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29 September 2022

Quality of Advice Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email: AdviceReview@treasury.gov.au

Dear Ms Levy,

AFA Submission: Quality of Advice Review Consultation paper – Proposals for Reform

Introduction

The AFA welcomes the opportunity to provide feedback on the Quality of Advice Review Consultation paper – Proposals for Reform. We would also like to thank you for the extension of time to make our submission, which was necessary in the context of the AFA team being focussed upon our National Conference last week.

We are ardent supporters of the Quality of Advice Review and warmly welcome the Assistant Treasurer and Minister for Financial Services' (Stephen Jones) recognition of the extent of the issues impacting the financial advice profession and strong endorsement for the Quality of Advice Review. After many years of extensive regulatory change, often in response to the latest concern, but before the full impact of past reforms have been experienced, the financial advice profession finds itself in what the Minister has accurately described as a "hot mess". It is difficult to avoid reaching this conclusion, with the cost of financial advice rising rapidly, more than 12,000 advisers having left the profession since the start of 2019, and consumers struggling to access financial advice when they need it. Now is the time to confront these challenges and to find a pathway towards a solution that addresses the problems and delivers better outcomes for both clients and financial advisers.

There is no question that we face a point of a burning platform, and thus all stakeholders are all in the situation where the Quality of Advice Review is critical to finding a long-term sustainable solution. We warmly welcome the fact that the proposals that have been put forward are revolutionary and not just ideas that might achieve incremental change. Now is the time for fundamental, generational change, and not just incremental improvement. In the absence of genuine and substantial reform, any smaller changes will just lead us back to the same confronting position in a couple of years.

The proposals for reform rightly recognise some key existing issues in the advice market:

- Regulatory uncertainty and overly cautious processes.
- The inefficient advice process, which is tied up in the completion of activity that is required to demonstrate compliance with the Best Interests Duty safe harbour.

- Statements of Advice that are neither read nor understood by consumers yet drive significant costs.
- Completion of inefficient servicing and administration processes, such as Fee Disclosure Statements, that are not delivering value to consumers yet are driving up the cost of an ongoing advice relationship.

We believe that these proposals do address the key issues in financial advice, however we are conscious that they have been subject to some active debate in terms of whether they will achieve the objectives, without increasing the risk of consumer detriment. In particular, the feedback from financial advisers and other stakeholders has been with respect to the following:

- Whether the proposed change from a Best Interests Duty to a good advice obligation will result in a deterioration in the client outcomes.
- Whether people who provide financial advice, who are not relevant providers, should be required to comply with the professional standards obligations that apply to financial advisers.
- Whether people employed by product providers should be able to provide personal advice, if they are not trained to the same standard as financial advisers.
- Whether the scope of advice that is provided by super funds, to their members under a collective charging model, should be expanded.

Some of our members have also questioned the removal of the obligation to provide a Statement of Advice, however we note the majority are strongly in support of this proposal and those who wish to continue to, or to provide something different, will be able to do so.

These are all critical questions, which need to be carefully assessed. We believe that they can be addressed, by better understanding of how the individual proposals would be applied and through improved design and the introduction of additional controls.

Our primary feedback, to address the concerns that have been raised, is as follows:

- Consider an alternative to the replacement of the Best Interests Duty with a good advice obligation, through keeping the Best Interest Duty, however modifying it to be more reflective of an obligation to provide advice which is in the best interests of the client, along with the repeal of the three related obligations and the Best Interests Duty safe harbour. This should facilitate a change to a principles-based obligation and a focus on the advice outcome, rather than the current excessive focus on the advice process.
- Controls should exist to ensure that only simple advice is provided by people who are not relevant providers.
- The education standard should be defined and significantly increased for anyone who is providing personal advice, who is not a relevant provider.

Whilst we are aware of the elevated level of concerns about the provision of personal advice by product providers, particularly where this is to be done by people who are not relevant providers, in our view this can work with the appropriate controls applied. We recognise that the current adviser population cannot meet the advice requirements of all Australians and that there needs to be alternative solutions developed to meet the level of demand for simple financial advice.

We address below what we believe are suitable solutions to overcome these concerns.

Response to Consultation Paper Questions

Intended outcomes

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

We answer this question with the full knowledge that there is a natural trade-off between the cost of providing financial advice and the level of consumer protections that are in place. We have therefore long argued for a regulatory regime where the obligations on the providers of financial advice was commensurate with the level of complexity of the advice and the risk of client detriment. We have also long argued that ineffective consumer protections are counter-productive, in that they increase the cost of advice without any genuine consumer benefit. Fundamental reform is required to address these issues.

We therefore argue that the removal of the substantial non-value adding work that is involved in meeting the Best Interests Duty safe harbour steps, preparing lengthy Statements of Advice and in the production of Fee Disclosure Statements (FDSs) is both warranted and aligned with improving consumer outcomes.

We are conscious that there are elevated levels of concern about personal advice being provided by product providers, and particularly in the context of the recent Banking Royal Commission, however we are supportive and believe that this ought to be possible, provided it is limited to simple forms of advice and subject to sensible standards and controls.

What should be regulated?

2. In your view, are the proposed changes to the definition of 'personal advice' likely to:
a) reduce regulatory uncertainty?

Yes. We support the proposed change to the definition of personal advice to include situations where an advice provider holds or has access to information on the consumers personal circumstances. We believe that this is an effective way to address the elevated levels of uncertainty with respect to the boundary between personal advice and general advice. We think that this solution takes into account the recent High Court judgement in the Westpac case.

This puts a clear demarcation between personal advice and general advice and reduces the incentive for any operator to design a business model based on general advice, where it is evident that they have knowledge or access to information related to the client's relevant personal circumstances.

It is also more reflective of consumer expectations, which is that when they are dealing with an existing product or advice provider, that they will expect that provider to provide advice based upon knowledge of their personal circumstances.

b) facilitate the provision of more personal advice to consumers?

It is not our view that this measure on its own will necessarily increase the level of personal advice provided to consumers. We believe that this measure along with other measures, such as the rationalisation of the Best Interests Duty and related obligations and the removal of the

need to provide a Statement of Advice will together reduce the effort and cost involved in providing financial advice and therefore increase the amount of personal advice that is provided.

c) improve the ability of financial institutions to help their clients?

Similar to the feedback that we provided above, we do not believe that this measure alone, will improve the ability of financial institutions to help their clients. However, in combination with the other proposals, we believe that this is certainly probable.

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?

We are not aware of the extent to which the general consumer protections measures are an effective constraint against misconduct by operators who are unregulated. We have seen some insight into this area in the recent activity that ASIC has undertaken with respect to 'finfluencers', however this might not be reflective of what might happen in the future. We accept that the legal obligations with respect to misleading and deceptive conduct are robust, however we have no knowledge of how frequently they have been applied.

We would be concerned about the extent to which misconduct by unlicensed operators would be subject to monitoring and enforcement. We assume that this would be the responsibility of ASIC, however, appreciate that they would prioritise their efforts on the regulated population, unless serious misconduct by unregulated entities was brought to their attention.

In our consideration of this, we believe that it is necessary to contrast the amount of money that ASIC has spent on the supervision of the financial advice sector in recent years (over $40m per year in recent years), compared with the $0.6m that was spent on the general advice only sector in the 2021/22 year. On that basis, it may not make much difference in terms of matters that are identified and investigated.

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

The key limitation on people who are unlicensed is the inability to earn an income from the provision of advice or the implementation of products. If they cannot get paid for doing it, then they are much less likely to seek to do this. Thus, we recommend consideration be given to mechanisms that are available to prevent remuneration being paid to anyone who is not licensed.

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?

We don't believe that it will have a negative impact on the quality of advice, however we fear that this proposal has been misunderstood and some stakeholders have incorrectly assumed that it will have a seriously detrimental impact on the quality of financial advice. This appears to be based upon the following factors:

- The incorrect assumption that the Best Interests Duty means that the advice needs to be the best advice, which is not the case. In fact, ASIC look at it in terms of whether

the advice puts the client in a better position and whether the recommended product(s) is fit for purpose. This is not significantly different to what has been proposed for the good advice obligation.

- A lack of appreciation of the benefits in moving from a focus on the process to a focus on the outcome, which is likely to lead to better results for consumers.
- A lack of understanding of the fact that under section 961G of the Corporations Act there was already a similar obligation, however it was unnecessarily complicated ("The provider must only provide the advice to the client if it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the duty under section 961B to act in the best interests of the client").

We do not believe that there would be any material consumer detriment under a good advice obligation, particularly when the advice is provided by a relevant provider.

We are however aware that this will be one of the more contentious proposals and it may make sense to take an alternative approach that would achieve a similar outcome. What we propose is as follows:

- Section 961B(1) of the Corporations Act be reworded to reflect an obligation to provide advice which is in the best interests of the client.
- Repeal the Best Interests Duty safe harbour (Section 961B(2).
- Repeal the Appropriate Advice obligation (Section 961G), the incomplete or inaccurate information warning (Section 961H), and the obligation to prioritise the interests of clients (Section 961J). These other obligations are duplicative and are already largely addressed through the Best Interests Duty.

In taking this approach to leave the Best Interests Duty in the law, we would therefore suggest that the Best Interests Duty is removed from the Code of Ethics. This would avoid the current duplication and any perception or risk of difference between the requirements of the Corporations Act and the Code of Ethics.

b) the time and cost required to produce advice?

The biggest impact on time and cost comes from the removal of the Best Interests Duty safe harbour, which has evolved over the last nine years into a very labour intensive and administratively complex exercise. Material changes over this time, including the requirements of ASIC Class Order 14/923 and the out-workings of the project that followed the release of ASIC Report 515 have led to the introduction of exceedingly long checklists to confirm compliance with the Best Interests Duty and the safe harbour. In this context, we believe that the alternative that we have discussed above would achieve a similar outcome for consumers, with a much-reduced risk of resistance from consumer groups and other stakeholders.

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?

Yes, it does, particularly when considered in the context of the removal of the restrictive obligations related to compliance with the Best Interests Duty safe harbour and other QAR proposals such as the removal of the requirement to provide SoAs.

There are other complications in the provision of limited advice, which includes Standard 6 of the Code of Ethics. We believe that refinements to the Code of Ethics are still required to provide greater confidence in the provision of limited advice.

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

It is likely that the removal of the Best Interests Duty safe harbour will also have a positive impact on the provision of digital advice. It is important to appreciate that digital advice is much more likely to be simple single-issue advice, so the impact may not be as great.

Whilst compliance with the Best Interests Duty safe harbour could be built into the digital advice algorithm, a crucial factor would be the reduction in the level of uncertainty with compliance with the Best Interests Duty safe harbour.

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

The ability to provide limited advice will be enhanced by several elements of the QAR proposal package, including alterations to the obligations with respect to the Best Interests Duty safe harbour and the removal of the obligation to provide advice documentation. To the extent that personal advice could be provided by someone who is not a relevant provider, this would also reduce the cost of providing financial advice, and potentially enable more providers to offer limited advice.

Better access to client data through the ATO portal and future developments with the Consumer Data Right will also have a material impact upon the efficiency of the advice process and will therefore assist in better enabling limited advice.

As discussed above, we believe that the Code of Ethics also needs to be addressed to provide greater confidence in the provision of limited advice.

b) digital advice?

We are not aware of any other measures that would better facilitate the provision of limited digital advice.

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?

This is an area of significant concern to our members. Many of them have expressed concerns that personal advice provided by the employees of product providers, who are not relevant providers, and thus not trained to the same standard, will increase the risk of client detriment.

We believe that there are two important levers that are available to address this issue:

- Limitations on the complexity of advice that can be provided by people who are not relevant providers.
- Increased education standards for people who are not relevant providers, who are providing personal advice.

Section 912A(1)(f) of the Corporations Act requires that a licensee "ensure that its representatives are adequately trained (including by complying with the CPD provisions), and

are competent, to provide those financial services". This is a very generic obligation and is not specific to financial advice.

In terms of the provision of personal advice by a person who is not a relevant provider, we are not convinced that the differentiation based on whether the person is paid a fee or a commission (life insurance advice) for initial or ongoing advice, is an adequate approach. This simply ensures that financial advisers will be held to a higher standard and those working on behalf of product providers are much less likely to be held to the same standard. This is not reflective of the level of risk of consumer detriment, and we would argue that vertical integration, results in not insignificant levels of risk to the consumer. We are also conscious of concerns expressed by the Minister with respect to the issues with vertical integration.

We note that those providing personal advice, who are not relevant providers, would not be called financial advisers, however our members have provided feedback on whether it is appropriate for these services to be described as 'personal advice' in the absence of an increase in the education standard that applies to the providers of this service. Further feedback from our members is that it would be important to carefully consider the job titles that could be attributed to those offering these services. We would recommend that a level of standardisation in the description of those who provide personal advice, who are not relevant providers, would ensure that consumers are better informed and the risk of misunderstanding whether they are financial advisers would be reduced. Our members are genuinely concerned about the risk of poor conduct by people who provide personal advice, who are not relevant providers, being attributed to financial advisers and as a result tarnish the reputation of the advice profession.

Another important control that could be placed on people who provide personal advice who are not relevant providers, is to have them formally supervised by people who are relevant providers. This would serve to reduce the risk of consumer detriment.

b) the affordability and accessibility of financial advice?

Affordability and accessibility should be significantly improved for those clients, with quite simple needs, who can access advice from their product provider. These types of consumers are less likely to be able to see a financial adviser, and thus having access to some advice, in most cases, is likely to be better than no advice.

The AFA support this, as these Australians would otherwise be unlikely to have access to personal advice and the introduction of them to financial advice in this form, at an earlier stage, may more likely lead to them proactively seeking financial advice from a relevant provider at a later stage.

Equally importantly, the creation of a category of providers of personal advice, who are not relevant providers, might create a pool of candidates who may ultimately transition to become relevant providers (if they commit to undertaking additional study).

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?

In our view, the existing licensing obligations are not enough to ensure that representatives who are not bound by the professional standards will be adequately trained and competent.

Section 912A(1)(f) of the Corporations Act requires that a licensee "ensure that its representatives are adequately trained (including by complying with the CPD provisions), and are competent, to provide those financial services". This is very high level, does not apply directly to financial advice and is arguably contingent upon the type of advice or service that they provide. On this basis, it would be difficult for licensees to assess whether their representatives meet the required standard or not. It may also make it more difficult for ASIC to prove that they do not meet the required standard.

ASIC Regulatory Guide 146 has not been updated since July 2012. It is based upon a period prior to the February 2017 professional standards legislation and did not envisage the proposal for people providing financial advice, who are not relevant providers. RG 146 does provide for the differentiation of people between general advice and personal advice and with respect to the types of products that are recommended, however even this gap is far too great. Many of the courses that were required, at the time when financial advisers were bound by RG 146, no longer exist. In terms of CPD, RG 146 does not even specify the minimum number of hours required.

ASIC Consultation Paper 212 in July 2012 proposed a staged increase in the minimum education standards for those providing personal advice and those providing general advice. These proposals did not proceed. Whilst the increase in the minimum education standard for financial advisers was ultimately driven through the Professional Standards legislation in 2017, there has been no increase in the education standard for those who provide general advice. At present providers of general advice are bound by a Certificate III level requirement. This highlights the huge gap between what applies to relevant providers and what applies to other categories of people who provide financial advice. It also highlights the inadequacy of RG 146 in this new era. The introduction of a new category of people who provide personal advice, who are not relevant providers, would necessitate a significant updating of RG 146. However, we would go further in suggesting that the education standard for people who provide personal advice, who are not relevant providers, should be in the law (through regulations or legislative instruments) and not just left as a matter for ASIC regulatory guidance.

a) If not, what additional requirements should apply to persons who are not required to be relevant providers?

We would argue that as a minimum, anyone who is providing personal advice, who is not a relevant provider, should be required to complete study at the advanced diploma level. It may be preferable to elevate this to a degree level or even a graduate level to better enable them to progress on towards being a relevant provider. We would suggest that this should be the subject of further consultation to determine the level of study and the required knowledge areas, however it needs to be significantly higher than what might otherwise be suggested by RG 146, to ensure that they are appropriately qualified to adequately reduce the level of risk of consumer detriment.

We also pose the possibility of a Code of Ethics that could apply to people who provide personal advice who are not relevant providers. It may also be possible to suggest that some of the existing standards of the financial adviser's code of ethics could be applied, rather than building a separate code.

Superannuation funds and intra-fund advice

As noted in our response to Question 7, we do have concerns about the risk of consumer detriment in the context of vertical integration, particularly where the person providing the advice, can only recommend the existing product.

The AFA supports a review of the Sole Purpose Test, which we understand APRA are currently undertaking. Whilst we support the objective of the Sole Purpose Test in ensuring that expenses drawn from superannuation funds are limited to the intended objectives, we believe that there is room for greater flexibility. This would include removing limitations that apply to people in the pension phase from authorising advice fees from their pension accounts, where a condition of release has already arisen.

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?

Yes, the overall QAR proposals package will make it easier for super funds to provide advice to their members.

We have no objections to super funds providing the full range of financial advice services to their members, where they are relevant providers and where the members are paying directly for the financial advice.

Collectively charged fees (intra-fund advice) is a different matter for our members, who have three primary concerns:

- Intra-fund advice is limited to advice about the members interest in the fund, and therefore it is intrinsically conflicted, and thus may not be in the best interests of the member. There is inadequate warning of this risk.
- The collective charging of fees by super funds, under Section 99F of the SIS Act has the effect of misrepresenting the value of financial advice. If people can get it for free, then it appears to be less valuable and why would they pay the market rate for it in the future.
- Intra-fund advice is a form of cross-subsidisation, where those who do not use the service pay for those who do. Advisers argue this is a form of Fee for No Service.

Despite these views, we believe that in the context of the decline in adviser numbers, and the difficulty in accessing financial advice, particularly with respect to simple advice, that intra-fund advice has a key role to play. We do, however think that it should be limited to simple advice. We are concerned that these proposals do not place a limit in terms of complexity, as is currently the case through Section 99F of the SIS Act.

We would also be supportive of an extension to the existing range of simple advice types that can be provided under intra-fund advice. For example, we would support the inclusion of the consolidation of small super accounts (under an approved threshold i.e., under $25k), where there is no life insurance.

b) make it easier for members to access the advice they need at the time they need it?

Yes, this will make it easier for members to access financial advice, provided that super funds invest in the development of their financial advice arms. There is no guarantee that this will be the case.

We would also hope that trustees would avoid seeking to provide complex advice under this model, on the grounds that the cost of it would be reflected in the administration fees, and collectively paying for complex advice on a larger scale would materially push up these costs.

It will be important to ensure that members who get personal advice that is provided by people who are not relevant providers have the full protections that currently exist in terms of access to the Internal Dispute Resolution and AFCA regimes, particularly if they go down the path of providing what could be classified as more complex advice where the provider fails to adequately consider all relevant issues and circumstances.

Disclosure documents

We strongly support the recommended change with disclosure documents. These changes will help to significantly reduce the cost of providing personal advice and servicing existing clients.

We note that what has been proposed does not remove the obligation on the person providing financial advice from maintaining a complete record of the advice, and as such it will be critically important to ensure that what is required under this obligation is clearly understood and does not lead to a new area of regulatory uncertainty and excessive caution. This will be especially important in terms of the file audit process that is followed by licensees, where a selection of files are assessed for compliance with the obligations. This process will necessarily need to change significantly.

10. Do the streamlined requirements for ongoing fee arrangements:
a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?

We strongly believe that this is the case. We have been advised of costing for the annual renewal obligations, suggesting that this could cost between $400 and $500 per year per client. Whilst a sizeable proportion of this is related to the production of Fee Disclosure Statements, it is also important to acknowledge the significant cost of the client consent process, where seemingly just about all the product providers have implemented different approaches and are using different forms. This is the inevitable consequences of implementing major reform far too quickly.

We strongly support the repeal of the FDS obligations. As previous proposed, we would also support the temporary suspension of the client consent obligations for three years to allow for a universal, standardised systems solution to be developed. We envisage a model where client consent was completed by a client for all their existing arrangements and electronic confirmation was automatically transmitted to all the product providers that they utilise.

b) negatively impact consumers, and if so, how and to what extent?

We do not believe that this would negatively impact consumers. It is important to note that fee disclosure already occurs through product statements and clients would continue to have the control in terms of completion of the annual renewal and client consent process.

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?

We believe that this will have a material impact upon the cost of providing financial advice.

We note that some licensees may still require some form of advice documentation to be provided and some advisers will still want to provide it. Some of our members have responded negatively to this proposition, suggesting that the provision of advice documentation is a critical part of the service and exposes clients to increased risk of client detriment. We appreciate these arguments, however, we would argue that this will enable advice providers to tailor the form of the advice documentation to the complexity of the advice, such that advice documentation will still be provided for complex advice, but may not be provided for more simple advice. It will also help to better enable advice being provided in different forms, rather than just in written form. Most of our members support the removal of the obligation to provide advice documents.

b) negatively impact consumers, and if so, to what extent?

To the extent that most clients don't read their SoA, and they can request an SoA if they want one, then there should be limited risk of negative client impact. ASIC Report 632 on the effectiveness of Disclosure highlights the flaws in a system that is excessively reliant upon disclosure.

We would suggest that the adviser should have an obligation up-front to discuss the option to provide an advice document, so that there is a clear understanding at the start of what will be provided, rather than a need to create something at the end.

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?

We believe that this will have an important, although not substantial impact upon the cost of providing financial advice. It will cut back on the cost of providing FSGs, but also reduce the level of risk that an adviser did not provide a new FSG after it was changed and reduce the amount of effort that is devoted to checking which version was provided and when and what evidence was maintained to demonstrate that it was provided.

Inclusion on websites, where it can be updated when required, is the most sensible solution. Over the longer term, the most relevant information in an FSG for a small percentage of the client base, is the details on making a complaint. Clients may not recall where they filed the latest FSG, so it is better that they are made aware of where to find it and can come back to it later if and when they need it.

b) negatively impact consumers, and if so, to what extent?

Having ongoing access to an FSG is important for clients facing the prospect of needing to make a complaint. It is a good outcome if they will be more readily available on the practice's website.

Design and distribution obligations

We strongly support the proposed removal of DDO reporting, other than complaints. Significant dealings have been a point of material confusion, and in any case, this is not

relevant if the adviser is bound by the Best Interests Duty and is also subject to Professional Standards. DDO has caused a great deal of confusion and uncertainty for advisers and with the high level of obligations that apply to them, it is difficult to see how this legislation could have a material positive impact on advice clients.

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?

We cannot envisage a situation where the proposed amendment to the DDO reporting obligation for financial advisers would have any impact on the design and development of financial products. The reality of the DDO regime is that advisers can recommend a product to a client where they are not part of the product providers nominated target market because they are bound by other obligations, including an assessment of the client's personal circumstances and a requirement to ensure that the product is suitable for the client. Thus, it is not evident why this would impact on the design and development of products.

b) target market determinations?

As discussed above, we cannot see any reason why the proposed amendment to the DDO reporting obligations for financial advisers would have any impact on target market determinations. It is important to keep in mind that DDO is largely a regime for product providers who do not have a detailed understanding of their client's personal circumstances and are thus less able to determine the suitability of the product for the client. This is not the case when it comes to financial advice clients.

Transition and enforcement

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

We would normally recommend at least 12 months from the time that legislation is passed until the law comes into force. The recent history is regulatory change that was implemented too quickly and thus often led to complications, uncertainty and confusion (i.e., Annual Renewal, which was legislated in late February 2021 and came into force on 1 July 2021).

The approach that should be taken in the case of this package of reforms, could vary contingent on the specific initiative. We would argue that where some obligation was taken away (i.e., FDSs or DDO reporting), then it could be done more quickly. This could even apply to the removal of the obligation to provide advice documentation. Where there was a more fundamental change from one regime to another regime, such as in the proposed move from the Best Interests Duty to a good advice obligation, or an expansion of the scope of personal advice, that this should be done over a longer timeframe.

We would also expect that any material change would involve a facilitative compliance approach being undertaken by ASIC.

General

15. Do you have any other comments or feedback?

Whilst the AFA supports the idea of simple advice being provided by people who are not relevant providers, we firmly believe that this should be limited to simple advice, particularly

in cases where it is just not practical to have a financial adviser provide the advice. Cameo 2, which relates to limited advice by a superannuation fund, seems to suggest that retirement planning advice that addresses Centrelink benefits could be provided by someone working for a super fund who is not a relevant provider. It is also suggested that this advice could be provided through the intra-fund, collective charging model.

We firmly oppose the provision of complex advice, and retirement advice is always complex advice, by someone who is not a relevant provider. We also oppose the prospect of complex financial advice being provided under a collective charging model.

If financial advisers are going to accept that personal advice can be provided by someone who is not a relevant provider, and that it could be done through intra-fund advice, then it is important that this is limited to what is genuinely simple advice.

Concluding Comments

The AFA strongly supports the Quality of Advice Review and the majority of proposals comprised in this consultation paper. We have identified a few areas where there has been significant concerns identified by our members. We believe that these areas of concern can be addressed by sensible modifications to the proposals.

We would be happy to discuss this submission further, or to provide additional information if required. Please contact us on (02) 9267 4003.

Yours sincerely,

Phil Anderson
Chief Executive Officer
Association of Financial Advisers Ltd

About the AFA

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 75 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

With the exception of Independent Directors, the Board of the AFA is elected by the Membership and Directors are currently practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting their wealth.