3 June 2022

Secretariat, Quality of Advice Review
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

By email: AdviceReview@treasury.gov.au

Dear Sir / Madam

RE: QUALITY OF ADVICE REVIEW SUBMISSION

Thank you very much for the opportunity make a submission to Treasury as part of the Quality of Advice Review ("the Review"). I support the Government's intention to ensure Australians have access to high quality, accessible and affordable financial advice for retail clients.

About Strategie3

Strategie3 Is a small independent management consultancy that provides strategic consulting, execution and risk management services to the wealth management Industry.

I have worked within Financial Advice for 17 years with 3 of the 4 major Australian banks and a listed wealth manager. In my career I have held executive leadership roles across advice having been responsible for the leadership of their risk management, compliance and advice delivery functions through to innovation and commercial roles with leadership of advisers.

I make this submission as a private citizen and the views reflected are my own and not those of any of my previous employers. I seek to contribute to the Review my perspective as an executive leading advice businesses with firsthand experience of how regulation and compliance has enabled and at times prevented affordable access to advice.

My passion is to ensure ordinary Australian consumers, like my parents can access professional, trusted advice as I believe good financial advice can make a significant difference for the better for Australian families.

The benefits of advice are significant

Financial advice provides a significant and enduring benefit to consumers who understand it and act on it. Given the inherent complexity of financial products, investment markets, life insurance combined with Taxation legislation, Superannuation, Centrelink rules and major life events with financial consequences, the need for Financial advice is high.

A December 2020 study carried out by Insignia Financial Limited and CoreData of over 11,600 advised and 1,000 unadvised consumers   revealed that 90% of advised clients said that accessing financial advice has left them in a better position and 89% of them noted their adviser helped them achieve their desired lifestyle.   However, only 27% of the unadvised consumers who needed advice accessed it, with cost of advice and a lack of trust being two main issues.[1]

A 2021 Financial Wellbeing survey of over 3,552 Consumers by ANZ Banking Group found a sought to measure both how financially confident, resilient consumers felt about their future ("financial wellbeing") and whether there was a link to their overall mental and physical health. On average 28% of total respondents reported that their mental health was fair or poor however this rose to 46% when looking at those who rated their financial wellbeing as "getting by" and up to 68% of those who rated their financial wellbeing as "struggling". Similar results were found in the percentage of those rating their physical health as "fair'' or "poor" rising significantly in those cohorts who rated their financial wellbeing as "getting by" and "struggling"[2].

I view the main purpose of advice is to improve a consumer's total financial wellbeing. This can be achieved in a single interaction or better through a long-term relationship over a lifetime.

The advice gap

The demand for financial advice has never been greater with an estimate of 12.6 million consumers who have unmet advice needs and 40% of consumers saying they cannot afford advice. An estimated 1.8 million consumers access advice today.[3]

The gap is widening as a result of:

- The cost of financial advice rising beyond the reach of many consumers;
- An exodus of experienced advisers with insufficient newer advisers to replace them;
- An exit of supply in the market with many licensees restricting the provision of their services to the market or exiting altogether.

[1] IOOF & CoreData (December 2020). The true value of advice. Sydney Australia
[2] ANZ Banking Group limited (December 2021). The Financial Wellbeing Survey. Melbourne Australia
[3] Professional Planner. Tan Sharpe. Nov 3 2021. "Number of advised dropping 100K per year: Investment Trends"

In order to achieve the Government's intention of ensuring Australians have access to high quality, affordable advice, there is the concept of an ''advice gap'' that must be addressed. I define it as a gap that arises when the public's need for financial advice is not able to be met by the availability of skilled advisers or suppliers who provide advice.

Closing the gap requires recommendations aimed at encouraging 3 main parts of the market to reach more of an accord:

- **Consumers** – enabling public understanding of financial advice is, encouraging calls to action and building trust and confidence in the market;
- **Advisers** – retaining skilled professionals in the market and building the professionals of tomorrow
- **The ecosystem** – promoting collaboration across the market from Government, consumer bodies, professional bodies, advice firms, licensees, Trustees, wealth providers, digital advice platforms to build a healthy and growing ecosystem which develops the market and builds trust and confidence for all participants.

I submit the attached report and recommendations for the Review's consideration.

Please do not hesitate to contact me on adrian.kwa@strategie3.com.au or on the mobile number below if I can assist the Review further.

Yours sincerely

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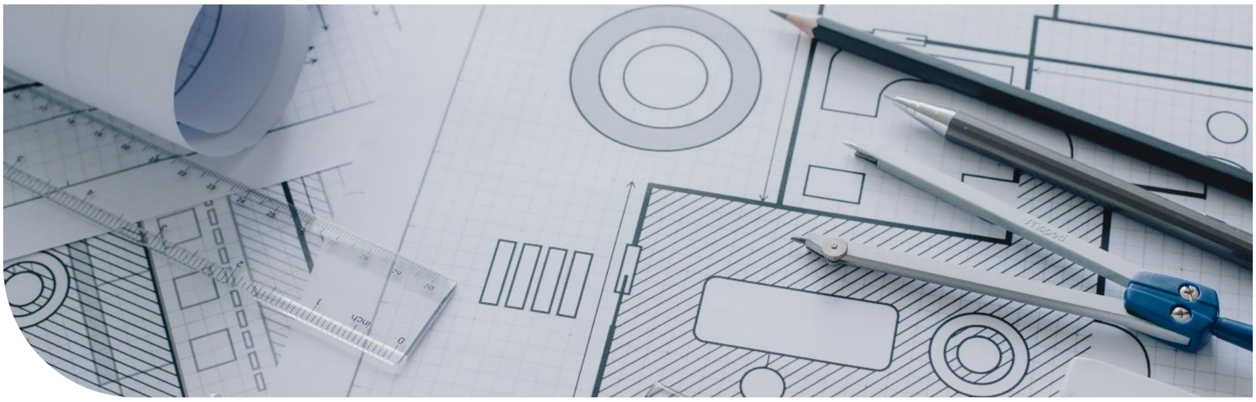

Quality of advice review

Submission paper

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June 2022

Strategy | Execution | Risk Management

1. The widening advice gap

In order for high quality advice to be accessible and affordable for more consumers. It is important to address the concept of what I term the "advice gap".

The gap arises where the needs of the public for advice cannot be met by the supply of financial advice in its current legislative, regulatory and market ecosystem today.

If the advice gap is wide, less consumers are able to access the right quality and type of advice for their needs, lower numbers of self-funded retirees result, greater levels of underinsurance occur and ultimately there is more reliance on public funds to manage post retirement needs in an ageing population.

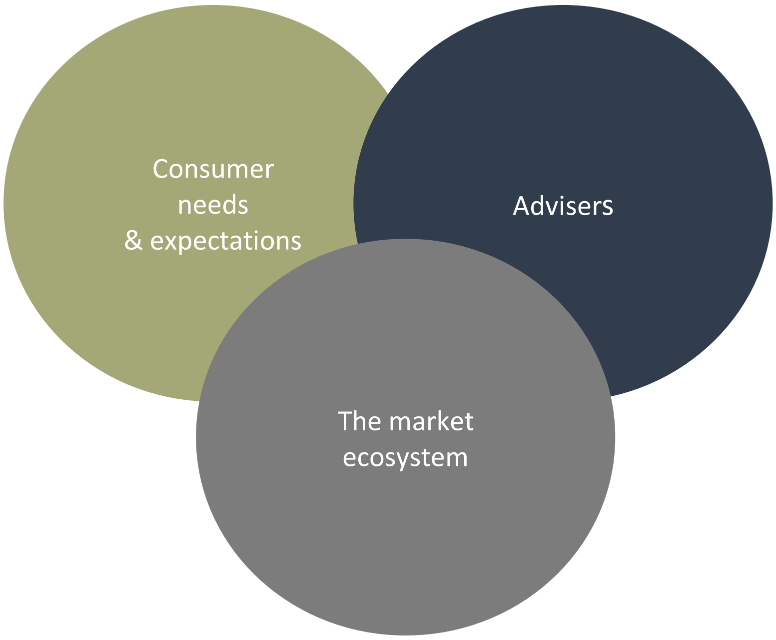


Figure1.1 Components that need to be aligned to address the advice expectation gap

Q15 What are the barriers to people who need or want advice accessing it?
Q16 How could advice be more accessible
Q.83 What further actions could ASIC, Licensees or professional associations take to improve the quality, accessibility and affordability of advice?

1.1 Consumer needs and expectations are not aligned to what financial advice can do

These expectations are driven by:

- low levels of financial literacy that exist in the public, coupled with inherently complex financial products, taxation and superannuation legislation that acts as a barrier to consumer engagement;
- a lack of confidence and trust in financial advice as a result of all too common instances of misconduct and negative press.
- a lack of understanding of how advice can help. Many advice opportunities are time-bound and a number of consumers tend to seek advice either too late or only as a result of a life event, an inheritance or when retirement approaches. Many miss out on many opportunities to save earlier, manage risk and plan ahead; and
- consumer confusion as to who to go to for financial advice. A very wide range of participants and different business models that operate within the realm of financial advice. They can range from stockbroking to money managers to accountants and even financial influencers. As a result if misconduct does occur the press often labels it "financial adviser".

Recommendation 1

1. Promote greater consumer understanding of the benefits of financial advice through:

    1.1. Government, professional bodies, educational bodies, industry participants and communities co-sponsoring the growth and reach of programs (like the ASIC Moneysmart schools program and ANZ's Money Minded program) to provide financial advice education in schools, universities, social media and local communities;

    1.2. Where Government bodies become aware of life events or triggers where consumers may benefit from financial advice, considering options as to how that data may be able to be shared securely with market participants to facilitate access on a timely basis to financial advice that may assist.

1.2 Retaining, developing and mentoring professional advisers

The raising of professional standards in advice was a transformative moment within the evolution of the financial advice industry to make the leap to a profession.

I support the Professional standards reform that all new entrants to advice need to ensure that demonstrate the education, technical competencies, professional skills and on the job work experience to be able to call themselves financial advisers. If it was easy, anyone could do it and it would be free.

However, within the context of the significant and growing gap between numbers of advisers in the market the reforms have had the unintended effect of driving significant numbers of experienced and skilled advisers to leave the market.

Figure1.2 Falling numbers and supply gaps

In order to halt the exodus of experience from the profession above in light of the growing advice gap, a pragmatic approach can be taken by the Government to allow greater recognition of the years of experience as an adviser to offset the need for the requirement to obtain a tertiary qualification as:

- an advisers actual work experience should be recognised as more recent and directly relevant to the skills required to deliver quality financial advice than having to complete a degree; and
- financial services licensees already ensure advisers are trained and competent in the areas of advice they provide. Where there is a need or technical gap. Licensees already supplement this with technical training and supervision of the advice; and
- The majority of advisers in the market are self-employed and taking time out of running their business to do a degree is an unnecessary impost and would further reduce access to advice for consumers.
- I recommend 5 years of professional work experience with no record of disciplinary action from ASIC, or identification by licensees as a "serious compliance concern" would be a reasonable level of experience to consider.

There are insufficient entrants are joining the market . The professional career of being a financial adviser is not perceived as attractive to new entrants due to:

- uncertainty over the career path and fears of limited prospects for advancement;
- uncertainty over whether the total remuneration and benefits would be attractive;
- fear that they will not have sufficient access to support and mentoring to build their capabilities;
- hgh reported rates of stress and self-harm in the advice profession;
- the risk of one mistake ending your career and livelihood; and
- reputational risk of the profession in the media.

There is a need for the profession to develop a clear and uniform set of broad standards to address the fears above of new entrants. A mapping out of a professional career pathway similar to what is available for lawyers and accountants) would look longer term beyond the professional year addressing a range of factors such as the soft skills, technical capabilities supervision requirements and qualifications required at each level of adviser. Practitioner mentoring and supervision of less experienced advisers by senior experienced advisers must be a cornerstone of this model in order to produce quality outcomes.

The benefits would be to:

- provide greater certainty over the career pathway for an adviser;
- reduce the level of inconsistency and gaps in skill that result in variable quality of outcomes in advice and require greater supervision and oversight costs to manage;
- mentoring and supervision from experienced advisers leads to better quality on the practitioner training for new advisers and fosters their growth into senior advisers themselves.
- The career pathway would go beyond the professional year and also foster the mentoring and growth of senior advisers into business leaders / owners of the firm as well.

However an issue that needs to be addressed will be for more senior advisers to have the capacity and time to mentor junior advisers, the organisation of work and roles and responsibilities needs to change to move from individual work to a team or unit servicing the client. This benefits larger advice firms and higher net worth firms where the revenue supports a team based servicing model. For smaller firms, the cost of this model may be prohibitive and the career pathways constrained.

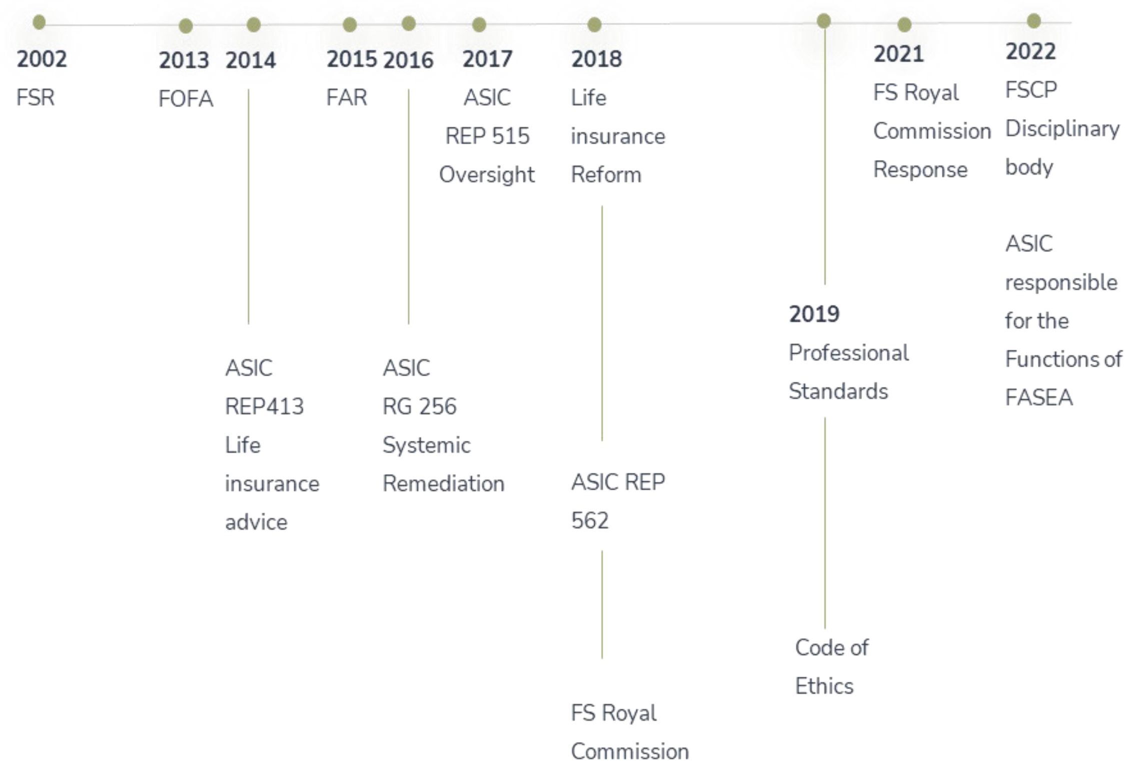
In the short term, costs of this type of advice may increase but in the long run, the benefits would be to retain and grow a pool of trained professionals who can reach and service more clients.

Recommendation 2 2. Foster the retention and development of more financial advisers by: 2.1. allowing those with 5 years or more of experience as a financial adviser and a clean record an exemption from the requirement to complete a tertiary degree; 2.2. Encourage professional bodies, universities, advice firms, licensees (in consultation with ASIC) to develop a professional career pathway for advisers from new entrant all the way to senior adviser and above.

1.3 Fostering innovation and stability in the market ecosystem

FSR, The banning of conflicted remuneration in FOFA, LIF and the aftermath of the Financial Services Royal Commission drove transformative change in the marketplace for advice.

Figure1.3 20 years of regulation driving marketplace transformation



The aftermath of the Financial Services Royal Commission resulted in the exit of the major banks from the wealth landscape. Many licensees ceased to provide services in the market due to the rising costs of compliance and many advisers have migrated toward mid tier and smaller licensees or applied for their own license. With many advisers continuing to exit, the marketplace is in a constant state of change with the impacts yet to be known other than rising costs of advice and reducing access to advice.

An important role within the ecosystem is that of the Australian Financial Services Licensee. The introduction of an AFSL in 2002 under FSR made an entity accountable for the advice provided and ensuring its representatives were trained, monitored and supervised and that representatives complied with financial services law. Given a lot of the advice businesses today comprise small to mid-tier businesses of self-employed advisers and their staff, licensees provide a very important service to bring scale, systems, compliance and governance processes to these businesses enabling their growth. Licensees form part of the supervision and oversight of the advice market itself working with ASIC, professional bodies and associations to implement government policies and to report breaches and remediated them as they arise. However there has been increasing pressure on the financial sustainability of many licensees driven by:

- Increasing costs of regulation;
- management and monitoring of delivery of ongoing services, ongoing fee consents and terminations;
- expanding expectations from ASIC as to their scope of their role for supervision such as cyber security;
- increasing administrative burden from breach reporting;
- an increasing volume of regulatory notices and requirements to pay for “independent expert” assurances;
- a “why not litigate” approach to enforcement; and
- increasing compensation and systemic remediation payouts.

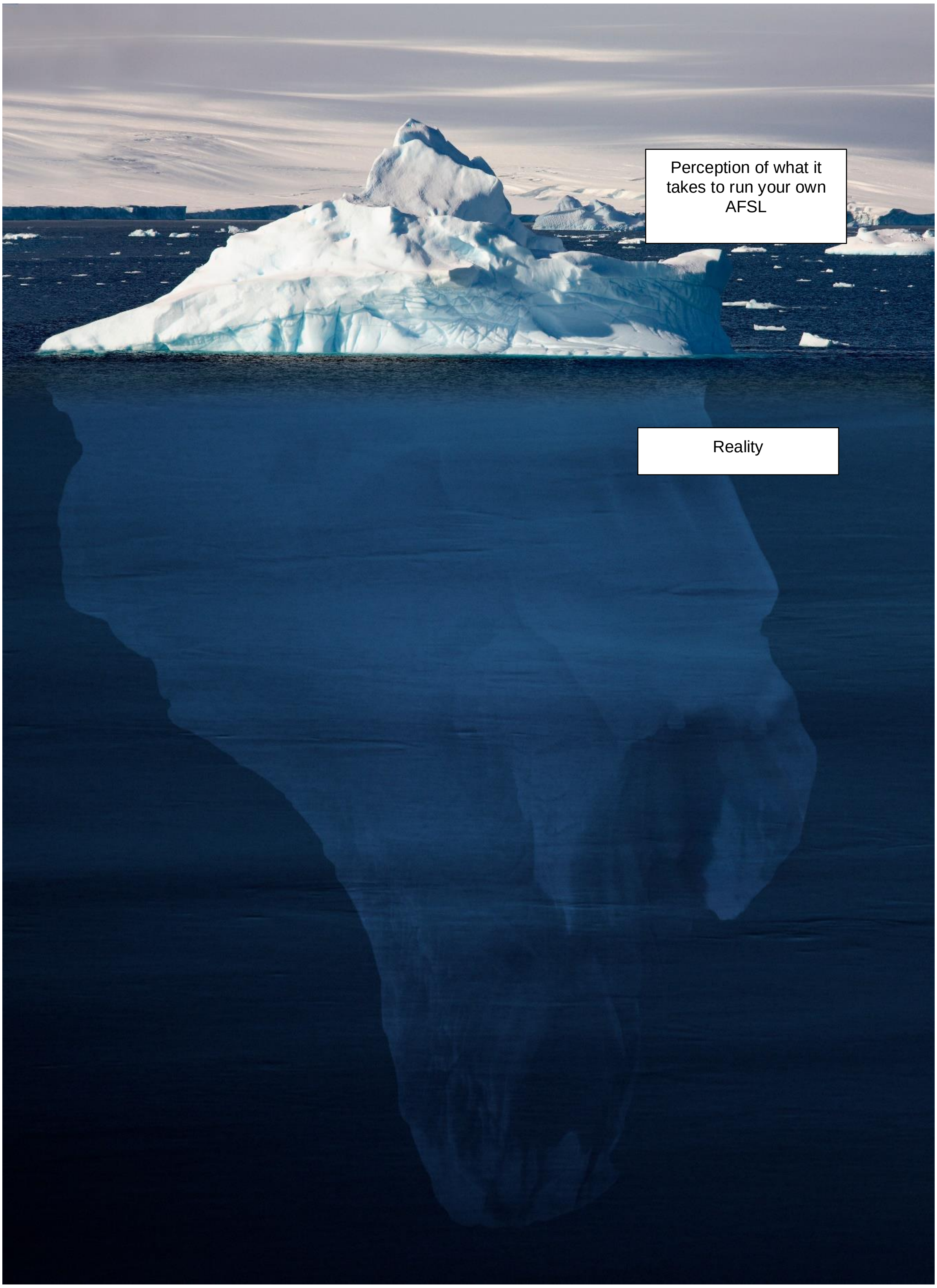
There has been talk in parts of the market of removing the role of the licensee and simply making advisers self-license as a way to reduce cost. These parties underestimate the volume of work that licensees perform in support of advice and the governance expertise they bring to the table. Removing the role of a licensee would fragment the market and cause an exponential increase in complexity for the implementation of regulatory change.

With 234 licensees ceasing in 2021 and the exit of many major licensees with significant financial resources, thought needs to be given as to how ASIC interacts with Licensees and the increasing costs of each regulatory interaction.

Recommendation 3

3. Maintain and support the role of a Licensee in the market. Review the cost of regulatory interactions between ASIC and licensees and work together to foster sustainable and efficient regulation.

Figure1.4 The work of an Australian Financial Services Licensee is often significant below the surface



The advice market in the past has operated as a closed competitive system where instead of co-operation and innovation, participants placed barriers up to entry, fought to attract advisers and clients from each other and made it difficult for consumers and advisers to migrate to alternative providers. A closed system declines rather than grows. In the digital age, successful markets behave more an ecosystem in biology. In an ecosystem, interconnected organisms influence each other, they do compete but also collaborate, share and create resources. They grow to adapt to external shocks and disruptions to survive.[4]

The advice market is transforming into an ecosystem. Participants in a business ecosystem collaborate and share interests, goals and values but also work as a community to self-govern and maintain a sense of order and stability to build confidence in the market that that consumers can trust participants, can receive quality outcomes and that misconduct and actions that operate against those shared values are rejected from the ecosystem. Competition still is needed to drive innovation however participants are focused on growing the total market rather than winning by making sure the other loses.

Within the ecosystem of advice there are many participants. Consumers, consumer bodies, advisers (many small to medium business owners), mid-tier employed advice firms, advice licensees, professional bodies and associations, consumer bodies, technology providers, digital platforms, service providers, Trustees, Insurers, Responsible Entities, Product Manufacturers, ASIC, AFCA, the ATO, the Tax Practitioners Board and at times APRA. What appears to be lacking many times is the collaboration and innovation that needs to be across these participants to adapt and innovate together.

Recommendation 4

4. Create an Advice Ecosystem Panel comprising representatives from Government and the different stakeholders in the ecosystem with a set of objectives and goals that aims to bring innovation and solutions to the problem of access to quality advice and sustainability of supply together. Invite attendees from other non-Financial Services industries that may have innovative solutions that could help. The panel should meet regularly to measure their progress and achievement in each of the agreed areas and review whether the effect of reforms and regulation are achieving their intent o whether refinements should be made.

[4] Deloitte University Press. Business Systems come of age. Quoting British Botanist Arthur Tansley

2. Issues and recommendations

2.1 Defining quality

Q1 What are the characteristics of quality advice for providers of advice?
Q2 What are the characteristics of quality advice for consumers?

The challenge in defining and measuring quality is that this is based on the perception of value in the eye of the beholder. Consider the market for watches: For some consumers, a very simple cheap digital watch that tells the time and is functional represents the desired quality. For others, a Swiss watch with precision mechanics and diamonds is high quality. If the consumer values the features of the watch, there is a market for that price point.

Whilst measuring quality for a watch is well understood by members of the public, the outcomes of financial advice are much more difficult to assess and consistently measure without reference to the underlying consumer / client's goals or objectives when seeking the advice out.

Quality of advice must be assessed through the lens of what a client was seeking to achieve. Did the advice make it more likely for them or less likely for them to achieve it?

Quality from a consumer's perspective begins with ensuring that the advice they are given actually addresses the problem or need they came to the adviser with. Consumers work with advisers who they feel seek to understand them and their problems thus have their best interests at heart.

As consumers generally find financial advice highly complex, any advice that can educate and empower them is considered a positive addition to quality for a consumer (noting that a proportion of consumers prefer not to go into detail and just want someone to solve their problem).

Finally the consumer must feel that the advice represents value for money. Value will be personal to the consumer and is a function of what the perceive the benefits of the advice to be relative to the cost. This may be both financial hard benefits as well as non financial benefits such as peace of mind knowing a plan is in place and that they remain on track to achieve their goals.

Therefore

- The consumer's interests, problems and goals have been the focus of the advice;
- The advice and solutions recommended ultimately solve the problem;
- The advice empowers and educates the consumer; and
- The advice represents value for the cost.

From a providers view the four areas above are aligned. In addition, providers would look at the advice from a technical feasibility basis. Could the advice technically be achieved synthesizing sound investment and risk management philosophies, taxation law, superannuation law, the clients' needs and constraints?

Some level of risk will be required for clients to achieve their long-term goals. From a provider's standpoint we seek to ensure a balancing of the risk factors that can assist a client to achieve their goals.

Those risk factors may include:

- investment risks - ensuring the client is exposed to a suitable level of risk given their goals and their ability to tolerate losses , changes in currency, credit, liquidity or interest rates.
- technical advice strategy risks - the advice may be conditional upon SIS legislation, Budget Changes or Tax Ruling interpretation that could change rendering the advice inappropriate.
- Insurance risks - managing the risk of not insuring particular events the client may be exposed to such as a life insurance, income protection or total and permanent disability event.
- Product risks - some products recommended are inherently risky and may generate returns at a greater degree of risk from markets, credit events or liquidity events.

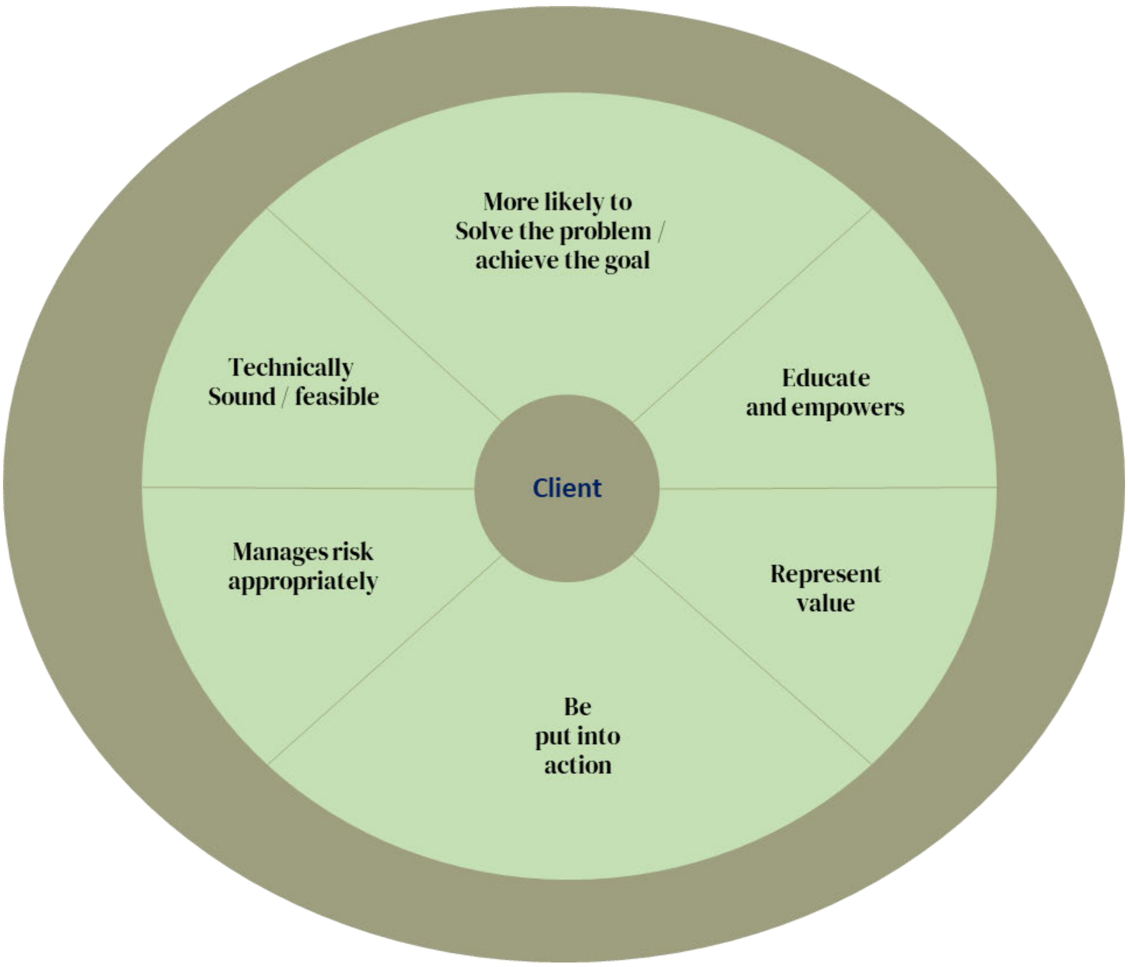
Advice from an advisers providers viewpoint needs to be persuasive enough to be actioned by the client. If the objective of financial advice is to improve the client's financial wellbeing over time, if the client does not proceed to act on the recommendations, there is limited value in the advice other than knowledge itself. I can read as many books and magazines on healthy diet and exercise as I want to but if I do not actually act, what have I actually done to improve my health?

In summary from a provider's viewpoint, the advice should be all of the items above plus

- Based on sound technical and financial principles
- Manages risk appropriately;
- The advice should be put into action by the client.

Combining the consumer's view with the provider's view I propose the following framework could assist the Review in defining what the characteristics of quality advice:

Figure1.5 Strategie3's framework to assess quality of advice



Recommendation 5
5. Assess quality of advice through the lens of whether it is more likely or less likely to achieve the outcome / goal the client sought

This framework should be scalable to the complexity of the advice being provided on a case by case basis. The benefits of advice could occur in a single advice interaction or progressively over the course of an ongoing relationship.

If it is a simple situation such as an intra-fund question where a member seeks advice in relation to their risk profile within superannuation, the factors above for education and risk management may be given more weight than the factors on the value of the advice or whether it is technically feasible.

In a more complex holistic situation where the client is seeking a plan to manage transfer of wealth across multiple entities, dependent children from multiple families and a business, more weight may be given to ensuring the achievement of the complex goals the client requires, the risks of the strategies and the technical feasibility.

In all cases above, the fundamental question we have to ask is:

1. What the client wanted to achieve
2. Taking into account any relevant known information at the point in time the advice was given, would the advice be more likely or less likely to enable the client to achieve their goals?

Q4 What are the factors that the Review should consider in deciding whether a measure has increased the quality of advice?

The factors of quality above are not based on the weight of disclosure documentation and proofs required of the procedural steps taken to provide the advice. The framework focuses on the advice itself and its likely outcome for the client rather than the documentary evidence of how the advice was constructed.

Whilst there is value in ensuring that procedural compliance documentation is on file to manage risk for a licensee, defend from compensation claims at the Australian Financial Complaints Authority (AFCA) or litigation, the balance has swung too far towards assessing the documentation itself and not focusing on the likely effect on client objectives and goals.

It is important to note that within Financial advice today, it is possible to have:

- good quality financial advice accompanied by poor compliance documentation;

- Poor quality advice accompanied by good documentation or too much documentation the client doesn't read it

The former can still result in a compliance breach however the client is likely to have received quality advice. The latter is more dangerous and unfortunately today more likely to occur as the weight of disclosures, consent forms and length of disclosure documents has interfered with the client's ability to understand and make an informed decision.

2.2 Drivers of cost in the advice process

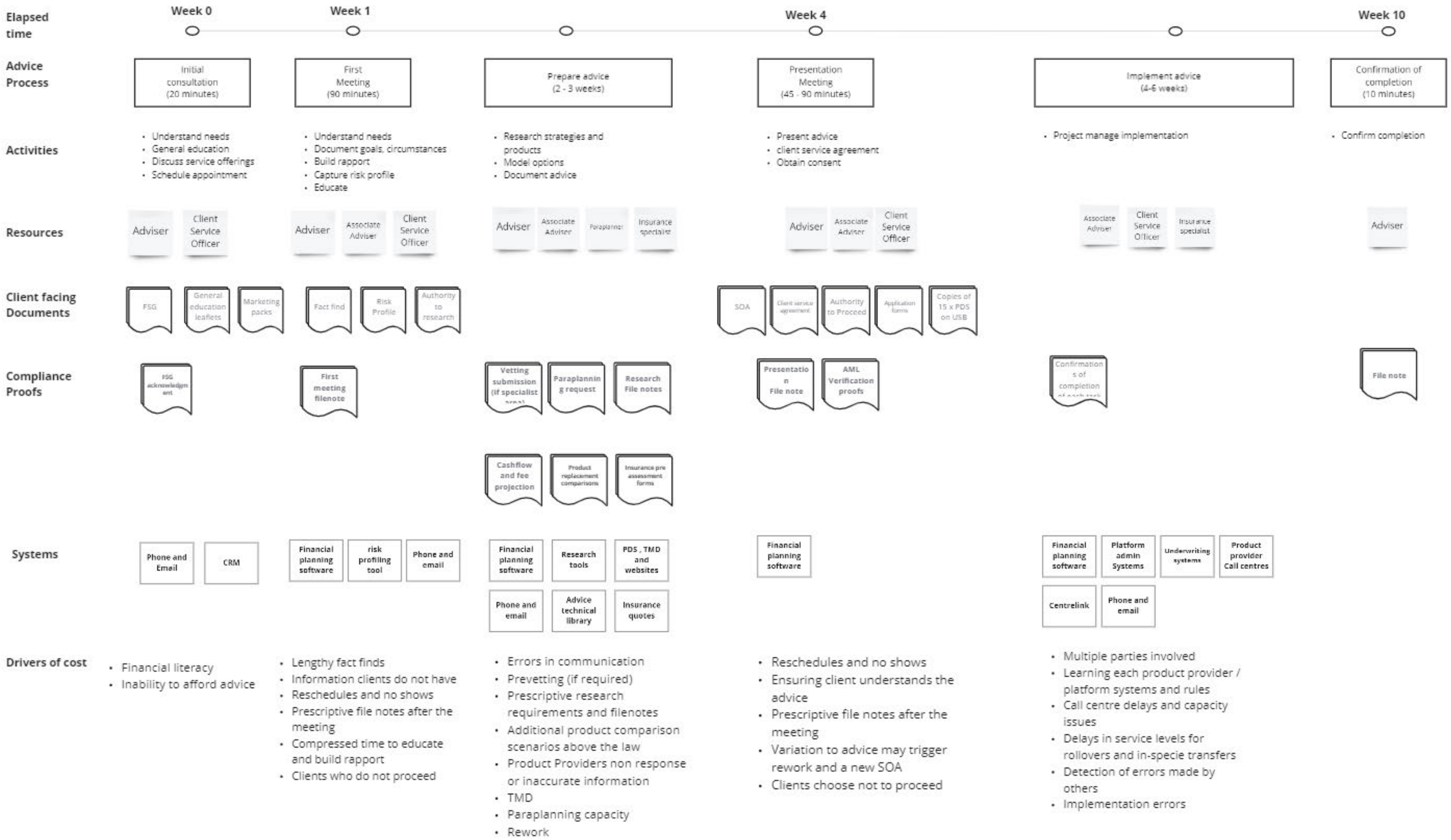
Q6 What are the cost drivers of providing financial advice?
Q8 How much is the cost of meeting regulatory requirements as a result of what the law requires and how much is a result of the process and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?

Initial financial advice is costly to deliver due to:

- Significant time incurred in investigating and documenting the relevant client needs, objectives and circumstances; (legal requirement);
- The time and cost of file noting each meeting (licensee compliance and ASIC requirement);
- The investigation of existing financial products held by the client (legal requirement) exacerbated by poor service levels and response times from particular superannuation funds in the market;
- Ensuring that clients turn up to each stage of the meeting and sign the relevant forms and authorities (business requirement, trustee and product provider requirements);
- Researching and modelling financial strategies and products (legal, ASIC and licensee requirements);
- Constructing and reviewing the Statement of Advice ("SOA") and tables of disclosures (legal, ASIC and licensee requirement); and
- Project managing implementation of instructions across multiple platforms, insurers, providers and ensuring each party has completed the instruction correctly (business, licensee and trustee requirements);
- Project managing insurance advice – managing the end to end process from fact finding through to pre assessment, underwriting process (business requirement, insurer requirements)
- A high cost due to clients abandoning the process part of the way through or not responding to requests to complete paperwork (business risk);
- Manual errors due to manual processes and the volume of systems involved which are not integrated and require manual reconciliation (business risk).

A representation of the initial advice process is below with resources and systems indicated as well as costs drivers:

Figure 1. 6 The initial advice process



However the majority of an adviser's time is not spent on initial advice. Each adviser services on average 100 ongoing advice clients. ASIC REP 499 and the Royal Commission findings in relation to ongoing fees caused advisers and licensees to focus their efforts on ensuring 100% of ongoing advice clients receive a minimum of an annual review a year. Controls and documentary evidence points were added to ensure that this would always be met. As a result advisers with a full list of clients tend to only onboard less than 7 new clients a year given their existing capacity.

The majority of time in a week for an adviser is taken up with:

- Scheduling and preparing for annual reviews;
- Records of advice and file notes of the interactions
- Responding to ad hoc client emails
- Keeping up to date with investments, platforms, insurer, licensee, technical updates that may impact their clients;
- Chasing up information requests, research and implementation;
- Administration; and
- Ensuring all fee consents have been received

In addition to reviews, advisers may need to generate additional advice and transactions as a result of ad hoc client requests or more significant life changes for clients driving the need for a new Statement of Advice. The cost of ongoing service and maintenance is the main reason advisers are constrained in their capacity. Therefore advisers who are not well organised or who do not establish proper systems / make use of platforms, managed account solutions or other technology well drown under the cost of their business structure. Efficient businesses can serve more clients and afford to pass the savings in cost of advice on to their clients

The law is clear and concise in relation to what an adviser has to do. A major driver of cost though is how ASIC interprets the law and then releases guidance and recommends measures for licensees to implement.

During the Quality Advice Project run by ASIC, REP 515 was released which reported deficiencies in the way licensees monitored their representatives in a compliance review. ASIC wrote to the licensees involved requiring a major uplift of compliance audit processes in and record keeping. Licensees were asked to engage independent experts to assure that the new compliance monitoring processes would ensure they detected any instances of non compliance with financial services law. As a result of each of these uplifts the volume of file notes, length of SOAs and ROAs and compliance proofs required increased significantly. Many advisers reported that each interaction with a client took double the time.

Advisers reported a decline in service levels to clients as a result and more client confusion as the documents became lengthier and more confusing.

Recommendation 6	
6.	ASIC should be required to conduct a cost analysis of recommendations made in their Regulatory Guides, Reports and in the course of their project work to ensure that the cost of measures are commensurate with the benefits in managing risk.

2.3 The Best Interests Duty Safe Harbour

Q43 Do you consider that the statutory safe harbour for the BID provides any benefit to consumers or advisers and would there be any prejudice to either of them if it were removed?
Q.44 If at all how does complying with the safe harbour add to the cost of advice and to what extent?
Q45. If the safe harbour was removed what would you change about how you would provide personal advice or how you would require representatives to provide personal advice?
Q46. To what extent can the Best Interests obligations be streamlined?

S.961B(1) of the law was introduced the requirement that a provider must act in the best interests of the clients in relation to the advice. The profession felt that the obligation alone without sufficient guidance or a "safety net" would result in litigation and the costs of advice for consumers increasing exponentially as a result of the lack of regulatory certainty.

S.961B(2)(a) to (g) was created with the intent of providing a safety net for advice providers to know that if they met these steps a "safe harbour" was achieved and they were deemed to have fulfilled S.961B(1).

I believe there is value in retaining the safe harbour steps. The intent of steps (a) to (f) align with what an adviser does today in their advice process. It may benefit from being reworded and streamlined to be more in line with the steps of an advice process so that some of the confusion around scope of advice vs. "subject matter" can be resolved. We believe in general that the advice process does result in quality outcomes if followed.

S.961B(2)(g) introduced a catch all provision that required the adviser to do any other step reasonably regarded as being in the best interests of the client, given the client's relevant circumstances. The catch all has introduced significant confusion and I recommend its removal as the intent of (g) is now duplicated in the Professional Standards within the Code of Ethics which provide a far-reaching set of principles that sit above the safe harbour steps.

There is a view from some parts of the industry that safe harbour is the reason for a prescriptive compliance process. I disagree. The prescription did not arise as a result of the safe harbour, rather it arose because:

- Both ASIC and licensee compliance monitoring arrangements look for objective evidence of the advice process and business rules being followed rather than test advice quality outcomes (which requires a different skillset); and
- ASIC measures in REP515 introduced a range of prescriptive uplifts on the compliance monitoring process seeking documentary evidence and disclosures over and above what the law required.

The removal of the BID safe harbour would result in litigation in order to determine what the law requires. This would be a very costly and lengthy process. In the meantime it may have the opposite intended effect of streamlining arrangements as licensees would naturally increase prescription and process to manage the risk of claims.

Recommendation 7

7. Keep the Best Interest Duty but review the wording of S.961(a) to (f) to better align with a process an adviser follows today. Remove S.961(g) as it is already covered within the Code of Ethics.

2.4 Documentation and disclosure

Q 63 How successful have SOAs been in addressing information asymmetry?
Q 65 To what extent can the content requirements of for SOAs and ROAs be streamlined, simplified or made more principles based while still ensuring that consumers have the information they need to make an informed decision?

Statements of Advice as documents to deliver client understanding and addressing information asymmetry have failed. It was not because of the drafting of the law. Rather it was driven by the factors below:

1. Advice is inherently complex as you have to provide recommendations to clients from 3 perspectives:

    a. the strategy you want to recommend,
    b. the products and platforms that will meet the client’s best interests; and

   c. the underlying investment options and features within each of the products and platforms recommended

2. Detailed dollar based disclosures of conflicts and associations are a lengthy element of the advice document as many licensees that operate as part of a diversified financial group will have relationships with other group entities that may form one or more parts of the solution recommended to a client.

3. Many years of compensation payments in Internal Dispute Resolution as well as AFCA determinations and remediation payouts have resulted in licensees requiring multiple warnings and disclaimers to be added to manage the risk of loss.

4. ASIC additional requirements and guidance have also added weight to the SOA.

As a result the requirements for documents to be clear, concise and effective and for the Code of Ethics Standard 5 to ensure the client understands the advice is near impossible to achieve.

In practice advisers create the 75 page document and clients neither read nor understand it – therefore advisers summarise the key points and deliver these in addition to the document to aid understanding,

Records of advice are easier for an adviser to use but the circumstances in which they can use them are limited. A significant change in client circumstances would trigger a new SOA rather than an ROA. Note that the ROA still has the same lengthy disclosure section of the SOA.

Recommendation 8

8. Replace the SOA and ROA with a single Advice Record. The Advice record should be a file note of the advice provided to the client (either initial or ongoing advice) containing:
   - The goal or objective the client seeks to achieve
   - The agreed scope of advice with the client
   - The key points of what the advice is and how it will help the client achieve their goals
   - Any material risks the client should be aware of;
   - The cost of the advice and the cost of the solutions recommended
   - A simple disclosure of the total financial benefit that the adviser will receive (that is not already included in the advice fee above).

The document should be kept on file and made available to the client upon request.

The advice should be able to be provided verbally to the client with a summary of the information above.

The content and detail in the document should be scalable so that it is simple and concise for a simple interaction or more detailed in a more complex interaction.

The document can incorporate by reference to the PDSs FSG and other relevant documents for further details.

Disclosure requirements were created 20 years ago when the industry was full of conflicted remuneration arrangements and opaque incentives and arrangements that existed between manufacturers, licensees and advisers. After the banning of conflicted remuneration was introduced in FOFA, we have not gone back to review disclosures in light of the current world where:

a. Conflicted remuneration save for a few exemptions has been eliminated from the profession;
b. Financial adviser incentives prohibit many forms of non-financial benefits other than educational benefits from third parties;
c. Licensees no longer are able to receive any incentives that could be reasonably capable of influencing the advice provided by the adviser; and
d. Advisers now have the responsibility placed on them to act in the client's best interests.

The Advice Record would serve to be the documentary evidence and proof point for risk management. The adviser can then use their professional judgment and be free to either present this document to the client, provide a verbal summary or email or a presentation of their own choice to aid consumer understanding as per Standard 5 of the code of ethics.

The adviser would still need to have their own proofs on file as to the research that sat behind the recommendation for risk management purposes.

End of submission.

Attachment: about the author

About the author

Adrian Kwa B.Com CA.
Managing Director
Strategie3

I am driven to ensure Australians get access to high quality sustainable and professional advice that will look after them for their lifetime.

I firmly believe advice makes a fundamental difference in the wellbeing of Australians.

Stratégie3

My Career Experience

- Managing Director, Strategie3
- National Head of Advice, Shadforth
- Head of Business Controls & Advice Services, Insignia Financial Ltd
- Head of Advice Transformation, ANZ Wealth
- Head of Governance, ANZ Aligned Licensees
- Head of Advice Essentials Colonial First State
- Head of Risk, Compliance and Legal for Westpac Banking Group Advice & Private Bank
- Executive Management Consultant KPMG Consulting UK
- Senior Manager, Risk Advisory KPMG
- Audit Manager, KPMG

With over 27 years of experience in Wealth Management and Financial Services, 17 of those in advice. I have worked in wealth for 3 of the 4 major Australian Banks as well as most recently a large ASX listed wealth manager.

During my career I was part of senior leadership within advice licensees from Risk Management, Governance, through to Innovation, Strategy and running advice businesses. My experience includes businesses that served self employed adviser firms, mass retail consumers through to high net worth clients.

This has given me a practical insight into what different consumers want, the challenges the profession faces to supply them.

My own training and development as a qualified chartered accountant in a big 4 firm has also provided some learnings from a highly trusted profession that may provide insights into a way forward for the financial advice profession.

In making this submission as a private citizen, my aim is to shed some light on what financial advice really is, raise awareness of the practical difficulties implementing the law as currently set out and to make recommendations that promote a sustainable thriving market professional marketplace that serves the advice needs of more Australians and benefit the communities we are part of.