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The Treasury

TSY/AU

Quality of Advice Review

Issues Paper

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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this Paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

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View Treasury's [Submission Guidelines](#) for further information.

Closing date for submissions: 03 June 2022

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Foreword



The Quality of Advice Review provides an opportunity to enhance the regulatory framework for financial advice so that more people are able to access affordable financial advice when they need it and in the form they want. High quality advice should enhance our financial security and wellbeing.

The regulatory framework we have today was introduced by the *Financial Services Reform Act* in 2001. Since then, Governments have passed various further reforming Acts imposing layers of additional obligations in an effort to provide stronger protections for consumers. Other reforms have also shifted the risks for consumers. They all proceed on the basis that the regulated activity is the provision of financial *product* advice. While financial advice is often used as shorthand for financial product advice, they are not necessarily the same.

Against this background, the way consumers are engaging with the financial system is changing. Improvements in technology open up exciting possibilities for delivering advice to consumers in ways that were not feasible in the past.

This Review will consider how the regulatory framework operates holistically. The framework should assist the people we entrust to provide financial advice to do so as effectively and efficiently as possible.

This Issues Paper is just the start of the consultation process. I look forward to engaging with a wide range of stakeholders throughout the rest of the year as part of developing the Review's recommendations.

Michelle Levy
Independent Reviewer
Quality of Advice Review

Issues Paper

Glossary

Term	Definition
AFSL	Australian financial services licence
AFS licensee	Australian financial services licensee
ALRC	Australian Law Reform Commission
ASIC	Australian Securities and Investments Commission
CP 332	ASIC's Consultation Paper 332 <i>Promoting access to affordable advice for consumers</i>
FAR	Financial Advisers Register
FDS	Fee Disclosure Statement
Financial Services Royal Commission	The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
FOFA reforms	<i>Future of Financial Advice Reforms</i>
FSC	Financial Services Council
FSG	Financial Services Guide
LIF reforms	Life insurance framework reforms
OFA	Ongoing fee arrangement
ROA	Record of advice
SMSF	Self-managed superannuation fund
SOA	Statement of advice

1. Introduction

1.1 Objective of the Review

On 11 March 2022, the Government released Terms of Reference for the Quality of Advice Review (the Review). The Review will look at how the regulatory framework could better enable the provision of high quality, accessible and affordable financial advice. A copy of the Terms of Reference is at Appendix 1. The purpose of this Paper is to seek feedback on the topics raised in the Terms of Reference.

The Review is born out of the recommendations of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Financial Services Royal Commission). In particular, the Review addresses Recommendations 2.3, 2.5 and 2.6, which called on the Government to assess the effectiveness of measures to improve the quality of financial advice following their implementation.

The Review will consider the full scope of financial advice and the forms in which it is provided, from comprehensive personal advice provided by financial advisers to general advice provided by product issuers in the course of selling or administering financial products, as well as online tools such as digital advice, forecasts and calculators.

It is important to note that the Terms of Reference refer to financial advice and not to financial *product* advice which is the activity regulated by the *Corporations Act 2001*. Often financial advice is used (including in this paper) as a shorthand reference to financial product advice. In doing so, the Review is aware there are differences between the two, and it is a question to be considered: to what extent should the gap between financial advice and financial product advice be addressed in the regulatory framework and to what extent is it relevant to the purpose of this Review.

As outlined below, there has been significant change in the financial advice industry over the last decade. Given this, it is timely for there to be a review that considers whether the regulatory framework governing financial advice is fit for purpose.

In addition to considering whether the framework provides appropriate safeguards, the Review will explore whether changes should be made to facilitate the delivery of advice that is accessible and affordable. While many of the reforms implemented by governments over the last decade were aimed at protecting consumers by enhancing the quality of financial advice, there are concerns that they have had the unintended consequence of making financial advice less affordable and accessible. They may also act as an impediment to new forms of advice. While not everyone will require financial advice, where a person needs or wants to access financial advice the regulatory framework should not operate as an impediment.

It is often suggested that there may be trade-offs between quality on one hand and accessibility and affordability on the other hand. This is not inherently the case. More effective regulation may reduce the costs of compliance without prejudicing outcomes for consumers and, where there might be trade-offs between quality, accessibility and affordability, the Review will seek to determine whether the framework is achieving an appropriate balance between these elements.

In addition, the Review will consider whether simpler principles-based regulation can replace any of the current detailed requirements to allow the law to better address fundamental harms and reduce the cost of compliance. According to the Australian Law Reform Commission (ALRC), principles-based regulation 'can be distinguished from rules-based regulation in that it does not necessarily prescribe detailed steps that must be complied with, but rather sets an overall objective that must be

achieved'.¹ There are trade-offs involved in balancing a flexible, simple, principle-based approach with providing clarity and certainty to stakeholders.

Finally, the Review is not operating in a vacuum. The Review is also being informed by a number of other reviews or projects that are currently underway or have recently been completed. This includes the work by the ALRC's *Review of the Legislative Framework for Corporations and Financial Services Regulation*, the findings of the Financial Services Royal Commission and the *Retirement Income Review*, as well as work undertaken by the Australian Securities and Investments Commission (ASIC) on their *Unmet Advice Needs* project and *Life Insurance Framework Review*.

1.2 Legislative Reforms

To provide financial advice, a person is required to hold an Australian financial services licence (AFSL) or be a representative of a licensee. Successive Governments have imposed new obligations on licensees and advisers with the main objective of better protecting individuals who seek financial advice.

Including the *Future of Financial Advice* reforms (FOFA reforms), which came into effect in 2013, there have been six major reforms to the regulation of financial advice over the last decade (see Text Box 1).

In addition, there has been a large number of broader reforms to the financial system that affect the financial advice industry both in terms of the level of consumer protection and also the cost of operating an advice business. These include the introduction of the ASIC Industry Funding Model and the Australian Financial Complaints Authority, the new regime governing the design and distribution of financial products, the strengthening of breach reporting requirements and the proposed establishment of the Compensation Scheme of Last Resort.

Text Box 1 – Timeline of Financial Advice Reforms²

2002 – Financial Services Reform: Introduced a single licensing regime for all financial services including financial advice as recommended by the 1997 Financial System (Wallis) Inquiry.

2013 – FOFA reforms: Introduced the best interest obligations, a ban on financial advisers receiving certain forms of conflicted remuneration and renewal and disclosure requirements for ongoing fee arrangements.

2015 – Financial Advisers Register: Established a public register of all individuals providing personal advice on more complex products to retail clients.

2018 – Life insurance remuneration reforms: Introduced a cap on commissions that a financial adviser can receive for the sale of a life insurance product and a two-year clawback requirement for commissions.

2019 – Professional standards: Introduced requirements for financial advisers to complete an exam, have an approved qualification, complete continuing professional development, and comply with a code of ethics.

2021 – Response to the Financial Services Royal Commission: Implemented a range of measures including: removing the grandfathering arrangements from the ban on conflicted remuneration, amendments to ongoing fee arrangements (including new consent requirements), reference checking, independence disclosures and new arrangements for the reporting of compliance concerns or misconduct.

¹ Australian Law Reform Commission (ALRC) 2010, *Regulatory Theory*, <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/4-regulating-privacy/regulatory-theory/>.

² Ordered by application date of measure.

2022 – New disciplinary requirements: Established a single disciplinary body for financial advisers, an obligation for financial advisers to be registered, transferred the responsibility of setting the professional standards to the Minister responsible for the *Corporations Act 2001* and removed the requirements for financial advisers providing tax advice to be registered with the Tax Practitioners Board.

In most cases, the imposition of each reform has been triggered by an event or report that highlighted concerns with the outcomes experienced by consumers engaging with financial advisers and sometimes product issuers. The Financial Services Royal Commission was the most recent and public examination of how poor-quality financial advice practices affect consumers.

1.3 State of the Advice Industry

The financial advice industry is changing.

The number of financial advisers on the Financial Advisers Register (FAR) has been trending down since 2019 when registrations peaked (see Chart below). There are currently around 17,500 advisers on the FAR in Australia servicing a population of almost 26 million. By way of comparison, there are around 27,000 registered advisers in the United Kingdom in 2020 servicing a population of around 68 million.^{3,4} The advisers currently in the Australian market are generally experienced with around 88 per cent having more than five years' experience. However, there are concerns that the number of new advisers entering the industry is not sufficient to replace those advisers exiting.

This decline in adviser numbers could be attributed to a number of factors including:

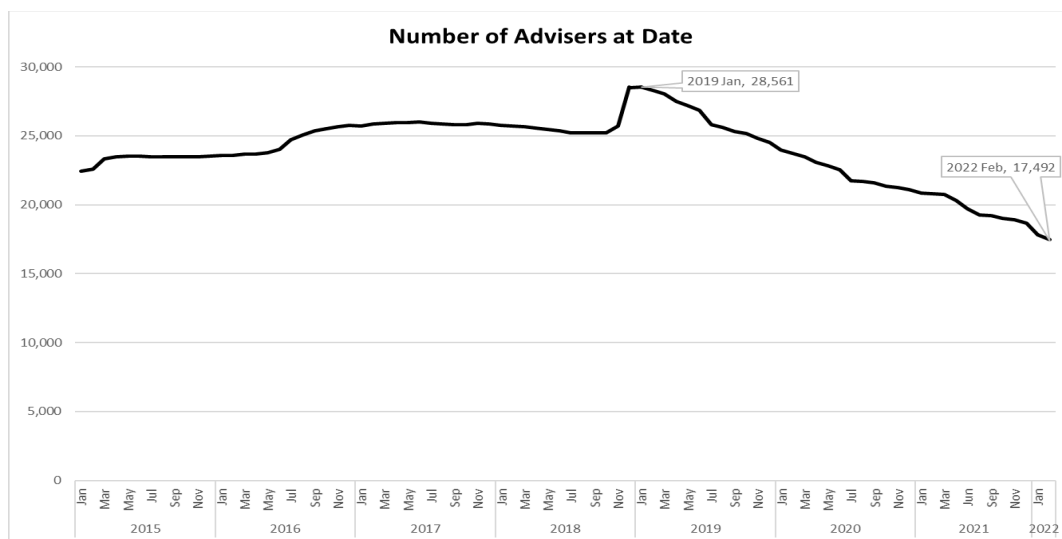
- Some advisers bringing forward their authorisations in advance of the professional standards reforms in 2019.
- The professional standards reforms creating a higher bar and potential barrier for new entrants. It may have also triggered some advisers that were closer to retirement to transition out of the industry early, rather than complying with new education or exam requirements.
- Successive regulatory reforms changing or reducing traditional sources of adviser revenue.⁵

³ International comparisons are difficult due to differing legal regimes. For example, UK adviser numbers only include investment and pension advisers (not insurance advisers that operate under a different regime in the UK).

⁴ Financial Conduct Authority (FCA) 2020, *Evaluation of the impact of the Retail Distribution Review and the Financial Advice Market Review*, p 15, <https://www.fca.org.uk/publication/corporate/evaluation-of-the-impact-of-the-rdr-and-famr.pdf> (FCA Evaluation Report).

⁵ For example, the capping of life insurance commissions, ending the payment of grandfathered conflicted remuneration and increasing requirements around the charging ongoing fees to clients.

Chart: Adviser Numbers



Source: FAR

The industry is also in the process of restructuring with all the major banks selling or closing their financial planning businesses. The market has become more fragmented with a larger number of smaller AFS licensees relative to 2017 (see Table below). That is, a greater percentage of AFS licensees have one to five advisers than in 2017. This is broadly similar to the market structure in the UK where 89 per cent of advice firms have five or less advisers.⁶

Table: Comparison between 2017 and 2022 Advice Market

	2017 ⁷	2022 ⁸
Market share (by number of advisers) of top five advice companies	36%	21%
Number of AFS licensees with 500 or more advisers	7	1
Percentage of AFS licensees with one to five advisers	72%	82%
Total number of AFS licensees	1,521	2,097

Source: FAR.

We are also starting to see the introduction of alternative advice providers who, using new technologies, are providing people with greater choice around how to access advice. However, digital advice remains a small segment of the market with only one per cent of Australians having used digital advice.⁹

⁶ FCA [Evaluation Report](#), p 15.

⁷ As at January 2017.

⁸ As at February 2022.

⁹ ASIC 2019, *Report 672 Financial Advice: What Consumers Really Think*, p 5, <https://download.asic.gov.au/media/5243978/rep627-published-26-august-2019.pdf%20> (ASIC What Consumers Really Think Report).

2. Scope of the Review

The Terms of Reference set out the matters that the Review will consider, along with those that are out of scope. Stakeholders should have regard to the matters specified within the Terms of Reference when providing feedback to the Review.

Broadly, the aspects of the regulatory framework within the scope of the Review are those that specifically relate to financial advice. However, aspects of the framework that are currently under review by Government (for example, professional standards) or have only recently come into effect (for example, the new disciplinary and registration system) are excluded from the scope.

The Terms of Reference also refer to the Review having regard to key regulatory reforms including the consumer data right, the retirement income covenant and the design and distribution obligations. These reforms will be taken into consideration as part of the regulatory framework that specifically applies to financial advice. However, the Review will not be undertaking a detailed analysis of the operation of these reforms.

The Terms of Reference do not make specific reference to consideration of the AFSL regime within which financial advisers operate. The Review will not be undertaking full analysis of the AFSL regime given its broader application across all financial services and products. However, if there are specific aspects of this regime that uniquely affect financial advisers, you are able to explain this in your submission to the Issues Paper.

Finally, the Review will not be considering the provision of information by Governments aimed at assisting people when making financial decisions such as ASIC's Moneysmart website and the Financial Information Service operated by Services Australia.

3. Framework for Review

The Terms of Reference focus the Review on how the regulatory framework can better enable the provision of high quality, accessible and affordable financial advice. The starting point for the Review is that quality advice can be accessible and affordable. If, in particular cases, trade-offs might be required to balance these three elements, the Review will consider whether the regulatory framework has the balance between these elements right. To do so, it is important to determine what they mean.

Notions of ‘quality’, ‘accessibility’ and ‘affordability’ are subjective. This section of the Issues Paper outlines the factors the Review will be considering in determining whether changes to the framework are needed to better balance these factors.

3.1 Quality Financial Advice

‘Quality’ financial advice might be difficult to define (and identify). Personal advice must be in the consumer’s best interests and it must meet their needs. Arguably, advice which meets these requirements will be quality advice. However, there may be different views of what quality means depending on who is measuring the advice. Consumers may be more or less satisfied with the quality of advice depending on the kind of advice sought and when the question is asked. Some, perhaps many, consumers may measure quality with the outcome of the advice (e.g. the return on their investments). Advisers may look at the relative position of their clients (e.g. what would have happened if they had not followed the advice) and the process they undertook in giving advice. Some industry participants will measure the quality of advice by looking at complaints or enforcement action.

Questions for stakeholders:

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

3.2 Affordable Financial Advice

There is some evidence indicating a significant mismatch between the amount many consumers would be willing to pay for financial advice against the price at which the market is willing to supply this advice. ASIC’s Consultation Paper 332 *Promoting access to affordable advice for consumers* (CP 332) indicated that consumers are willing to pay between \$340 and \$500 for advice (depending on the scope of the advice), whereas the average price charged is between \$1,500 and \$2,900 (depending on the scope of the advice).¹⁰ Separately, KPMG modelling undertaken for the Financial Services Council (FSC) indicates that the cost to prepare this advice is in fact in excess of \$5,000.¹¹ The disparity appears to suggest that advisers may not be charging the full cost of preparing advice as an upfront fee, looking instead to recover these costs in other ways.

¹⁰ ASIC 2021, *Consultation Paper 332: Promoting access to affordable advice for consumers*, p 20, <https://download.asic.gov.au/media/5853864/cp332-published-17-november-2020.pdf> (ASIC Affordable Advice Paper).

¹¹ Financial Services Council (FSC) 2021, *White Paper on Financial Advice*, p 3, <https://www.fsc.org.au/policy/advice/white-paper-advice> (FSC White Paper).

Regulation affects costs and shapes the way those in the financial advice industry run their businesses. Overly burdensome regulatory requirements will affect an adviser's capacity to provide financial advice and regulatory requirements designed to address risks associated with a particular financial advice model may be poorly suited to the risks associated with a different model.

In August 2020, as part of the Unmet Advice Needs project, ASIC engaged an external research consultant to undertake a survey on the cost of advice. Over 300 financial advisers responded to the survey, which aimed to identify the cost components incurred by financial advisers when providing advice. The survey found that the break-even cost to provide comprehensive advice of a moderate complexity to a new client is, on average, \$3,750, but ranged from as little as \$1,000 to \$9,000. On average, the cost of advice to existing clients is only 20 per cent less than the cost to provide the same advice to new clients. The survey found that scaled advice can be provided more cost effectively than comprehensive advice, costing roughly half that of comprehensive advice.

The top three factors considered to be driving the increase in the cost of providing advice over 3 years to 2020 were: increased compliance burden (92 per cent), more comprehensive due diligence process (76 per cent) and more time required to meet the best interests duty (69 per cent).

Other than the overall operational cost of running an advice business (e.g. staff, rent, marketing), the highest average specific costs identified by advisers were: paraplanning, licensee/professional service fees, software/technology and professional indemnity insurance.

Questions for stakeholders:

- What is the average cost of providing comprehensive advice to a new client?
- What are the cost drivers of providing financial advice?
- How are these costs apportioned across meeting regulatory requirements, time spent with clients, staffing costs (including training), fixed costs (e.g. rent), professional indemnity insurance, software/technology?
- How much is the cost of meeting the regulatory requirements a result of what the law requires and how much is a result of the processes and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?
- Which elements of meeting the regulatory requirements contribute most to costs?
- Have previous reforms by Government been implemented in a cost-effective way?
- Could financial technology (fintech) reduce the cost of providing advice?
- Are there regulatory impediments to adopting technological solutions to assist in providing advice?

3.3 Accessible Financial Advice

Accessible financial advice means that consumers who would benefit from or who wish to obtain financial advice can access the advice they need. Consumer preferences for the content and type of financial advice appear to be changing. ASIC has noted the top three areas consumers want advice on are investments (45 per cent), retirement income planning (37 per cent), and growing superannuation (31 per cent). Previous research has also highlighted that many consumers prefer 'piece-by-piece' financial advice and tend to seek advice on 'event-based developments'.¹²

Technology is also changing the accessibility of financial advice. Fintech presents the opportunity to automate processes, improve information, increase consumer choice, and eliminate constraints caused by distance.

¹² ASIC [What Consumers Really Think Report](#), p 6.

Recent financial capability survey data has shown that consumers express a strong preference for using digital financial products and services.¹³ Across all ages, 85 per cent of respondents agreed or strongly agreed that using online financial technology saves them time and 68 per cent would prefer to use financial technology over other channels to access financial services.

Despite these advantages the financial services industry remains cautious about adopting technological solutions. Submissions to CP 332 indicated that 69 per cent of advisers and AFS licensees responding to the consultation paper do not provide digital advice services and do not intend to in the future.¹⁴ Financial advisers said the key impediments were a lack of demand, consumer preference, and compliance concerns associated with digital advice.

Digital advice refers to automated financial advice delivered through technology without the direct involvement of an individual adviser. The provider of digital advice must, like all other advice providers, hold an AFSL or act as a representative of an AFS licensee. The same obligations apply to the provider of digital advice, including the best interests duty and the requirement to provide a statement of advice when providing personal advice.

Questions for stakeholders:

- How should we measure demand for financial advice?
- In what circumstances do people need financial advice but might not be seeking it?
- What are the barriers to people who need or want financial advice accessing it?
- How could advice be more accessible?
- Are there circumstances in which advice or certain types of advice could be provided other than by a financial adviser and, if so, what?
- Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?
- What is preventing new entrants into the industry with innovative, digital-first business models?

¹³ Australian Government 2021, *National Financial Capability Survey*, <https://www.financialcapability.gov.au/sites/default/files/2022-02/2021-national-survey.pdf>.

¹⁴ 148 of 215 respondents said they did not provide digital advice and do not intend to in the future. See ASIC 2021, *Infographic Summary: Response to ASIC Consultation Paper 332 Promoting access to affordable advice for consumers*, <https://download.asic.gov.au/media/eradomas/infographic-summary-of-the-response-to-cp332.pdf> (ASIC Response to CP 332).

4. Regulatory Framework

4.1 Types of Advice

General and Personal Advice

The *Corporations Act 2001* does not regulate the provision of ‘financial advice’. Instead it uses the defined term ‘financial product advice’ to specify and then regulate a range of activities which are treated as financial services and covered by the AFSL regime. Financial product advice is defined as a recommendation or a statement of opinion, or a report of either of those things, that is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or could reasonably be regarded as being intended to have such an influence.¹⁵ The reference to ‘class of financial products’ in this definition extends the scope of financial product advice beyond circumstances where a particular financial product is recommended. This means that strategic advice about asset allocation, for example, will be financial product advice. Advice on financial matters unrelated to financial products, such as budgeting, is outside of the bounds of the framework. However, it might be difficult to provide advice on financial matters without touching on some financial products, for example, a basic deposit product. It might also be difficult to provide financial product advice without also considering assets which are not financial products, for example, the consumer's home or Centrelink pension.

The *Corporations Act 2001* then divides financial product advice into two categories – personal advice and general advice:

- personal advice is financial product advice that is given or directed to a person (including by electronic means) where the provider of the advice has considered one or more of the person's objectives, financial situation and needs (subjective limb); or a reasonable person might expect the provider to have considered one or more of those matters (objective limb); and¹⁶
- general advice is financial product advice that is not personal advice.¹⁷

Different obligations apply to the provider of each type of advice. Personal advice attracts more onerous obligations (including the best interests and statement of advice obligations) and provides a higher level of protection to consumers than general advice.

The different regulatory requirements for the two forms of advice mean that much turns on the distinction. As a consequence, it is important for providers of advice to be able to readily identify the difference between them. The decisions of the Supreme Court of New South Wales, the Court of Appeal and the High Court in the *Westpac* case on advice highlighted the difficulty in distinguishing those activities which amount to personal advice from those which are general advice.¹⁸ This case considered the distinction between personal advice and general advice in the context of conversations between call centre staff and superannuation fund members. The Court of Appeal and the High Court found that the context in which the advice was given and the content of the calls were such that a reasonable person might have expected the call centre staff member to have in fact taken into account their personal circumstances. This was enough for them to provide personal advice.¹⁹

¹⁵ *Corporations Act 2001* (Cth) (*Corporations Act 2001*) s 766B(1).

¹⁶ *Corporations Act 2001* s 766B(3).

¹⁷ *Corporations Act 2001* s 766B(4).

¹⁸ *Westpac Securities Administration Ltd & Anor v ASIC* [2021] HCA 3.

¹⁹ ALRC 2021, *Financial Services Legislation: Interim Report A*, p 463, <https://www.alrc.gov.au/wp-content/uploads/2021/11/ALRC-FSL-Interim-Report-A.pdf> (ALRC Interim Report).

Taking into consideration the *Westpac* case, the Financial Services Council (FSC) has proposed a change to the definition of personal advice so that only advice which considers the ‘personal circumstances of the individual consumer’ would be personal advice. This would make two changes to the existing definition. First, only the subjective limb of the definition would apply so that what a reasonable person might think would not be sufficient.²⁰ Second, the FSC considers that replacing the existing formulation (under which the provider must consider one or more of the individual's objectives, financial situation and needs) with a requirement for the provider to consider the individual consumer's circumstances will also narrow its application.

Where the line is drawn between personal advice and general advice may have a significant effect on the affordability and accessibility of financial advice. For example, broadening the scope of general advice is likely to increase the amount of advice that is provided to people (due to the lower cost of providing general advice relative to personal advice), but people receiving that advice will have fewer protections. In addition, it is not clear how useful general advice is.

The ALRC noted in its *Financial Services Legislation: Interim Report A* (ALRC Report) that rather than changing the current boundaries between general and personal advice there could be merit in the Government amending the current general advice warning to more clearly specify the implications of receiving general, as opposed to personal, advice.²¹

There have also been longstanding concerns that consumers do not understand the differences in the level of protection offered between the different types of advice. In particular, the reference to ‘advice’ in the label ‘general advice’ may lead a consumer to believe the advice does take their personal circumstances into consideration. While this is relatively longstanding concern, to date a suitable replacement term that could raise the level of consumer understanding has not been identified.²² The ALRC is consulting on a proposal for the Government to replace the term ‘general advice’ with a term that “corresponds intuitively with the substance of the definition” (proposal A15).²³ In this area, the FSC has proposed moving to a label of ‘general information’ rather than ‘general advice’.²⁴

Questions for stakeholders:

- Is there a practical difference between financial advice and financial product advice and should they be treated in the same way by the regulatory framework?
- Are there any impediments to a financial adviser providing financial advice more broadly, e.g. about budgeting, home ownership or Centrelink pensions? If so, what?
- What types of financial advice should be regulated and to what extent?
- Should there be different categories of financial advice and financial product advice and if so for what purpose?
- How should the different categories of advice be labelled?
- Should advice provided to groups of consumers who share some common circumstances or characteristics of the cohort (such as targeted advertising) be regulated differently from advice provided only to an individual?

²⁰ FSC [White Paper](#), p 16.

²¹ ALRC [Interim Report](#), p 463.

²² ASIC 2021, *Findings from Research on General Advice Label*, <https://asic.gov.au/about-asic/news-centre/news-items/findings-from-consumer-research-on-general-advice-label/>.

²³ ALRC [Interim Report](#), p 450.

²⁴ FSC [White Paper](#), p 16.

- How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?
- How does applying and considering the distinction between general and personal advice add to the cost of providing advice?

Intra-Fund Advice

Intra-fund advice is not a term defined in legislation but is generally used to refer to the types of advice that a superannuation trustee can provide to members without an additional fee being charged to the individual member. The cost of the advice is usually borne by all members of the fund. The advice may be given by the superannuation trustee or by a person acting under an arrangement with the superannuation trustee.

With some limited exceptions, the obligations that apply to the provider of intra-fund advice are the same as the obligations that apply to any other advice provider and depend on whether the advice is general advice or personal advice. Where the advice is provided by the superannuation trustee personally, the trustee's trustee duties also apply. Intra-fund advice is often personal advice because of the permitted topics. It is always limited in scope (and so the discussion below about limited scope advice is also of relevance to intra-fund advice).

The *Superannuation Industry (Supervision) Act 1993* prohibits a superannuation trustee passing on the cost of providing personal advice to an individual to other members where that advice is:²⁵

- given to a person about becoming a member of the fund, if the person is not already a member;
- about a financial product other than a beneficial interest in the fund or associated products (e.g. related pension, insurance or cash management product);
- about whether a member should consolidate holdings in two or more superannuation entities; and
- ongoing personal advice.

There are competing policy objectives that need to be balanced when defining the scope of intra-fund advice. The first policy objective is to reduce the extent to which the retirement savings of members are eroded by the cost of providing financial advice. In addition to the direct cost of providing advice to members, there is the potential cost to the fund if the trustee provides negligent advice or otherwise breaches an obligation when providing that advice. The second policy objective is assisting superannuation trustees to assist their members with making decisions in relation to their superannuation savings and retirement income.²⁶

²⁵ *Superannuation Industry (Supervision) Act 1993* (Cth) ss 62, 99F.

²⁶ Australian Government 2020, *Retirement Income Review – Final Report*, p 456, <https://treasury.gov.au/publication/p2020-100554>.

Questions for stakeholders:

- Should the scope of intra-fund advice be expanded? If so, in what way?
- Should superannuation trustees be encouraged or required to provide intra-fund advice to members?
- Are any other changes to the regulatory framework necessary to assist superannuation trustees to provide intra-fund advice or to more actively engage with their members particularly in relation to retirement issues?
- To what extent does the provision of intra-fund advice affect competition in the financial advice market?

Limited Scope Advice

Limited scope advice (sometimes referred to as “scaled advice”) is not a term used in legislation but is frequently used to refer to personal advice provided to a consumer that is limited to a specific topic. ASIC research has indicated that consumers often prefer to access limited scope advice as they need it rather than broad scope holistic advice.²⁷

The legislative requirements for the provision of personal advice are intended to be ‘scalable’. This means that the steps the adviser is required to undertake (for example, in doing a ‘fact find’) should be based on the scope of the advice that the adviser intends to deliver. This is reflected in the legislative note that accompanies the best interests duty safe harbour.²⁸ ASIC has also provided regulatory guidance to assist industry in providing scaled advice (see ASIC Regulatory Guides 90 and 244 and Information Sheet 267). However, there remains uncertainty within industry about how to provide such advice within the legislative framework.²⁹

Questions for stakeholders:

- Do you think that limited scope advice can be valuable for consumers?
- What legislative changes are necessary to facilitate the delivery of limited scope advice?
- Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?

Digital Advice

Digital advice (also known as ‘robo-advice’ or ‘automated advice’) refers to the provision of automated financial product advice using algorithms and technology without the direct involvement of an individual adviser. It can range from general or personal advice and it can be limited or, at least in theory, comprehensive in scope.

The obligations which apply to the provision of financial advice are intended to be technology neutral. This principle is reflected in the regulatory framework by imposing the same licensing, conduct and disclosure obligations on providers of advice irrespective of who or what the provider is and the form in which the advice is provided.³⁰ As a consequence, a provider of personal advice must act in the best interests of the client, give priority to the client's interests and not accept conflicted remuneration whether the provider is an individual financial adviser or an algorithm. These duties

²⁷ ASIC [Affordable Advice Paper](#), p 10.

²⁸ *Corporations Act 2001* s 961B(2).

²⁹ ASIC [Affordable Advice Paper](#), p 11.

³⁰ It is noted, however, that the professional standards obligations associated with financial advice providers are only imposed on individuals.

are intended to mitigate the risk of an adviser acting in their own interests when providing personal advice. However, it is not clear the same risks are relevant to digital advice.

ASIC has provided regulatory guidance to assist digital advice providers to understand their obligations under the regulatory framework.³¹ ASIC has also provided limited relief from the advice requirements for certain forms of digital advice (particularly, generic calculators and superannuation forecasts), which have recently been the subject of consultation.³² The need for this relief points to the difficulty in applying the existing regulatory framework to new ways of providing advice.

Digital advice has the potential to make financial advice more accessible and affordable. Technological neutrality is not intended to be an impediment to digital advice and innovation and it is possible that a technology neutral regulatory framework might require different regulation to both foster the development of digital advice tools and to address the risks associated with them.

The Review is interested in any feedback on impediments that the regulatory framework presents for the providers of this form of advice and the risks that might be associated with digital advice.

Questions for stakeholders:

- Do you agree that digital advice can make financial advice more accessible and affordable?
- Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?
- Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?
- Should different forms of advice be regulated differently, e.g. advice provided by a digital advice tool from advice provided by a financial adviser?
- Are you concerned that the quality of advice might be compromised by digital advice?
- Are any changes to the regulatory framework necessary to facilitate digital advice?
- If technology is part of the solution to making advice more accessible, who should be responsible for the advice provided (for example, an AFS licensee)?
- In what ways can digital advice complement human-provided advice and when should it be a substitute?

4.2 Best Interests and Related Obligations

The FOFA reforms introduced new obligations for the providers of personal advice.³³ The key elements of these obligations are:

- the provider must act in the best interests of the client in relation to the advice (the best interest duty);³⁴

³¹ ASIC 2016, *RG 255 Providing digital financial product advice to retail clients*, <https://download.asic.gov.au/media/0ylptfow/rg255-published-29-june-2021.pdf>.

³² ASIC 2021, 'ASIC Consults on Updates to Relief for Superannuation Calculators and Retirement Estimates', media release, 18 November, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-309mr-asic-consults-on-updates-to-relief-for-superannuation-calculators-and-retirement-estimates/>.

³³ *Corporations Act 2001* pt 7.7A div 2.

³⁴ *Corporations Act 2001* s 961B(1).

- the provider must ensure that it is reasonable to conclude that the advice is appropriate to the client;³⁵ and
- the provider must give priority to the interests of the client when giving advice in the event of a conflict of interest or duty.³⁶

The purpose of the best interests duty is set out in the Explanatory Memorandum to the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012*:

The principle guiding the application of the best interests obligation is that meeting the objectives, financial situation and needs of the client must be the paramount consideration when going through the process of providing advice. This principle is embedded in the framework for the best interests obligation (paragraph 1.22).

The best interests duty is supplemented by specific steps which are commonly referred to as the 'safe harbour'. If a provider of advice satisfies each of the steps in the safe harbour, they will be taken to satisfy the best interests duty. The steps were intended to assist advisers in complying with the general obligation and were not intended to represent an exhaustive or mechanical check list.

The safe harbour has been the subject of criticism both in the Financial Services Royal Commission and the ALRC Report for encouraging a 'tick-a-box' approach to compliance with the duty.³⁷ The safe harbour steps also introduce some confusion about what is required by the best interests duty since the steps are directed at what would ordinarily be matters going to the provider's duty of care and not to acting for the benefit of the client. It is also noted that equivalent statutory duties imposed in other areas of the law do not include similar safe harbour provisions though they are in place for other statutory duties.³⁸ KPMG modelling undertaken for the FSC indicates that removing the steps of the safe harbour (while still retaining the best interests duty) would result in a nine to 11 per cent reduction in the cost of providing advice.³⁹

The Review is interested in the views of stakeholders on whether the safe harbour provides benefits to consumers or providers of advice, noting that Recommendation 2.3 of the Financial Services Royal Commission called for safe harbour to be repealed unless a clear justification could be identified.

The ALRC has also noted that there is a significant degree of overlap across the obligation to give priority to the interests of the client and the obligation to act in the best interests of the client in relation to the advice, as the ALRC says '[a]cting in the best interests of a client would arguably always require prioritising their interests over those of the provider'.⁴⁰ Similarly, ASIC has noted that failure to comply with a step of the safe harbour in relation to the best interests duty will often result in a breach in the obligation to give appropriate advice.⁴¹ This suggests there may be some scope to rationalise these requirements if all of the safe harbour steps were not to be repealed.

³⁵ *Corporations Act 2001* s 961G.

³⁶ *Corporations Act 2001* s 961J.

³⁷ Australian Government 2019, *Financial Services Royal Commission Final Report*, p 177, <https://treasury.gov.au/publication/p2019-fsrc-final-report> (Financial Services Royal Commission Final Report); ALRC *Interim Report*, p 534.

³⁸ See, for example, the best interests duty on superannuation trustees in *Superannuation Industry (Supervision) Act 1993* (Cth) s 52, the best interests duty for responsible entities in *Corporations Act 2001* s 601FC, and the best interests duty on credit licensees and representatives in *National Consumer Credit Protection Act 2009* (Cth) ss 158LA, 158LE.

³⁹ FSC *White Paper*, p 7.

⁴⁰ ALRC *Interim Report*, p 539.

⁴¹ ASIC 2017, *Report 575: SMSFs: Improving the quality of advice and member experiences*, p 69, <https://download.asic.gov.au/media/4779820/rep-575-published-28-june-2018.pdf>.

Questions for stakeholders:

- Do you consider that the statutory safe harbour for the best interests duty provides any benefit to consumers or advisers and would there be any prejudice to either of them if it was removed?
- If at all, how does complying with the safe harbour add to the cost of advice and to what extent?
- If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal advice?
- To what extent can the best interests obligations (including the best interests duty, appropriate advice obligation and the conflicts priority rule) be streamlined to remove duplication?
- Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?

4.3 Conflicted Remuneration

The FOFA reforms introduced a ban giving or receiving conflicted remuneration. Broadly, conflicted remuneration is a benefit which may influence the financial product advice given to retail clients. The advice may be either general advice or personal advice. Under the ban, a product issuer must not give conflicted remuneration to a licensee or its authorised representative that gives financial product advice to retail clients and a licensee must not accept conflicted remuneration, and it must take reasonable steps to ensure its representatives do not accept conflicted remuneration.⁴²

The purpose of the ban was to remove the conflict between advisers and their clients' interests that arises when advisers are provided with incentives (remuneration and other benefits) from the issuers of financial products. By removing this conflict, advisers would be free to act in the best interests of their clients and thereby provide better quality advice. The ban became mandatory from 1 July 2013 for arrangements entered from that date. Under grandfathering rules, the ban did not apply to benefits provided under arrangements entered into before that date in respect of clients before 1 July 2014. The grandfathering provisions were repealed with effect from 1 January 2021 in line with Recommendation 2.4 of the Financial Services Royal Commission.⁴³

The FOFA reforms also provided exemptions from the bans, including for certain life risk insurance products and for general insurance products. This means that conflicted remuneration can continue to be provided for these products, subject in the case of the life risk insurance products to specific conditions. As per Recommendations 2.5 and 2.6 of the Financial Services Royal Commission, the Review will consider whether the remaining exemptions are appropriate. These exemptions are outlined in further detail below. Commissioner Hayne indicated that his starting principle was that conflicted remuneration will always, by definition, raise the risk of poorer quality advice because it misaligns the incentives of advisers from the interests of consumers. He noted this is 'the unchallenged (and unchallengeable) basic premise for the conflicted remuneration provisions'.⁴⁴

Life insurance exemption

The FOFA reforms introduced an exemption from the definition of conflicted remuneration for monetary or non-monetary benefits for life risk insurance products (other than certain policies held within superannuation products). Following the FOFA reforms, various inquiries into the life

⁴² *Corporations Act 2001* s 963F.

⁴³ Implemented by *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019* (Cth).

⁴⁴ Australian Government 2019, *Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, p 97, <https://www.royalcommission.gov.au/system/files/2020-09/volume-1.pdf>.

insurance industry highlighted the negative effects of conflicted remuneration on the quality of financial advice for life insurance products.⁴⁵ These inquiries recommended amendments to remuneration practices covered by the exemption from the ban on conflicted remuneration.

In response to this, the Government introduced the life insurance framework (LIF) reforms, which took effect from 1 January 2018. The objective of the LIF reforms was to better align adviser and consumer interests by introducing certain measures to reduce the risks of conflicted remuneration to the quality of advice.

The LIF reforms specifically identified the risk high upfront commissions created because the commissions provided an incentive to advisers to recommend unnecessary product replacement (or 'churn'). The LIF reforms addressed this risk in a targeted way by requiring capped commissions (now, 60 per cent in the first year and 20 per cent thereafter) or level commissions, subject to claw-back provisions where a policy was terminated. This approach looked to strike a balance between mitigating consumer detriment from conflicted advice and continuing to facilitate consumer access to life insurance by keeping up-front advice costs low and businesses sustainable.

The Government also tasked ASIC with conducting a post-implementation review in 2021 of the LIF reforms to consider their effectiveness in improving consumer outcomes (the 'LIF review'). At the time, the Government announced that it would mandate level commissions, as recommended by the 2014 Financial System Inquiry, if the LIF review did not identify an improvement in the quality of advice about life insurance.⁴⁶

During the Financial Services Royal Commission, Commissioner Hayne questioned whether banning commissions would raise the risk of under insurance and recommended that, unless there 'is a clear justification for retaining [capped] commissions', the cap should be ultimately reduced to zero – that is, entirely removing conflicted remuneration (Recommendation 2.5).

In April 2021, the Government announced that the LIF review, which ASIC had commenced, would be incorporated into the Quality of Advice Review including the matters set out in Recommendation 2.5. ASIC has progressed data collection, which will assist in responding to the matters covered by the LIF Review (including Recommendation 2.5) on whether reducing commissions under the reforms has better aligned the interests of adviser and consumers. ASIC has been undertaking life insurance advice data reviews and collecting data from insurers and this will be provided to the Review.

The Review will analyse and consider this information. In considering whether there is a 'clear justification' for retaining capped commissions, it will also consider the under insurance risk and whether there are other ways to align adviser and consumer interests and to prevent poor quality advice. Stakeholders may want to address these matters in their submissions.

⁴⁵ See, for example, ASIC 2014, *Report 413 Review of Retail Life Insurance Advice*, <https://download.asic.gov.au/media/2012616/rep413-published-9-october-2014.pdf>; John Trowbridge 2015, *Review of Retail Life Insurance Advice Final Report*, <https://www.fsc.org.au/policy/investment-management/asian-region-funds-passport?view=article&id=168:trowbridge-report&catid=32>; Australian Government 2014, *Financial System Inquiry Final Report*, <https://treasury.gov.au/sites/default/files/2019-03/p2014-FSI-01Final-Report.pdf>.

⁴⁶ Second Reading Speech, Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016 (Cth), <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F3bef5bfd-10a1-42ac-8cdf-41e8b9c0f758%2F0029%22>.

General insurance and consumer credit insurance exemptions

Similar to life insurance, the FOFA reforms included an exemption from the definition of conflicted remuneration for monetary and non-monetary benefits for general insurance and consumer credit insurance.⁴⁷

Following the introduction of this exemption for general insurance, the Australian Competition and Consumer Commission review of the insurance market in northern Australia recommended that the exemption be removed because it creates an unacceptable conflict of interest that cannot be managed by disclosure.⁴⁸ This is consistent with the views expressed in the Financial Services Royal Commission.

ASIC has also undertaken a review of the sale of consumer credit insurance highlighting significant concerns with the value these products represented to consumers and the sales practises used to distribute the products.⁴⁹ In response to these concerns, the Government has implemented reforms to reduce the instances of mis-selling of general insurance including the design and distribution obligations, as well as prohibiting the hawking of insurance and mandating deferred sales for add-on insurance (as recommended by the Financial Services Royal Commission).

The Review will consider whether the exemption from the conflicted remuneration ban results in poor quality advice and consumer outcomes, whether there are reasons to retain the exemption and whether there may be more targeted ways to address consumer harm.

Treasury is currently exploring a voluntary data collection with insurers to gather information about their remuneration and product performance across intermediaries for key general insurance retail products.⁵⁰ Treasury is also engaging with the National Insurance Brokers Association to collect information from insurance brokers, who act on behalf of clients and provide financial advice to place them in general insurance products.

The Review welcomes any additional stakeholder views during consultations on whether conflicted remuneration in general insurance is justified.

Other exemptions

The Review will consider other remaining exemptions from the definition of conflicted remuneration as per Recommendation 2.6 of the Financial Services Royal Commission. Text Box 2 outlines these exemptions.

The Government reviewed the stamping fees exemption in January 2020 and repealed those categories of exemptions for stamping fees paid in relation to certain listed investment companies

⁴⁷ Even with the exemption, a financial adviser will be subject to the 20 per cent cap on consumer credit insurance commissions if they are covered by the *National Consumer Credit Protection Act 2009* (Cth) sch 1 (National Credit Code) s 145.

⁴⁸ ACCC 2020, *Northern Australia Insurance Inquiry Final Report*, p xxii, Recommendation 19.1, <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20Final%20Report%20-%2030%20November%202020.pdf>.

⁴⁹ ASIC 2019, *ASIC finds unacceptable sales practices, poor product design and significant remediation costs in CCI sold by banks and major lenders*, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-180mr-asic-finds-unacceptable-sales-practices-poor-product-design-and-significant-remediation-costs-in-cci-sold-by-major-banks-and-lenders/>.

⁵⁰ The data request covers motor vehicle, home contents and building, residential strata, sickness and accident, travel and consumer credit insurance, which are the most prevalent forms of general insurance or have historically raised significant concern in terms of high intermediary commissions and conflicts of interest.

and listed investment trusts. These were considered to have the potential to encourage licensees and their representatives to mis-sell investments to consumers. The Review will consider the outcomes of earlier consultations in reviewing the parts of the stamping fees exemption that remain operational.

Text Box 2: Remaining exemptions from the definition of conflicted remuneration

Monetary benefits

- Monetary benefits on the issue or sale of a financial product where financial product advice has not been given to the retail clients in the last 12 months (paragraph 963B(1)(c)).
- Monetary benefits given by a retail client for the issue, sale or dealing in a financial product or financial product advice (paragraph 963B(1)(d) and regulation 7.7A.12EA).
- Monetary benefits for a basic banking product that is part of the remuneration of an agent or employee of an Australian authorised deposit-taking institution (subsection 963D(1)).
- Monetary benefits that are stamping fees to facilitate capital raising for certain listed companies, a listed infrastructure managed investment scheme or a listed real estate investment trust (regulation 7.7A.12B).
- Monetary benefits if the benefit is given for advice that relates to a time-sharing scheme (regulation 7.7A.12C).
- Monetary benefits for a brokerage fee given to a trading participant of a prescribed financial market (regulation 7.7A.12D).
- Monetary benefits for the sale of a financial advice business where the price is calculated by a prescribed formula (regulation 7.7A.12EA).

Non-Monetary benefits

- Non-monetary benefits less than \$300 not given on a frequent or regular basis (paragraph 963C(1)(b)).
- Non-monetary benefits given for genuine education or training purposes relevant to carrying on the business of the licensee (paragraph 963C(1)(c)).
- Non-monetary benefits for the provision of information technology software or support related to the provision of financial product advice (paragraph 963C(1)(d)).
- Non-monetary benefits given by a retail client for the issue or sale of a financial product or financial product advice (paragraph 963C(1)(d)).
- Non-monetary benefits for a basic banking product that is part of the remuneration of an agent or employee of an Australian ADI (subsection 963D(1)).

Questions for stakeholders:

- To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?
- Has the ban contributed towards improving the quality of advice?
- Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

- What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.
- Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?
- Has the capping of life insurance commissions led to a reduction in the level of insurance coverage or contributed to underinsurance? If so, please provide data to support this claim.
- Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.
- What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be retained?

4.4 Charging Arrangements

There are a range of charging arrangements used in the financial advice industry. Fees charged to consumers by advisers may be flat (as an hourly rate or an agreed dollar-based amount) or percentage-based (as a percentage of the client's investment portfolio⁵¹). Either can be charged on a non-ongoing (often one-off) basis or under an ongoing fee arrangement (OFA). Either may be paid by the consumer directly or be deducted, with the consumer's consent, from a product held by the consumer (often a platform product or superannuation fund). In addition, advisers may receive commissions from product issuers for the sale of insurance products.

Recent regulatory reforms have aimed to strengthen disclosure and consent requirements for adviser fees.

Non-ongoing fee arrangements for superannuation

To address consumer harm resulting from fees for no service, and the erosion of superannuation balances through inappropriate advice fees, the Financial Service Royal Commission recommended that advice fees not be deducted from MySuper accounts, other than for intra-fund advice (Recommendation 3.2), and that there be limitations on deducting advice fees from choice accounts (Recommendation 3.3).

Legislation was passed prohibiting the deduction of ongoing advice fees from MySuper products. Advice fees (including ongoing fees which are discussed below) may be deducted from choice accounts with the written consent of the member, which must be renewed every year.

The consent must meet requirements determined by ASIC, including that the consent form sets out an explanation of why consent is being sought, the services the member will be entitled to receive under the arrangement and the fees that will be deducted and from the member's account.⁵²

While the requirements are very new, the Review welcomes any feedback on the requirements for consent to deduct advice fees from superannuation choice accounts, including whether they are working efficiently and effectively.

ASIC and APRA have also provided guidance to superannuation trustees on the controls trustees should have in place in relation to the deduction of advice fees from member accounts and the

⁵¹ Based on the total value of the assets in a client's portfolio.

⁵² See *ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2021/126*.

payment of those fees to a financial adviser. The controls seek to ensure that the member's consent has been provided, the services relating to the fees have been provided and the advice provided complies with the sole purpose test. Among other things, the actions to be undertaken include reviewing a sample of statements of advice, not to assess the quality of the advice, but to verify services have been provided and are within the scope of the sole purpose test.⁵³

Ongoing fee arrangements

OFA's were first introduced with the FOFA reforms to improve the transparency and accountability associated with charging clients an ongoing fee for advice. There is an ongoing fee arrangement if an AFS licensee gives personal advice to a retail client and the client enters an arrangement with the AFS licensee or its representative and under the terms of that arrangement, a fee is to be paid during a period of more than 12 months.⁵⁴

Key elements of these reforms required the person receiving an ongoing fee under an OFA (after 1 July 2013) to:

- Meet a 'disclosure obligation' by providing an annual fee disclosure statement (FDS) to a client, setting out:
 - the amount of each ongoing fee paid under the arrangement by the client in the previous year;
 - information about the services that the client was entitled to receive under the arrangement during the previous year; and
 - information about the services that the client received under the arrangement during the previous year.
- Meet a 'renewal notice obligation' to continue charging an ongoing fee for a period longer than 24 months, the fee recipient needed to provide both a renewal notice and fee disclosure statement to clients.
 - Under these requirements, if the client failed or opted not to renew the arrangement within 30 days of receiving the notice, it would cease, and an ongoing advice fee could no longer be charged.

The Explanatory Memorandum to the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012* provides context for the amendments:

In some situations, clients of advisers that pay ongoing fees for financial advice receive little or no service. Of the clients that do receive a service for the fees they are paying, some are

⁵³ ASIC and APRA 2021, *Further guidance on the oversight of advice fees charged to members' superannuation accounts*, https://download.asic.gov.au/media/oc4fxkpw/apra_asic_joint_ffns_trustee-letter_30_june_2021-update.pdf.

⁵⁴ An ongoing fee arrangement has the meaning given by the *Corporations Act 2001* s 962A. See also ASIC 2021, *FAQs: Ongoing fee arrangements*, <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/fees/faqs-ongoing-fee-arrangements/#q3>.

unaware of the precise magnitude of those fees (or the fees advisers are receiving from third parties) or they continue paying ongoing fees as a result of their own disengagement.⁵⁵

The purpose of the reforms was to enhance the disclosure of fees and help consumers determine whether the ongoing fees they were paying were proportionate to the services they received, or they were entitled to receive.⁵⁶

The Financial Services Royal Commission later highlighted a serious issue whereby consumers were paying ongoing fees for advice that was not provided. This became known as ‘fees for no services’, which Commissioner Hayne regarded as being ‘endemic’ in the industry. Commissioner Hayne was concerned that the then current OFA framework provided insufficient protection to consumers because they were not given a regular opportunity to review the services they were paying for and the fees deducted from superannuation accounts were ‘invisible’.⁵⁷

To address this, in response to Recommendation 2.1 of the Financial Service Royal Commission, changes to the OFA framework commenced on 1 July 2021. These changes apply to all OFAs entered into on or after that date.⁵⁸ Key aspects of the current requirements include:

- Seeking the client’s renewal to opt-in to OFAs annually (rather than every two years).
 - The renewal period is 120 days beginning on the anniversary day.⁵⁹
 - The ‘anniversary day’ is the anniversary of the day on which the OFA was entered into.⁶⁰
- Providing the client with a FDS, including a forward-looking summary of the fees and services they will (be entitled to) receive in addition to the existing disclosure of fees and services.
 - Fee recipients must give clients a FDS no later than 60 days after the anniversary day of the OFA each year.⁶¹ It must include:
 - the amount of each ongoing fee paid by the client under the arrangement in the previous year;
 - the amount of each ongoing fee the client will be required to pay under the arrangement for the upcoming year;
 - the services that the client received, and was entitled to receive, under the arrangement during the previous year;
 - the services the client will be entitled to receive under the arrangement during the upcoming year;
 - the ongoing fees the client will pay after the end of the upcoming year for services they are entitled to receive during the upcoming year; and

⁵⁵ Revised Explanatory Memorandum, Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012 (Cth), para 1.4.

⁵⁶ ASIC 2013, ‘ASIC releases guidance on FOFA fee disclosure statements’, media release, 25 January, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2013-releases/13-007mr-asic-releases-guidance-on-fofa-fee-disclosure-statements/>.

⁵⁷ Financial Services Royal Commission *Final Report*, p 160-162.

⁵⁸ These amendments removed previous exemptions that applied for OFAs entered into prior to the FOFA reforms. The amendments will provide that these ongoing fee arrangements will be subject to the application of these new provisions.

⁵⁹ *Corporations Act 2001* s 962L.

⁶⁰ *Corporations Act 2001* s 962G(3).

⁶¹ *Corporations Act 2001* s 962G(1).

- information about how to renew the arrangement.
- Obtaining the client’s written consent before deducting, arranging to deduct, or accepting the payment of ongoing fees from a client’s account.⁶²

Transitional provisions were established for OFAs in place before 1 July 2021, which allows a FDS issued in the transition period of 1 July 2021 to 30 June 2022 to report fees paid as at 60 days prior to the statement being issued. Following the transition period, fee recipients have 60 days from the anniversary date to issue a FDS which must report all fees paid in the previous 12 months.⁶³

Superannuation trustees are expected by APRA and ASIC to have the same controls for the deduction of ongoing advice fees from members’ accounts as they do for non-ongoing advice fees (as outlined above).

There have been some reports from industry that the current requirements are overly onerous and may be resulting in a poor consumer experience as clients need to respond to multiple consent forms on an annual basis.

Questions for stakeholders:

- Are consent requirements for charging non-ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?
- To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?
- How could these documents be improved for consumers?
- Are there other ways that could more effectively provide accountability and transparency around ongoing fee arrangements and protect consumers from being charged a fee for no service?
- How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?
- To what extent, if at all, do superannuation trustees (and other product issuers) impose obligations on advisers which are in addition to those imposed by the OFA and FDS requirements in the *Corporations Act 2001*?
- How do the superannuation trustee covenants, particularly the obligation to act in the best financial interests of members, affect a trustee’s decision to deduct ongoing advice fees from a member’s account?

4.5 Disclosure Documents

The current financial advice disclosure obligations are intended to ensure retail clients receive appropriate information to make an informed decision about a financial product or financial service. The disclosure obligations are intended to correct the information asymmetry between financial advisers and consumers.

The Final Report of the 1997 Financial System (Wallis) Inquiry emphasised the ‘aim of regulation should be effective disclosure, not merely the production of information’.⁶⁴ The report noted the

⁶² *Corporations Act 2001* ss 962R and 962S.

⁶³ Senator the Hon Jane Hume 2021, ‘Relief for financial advisers to meet their ongoing fee disclosure obligations’, media release, 11 June, <https://ministers.treasury.gov.au/ministers/jane-hume-2020/media-releases/relief-financial-advisers-meet-their-ongoing-fee-disclosure>.

⁶⁴ Stan Wallis et al 1997, *Financial System Inquiry Final Report*, p 261, <https://treasury.gov.au/sites/default/files/2019-03/11-fsi-fr-chapt07.pdf> (Wallis Financial System Inquiry Final Report).

potentially counterproductive effect of disclosing ‘excessive or complex information’, which ‘may confuse consumers and discourage them from using disclosure documents’.⁶⁵

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

- a financial services guide (FSG); and
- a statement of advice (SOA).

A record of advice (ROA) can be provided to an existing retail client in certain situations. This includes where the adviser provides the client further advice and the client was previously given a SOA setting out the client’s relevant circumstances.

If they are recommending a financial product, they must also provide the client with a product disclosure statement for the product. The Review is not considering product disclosure statement obligations.

The Review is considering whether and how disclosure requirements can be simplified so that consumers are presented with clear and concise information without unnecessary complexity.

Statement of Advice

A SOA is intended to help a retail client understand, and decide whether to rely on, personal advice.⁶⁶

Where a provider of advice provides personal advice to a retail client, they are generally required to prepare and provide a SOA at the same time, or as soon as practicably possible. A SOA must include:⁶⁷

- the advice;
- the reasoning that led to that advice, including as much information as is required for a person to make a decision to follow the advice as a retail client;
- all conflicts of interest that may arise from that advice, such as the remuneration, commission, and other benefits that the providing entity will receive or may expect to receive; and
- the costs, loss of benefits and other significant consequences if recommending to switch between financial products.

The SOA content requirements were introduced prior to the FOFA reforms and before the ban on conflicted remuneration (see section 4.3 of this paper). The FOFA reforms banned many forms of conflicted remuneration potentially reducing the need for at least some of the content requirements for a SOA.

The information included in a SOA must be set out in a clear, concise and effective manner. ASIC places a significant emphasis on this requirement stating:⁶⁸

Clear, concise and effective presentation of SOAs promotes understanding of advice by retail investors. We consider that the presentation requirements are as important as the content requirements in preparing an SOA.

ASIC has provided guidance on how financial advisers can set out the required information in a clear,

⁶⁵ Wallis [Financial System Inquiry Final Report](#), p 261.

⁶⁶ ASIC 2021, *RG 175 Licensing: Financial product advisers—Conduct and disclosure*, p 45 [175.167], <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-175-licensing-financial-product-advisers-conduct-and-disclosure/> (ASIC RG 175 Licensing: advisers).

⁶⁷ *Corporations Act 2001* ss 947C, 947D.

⁶⁸ ASIC *RG 175 Licensing: advisers*, p 58 [175.213].

concise and effective way, specifically for scaled advice to a new client.⁶⁹

There are some circumstances when a SOA is not required, such as where the adviser is providing further advice (in these cases an ROA is usually required, covered in more detail below).⁷⁰

As part of CP 332, ASIC sought feedback from industry stakeholders on the guidance it provides for SOAs and ROAs, as well as what were key drivers of the cost of advice. In response, stakeholders identified SOA preparation (including client and product research) as a major driver of the cost of advice.⁷¹

The financial advice industry has tried to estimate the cost of providing a SOA. In a survey of its members, the Financial Planning Association of Australia found on average advisers were charging \$2,671 to prepare a SOA for new clients, which was up almost 10 per cent from \$2,435 in 2018.⁷²

KPMG modelling included in the FSC's white paper estimated that providing advice costs about \$5,334.65 per client and that replacing the SOA with a more streamlined disclosure obligation would reduce the cost of providing advice by \$917.24 per client.⁷³

Record of Advice

A ROA is intended to be a simple record that confirms the advice provided by a financial adviser. The ROA is similar to a SOA but shorter and less formal. It is often given to existing clients to confirm changes to, or implementation of, advice that has been provided in a previous SOA. However, if there is a significant difference in the basis of further advice being provided to the client, the adviser cannot use a ROA, and must provide a SOA.

There are also other situations, such as small investment advice and no buy or sell product advice where a ROA is sufficient.

Whilst broadly similar to a SOA, there are some key differences for ROAs:

- a ROA does not necessarily need to be written advice, it can also be an audio or video recording;⁷⁴
- when providing further advice, a ROA can cover either the advice itself, or a brief description of the adviser's recommendations to the client and the basis for the recommendations; and⁷⁵
- whilst it is not always necessary to provide a ROA to a client (primarily when it is for further or no buy and sell product advice), if requested it should be provided as soon as practicably possible.

Also following the CP 332 consultation, ASIC released guidance and examples on financial advisers' obligations when using ROAs to provide advice to retail clients (INFO 266 FAQs: *Records of Advice*).⁷⁶

⁶⁹ ASIC 2017, *RG 90 Example Statement of Advice: Scaled advice for a new client*, <https://download.asic.gov.au/media/4567144/rg90-published-7-december-2017.pdf>.

⁷⁰ ASIC *RG 175 Licensing: advisers*, p 47 [175.176].

⁷¹ ASIC *Response to CP 332*.

⁷² FPA 2020, 'The national opportunity that is financial planning', <https://fpa.com.au/news/the-national-opportunity-that-is-financial-planning/>.

⁷³ FSC *White Paper*, p 12.

⁷⁴ ASIC 2021, *FAQs – Record of advice (ROAs)*, <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/faqs-records-of-advice-roas/>.

⁷⁵ ASIC *RG 175 Licensing: advisers*, p 49 [175.182].

⁷⁶ ASIC 2021, 'ASIC releases guidance and examples on records of advice', media release, 5 November, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-294mr-asic-releases-guidance-and-examples-on-records-of-advice/>.

Questions for stakeholders:

- How successful have SOAs been in addressing information asymmetry?
- How much does the requirement to prepare a SOA contribute to the cost of advice?
- To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information they need to make an informed decision?
- To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?
- How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?
- Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?
- Has recent guidance assisted advisers in understanding where they are able to use ROAs rather than SOAs, and has this led to a greater provision of this simpler form of disclosure?
- Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?

4.6 Accountants Providing Financial Advice

Review of the Tax Practitioners Board Recommendation 7.2

Recommendation 7.2 of the Review of the Tax Practitioners Board (TPB review) recommended that the Government initiate a specific review into what advice accountants can and cannot give in respect of superannuation and to which accountants that might apply. In response, the Government agreed to consider the recommendation as part of the Review.⁷⁷

Former “accountants’ exemption”

Up until 30 June 2016, the accountants’ exemption allowed recognised accountants to provide advice recommending a client establish or wind up a self-managed superannuation fund (SMSF) or acquire or dispose of an interest in a SMSF, without an AFSL. Recognised accountants included those who were members of CPA Australia, Chartered Accountants Australia and New Zealand, or the Institute of Public Accountants.

As accountants were not required to hold an AFSL they also were not required to comply with key consumer protections in the AFSL regime, including disclosure requirements, obligations applying to the provisions of personal advice to retail clients, dispute resolution mechanisms and compensation arrangements.⁷⁸

There were also concerns that the exemption created an uneven playing field, which favoured accountants over others who provided similar services and held an AFSL or who were a representative of an AFSL holder.

⁷⁷ Australian Government 2020, *Government Response to the Review of the Tax Practitioners Board*, p 20, <https://treasury.gov.au/sites/default/files/2020-11/20201117-governmentresponse.pdf>.

⁷⁸ The Hon Chris Bowen MP 2010, ‘Overhaul of Financial Advice’, media release, 26 April, <https://ministers.treasury.gov.au/ministers/chris-bowen-2009/media-releases/overhaul-financial-advice>.

Limited AFSL

In place of the accountants' exemption, a new 'limited' AFSL regime was established. A limited AFS licensee can provide limited financial services, including:⁷⁹

- financial product advice about SMSFs, and a client's existing superannuation holdings, to the extent required for making a recommendation to establish an SMSF or providing advice to a client about superannuation contributions or pensions;
- arranging to deal in an interest in an SMSF; and
- class of financial product advice: superannuation products; securities; simple managed investment schemes; general and life risk insurance products; and basic deposit products.

A limited AFS licensee is required to comply with the other relevant requirements of the *Corporations Act 2001*, including key consumer obligations, but are subject to lower levels of financial reporting obligations where they do not handle client money.⁸⁰

Questions for stakeholders:

- Should accountants be able to provide financial advice on superannuation products outside of the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why?
- If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?
- What effect would allowing accountants to provide this advice have on the number of advisers in the market and the number of consumers receiving financial advice?
- Is the limited AFS licence working as intended? What changes to the limited licence could be made to make it more accessible to accountants wanting to provide financial advice?
- Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?

4.7 Consent Arrangements for Wholesale Client and Sophisticated Investor Classification

Consumer protections in the financial services regime generally apply only to 'retail clients' on the basis that 'wholesale clients' are in a better position to look after their own interests. The best interests duty, protections against conflicted remuneration, and disclosure requirements such as the requirement to provide an FSG, do not apply to wholesale clients.

The definitions of wholesale and retail clients change depending on the financial product. Therefore, a person might be a wholesale client for some purposes but not for another. A person is a retail client unless the *Corporations Act 2001* provides otherwise.

Except when a financial product or service relates to a general insurance product or superannuation product (or RSA product), a person will generally be a 'wholesale client' if, among other things, they are:

- a person purchasing a financial product, or a financial service related to a financial product, where the value of the product is above the prescribed threshold (currently set at \$500,000);
- a person with certified net assets of at least \$2.5 million or a person who had a gross income for

⁷⁹ ASIC 2014, *Limited Financial Services*, <https://asic.gov.au/for-finance-professionals/afs-licensees/applying-for-and-managing-an-afs-licence/limited-financial-services/> (ASIC Limited Financial Services).

⁸⁰ ASIC *Limited Financial Services*.

each of the past two financial years of at least \$250,000;

- a ‘professional investor’; or
- a ‘sophisticated investor’⁸¹.

For most personal, motor vehicle and domestic types of general insurance products, individuals and small businesses are treated as retail clients.⁸² For superannuation products, other than trustees of SMSFs, the client is always a retail client.⁸³

Under the ‘sophisticated investor’ exemption, a AFS licensee needs to make an assessment about the investor's previous experience in using financial services and investing in financial products. The licensee must give the client a written statement setting out their reasons for being satisfied that the client is a ‘sophisticated investor’. The client also needs to acknowledge, among other things, that they have not received disclosure documents that would usually be given to a ‘retail client’.⁸⁴ Accordingly, this exemption requires the written acknowledgement of the client to opt out of the protections for retail clients.

A qualified accountant can issue a certificate to certify that a person has the required net assets or gross income to be classified as a wholesale client.⁸⁵ ASIC has previously held concerns some accountants may be inappropriately providing certificates.⁸⁶ Financial advisers may refer clients to an accountant or arrange for the certificate on the client’s behalf. Unlike the section 761GA ‘sophisticated investor’ test, the income and asset test does not require the client to consent formally in writing to being a wholesale client.

Under the Terms of Reference, the Review will consider whether the process by which a client might consent to being a wholesale client is operating as it should. A person may not always understand the consequences of being a wholesale client. Given the fewer regulatory obligations that apply when a financial adviser is giving advice to a wholesale client there may be an incentive for an adviser who provides personal advice to recommend that their eligible clients opt out of being a retail client when it is not in the client’s interest to do so.

The ALRC is considering amendments to the definitions of ‘retail client’ in section 761G of the *Corporations Act 2001*, including the asset and income tests, and the sophisticated investor exception in section 761GA.⁸⁷ As the ALRC’s review will not conclude until 2023, the Quality of Advice Review will proceed based on the existing law.

⁸¹ *Corporations Act 2001* s 761G(7).

⁸² *Corporations Act 2001* s 761G(5).

⁸³ A trustee of a SMSF will be classified as a retail client unless the fund holds net assets of at least \$10 million at the time the service is provided, see *Corporations Act 2001* s 761G(6)(c). However, ASIC has indicated that where the trustee of a SMSF receives advice about how to invest the fund’s assets, ASIC will not take action if the person providing the advice determines whether the trustee is a wholesale client based on the general test (e.g. if they have assets of at least \$2.5 million). See ASIC 2014, ‘Statement on wholesale and retail investors and SMSFs’, media release, 8 August, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2014-releases/14-191mr-statement-on-wholesale-and-retail-investors-and-smsfs/>.

⁸⁴ *Corporations Act 2001* s 761GA.

⁸⁵ ASIC 2014, *Certificates issued by a qualified accountant*, <https://asic.gov.au/regulatory-resources/financial-services/financial-product-disclosure/certificates-issued-by-a-qualified-accountant/>.

⁸⁶ ASIC 2017, ‘ASIC takes action over misuse of ‘sophisticated investor’ certificates’, media release, 7 July, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2017-releases/17-228mr-asic-takes-action-over-misuse-of-sophisticated-investor-certificates/>.

⁸⁷ ALRC *Interim Report*, p 480-497.

Questions for stakeholders:

- Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?
- Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?
- Should there be a requirement for a client to be informed by the adviser if they are being classified as a wholesale client and be given an explanation that this means the protections for retail clients will not apply?

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

Government and non-government institutions in the financial advice landscape can play an important role in improving the quality, affordability and accessibility of advice. Within ASIC's regulatory framework and remit, ASIC oversees compliance with advice laws and takes action to protect consumers and address misconduct. AFS licensees also play a critical role by ensuring their authorised representatives are trained and competent and provide compliant advice. Additionally, professional bodies can play a role in promoting the professionalisation of financial advice.

The Financial Services Royal Commission recommended that the Review consider the effectiveness of measures that have been implemented by regulators and financial services entities to improve the quality of advice, in addition to measures implemented by Government (Recommendation 2.3). As outlined in the Terms of Reference, the Review is examining actions taken by ASIC, including regulatory guidance and class orders, and the role of financial services entities and professional associations.

5.1 ASIC

As the primary regulator of the financial advice sector, ASIC's role is to oversee compliance with financial services laws by advice licensees and advisers. In this role, ASIC:

- undertakes surveillance and audit activity to identify compliance failures;
- issues legislative instruments to provide relief to the industry or modify the operation of the law;
- provides regulatory guidance to the industry to explain when and how ASIC will exercise its powers under legislation and how ASIC interprets the law;
- takes enforcement and administrative action, such as banning individual advisers, to protect consumers and deter misconduct;
- undertakes research including examining the regulatory framework, the behaviours and practices of financial advisers and what consumers think about financial advice; and
- issues licences authorising people to provide financial advice and maintains the FAR, which enables consumers, employers and ASIC to check the credentials of financial advisers.

During the COVID-19 pandemic, ASIC has been focussing on assisting financial advice businesses to respond to its impact. For example, ASIC provided temporary relief to allow the use of a ROA instead of an SOA in more circumstances, including when advisers were providing advice on the early release of superannuation schemes.⁸⁸

In 2020, ASIC commenced a dedicated project on improving consumer access to good quality and affordable financial advice. ASIC undertook consultation (CP 332) in November 2020 to seek input from industry participants and other stakeholders to understand the issues and impediments affecting the supply of good quality and affordable advice, and the practical steps that can be taken by ASIC and the industry to improve consumer access to advice.

ASIC held roundtables in April 2021 with advisers, licensees, and industry associations to discuss key issues raised in CP 332 and possible solutions. Based on feedback received in submissions to CP 332 and roundtable discussions, ASIC has recently undertaken a range of initiatives to assist licensees and advisers to provide quality and affordable advice, including:

⁸⁸ ASIC 2021, *Annual Report 2020-21*, p 85, <https://download.asic.gov.au/media/2aaomxuz/asic-annual-report-2020-21-full-1.pdf>. See also *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2021/268*.

- launching a new 'Financial Advice Hub' webpage to make it easier to find regulatory content;
- providing guidance and examples of ROA;⁸⁹ and
- providing practical tips for giving limited advice and an example SOA.⁹⁰

5.2 Advice Licensees

Licensees play a critical role in the effective regulation of financial advice under the AFSL framework. Licensees must:

- do all things necessary to ensure their provision of financial services is efficient, honest and fair;
- have in place adequate arrangements for the management of conflicts of interest;
- take reasonable steps to ensure that their representatives comply with financial services laws;
- have available adequate resources to provide the financial services covered by their licence and carry out supervisory arrangements;
- ensure representatives are adequately trained and competent; and
- have a dispute resolution system (if providing services to retail clients).⁹¹

Licensees are also responsible (and liable) for the misconduct of their representatives, including financial advisers.⁹² Misconduct by an adviser should be, in the first instance, dealt with by the licensee, consistent with the licensee's obligation to take reasonable steps to ensure their representatives comply with the law.

Concerns were raised during the Financial Services Royal Commission about the adequacy of licensee monitoring and supervision of advisers. In response to the recommendations of the Royal Commission, the Government introduced requirements for licensees to:

- comply with a Reference Checking and Information Sharing Protocol (Recommendation 2.7);
- report 'serious compliance concerns' about advisers to ASIC (Recommendation 2.8); and
- investigate misconduct by advisers and appropriately remediate clients affected by the misconduct (Recommendation 2.9).

5.3 Professional industry associations

The primary role of professional associations has historically been policy advocacy for the industry. Associations also play an educative role for members, for example by offering continuing professional development. In addition, associations provide services to promote the professionalisation of financial advice that may assist in improving advice quality. For example, codes of practice may promote higher ethical standards.

However, in a submission to the Financial Services Royal Commission, ASIC noted that the multiplicity of professional associations has 'mitigated against any of them taking a strong leadership role in

⁸⁹ ASIC 2021, *Information Sheet 266: FAQs – Record of advice (ROAs) and three ROA examples*, <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/faqs-records-of-advice-roas/>.

⁹⁰ ASIC 2021, *Information Sheet 267: Tips for giving limited advice and an example statement of advice (SOA)*, <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/tips-for-giving-limited-advice/>.

⁹¹ *Corporations Act 2001* s 912A(1).

⁹² *Corporations Act 2001* pt 7.6 div 6.

setting or enforcing strong ethical standards (lest they risk losing members to those bodies with less rigorous standards)'.⁹³

Under the current regulatory regime there is limited scope for professional industry associations to play a significant regulatory role, although some play a role in the disciplining of members.

Questions for stakeholders:

- What steps have licensees taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?
- What steps have professional associations taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?
- Have ASIC's recent actions in response to consultation (CP 332), including the new financial advice hub webpage and example SOAs and ROAs, assisted licensees and advisers to provide good quality and affordable advice?
- Has licensee supervision and monitoring of advisers improved since the Financial Services Royal Commission?
- What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice?

⁹³ *Submission of ASIC, Round 2: Financial Advice*, Financial Services Royal Commission, p 20.

6. Next Steps

The purpose of this Issues Paper is to seek the views of interested stakeholders on the issues set out in the Terms of Reference and the ‘questions for stakeholders’ in this Paper.

Interested stakeholders are encouraged to make a submission by 3 June 2022.

The Review will consult broadly with representatives from industry, consumer representatives and other interested parties. This may involve conducting targeted roundtables with interested stakeholders on specific issues.

The Review will also be informed by data collected by ASIC and Treasury.

Treasury is currently undertaking a voluntary data collection with insurers to gather information about their remuneration and product performance across intermediaries for key general insurance retail products.

The data and advice file review being collated by ASIC for the life insurance framework will be provided to Treasury for analysis.

The independent reviewer will provide a report to Government by 16 December 2022.

Event	Date
Issues Paper released	24 March 2022
Closing date for submissions on Issues Paper	3 June 2022
Report to be provided to the Government	16 December 2022

7. Consultation questions

The consultation questions from throughout this paper are set out below for ease of reference. Stakeholders are encouraged to refer to the questions listed below in their submissions. Where possible, stakeholders are encouraged to provide case studies, data and evidence to support their views.

Section 3: Framework for Review

1. What are the characteristics of quality advice for providers of advice?
2. What are the characteristics of quality advice for consumers?
3. Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?
4. What are the factors the Review should consider in deciding whether a measure has increased the quality of advice?
5. What is the average cost of providing comprehensive advice to a new client?
6. What are the cost drivers of providing financial advice?
7. How are these costs apportioned across meeting regulatory requirements, time spent with clients, staffing costs (including training), fixed costs (e.g. rent), professional indemnity insurance, software/technology?
8. How much is the cost of meeting the regulatory requirements a result of what the law requires and how much is a result of the processes and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?
9. Which elements of meeting the regulatory requirements contribute most to costs?
10. Have previous reforms by Government been implemented in a cost-effective way?
11. Could financial technology (fintech) reduce the cost of providing advice?
12. Are there regulatory impediments to adopting technological solutions to assist in providing advice?
13. How should we measure demand for financial advice?
14. In what circumstances do people need financial advice but might not be seeking it?
15. What are the barriers to people who need or want financial advice accessing it?
16. How could advice be more accessible?
17. Are there circumstances in which advice or certain types of advice could be provided other than by a financial adviser and, if so, what?
18. Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?
19. What is preventing new entrants into the industry with innovative, digital-first business models?

Section 4: Regulatory Framework

20. Is there a practical difference between financial advice and financial product advice and should they be treated in the same way by the regulatory framework?
21. Are there any impediments to a financial adviser providing financial advice more broadly, e.g. about budgeting, home ownership or Centrelink pensions? If so, what?
22. What types of financial advice should be regulated and to what extent?
23. Should there be different categories of financial advice and financial product advice and if so for what purpose?
24. How should the different categories of advice be labelled?
25. Should advice provided to groups of consumers who share some common circumstances or characteristics of the cohort (such as targeted advertising) be regulated differently from advice provided only to an individual?
26. How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?
27. How does applying and considering the distinction between general and personal advice add to the cost of providing advice?
28. Should the scope of intra-fund advice be expanded? If so, in what way?
29. Should superannuation trustees be encouraged or required to provide intra-fund advice to members?
30. Are any other changes to the regulatory framework necessary to assist superannuation trustees to provide intra-fund advice or to more actively engage with their members particularly in relation to retirement issues?
31. To what extent does the provision of intra-fund advice affect competition in the financial advice market?
32. Do you think that limited scope advice can be valuable for consumers?
33. What legislative changes are necessary to facilitate the delivery of limited scope advice?
34. Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?
35. Do you agree that digital advice can make financial advice more accessible and affordable?
36. Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?
37. Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?
38. Should different forms of advice be regulated differently, e.g. advice provided by a digital advice tool from advice provided by a financial adviser?
39. Are you concerned that the quality of advice might be compromised by digital advice?
40. Are any changes to the regulatory framework necessary to facilitate digital advice?
41. If technology is part of the solution to making advice more accessible, who should be responsible for the advice provided (for example, an AFS licensee)?

42. In what ways can digital advice complement human-provided advice and when should it be a substitute?
43. Do you consider that the statutory safe harbour for the best interests duty provides any benefit to consumers or advisers and would there be any prejudice to either of them if it was removed?
44. If at all, how does complying with the safe harbour add to the cost of advice and to what extent?
45. If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal advice?
46. To what extent can the best interests obligations (including the best interests duty, appropriate advice obligation and the conflicts priority rule) be streamlined to remove duplication?
47. Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?
48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?
49. Has the ban contributed towards improving the quality of advice?
50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?
51. What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.
52. Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?
53. Has the capping of life insurance commissions led to a reduction in the level of insurance coverage or contributed to underinsurance? If so, please provide data to support this claim.
54. Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.
55. What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be retained?
56. Are consent requirements for charging non-ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?
57. To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?
58. How could these documents be improved for consumers?
59. Are there other ways that could more effectively provide accountability and transparency around ongoing fee arrangements and protect consumers from being charged a fee for no service?
60. How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?

61. To what extent, if at all, do superannuation trustees (and other product issuers) impose obligations on advisers which are in addition to those imposed by the OFA and FDS requirements in the Corporations Act 2001?
62. How do the superannuation trustee covenants, particularly the obligation to act in the best financial interests of members, affect a trustee's decision to deduct ongoing advice fees from a member's account?
63. How successful have SOAs been in addressing information asymmetry?
64. How much does the requirement to prepare a SOA contribute to the cost of advice?
65. To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information they need to make an informed decision?
66. To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?
67. How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?
68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?
69. Has recent guidance assisted advisers in understanding where they are able to use ROAs rather than SOAs, and has this led to a greater provision of this simpler form of disclosure?
70. Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?
71. Should accountants be able to provide financial advice on superannuation products outside of the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why?
72. If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?
73. What effect would allowing accountants to provide this advice have on the number of advisers in the market and the number of consumers receiving financial advice?
74. Is the limited AFS licence working as intended? What changes to the limited licence could be made to make it more accessible to accountants wanting to provide financial advice?
75. Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?
76. Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?
77. Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?
78. Should there be a requirement for a client to be informed by the adviser if they are being classified as a wholesale client and be given an explanation that this means the protections for retail clients will not apply?

Section 5: Other measures to improve the quality, affordability and accessibility of advice

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| 79. | What steps have licensees taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice? |
| 80. | What steps have professional associations taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice? |
| 81. | Have ASIC's recent actions in response to consultation (CP 332), including the new financial advice hub webpage and example SOAs and ROAs, assisted licensees and advisers to provide good quality and affordable advice? |
| 82. | Has licensee supervision and monitoring of advisers improved since the Financial Services Royal Commission? |
| 83. | What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice? |

8. Appendix 1: Terms of Reference

Purpose and scope of the Review

1. The Government is committed to ensuring that Australians have access to high quality, affordable and accessible financial advice. Consistent with recommendations 2.3, 2.5 and 2.6 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission), the Government is commissioning this Review.
2. The Review will consider how the regulatory framework could better enable the provision of high quality, accessible and affordable financial advice for retail clients. In particular, it will investigate:
 - 2.1. Opportunities to streamline and simplify regulatory compliance obligations to reduce cost and remove duplication, recognising that the costs of compliance by businesses are ultimately borne by consumers and serve as an impediment to consumers' access to quality advice;
 - 2.2. Where principles-based regulation could replace rules-based regulation to allow the law to better address fundamental harms and reduce the cost of compliance;
 - 2.3. How to simplify documentation and disclosure requirements so that consumers are presented with clear and concise information without unnecessary complexity;
 - 2.4. Whether parts of the regulatory framework have in practice created undesirable unintended consequences and how those consequences might be mitigated or reduced.
3. The Review will include examination of:
 - 3.1. The legislative framework for financial advice, specifically:
 - 3.1.1. Key concepts such as 'financial product advice', 'general advice', 'personal advice', as well as how they are used, how they are interpreted by consumers, and whether they could be simplified or more clearly demarcated. The Review should also consider the role and bounds of advice that is scaled, intra-fund or limited in scope;
 - 3.1.2. The safe harbour provision for the best interests duty, in line with Commissioner Hayne's recommendation that 'unless there is a clear justification for retaining (the safe harbour provision), it should be repealed';
 - 3.1.3. Financial advice documentation and disclosure requirements, including statements of advice;
 - 3.1.4. Fee disclosure and consent requirements, including reforms to introduce annual renewal of ongoing fee arrangements (Royal Commission Recommendation 2.1);
 - 3.1.5. The life insurance remuneration reforms, and the impact of the reforms on the levels of insurance coverage;
 - 3.1.6. The remaining exemptions to the ban on conflicted remuneration, including in life and general insurance (Royal Commission Recommendations 2.5 and 2.6);
 - 3.1.7. The application of the advice framework to certain activities and professions, including consideration of Recommendation 7.2 of the Review of the Tax Practitioners Board.

- 3.2. Whether consent arrangements for sophisticated investors and wholesale clients are working effectively for the purposes of financial advice;
 - 3.3. Actions undertaken by ASIC, including regulatory guidance and class orders; and
 - 3.4. The role of financial services entities and professional associations.
4. As relevant, the Review will have regard to:
 - 4.1. Structural changes and professionalisation of the sector;
 - 4.2. Best practice developments internationally;
 - 4.3. The level of demand for advice and the needs and preferences of consumers;
 - 4.4. Enabling innovation and the development of technological solutions, including the use of regulatory technology and digital advice. The Review should pay particular attention to how technology and digital advice might enable mass market adoption of low-cost advice, particularly by young consumers, those with low asset values and consumers who do not currently engage with the advice industry;
 - 4.5. Opportunities to reduce compliance costs on industry, while maintaining adequate consumer safeguards;
 - 4.6. Other key regulatory developments, including the Consumer Data Right, the Retirement Income Covenant and the Design and Distribution Obligations as they apply directly to financial advice.
 5. The Review may also have regard to the interim findings of the Australian Law Reform Commission's Review of the Legislative Framework for Corporations and Financial Services Regulation.
 6. The Review will not make recommendations on:
 - 6.1. The professional standards for financial advisers;
 - 6.2. The new disciplinary and registration systems for advisers (Royal Commission Recommendation 2.10), the reference checking and information sharing protocol (Royal Commission Recommendation 2.7), the obligation on licensees to report serious compliance concerns (Royal Commission Recommendation 2.8) and to take steps when they detect an adviser has engaged in misconduct (Royal Commission Recommendation 2.9);
 - 6.3. Changes to the definitions of 'retail client', 'wholesale client', and 'sophisticated investor', including the income and asset thresholds;
 - 6.4. Financial services redress arrangements; or
 - 6.5. The application of taxation and privacy laws to financial advice.

Process

7. The Review will be led by an independent reviewer and supported by a secretariat based in Treasury.

8. The Review will invite submissions from the public and consult with stakeholders, including consumers, industry and regulators. The Review will also be informed by data collected by ASIC and Treasury.
9. The reviewer will provide a report to Government by 16 December 2022.

9. Appendix 2: International Jurisdictions Comparisons

Country	Types of Advice and Conduct of Advisers	Regulation of Conflicted Remuneration	Regulation of Charging Arrangements	Regulation of Disclosure Documents
United Kingdom ⁹⁴	<p>There are two types of investment advisers: independent advisers and restricted advisers.</p> <p>Independent advisers must consider and recommend all types of retail investment products, from all firms across the market, and must give unbiased and unrestricted advice.</p> <p>A restricted adviser can recommend only certain products, product providers, or both.</p> <p>Each type of adviser is required to “act honestly, fairly and professionally in accordance with the best interests of its client”.</p> <p>For insurance sales, the firm must take reasonable steps to ensure a customer only buys a product that they are eligible to claim under. For advised sales, the firm is required to ensure the suitability of any advice it provides to the consumer.</p>	<p>For recommendations on investments and pensions, advisers must be remunerated from adviser charges and must not accept or solicit any other commissions or remuneration. There are some carve outs including for minor non-monetary benefits.</p> <p>No restriction on insurance commissions. However, details on the commission must be disclosed to the client before the conclusion of the insurance contract or renewal.</p>	<p>A firm must determine and use an appropriate charging structure for calculating its adviser charge having regard to its duties under the client best interests rule. This includes whether the advice is likely to be of value to the client having regard to the total charges the client is likely to be required to pay.</p> <p>A firm must disclose the charging structure to the client before making the advice recommendation.</p> <p>A firm can only charge an ongoing fee if it relates to an ongoing service which has been disclosed to the client along with the client’s right to cancel the ongoing service without penalty.</p>	<p>A “key features document” must include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a retail client to be able to make an informed decision about whether to proceed.</p>

⁹⁴ FCA, <https://www.fca.org.uk/>.

<p>New Zealand⁹⁵</p>	<p>From March 2021, the three adviser types – Registered Financial Adviser, Authorised Financial Adviser and Qualifying Financial Entity adviser have been removed – and all advisers need to meet the same standards and are subject to a Code of Professional Conduct for Financial Advice Services.</p> <p>To provide financial advice to retail clients, advisers must either hold a Financial Advice Provider licence; or be engaged to operate under a Financial Advice Provider’s licence as a Financial Adviser or Nominated Representative.</p> <p>If you give financial advice to retail clients, advisers must:</p> <ul style="list-style-type: none"> • Take steps to ensure clients understand the nature and scope of the advice being provided, including any limitations. • Prioritise your client’s interests where there’s a conflict of interest. • Always exercise care, diligence and skill. • Comply with the Code of Professional Conduct for Financial Advice Services requirements for ethical behaviour, conduct and client care and meet the competence, knowledge and skill requirements. 	<p>New Zealand does not ban conflicted remuneration.</p> <p>Commissions are the main form of remuneration for financial advisers who sell life and health insurance. The commissions paid by insurers to advisers include monetary and non-monetary benefits.</p> <p>Soft commissions are incentives or benefits such as gifts, prizes, trips, professional development such as training or software, events including conferences, sponsorships, payment of membership fees and loans to advisers.</p>	<p>An adviser that provides financial advice has an obligation to take reasonable steps to disclose certain information, including all fees and costs associated with that advice.</p> <p>Advisers are generally paid:</p> <ul style="list-style-type: none"> • Directly – via a fee for the service the adviser has provided • Indirectly – the adviser is paid a commission from the providers whose product you sign up to. • An ongoing fee • A “trail commission” where money is paid to them by a supplier of a product, for the duration of the relationship 	<p>Advisers need to disclose:</p> <ul style="list-style-type: none"> • FAP Licence information • Fees & Commissions • Conflicts or other Incentives • Reliability History • Nature & Scope of Advice • Duties Information • Identifying Information • Availability of info • Complaints Process <p>The disclosure can be provided verbally, electronically or in writing. The disclosure must be clear, concise, effective and in plain language. The disclosure must be available at request at no cost.</p> <p>Advisers must make the disclosure before receiving client money or client property from retail client.</p> <p>Advisers can disclose this information within</p>
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⁹⁵ Financial Markets Authority, <https://www.fma.govt.nz/>; Financial Services Council NZ, <https://blog.fsc.org.nz/media-release-9-november-2020-new-disclosure-guide>.

	<ul style="list-style-type: none"> • Only recommend financial products that are offered in compliance with the FMC Act and its regulations. • Follow the disclosure regulations and ensure that any information you make available to clients is not false, misleading or incomplete. 		<p>documents they already provide to their clients.</p> <p>The disclosure regulations require advisers to present certain information to clients during the advice process:</p> <p>Publicly available information to help consumers decide whether your firm’s financial advice proposition meets their needs;</p> <p>By the time the nature and scope of advice is known (e.g. in your scope of service agreement) to help your client decide whether to obtain financial advice from you;</p> <p>When providing advice (e.g. in your statement of advice) to help your client decide whether to follow your advice; and</p> <p>When a complaint is received, to help your client understand your complaint resolution process</p>
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<p>United States⁹⁶</p>	<p>An investment adviser is a firm or person that, for compensation, engages in the business of providing investment advice.</p> <p>Investment advisers operating in the USA must register with the SEC if they manage assets totalling \$100 million or more. Investment advisers with lesser amounts are only required to register at the state level. Advisers registered with the SEC are known as a Registered Investment Adviser and have a duty to provide investment advice that is in their clients' best interests.</p> <p>Brokers are defined as "any person engaged in the business of effecting transactions in securities for the account of others." Brokers must register with the SEC and have a duty to act in their clients' best interests.</p> <p>As fiduciaries, Registered Investment Advisers and brokers owe their clients a duty to provide only suitable investment advice, a duty to avoid misleading them and an obligation to obtain "best execution" of clients' transactions.</p>	<p>An adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship. An adviser must eliminate or at least expose through full and fair disclosure all conflicts of interest that might incline it – consciously or unconsciously – to render advice that is not disinterested.</p> <p>An adviser's fiduciary duty requires the adviser to disclose the conflict of interest that results when it receives compensation, directly or indirectly, in connection with the investments it recommends. Where this conflict exists, an adviser must also disclose how it addresses the conflict.</p> <p>If someone who is not a client provides an economic benefit to an adviser for providing investment advice or other advisory services to</p>	<p>Investment advisers are prohibited from receiving any type of advisory fee calculated as a percentage of capital gains or appreciation in the client's account. However, exceptions are made for clients having more than \$1 million in managed assets, private investment companies excepted from the Investment Company Act and clients that are not U.S. residents.</p> <p>Advisers can charge performance fees to: (1) clients with at least \$750,000 under management with the adviser or more than \$1,500,000 of net worth; (2) clients who are "qualified purchasers" under the Investment Company Act; and (3) certain knowledgeable employees of the investment adviser.</p> <p>An individual generally qualifies as a "qualified</p>	<p>Advisers have an obligation of utmost good faith and full and fair disclosure of all material facts to their clients.</p> <p>Registered Investment Advisers are required to deliver to each client or prospective client a brochure and brochure supplement describing the adviser's business practices, conflicts of interest and background of the investment adviser and its advisory personnel. An adviser must deliver the brochure to a client before or at the time the adviser enters into an investment advisory contract with a client.</p> <p>Registered Investment Advisers that have custody over client funds or securities, or that requires prepayment six months or more in advance of more than \$500 of advisory fees, are required to disclose</p>
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⁹⁶ US Securities and Exchange Commission, <https://www.sec.gov/>.

		its clients, the adviser must generally describe the arrangement, explain the conflicts of interest, and describe how it addresses the conflicts of interest.	purchaser" if they own not less than \$5 million in investments.	promptly to clients and prospective clients any financial conditions of the adviser that are reasonably likely to impair the ability of the adviser to meet contractual commitments to clients. An investment adviser must disclose all potential conflicts of interest between the adviser and its clients, even if the adviser believes that a conflict has not affected and will not affect the adviser's recommendations to its clients.
Canada⁹⁷	In Quebec, only certain trained individuals are allowed to use the title "financial planner". This includes financial planners who: <ul style="list-style-type: none"> • have a certificate issued by the Autorité des marchés financiers • are members of a professional association with which the Autorité des marchés financiers has entered into an agreement. 	Registered firms and investment advisors are required to address material conflicts in the client's best interest, and put the client's interests first when recommending or choosing investments for the client. Firms and advisors are required to inform the client about conflicts of interest,	Clients pay financial advisors in different ways, depending on the type of service they provide, examples include: <ul style="list-style-type: none"> • an hourly fee to an advisor helping the client create a financial plan. • a commission or a trading fee to an advisor 	Compliance requirements can vary widely according to firm, industry segment and province. This includes developing and presenting a written financial plan that makes specific recommendations about the client's situation and for clients to consider.

⁹⁷ Canadian Securities Administrators, <https://www.securities-administrators.ca/>; The Financial Consumer Agency of Canada, <https://www.canada.ca/en/financial-consumer-agency.html>.

	<p>The advisor is obligated to act in the client’s best interests at all times and to recommend investments that are suitable for the client.</p> <p>Outside of the province of Quebec, anyone can call themselves a “financial advisor” or “financial planner”. However, Ontario, Saskatchewan and New Brunswick are in the process of restricting the use of the titles.</p>	<p>and how they are being addressed in the client’s best interest, in a timely fashion and in an understandable language.</p> <p>Advisors must resolve conflicts in their client’s best interest, taking into account different factors, including the suitability of a product for their situation.</p>	<p>buying a stock for their client.</p> <ul style="list-style-type: none"> • a percentage to an advisor based on the value of the assets they manage for their client, also known as the management expense ratio. 	<p>Firms and investment advisors must take reasonable steps to understand the securities that they purchase, sell or recommend to clients, including the impact of the initial and ongoing costs associated with acquiring and holding each security. This means they must make a suitability determination that puts clients’ interests first.</p> <p>Advisor requirements include providing information about potentially significant restrictions on what will be made available, investing costs and any limitations relating to the products and services offered. If so, the advisor should be able to demonstrate that the proprietary product they recommend is competitive and of quality compared to other products in the market to meet their client’s needs.</p>
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