Response to the
Review of the quality of financial advice

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Consideration for the Regulatory Framework

Simplification of regulatory compliance obligations

To make the way for the regulatory environment to better provide high quality, accessible and affordable advice, the fear that is prevalent of having a claim upheld against it must first be removed.

While the initial response to this statement may be that if the advice was of high quality there should not be any fear. Unfortunately, this is not the situation with the current manner in which complaints handling is performed by the Australian Financial Complaints Authority ("AFCA").

While AFCA insists they are not a regulatory body (and therefore should not be considered in relation to this area of the review), their process is regulated and it is this regulation that requires review and adjustment.

Currently there is very little thought given to dismissing a nuisance claim at its initial submission, and whether determined to be without merit or not, the current process will allow a client to continue the complaint claim at the cost of the advisers – in terms of both money and time out of their practice. Both of these are aspects that at the current time must be considered in terms of the cost of advice which is ultimately passed onto the client due to the following effects:

Increasing complexity of advice documentation – with each determination made and claim awarded against an adviser, licensee compliance regimes and compliance consultants promote the need for additional inclusions in the advice document. Quite often additional steps in the advice process to support what is being recommended will be implemented, increasing the time taken and therefore cost to prepare advice documentation, often to the bemusement of the client.

Perception of the quality of the Australian financial advice market to PI insurers and reinsurers: based on the way in which the complaints system is operated and the way in which claims are awarded against advisers, PI insurers regard the Australian financial advice marketplace with great trepidation. It is this situation that has made PI insurance prohibitively expensive (hence raising the cost of advice to the consumer) and close to impossible to implement.

In order to improve the situation to both simplify advice regulation and reduce overall advice cost, we believe that the complaints system should be adjusted in the following ways:

- To assess and dismiss a claim at the time it is lodged if it is shown that there is no basis for the claim to proceed and incur costs that will only be passed onto other consumers.
- That if a claim is investigated and found to be without merit that the process be ceased – that the client is not simply be asked if they still wish to proceed in the hope of a payout (as per current practice).
- If a client does proceed past the initial assessment, that if any further assessment or mediation is found to be against them then they will be liable for the cost.
- That the Ombudsman operate under the accepted rules of evidence as per the regular legal system.
- That the amount of claim over which the Ombudsman has jurisdiction be substantially reduced (we would suggest a limit of $20,000), with any claim above that amount to be settled via the legal system through the courts.

These steps should be taken to provide some confidence that any award given will be fair and just for either party.

In putting this forward it should be noted that we firmly believe that if an adviser has given poor advice they should be penalised and have their place in the industry considered by their licensee. In such an instance, having an adviser subject to a legal penalty would require action under the "fit and proper person" requirements and their licensee would be obliged to take action accordingly.

Conversely, if a client was found to be simply looking for a 'quick and easy pay day' with a nuisance claim, the application of legal principles would see them responsible for their actions. Further, if a penalty for consumers is prescribed at the Ombudsman level it may see nuisance complaints reduced and not have the associated cost passed onto other consumers.

In terms of regulatory framework, we have considered ASIC's monitoring and supervision in this area and believe that with recent work in the area of "Affordable Advice" their view will now better promote the provision of higher quality, accessible and affordable advice. As this work has only had its results released recently its effect should be reviewed after a sufficient period of time is allowed for the advice community to understand, implement and adjust based on experience.

Replacement of rules for "Principles Based regulation"

It is our belief that the Australian financial services industry is not ready for the replacement of rules by "principles based regulation". This does not mean that as a profession we should not be seeking to evolve over time to have this the main basis by which oversight of the industry takes place.

While many associations have had in place a Code of Ethics of some sort these have not been utilised for oversight purposes, with minimal use for any enforcement or oversight action. It is only since the inception of the industry Code of Ethics and Professional Standards introduced by the FASEA Board ("the Code") that the advice industry has to a great extent included ethical concepts in the way in which it monitors and supervises those authorised.

Many in the industry are still grappling with using the elements of the Code and how a principles basis applies in terms of oversight. Two examples demonstrate the confusion:

- The general acceptance of most industry participants to believe the Code's Standard 3 meant that referral arrangements and payments were in fact banned. This was clearly not the case given the guidance by FASEA and was further reinforced when in its final stages FASEA called for comment on the potential rewording of the Standard, given the confusion there was. The confusion was caused by the fact that the industry is used to 'black letter law' as opposed to acting upon one's principles (as applying ethical standards requires one to do).
- Financial Product Providers have now commenced the imposition of benchmarks of what is acceptable for an adviser to receive as a fee as a reaction to "Fee Consent" requirements, based on their interpretation of Standard 7 of the Code. These benchmarks make no allowance for an adviser to act on a principles basis and take no account of any justification for a fee, other than the basis of the amount invested and as such are counterintuitive. For example, a client with a small account balance could indeed require more service taking more time for more cost.

We as an industry are in the infancy of operating with this type of regime and it will take many years before we effectively operate in this way, both ethically and commercially. Therefore, the current manner of operating under a 'black letter law' market with ethical principles alongside to guide our actions should be allowed to evolve with the view that over time, as participants become more familiar with principles based regulation the balance between rules and principles can be adjusted.

Improvement and availability of documents and disclosures

This aspect of the marketplace would be well served and promoted if the first element of this area above were addressed. By improving the system whereby an adviser had confidence to provide quality advice without fear of complaint the following benefits would apply:

- Shorter, more client directed advice documentation that would allow a client to read the written recommendations should they choose to do so.
- Confidence to communicate recommendations in terms of the benefits to the client in question – not to have to include what would be regarded as every single rationale and nuance, even where it would be irrelevant to that person.
- The freedom to use plain English in shorter, more understandable sentences that will not be misinterpreted.

It should be noted that the Corporations Act already requires that this take place with its provisions at section 957B/C(6) that states:

> *"The statements and information included in the Statement of Advice must be worded and presented in a clear, concise and effective manner".*

Recent work by ASIC regarding affordable advice has come to recognise and promote this. With the benefit of time it is hoped by many in the industry that the use of clear, concise and effective documentation can become the norm under ASIC's regulatory guidance.

Undesirable and unintended regulatory consequences

While the first part of this section has seen our criticism of AFCA in terms of the havoc created with PI insurance as well as causing the explosion of inclusions in advice documents, we do acknowledge that this is indeed an unintended consequence of their trying to protect consumers. The legislation that regulates their operation is also well intentioned but has caused the undesirable situation of providing no checkpoint by which a consumer might reflect on whether an adviser is actually responsible for any loss that may have been incurred.

The further unintended consequence is the scepticism and lack of confidence of the Australian public at large in the financial advice community. In these days of the 'opinion age' (as opposed to the 'information age') it seems that where there is any opportunity to show outrage it overcomes any good news that might be had.

When you consider over the last few years the publicity surrounding the Hayne Royal Commission, the introduction of a legislated code of ethics, the questioning of adviser remuneration (especially the payment of commission) and the failures of the banking system in the provision of financial advice there has been much to make the general public at large sceptical of the motives of participants in the financial advice industry.

Consideration for the Legislative Framework

Advice terminology

The view of what is appropriate in this area we believe should be guided by what a consumer would understand. It has become highlighted in recent times that there is confusion even within the industry in terms of what type of advice might be given and in what circumstances.

This could be simplified to ensure less confusion by reducing types of advice to:

Personal advice – any advice that takes a person's situation into account. This would include both the application of an actual financial product as well as a class of product.

Financial Product Advice – advice that is given about a financial product or class of product; its features and benefits only, without application to a person's situation.

This would remove the ability to provide factual information in relation to a financial product of any type, however this would see the benefit of providing a clear delineation for providing advice and the need to be authorised (hence requiring the appropriate education) to do so.

Maintenance of the 'safe harbour' provisions

The existence of the 'safe harbour' provisions allows a guide to the basis for what would be required to give advice in the best interests of a client. To remove these provisions would then see no basis upon which an adviser could defend themselves against an allegation of not advising within a best interest duty.

A further consideration of the removal of the 'safe harbour' provisions is for the "Note" that follows these provisions. It is this "Note" that stipulates that advice may be given on a limited basis if the clients requests, providing that their "relevant circumstances" have been recorded.

Given our concerns expressed in the earlier section for the damage caused by malicious or nuisance complaints, the removal of any defence in this area is a cause for concern. If a removal was to be considered, a means by which it could be upheld that an adviser has indeed met their best interest obligations would need to be implemented in its place, as well as a specification of the means by which to provide scaled advice (as per the "Note").

Financial advice disclosure requirements

The recent legislation instigated for this purpose has been a disaster, distracting advisers from providing a quality service for their clients as they were more concerned about what was required of them for the implementation of new administration processes. This was not helped by the time frame in which this was implemented – the legislation was passed with less than 6 months to commencement, and with less than a month's guidance provided by the regulator on what was required and how actions would be interpreted.

Further, the additional paperwork created by doubling the "opt in" requirements to an ongoing service agreement (from every two years to annually) plus the requirement for a "fee consent form" in addition to the other paperwork already required that would suffice for this purpose has clients questioning the need for such paperwork, and in some cases having clients question the intentions of the adviser.

The additional impost has done nothing to reduce the concern noted in the previous section for the actions of the advice community.

The life insurance remuneration reforms

While these reforms were essentially well intentioned, this has only been considered from a single point of view. While the payment of commission may be viewed as a conflicted form of remuneration, it is a means by which those without means to pay for advice can receive advice and consequently the insurance protection that they and their families need. Without such personal protection, in the event of a death or disability the family of that person would be forced to rely on the public purse to get by.

If we follow such a situation through and move to a nil commission environment it will become a vastly more expensive exercise for anyone to be provided with insurance advice. This is because the client will then be paying both a fee for the advice plus the premium to instigate the insurance (whereas with the current system only the premium would be paid).

It is argued that this offers the adviser the opportunity to rewrite the insurance at any point to earn a commission. What is ignored in this situation is that such a rewrite would only occur if the adviser could prove it was in the best interests of the client to do so, as is the legislated requirement for a financial adviser.

Our belief is that provided a client is fully informed of any commission payment and provides their free, prior and informed consent to implement any new policy, the payment of commission should be a viable means of remuneration. From this position we hold that any further reduction on commission should not take place as per Commissioner Haynes' recommendation 2.5.

Accountants and superannuation advice

While accountants are well equipped to discuss the taxation benefits of superannuation contributions and provide Self Managed Superannuation Fund ("SMSF") administration and taxation services, such advice is only a part of the overall superannuation picture.

What needs to be recognised by the accountancy profession is that if advice is to be provided on superannuation it requires coverage of the wealth creation aspect of a superannuation fund (a key component of the requirement under the sole purpose test) which in turn involves having a knowledge of and application made of the client's investor risk profile and how this is to be applied to their investment time horizon.

These last two areas require specialist education (as is required by financial advisers), and it is on this basis that accountants should not be able to provide advice on superannuation unless they:

- Hold the supporting qualifications; and
- Are authorised under an Australian Financial Services licence.

To go back to the days of the "accountants' exemption" and allow qualified accountants to simply recommend SMSF structures sees the real possibility of blurred lines in terms of whether advice required to be given under a financial services licence is given. And having a client where no investment advice is given but simply are instructed to establish and SMSF without further guidance holds the potential for losses to their balances or breaching the SMSF investment rules. What must be recognised also is that such behaviour by accountants would not be covered under any PI insurance, providing a risk for both accountant and fund member.

Hence, an accountant should be limited with any superannuation advice to taxation questions for which they are qualified and covered for PI and be required to refer any questions relating to the wealth aspects of superannuation to an authorised financial adviser.

Advice framework applications

Sophisticated investors and wholesale clients – while we have no problems with the current methodology (including considerations through the Code as to whether a person is truly “sophisticated” or not), if any change is to be made we would hope it would be in a manner consistent with established practices. For example, if looking to adjust the assessment of the level of assets the application of the Centrelink assets test could be considered; this would remove the principal residence from the calculation, leaving only investment assets for consideration – a possible indication of their true level of investment ‘sophistication’.

The role of financial services entities including professional associations – while associations exist to represent the interests of the industry participants, they are to a certain degree removed from exposure of day-to-day activity of financial advice. For example, they do not feel the effects of any complaints process, they are unaware of monitoring and supervision obligations and have no direct relationship or responsibility to the provision of advice. Because of this we believe there should be more interaction from regulators with financial services licensees, with any such consultation covering a range of licensee situations (large corporate, boutique and single operator providers).

With regard to the Review

Structural changes and professionalisation

Over the last several years we have seen an accelerated rate of change to the legislation that guides the financial advice industry in Australia. Consider what occurred in just 2021:

- The removal of grandfathered commission
- “Opt In” requirements for ongoing service agreements moved from every two years to annually
- Enhanced Fee Disclosure requirements
- Fee consent form requirements
- Changes to complaints procedures
- Changes to breach reporting
- Introduction of Design and Distribution Obligations
- Change to introduce the Duty to take care to not make a misrepresentation

While some changes made are for the betterment of the industry, with the changes and reviews being put into place we would suggest that part of the review be to determine where change is not required – to consider whether what is in place is actually the best option, but perhaps needs to be addressed to clear up misconceptions and reset how actions might be practised.

An example of this is the call by some for a “Letter of Advice” in the hope of a shorter advice document for consumers. The proposals for this provide little if any extra guidance than exists for the Statement of Advice currently legislated.

If such a change were entertained:

- The current issues causing the length and complexity of documentation, if unaddressed would soon cause such a “Letter” to be the length of current experience; and
- The debate around this and ensuing legislative process would take years for implementation to occur, setting the industry back over this time frame.

Instead, we could choose to address the issue as outlined earlier in this document and act now to follow what is currently required by legislation, that:

> *“The statements and information included in the Statement of Advice must be worded and presented in a clear, concise and effective manner.”* (Corporations Act section 947B/C(6))

To assess the impact of constant change (some would say “unnecessary change”) we have only to look at the mental anguish caused in the industry over the last few years with the imposition of the “FASEA Exam” and its consequences for many; the loss of their livelihood, their business, their retirement aspirations and their feeling of self-worth (resulting in numerous suicides) provides a clear and real demonstration of the consequences that changes being rushed through in only a couple of years can have.

To this end we believe that the movement to professionalism within the industry should be an evolution – not a revolution. While we noted the personal losses above, the industry is the much poorer for the loss of the experience and knowledge of where the industry has come from with those who have left.

With the changes to education standards looming, the industry may go through a process again where it will once more lose that knowledge and experience so necessary to mentoring the next generation coming through. This loss will have a great impact on those entering the industry under the new terms and seeking mentors for their professional year.

The education exemption proposed by both major political parties (for those with ten years' experience and a 'clean record') potentially provides some welcome relief from another exodus from the industry in 2026, however this is to a certain extent the making of a 'revolution' as this exemption will take time to legislate, leaving advisers to have to decide quickly how to act in the event of amendments to what has been proposed.

It is for this reason that we believe that the profession should be allowed to "evolve", with those intending to retire in the next ten years be given an exemption from the education requirements should the proposed exemption not eventuate.

This is not to say that we do not believe that education should be required for the industry to be regarded as being more professional. Instead, it is our belief that any education that is to be undertaken should only be what is relevant to that adviser's business and the authorisations held under the financial services licence by which they are authorised. This would ensure that:

- The education would be a development of the adviser's knowledge for application in their day-to-day activities, ultimately for the benefit of the client receiving advice; and
- It will not create any ethical issue of having received education that will not be used but might create expectation from a client for advice to be provided in that area.

One must also question the ethics of insisting someone pay a significant sum to undertake study for an area which will have no legal application (if they are not authorised they cannot legally provide advice in that area).

As time goes on, with the current provisions that new entrants complete at minimum a degree qualification and receive mentoring over a professional year, the professionalism is of the financial services industry is assured.

In the meantime, let's not mistreat those who helped build the industry and who (in the vast majority) have provided Australians with good quality advice that has helped them achieve their financial goals for creating wealth and protecting their families.

Needs and preferences of consumers

As a licensee with a proud of heritage of providing personal risk insurance advice, Synchron is far more aware than others of the need for specialised advice.

While many regard the provision of insurance advice as being basic and sales based, the features and benefits of insurance policies and claims requirements is in fact a complex area that requires careful consideration when making a recommendation. It is for this reason that many advisers choose not to advise in this area, and those who do tend to specialise in it.

It is for this reason Synchron is aware of the need to cater for advice specialisations and ensure focus is not diverted from this specialisation by being required to gain education and accreditation in areas that have no relevance to the advice being provided.

It is also from this that we understand the need to foster referral relationships – to ensure that consumers have their full range of needs considered and high-quality advice given. As with any business, the referral relationship is a commercial one and will, in any industry, involve the exchange of referral fees as a matter of course.

Because of this the outcry by many regarding the payment and receipt of referral fees does not take into account the fact that the provision of financial advice is a business and needs to be operated in a commercial manner. We believe this is has regulatory support with the guidance given by ASIC in their Regulatory Guide 181 – "Licensing: Managing conflicts of interest".

Innovation in advice

In the changing world more and more are choosing to deal with daily activities by digital means. The provision of advice will be seen as archaic and left behind unless it adopts digital technologies for its delivery.

We believe there is a major benefit to the provision of advice by digital means. Many people learn more easily through the use of video and digital calculators provided by "apps". Making use of such devices to explain to clients' recommendations and in a way help them 'discover' what has been recommended for them may have the benefits of helping them better understand the advice being given, as well as being more likely to have the client review the advice by the interactive nature of the media that is used.

This strategy aligns with our thoughts that if the effect of complaints can be reduced (in this instance by having the clients perhaps better understand what has been recommended) it can serve as a means by which the cost of advice can both be reduced and made more accessible to the general public.

Opportunity to reduce compliance costs

We believe that all recommendations given in this submission would have the effect of reducing compliance costs in the following ways:

- A better complaints process reducing the need for advice disclosure inclusions and lowering PI costs.
- Allowing the production of shorter, more direct and understandable advice documentation.
- Less time spent and money required to deal with answering client complaints.
- Less time and money spent on unnecessary education.
- Evolution of the profession not requiring constant retraining of advisers and their support staff.

For more detail on these points, please refer to the coverage of these issues provided in the earlier sections.

Conclusion

The opinions included in this submission have been arrived at with close interaction with financial advisers and their businesses on a day-to-day basis while undertaking monitoring and supervision activities. Synchron as an Australian Financial Services licensee undertakes these activities on a daily basis and faces the challenges of how financial services might be provided to consumers in a way that is cost effective for them while serving their best interests.

Part of providing an advice service that meets a client's best interests is to ensure the adviser they consult runs a sustainable practice; therefore what must be considered in terms of being cost effective is the actual cost of running a practice and putting all things into place that meet its compliance requirements.

What we have submitted is detail of our concerns for aspects that affect the cost of providing advice of a high quality that is both accessible and affordable. We believe that our thoughts address the issues this review is seeking to consider and can provide part of a blueprint for a viable way forward for the financial services industry.

We would be happy to answer any questions, expand on any point or provide any clarifications the review might seek. For this please contact Synchron through the following means:

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