RoA should be permitted when advice is provided, where there will be no remuneration paid with respect to it. This could, for example, be where an adviser provides advice to the child of an existing client with respect to the selection of a super fund for their first job, at no cost, when they have not previously received advice. We can provide a range of further examples if this is helpful. This might also help with respect to the provision of pro-bono advice.

- We question the unnecessarily complex wording of s946B(2)(c). This could be worded in a much simpler form.

- We question the need for the note at the bottom of s946B(2)(c). What is the purpose of including this note in this location?

- Section 946B(3) is not required. This was a provision in Regulation 7.7.10AE to enable advisers in the early years of the FSRA regime to rely upon Customer Advice Records that were provided prior to the commencement of the FSRA regime. Given the extended timeframe since FSRA commenced, this would certainly no longer be necessary or appropriate. This reliance on previous advice documents is otherwise allowed for in the transition provision in s1711A(2), enabling reference to an SoA provided before commencement.

- Section 947B requires that the advice is "expressed and presented in a manner that, having regard to clarity, conciseness and effectiveness is fit for the purpose of assisting the client to make an informed decision …" We recommend that the legislation or Explanatory Memorandum make it clear that financial advisers are permitted to rely upon their professional judgement in making this assessment. This would be in line with paragraph 1.103 of the Explanatory Memorandum which states "These requirements are intended to bring a client-centred focus to the CAR and allow providers to have flexibility in providing it in a way that is responsive to the client's needs". If the law does not make this clear, it will

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

perpetuate the uncertainty of the disclosure regime and likely perpetuate the practice of the Regulator and licensees stipulating a checklist of items needed to satisfy this provision.

- The requirements in s947C(1)(c) to provide "a statement of the reasons for the advice, including how the advice meets the client's objectives, financial situation and needs" requires greater clarity. We would hope that this obligation could be addressed in a matter of a few paragraphs, rather than tens of pages. It should be possible for an adviser to rely upon their professional judgement. We would be deeply concerned if ASIC had more substantial expectations with respect to complying with this obligation. There is nothing in the draft legislation or the Explanatory Memorandum to provide confidence that ASIC will be required to allow advisers to rely on their professional judgement or that they will interpret the law in a manner that enables succinct advice. We believe that it is essential that ASIC work with the advice profession in the development of the guidance to ensure that this is the outcome.

- We believe that it is reasonable to expect advisers to address s947C(1)(a) to (d). It is also appropriate that there are sensible additional obligations in the case of replacing one product with another. This should be as limited as is sensibly possible. **We suggest that the cost of replacing one product with another be disclosed as a total cost rather than each and any individual charge that may apply.**

- It is appropriate for the adviser to disclose any applicable product fees that apply from the recommendation of a product, and any associations they or their business have with the provider of the recommended products. However, the expectations of s947C(2) and (3) are complex, which we assume will require substantial effort to investigate and comply with. We question whether this needs to be explained in such a complex form. In the world of conflicted remuneration bans, where other than commissions for life insurance, only client-approved advice fees are permitted, this seems excessive and unnecessary. The remuneration for the advice will be disclosed as part of complying with s947C(1)(d). **We therefore think s947C(2) should not be required.** The disclosure of associations can be addressed through reference to an FSG.

- We assume that the reference in s947(5)(b)(i) to "AFCA regulated super schemes" should be "APRA regulated super schemes". We do not understand the need to make specific reference to MySuper and choice products in this section. We assume that these products would already be covered in s947(5)(a).

- We are concerned that the obligations of a financial adviser, when providing an advice document, might be expanded by the regulations (s947(10)). Having started with the objective of simplifying advice documents, we are concerned by the extent to which this

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453

objective could be undermined, if it is achieved, by later addition of extra obligations by either the Government or the regulator.

- We are uncertain as to the reason for the note at the bottom of s947D being included in this form as opposed to as an explicit obligation.
- Paragraphs 1.115 and 1.116 in the EM incorrectly refer to s947B(8)-(9) and 947B(10), and we believe they should instead be referring to s947C.
- We question why the content of a CAR needs to be spread across sections 947A, 947C and 947D. For clarity, this could be consolidated into a single section and 947C could be rationalised.

It would be hugely beneficial to see a draft CAR, including in email and audio recording formats, to demonstrate how this new proposal is expected to work and how it would differ to existing obligations. That would be one way of being quite clear that additional obligations are not expected or required, and that the more open-ended obligations can be addressed in a succinct manner using professional judgement.

Conclusion

The DBFO reforms are the most critical reforms for the financial advice profession in a generation. It is important that the complete DBFO Tranche 2 package will make high quality financial advice more accessible and affordable, and we are very keen to engage in the next stage of consultation on the complete package, with this goal in mind.

Please do contact me on (02) 9220 4500, or via sarah.abood@faaa.au, if you have any questions at all or if we can provide further information on any of the points raised.

Yours sincerely,

Sarah Abood
Chief Executive Officer
Financial Advice Association of Australia

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001
CONTACT@FAAA.AU
WWW.FAAA.AU
T 1300 337 301
ABN 62 054 174 453