



QUALITY OF ADVICE REVIEW

**Submission by the Association of Independently Owned
Financial Professionals [AIOFP] – JUNE 2022.**

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EXECUTIVE SUMMARY

The genesis and title of this project concerns and offends the Advice Community. The title **QUALITY OF ADVICE REVIEW** is inequitable and disingenuous to the Advice community who pride themselves on delivering high quality advice to consumers.

The latest AFCA complaints data backs up this position where less than 1.5% of around 700,000 complaints were against Advisers, the remaining 98.5% were against Institutions. Furthermore, the ASIC 27 independent survey Paper found 89% of consumers are satisfied with their Adviser.

These facts comprehensively dismiss the false narratives some detractors use to unfairly denigrate the advice community.

This paper should be renamed **HOW TO REDUCE THE COST OF ADVICE REVIEW** which tripled under the watch of the previous Government. We believe the previous Minister was attempting to deflect the seriousness of their mishandling of the industry by deferring accountability until post – election by using a third party at tax - payers expense.

Thankfully, this dissection does not need to eventuate with the removal of the Government. We think there is ample evidence to conclude that this Government purposely drove up the cost of Advice to frustrate Advisers and justify the implementation of digital advice. They seemed to not conceptualize that consumers actually paid directly for this cost escalation and that outcome was reflected at the recent electoral ballot box.

We note this afternoon [3/6/22] that new Minister Stephen Jones is proceeding with pre - election promises and not waiting for the results of this Review. This action supports our position that this Review was a hastily put together ruse to deflect accountability of the previous Governments poor handling of the industry since 2014.

Please be advised of our views to decrease the cost of Advice for consumers and remove the remaining conflicts in the industry.

Some background - The utopian financial services landscape all stakeholders should be striving for are appropriately educated and experienced independent Financial Advisers dealing directly with Consumers on a flexible fee for service basis selecting the best product/service from manufacturers who do not own or subsidize advice distribution.

There should be no cross subsidization of advice fees from any source and consumers should be given a choice of a fee for service or a capped commission basis to select from with Risk insurance advice.

This environment finally addresses the imperfections FOFA missed around 10 years ago. Although Risk commissions are the only potential blemish, we believe it is what most consumers want to have – ***choice of two Adviser remuneration structures to select from.***



A critical logistical issue ASIC, Treasury Bureaucrats and Politicians need to understand and appreciate is that the Advice community does not want 'bad apples' operating in the industry, we want them out more than any other stakeholder. We need to have Industry practical representatives at the table when decisions are being made to how the Advice industry operates on a day-to-day basis, **much the same as the 'ULURU a message from the Heart' initiative strives to achieve.**

With all due respects to Allen's Ms Michelle Levy extensive experience with Corporate Superannuation funds, the intricacies of the Advice industry are a different matter altogether and we encourage Ms Levy to seek counsel from experienced industry advice participants.

We believe the basic building blocks for a conflict free cost - effective advice delivery to all consumers is already in place. FOFA, FASEA, LIF and some of the compliance legislations were theoretically in the right direction but were either poorly or nefariously implemented to suit the Government of the day's agenda.

We believe the cost of advice can be readily solved by a panel of ASIC, AFCA and Industry representatives collaborating in a relatively short space of time to eliminate compliance duplication, irrelevance and waste. Despite the Corporations Law stating that General low - cost Advice can be implemented, the Advice community has been deliberately influenced by the legal fraternity to produce large Statements of Advice [SOA] to 'protect everyone'. As previously indicated, more practical compliance minds are needed NOT legal minds.

This anti - consumer outcome should immediately end, ASIC/AFCA need to be involved with assuring the Advice community and consumers of their views to avoid future confusion.

A glaring anomaly in the industry eco system are Industry Superannuation Funds [ISF] cross subsidizing advice delivery to a low percentage of members by levying every member. This concept of 'FEE FOR NO SERVICE' was frowned upon by Comm Hayne in the Royal Commission leading to Institutions being heavily fined and forced from the industry, however it is currently tolerated in the ISF space by ASIC, APRA and Politicians of all description.

We are supporters of the ISF industry as a very legitimate alternative for consumers but this issue needs to be addressed. Besides for being unfair to most Fund members who do not use the service but are paying for it, it makes a mockery of the entire Financial Services industry image.

Once the compliance issue is dealt with including the cost and size of Statement of Advice documents, ISF members can then deduct the cost of Superannuation advice from their account balance to pay they're in - house or external Adviser. Furthermore, ISF Advisers getting paid bonus' for maintaining clients account balances in the fund is tantamount to commission payments under the past vertical integration model of the Banks. This must end, it is also involuntarily funded by super members who do not use the service.

The industry must have a level playing field for advice delivery where every consumer pays a fee for the service they request, and no other party is involuntarily funding it.

The user pays system is the only fair way to achieve a level playing field across the industry in our view.



OUR CONCERNS IN DETAIL

Our specific response to the items in the Quality of Advice Review are as follows:

Objective of the Review

- If desirous of a move to “Principles Based Regulation” then greater time needs to be spent by providing guidance, training, and education to the Regulators so that they effectively understand and appropriately apply this method of governance.
- The “black-and-white” manner in which legislation is currently interpreted and applied by Regulators is in direct contrast to a principles based philosophy:
 - No account is given for interpretation by the industry participant.
 - Rather a “letter of the law” view is taken with no account for circumstance or context.
- This contradiction is evident when viewing the competing areas of ASIC’s regulatory areas:
 - The market conscious section wants shorter advice documents and more affordable advice.
 - The consumer protection section penalises advice that isn’t lengthy and sophisticated in its wording.
- It is this paradox that sees internal AFSL compliance bow to this legal rather than “principles-based” approach, so as to reduce the impact of claims paid against advisers by an overzealous and biased complaints determination scheme.
- The Ombudsman needs to examine its role in the process as an impartial arbiter of the situation presented.
- A part of this is to understand that a Consumer may not always be right and the adviser always at fault – the Consumer may need to take responsibility and/or recognise that the adviser has not been at fault.
- Our current system sees no such Consumer responsibility taking place – consequences should be in place for a Consumer making and continuing with a nuisance complaint. It is too easy for a Consumer to continue with a complaint when there is no merit behind it; adjustments must be made for a fair and impartial service.

Financial Advice

Quality financial advice

- We believe quality financial advice should have the following qualities:
 - It should be strategic in nature
 - It must be related to the objectives of the client
- It should be noted that previous regulatory changes (including “safe harbour”) haven’t necessarily improved the quality of advice.



Affordable financial advice

- When considering that the majority of advice given in the market place is scaled/scoped to some degree we question why this review seems to focus on comprehensive advice.
- It is not so much regulations causing the burden for which this review is concerned, but rather the overlay mandated by compliance regimes that is scaring advisers into giving comprehensive advice on “best interests” basis.
- To effectively meet clients needs we need to remove culture of fear around scaled advice:
 - Provide training and guidance to all participants, adviser and regulator alike, on the appropriate use of scaled advice
 - Large institutions and product providers should not be involved so as to remove bias in these areas – industry advice participants should lead such an initiative.
 - AFCA & PI insurers should also receive training in relation to this so that they understand and can apply the principles of the provision of scaled advice.

Accessible financial advice

- What needs to be recognised is that Australian culture regarding financial issues is for the consumer to believe that they know how to invest – so ‘why pay for it’?
- With regard to Fintech use:
 - This is best supported by assisting the adviser to provide financial strategy for clients.
 - Fintech comes into its own for overall product comparison and recommendation.
- Product recommendation and implementation can be part of service offered by an adviser should they choose to do so, or completed separately by a client, depending on the client’s level of financial sophistication
- Both aspects should be clearly delineated to ensure that the possibility of a claim of negligence is negated as far as possible.

Types of Advice

- If the issue of “types of advice” is to be addressed properly, the manner of licensing needs to be changed:
 - Authorisations for an AFSL currently are noted as types of financial products
 - To move to more strategically based advice, the authorisations under an AFSL need to reflect the types of strategy advice is to be provided on, such as:
 - Retirement Planning
 - Personal Risk Protection
 - Authorisation in this way promotes the inclusion (and therefore supervision) of non-financial product issues such as:
 - Centrelink
 - Estate Planning
 - Aged Care
 - Cashflow and Budgeting
- We believe that advice should fall into one of two categories to remove confusion that currently exists, either:



- Financial advice – anything to do with a financial strategy or product
- Factual information – would operate much as general advice does now, that it does not refer to any personal information or relate to goals and objectives; only give facts about a financial product.
- “Limited licensing” should be more greatly ‘promoted’, as industry participants are not aware of its existence or place in the advice profession.
- The use of “limited licensing” can be used for those on the periphery of what we know the advice industry to be to enable them to participate and meet the legislated requirements.
- The use of “scaled advice should be
- Intra-Fund advice should be subject to the same provisions as noted above. By removing different rules for various types of advice delivery we both remove any opportunity for the exploitation of “loopholes”, as well as ensure that a consistent advice delivery is experienced by consumers no matter where they seek it.

Digital Advice

- This provides a good option for the provision of financial product placement, but it is not appropriate for all clients (some clients want the comfort of speaking to someone).
- An anomaly with Digital Advice is that it would not be personalised to any great degree.
 - If it is the case that Digital Advice can be provided in a “cookie cutter” format some allowance for this would need to be provided for advisers to operate in this way at some level.
 - A benefit in support of a re-think of the element of “cookie-cutter” advice would be the cost savings that could be passed on to clients.

Best Interests & Related Obligations

- We agree that there is some overlap with elements of the Corps Act, and that overall the requirement to act in the best interests of the client can be simplified – particularly in relation to “safe harbour”.
- The “safe harbour” element of the best interest duty should not be removed. This should not be seen as a checklist; instead this needs to be considered as a benchmark by which an assessment can be made as to whether an adviser has acted appropriately. By maintaining the “safe harbour steps an adviser can demonstrate that they have met the standards required or held accountable when they have not done so.
- The industry has had requirements to act in the best interests of the client since before the introduction of Financial Services Reform; section 945A (the requirement to provide a “reasonable basis” for a recommendation, and prior to the reforms sections 849 and 851 were applied (the “Know Your Client, Know your Product” rules).
 - Both of these prior requirements did not provide such guidance as the “safe harbour” steps – to remove these would be to go back to these old methods and not provide any framework by which an adviser can be objectively viewed as to their actions and methodologies.



Conflicted Remuneration

- The major aspect of conflict with commission remuneration – the concern of placement of policy for the highest commission payable - has been removed with the provision of an overall ceiling, hence the potential for “conflicted remuneration” has been significantly reduced.
- The commission ceiling should be increased rather than reduced to zero; Australia already has an underinsurance problem that making Australians pay for personal insurance advice would only exacerbate.
- Making clients pay a fee for insurance advice would be directly at odds with the goal to make insurance advice more affordable:
 - *No commission* – client will pay a fee for the advice plus what would be slightly reduced premium amount.
 - *Commission* – the client will pay a slightly higher premium, but in the majority of cases no additional fee would be required to see an adviser meet the cost of their being able to survive as a professional service provision business.
 - This would see the situation that the use of commission for remuneration as the superior method in terms of the affordability of advice for consumers.

Charging Arrangements

Non-ongoing fee arrangements for superannuation

- We agree that MySuper accounts should not have fees deducted, as a major reason for a person to use MySuper is the lower fees charged.
- While superannuation accounts are being used for things such as the “First Home Saver Scheme” (i.e., not retirement funding as per the sole purpose test) we recommend that the sole purpose test be modified to allow for payment of the total advice fee charged where advice that includes retirement planning for the client has been provided, regardless of whether that advice strategy includes non-superannuation assets.
 - These non-superannuation assets are a means of assisting funding retirement and ultimately reduce the future effect on the public purse.
- We believe that the “First Home Saver Scheme” and considerations for providing for home deposits provide precedent for the use of superannuation in this way and the modification of the sole purpose test.
- Further, we believe financial advice should be tax deductible to help with affordability – not simply the reduction in gross cost, but also this step would allow financial advice to be packaged without the impost of Fringe Benefits Tax due to the application of the “otherwise deductible” rule, thus allowing advice to effectively be paid for in instalments from their salary package.



Ongoing Fee Arrangements

- The impost of the Ongoing Service Agreement and Enhanced Fee Disclosure Statement regime is an excellent example of how a rush to implement legislation should always be avoided.
- While we do not disagree with the concept of service agreements, we believe that requiring an annual “opt in” is unnecessary for many clients with less complex circumstances.
- To this end we believe it appropriate to offer clients an alternative that will provide a more affordable means of ongoing service arrangement:
 - That “opt in” happen less frequently than annually with the requirement to offer an annual “opt out” as part of a Fee Disclosure Statement required annually.
 - When a client does choose to “opt in” that as this involves giving detail of the service to be provided, its cost and method of remuneration payment (direct or from a financial product) that at this time no Fee Disclosure Statement would be required.
 - If a regular service agreement is in place (“opt in” at least annually) there should be no requirement for the “Enhanced Fee Disclosure Statement” measures.
- An associated problem that was an unintended consequence of the legislation introduced is the burden being created by product providers offering fee deduction and requiring a Fee Consent Form.
 - Having different forms for each provider creates unnecessary administration and increases the costs for advisers.
 - These unnecessary costs are in turn passed onto clients which contributes to increased expense for being part of an advice service.
 - To this end, some sort of surveillance should take place of product providers who unnecessarily burden the advice community with unrealistic requirements.
 - Those product providers being found to create a burden through the unnecessary requirement for documentation should be warned by regulators that their conduct is unnecessary and should be reviewed and adjusted.

Disclosure Documents

Statements of Advice (“SOA”)

- Current legislation requires an SOA to be “clear, concise and effective. It is not legislation responsible for the length of these documents but rather internal compliance regimes reacting to:
 - AFCA and their rulings
 - PI insurance and the need to reduce risk from advice given in such documents
- Compliance departments need to be conscious of the requirement of SOAs to be of a length that could be relatively easy to read should a client wish to do so.
- Consideration should also be given by compliance departments to understand that it is the entire client file that comes under scrutiny should there ever be cause to review it – that not everything is required to be included in the SOA.
- More allowance needs to be made for scaled advice and a better understanding that a client’s complete detail may not necessarily be required for such advice (as highlighted in the contained in section 961B of the Corporations Act).



Record of Advice (“ROA”)

- Legislation is not the issue with this document here – it is (as above) compliance departments and their concerns for AFCA rulings and PI de-risking.
- These concerns are generally baseless as such issues are only part of the vast minority of advisers.
- A return to the spirit and intent of the ROA should be encouraged to ensure clients still have a positive and effective advice experience while reducing the administrative burden for advisers and subsequently reducing costs for all parties.

Accountants Providing Financial Advice

- We refer back to our assertion of having only two types of financial advice; there should be no exemptions from this as it only serves to create loopholes to be abused at some stage in the future.
- Where an accountant does not want to provide product advice by only strategic recommendations we have the Limited Australian Financial Services licence (“LAFSL”) for this purpose and which should be actively encouraged for use.
- While accountants may feel this is not necessary, their lack of knowledge of specific requirements in giving financial advice (including the obligation to act in the best interests of the client) may cause problems in scenarios where accountants act with tax reduction as their primary goal – not the objectives of the clients.

Consent arrangements for Wholesale Clients and Sophisticated Investor Classification

- We do not believe there should be any changes to the way such clients are dealt with in terms of legislation.
- We do believe that advisers need to be more conscious that just because a person has significant assets that this does not make them ‘sophisticated’ investors; where an investor does not have investment ‘sophistication’ it should be up to the adviser to deal with them in retail advice terms.
- The possible alteration we would suggest is for the assessment of a person’s assets toward the sophisticated threshold be brought (for consistency) in line with the Centrelink Assets test. In this way, clients with high value principal residences would not see this asset counted.

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

ASIC

- The regulator needs to work with common goals held throughout its entire organisation; past experience and that experienced currently sees the Consumer division promoting practices (particularly with affordability of advice) that the Investigations/Remediation division would in the past deem necessary to issue penalties to advisers.



Advice Licensees

- This group is crucial to the operation and implementation of many of the changes that we are seeing in the industry.
- With the pace of change over the last few years an adviser acting under their own licence would be under extreme pressure to ensure that they were putting changes into place while still running their businesses, being able to keep up with product and market changes while still providing clients with an adequate service level for all their clients.
- Operating under a licensee sees the services they provide as being effectively outsourced and enables better focus to be placed providing client service and therefore a better quality advice experience for consumers.
- Regulators need to interact more with and rely on Advice Licensees to assist with smooth implementation of regulation, as well as consult with them to discuss issues such as legislative implementation and what future issues might be considered
- Remember that these groups are the next closest thing to retail clients than advisers, yet get very little consideration when it comes time for consultation; instead parties removed totally from the advice process such as product providers and large institutions are the ones consulted on issues with which they have little knowledge or experience.

Professional Industry Associations

- While their purpose is to represent their members, most associations take to representing the clients of their members.
- This can be to the members' disadvantage when taking on issues of clients who have little understanding of a situation and are acting emotionally instead of rationally.
- Because of this, industry associations should understand that it is their role to represent and support advisers. To this end they should be the ones advocating for change for advisers in the areas of this review, and not be pandering to large institutions or government supporting measures that are meaningless to their membership.



SUMMARY

The current advice model is definitely not broken as some other industry commentators may allude to. It has been a painful journey however for many Advisers over the past 12 years since the introduction of the Future of Financial Advice [FOFA] changes under the last ALP Government in 2013.

FOFA changes were [in hindsight] largely well received with the abolition of product commissions, grandfathering of trailing commission and retention of Risk commission. It has been the LIF, FASEA and some compliance legislation by the last Government that has been brutal to the extreme resulting in the loss of support from the industry and 4 million clients.

The overwhelming influence on the escalation of advice costs for consumers has been the convoluted and duplicated compliance regime that in some instances defies common sense. With all due respect to the Legal fraternity, it is difficult to not level significant blame at Lawyers operating within all industry stakeholders who are responsible for this compliance malaise consumers are paying for.

Experienced Advisers and compliance professionals who are at the coal face of advice dealing with consumers need to be involved in any Review of the Advice industry alongside ASIC and AFCA. The Advice community and PI Insurance industry need this reassurance that all are stakeholders are on the same page. The alternative is what has happened over the past 10 years, a dubious amalgam of duplicated rules defying logic that consumers are paying for.

It is ironic and fitting that a new ALP Government has the opportunity to complete the transformation of the Industry they started with the 2009 Ripoll Enquiry.