

23 September 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 PROPOSALS PAPER RESPONSE

The group of Licensees (“Licensees”) welcome the opportunity to provide feedback to Treasury on the Quality of Advice Review Proposals paper (“the Proposals paper”).

About the Licensees in this submission

The Licensees are a group of industry participants within the Financial Advice market comprising:

- AMP Group Limited
- Australian Unity Personal Financial Services
- Diverger Limited
- Fitzpatrick's Private Wealth Limited
- Fortnum Private Wealth Limited
- Infocus Wealth Management Limited
- Otivo; and
- WT Financial Group limited

Collectively we manage 21 Australian Financial Services Licensees which include 2,690 Authorised Representatives, 187 employed representatives and one digital advice platform. We provide financial advice to circa 433,000 retail consumers.

Our overall comments

We support the package of proposals which we believe are both innovative and pragmatic solutions to the complex issues faced in providing more Australians access to affordable quality advice. Bold steps are required to ensure better outcomes for consumers, continue to restore the public trust in advice and support the sustainability of the market for all participants.

The proposals have the potential to reduce significant costs, streamline complexity and will allow more participants to provide good advice to those who need it.

We welcome in particular:

- Proposal 8 which will greatly streamline the burden of multiple overlapping fee disclosure and consent regimes that are overly complex and confusing for clients;
- Proposals 9 and 10 which are a great outcome for consumers. The removal of costly prescriptive advice documents that do not serve to educate consumers, will allow providers to use professional judgement to more clearly communicate their advice to clients, create capacity to enable more clients to be served proactively, and to encourage innovation in new ways of engaging clients in the substance of the advice being provided;
- Proposal 7 will streamline the administrative burden and unnecessary paperwork of consents required from members of superannuation funds for fees that have been agreed to by clients; and
- Proposal 11: will achieve the original intent of the legislation to keep personal advice out of the Design and Distribution Obligations (“DDO”) other than complaint reporting.

Providing greater access to personal advice for all consumers

We are pleased that the Review has developed proposals aimed at encouraging a significant increase in the provision of advice to consumers facilitating access to advice via digital tools, superannuation funds, product providers, and wealth management institutions. We believe this will go a long way to enabling access to advice for many consumers who cannot afford a financial adviser and who do not access advice today.

We support the principle in proposal 4 that personal advice should be able to be provided by licensees that:

- a) are not required to be a relevant provider; or
- b) are relevant providers (requiring higher educational, supervision and ethical standards).

We believe that consumers should be able to choose to seek advice under a) above for less complex, transactional once off and simple advice on basic product features and simple advice strategies. They should equally be able to choose to access that type of advice from their superannuation fund, platform provider or an advice licensee. This would result in effectively 3 tiers of help accessed by consumers:

1. Factual and promotional information about a financial product/class of financial products (no longer regulated as advice);
2. Personal advice – simple advice scenarios from providers not requiring relevant provider status;
3. Personal advice – complex advice that is subject to the full relevant provider requirements (education standards, adviser qualification and code of ethics);

Those operating under (1) above should not be able to use the term “advice” at all. Individuals and entities providing advice that are not subject to relevant provider status (2) above must be given a title that sufficiently differentiates them from a “financial planner”, “private wealth adviser” or “financial adviser” to ensure consumers understand the difference in the standards they are held to (in a similar way to how conveyancers are not able to represent themselves as solicitors in the legal profession).

Whilst good advice can be achieved under simple limited advice scenarios, more complex consumer needs require investigation of a number of external products beyond the superannuation/product provider's own. The cross-subsidised nature of the advice under a) being linked to a product or administration fee is more likely to result in inherently conflicted advice.

Whilst the proposed requirements to provide good advice, as well as duties that apply to superannuation trustees, would mitigate some of that risk, these duties do not equally apply to digital advice providers and other non-relevant providers. As a result, relevant provider requirements should apply where the consumer's advice needs are more complex.

The determinant that to be classified as a relevant provider turns on a specific fee being paid for the advice, we believe requires further assessment.

We have concerns that the requirement to be a relevant provider should be triggered only with reference to how the provider receives its remuneration. We understand and acknowledge that a professional who has the right to charge a fee has higher obligation and duty of care. In practice it is the scope and complexity of the advice based on consumer need that drives who and how personal advice should be provided.

Acknowledging the challenge of recommending changes to the law based on complexity, we submit that the law can specify the types of advice that can be provided by licensees who are not relevant providers and specify the points when the advice must be referred to a relevant provider. This has precedent in the way that S.99F of the Superannuation Industry Supervision Act was applied to define the types of financial advice that should not be collectively charged. Please refer to our comments in question 7 for more detail.

Alternatively, the review could consider that the requirement to be a relevant provider triggers when ongoing advice fees / an ongoing advice relationship has been established, or for advice that is provided on amounts of wealth above a specified amount (allowing non relevant providers to continue to facilitate greater access to advice for those with smaller amounts of wealth).

This may facilitate the greater access to and provision of once off limited advice for consumers whilst maintaining the professional standards for ongoing advice clients. This would also achieve greater competitive neutrality as it would allow advice licensees to provide the same type of access to the families of their clients as superannuation funds and digital platforms can.

Case study: Provision of simple limited scope advice

Consider the example of a young family in their late 30s with 2 children under 10 and under \$50,000 to invest. The husband works as an engineer at a mining company and the wife as a pharmacist. Whilst they have set aside some money to invest and have some funds in superannuation, cashflow is tight as their mortgage repayments on their home and school fees are significant.

In the short term, they are concerned with volatile markets and they would like to find out more from their superannuation fund about the risk profile of the investment options in their fund as well as learn about insurance coverage and options within their superannuation fund. They are wondering if they should place the \$50,000 in their superannuation now, make a co-contribution and / or pay down their mortgage instead.

The proposals encourage the provision of this kind of advice to the couple as they would not normally be able to afford to access this advice from a financial adviser. No relevant providers

(product providers) are able to collectively charge the couple or offer a subsidised advice fee making advice more affordable.

In the scenario above where the couple's parents are the clients of XYZ Wealth advice, they may be more inclined to seek that advice from XYZ as their parents trust the firm. The proposals do not offer the couple the same ability to access the advice at a lower cost because XYZ can only provide advice under a relevant provider regime. The professional standards code of ethics requirements would mean the couple would be charged significantly more and undergo a more comprehensive process as the advisers need to take into account longer term considerations outside of the limited scope the couple wants.

Enabling equal consumer access to simple limited scope advice through their provider of choice

We support the equality of access for consumers to simpler less complex advice provided at a lower cost regardless of whether the consumer chooses to access the advice through their superannuation fund, digital platform or through and financial advice licensee. This would enable better commercial neutrality and greater access to advice.

The current wording of proposal 4 will limit access to similar simple advice being provided by relevant providers due to the way the code of ethics interacts with the requirement to provide good advice. Standards 3 and 6 make it practically difficult to limit the scope of the advice and provide simple advice at an affordable cost. Differing interpretations made by licensees, ASIC and AFCA have also meant that advisers are very conservative when it comes to limiting the scope of advice.

Financial advisers have been actively disengaging clients who do not have the capacity to pay the required advice fees to remain an advised client under the current policy settings. Many of these disengaged are younger family members and connections of the adviser's clients. Under the proposal, a relevant provider could only provide the advice to these younger members if the advice was not charged for (which is not economically viable) or only if the younger members pay an advice fee (triggering the relevant provider requirements).

Whilst the advice could be provided by more junior advisers / associates in the advice firm, the relevant adviser would have to supervise and sign off on the advice (triggering a higher cost and the overlay of the code requirements, monitoring, education and controls).

Digital advice providers should also need to meet the requirements to be relevant providers

We fully support the initiatives to facilitate the provision of personal advice through digital means. We believe more consumers are turning to digital providers and expect more services to be delivered this way. However, like their traditional counterparts, digital providers should not be exempt from the relevant advice provider requirements where their advice is more complex.

Under today's regulatory environment, digital providers are required to have a Responsible Person (or multiple persons who collectively meet the requirements of a relevant advice provider) oversee the development and outcomes of their advice. These persons today must be accountable for ensuring the advice provided from the algorithms are in the client's best interests and this could also be applied under the proposals. We believe that both the directors of the licensee and responsible managers continue to demonstrate competency and accountability, signing off the advice provided by digital platforms. This chain of accountability would be a valuable safeguard to retain for consumer protection.

Greater clarity is needed on “good advice”

With respect to Proposal 3, we support in principle the “good advice” obligation as it enables the profession of financial advice to exercise more professional judgement and for Licensees, together with professional bodies, to develop professional standards and more appropriate solutions that manage the risk given the nature of the advice they provide.

Greater clarity is required on what all providers must do to meet the standard. From a superannuation trustee and product provider who provides limited scope and general / intra fund advice today, the good advice standard will require a raising of the bar around the depth of fact finding and investigation into client circumstances from what they do today. Additional licensee monitoring, supervision and controls will be required by non-relevant providers to meet the good advice requirement.

We support the removal of the safe harbour steps from the law in order to ensure the focus should be on good client outcomes. Under the current law, licensees have trained advisers to also follow robust advice processes and document their file notes and we are confident this will continue, reflecting the role of a professional. We also note that despite the Safe Harbour steps being removed/simplified in the Corps Act, the process today stands as commonly accepted benchmarks for assessing if due professional care and skill was undertaken in providing advice.

Duplication and inconsistencies remain between “good advice” the code of ethics at law.

We note that after the review is completed the Government has committed to reviewing the code of ethics. In our previous submission at recommendation 6.5 on page 27, we recommend that the professional code of conduct be removed from legislation and be placed into ASIC regulatory guidance in line with other professions. As investment markets, the advice landscape and technology continues to change and evolve at a rapid pace, this would enable more speed and adaptability to update standards appropriately rather than going through a less agile change process at Law.

Transition timeframes

In our previous submission section 1, page 9, we noted that the industry has been subject to 20 years of successive reform and the magnitude of these changes have been very high. Many participants are weary of change. Smaller licensees who do not have the resources, capacity nor capability to absorb these changes would be placed under significant strain. We would suggest a staged approach to implementation over a period of up to 2 years.

Some of the more “quick wins” such as proposals 7 to 11 could be opted in to early providing much needed relief to the growing costs of advice, a better consumer experience and help adviser wellbeing.

The transition from best interest and replacing with good advice is complicated, will cost significant time and resources to adapt to, and should be done carefully to minimise confusion and pitfalls. The absence of the safe harbour steps will increase the subjectivity of assessments by regulators and AFCA in the short to medium term and raise legal and regulatory uncertainty.

As part of managing that transition, we submit that it would be prudent to establish Regulatory Guidance notes that support the advice process steps that would more likely result in good advice to ensure a broad-based understanding and acceptance of what would support good advice outcomes. We acknowledge that these types of requests can in fact lead to constraints or over interpretation, but on balance given the context of the advice sector today, we believe some guidance will be beneficial.

This will take some time to develop as other similar professions in accounting and legal have had the benefit of many years to develop these standards in practice.

Other issues that remain to be addressed in the proposals

We note that the Review will release more proposals and we look forward to further consultation on issues such as:

- the recommendation to make up front and ongoing advice costs tax deductible or tax rebate (recommendation 1.4 of our prior submission);
- measures to provide Government subsidies to advice for segments that are not easily able to access advice (recommendation 1.5 of our prior submission);
- measures to address the decline in adviser numbers (recommendations 2.1 to 2.3) in our prior submission;
- measures to review the sustainability of personal risk advice given the significant upfront costs incurred in risk advice and reviewing the current caps on commissions. (recommendations 5.1 and 5.2 of our prior submission).
- The removing the code of conduct from Law, removing inconsistencies in Standards 3 and 6 and making it a binding guidance note as in other professions (Recommendation 6.5 of our prior submission to the Review). This would further need to align with the duty to give “good advice”;
- The ability for financial advisers to access data in standard formats from government portals such as MyGov, the Australian Taxation Office (recommendation 6.4 in our prior submission); and
- We note that many of the professional standards (Standard 3 and Standard 6) must also be aligned to the proposed “good advice” requirements standard as they were derived from the current Best Interest Duty obligations.

Our detailed response to the proposals are contained in the attachment below.

We believe the proposals, accounting for our recommendations above, will significantly increase access to quality advice for consumers and provide significant streamlining of regulation, administration and reduction in cost. These are strongly positive steps and whilst the work ahead is substantial, the benefits are substantial for all consumers.

Please do not hesitate to contact us below we can assist the Review further.

Yours sincerely

Matthew Lawler

Matthew Lawler
Managing Director, Advice
AMP Group Limited

Matthew Brown

Matthew Brown
Executive General Manager, Advice
Australian Unity

Nathan Jacobsen

Nathan Jacobsen
Managing Director
Diverger Limited

Matthew Fogarty

Matthew Fogarty
Chief Executive Officer
Fitzpatricks Private Wealth

Neil Younger

Neil Younger
Managing Director & CEO
Fortnum Private Wealth Limited

Darren Steinhardt

Darren Steinhardt
Managing Director
Infocus Wealth Management Limited

Ross Barnwell

Ross Barnwell
Chief Operational Officer
Otivo

Keith Cullen

Keith Cullen
Managing Director
WT Financial Group Limited



Australian Government
The Treasury

TSY/AU

Quality of Advice Review

Template for response

August 2022



Consultation process

Request for feedback and comments

Interested parties are invited to provide feedback on the proposals for reform listed in the Quality of Advice Review Proposals Paper using the template in [Appendix 1](#). Consultation will close on Friday 23 September 2022.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses in a Word or RTF format via email. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All of the information (including the author's name and address) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

View our [submission guidelines](#) for further information.

Closing date for submissions: 23 September 2022

Email	AdviceReview@TREASURY.GOV.AU
Mail	Secretariat, Quality of Advice Review Financial System Division The Treasury Langton Crescent PARKES ACT 2600
Enquiries	Enquiries can be initially directed to AdviceReview@TREASURY.GOV.AU

Appendix 1: Consultation template

Name/Organisation:

Mr Neil Younger
Managing Director & CEO
Fortnum Private Wealth Limited
Email: nyounger@fortnum.com.au

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?

We agree that advisers and product issuers should be able to provide personal advice to their customers without having all the requirements that currently apply to the provision of personal advice.

As a package, the proposals will provide significantly more access to advice for many consumers that would not ordinarily be able to afford advice, a much-needed simplification and streamlining of the requirements that have made advice unaffordable for many.

There are some amendments we would submit for consideration in our comments below.

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?

2a) We support the widening of the definition of personal advice. Our experience has been that consumers do not understand the difference between general and personal advice and often just seek help. As a result, ensuring clarity that activities that involve recommending a financial product (or class of financial product) would increase consumer protection to ensure such activities are subject to licensing and a requirement to provide "good advice". On the whole it would reduce the uncertainty by effectively limiting the types of activities outside of personal advice to a very narrow range of non-advice interactions.

The proposed definition requires two elements in order to be personal advice:

- i) the provider makes a recommendation or opinion about a financial product (or class of financial product); and
- ii) the provider has or holds information about the client's objectives, needs or any aspect of the financial situation.

Assuming that the provider can be either an individual adviser or a body corporate Australian Financial Services Licensee ("AFSL"), it is highly likely that a provider would have item (ii) at least somewhere within their organisation.

Some clarity would be needed around item (i) for general marketing and promotional purposes (even seminars) that they could still conduct educational, marketing and promotional activities about the benefits of classes of product / advice strategies that use multiple product classes without it deemed by conduct or inference that the seminar is making an explicit recommendation. Educational seminars are a good way of providing mass access to education however content may be curtailed significantly if the inference of a recommendation can be made.

2b) The increase in the definition of personal advice will likely encourage more personal advice to consumers particularly where the provider is not subject to the requirement to be a relevant provider. We believe superannuation funds, digital advice providers and many product / platform providers will be the

main parties encouraged to increase the scope of the advice interactions and the range of call centres and channels increasing access to advice to existing and prospective customers.

For a smaller proportion of existing providers who today operate businesses that operate in the general advice space for a commission or fee, it will trigger a decision point to either uplift their capabilities to meet the good advice requirements or exit and just restrict their activities to provide factual information.

- 2c) Generally yes. However, it should be noted that for providers who already operate under a relevant provider status, the change in definition alone will not be a significant impact.

The other proposals such as the removal of prescriptive advice documentation and fee disclosure streamlining, the clarity provided to superannuation fund trustees and the ability to provide advice without triggering relevant provider status will encourage the re-entry of a number of institutions back into advice or the re-establishment of direct wealth call centres and growth in digital advice tools. The proposals may also result in some superannuation funds and life insurers growing their own tied relevant provider channels.

Access to limited scope simple advice for licensees who are relevant providers remains a challenge to facilitate due to the interaction of the code of ethics and higher cost structure that limits our ability to provide the same access to low-cost advice in the same way as non-relevant providers can (see comment 5 below)

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?

- 3a) We believe general consumer protections are good safeguards for consumers.

We agree that after the widening of the definition of personal advice, the residual activities under ‘general advice’ will be significantly limited to broader education, advertising (that is not a personal recommendation) and factual information. We would suggest that the new unregulated “general advice” cease to be referred to as “advice” at all to avoid consumer confusion.

Whilst not recommending that those operating under the remaining activities outside of personal advice be licensed, it should be noted that the Australian Financial Services Licensing regime has provided some degree of consumer protection in the past to ensure that any person seeking to promote financial products operating under general advice are subject to appropriate licensing, education and supervision.

Once under the licensing regime, ASIC appears to have a more direct way to monitor and regulate these players, limit licensing activities and ensure they have suitable staff, adequate qualifications, monitoring, supervision and capabilities. With these no longer in place, there is a marginal risk that some unqualified, unscrupulous “fin influencers” could continue to push the boundaries in this space (without making an explicit recommendation) and without the same risk management measures required if they were licensed. The inherent nature of social media channels incentivises influencers to drive higher engagement and sponsorships through content to “monetise” their channel. The more sensational, the more engagement. Whilst subject to the general consumer protections at law, the supervision and vetting that a licensee may have provided in the past is no longer there.

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?

4a) For relevant providers today who operate under a Best Interest Duty and Professional Standards and Code of ethics, very little would change regarding the outcome of the advice under a “good advice” regime however in combination with the removal of a prescriptive “safe harbour”, steps there would be greater focus placed on spending more time on the heart of the advice itself and ensuring clients better understand the advice being provided through more clear and concise discussions.

For superannuation trustees, platform and product manufacturers, digital advice providers and businesses operating in general advice / limited advice only, the good advice requirement will represent an uplift. Greater clarity will be needed to ensure consistency of understanding across participants as to what must be able to be demonstrated in minimum education, training, scripting, escalation points and supervision to provide advice that is good advice. The cost and investment required for them to upskill their teams would be significant, but worthwhile to engage more consumers.

4b) It is hard to estimate the exact time and cost saving however a recent study by KPMG referred to in the FSC white paper on advice may provide a guide. We feel that the time and cost saving will enable advisers and their support staff to reinvest significantly more time being proactive to servicing existing and new clients.

We support the removal of the safe harbour steps from the law in order to ensure the focus should be on good client outcomes. We believe this will result in significant savings to the time taken and cost to produce advice as unnecessary disclosures, and administration to prepare all the proof points required under a safe harbour process were onerous.

However the move from best interests to good advice will be complex and the magnitude of change not underestimated. Advisers will still want and need some way to demonstrate a robust and defensible advice file and due professional care and skill in providing the advice. Under the current law, licensees have trained advisers to also follow robust advice processes which, in our experience are more likely to result in good advice, good record keeping and stand as commonly accepted benchmarks for assessing if due professional care and skill was undertaken in providing advice. The absence of the safe harbour steps will increase the subjectivity of assessments by regulators and AFCA in the short to medium term and raise legal and regulatory uncertainty.

As part of managing that transition, we submit that it would be prudent to establish Regulatory Guidance notes that support the advice process steps that would more likely result in good advice. to ensure broad based understanding and acceptance of what would support good advice outcomes. This will take some time to develop as other similar professions in accounting and legal have had the benefit of many years to develop these standards in practice.

An example of how this has worked well has been in ASIC's approach to regulating Mortgage Broking in ASIC RG 273 and providing clarity on the general principles that ASIC would look for in demonstrating the elements of an advice process that would amount to a safe harbour without enslaving the mortgage broking industry to prescriptive steps.

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)?**

5a) At face value the proposals should facilitate both a reduction in cost and a simplification of the good advice requirements facilitating more scaled advice. For relevant providers the interaction of the good advice obligation with the code of ethics standard 6 at law requires advisers to "actively consider the

client’s broader long term and likely interests” which has caused a conflict with the provision of scaled limited scope advice. This still remains to be resolved. As a result of differing interpretations taken by licensees, actions taken by ASIC and past decisions made by AFCA, advisers have had to approach scaled advice with a great degree of caution. Until the inconsistencies in the code are amended, many licensees and advisers are not providing much in the way of limited advice to consumers. This continues to limit consumer access to this type of advice

For providers not subject to the relevant provider requirements, the introduction of a good advice obligation would facilitate institutions, superannuation funds and product manufacturers to increase provision of scaled advice (although more guidance on the uplift required for them to understand the addition lifting in education standards, monitoring, supervision, advice process and types of advice is required, above what they do today).

- 5b) We believe the proposal will facilitate the provision of personal advice through digital means. Consumer preferences increasingly have moved towards interacting via digital and an expectation that the consumer can deal with a provider through multiple channels seamlessly. Relevant providers will be given more freedom to present more clear, concise and meaningful advice presentations through digital means without many pages of additional complex disclosures that the client does not understand. A provider who is delivering digital advice is well placed to deliver scaled advice and as long as there are clearer parameters on what meets the standard for good advice, they can develop their algorithms to meet the new standard. However we do believe that digital providers should be subject to supervision and signoff of algorithms as a relevant providers where they advise on more complex needs. See our comments at 7 below.

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

a) limited advice?

b) digital advice?

- 6a) As mentioned above in 5a), the inconsistencies in the code are amended, many licensees and advisers are not providing much in the way of limited advice to consumers. It should be made clearer in Standard 6 that a client can agree and limit the scope of the advice and proceed to scaled advice without conflicting with the code.

- 6b) More regulatory guidance will be needed for digital advice providers to understand the changes they made need to make to algorithms to meet “good advice” and the types of circumstances where they have to refer advice to a relevant provider or operate as a relevant provider themselves.

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?**

7a) We support the proposal of having types of personal advice provided that does not require the application of the professional standards and the requirements of the relevant provider status. For relevant providers, little would change in respect of the quality of advice.

We understand the stated logic for tying the classification to fee remuneration, in particular in terms of ease of drafting relevant legal provisions. We have concerns that the requirement to be a relevant provider should be triggered only with reference to how the provider receives its remuneration. We understand and acknowledge that a professional who has the right to charge an ongoing fee has higher obligation and duty of care, in practice it is the scope and complexity of the actual advice that drives who and how personal advice should be provided.

Page 20 of the proposals paper notes “Where advice is simple and follows guidelines or rules provided by the employer, the professional standards that apply to a relevant provider are I think unnecessary and act as an impediment to the provision of personal advice. Having said that, the licensee will continue to have an obligation to ensure its staff are competent, appropriately trained and supervised”.

Rather than link the requirement to be a relevant provider based on the presence of advice fees, or legislate for “complexity”, we suggest the proposals can specify the types of advice that can be provided by licensees who are not relevant providers and specify the points when the advice must be referred to a relevant provider. This has precedent in the way that S.99F of the Superannuation Industry Supervision Act was applied to define the types of financial advice that should not be collectively charged. We would suggest simpler advice types that lend themselves to non-relevant provider advice include:

- Budgeting
- Debt reduction;
- Regular savings plans;
- Contributions into superannuation / Co-contributions;
- Changing model portfolio / per se, investment options within the platform or superannuation fund;
- Comparisons of financial product options and features within the suite of products issued by the provider;

- Insurance needs and options within superannuation;
- Making a binding death nomination;
- Withdrawals and sell downs; and
- Switching from superannuation to pensions from holdings in your existing product

We believe the advice scenarios above are broad enough to provide wide ranging access to the majority of simple advice and client requests whilst ensuring more complex advice needs go to a relevant provider with sufficient education, skills and oversight.

Certain types of advice can only be referred to a relevant provider as these require a significant uplift in the requirement to diagnose and collect more information about the client and consider multiple goals and trade-offs in order to reach the standards of good advice. This would include strategic goals based advice, retirement planning, transition to retirement, consolidation of financial products / platforms, insurance outside of superannuation, specialist advice needs like SMSF advice, transition to aged care, intergenerational wealth transfer and many others. As these types of considerations naturally also involve comparisons and analysis of options outside of the superannuation fund or financial product that is paying for cross-subsidised advice, there is an increase in both training, qualifications and experience required as well as the principles behind the code of ethics that should apply to this type of advice. Whilst the proposals leave this decision to the risk management of a licensee, as licensees ourselves, we would recommend that the proposals be more specific around types of advice that must be referred.

Alternatively, triggering the requirement to be a relevant provider when ongoing advice fees are received or for when advising clients with wealth above a certain level (for example >\$100,000) may be a way to better facilitate access for consumers to once-off limited scope advice to be provided by junior staff members who are not advisers in an advice practice.

This would allow more competitive neutrality between relevant advice providers and other providers to provide access to limited advice to their client base.

This would result in effectively 3 tiers of help accessed by consumers:

1. Factual and promotional information about a financial product / class of financial products (no longer regulated as advice);
2. Personal advice – simple advice scenarios from providers not requiring relevant provider status;
3. Personal advice – complex advice that is subject to the full relevant provider requirements (education standards, adviser qualification and code of ethics);

Those operating under (1) above should not be able to use the term “advice” at all. Individuals and entities providing advice that are not subject to relevant provider status (2) above must be given a title that sufficiently differentiates them from a “financial planner”, “private wealth adviser” or “financial adviser” to ensure consumers understand the difference in the standards they are held to (in a similar way to how conveyancers are not able to represent themselves as solicitors in the legal profession).

Whilst good advice can be achieved under simple limited advice scenarios, the more complex needs require investigation of a number of external products with the superannuation / product provider’s own. The cross subsidised nature of the advice under a) being linked to a product or administration fee is more likely to result in inherently conflicted advice for more complex scenarios. Whilst the proposed requirements to provide good advice as well as duties that apply to superannuation trustees would mitigate some of that risk, these duties do not apply to digital advice providers and other product manufacturers equally.

7b) The proposals will result in significantly increased access to advice and affordability of advice. Providers who are not required to be relevant providers can provide advice at a significantly lower cost than their counterparts operating under the professional standards requirements. The ability to charge collectively or recover the cost of advice through a product / platform or superannuation fund is a significant and attractive opportunity that will encourage these providers to reach many more consumers than today.

However relevant providers who are not part of a vertically integrated group there remain impediments to offering access to the same type of advice for consumers who choose to go to an adviser. Over the past few years, financial advisers have been actively disengaging clients who do not have sufficient capacity to pay advice fees sufficient to fund the service.. Many of these disengaged are younger family members and connections of the adviser’s clients (identical to the ones in superannuation funds today which may seek advice. Under the proposal, a relevant provider could only provide the advice to these younger members if the advice was not charged for (which is not economically viable) or only if the younger members pay an advice fee (triggering the relevant provider requirements).

Whilst the cost of advice has been lowered by the package of proposals and an advice AFSL could allocate more junior advisers / associates to perform the work, a relevant provider would need to ensure the advice provided meets the good advice obligation plus the code of ethics. The overlay of the code requirements, monitoring, education and controls would result in lowering access to simple advice for the clients and family members of families with less wealth.

We support the equality of access for consumers to simpler less complex advice provided at a lower cost regardless of whether the consumer chooses to access the advice through their superannuation fund, digital platform or through an Australian Financial Services Licensee that can offer a choice between a financial adviser or a simple advice under a financial advice coach or associate or similar title.

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?

8a) For providers not required to be relevant providers, we would seek more detail on the parameters of the types of advice that can versus could not be provided versus the types of advice that should only be provided by a relevant provider.

Establishing minimum education requirements and licensee supervision required would assist. If education requirements could be aligned as a subset or “feeder” to the education and professional standards for relevant providers, this could be a good way to address the falling numbers of professional financial advisers and provide a more sustainable career pathway and choices for less experienced entrants into the profession of advice.

We fully support the initiatives to facilitate the provision of personal advice through digital means. However digital providers should not be exempt from the relevant advice provider requirements where their advice is more complex.

Under today’s regulatory environment in ASIC RG 255, digital providers are required to have a Responsible Person (or multiple persons who collectively meet the requirements of competency, qualification and training as a relevant advice provider) oversee the development and outcomes of their advice. These persons today must be accountable for ensuring the advice provided from the algorithms are in the client’s best interests and this could also be applied under the proposals. We believe that as a licensee, ensuring the responsible manager(s) continue to demonstrate competency and accountability, signing off the advice provided by digital platforms would be a valuable safeguard to retain for consumer protection.

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?

9a) Yes

9b) Yes

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?

10a) We do believe these will have significant positive effects freeing capacity of existing administration staff and advisers to reinvest the capacity released on to proactive client service rather than spending their hours after work managing administration of forms between product providers, client scheduling and managing fee consents.

10b) We think the impact is positive overall as consumers were confused by these multiple consents each with a different timeframe and fee number due to system limitations and different cut-off dates.

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?

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

- 11a) We strongly support the proposal. A significant amount of time and resource is dedicated to the production of the Statement of Advice (“SOA”) as well as time spent checking it for all the required disclosures and disclaimers /warnings that the licensee requires. As noted in our previous submission page 23, the direct costs of producing an SOA can vary from \$400 for simple plans up to \$1000 for a complex plan on a wholesale basis. The time spent by advisers and compliance staff checking these advice documents could be a substantial driver of the cost of an advice interaction. In the absence of advice documentation requirements, many advisers may choose to spend time preparing a more client friendly financial plan that will replace an SOA in order to demonstrate the value of the advice fees and to document the key actions / commitments agreed.
- 11b) As above we have noted that consumers do not find Statements of Advice readable, and many are confused by the multiple layers of disclosure table as and warnings they read. Advisers spend significant time explaining the technical jargon to clients so the key points are understood. We think the proposals are a highly positive outcome as the advisers will be able to exercise their professional judgment and spend more time in reality educating the client and advising them rather than documenting.

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?**

- 12a) This is not currently a major cost or burden for advisers.
- 12b) No significant difference. Consumers rely more on the adviser’s explanation of the arrangements than read what is provided to them today.

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?

Nothing to add

Transition and enforcement

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

In our previous submission section 1, page 9, we noted that the industry has been subject to 20 years of successive reform and the magnitude of these changes have been very high. Many participants are weary of change. Smaller licensees who do not have the resources, capacity nor capability to absorb these changes would be placed under significant strain. Some of these changes are significant. We would suggest a staged approach to implementation over a period of up to 2 years.

Some of the more “quick wins” such as proposals 7 to 11 could be opted in to early providing much needed relief to the growing costs of advice, a better consumer experience and help adviser wellbeing. ASIC Class order relief and no action letters may be a good way to enact quick wins.

The more complex changes such as widening personal advice and the moving to an outcomes based “good advice” test require substantial training and collaboration between practitioners, consumer bodies, professional bodies, licensees, regulators and complaints bodies to develop common standards of practice and significant guidance notes.

The magnitude of this part of the change is significant and complex. This would take time to implement and needs more of a regulatory and consumer impact assessment to ensure there is a common understanding and minimise subjectivity of assessments that we have experienced from regulators and AFCA in the past. These changes need to be impact assessed and made at a more measured pace to enable better adoption and reduce regulatory uncertainty or unintentional errors.

General

15. Do you have any other comments or feedback?

We support the package of proposals which we believe are both an innovative and pragmatic solutions to the complex issues faced in providing more Australians access to affordable quality advice. Bold steps are required to ensure better outcomes and access for consumers, restoring public confidence in advice and supporting sustainability of all participants.

The proposals are a breath of fresh air. The consultative approach by the Review has been positively received by the industry as a whole. Now more than ever, there is a genuine willingness for group to work together for the common good, allow us to leverage this by engaging and working with regulators to solve the problems and issues. The proposals have the potential to reduce significant cost and burden to the provision of financial advice and will allow more participants to provide advice to those who need it.

Other issues that remain to be addressed in the proposals

We note that the Review will release more proposals and we look forward to further consultation on issues such as:

- the recommendation to make up front and ongoing advice costs tax deductible or tax rebate (recommendation 1.4 of our prior submission);
- measures to provide Government subsidies to advice for segments that are not easily able to access advice (recommendation 1.5 of our prior submission);
- measures to address the decline in adviser numbers (recommendations 2.1 to 2.3) in our prior submission;
- measures to review the sustainability of personal risk advice given the significant upfront costs incurred in risk advice and reviewing the current caps on commissions. (recommendations 5.1 and 5.2 of our prior submission).
- The removing the code of conduct from Law, removing inconsistencies in Standards 3 and 6 and making it a binding guidance note as in other professions (Recommendation 6.5 of our prior submission to the Review). This would further need to align with the duty to give “good advice”;

- The ability for financial advisers to access data in standard formats from government portals such as MyGov, the Australian Taxation Office (recommendation 6.4 in our prior submission); and
- We note that many of the professional standards (Standard 3 and Standard 6) must also be aligned to the proposed “good advice” requirements standard as they were derived from the current Best Interest Duty obligations.