

23 September 2022

Ms Michelle Levy
Independent Reviewer
Quality of Advice Review Secretariat
Financial System Division
The Treasury

By Email: AdviceReview@treasury.gov.au

Dear Ms Levy

**Quality of Advice Review
Response to Consultation Paper – Proposals for Reform**

Fiducian Financial Services Pty Limited (ABN 46 094 765 134/ AFS Licence 231103) (**Fiducian**) is a subsidiary of Fiducian Group (ASX code: FID) and provides financial planning services to approximately 15,000 clients across Australia.

Fiducian has taken an interest in the Quality Advice Review and lodged a response to the Issues Paper on 3 June 2022. We now provide our response to the Consultation Paper – Proposals for Reform released for comment on 29 August 2022.

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 do not agree entirely with the proposition above. We agree that improvements are needed that assist with the provision of financial advice in a cost effective way.

Personal advice should be just that, personal and requires an understanding of the client and the potential longer term impact on the client's position. It is not a product sale and enabling participants in the market to sell without obligations, whilst imposing higher obligations to other participants, is unjust and will not provide benefits to the consumer but increase the risk of incomplete or inappropriate advice.

The starting point that advisers have 'customers' is also an incorrect assessment of the financial planning relationship. An adviser has a 'client' and not a 'customer'. Financial planning should not be seen as a commodity but as a relationship of trust and reliance by the client on the adviser which is seeking to stand amongst other professions, which have similar relationships with clients. As a consequence, we will refer to individuals who receive advice as a client within our responses 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?**

We partially agree with the proposal for the recommended definition of personal advice, but also the definition needs to include the circumstances that personal advice can include advice without a product recommendation. We believe that when formulating advice, an adviser must first develop an appropriate strategy for the personal circumstances of the client, and once that is considered, a suitable product can be identified to suit the client's financial/investment needs.

We further reiterate our position, as detailed in our initial responses to the Issues Paper on 3 June 2022 (**June 2022 Response**), that personal advice must be only be provided by individuals who are appropriately qualified and registered on the Financial Advisers Register. Any dilution of this requirement will diminish the gains the industry has made in the past few years to establish itself as a profession.

The provision of personal advice also needs to be considered against the risk to clients. We do not agree that simply making advice more available is the answer. The industry needs to ensure that advice is provided by a professional, with the client's outcomes in mind, that is at a reasonable cost. We do not believe that making it easier for Financial Institutions or Superannuation Funds to provide personal advice is the correct direction, as borne out by the Royal Commission.

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?

We agree that the removal of the definition of general advice will be positive outcome and the existing laws will enable a client or Regulator sufficient recourse against the service provider.

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?

If the financial planning industry is seeking to become a profession, the client-adviser relationship will be one of a fiduciary nature. The proposed removal of the obligations under the *Corporations Act 2001 (Cth)* will not diminish an adviser's obligations under the general law where a fiduciary relationship occurs, which requires the adviser to act in the best interests of the client. We therefore believe that changing the requirement to the provision of 'good advice' will not change the legal requirements on the profession.

The best interest obligations provides an objective approach in guiding the financial planning industry to provide advice to clients that is in their best interests. There is insufficient information at this time to understand what is meant by the phrase 'good advice' as it connotes a subjective assessment of advice. The same set of client circumstances may elicit different responses from any number of advisers and all may technically be considered as 'good advice', and therefore, any definition or explanation of 'good advice' will need to acknowledge that fact.

It may be that the unintended consequence of removing the best interest obligations is that it may embolden advisers to ignore such considerations, even though they are still relevant under the fiduciary relationship that will continue to exist between an adviser and their client. We do not believe that there would be any impact to the time or cost required to provide advice to clients arising from a change from the best interest obligations to the 'good advice' model as an adviser will still need to continue to meet with the client, maintain appropriate documentation and communicate to the client

their advice. This all takes time and resources which have a cost. In our view, advice that is in the client's best interest is surely good advice.

However, any change to a new model which is yet to be fleshed out, will require an adjustment to business models, additional training and potential changes to checklists, documentation, FSG etc and these all create uncertainty and additional cost. We do not believe the benefit of changing from client best interest to good advice outweighs this uncertainty or cost. The consumer will see no significant difference but potentially pay more for advice. The review should instead focus on reducing the current onerous compliance obligations to "prove" best interest.

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)?

We do not believe that it will make it easier to provide limited advice to clients or provide advice by using technological solutions as the need to consider the client's circumstances will still need to be undertaken by the adviser. The failure to ask the correct questions and alert the client to issues that need to be considered have the potential to breach the fiduciary relationship and may be negligent, particularly if it causes detriment to the client, especially if a client is only focussed on one or two issues to be dealt with in a limited advice situation.

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

(a) limited advice?

(b) digital advice?

Limited advice should specifically consider only that aspect of advice which is being sought. However, an adviser should also document the various other matters that relate to the client, and that could impact on their circumstances, should be considered by the client even though advice has not been sought on this occasion. A broad description of these matters should be sufficient and it is then for the client to decide if they want holistic advice.

Digital advice as it currently stands simply seeks answers to a few questions which then determine whether an investor should invest in a defensive or growth investment. Advice goes well beyond a one off investment as we have explained above. Digital advice providers in our view only provide information for investors to make up their own minds on where to invest money. This information is generally available in Product Disclosure Statements and on websites which don't require questions to be answered. Such disclosure should be provided by those who offer investment in products through digital means.

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?

We disagree with the proposed changes, the list of criteria to determine who is a relevant provider and who must comply with the professional standards for the purposes of providing personal advice. Any individual or entity that wishes to provide personal advice must be required to satisfy all of the professional standards prior to the provision of personal advice. There should be no exceptions to this rule.

If the proposed changes are implemented as suggested, the quality of personal advice would vary between service providers and will generate greater uncertainty with clients who will need to differentiate between personal advice providers who comply with the professional standards and those who do not.

It is uncertain whether the proposed changes will make any impact on the affordability and accessibility of financial advice.

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?

We again confirm that the provision of personal advice should only be provided by a relevant provider, where that person is required to comply with the professional standards.

We agree though that the licensing obligations would be sufficient to ensure the quality of personal advice provided to clients on the proviso that there are a minimum set of standards that must be adhered to by an adviser, which in effect are the professional standards. We believe that to unwind the professional standards for those providing personal advice would detract from the hard work completed by those individuals within the industry that have incurred significant costs in completing the necessary qualifications and exams to maintain their ability to provide personal advice.

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?

We believe that the proposals are flawed and will diminish the role of advisers in the community by permitting the provision of personal advice by individuals that do not satisfy the professional standards. We again reiterate that personal advice must only be provided by those individuals who satisfy the professional standards.

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?

We believe that the proposal to have a single consent form will be a positive regulatory change. We would also suggest that such a form is standardised. We have established product providers reject consent forms on the basis that it was not on the product provider's latest consent form. A standardised form would avoid such an absurd result. Indeed, for a client to provide a simple declaration with an address and a date, stating that they have an arrangement for ongoing and continuing advice from an adviser and that fees for the prior and current period should be paid, should be sufficient. This declaration can be provided to any platform or product provider as required.

The change to remove the requirement to provide a Fee Disclosure Statement (**FDS**) is positive as it can take many hours to collate and verify the contents of a FDS, and if the content, especially fees charged, are marginally incorrect, the FDS is in breach and a licensee then needs to consider if a breach report is required to be provided to ASIC.

We believe that the changes will not negatively impact clients as the client is still required to sign the annual consent for the deduction of fees and ultimately if an adviser has not provided the requisite services to the client, or if the client wishes to terminate a relationship, the client can refuse to sign the consent form.

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?

We do not believe that the removal of the requirement of a Statement of Advice (**SoA**) will provide the cost savings that are envisaged by the proposal. The adviser will still need to collect all necessary information about the client, assess their personal circumstances and then communicate that to the client, which for a professional industry, should include the provision of an advice document in some form. We believe that the content of a SoA can be improved such that it focusses on the subject matters raised by the client and the consequences arising from the recommendations proposed by the adviser. It should be simplified and be relevant to the client's situation and not littered with additional information designed to protect from potential litigation. The SoA should be subject to a simple common sense test, does this meet the client's goals and not be full of disclosures. Too much time is dedicated to ensuring compliance with rules and regulations and providing more and more documentation, rather than simply looking at "the advice" and ensuring it is suitable for this particular client.

The removal of the SoA will negatively impact clients for the primary reason of not receiving a written advice from the adviser. When implementing an investment strategy, it is vitally important that a client can consider, in their own time, the advice being recommended. The provision of advice solely through verbal means may cause unwarranted pressure on a client to immediately implement an adviser's recommendation. It may also cause greater instances of disputes between the adviser and client as the parties would have a different understanding of the advice that was provided if it was not documented at the time.

A suitable framework that assists planners to comply with both advice and documentary requirements will alleviate the current fear of being penalised for minor documentary weaknesses, even if the advice is appropriate, and this is resulting in excessive paperwork and forcing advisers to go through page after page of a SoA to confirm that a client has understood the entire document, which is an unnecessary waste of time at significant cost for both the adviser and client. Should a dispute arise, AFCA should be required to use a common sense and neutral approach to both parties rather than simply serve as a body to compensate the client. Clients should be required to pay their share of AFCA costs in circumstances where their claim is frivolous. In our discussions with insurance brokers, we understand that the excess for a claim is going higher and higher because the insurance industry believes that a claim going to AFCA will, with high certainty, result in them paying compensation. This is inadvertently making professional indemnity insurance meaningless because the adviser is having to pay out almost all claims even if they are frivolous because the excess is between \$50,000 to \$100,000 and claims are predominantly lower than this amount.

As noted earlier, the safe harbour steps are a good guide to ensuring that matters of relevance to clients have been considered before advice is provided in a SoA. If followed and documented, it is reasonable to expect that the advice provided in a SoA should be in the best interest of the client, which therefore implies good advice. Without a proper framework, it cannot be proven that relevant matters were considered in the provision of advice. Further, as stated above in the event of a dispute

where there is no proper documentary evidence, the adviser will have no defence as to whether the advice is good or incorrect. Apart from a minor modification, we believe the safe harbour steps should be retained. The modification would be to update the research requirement to reflect what occurs in practice, where the adviser would only need to confirm that the adviser has considered the research that has been undertaken by either a third party or their dealer group (via their Approved Product List) on the investment products that are to be considered in the advice to the client.

In our view, 'content', that has not been documented and understood, cannot be proven. However 'conduct', that the various safe harbour steps have been followed, can be proven for the defence of an adviser.

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?

We agree with the proposal but do not believe it reduces any regulatory burden as the proposal does not amend the need to provide a Financial Services Guide directly or to refer the client to the adviser's/licensee's website.

The adviser's clients will not be impacted as there is no change to the requirement to provide a Financial Services Guide to a client.

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?

We agree with the proposal and do not believe that there will be any impact to the development of financial products or target market determinations.

Transition And Enforcement

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

We agree with the proposal that there be sufficient time (of at least 12 months) to implement the reforms that may arise from this review and that ASIC apply a facilitative approach to all compliance matters. This should extend to all matters, whereby the regulator should take on a more consultative role as opposed to strict enforcement. This is one of the reasons AFSL holders impose excessive requirements on their representatives.

General

15. Do you have any other comments or feedback?

We believe that:

- (a) the regulatory costs of operating a financial planning practice can be reduced by streamlining various aspects of the advice process while preserving the standards applicable to a 'profession' by focussing on the needs of the client.

- (b) personal advice must only be provided by relevant providers who comply with the professional standards, this includes any opinion or information intended to influence a client;
- (c) there should only be the provision of personal advice, with all other assistance being the provision of information or guidance to the client. The provision of personal advice should be distinguishable as a professional and skilful act. The use of the word “advice” and “personal advice” should be restricted. We set out below, for consideration, some examples of how these terms should be re-defined within the financial planning context to avoid future misunderstandings by clients.
 - (i) “Information”: to provide information on basic requests such as, what is superannuation, how does a self-managed super fund work, how one can make an investment outside of super, why it is important to save for retirement, how can I borrow and invest.
 - (ii) “Guidance”: to provide information on specific subject matter such as Transition to retirement; How do shares perform and do they carry risk; What is an annuity; How does margin lending work and what do I need to be concerned about; who can give me financial advice and what can I expect; How does an account based pension work, what is a Centrelink benefit etc..
 - (iii) “Personal Advice”: to educate and provide advice to a client on matters that can impact on their finances and lifestyles for the rest of their lives and include investment strategies, estate planning and tax saving followed by monitoring and alteration to adjust to their changing circumstances. The client should expect to pay for such advice.

Where a person is to provide “Information” or “Guidance” to a client, a suitable warning should be provided to the client explaining that the person is not providing or is not qualified to provide advice, and that the person should seek a professional qualified adviser should they wish to receive personal advice.

- (d) the financial planning industry deal with individuals as clients, and not customers.
- (e) there should be less focus on fees when proposing investment products but rather consider the overall outcomes to the client’s position over the long term. Products that currently offer lower fees now, may end up delivering significantly poorer returns over the long term. It is more important to focus on features, risk and longer term returns of investment products which are more appropriate for the client to consider than to get distracted by fees being used as a selling proposition.

Please call me on +61 2 8298 4650 or email me at paulgubecka@fiducian.com.au should you wish to discuss any of the matters raised in our submission above.

Yours faithfully



Paul Gubecka
General Counsel & Company Secretary