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[Quality of Advice Review - Issues Paper | Treasury.gov.au](#)

About Julie Matheson

Julie is a Certified Financial Planner (CFP®) since 1992 and one of the founding members of the Financial Planning Association of Australia (FPA) from IAFP 1989. Julie was first registered as a Dealer's Representative in 1987 and gained a Dealer's Licence in 1999 and an AFS Licence from 2001 to 2010. Julie was elected to the FPA Board from 2006 to 2016 and again in 2020 and is a current board member on the Finance, Risk and Audit Committee.

There are more than 203,000 global CFP®s and this certification has been the standard of excellence in financial planning since 1985. "CFP® professionals meet rigorous education, training and ethical standards, and are committed to serving their clients' best interests today to prepare them for a more secure tomorrow".¹

Note: This submission is my own personal work and does not reflect the views of the FPA, nor its members.

Background Information

In 2001, the Liberal/National Government introduced the Corporations Act 2001 ("the Act"), and Chapter 7 to create a single Australian Financial Services licensing (AFSL) system to capture financial planners, bankers, stockbrokers, life insurance agents, and time share agents.

According to the Act the Object of the AFSL system is to "promote confident and informed decision making by consumers of financial products and services...". To deliver these financial products and services, registered financial planners/advisers must give the consumer a legal document and this document must be called "Statement of Advice" with prescriptive contents and in a format designed in 2001.

In 2009, at the time of the Global Financial Crisis (GFC), most consumers were prepared to pay **\$200** or less for financial planning advice yet the cost at the time was **\$3,750** to produce, present and implement a Statement of Advice.²

Unfortunately, the government ignored consumer and cost data and introduced FOFA in 2013 to make delivering financial product services even more convoluted and expensive while financial theft and fraudulent activity has grown without interruption.

¹ CFP® Board, The Standard of Excellence, 2022. Access: [CFP Board | Certified Financial Planner Board of Standards, Inc.](#)

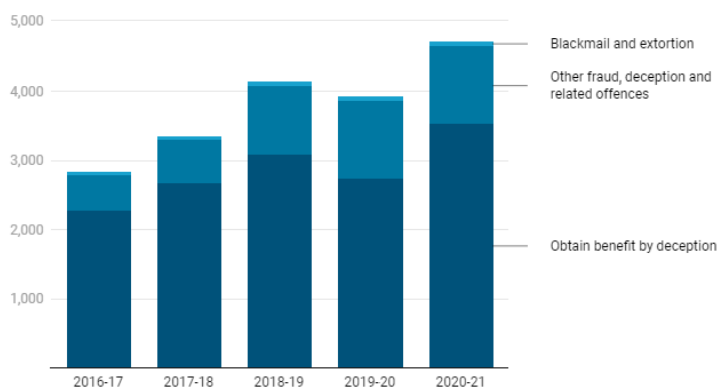
² Paul Barrett, Money Management, What is the real cost of financial advice? 28 August 2009. Access [What is the real cost of financial advice? | Money Management](#)

Big increase in financial crimes

The number of financial crimes like fraud, deception, blackmail and extortion reported to SA Police has increased by 29 per cent over the past year, and 55 per cent over the past five years according to new crime data.

Meanwhile, home break-ins were down 22 per cent in 2020-21 compared with 2019-20, with more people working from home, unemployed or not going on holiday.

Financial crime statistics



Source: SA Police - [Get the data](#)

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Chapter 7 has been amended many times by the Federal Government to add more and more red tape without replacing the poorly designed single licensing system created back in 2001. The single licensing system is no longer fit for purpose and does not meet community standards and expectations.

Quality of Advice Steps

As of May 2022, to provide just one piece of financial planning advice to consumers in Australia without breaking the law, a registered financial planner/adviser must take these steps to deliver the service which costs \$5,300 per advice according to KPMG:⁴

Steps marked in **Yellow** create uncertainty because of government delays.

| Steps | Professional Standards and Services | Laws and Regulations |
|-------|--|--|
| 1. | Before giving advice the registered financial adviser (Adviser) must have an approved qualification (eg SMSF, Life Risk) and be ethical, trusted, have experience and must not falsify their education. The existing relevant provider must pass the FASEA Exam before 1 January 2022. | Corps Act 2001 Section 921A, 921B, 921C, 921D, 921E, 952D(2)(a)(ii) , 1041G , RG 146, ASIC Professional Standards FASEA Standard.1. Standard 10 , FPA Professional Code of Practice |
| 2. | Provide a Financial Service Guide (FSG) - updated and accurate with evidence that the consumer has received the document | s941B , s 941D , s942D , RG175, Standard 1 |

³ ABC News, Financial crimes increasing even more under COVID19 as some burglars switch to fraud, 22 September 2021. Access: [Financial crimes increasing even more under COVID-19 as some burglars switch to fraud - ABC News](#)

⁴ Cecilia Storniolo, Reducing the \$5,300 upfront cost of financial advice, Firstlinks, 20 October 2021. Access: [Reducing the \\$5,300 upfront cost of financial advice \(firstlinks.com.au\)](#)

| Steps | Professional Standards and Services | Laws and Regulations |
|-------|--|---|
| 3. | Declare to the consumer in writing why the Financial Adviser is not independent and cannot use "restricted terms" described in Act under s923A from 1 July 2021 | s.923A, Standard 1, Recommendation 22 , Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Standard 1, Standard 3 |
| 4. | The office staff must be supervised by a qualified financial adviser before they can assist the consumer. | s912A , FPA Code PS7.30-31 , Standard 1 |
| 5. | The adviser must be capable of providing on demand availability and clarity when concerns or issues arise, limited to the conditions of the AFS Licence. | Part 7.6 of the Act, s912A , Standard 1, Standard 9, PS7.4 |
| 6. | The adviser must provide one location to register and update the consumer's assets, liabilities, tax entities, income, tax and expenditure obligations including their SMART Goals and Objectives | Section 961G, 961H, Standard 1, Standard 8 |
| 7. | The adviser must have privacy systems in place to protect consumer information | Privacy Act 1988 Section 16 , Standard 1, Standard 2 |
| 8. | The adviser must have Professional Indemnity Insurance in place just in case human error occurs. They must also check if the advice to the consumer is covered by PI insurance cover | Section 912B, RG 126, Standard 1, Standard 11 |
| 9. | Assess the consumer's risk to the business and whether the consumer is suitable for the business. | RG104 , s912, Standard 1, Standard 2, Standard 5 |
| 10. | Check the business has appropriate systems , capacity and capability to provide the advice and/or service | RG 259 |
| 11. | The adviser's AFS Licensee must have membership of AFCA to determine unresolved complaints | Section 912B, RG 165 , Standard 1, |
| 12. | Provide adequate resources and staff training to handle Internal dispute resolution to help resolve complaints quickly but without admission before agreement with the AFSL. Complaints must be responded to within 30 days and acknowledged within 24 hours. Social media comments posted by identifiable authors are deemed a complaint | Sect 912A , RG 267 , RG 271 , Standard 1, Reporting in accordance with ASIC's data dictionary |
| 13. | The AFS Licence must be capable of permitting the financial adviser to research and provide personal product advice based on the consumer's relevant circumstances, needs and objectives | Section 916A, Standard 1, |
| 14. | Adviser registration with ASIC must be up to date with relevant education and meet Continuing Professional Development requirements of 40 hours each year | ASIC FAR , Financial Planners and Advisers Code of Ethics 2019 (legislation.gov.au) |
| 15. | Be registered with an ASIC approved Code Monitoring Body when it becomes available | Financial Planners and Advisers Code of Ethics 2019 , Standard 1 |
| 16. | Pay a fee to a Compensation Scheme of Last Resort – TBA Compensation Scheme of Last Resort Treasury.gov.au | 17/3/2021 |
| 17. | Gain the Retail consumer's free, informed and prior consent before delivery of any service contained a Terms of Engagement letter or contract | Section 761G, Standard 1, Standard 4 |

| Steps | Professional Standards and Services | Laws and Regulations |
|--------------|--|--|
| 18. | Explain Joint Venture arrangements with the business including referral fee arrangements (if any), commissions, adviser and staff bonuses from the FSG | RG 175 , Standard 3, Standard 7 |
| 19. | Retail consumers must give their free, informed and prior consent to all benefits received by the adviser and the licensee including any fees for service | Section 963A , RG 107 , Standard 1, Standard 7 |
| 20. | The adviser must ID the consumer for AML and Terrorist Financing including Politically exposed persons and beneficial ownership | AML Act 2006 Section 32 , 35, Standard 1 |
| 21. | Prepare consumer consent forms to access account information to ensure client records are complete and accurate | Standard 8 |
| 22. | Prepare a consumer file for record keeping and audit. The file must be kept intact for 7 years or more " depending on the context and circumstances of the advice relationship ". | Standard 8, ASIC Class Order 14/923, ASIC RG256 |
| 23. | Prepare an emotional fact find and how any decisions will impact others related to the consumer and their family. Assess what stage the consumer is at in the Normal Cognitive Ageing timeline | Standard 6 |
| 24. | Discuss in a fact find past, present and future SMART financial goals and objectives including relevant circumstances | Section 961B , Standard 1, |
| 25. | Apply the seven safe harbour steps and best interest duty to complete the fact find with details of the consumer's relevant circumstances, financial needs and objectives | Section 961, Standard 1, Standard 2, Standard 5 |
| 26. | After completing the fact find , the Financial Adviser must determine if they are qualified to provide advice and can manage conflicts between the consumer's interest and adviser or be avoided | Section 961J, Standard 1, Standard 3, Standard 6 |
| 27. | Decide if scoping the advice or provide intra-fund advice is in the best interests of the retail consumer. Is it General Advice or personal advice that is required? | s. 961g, s.961E, RG244, Standard 1, Standard 2, Standard 3, Standard 5, Standard 6, APRA Prudential Standard SPS 521 |
| 28. | Discover and disclose fees and costs associated with the advice including product costs and comparisons. The fee must be fair, reasonable and value for money | RG 97 , Standard 3, Standard 7 |
| 29. | Work out how and when the consumer can pay for the advice - upfront and/or ongoing and to avoid or accept conflicted or banned remuneration. | s.962, s.963, Standard 1, Standard 3, Standard 7 |
| 30. | Separate advice into personal and superannuation advice to meet the sole purpose test | SIS Act 1993, Section 62 APRA , Standard 5 |
| 31. | Apply Section 62 Sole purpose test for all superannuation advice including investment recommendations to pay a retirement benefit from age 60 and insurance cover for beneficiaries or a sick member. | SIS Act 1993, Section 62, Standard 1, Standard 5, Standard 7 |
| 32. | Section 62 Sole purpose test - SMSF Trustees to develop an investment strategy to meet the member/s' retirement benefit from age 60. Check if the member's investment risk profile is satisfactory | SIS Act 1993, Section 62, Standard 6 |

| Steps | Professional Standards and Services | Laws and Regulations |
|--------------|--|--|
| 33. | From 1 July 2021, check if the existing super fund meets the annual performance benchmarks set by APRA and whether the proposed new fund has been blocked from accepting new members if it failed the benchmark over two consecutive years. | Super fund performance test an emerging liability issue for advisers Professional Planner Standard 1, Standard 5, Standard 6, s.961B, Annual fund-level superannuation statistics APRA |
| 34. | Check SG contributions have been made and are lawful including any allowance for excess contributions as required by the ATO | Superannuation Contributions Tax Act 1997 , Standard 6, Standard 8 and Standard 10 |
| 35. | Assess the need for "Peace of Mind" insurance cover inside or outside superannuation | SIS Act 1993, Section 62 FSC Code of Practice , Standard 6 |
| 36. | Prepare complex calculations and search for other information not provided by the consumer but relevant to their circumstances | Section 961C, 961D, 961E, 961G, 961H, Standard 1, Standard 5 |
| 37. | Investment philosophy and steadfast principals must be articulated including systems, processes, evidence of veracity and demonstrate how it meets best interest duty for the consumer. | s961B, RG 105 , Three regulatory must-haves for an advice investment service Professional Planner |
| 38. | Collate research, quotes, references and evidence to support the advice and to add to the public discourse on how and why consumers are better off for taking the advice | Section 961G, Standard 1, Standard 9, Standard 10, Standard 12 |
| 39. | Prepare a Chapter 7 legal document (Statement of Advice or Record of Advice) if the advice and small investment threshold is more than \$15,000. Customise the Advice. Do not give the same solution to every consumer | Section 946A, 946C, 947B, 947C, REG 7.7.09A REG 7.7.10E RG 90, Standard 1, Standard 2, Standard 5, Storm Financial case law precedent |
| 40. | Outsource a peer review of the advice (pre-vet or paraplanning) | Section 921F, 961L, Standard 1, Standard 6, Standard 9, Standard 12 |
| 41. | Present the personal advice in the legal document (SOA) within 5 days and make sure the consumer understands the information and recommendations | s.947B, s.947D, Standard 1, Standard 5 |
| 42. | Consumer may vary the recommendations | Not covered in the Regulatory Framework. |
| 43. | Prepare a variation letter on why the variation may be problematic to the advice | RG 244, Standard 5 |
| 44. | Prepare or update Ongoing Service Agreement (OSA) and fee collection. The OSA is used to check the advice given is on track to meet the consumer's needs and objectives. An ongoing fee arrangement is <i>"a fee (however described or structured) is to be paid during a period of more than 12 months."</i> | s962A, RG 245, Standard 8 |
| 45. | Prepare draft invoice for costs and satisfy yourself that any fees and charges paid to you, or the licensee are fair and reasonable and represent value for money for the consumer or the superannuation fund | Standard 5, Standard 7, SIS Act section 62 |
| 46. | Obtain instructions to proceed with the advice including variations, if any | Standard 7 |
| 47. | Implement the advice and collect payment for advice | Standard 7 |
| 48. | Confirm the advice has been implemented | Standard 7 |
| 49. | Audit the advice process, legal reports (SOA or ROA) and implementation | Standard 9 |

| Steps | Professional Standards and Services | Laws and Regulations |
|--------------|---|---|
| 50. | Record keeping: Update the consumer's file with file notes, evidence, communications and products owned by the consumer | Section 912G, Class Order 14/923 |
| 51. | Update referral source with consumer information, if required | Standard 3, Standard 7 |
| 52. | Provide investment portfolio administration and reporting on demand or as part of a service agreement | RG 175, Standard 8 |
| 53. | Provide ongoing management and oversight of the consumer's affairs including stage of life, family obligations, health circumstances, income sources, personal balance sheet, retirement planning, insurances, investment strategy, estate planning, tax impacts, debts and budgeting | RG 175, Standard 6 |
| 54. | Back test previous advice against the consumer's SMART Goals and Objectives and update the strategy if necessary | Section 961B, RG 175, Standard 1, Standard 6 |
| 55. | Hold joint meetings with other professionals or family members linked to the consumer, if any | RG 256, Standard 6, Standard 12 |
| 56. | Provide tax planning and salary advice including transition to retirement options, if relevant. | SIS Regulations 1994 , Standard 6 |
| 57. | Intergenerational/family group meetings on succession strategies, especially business | Standard 6 |
| 58. | Power of Attorney transactions while the consumer is on holidays, sick, overseas or interstate | WA Dept of Justice or other state jurisdiction, Standard 6 |
| 59. | Ongoing Fee Arrangements must be renewed annually with each entity by providing a Fee Disclosure Statement and inform them of the services they agreed to, the services that were delivered and the services that are to be provided in the future. | ASIC compliance action , s.962D, s.962K, s.962F, s.962P, s.1317E, s.1317G, Standard 1, Standard 7 |

Recommended changes to Regulatory Framework:

1. Replace Chapter 7

- a. Australian lawmakers should review the Corporations Act 2001, and replace Chapter 7 with a workable, **affordable piece of legislation** that can support high quality, accessible and affordable personal financial planning advice for all Australian consumers, not just the wealthy and retirees.
- b. Clearly **59 steps to provide quality personal advice without breaking the law** is an impediment and not sustainable or affordable.
- c. Chapter 7 does not live up to community standards and expectations in modern Australia and should be replaced. A **reasonable person** can't explain how they benefit from a single licensing system which doesn't pass the "**Pub Test**".⁵

2. Add personal advice to Bulk Billing with Centrelink

- a. Introduce a **Means Test** for a Centrelink "Bulk Billing" system to pay registered financial planner/advisers to provide financial planning advice necessary for the mental health and wellbeing of consumers who can least afford it.

⁵ Treasury, 7. Foreseeability, Standard of Care, Causation and Remoteness of Damaged, what the reasonable person would have known, March 2019, p.104. Access: [Microsoft Word - 13 Foreseeability.doc \(treasury.gov.au\)](#)

- b. Research shows that **financial stress** is one of the leading causes of depression and PTSD and can be linked to low self-esteem and domestic violence. Cost should not prohibit Australian consumers from seeking financial planning advice from a registered, qualified, experienced, ethical and professional financial planner/adviser, just like a medical practitioner.⁶
- c. Registered Financial Planners/Advisers have a **fiduciary duty**, just like medical practitioners, to put the Australian consumers' interests ahead of their own in law and the Code of Ethics and therefore deserve proper recognition in government legislation and laws.
- d. Australia's welfare system is under duress due to more and more Australian consumers seeking financial assistance due to **financial ruin** caused from natural disasters, aggressive lending practices, unregistered investment schemes, fraud, COVID19 and the lack of quality personal advice from a registered financial planner/adviser.
- e. **Bulk Billing** is the most affordable and cost-effective way for Australian consumers to pay for financial planning advice under a schedule regime similar to Medicare Benefits Schedule (MBS), except the payments will come from Centrelink.

3. Make quality personal advice affordable and tax deductible

- a. The Financial Planning Association has made many requests to the government, via submissions, to make personal financial planning advice in a **Financial Plan** tax deductible since **1994**.⁷
- b. A tax deduction on average would make advice **30% more affordable**, reducing the net cost to \$2,719 per family group (example \$3,885 - 30% average tax rate)
- c. Personal financial planning advice is no longer subsidised by commissions which were a tax-deductible cost to the product provider. Prior to 2013, upfront commissions sometimes paid for the Statement of Advice and **increased** the cost base of an investment for the purposes of Capital Gains Tax. This small tax relief was banned so the consumer has **no tax deductions** for the cost of personal financial planning advice, unrelated to investment income.
- d. Registered financial planners/advisers were, until recently, registered with the Tax Practitioners Board as are accountants and their advice is tax deductible. Financial planners are required to **consider tax consequences** of their advice or face a complaint at AFCA. Complaints against accountants are not referred to AFCA and their liability is limited.
- e. **Ongoing service fees** are tax deductible for the "servicing" of an investment that produces income, ie franking credits and dividends from CBA shares. Personal financial planning advice is more than just investments yet the Corps Act 2001, Chapter 7 and the Income Tax Assessment Act 1997 treats it as if it was so.

<End>

⁶ Health direct, financial stress and your health, December 2020. Access: [Financial stress and your health | healthdirect](#)

⁷ Mark Rantall FPA CEO, Australian Government, Tax Forum, Statement of Reform Priorities, 4-5 October 2011. Access: [Financial Planning Association of Australia - FutureTax - Statements from Participants \(treasury.gov.au\)](#)