I am a financial adviser with 14 years experience. I have ongoing advice relationships with my clients, and provide holistic/comprehensive advice and service. I work within a large licensee as an employed adviser.

1. **What should be regulated:**

Proposals 1 and 2

- I agree that the financial services regime should regulate 'personal advice' and the definition of 'general advice' be removed. This will facilitate more personal advice for consumers.
- I agree that the 'general advice' term is unhelpful. Diagram 1 on page 14, differentiating between either 'information' or 'personal advice' is very clear for consumers and practitioners.
- 'Personal Advice' should be able to be prepared in draft form with a warning provided to consumers accordingly, that the advice is not yet final.
- However, it has been noted that consumers are confused by the term general advice (Proposals Paper, page 12). Accordingly, I do not believe that removing the *explicit* 'general advice' term from legislation, partly due to consumers lack of understanding of the term, is made adequately clear by ***only*** having the term 'personal advice' and then having two *implicit* classes of advice depending on the person or entity providing the advice and whether or not there is a fee directly charged for the advice.
    - This is less clear for consumers. It has been contended that 'personal advice' being provided by an employee of a product issuer where no fee is being charged will be "obvious" to the consumer that it is not equivalent to advice being provided by a 'relevant provider'. I do not agree. If consumers did not understand the difference between 'general advice' with an accompanying warning, I do not believe they will understand an implicit difference between 'personal advice' and 'personal advice from a relevant provider'. They may have no experience working with a relevant provider.
    - It potentially introduces double standards (i.e. 'relevant providers' being held to different standards to other providers of 'personal advice' where similar advice is being provided).
- In the interests of maintaining a simplified advice regulation framework, I do not propose that another term or category of advice be introduced. Rather, I propose that some simple limitations be applied to personal advice that is not provided by a relevant provider – see section 2 below.

2. **How should personal advice be regulated**

Proposal 3:

- The move to requiring advice to be 'Good advice' appears to be a pragmatic and more direct approach to regulation. I am in favour of this change. For too long, internal advice audits have focussed on the advice process, not the content of the advice. The definition of 'good advice' will be critical, particularly to ensure it adequately accounts for key factors such as client preferences and goals.

Proposal 4

- Calling all personal advice from any person or body the same thing, but regulating it differently based on the presence of a direct advice fee/commission or ongoing relationship is not sufficient.

- On pages 20 and 21 of the Proposals Paper, it suggests that it would be adequate to leave discretion to the licensee/employer to decide what personal advice can only be provided by a relevant provider. This leaves the door wide open to very different interpretations amongst organisations on this matter – which may be inappropriate for consumers. The industry has worked very hard to professionalise and increase education standards. I do not believe that we should now allow discretion amongst licensees/employers about how much education is necessary to provide different types of personal advice. **This should be regulated to protect consumers and ensure a high quality of advice.**
- If 'Personal Advice' that is provided by a product issuer/not a relevant provider, is not to be given its own 'term', then I suggest the following:
  - The advice provider needs to include a statement that the advice is not being given by a 'Financial Adviser' (which is a protected term). However, this may be no more effective than the general advice warning was. Again, if the consumer has never worked with a 'Financial Adviser' / relevant provider, they won't know any difference.
  - AND/OR, my preferred solution:
  - The advice that can be provided by an employee of a product issuer, who is not a relevant provider, **needs to be <u>limited</u> to their own product: Adding from cash, withdrawing, altering the features or switching investments, and any implications of such changes on other relevant matters**. Eg. Potential Centrelink or capital gains tax implications. The advice may also cover non 'relevant financial products' (basic deposit products, general insurance, consumer credit insurance) given the existing carve out.
  - Personal advice must not be provided by a person or organisation who is not a product issuer **and** not a relevant provider.

- I believe that personal advice provided by a digital advice provider or body corporate should still be subject to the code of ethics where they provide advice that is **broader than** the above limitations (i.e. where the advice is not limited to their own product: Adding from cash, withdrawing, altering the features or switching investments, and any implications of such changes on other relevant matters).
  - If the scope/content of the advice is the same between an individual, a digital advice provider and a body corporate, why should there be a difference in the standards against which the advice is assessed? Maintaining the code of ethics for all advice providers (where they provide advice that is broader than the above limitations) is fairer and should protect consumers and ensure a high quality of advice.
- Naturally, the education standards can't be applied directly to a digital advice provider or body corporate, however, if such firms are to be able to provide advice that is broader than the above limitations, should there be a requirement that a relevant provider is involved in developing the advice/algorithm? This is in the interest of fairness, protecting consumers and ensure a high quality of advice, proactively. Appropriately shaping the advice algorithm upfront reduces the monitoring and supervision activities that would otherwise be required of the regulator.
- If no professional standards apply to a digital advice provider or body corporate – who is accountable?
- Following the above discussion, I highlight that the framework I have suggested still allows for vertical/horizontal integration between product issuers and 'relevant providers', however the line is blurry and leads to potential, perceived and actual conflicts of interest. The conflicts of interest can be at odds with the current wording of the code of ethics, and their presence introduces additional compliance requirements/burdens (i.e. time and cost) for licensees and the regulator.
  - **I believe it would be significantly simpler for businesses/licensees and clearer for consumers if 'relevant providers' must not be owned by or in partnership (e.g. have a revenue sharing agreement) with product issuers.**

- I acknowledge this proposal would not make all 'relevant providers' 'independent', as they may still charge asset based fees and receive insurance commissions, but it would go a long way to achieving the above benefits, which again, I believe would help to protect consumers and ensure a high quality of advice.
- **Most issues and complexity are untangled, with greater alignment to the code of ethics, where advice and product are separated.**

Some further thoughts on removing vertical/horizontal integration (VI/HI) between product issuers and 'relevant providers':

- For many years Licensees were (and some still are) running losses on advice businesses, subsidised by product fees.
- Licensee fees have increased dramatically in recent years to make advice businesses profitable for licensees, or at least breakeven – the issue has been exacerbated by onerous and prescriptive requirements around advice documents, the safe harbour steps, fee disclosure statements/renewals/consent forms etc.
- If the framework to give advice is drastically simplified as proposed by the proposals paper and as I have suggested in this submission, and major conflicts (which need additional compliance resources) are removed with no VI/HI, then the burden of proof around advice being in a client's best interests is much less, making standalone advice businesses and licensees more cost effective and viable.
- Removal of VI/HI could pave the way for a professional standards scheme to be created for advisers, alleviating major PI insurance issues facing the industry.
- If the above were to play out, the proposed merger of the AFA and FPA could result in a body that could form a professional standards scheme and potentially take over the code of ethics development/maintenance from ASIC, becoming more comparable to other recognised professions.

Is there a potential cost to removing VI/HI?

- With VI/HI, advice firms can use scale and the presence of a perceived/potential/actual conflict to negotiate product cost reductions for the benefit of clients and ensure best interest duties are met.
- However, this dynamic should also exist (and may even strengthen) without the presence of VI/HI. All product issuers would be assessed on their own merit. A competitive product market place without the 'backup' support of an associated advice arm, means product costs and features must be competitive to retain market share. Large advice firms with scale could still use their size to negotiate better product outcomes for their clients. So I do not believe it would be a strong enough argument to justify retaining VI/HI.
- Related to the above, consideration should be made to mandating the allowance of in-specie transfers and CGT rollover relief when moving between super fund providers. This would increase product competitiveness to the benefit of consumers.

Refer appendix 1 for a simplified outline of the suggested framework.

3. Intra-fund advice and paying for advice through superannuation

Proposals 5 and 6

- The framework I have suggested above, which limits the advice that can be provided from individuals or organisations that are not relevant providers, and seeks to remove VI/HI, should be applied consistently to superannuation funds and how they charge fees.
    - Super fund collective charging of fees should only be allowed for the limited personal advice provided by an employee who is not a relevant provider.
    - Individual Member charging of fees should be required for advice given by a relevant provider.
    - It would not be a level playing field or necessarily fair to other members if trustees could collectively charge members for more comprehensive advice provided by a relevant provider.
    - If it ***is not*** regulated that non relevant providers can only provide limited advice as I have suggested, but Proposals 4 and 6 in the proposals paper ***are*** legislated, then this could allow superannuation funds to provide a broad range of advice, collectively charged across their members and circumvent their need to meet the professional standards. Notwithstanding the requirement to provide 'Good Advice' this would create a very disparate and unfair advice environment between superannuation funds and other advice providers. It also creates a window for less consumer protection.
- If VI/HI is removed as suggested above, then this also achieves the above aim to avoid super trustees circumventing the need to meet professional standards through collective charging of members, because broader advice from a relevant provider would have to be provided by an external firm, with fees directly charged to the consumer (or pro bono).
    - In simple terms: Only a relevant provider could directly charge a client for the advice, and relevant providers could not be owned by a product issuer. No exception for super funds.
- I have no issue with allowing super funds to collectively charge members for limited advice as I have suggested.

Proposal 7:

- Trustees should be able to be satisfied with an adviser/client declaration that advice fees being deducted from super, relate to super/pension advice and not need to undertake audits of SoAs / file notes etc. Further, the fee should be able to relate to multiple super fund interests (not just the member's interest in the fund being charged). It would provide a more efficient option to charge for superannuation advice, than needing to charge multiple superannuation accounts.
- The legal obligation is on the adviser who is charging the fee, to charge appropriately and comply with the sole purpose test. Advisers and their files are audited. Reducing the obligation on trustees to verify the appropriateness of the advice fees being paid from super would reduce regulatory overlap and uncertainty. If necessary, a fee cap could be applied to fees deducted from super.

- Where VI/HI is removed and the other boundaries on personal advice are regulated as I have suggested, then the supervision and monitoring activity required by ASIC would be less, and easier to enforce. If firms can set their own boundaries on what advice can/cannot be provided by someone who is not a relevant provider (including digital advice firms and a body corporate) then it would create a disparate advice industry/profession that requires more monitoring with less clarity for the regulator in respect of what advice each firm may/may not be providing. Maintaining boundaries as suggested, would help to keep the financial adviser register useful.

4. Disclosure documents

Proposal 8:

- This is a big step in the right direction, which I agree with.
- The proposal paper states: “Providers of personal advice should obtain annual written consent from their client to deduct ongoing advice fees from a **financial product**”. Is it intended that the term “financial product” includes a bank account, given this is not a “relevant financial product”.
- The proposal paper states: “Where advice fees are deducted from more than one product, a single consent form should cover each of the products issued by **a product issuer**”. Is it intended that the one consent form could cover products issued by multiple product issuers? That would be ideal. The consent form would be standardised where there is an ongoing fee in place and it is not changing – enabling it to cover multiple product issuers.
- A separate fee amendment/renewal form can be used if the advice fee is changing or a fixed term fee is being renewed.

Proposal 9:

- This is a massive step in the right direction, which I agree with. SoA and RoA production/review is a HUGE component of the cost to deliver advice to clients. Removing the prescriptive legislation would reduce costs for consumers. The current advice documents are largely unhelpful for clients – **aside from the executive summary**.
- The “financial product advice” term gave rise to the need for an SoA. However the prescriptive process didn’t align with actual comprehensive and ongoing advice that is provided to clients, which includes modelling, cash flow structure recommendations, goal guidance, strategic guidance etc. much of which is not financial product advice. Removing SoA prescriptions makes sense.
- Some have argued for a legislated need to provide written advice to clients. I do not believe this needs to be legislated. I believe the requirement that advice providers must be able to provide a written record of the advice to a client on request is sufficient. Firms can then choose for themselves whether they proactively provide written advice to their clients. There are many instances where providing a summary of the advice to the client is prudent and beneficial – I don’t know that it needs to be legislated.
- If anything, perhaps it should be legislated that advice providers must make it clear that clients can request a copy of the advice (either written or a recording (audio/video))
- In what form can authority to proceed with the advice be given? Does this need legislating?

Proposal 10:

- This is a minor, but sensible change, which is appropriate in our digital/online era. I am in agreement.

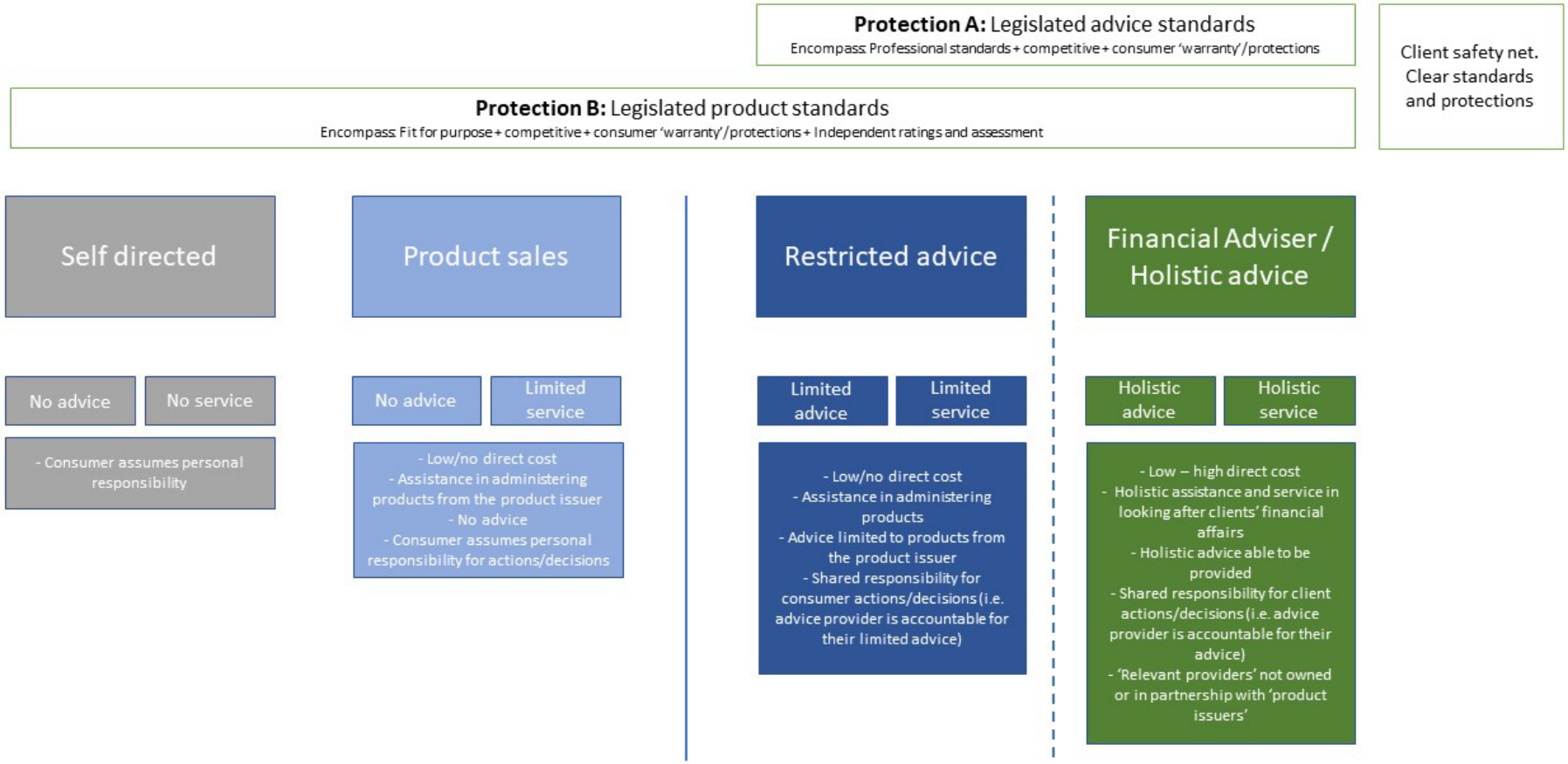
5. Design and distribution obligations

- I agree with proposal 11.

6. Transition period and enforcement

- I agree with proposal 12.

Appendix 1


Protection A: Legislated advice standards
Encompass: Professional standards + competitive + consumer 'warranty'/protections
Client safety net. Clear standards and protections
Protection B: Legislated product standards
Encompass: Fit for purpose + competitive + consumer 'warranty'/protections + Independent ratings and assessment
Self directed
Product sales
Restricted advice
Financial Adviser / Holistic advice
No advice
No service
- Consumer assumes personal responsibility
No advice
Limited service
- Low/no direct cost
- Assistance in administering products from the product issuer
- No advice
- Consumer assumes personal responsibility for actions/decisions
Limited advice
Limited service
- Low/no direct cost
- Assistance in administering products
- Advice limited to products from the product issuer
- Shared responsibility for consumer actions/decisions (i.e. advice provider is accountable for their limited advice)
Holistic advice
Holistic service
- Low – high direct cost
- Holistic assistance and service in looking after clients' financial affairs
- Holistic advice able to be provided
- Shared responsibility for client actions/decisions (i.e. advice provider is accountable for their advice)
- 'Relevant providers' not owned or in partnership with 'product issuers'