

Thank you for the opportunity to provide feedback. Thanks also to Michelle Levy and to those at Treasury who are working on these proposals.

While I have some concerns with elements of the proposals, as an overall package, I support the direction of the proposals and view this work as a very significant step forward for the financial advice profession.

Questions

Intended outcomes

1. Do you agree that advisers and product issuers should be able to provide to personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?

I have concerns about the use of financial advice as a marketing tool by product issuers. However, I accept there are situations where basic financial advice could benefit consumers, when delivered by a product issuer. If this proposal is recommended to government, I recommend a clear delineation which separates the financial advice delivered by professional financial advisers and that which is delivered by product issuers. I have provided an example below:

Category 1 – Customer Service Representatives

- Employed by a product issuer
- Limited to factual information only
- Training delivered by product issuer only

Category 2 – Sales Representatives

- Employed by a product issuer
- Limited to basic financial advice on in-house products and basic strategies
- Formalised, basic training which is consistent across the industry, such as a diploma of financial services meeting the RG146 requirements.

Note: This training should relieve some concerns about the potential for poor advice from untrained and inexperienced staff. The training could easily be rolled out in less than 12 months, and could provide credits and a potential career pathway through to a approved financial planning degree

Category 3 – Financial Planner

- Self-Employed, part of a financial planning firm or employed by a product issuer

- Authorised to provide tailored personal financial advice to consumers
- Approved qualifications, exam, CPD and required to adhere to code of conduct which is overseen by peers

What should be regulated?

2. In your view, are the proposed changes to the definition of 'personal advice' likely to:

- a) reduce regulatory uncertainty?
- b) facilitate the provision of more personal advice to consumers?
- c) improve the ability of financial institutions to help their clients?

- a) I agree there will be a reduction in regulatory certainty. However I am concerned that financial institutions would not be required to investigate a clients circumstances beyond the information that is known at the time. For those giving financial advice, who are not classified as 'relevant providers', I think the requirement to give good advice should go further by also requiring the institutions to make further investigations to ensure the advice is not 'bad advice'.

There are many situations where advice may appear likely to be good based on the facts at hand, but some targeted questioning could reduce the risk of inadvertently delivering bad advice. I don't see any reason why an in-house financial planner and/or technical expert couldn't make a list of questions the staff must ask to ensure the advice isn't 'bad advice'. This could be tailored for different campaigns or products. Without this requirement, my fear is that the institutions could exploit the proposed reforms to data-mine their databases and target consumers for widespread campaigns based on the information they already know, without checking or qualifying the circumstances to ensure the advice is not harmful.

- b) While product providers will no doubt increase their provision of financial advice to consumers, a better approach would be to unshackle financial planners so we are in a position to deliver widespread financial advice, at low cost to consumers in much the same way that other professionals are able to do.
- c) I definitely agree that financial institutions, specifically product issuers, will have an improved ability to help their clients. I am certain there will be negative consequences however, which need to be carefully considered.

3. In relation to the proposed de-regulation of 'general advice' - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?

a) If not, what additional safeguards do you think would be required?

Training

If staff employed by product issuers are allowed to give financial advice, they need to have some level of formalised training. A basic diploma course, such as a RG146 equivalent diploma of financial services would be a good start. CPD points would also be desirable. What is crucial, is that those delivering financial advice have a broad understanding of financial planning strategies and the industry as a whole. This is to reduce the risk of damage from inexperienced staff who may not fully appreciate the context of their advice and the possible impact on other aspects of consumer's financial lives.

A basic, RG146 qualification could provide these individuals with credit towards a formal financial planning degree in the future, which could help the profession to address the lack of new entrants.

Categories of Advice/Product

In the medical profession, medicines are categorised in such a way that only certain products are allowed to be sold over the counter. Other products must be approved by a pharmacist, and then the highest level of drugs must be prescribed by a doctor. I think it would be useful to reflect on the pharmaceutical industry in this regard. For example:

1. Certain categories of advice strategies and certain types of products should be restricted to qualified financial planners only. I would include retirement planning advice in this category, especially where an individual is transitioning to retirement. This may not be what you want to hear. However my experience is that consumers are extremely vulnerable when they transition to retirement. For many of them, it is the first time in their life that they have engaged with their super or sought financial advice. If an inappropriate product is sold to consumers, or poor advice given at this crucial time, it could have serious, negative, long-term consequences for the individuals
2. Advertising on financial advice should also be restricted. ie. Product issuers should not be able to use financial advice as a sales tool to reel in consumers via 'free retirements seminars' or the like, and then sell their products. Any financial advice delivered should be restricted to incidental advice provided to help their own clients/members, where the engagement is initiated by the client.
3. Product issuers should not be allowed to target their clients for financial advice strategies based solely on information or trigger points they are aware of. I do not have a problem with product issuers letter their clients know that they can assist with certain matters, but I feel very uncomfortable with financial institutions using data they have on file to run sales campaigns where financial advice is used as a tool to influence behaviour where the motivation is primarily driven by the product issuer's self-interest rather than consumer needs.

How should personal advice be regulated?

4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide 'good advice' have on:

- a) the quality of financial advice provided to consumers?
- b) the time and cost required to produce advice?

a) This is a very positive step. For many years myself and my colleagues have been frustrated by ever increasing regulatory red-tape which is focused on time consuming processes which are often not needed and are in many cases, counterproductive. By turning the conversation around to the question – 'is this good advice?', potentially we could move towards the medical profession for example, where there are therapeutic guidelines, which are focused on what good advice looks like. If we can move in that direction, potentially it could cut the cost of financial advice considerably.

However, I am concerned the overly prescriptive FASEA Code of Ethics and licensees (which are fearful of ASIC) have the potential to circumvent the intent of this reform. I'm not sure how to solve this. Perhaps it is outside the scope of your review? In my opinion, the AFSL system needs to be disbanded and the Code of Ethics needs to be changed to a principles-based code. This, together with your proposed reforms, would allow financial advisers to substantially increase the number of clients they see, and reduce the time taken to deliver financial advice. If this was to occur, I think you would find the vast majority of financial planners would be more than happy to give up life insurance commissions and asset-based fees. By removing such conflicts, there is no reason why financial planners could not operate like other professionals, and equally no reason why financial planners would not give advice that is not in the interests of consumers.

b) How much difference this makes to my process, I am unsure. I fear that my Licensee is likely to force me to follow the same process I currently follow, as the best interest steps are essentially embedded into the Code of Ethics. If the Code was amended to fall into line with the law (ie. focussed on the delivery of 'good advice', or changed to be less prescriptive and focused on principles, then this proposed reform would certainly reduce the time taken to deliver financial advice in most circumstances.

5. Does the replacement of the best interest obligations with the obligation to provide 'good advice' make it easier for advisers and institutions to:

- a) provide limited advice to consumers?
- b) provide advice to consumers using technological solutions (e.g. digital advice)?

- a) Potentially yes, but it largely depends on how licensees react to this proposal. Especially if there is no change to the Code of Ethics, which essentially mirrors the best interest obligations. Perhaps that is a problem to be solved at a future point in time. In the meantime, I wholeheartedly support this proposal.
- b) I can see how digital advice will be easier to deliver as a result of this proposed reform.

6. What else (if anything) is required to better facilitate the provision of:

- a) limited advice?
- b) digital advice?

The licensee system should be disbanded

It is not wanted or needed by qualified financial planners. It will likely thwart the intentions of the reforms in my opinion, and ASIC has acknowledged that Licensees, by imposing their own regulatory overlay, are forcing up the cost of financial advice and are making it difficult for financial planners to deliver cost effective advice.

From my perspective, licensees are largely a legacy issue. Most struggle to remain profitable and they are not wanted or needed by financial planners. They will eventually go, the question is whether they are wound up now, or at some future point in time. I understand there may be resistance to this by some who view licensees as a form of consumer protection. However with the introduction of a compensation scheme of last resort (CSLR), this should relieve those concerns. Personally I believe we should have a system where all financial planners pay an annual licensing fee to government which encompasses regulation and enforcement of professional financial advisers, professional indemnity insurance and the CSLR. If you speak to financial planners on the ground, I can assure you the level of support of this would be overwhelming (as it was in the focus group I participated in as part of the QAR consultation). The FPA have also thrown their support behind this idea.

While some may argue that financial advisers can simply move to a self-licensed model if they wish, this is not necessarily true. The costs, uncertainty and massive disruption inflicted by licensees when an adviser leaves their AFSL is a significant barrier which locks many financial planners into a larger licensee. I have shifted licensee myself personally and in doing so, I read the contracts of 11 different large licensees. The clauses in these contracts are extraordinary. I would go so far as to say, many of them (if not all) breach of the unfair contracts provisions in Australian Consumer Law, which is designed to protect small businesses and franchises from the abuse of larger institutions. For friends of mine who have transitioned to a self-licensed model, their stories tell a tale of substantial disruption and anxiety for their business and personal lives. This is not in the interests of consumers. Financial planners should be able to move freely to a self-licensed situation without the fear of persecution and disruption from a former licensee, and without needing their approval.

7. In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:

- a) the quality of financial advice?**
- b) the affordability and accessibility of financial advice?**

- a) Allowing product issuers to provide financial advice without the need to be a relevant provider, will significantly reduce the quality of advice and I fear consumers will be harmed. There are steps which I believe could reduce the risk of harm which I have put forward elsewhere in this submission.
- b) While financial advice may become more affordable and accessible for consumers by allowing unqualified, conflicted individuals to deliver financial advice, I question whether this is the right approach. A better approach, in my opinion would be the following:
 - 1) Disband the current licensing system, with financial planners registered directly with ASIC. Financial planners pay a single fee to ASIC which covers i) enforcement and regulatory activities; ii) Professional Indemnity Insurance; and iii) The Compensation Scheme of Last Resort
 - 2) The FASEA Code of Ethics should be brought into line with the codes of other professions, which are principle-led codes, rather than overly prescriptive codes
 - 3) The Code of Ethics should be enforced by a board of qualified, experienced, practicing professionals

If the above reforms were introduced, it would substantially reduce our costs (even if the headline fees paid to ASIC may not be materially different to what we pay to a licensee). It would allow us to operate in a similar way to other professions and in most cases, we would be in a position to be able to provide financial advice quickly, in many cases, on-the-spot, for an affordable hourly rate – much like doctors, lawyers and accountants.

8. In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?

- a) If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?**

Internal training is not sufficient to provide the level of broad understanding of the financial landscape and financial planning strategies necessary for product issuer staff to avoid harming consumers. I propose that those delivering financial advice should have a basic diploma of financial planning, such as a RG146 qualification. This would ensure there is a minimum standard and those delivering advice have a broader understanding of the financial services landscape. I don't believe this would be a significant barrier for financial intuitions to overcome. These courses could be introduced via intensive workshops and completed part-time in less than

12 months with relatively minimal cost. Educational institutions could also offer these courses as a pathway through to an approved financial planning degree which could help to address the problem of the very low number of new entrants coming into the profession.

Superannuation funds and intra-fund advice

9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):

- a) make it easier for superannuation trustees to provide personal advice to their members?
- b) make it easier for members to access the advice they need at the time they need it?

I disagree with the concept of collective charging, which will increase the costs for those not using the service.

Disclosure documents

10. Do the streamlined disclosure requirements for ongoing fee arrangements:

- a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, how and to what extent?

a) It will certainly reduce the cost regulatory burden and reduce costs. I estimate a saving of 65 hours per year, maybe more.

Can you please consider the following clarifications to ensure certainty in the final report:

- i) The current 150 day period in which the consent form can be signed remains in place. This provides consumers with the ability to make an appointment with their financial planner at a time that suits them.
- ii) Financial planners should be able to ask a client to sign early, for example if they meet with the client after 6 months, or 9 months. Under the current rules, we must wait 12 months before a client can provide consent, which is creating chaos at grass roots level. We must either delay client meetings, or

post out the consent forms after the meeting if our clients wish to meet with us early. An alternative is to allow clients to sign the form at any time convenient to them or the advice practice, on the proviso that providing the consent simply re-sets the anniversary date to 12 months from the date the form is signed. This preserves the intent and integrity of the measure, but better aligns the system with the best interests of clients.

- iii) NB. You may be told that an adviser can simply end a fee agreement and start a new one. In theory this should be straight forward, but in practice, each platform and licensee has a different process, which is often cumbersome and counterproductive. In many cases, it is easier to wait and post the documents to the client at a later point in time. By making it clear that the consent form can be signed earlier, and in doing so, the anniversary shifts to 12 months after the date of signing, this will make the process much easier at the grass roots level, and save our clients from receiving packages of documents which they have to sign and return outside of their review meetings.
- b) I don't see any potential for consumer harm. If consumers are signing off on the fees every year (or earlier), the opportunity for harm is already significantly reduced.

11. Will removing the requirement to give clients a statement of advice:

- a) **reduce the cost of providing advice, and if so, to what extent?**
 - a) It will certainly reduce the cost. The extent of the cost saving will depend on the requirements imposed by licensees, which I suspect will be largely unchanged due to their efforts to enforce the overly prescriptive FASEA Code of Ethics. For example, it is not good enough that a financial adviser makes a professional judgment or is satisfied that they have met the code. The Licensees are forcing financial advisers to follow processes and include documentary evidence that they are meeting all of the requirements under the code. I don't think this will change.
I can potentially see a cost saving of around 10% in my business, which based the removal of paraplanning from my business model. However if the licensee model is disbanded and the FASEA Code of Ethics is brought into line with other similar professional codes, the removal of the Statement of Advice requirement would substantially reduce costs, perhaps as much as 80%.
- b) **negatively impact consumers, and if so, to what extent?**
 - b) Consumers already tell me overwhelmingly that they do not want or need Statements of Advice. No other profession is required to provide them and the costs involved are detrimental to consumers. The key information contained in a Statement of Advice can usually be summarised into a 2 or 3 letter outlining the advice, rationale and costs involved. I don't see a negative impact on consumers at all as a result of removing this requirement.

Can you please consider the following clarifications to ensure certainty:

- I note the proposal states a Record of Advice should only be required if requested by the client. Can you please clarify that this is only applicable if the client requests the Record of Advice prior to or at the time the advice is delivered. This is to minimise the risk that Licensees force financial planners to produce Records of Advice in all instances, on the basis that clients may request the document in the future.

12. In your view, will the proposed change for giving a financial services guide:

- a) reduce regulatory burden for advisers and licensees, and if so, to what extent?**
- b) negatively impact consumers, and if so, to what extent?**

- a)** I don't consider this to be a major burden, but it will certainly help to improve the interaction with our clients. I suspect we will still be required to give them to clients, due to the requirement for us to 'warn' our clients about not being independent. On this note, I find it to be particularly frustrating that I am required to tell my clients I am not independent even if I am not employed by a product issuer, not receiving commissions in relation to the advice and not charging fees based on assets for the individual client. My view, is that the concept of independence should be determined at the client level, rather than the licensee level. If this was the case, I could offer independent financial advice to the majority of clients, and in special cases where I may operate based on commissions or asset-based fees, I should be required to warn these individual clients at the time. This would make the warning more accurate and timely, and in my view encourage financial planners to offer independent financial advice.
- b)** I don't see the potential for consumer harm, as long as consumers are able to find the document at the time they need it, for example when deciding whether to engage with the firm or if in the future, they need to make a complaint.

Design and distribution obligations

13. What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:

- a) the design and development of financial products?**
- b) target market determinations?**

As a self-employed financial planner, this will certainly save me time and reduce an unnecessary burden on my advice practice.

Transition and enforcement

14. What transitional arrangements are necessary to implement these reforms?

I personally don't see a need for a significant period of transition for most of these reforms, however a single financial year could potentially help financial institutions prepare. Perhaps there could be a period of 12 months where those who wish to go early can do so, and then at the end of the period, all providers and institutions must comply.

I strongly believe a basic qualification should be necessary for institutions to allow their staff to give financial advice, such as a RG146-style diploma course. In this case, I think a 12-month period of transition would allow the product issuers sufficient time to upskill and train their staff.

General

15. Do you have any other comments or feedback?

The Single Renewal and Consent Form

I note the following comments regarding the proposed single form:

'I do not think there is any reason why the form or content of a consent form should be prescribed. However, I understand that this may assist the industry and I have no objection to that being the case on the basis that it would not prejudice consumers.'

My strong preference would be for the single form to be prescribed and if you are able to include an example of your final report, it would be very helpful. As a self-employed adviser working in the community, without direct links to ASIC or industry decision makers, I find it to be extremely frustrating that we have had the new 12-month consent laws in place for 15 months, and we still do not have a single form which has been agreed by ASIC and the industry. I also reflect on the past government proposal to allow financial advisers to join a professional association and sign up to a code which obviates the need for opt-in. It took years for a code to be approved by ASIC, and by that stage, the intent of the reform (which was to encourage advisers to join professional associations) was completely lost.

By prescribing the form, it may help to speed up the rollout of this much needed measure, which will take a lot of pressure off financial planners on the ground.

SIS Act and the Deduction of Fees

I note the following comments in the QAR proposals regarding Product Issuers Auditing Financial Advisers

'This might mean that trustees will only permit financial advice fees to be paid at the direction of members to advisers with whom they have an agreement that enables a trustee to review advice provided to members from time to time or to require an audit of that advice to be undertaken.'

I find it particularly offensive that a super fund is able to audit my files or request confidential client information. My clients would not be happy if this was to occur. Can you imagine a pharmaceutical company compelling a doctor to hand over sensitive and private health information for one of their patients? This situation would not be tolerated. A signed consent form should be more than sufficient to satisfy the product issuer that the client has authorised the fee and if attested by the client, that the advice was related to the members interest in the fund. If the super fund has identified certain triggers that raise concern about the activity of a financial adviser, the best approach would be to report the information back to the relevant disciplinary body, the industry association and/or the licensee.