Quality of Advice Review Secretariat
Financial System Division

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Submission written by
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To whom it may concern,

My name is Michael Baragwanath; I am the responsible manager for three licensees with a career in financial services that has included time as a financial adviser for a bank, a non-aligned adviser, an adviser under my license, a distribution or salesperson for an investment company, a distribution person for insurance and then as a national manager for distribution and sales.

In 2013 I was awarded Money Managements BDM of the Year and have made regular submissions to various reviews of financial services.

Today I am the responsible manager for

- Enva Australia, a small financial advisory firm with three advisers and two mortgage brokers
- Spaceship Super, a new superannuation fund focused on younger investors, with more than $1billion in funds under management.
- Australian Standfirst Global Equity, an equities-focused fund offered primarily to family offices.

Enva Australia authorises general advice-focused businesses such as Coverhero, which sells insurance to gig workers, and SRG Partners, which provides guidance to corporations rather than individuals.
Collectively, the licenses I monitor can handle all forms of personal and general advice, and product issuance for nearly all product types, including the ability to handle claims on behalf of the claimant.

While I spend most of my time on project consulting, I would consider myself to have perhaps one of the most diverse experience sets in the industry with direct customer interaction, product design, distribution, and compliance for retail and wholesale clients.

I have attempted to provide concise answers to the questions raised. I offer a summary of my view of the financial services landscape and my recommendation for a framework that addresses the primary purpose of the review – to ensure clients can access affordable, quality financial advice.

The main point I present is this – the entire framework is a mess, the industry is in terminal decline, driven almost entirely by poor legislation. The flow-on effects have negatively impacted consumers with significant premium increases on insurance, higher advice fees and higher rates of financial fraud.

The problem has not been the removal of conflicted payments and increase of education standards – these are exactly the right moves, but because they have been done within a fundamentally broken framework, they have contributed to extreme stress on individual advisers and significant cost increases for consumers.

The solution is NOT technology – if the market could make sense of the current nightmare and digitise it, the major banks and wealth companies would have done so. Many have spent HUNDREDS OF MILLIONS OF DOLLARS and have utterly failed.

What is the fundamental problem, and why is advice so expensive?

For the most part, we have removed conflicted payments, which means that a client can now expect that financial advice means advice for them, not product sales. However, the burden of proof that the adviser is acting for the client is so high that the cost is unaffordable for most people.
The issue's heart and the primary cost driver is the burden of proof.
Determining the right outcome for a client is a simple process for an experienced adviser. Most areas of financial advice are simple grade 10 maths and product comparison work that can be done in 30 minutes. Higher net worth clients certainly have more complex requirements but the person missing out on access to advice can receive 80% of the value in 5% of the time and 5% of the cost that the process demands currently.
Consumers have said they are willing to pay $500 for advice, which is possible but not within the current framework.

Why has this occurred?

A coin has two sides. But its representation on paper is that of a single dimension. We inherently know that a coin has two sides because of our physical experience but describing this property to a person who has never seen one is surprisingly difficult.

The approach to regulation has been the same – every attempt to improve the quality of advice has been one dimensional, with a focus solely on consumers and no consideration for practical implementation or even a basic understanding of how financial advice works. The result has been detrimental to the consumer, the product providers and the advisers.

What is financial advice really?

Personal Financial Advice is an ongoing personal relationship with a paid expert – it is a personal service. It is not simply the delivery of an advice document and the occasional revision of a financial strategy with annual records of advice.

Financial advisers have a deep personal connection with their clients and must be aware of their family dynamics, spending behaviour, investment behaviour, personal goals and approach to savings. Advisers are coaches, teachers, counsellors, brokers, client advocates and financial product administrators.

Typically, people have a sub-optimal approach to their financial lives and struggle to be objective about their investments. Financial advisers can provide that objectivity and can assist people to moderate their behaviour.
People often operate on a scale, at one end afraid of spending money and taking investment risks, while on the other end afraid of keeping money and taking an excessive risk with the hope of changing their circumstances.

The personal element of financial advice is easiest to understand with life insurance. Life insurance (including income protection etc) is a product people do not want and do not want to think about. Because of their personal relationship with a client, an adviser is able to make sure people are properly insured, that they maintain or modify the cover, and they will help advocate for the client when a claim event occurs. This can be viewed as a clinical process of simply calculating a benefit, selling a policy and referring them to the insurer if there is a claim. The experience is nothing like that.

Advisers will visit clients in the hospital, engage with other professionals such as accountants, lawyers and doctors, spend time with the family and attend funerals. It is a deeply personal service dealing with highly personal circumstances for clients, day in and day out.

Why technology isn't a solution

The question set presented focuses on fintech or financial technology platforms to solve problems and create efficiency.

This is not a practical framework for thought. Unless the government proposes to deliver a fintech platform or create more efficient wholesale data access channels, the discussion is a waste of time.

Market participants have tried and failed to deliver solutions. Those who have been successful are nothing more than a product being sold in a friendly way.

Suppose the market can deliver a technology platform that operates within the legislative framework. In that case, the price advantage it offers will create an incentive for advisers and/or consumers to adopt it. This has been the case with electronic underwriting, consumer relationship management platforms and other services over time.

The market has thus far failed because the regulatory framework is fundamentally broken, and neither humans nor computers can make enough sense of it to deliver a scalable solution.

Technology also suffers from reader burnout – the text, sound or video required to present these concepts is not engaging, and it is difficult to make it interesting. Those tech platforms that have seen adoption are those with high gaming/gambling elements, such as bitcoin.

Lastly, the service value is primarily a personal connection with an objective expert; digitising this requires a significant investment in artificial intelligence.

Why and how does advice go wrong?

Firstly, does financial advice go wrong? Of all the compliant areas managed by AFCA, financial advice receives one of the lowest numbers of complaints and represents the smallest volume of compensation claims. While major banks have made headlines about financial advice fees and the vast refunds, what are these about, really? Essentially, these complaints are about nothing more than a refund of a service not received and not an issue with the advice provided. Within the context of a fee collection model that moved from an embedded payment to the adviser to a more directly disclosed fee, the identification and refund of fees for no service are nothing more than administration catching up with changes in the law.

These passive fee models are part of nearly every form of product distribution in the marketplace. You do not pay a fee to the salesperson at the car lot, nor is the sales commission disclosed when you purchase a candle at a retail store. These incentives exist and if you do not attend your gym, the fact that it was available to you is reason enough for a subscription fee – the same as nearly all subscription services, including car registration, Netflix and Choice Magazine, to name a few. These service providers pool fees and cross-subsidise the cost-of-service delivery by providing "value" to high users and "exploiting" low users.

Even the most abhorrent of all, the payment of fees by deceased members to financial advisers, is nothing more than an administrative error or, more likely, recognition that the estate of a dead person often results in more work being required rather than less.

So why defend the indefensible? Because the assumption that financial product advice as defined in the Corporations Act is some kind of malevolent force taking people out of good services and into poor ones is simply not backed up by evidence, and if consumers are dissatisfied, they have a funny way of showing it. Surveys and market investigations show that consumers are overwhelmingly happy with their adviser if they have one.

Over the past decade, what has occurred is the assumption that despite their satisfaction, consumers are being defrauded of their savings and exploited by cunning salespeople seeking to leverage the knowledge gap between complex financial products and the regular consumer.

This absolutely can and does happen; advice does go wrong, most often by product providers and financial advisers who see themselves as product providers. Ironically, the law defines advisers as financial product salespersons, ensuring that those who closely follow the Corporations Act are most successful when they focus as little as possible on the clients' requirements!

Storm Financial, as an example, ran one of the most sophisticated onboarding programs in the industry, requiring clients to complete a series of seminars and workbooks before they were allowed to access a highly geared investment strategy, one that made them very wealthy right up until the moment it didn't. It took a global financial crisis and a once-in-a-half-century market correction to expose that strategy. What they sold was essentially a product; the more they sold, the more they were paid.

So why does financial advice go wrong? This is primarily because of poor incentives and influences on behaviour, many of which have since been eliminated.

These collapses resulted in the best intended but poorly implemented reforms – FOFA and the associated reform of insurance commissions. Removing conflicted payments at a licensee and adviser level, and increased education requirements, was an excellent move ensuring that advisers were rewarded only by their client and were better equipped to provide a valuable service.

However, the regulation did not address the core issue: the code is fundamentally written to define a financial adviser as a financial product salesperson who must disclose and account for the basis of every decision and who is held to account for any potential failure of product as if they were the representative of the product.
Removing conflicted payments shifted the industry to the place all good advisers have always lived – as the clients' advocate, confidant, and partner but it kept the framework that assumed they were nothing more than educated salespeople.

What about insurance? Commissions still exist and are a conflict.

Firstly, removing insurance commissions from a business perspective is economic ruin for thousands of practices, ours included. The removal of commissions is discussed at every review, and while all agree it is a conflicted payment, removal is not as easy. This economic point should not be understated. Previous reforms have taken a tremendous psychological toll on financial advisers and have contributed to suicides and financial ruin. Financial advisers are not just leaving because they want to avoid higher education requirements; they are leaving because they struggle to ask their clients for higher fees while delivering less services. Moreover, the overwhelming majority of financial advisers are extraverted, caring people who value fairness. They feel the framework is unfair to them and their clients, and so they leave the industry to do other things.

The current method of selling insurance requires a high level of physical work by the adviser to issue the advice and implement the cover. Without the cover, the advice itself is worthless. Efforts to reduce commissions have led to a collapse in sales, combined with a decade-long arms race in policy definitions to leave insurers with concerns about how their premium rates and inflows could match their claims obligations.

The result? A well-intended policy has increased insurance premiums by nearly 80% over the past three years and significantly reduced the quality of income protection and disability contracts in the market. Consumers pay more for inferior products, which will take a decade or more to correct.

Could we simply remove insurance commissions? Yes and no. Yes, a financial adviser who is so-called should not have any form of conflicted payment. But a person that sells insurance? Should they still be called a financial adviser? In my view they should not. A new framework should exist that separates a "Financial Product Salesperson" from a Financial Adviser.

Our vision for a new framework

We should adequately define and regulate the market participants:

1) The less qualified entry adviser
2) The product salesperson (where the intent is to sell a product no matter how much advice is involved)
3) The highly qualified financial adviser
4) The educated and experienced, sophisticated market participant, be it a corporate adviser or M&A consultant.

These participants are dealing with the following types of consumers:

1) Retail consumers (including small business owners) with simple requirements
2) Retail consumers (including small business owners) with complex requirements
3) Wholesale and sophisticated consumers, including businesses with turnover exceeding $2million.

How should the interactions between the participants and the consumers be governed?

Participant	Consumer	Example	Education requirement and obligation	Documents required	Liability
Entry adviser	Retail simple/complex	General advice for a fee, no conflicted payments, simple scaled personal advice eg risk profile, beneficiaries	Rg146, fiduciary duty	Letter/evidence of advice	Limited liability scheme
Product salesperson	Retail simple/complex/wholesale	Stockbroker, Insurance adviser, employed product representative	Rg146, cannot be misleading or deceptive, must clearly state they are a sales person.	PDS for product, disclosure of payments, product comparison if replacing.	Responsible for demonstrating that replaced products are better than old. Otherwise, liability falls to product provider. Must confirm target market determination with products.
Financial adviser	Retail simple/complex/wholesale	Personal Financial Advice simple, scaled, general or comprehensive	Relevant degree, free of all conflict payments, fiduciary duty to client.	PDS for product, letter outlining advice, maintain records on research and basis.	Limited liability scheme.
Corporate adviser or consultant	Wholesale	Corporate advice, business advice or wholesale product sales	Degree required, must disclose conflicts and payments	Investor memorandum, wholesale client certificate	Liability is determined by courts.

Under this framework, there are four disclosure regimes with example disclaimers below:

1) General advice: Advice is general in nature and may not suit your specific circumstances. The person offering this advice cannot receive any payment that would influence their recommendation and is not liable for your actions should you choose to act on some or all of the recommendations. You may ask for a copy of any research or notes used to determine the advice offered but this may come at a cost.

2) Financial Product sales: The person is either employed by or paid by a product provider to provide you with a personal service. While they may provide you with advice relating to this product, and this advice may be helpful, it will be influenced by the fact that the person providing the service is paid by the product provider.

3) Financial advice: You are working with a qualified professional who must act only in your interest. Financial Advisers are bound by a fiduciary duty which is a very high standard; they must also have a specific degree in financial services and must maintain their knowledge through ongoing education. Your adviser will provide personal recommendations based on the information you provide. Limited information may impair the quality of advice, and you may also seek advice on

only one specific thing. Your adviser is protected by a limited liability scheme so long as they maintain their education requirements and adhere to their obligation to act in your interest.

4) Wholesale/Corporate Advice: As a wholesale or sophisticated investor, you are responsible for your own decisions. The person offering a service may represent interests that conflict with your own and may not provide you with all the information you need to make an informed decision. It is your responsibility to ensure you have adequate information, and you can use professional advisers to assist in investigating the options and services presented to you.

Should Australian Financial Services Licensees still exist?

We believe so, yes. ASIC does not have the resources to monitor and supervise adviser activity appropriately. This should therefore be the responsibility of the AFSL Holder as it is today.

Framework for Review – specific answers to questions posed:

1. What are the characteristics of quality advice for providers of advice?
   a) What does the reviewer mean by "quality advice"? Does this mean the delivery of personal financial or general advice? Personal financial advice is subjective and complex, and can only be measured by a qualified peer. That peer would reasonably expect not to find any apparent shortcomings or concerns.

2. What are the characteristics of quality advice for consumers?
   a) Again, the questioner fails to define the type of advice in question. For general advice, the client would expect to have their question answered. For personal advice, the client would expect to have clear goals identified and understand how those goals may be met and which products or strategies will assist them.

3. Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?
   a) Best interest duty and safe harbour provisions have NOT improved the quality of advice. The previous framework, "reasonable basis for advice," was a reasonable measure. It would be unreasonable for an adviser to leave a client in a worse position under the previous framework. The "best interests duty" is more appropriately described as the "better duty" in that the service simply needed to be better, not the best. However, past regulatory changes, including banning shelf space fees, volume bonus payments and conflicted remuneration with improved education requirements, HAVE dramatically improved the quality of advice.

4. What factors should the Review consider in deciding whether a measure has increased the quality of advice?
   a) The primary factor to consider is that measuring advice quality is exceptionally subjective and difficult to quantify. The only accurate measure is the rate of complaints from other market participants to the regulator or professional body and the number of complaints from clients.

5. What is the average cost of providing comprehensive advice to a new client?
   a) $4500 - $8000, depending on the client's circumstances

6. What are the cost drivers of providing financial advice?
   a) Professional Indemnity insurance ($60,000 pa for our small firm), software costs ($30,000 per annum), regular operating costs and the labour costs in time required to research and construct a statement of advice properly.

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?
   a) An adviser would spend approximately two to three hours with a client to prepare advice and between 15-30 hours researching and preparing the direction. The labour cost of the time with a

client is approximately $270. The balance is a combination of labour hours and expenses as per the above.

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 conditions of an AFS licensee, superannuation trustee, platform operator or ASIC?

a) This question makes no sense. ASIC publishes and enforces legislation, and most process requirements set out by licensees and trustees are to meet their obligations under the law. Generally speaking, more significant AFS licensees will create additional process requirements based on a risk assessment by their legal teams.

9. Which elements of meeting the regulatory requirements contribute most to costs?

a) The provision of a statement of advice for personal financial advice.

10. Have previous reforms by Government been implemented in a cost-effective way?

a) Little consideration has been given to the cost of implementation by the industry, and all reforms (positive and negative) have resulted in a higher price for the industry and clients.

11. Could financial technology (fintech) reduce the cost of providing advice?

a) Yes and No.
Allowing financial advisers to directly access data held by financial services providers and data feeds to popular tools would increase efficiency.

However, most of the cost is in meeting regulatory requirements and overly complex documentation for even the most basic advice. Even the most sophisticated financial planning software currently available is nothing more than a complex calculator with much text. It is possible to force a client through these clunky processes, and it does provide a document, but it (like the majority of regulations) completely misses the core value proposition of financial advice – it is a personal relationship with a qualified person who is trusted to provide a solution and to simplify complex concepts.

12. Are there regulatory impediments to adopting technological solutions to assist in providing advice?

a) Yes, but these regulatory impediments apply equally to personal financial advice. It would be a crying shame to give software exceptions and leave advisers with the fundamentally broken framework they operate in.

13. How should we measure demand for financial advice?

a) Why is this relevant to affordability? Demand for financial advice is the responsibility of market participants. The service itself is valuable for every person.

14. In what circumstances do people need financial advice but might not be seeking it?

a) When they are working and dependent on their income to fund their lifestyle.
b) When they have dependants and inadequate savings to provide for those dependants in the event of death, disability or trauma
c) When they take on debt, such as buying a property
d) When they receive an inheritance or sum of money
e) When they commence a savings plan
f) When they are retrenched and receive an ETP
g) When they consider their superannuation options and make decisions about their investment choices or potential beneficiaries
h) When laws change relating to their investments or savings
i) When product providers write to them with significant changes
j) When they decide to buy, sell or hold a financial product
k) When they establish a new SMSF
l) When they review the investments of their SMSF
m) When they consider their taxable income and think of ways to save on tax
n) When they retire
o) When they move to an aged care facility
p) When they generally think about their circumstances 5 or 10 years from today.
q) When they make a claim or believe they may be eligible to claim on their insurance
r) When they are diagnosed with a severe illness

s) When a partner or family member dies
t) When a partner is diagnosed with a severe illness
u) When they lose their job and need to use their savings
and many other circumstances.

15. What are the barriers to people who need or want financial advice accessing it?

a) Financial advice costs are significantly above their price expectations for the service.
b) The service is too complex and obtaining what a client perceives as a simple answer to a simple question is challenging.
c) Advisers are treated as criminals by the regulator, the media, industry funds and consumer groups.
d) The number of advisers is shrinking due to the age of the participants, and the barriers to entry have risen.
e) Most financial advice firms comprise one to three advisers and less than 10 staff. These small businesses cannot support graduate programs, and no thought was given to how such small operations would carry graduates through a professional year.
f) Documenting even the most straightforward scaled advice is too expensive compared to the potential benefit for the client in many circumstances (e.g. investing less than $50,000).
g) Advisers are scared to advertise their business as the regulatory framework relating to promotion is difficult to understand.
h) Online solutions are text-heavy calculators or price ranking services that complicate decision making.

16. How could advice be more accessible?

a) By addressing the core issue, which is the complexity of the documentation and the high burden of proof placed on the financial adviser. These requirements were necessary when advisers were nothing more than a glorified sales force for product providers. However, now that these lucrative methods of cross-subsidy are gone, the obligations placed on advisers need to be radically simplified.
The simple truth is that a qualified financial adviser, without the influence of conflicted payments and constrained product choices, will automatically provide the best solution for their client, as giving good service is the core value proposition of any service provider.

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?

a) This question is very broad and. Non-financial advisers typically provide general advice. Non-financial advisers often offer infra fund advice. If the questioner intends to ask if personal financial advice should be provided by anyone other than a financial adviser, then the answer is NO.
b) Intrafund advice, currently provided by call centre staff with an RG146 entry qualification, should cease to be allowed as an exemption or renamed as "financial product sales".
c) General advice (which should be better defined and separated from financial product sales) can be offered by less qualified persons – see additional comments.

18. Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?

Unless the government proposes to provide a fintech solution, I fail to see the benefit of this question. Is the assumption that such technology exists and advisers simply need to use it? Generally, yes consumers and advisers benefit from using technology that can look up records and present graphical interpretations of concepts.

19. What is preventing new entrants into the industry with innovative, digital-first business models?

a) Those that do enter have high development costs and low market take-up – consumers do not like walls of text and clicking through long forms to get to a solution and these providers either fail or fail to achieve profit.
b) New market offers are often nothing more than a managed fund with a slick interface that helps the client select their risk profile. This is product sales, not financial advice.
c) The financial advice process involves determining a client's goals and setting clear measures for those goals. Consumers often do not know their goals and require another person's help to discuss these potential goals and agree on them. Digital-first solutions simply provide a list of goals or a low-level questionnaire to determine which type of "Harry Potter character" the client is.
d) Good financial advice is an ongoing relationship with a trusted person, not a simple one-off transaction, and digital solutions are about as effective as reminders on your watch to go for a walk.

Those who are already active don't need the reminder and those that do need the reminder find ignoring a push notification quite easy.

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?
There is no "financial advice" in the Corporations Act (2001). The Act is predicated on the basis that financial advice relates in some way to a financial product. This is usually the case and indeed was the case when the law was first created. Ultimately, all financial advice links to a financial product – insurance advice needs an insurance product to execute the strategy, superannuation requires a superannuation trustee and trust (be it SMSF, Industry funds, master trust, or wrap) and so on.

The legislative framework should better define the various types of advice in the market and provide a different legislative framework.

I define these as:

1. General advice: Information or limited calculations designed to guide without making any comment about a financial product. While this advice will ultimately influence a client's actions concerning some form of the product, in this circumstance the person providing the advice is not commenting and is unaware of the products the client holds. An example would be assisting with a retirement projection calculator and making comments about how a client might determine their risk profile and what the different consequence types of contributions will have on their end retirement balance.

2. Financial product sales: This is not currently defined, but I believe it should be. Financial Product Sales is general advice where the provider intends to have the client acquire or hold a financial product. This is currently referred to as "general advice" or "infra fund advice". Personal insurance advice where a commission is paid should be called "Financial Product Sales" rather than Financial Advice to give the client a clear understanding of the end objective of the person providing the advice. Even if the insurance advice considers the client's circumstances, the payment of a commission influences the adviser's objectives.

3. Financial Advice: A service provided by a degree qualified professional whom product payments or commissions do not influence.

4. Wholesale Financial Product Sales: Financial product sales or strategic advice to wholesale clients where conflicts exist.

21. Are there any impediments to a financial adviser providing financial advice more broadly, e.g. about budgeting, homeownership or Centrelink pensions? If so, what?\Financial services licensees are responsible for their authorised representative's actions outside their license conditions. It is a risk to the licensee to allow a financial adviser to provide services outside of these license conditions; therefore, they typically prohibit them from providing other services.

Licensees and advisers are caught in a halfway house – if the adviser was not qualified or licensed, then they could provide these services in a low-cost way. Because they are licensed and qualified (therefore better able to assist with these areas), they are held to a standard for a service that their AFSL has no legislative framework to operate within.

Additionally, because adviser productivity is so low (owing to the high time requirement to produce advice for a single client) the hourly rate for such services is too high compared to the benefit received by the client.

22. What types of financial advice should be regulated and to what extent?
All types of financial advice should be captured within the regulatory framework, but each should have its requirements.

Our view is that this could be categorised as follows:

1. General advice
2. Financial Product Sales (retail and wholesale)
3. Financial Advice (limited or comprehensive)
4. Corporate Advice

23. Should there be different categories of financial advice and financial product advice and if so for what purpose?
Yes, see above. The purpose is to ensure consumers make an informed choice while allowing the market to obtain a commercial return on investment. These categories are stated above.

24. How should the different categories of advice be labelled?
See the table above.

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?
Yes, see the table above.

26. How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?
Financial coaches are often quite distinct from influencers. Influencers often sell products or are paid by product and platform providers. Both should be required to have an RG146 qualification and be monitored by an AFS licensee. Their service will likely be defined as "general advice" if there is no product affiliation or as "financial product sales". Even though it may relate to deposit products and cash flow, these services invariably lead to conversations about strategic credit advice, etc.

27. How does apply and considering the distinction between general and personal advice add to the cost of providing advice?
A third category called "Financial Product Sales" must be introduced to distinguish clearly between conflicted and conflict-free financial services. Financial product sales should not be considered advice even though the process of selling can and does involve suggestions that add value to the client beyond the product sale (the same way all good salespeople present their product as a solution to a problem).

If my proposal is adopted, the cost to provide primary, straightforward product access is enhanced and the price reduced. Clearly defining product sales allows for the process of personal advice to be radically simplified – no SOA, no safe harbour, no liability for product and limited liability for the advice – just an obligation to offer a fiduciary duty to the client and to accept no conflicted payments.

28. Should the scope of intra-fund advice be expanded? If so, in what way?
No, it should be replaced with "Financial product sales" and managed under that framework.

29. Should superannuation trustees be encouraged or required to provide intra-fund advice to members?
No, renaming the service to "financial product sales" makes the relationship clear to the client and allows the superannuation trustee to either refer the client to a conflict-free adviser for limited or comprehensive advice or to invest in their own sales team whose role is to retain and grow funds under management.

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?
Superannuation Trustees can more effectively engage with their members by clearly employing salespeople whose job is to provide conflicted advice for the members. Members should be clear that as an employee of the fund, the person's job is to ensure the member remains invested, builds their savings and retains their product.

31. To what extent does the provision of intra-fund advice affect competition in the financial advice market?

It creates an unfair market advantage for superannuation trustees and disadvantages qualified financial advisers as intra-fund advice providers are not required to issue an SOA, significantly reducing the operation cost. If not for the fact that it is chronically under-utilised by trustees, it is a framework designed to provide a significant cost advantage to an organisation with a client relationship. While promoted as a benefit to members, the primary beneficiary is the superannuation fund.

32. Do you think that limited scope advice can be valuable for consumers?
While many areas of advice are interrelated, comprehensive advice is a highly complicated entry point to a financial advisory relationship. Often clients approach an adviser or a product provider with a single problem or concern; addressing this quickly and efficiently in the first instance builds trust and improve the client's financial situation.

33. What legislative changes are necessary to facilitate the delivery of limited scope advice?
A complete rewrite of the definition of advice and the requirements for a financial adviser. Beyond the scope of this question.

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?
A dramatic rewrite of the documentation required and the liability that exists.

35. Do you agree that digital advice can make financial advice more accessible and affordable?
No, because financial advice is primarily a relationship/coaching and mentoring service. Digital advice provides basic calculations and too much text to change behaviour. These tools inform, but they do not improve.
For financial advice to be practical, it needs to be delivered over time by a trusted and educated person.

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?
Financial Product Sales can be delivered digitally. This process can include risk profiling, needs analysis and other tools that assist the client in optimising the purchase of a product but making full use of a product needs to be separated from financial advice.

37. Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?
Yes, the scale benefit is also a risk; an error in code or text can magnify the social consequence as more people are impacted.

38. Should different forms of advice be regulated differently, e.g. advice provided by a digital tool from advice provided by a financial adviser?
Yes and no. General advice that does not involve a product can be provided digitally and should be under the same framework as financial advice. Government should NEVER engage in market manipulation by providing different regulatory frameworks for the same service delivered by a different mechanism.

39. Are you concerned that the quality of advice might be compromised by digital advice?
More comprehensive solutions are too complicated and too dull. The definitions of quality are very subjective. Will a client be able to obtain an objective financial model from digital advice? Yes. So long as they have to follow the same rules and the client knows if they are buying a product or receiving a service, the quality of advice will be the same.

40. Are any changes to the regulatory framework necessary to facilitate digital advice?
As above, the entire framework needs to be rewritten, and those changes would benefit digital as well as personal 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)?
The market. AFS Licensees mandating and changing software is a recipe for either chaos OR slow adoption. Technology is NOT a solution for flawed legislation.

42. In what ways can provide digital advice complement human-provided advice, and when should it be a substitute?

As a vehicle to sell products, to enable customers to better access product features and select elements they may need.

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?
The intent is correct, but the implementation is poor. Financial advisers should be held to a fiduciary standard, but this is only possible if the complexities around delivering advice are significantly reduced.

44. If at all, how does complying with the safe harbour add to the cost of advice and to what extent?
Hours are spent writing and justifying advice that is otherwise obvious to a professional.

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?
Removing the safe harbour provision is only good if a higher standard is implemented - a fiduciary obligation to the client. This higher standard must be accompanied by a dramatic reduction in the complexity of documenting 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?
Simplified as per my opening letter – clearly define product sales as product sales and advice as advice.

47. Do you consider that financial advisers should be required to view the target market determination for a financial product before providing personal advice about the product?
The process inherently considers the suitability of a product, and the entire concept of a target market determination is preposterous. Investors should typically diversify their holdings across asset classes and strategies. An income fund is not specifically for use by a retired person; it has a place in the portfolio of a conservative investor of any age. Likewise, a retired person should have some exposure to growth assets to ensure that their portfolio can keep pace with inflation. Derivatives and options funds are pretty complex and should not be the majority of any investor's portfolio, but they are appropriate for a small exposure of up to 5%.

The correct answer for every investment product is that their "target market" is all investors, noting that some products should be more or less of their portfolio. Asset allocation and blending of strategies are fundamental to the advice process.

48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?
It is the most critical change made and vital to ensuring the adviser only acts in the consumer's interests. We now need to remove the burden of proof placed on the adviser to prove it.

49. Has the ban contributed towards improving the quality of advice?
Yes.

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?
Yes. It has significantly impaired firms' profitability to the point where all major banks have exited the industry. From a consumer perspective, the lack of cross-subsidisation has increased the cost of advice for lower socioeconomic people and smaller investment balances to the point where it is no longer in the interest of the adviser or the client to engage.

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.
<u>The Soft Dollar register and removal of the restriction for gifts over $300</u>: would do little to improve or worsen the affordability of advice but would impact the quality of advice as advisers would be influenced by gifts and events designed to capture an adviser's attention. Product manufacturers with better margins would have a competitive advantage and would see more inflows.

<u>Shelf space fees and volume overrides</u>: reintroducing these conflicted payments would drive product sales to products that pay more and encourage advisers to pick a "favourite" platform. This may reduce the quality of advice, but it may not, as most products are similar and equal. It would improve accessibility and

affordability of advice as advisers would be incentivised to grow their funds under management to obtain more fee income and could afford to offset the cost of initial advice to a client.

52. Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?
Yes. Maintain the banning of conflicted payments and revenue streams and focus instead on radically simplify the cost of advice delivery and the liability that rests on the adviser.

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.
https://www.apra.gov.au/quarterly-life-insurance-performance-statistics
Net premiums have decreased
https://home.kpmg/au/en/home/insights/2021/10/life-insurance-insights.html
The number of lives insured in the market fell by 10% while premiums increased by 12%

Trowbridge and the associated regulatory reforms to life insurance advice and commission payments have decimated the insurance industry and added to existing pressures on pricing and claims.

54. Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.
Retail general insurance products such as car insurance, home contents etc are rarely provided by anyone that provides retail financial advice or retail life insurance.

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?
All bans on conflicted remuneration should remain IF and only IF there is a severe legislative change to remove the burden of compliance on the adviser. A higher fiduciary duty obligation can be placed on advisers so long as the entire liability and compliance regime is dismantled. A qualified adviser's recommendations to a client should require nothing more than an email or letter outlining what to do with a copy of their research and notes held on file. The adviser should not be liable for that advice either since they could only make their judgement based on the information presented to them. Clients seeking a more refined and detailed analysis would pay for more time, and those seeking a simple point in the right direction would pay less.

56. Are consent requirements for charging non ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?
No, they are an abomination. They should be abolished entirely.

57. To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?
The entire framework should be dumped, and financial advisers should simply not be able to establish a regular ongoing payment stream from a retirement account. They can charge one-off fees or a single cost debited monthly over 12 months and nothing more. Conversely, they should be able to set up a regular ongoing service plan from the client's non-retirement savings without any further complexity (technically, they can now).

58. How could these documents be improved for consumers?
See above; they should not exist.

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?
Consumers can determine if they are obtaining value for money, and aside from creating an industry-wide "gotcha" moment, what was achieved for consumers, product providers and advisers?

Businesses in a market choose fee payment schemes that deliver a profit margin and are marketable to clients. The old regime meant that clients cross-subsidised the advice provided to others, similar to many other services such as gyms, tv subscriptions, taxes, insurance, and others. At all times that a fee was

collected, the firm had to employ staff, conduct research, maintain systems and be available to consumers. The idea that this was "no-service" is a falsehood perpetuated by a vicious regulator beholden to uneducated, uncommercial stakeholders.

60. How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?
Median fees have increased by more than 40% ($3500) per annum since the introduction of FDS consent arrangements. One would estimate that compliance with this framework now accounts for approximately 25% of the annual cost when considering the additional technology cost, staffing costs and higher risk of client lapse.

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?
It varies from product to product, but overall, the additional primary obligation is to use their form instead of any standard form to confirm fee payment arrangements. This reduces scale as each client is an entirely manual process.

62. How do the superannuation trustee covenants, particularly the obligation to act in members' best financial interests, affect a trustee's decision to deduct ongoing advice fees from a member's account?
The idea of acting in a member's best interests is such a nebulous construct that it is easy to argue either way.
On the one hand, trustees know that their member's circumstances change constantly, and access to regular advice will ensure that their risk profile, beneficiaries, contribution strategy, level of insurance and decision to retire will all be optimised when their member has access to a trusted ongoing advice service.

On the other hand, the cost of financial advice is so high, and most of that cost is now in administration and compliance rather than member benefit. A trustee would be well within their rights to ban ongoing advice fees being debited from superannuation as the aggregate cost over time is likely to exceed the benefit gained from optimising the client's affairs.

63. How successful have SOAs been in addressing information asymmetry?
Poor. They are fundamentally designed on the basis that the financial adviser themselves cannot be trusted; therefore, a document is required for the client to review in their own time.

This document must have enough information for the client to consider all elements of the adviser's recommendation, including alternatives, fees, conflicts of interests etc. The foundation of the SOA – Financial Services Reform Act 2001 left the industry mainly as a sales force and decided that disclosure of conflict was suitable.

This framework has been retained even though the basis for its creation (conflicted payments and salespeople) has been abolished.

They are a terrible way to communicate the next steps for a client and should be abolished so that the market can find more effective ways of communicating advice (so long as it remains indeed free of conflict).

In the case of financial salespeople, as per our recommended new structure: the product disclosure statement framework already covers the product being sold and could be easily amended to state the payments made to salespeople who sell the product.

64. How much does the requirement to prepare a SOA contribute to the cost of advice?
It is the entirety of the cost of advice outside the time spent talking to the client. The actual advice itself can usually be formulated within an hour or so.

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?

Most financial advice can be stated in an email or a single page. If the adviser is educated and free of conflict, why is anything more than the actual instruction and the product PDS required for the client to make an informed decision? Many clients will want nothing more than the recommendation and the invoice for the service. Some will wish for alternatives, ask for them, and pay for them. There should be no requirement beyond what the client asks for.

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?
Regulatory requirements entirely drive them.

67. How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?
See our recommendations at the front of this submission.

68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?
Yes, but a superior solution is to remove the requirement for the current level of complexity as per our recommendations.

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?
No, the system has changed so many times in this regard that it has come full circle.

70. Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?
The reduced SOA obligation should be retained and applied to all forms of advice.

71. Should accountants be able to provide financial advice on superannuation products outside the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why?
No.

72. If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?
It should not.

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?
It would have the same effect as having completely unqualified people offering advice without any consequences. It would provide an unfair cost advantage to people LEAST qualified to provide advice. There would be little to no point in being an adviser as obtaining a diploma in accounting would be cheaper.

74. Is the limited AFS licence working as intended? What could changes to the limited licence be made to make it more accessible to accountants wanting to provide financial advice?
No, most licensees do not offer this arrangement because it is too difficult to administer.

75. Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?
No

76. Should there be a requirement for a client to agree with the adviser in writing to be classified as a wholesale client?
What does this have to do with advice affordability?

77. Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?
No.

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?
Yes

79. What steps have licensees taken to improve advice quality, accessibility and affordability? How have these steps affected the quality, accessibility and affordability of advice?
None, licensees have spent considerable resources simply attempting to keep up with and comply with the large-scale changes required by legislation in the past 10 years.

80. What steps have professional associations took to improve advice quality, accessibility and affordability? How have these steps affected the quality, accessibility and affordability of advice?
None.

81. Have ASIC's recent actions in response to the consultation (CP 332), including the new financial advice hub webpage and example SOAs and ROAs, assisted licensees and advisers in providing good quality and affordable advice?
No. The Financial Advice hub webpage is a list of links to content that I am already obligated to know.

82. Has licensee supervision and monitoring of advisers improved since the Financial Services Royal Commission?
Possibly. However in our case, we already had call recording and total supervision of our representatives so nothing changed in our practice.

83. What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice?
Lobbying government to reform the legislation.