2Association of Financial Advisers Ltd
ACN: 008 619 921
ABN: 29 008 619 921
PO Box Q279, Sydney 1230
1800 656 009
afa.asn.au

10 June 2022

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

By email: AdviceReview@treasury.gov.au

AFA Submission: Quality of Advice Review – Issues Paper

The AFA welcomes the opportunity to provide feedback on the Quality of Advice Review Issues Paper. We thank you for providing us with an extension of time to make this submission.

The AFA has addressed the 83 questions as set out in the Quality of Advice Review (QAR) Issues Paper, however we have included this in an appendix. In the main body of this submission, we have sought to set out our vision, context around the background of the current state of the market and our recommendations for the future.

1. Introduction

The AFA strongly supports the Quality of Advice Review, which we believe holds out hope that the current material problems in the financial advice market can be addressed. It is pleasing to see that both the former Government and the new Government have recognised that the financial advice sector has got to a point of crisis and that action must be taken.

The last five years have been very tough for the financial advice profession, however even more importantly, they have been devastating for hundreds of thousands of financial advice clients who have lost access to their financial adviser or for whom it has become impossible to get financial advice, even when they need it and are willing to pay for it. We trust that the state of the market and the implications for consumers will be clearly articulated and recognised as part of this review.

The AFA is firmly of the view that a quantum improvement in the overall operating and regulatory regime is required and that this will not be achieved by one single silver bullet, or even a handful of initiatives. Fixing the problems in financial advice will require a number of material changes, and this will not be limited to only addressing the regulatory regime. It is also likely to require a comprehensive re-think in terms of some of the fundamental design elements. The current model denies access to financial advice for many Australians, as the regulatory regime and the consumer protection measures place more focus on preventing simple advice from being provided, rather than encouraging it. The regime needs to provide consumer protection measures that are proportionate to the risk faced, that apply to those who are appropriately licensed. Young Australians who would like to discuss where their employer super

contributions should go, or whether they need life insurance, do not have anywhere to go to get this advice, other than the largely unregulated influencer space. This highlights a situation that has developed over a number of years, which is delivering a poor outcome for Australians.

Much of the public thinking on financial advice has been based upon a critical lack of understanding of what financial advice is and the value of advice. A deeper and shared understanding of what financial advice is and the value of it (which is set out below) will assist in the decisions that need to be made in relation to how to make financial advice more accessible and affordable.

Given the opportunity for 'blue sky thinking', we believe that the cost of providing financial advice could be more than halved. It is only with bold and broad thinking, that this could be achieved, however we should start this exercise from the perspective of what might be possible, rather than being restricted to thinking in terms of incremental change.

It is our view that there is a high level of urgency in fixing the problems in financial advice and we would therefore strongly support the development of a list of quick wins that could be quickly agreed and then either actioned or passed to the Government to implement. This could happen well before the final report is released. We would not like everything to be put on hold this year whilst the bigger framework issues are being considered.

2. Key AFA Recommendations

We have set out a detailed set of recommendations below in Section 11. A summary of our key recommendations are set out in the following table:

No.	Recommendation
1	The regulatory obligations for the provision of financial advice should be proportionate to the level of complexity and risk of client detriment.
2	Provision of a three year relief period for client consent forms to allow for a standardised industry wide system solution for the collection and transmission of these forms to be developed.
3	Achievement of regulatory certainty to better enable the provision of limited scope advice, including in terms of the requirements for the fact find process.
4	Increased regulatory certainty on the obligations with respect to demonstration of compliance with the Best Interest Duty.
5	Removal of the Best Interests Duty safe harbour and ability to demonstrate professional judgement or repeal of the "other steps" obligation and the ASIC record keeping class order.
6	Fix existing issues with FDS compliance or removal of the requirement to report the previous year fees, which are already reported in product statements.
7	Greater flexibility in the use of Records of Advice, including increasing the threshold for small investments and expanding it to include small life insurance cases.
8	Enable greater access to client data through the Consumer Data Right, ATO Portal, my.gov.au and Centrelink.
9	Retention of upfront life insurance commissions, but increased to 80% and a reduction in the year two clawback rate.
10	Support for small businesses to appoint Professional Year candidates and relaxation of some of the PY program obligations.

3. The Value of Financial Advice

In considering the potential solutions to the fundamental problems in the financial advice sector, it is important to start with a clear understanding of the value of financial advice. What do clients seek in the services that they obtain from their financial adviser and why do they choose to continue to maintain an ongoing advice relationship? This lack of understanding of the value of financial advice has undermined much of the thinking about financial advice in recent years and was an important factor in why many of the Banking Royal Commission recommendations were contrary to improving outcomes for existing clients. The simplistic thinking is that financial advice is predominantly about choosing financial products, and to some extent this is the way the law is framed. In reality, it is much more than this. It is important to appreciate that financial strategies are much more important than financial products. The benefits of financial advice include the following:

- The development of a financial plan and the ongoing monitoring of the progress towards the achievement of that plan.
- The emotional benefits of knowing that you have a plan, and having access to someone to help you, which provides greater confidence that you will be able to achieve it and generates a sense of security about the future. It is important to note that financial issues and problems are a big cause of stress and family conflict. Obtaining financial advice helps to significantly reduce stress, anxiety and family conflict. Financial advice helps to make Australians happier people.
- Behavioural change. Many Australians lack the necessary understanding and behaviours to manage their money and often this means that they spend more than they can afford and fail to save for their future. Often they do not understand their financial situation or the methods to manage their family budget. Having a financial adviser, who helps their client to prepare a budget, and is there to hold them accountable to the new behaviours that are required to achieve that budget, can make a real difference in their capacity to save and get ahead. It is remarkable how many Australians pay a very high rate of interest on their credit cards, when some obvious steps might help to repay this credit card debt each month.
- Financial education, and a better understanding of the economic and regulatory environment. The more financial knowledge that clients have, the better they are positioned to understand the decisions that they need to make and to prepare for the future. This is an important part of achieving informed consent. Financial advisers play an important role in educating their clients.
- Support and guidance to assist in avoiding making bad financial decisions. In addition to poor money management behaviours, Australians are also prone to making poor financial decisions, like selling growth assets following a serious market correction/crash, or wasting an inheritance or investing in a business that has a poor prospect of success. There is huge value in having access to an expert to bounce these issues off, when you need a second opinion. Financial advisers provide their clients with the confidence required to hold the course in challenging times. This advice to assist in avoiding bad decisions could make a huge difference to the long term financial position of their clients.

4. The AFA's Vision

Accessible and Affordable Financial Advice

The AFA's vision is that financial advice should be readily accessible and affordable for everyday Australians. At present we understand that around 10% of Australians have access to financial advice and that this has progressively declined in recent years. We know that face-to-face

personal financial advice is never going to be available to all Australians, and that other solutions will need to be available for some segments of the market, however we strongly believe that the rate of adoption should be closer to one in four Australians having access to financial advice. We are also conscious that often it is those who can no longer afford to get financial advice who are the ones who stand to benefit most from it.

Financial Knowledge and Literacy

The current lack of understanding of financial advice is as a result of a range of factors, including recent media coverage, the Banking Royal Commission and also the lack of community awareness of finance issues. This starts with a lack of financial education at school. To what extent do our schools teach basic financial concepts like the risk/return trade-off, diversification, insurance or even the concept of funding for retirement? At present financial advice is a bit of a cottage industry, where what they do is largely a secret and many people only access it through the referral of family and friends. Whilst it is easy for critics to say that the financial advice market should better promote itself, this is a somewhat simplistic response to a complicated problem.

An important part of the vision that the AFA has for financial advice, is that the broader community will have a much higher level of financial awareness and appreciation of the importance of financial advice.

A Thriving Financial Advice Profession

Ultimately, we also have a vision that financial advice could once again become a thriving profession. This would require financial advice to be recognised as a critically important service and more people wanting to become a financial adviser. We have seen three and a half years of adviser numbers declining, businesses exiting financial advice and university students choosing to pursue other professions. We dream of a return to an era where financial advice is a thriving profession, where businesses are enthusiastic to invest and where innovation is encouraged and supported. Ultimately, with all of this, financial advice can also become a more competitive market, rather than one where the demand for financial advice significantly exceeds the supply.

Seeking a Quantum Improvement

We believe that this review should be taking a blue sky thinking approach to this exercise. If we start from the perspective of the client outcome, then a minor improvement is not going to deliver what is required. We are necessarily seeking a quantum improvement and we believe that there is a substantial amount of opportunity to achieve this. We are conscious that this will only be achieved by radical thinking, that is well removed from the constraints that apply today.

5. Background on the Financial Advice Profession

The history of regulatory and structural change in financial advice is long and arduous. It is nearly 10 years since the Future of Financial Advice reforms were passed in the Senate and in the meantime the pace of changes has increased, really never pausing. It is the cumulative impact of all this reform that has impacted the advice profession, including the long-term health and wellbeing of Advisers. This is not a good thing. As is the case with all other professions, a passion for the job and serving clients is essential. For many this is no longer the case. There is significant research that has been undertaken on the state of the advice

profession and the increased prevalence of significant mental health issues. This will have deep and long-term consequences.

When we look at what has got us to this point, the list is long and troublesome:

- The cost to provide financial advice has increased rapidly. This has been driven by a range of factors including increased compliance obligations, increased input costs (new Government levies, licensee fees and PI Insurance) along with increased costs to stay in business, such as completion of an exam and undertaking further study. Amongst the most important factors driving increased compliance costs are the requirements to comply with the Best Interests Duty and the new annual renewal obligation.
- The Banking Royal Commission had a very negative impact upon financial advisers, including the criticism in the media and the statements by politicians. The unjust way in which all advisers were condemned for the misconduct of a small number of large institutions, was challenging to say the least. Even those advisers who had devoted themselves to being a professional and serving their clients over many years, were tainted with the same brush. This was a foreseeable outcome and one that was most inequitable and unjust. It did material damage to the self esteem and overall mental health of many advisers.
- The efforts and actions of ASIC were harshly assessed during the Banking Royal Commission. There is no one in the financial advice profession who considers ASIC to be a light touch regulator. A careful analysis of their actions and a reflection on the flaws that have become evident in the regulation of other sectors (i.e. gaming/gambling and building) highlights this. Well before the Banking Royal Commission, ASIC was already being a very rigorous regulator, including through the Fee for No Service campaign, remediation programs and through the enforcement of the Best Interests Duty obligations (ASIC Report 515 and related regulator enforcement). The Banking Royal Commission driven mantra of 'why not prosecute', helped to drive a mindset of aggressive enforcement, rather than cooperation, promoting the benefits of financial advice and a focus on finding practical solutions to the numerous problems.
- Whilst there has been broad support for the pursuit of professional recognition, the consequences of the Professional Standards reforms have had a huge impact. The exam has caused many advisers to exit and has caused significant emotional strain, particularly for those older advisers unfamiliar with undertaking an exam of this nature.
- The extent of industry restructuring has had a huge impact. In many ways the Royal Commission was the last straw that drove the exit of the large institutions, however there was a series of matters, such as Fee for No Service, Remediation, Best Interest Duty compliance requirements and other interventions. Many would argue that the financial advice profession is better off as a result of this restructuring, however it needs to be noted that this restructuring and the remediation programs undertaken by these institutions have caused untold damage and often unfair treatment for the advisers caught up in these exercises. The exit of these large licensees has also resulted in the elimination of a key training ground for new advisers.
- The Life Insurance Framework reforms, that were enacted in 2017, and commenced in 2018, have had a huge impact on the life insurance advice sector, with upfront commissions cut by half. This has made it very difficult for some of these businesses to adjust and it has made it virtually impossible for new businesses to commence in the life insurance advice space. The impact of the LIF reforms have been compounded by the significant premium increases (as much as 70% or more in some cases) that many clients have experienced and the resultant work for financial advisers to retain these

clients. The interdependency between the health of the financial advice profession and the health of the life insurance sector should not be underestimated. This is demonstrated by the significant decline in life insurance new business volumes over the last five years, which is disadvantageous to both policy holders and life insurers. We would suggest that this is something that the Government should watch very carefully.

- The introduction of upfront premium discounting practices in life insurance, where advisers need to undertake more work to assess the premiums paid over a longer period and have the increased risk of cancellations at the end of the first year, when premiums jump significantly as a result of the discount being removed, or reduced.
- The recent APRA Intervention in the Income Protection market has also had a huge impact. This has made it so much more complicated to be a life insurance adviser and many have simply left the profession or the life insurance market, including those generalists who previously did a bit of life insurance advice.
- For the last eight years, financial advice has been subject to consistent and considerable negative media focus and criticism. This peaked during the course of the Banking Royal Commission. The resultant impact on the public perception of financial advice has been substantial. The impact has predominantly been on those Australians who do not have a financial adviser, who have been discouraged from getting financial advice. In contrast, the vast bulk of existing clients remained with their adviser and continued to value the services that they received from their adviser. Nonetheless, that feeling of being vilified, has had a significant cumulative impact upon people working in the advice sector.
- It is unfortunate that much of the recent reform has been excessive and ill-considered. The Annual Renewal reforms are a classic case. Whilst we acknowledge that some genuine issues did exist that were the cause of the Fee for No Service scandal, this could have been solved without the need for such excessive prescriptive red tape, that ultimately needs to be paid for by clients. The virtually universal failure to do a Regulation Impact Statement for all the Banking Royal Commission reforms, under the misguided and erroneous claim that the Royal Commission was equivalent to an RIS, was at best laughable. Some of the consequences and the full cost of some of these recent reforms is yet to fully flow through, however it is substantial. This includes Annual Renewal, the new breach reporting regime, and the Single Disciplinary Body, which will all have a material impact on the cost at the licensee and adviser level.
- We have mentioned it above, however it is worth repeating again – the emotional and mental health impact of all of this has been substantial. There have been suicides, however that represents the ultimate peak of impact in a limited number of cases. The vast majority have been impacted, but not in such a severe manner. Some of these responses include fatigue, anxiety, loss of self esteem, loss of energy and passion for the job, declined confidence in the value they deliver and in many cases collateral damage that flows to family members, including family breakups (Australian Financial Advisers Wellbeing Report, The e-lab and Deakin University, 2021).
- In the context of so much regulatory change and with so much regulatory responsibility for their advisers, licensees are naturally somewhat conservative in the rules that they set for their authorised representatives. This results in a risk averse approach to the design of licensee standards and very careful practices. This is all compounded by the high level of regulatory uncertainty and the very high compensation limits that apply, should an adverse determination be made by the Australian Financial Complaints Authority (AFCA). Licensees often require more than the law or different things to the law and different licensees having different requirements all leads to less efficiency, poor processes and extra cost. Whilst this may appear easy to fix, that is not the case.

It is unfortunate, but fair to acknowledge that the financial advice sector has evolved, as a result of all of the issues above, to be more focussed upon compliance, risk minimisation and avoidance of complaints, as opposed to focussing on the needs of clients and delivering value to clients. This is the outcome of a period of intense media and political attention, excessive regulatory reforms, an aggressive regulator, a sense of vulnerability and inadequacies in the Professional Indemnity market. The atmosphere is not great, where licensees feel challenged to be profitable and to stay out of the attention of the regulators, and advisers feel the obligation to constantly prove they are doing the right thing and pressured into signing agreements with licensees where they are forced to provide extensive indemnities. To achieve a constructive, client centric culture, much needs to change.

6. Definitions of Financial Advice

There are three very important definitional boundaries in financial advice:

- The boundary between financial advice that requires a licence and the activity which is not defined as financial advice, including where it is limited to factual information.
- The boundary between personal financial advice and general advice.
- The boundary between retail clients and wholesale clients, opening up a different category of financial advisers who provide advice to wholesale clients only.

These three boundaries are critically important and the implications are significant from one side of the boundary to the other. For example, substantial obligations apply in the case of the provision of personal advice to retail clients, however the obligations in the general advice or wholesale client space are very much reduced. These boundaries have also led to substantially different business models.

Much debate has been held in recent years about general advice, and whether the term should be changed. We recognise that it does create problems, however it also reflects an important category of advice, which is a recommendation that has been made without taking into account the client's personal circumstances. This is very different from providing factual information. It does have an important role to play.

In the context of the financial adviser exam and other reforms that apply to financial advisers who provide personal advice to retail clients, there has been an emergence of a growing group of advisers, who predominantly provide life insurance advice, who operate in the general advice only space and seek to avoid placing any reliance on the client's personal circumstances. We recognise that this group of advisers can fill an important gap in facilitating the provision of life insurance advice to more Australians, however we are also very conscious that this model involves a material risk of crossing the line into the personal advice space. We also note that the recent High Court decision against Westpac, with respect to the conduct of call centre operators in their superannuation business, makes this boundary more delicate. We suggest that this is an important issue to consider.

These important definitions also create an increased level of complexity and the risk of confusion. One question that arises is what should the approach be when an existing retail client reaches the wholesale client threshold. What should happen if the adviser and the client want to transition to the wholesale client model?

We believe that the model that defines the types of advice and the obligations that apply to each of those categories should be a more graduate scale, rather than the current model, which is more a matter of all or virtually nothing. In this submission we discuss the idea of a regulatory regime where the obligations are proportionate to the level of complexity and the risk of client

detriment. We would suggest that the current model does not work, and the time has come to develop a new model that promotes access to advice and the affordability of advice, but preserves the essential consumer protection measures in a balanced and appropriate manner.

7. Understanding the Life Insurance Advice Sector

The life insurance individually advised sector has been going through a period of substantial reform since the release of ASIC Report 413 in October 2014. This report which covered financial advice provided in the period immediately before the commencement of the Future of Financial Advice reforms and the period immediately afterwards, found higher levels of non-compliance and some risk of client detriment. This report, which targeted advisers with higher lapse rates and in some cases licensees who were already subject to surveillance, led to the demands for reform to the life insurance remuneration model. This report was leveraged by the Trowbridge review and the Financial System Inquiry as the basis for the need for change. Repeatedly it was suggested that these three exercises proved the existence of fundamental problems, however in reality, it was only Report 413 that actually looked at life insurance client files and the advice. The others simply referred to the work that Report 413 had done. At the time there was a lot of debate in the market, including that Report 413 was targeted and was not reflective of the broader market. Neither was there sufficient recognition that Report 413 actually demonstrated a high level of compliance (93%) for business that was on the basis of a Hybrid form of commissions (80% upfront and 20% ongoing). Seemingly the solution was already evident.

Life Insurance Framework

Ultimately it was the Government that decided to legislate to reduce upfront commissions, which was achieved by delegating powers to ASIC. This reform resulted in a period of adjustment to the maximum permitted upfront commission rates as follows:

Year	Maximum Upfront Commission Rate	Maximum Ongoing Commission Rate
2018	80%	20%
2019	70%	20%
2020 on	60%	20%

As a further part of the reform, a mandatory clawback provision was introduced where the adviser would need to pay back 100% of the commission if the policy was discontinued in the first year and 60% in the second year. This is considered to be very harsh, particularly where the reason for the discontinuation is entirely due to a change in the client's personal circumstances, which has been prevalent during the COVID experience (and where no Government relief was made available).

It was expected by the Government that the LIF reforms would lead to a reduction in premiums as the cost of commissions was materially reduced. That has not been the case and in fact premiums have risen materially since the LIF reforms came into play.

Research over a number of years has shown that clients prefer to pay for their life insurance advice through commissions rather than through an upfront fee (Zurich - The Risk Advice Disconnect 2019). This is for many reasons, including the fact that they can effectively pay the upfront cost over a number of years and not be required to pay, should obtaining acceptable life insurance prove too difficult. Whilst some commentators might suggest that consumers would prefer to pay an upfront fee to avoid an exposure to conflicts of interest, our own members experience, when they offer the choice, almost all clients choose to pay by a commission.

The Life Insurance industry has been subject to other major changes in recent years including the Protecting Your Super and Putting Members Interests First reforms that mandated the withdrawal of insurance arrangements for inactive accounts and made it optional for people with small balances and under the age of 25. Data produced by APRA (Life insurance claims and disputes statistics), shows that the number of Group Super lives covered by Life and TPD has fallen by 35% and the number covered by Disability Income Insurance has fallen by 22% since 2018.

Understanding the State of the Life Insurance Market

The importance of the retail advised market to the overall life insurance market is demonstrated by the fact that in 2021, the individual advised market made up 53% of premiums paid to the life insurers, versus just 37% for the Group Super market (APRA Life insurance claims and disputes statistics). Whilst the Group Super market makes up many more members, the levels of cover are substantially lower (on average $782k for retail advised Life (death) cover and $841k for TPD, versus $219k for Group death and $187k for Group TPD). Group super insurance has an important role to play in ensuring that a greater proportion of the population have access to life insurance, however it is rarely enough for average Australians. Financial advisers will typically ensure that there is enough life insurance to repay the mortgage and to cover the cost of the children's education and living costs whilst they are young. This is to ensure that the surviving spouse and children are not forced to leave the family home at a time of such distress. With average mortgages now over $500k in Australia, a death benefit of $219k would not be sufficient to meet the needs of the surviving family.

We understand that trustees of super funds have an important role to play in the design of insurance arrangements, including to ensure that life insurance premiums do not lead to an inappropriate erosion of super balances, however this often plays out in terms of their intervention to reduce the level of cover that members have, rather than ensuring that it is adequate.

NMG Consulting do research on the level of new business volumes, and their research shows that retail advised new business volumes have declined from $638 million in 2016, before the LIF reforms commenced, to just $317 million in 2021. This number is expected to fall further over the next few years, driven largely by the following factors:

- The significant exit of financial advisers from the profession and particularly those who are active in the life insurance advice market.
- The reduction in remuneration has made it economically unviable to provide life insurance advice to the bulk of the population.
- The APRA intervention in the Individual Disability Income Insurance market has led to substantial changes to Income Protection products, making it very difficult for generalist advisers to come up to speed in terms of understanding these new products.

Overall, the number of advisers who choose to provide life insurance advice has declined substantially, and this has meant that it has become much more difficult for Australians to access life insurance advice.

The following table, based upon the APRA Claims and Disputes Statistics, highlights what has happened to individually advised clients in recent years.

Individual Advised Policy Holders – '000

Category	31-Dec-18	30-Jun-20	30-Jun-21	31-Dec-21	Cumulative % Change
Death Cover	1,994	1,717	1,653	1,621	-18.7%
TPD	1,177	996	968	972	-17.4%
Trauma	826	792	768	752	-9.0%
Disability Income	911	847	816	805	-11.6%

Responding to the Banking Royal Commission Recommendation

Recommendation 2.5 of the Banking Royal Commission was

> When ASIC conducts its review of conflicted remuneration relating to life risk insurance products and the operation of the ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, ASIC should consider further reducing the cap on commissions in respect of life risk insurance products. Unless there is a clear justification for retaining those commissions, the cap should ultimately be reduced to zero.

The further context that was presented in the report, was that the review should consider the implications for underinsurance. The table above, clearly shows that there has been a significant decline in the number of Australians who have life insurance and the established trend, based upon the declining level of new business (halved in 5 years), is that this will continue to get worse. Whilst the Banking Royal Commission may have formed the view that it was important to remove commissions, this included no consideration of what clients want and if it was pursued would lead to the decimation of the individually advised life insurance sector and would result in a substantial decline in appropriately insured Australians and huge pressure being placed upon the life insurance industry. Put simply, it would be catastrophic.

We believe that the Government should go back to the previous version of hybrid commissions, which was a model that demonstrated a high level of compliance in the 2014 ASIC Report 413 (93% compliance). With all the changes that have happened since then, including the bedding down of the Best Interests Duty, the increased education standard and the financial adviser exam, Australians can now be much more confident that the life insurance advice they are getting is quality advice. We certainly acknowledge than an increase in the upfront commission would not be appropriate for general advice business.

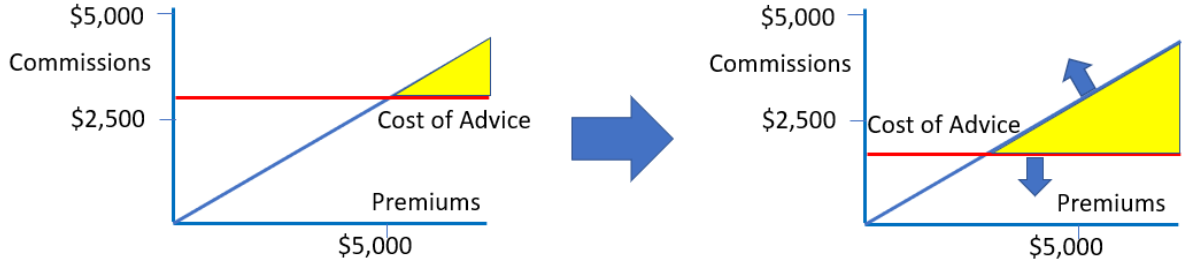
We also support a review of the year 2 clawback, which is particularly harsh at 60% and applies all the way through to the end of the second year. The recent COVID crisis has demonstrated that economic circumstances are a major contributor to the cancellation of life insurance policies. It is unreasonable that financial advisers should carry so much liability all the way through to the end of year two. If the Government, is reconsidering this model, then we would suggest either a 33% clawback in year two, or a 50% clawback for the first six months of year 2 and then a 25% clawback from months 7 to 12 of year two.

Fixing the Problem with Access to Life Insurance Advice

The following diagram sets out the challenge in the life insurance advice sector, where the cost to provide life insurance advice requires much higher premiums for this to be economically viable

to the financial adviser. In this diagram we have assumed that the average cost to provide life insurance advice is $3,000. This diagram illustrates that at a 60% upfront commission, the amount of overall life insurance premiums needs to be $5,000 for the adviser to cover their costs. This means that in recent years they have ceased providing advice to clients who are likely to have lower premiums, as it is simply not economically viable.

This problem can only be fixed by a combination of increasing the commission rate and reducing the cost to provide life insurance advice. In the absence of this, life insurance advice will only be available to a small proportion of the population. This diagram, shows that an increase in the commission rate and a reduction in the cost of providing life insurance advice will make advice available to many more Australians, as shown by the yellow shaded area.



Another important point to understand with respect to the dynamics of the changes that have resulted from the LIF reforms is that financial advisers are necessarily needing to work with clients who can pay higher premiums, who are invariably older. This means that there are less young people going into the life insurance risk pools and thus the risks are greater. This, along with the decline in the overall size of the pool (policy holders), is likely to have long term implications.

8. Key Considerations in Regime Design

Consumer Protections Should be Proportionate to the Consumer Risk

In recent years, almost the entire focus, in terms of regime design, has been on consumer protection. As an example, it seems that renewal every second year and disclosure of adviser fees in Statements of Advice, regular product statements and annual Fee Disclosure Statements was not enough, and thus it was decided that clients should be required to renew their agreement every year, including detailing what the fees will be for the next 12 months and that proof of that agreement should be provided to each and every product provider involved. There were already strong controls in the system. Was it really necessary to add further consumer protections, and what was the cost impact on clients of doing this? Of course, as expressed above, there was no Regulation Impact Statement to contemplate and quantify the cost impact. Might the existing measures have already reached the point where the incremental benefit for the client did not justify the additional cost. How much more would most consumers be willing to pay to go from a 95% confidence level to a 97.5% confidence level?

Equally, we would argue that clients wanting simple advice, such as a person starting their first job and asking which fund to put their super in, would prefer to have access to some advice, even if there is a minimal risk involved in accessing this advice, as opposed to having no access to affordable advice. Why should a young person starting their first job be forced to pay $3,000 for simple advice on where to have their super contributions go, and what

insurance to select, or otherwise be faced with the need to make the decision without any advice?

There is often a disconnect between the types of questions that clients ask in meetings and what an adviser can respond to. Some questions can be answered through the provision of factual information, however sometimes these discussions lead to elements of financial advice. Responding to some of these questions on the spot might be non-compliant. Some potential situations include the following:

- Helping clients to prepare a budget that will be achievable and realistic. Often acting as mediator to help couples with different money styles come to an agreement on their financial priorities, saving and spending commitments.
- Helping individuals understand the communications sent to them by their superannuation fund or insurance provider and encouraging early engagement with their retirement plans.
- Providing a second opinion on their difference between should and could – e.g. bank will lend us up to a certain amount, however in a few years we hope to have children, so can we afford it, not only now, but during periods of planned work interruptions.
- I have money in my savings account, would it be better to pay of my credit card/HECS debt, place into my offset account, contribute to super or leave it where it is? Should I use a redraw or offset account for my mortgage?
- Answering questions such as how much super am I likely to have when I retire?
- Is my super fund performing well?
- Am I on track to pay off my mortgage?
- What strategies can I use to save up to purchase my first home?
- I would like to get the government co-contribution. How much do I need to contribute and what are the requirements?

There needs to be a better balance achieved in the design of the regulatory regime, where consideration is given to the risk of adverse consequences/detriment and the additional cost involved. We would argue that this balance has been missed for some time and often this is as a result of a lack of listening to the needs of existing and genuine potential clients.

It seems that some of the key legislation that has been introduced over the last decade, has made it harder for a client to maintain an ongoing relationship with an adviser. It is also the case that the high upfront cost of establishing an advice relationship, means that advisers are much less interested in working with clients on a once-off basis. It is worth considering whether there should be greater access to once-off advice that is possible for advisers to provide in an economically viable fashion. We seem to be stuck in a model where advisers can only provide economical advice if it is structured through an ongoing relationship.

A Principles Based Regime versus a Rules Based Regime

We know that there is an active debate at the moment between proponents of principles based legislation and rules based legislation. We must make the point that a principles based regime will only work where all elements of the regime work on that same basis. If in the context of a principles based regime, the regulator takes a rules based approach, with their guidance or approach to enforcement, then this is counterproductive. Equally, if AFCA takes a different approach to the assessment of complaints, then a principles based regime only creates problems, rather than solves them. Section 912A(1)(a) is a principles based obligation ("do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly"). It is important to note that this principles based piece of legislation has been used by ASIC as the basis for a number of enforcement and

remediation activities. A principles based regime alone is not the answer to the current challenges that we face with regulatory uncertainty.

Having said the above about the potential issues with a principles based regime, it is important to also point out the deep flaws that can exist with a prescriptive rules based approach, which has often been employed in the financial advice sector. One obvious example is Fee Disclosure Statements, and the issues that have emerged with timing differences and small monetary differences. FDSs are prepared by licensees and financial advisers on the basis of when the licensee/adviser receives the fees. There can be a small delay between when the money is taken out of the client's account and paid to the adviser, which means that money can be taken out of the client's account in one reporting period and paid to the adviser in the next period. This creates a small difference in the amount reported. Differences can also arise as a result of the treatment of GST or Reduced Input Tax Credits.

The systems have been built in the advice sector on the basis of when the adviser is paid, and this approach had been in place for a number of years. ASIC has taken the view, expressed in the November 2019 Report 636 on Compliance with the fee disclosure statement and renewal notice obligations, that they expect FDSs to be prepared on the basis of when the money comes out of the client's account. ASIC suggests that this now requires manual checking each time. This is incredibly inefficient. The law provides no leeway for small differences and thus a $1 difference technically invalidates the FDS. Further, any error or difference in an FDS results in the termination of the ongoing fee arrangement. To rectify this, typically new advice would need to be provided to establish a new arrangement, and this could result in an additional fee being charged to the client. It is necessary to ask what clients really want out of FDSs, what the benefit is to them of such prescriptive rules? In the vast majority of cases they will want to know roughly what they are paying and will have no interest in small differences or timing differences. Clients already get separate reporting from product providers on the fees that they pay to their adviser. We should be asking what is most important to clients, rather than designing regimes where non-compliance is so difficult to avoid and so costly to achieve?

Alternative Forms of Financial Knowledge and Advice

As discussed above, at the AFA, we are strong believers in financial advice being opened up to as many Australians as possible. We are very conscious that this cannot entirely be on the basis of face to face advice, and in some cases it may need to be through digital or digital assisted means. We are also very conscious that financial advice can start in the form of financial education, and we are supportive of actions that can improve access to financial education. We are open to the role that social media influencers might play in providing financial education (as opposed to financial advice). We are also aware of the emergence of money coaches. The most critical thing is that these alternative channels must operate within the constraints of the law, and in a way that limits the prospect for consumer detriment. Clearly this has recently become an area that has created a lot of concern for ASIC, in terms of financial advice being provided by unlicensed operators and influencers assisting with dealing. Anyone who operates in the area of financial services and advice should be subject to licensing and regulatory oversight.

This review needs to carefully consider how financial advice or financial knowledge can be provided to more Australians and in a form that meets their needs and that they can afford. This might require new ways of thinking about how financial advice is categorised and what regulations apply to each category. However this is done, needs to ensure that consumer

protections exist, the cost of these protections is proportionate to the value delivered and a level playing field exists for all.

Licensee Risk Aversion

An issue that has generated a lot of debate in recent times, including statements by politicians, is the role that licensees play in defining the rules that financial advisers must operate under and the extent to which these internal rules exceed the expectations of the law. Whilst this might seem a simple issue on the surface, it is compounded by two important factors:

- Licensees are responsible for virtually everything that their financial advisers do and in the authorised representative model they typically only have limited sporadic oversight of what they are doing. A single mistake by an adviser can be very costly for the licensee in terms of either enforcement action or client compensation. No one should be in any doubt that the risk of an award of $542,500 by AFCA, for any single matter, will keep many licensee managers awake at night.
- A high level of regulatory uncertainty. The law and the regulatory guidance that licensees must understand and follow can be very complex and confusing. It is also unclear in what circumstances the actions of a licensee may lead to enforcement or compensation consequences.

9. Understanding the Client Experience

The most important outcome from the QAR will be how financial advice can better meet the needs of Australians. This means having access to financial advice when they need it, at a cost that they can afford.

We believe that it is important to reflect on what is often a huge gap between client needs and outcomes that are available to them under the current regime.

Client Need	Client Outcome
A potential new client, who has already established an account based pension, has just gone back to work in a part time capacity for 12 months and needs to set up a new super account. They just want some quick advice on a product that is cost effective and has appropriate investment options. They expect that this should take half an hour and cost no more than $200.	The adviser is required to take a comprehensive fact find, including detailing all existing assets and liabilities, health status, estate planning arrangements, family arrangements etc. The adviser needs to then assess the right strategy for the client and consider the product options that are available before considering why this advice would be in the best interests of the client. They then need to send it to their paraplanner to prepare the Statement of Advice. After four weeks the SoA might have been prepared and is ready to be given to the client, at a cost of $3,000.
An existing client who already has a superannuation account with their adviser receives a small inheritance from an uncle and they want advice on how to invest it for the next five to ten years before they will need it to help with the purchase a house.	As this is a new scope of advice to the previous advice, and it has been a couple of years since the previous SoA, the adviser will need to do a new and comprehensive fact find. As the scope of the advice is different to the previous advice, the adviser will need to prepare a full Statement of Advice. This will involve the

Client Need	Client Outcome
They would like some simple advice on the best option for them.	preparation of the SoA by a paraplanner, and might also require the SoA to be vetted by their licensee. After five weeks the SoA is ready to be presented to the client, who has got increasingly frustrated at the time that it has taken and whether the cost of $3,000 is worth it.
The client (a couple) would like to arrange their annual review in October each year after they get their annual product statements, including their investment and superannuation accounts.	The client commenced their arrangement with their adviser on 14 January 2022, and thus they can only renew their arrangement in the 120 days following 14 January 2023. The client wants to meet in October 2022, however the adviser cannot renew at that time, unless they put a completely new arrangement in place. The adviser would need to have two review meetings per year to meet both expectations. In the 2023 review meeting, whilst the clients might want to reflect upon the performance of their investments over the last year, the suitability of their life insurance policies and any changes to the investment and regulatory environment that may impact them, their adviser is also focussed on providing them with a Fee Disclosure Statement and getting them to sign a renewal document and to sign multiple product provider consents forms. Explaining what needs to be done and why takes up a material amount of the review meeting. All up this renewal and consent process might add $500 to the ongoing cost. Needing to hold an additional meeting each year would also add significantly to the cost.

In our view, the current model fundamentally fails to meet the needs of clients, and often forces them to take an option that is both slow, clumsy and costly.

In reflecting upon the above, it is useful to think what impact it would have on the medical profession, and overall client care, if doctors were required to:

- Undertake a broad fact finding process, including ordering pathologist tests, even for the most basic of conditions. They would need to delay the diagnosis and recommendation of any medicine until all the data had been obtained.
- Carefully consider how their advice is in the best interest of the client and document each and every step they have taken to assure this, including documenting what alternative diagnosis there might be and alternative medical solutions.
- Prepare a statement of advice before seeking the patient's agreement to take the medicine or to have an operation.
- To fully disclose any relationship, connection or benefits that they receive from pharmaceutical companies or health device providers.

Clearly this would prevent a doctor from providing a diagnosis in the same meeting, would push up the cost of medical services and in many cases provide medicines too late to have any meaningful impact.

10. AFA Objectives

In addition to our visions as set out above, at the AFA, we have defined the following objectives in order to achieve our visions for a financial advice regime that meets the expectations of consumers and financial advisers.

- Reduce complexity
- Reduce the cost of financial advice and the cost of running financial advice businesses
- Improve the client centricity in the advice and service processes
- Ensure that financial advice is a sustainable profession

11. AFA Recommendations

At the AFA, we have defined the following key drivers for achieving these objectives:

- Reduce regulatory uncertainty
- Regulatory relief
- Process re-engineering/improvement
- LIF Review and retention/increase of life insurance commissions
- Sustainability of advice profession actions

Reducing regulatory uncertainty

Our overall objective in terms of regulatory uncertainty is that an adviser and their licensee can have confidence that the advice that they have provided in an efficient form today will be assessed as compliant no matter whether it was assessed tomorrow or in five years time.

We believe that the key levers to reducing regulatory uncertainty are as follows:

- Better enabling the defining of the scope of advice, and specifically enabling limited scope advice. Uncertainty about the ability to provide limited scope advice is a contributing factor in the low level of uptake. This reflects a combination of issues with respect to what is expected to comply with the Best Interests Duty and the uncertainty created by Standard 6 of the Code of Ethics.
- Certainty on client data collection for limited scope advice. Further to the reservations with providing limited scope financial advice, advisers are also uncertain about how much client data they need to collect in order to meet the BID obligations and to comply with Standard 6, which requires consideration of broader circumstances and likely future circumstances.
- Application of limits on the ability of ASIC to mandate obligations that go above the law through either legislative instruments or regulatory guidance. If work is done to address the issue with regulatory uncertainty, we would not like this to be undone or to have it creep back in through the intervention of ASIC in an unconstrained fashion.
- Greater certainty on the use of RoAs. We recognise the guidance that ASIC has recently provided with respect to the use of RoAs, however we believe that further reform and clarity is required.
- Clear articulation of the requirements for Best Interests Duty compliance. One of the biggest challenges is being certain about what is required to comply with the Best Interests Duty, particularly with respect to meeting the expectations of the safe harbour. Section 961B(2)(g) requires the adviser to have met the open-ended requirement to have "taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances". This unclear requirement is completely inconsistent

with a safe harbour obligation, as it is so unclear as to what might be required. ASIC class order 14/923 also creates greater complexity in compliance with the safe harbour in requiring extensive record keeping.

- Clarity on the requirements for consideration of alternative strategies and products. There is a lot of confusion in the market place about what steps need to be taken to consider alternative strategies. There is nothing in the law that mandates it, however ASIC Regulatory Guide 175 requires that the SoA include a concise statement of the reasons why the advice and recommendation were considered appropriate, including in light of the alternative options considered, and the advantages and disadvantages for the client if the client follows the advice. What exactly this requires is somewhat unclear and therefore licensees have set their own rules. There are many who argue that it should not be necessary to address alternative strategies and products in the SoA.
- Certainty enabling shorter advice documents. The ability to deliver a materially shorter SoA (and RoA) is an objective that has been discussed over a long period of time. Despite the relatively limited expectations set out in Sections 947B and 947C, many SoAs can be as much as 80 pages long. It is broadly acknowledged that a lot of the complication is with respect to what licensees require to meet the regulatory obligations and to carefully manage the risk of complaints. There is a view that much of what is in the SoA is duplicated, however this is in part as a result of regulatory uncertainty on what needs to be in the SoA and how the SoA needs to demonstrate compliance with the Best Interest Duty. The preparation of example SoAs is a helpful exercise to assist with reducing this uncertainty, however more needs to be done to address this important role and to develop greater consistency in the expectations across the advice profession.
- Increased certainty with how AFCA will judge complaints. It is one thing to have regulatory certainty in terms of what ASIC expects to comply with the Best Interests Duty and related obligations, however if advice assessed by ASIC as compliant was assessed as non-compliant by AFCA, then this fails to pass the test. Many licensees are particularly concerned by the standards that are set through the decisions of AFCA. There needs to be a high level of consistency between what licensees think is compliant and what ASIC and AFCA thinks is compliant. We believe that this could be addressed by AFCA producing more guidance and through the establishment of forums to discuss their interpretation of cases.
- Introduction of a mechanism/forum to resolve regulatory uncertainty issues. At present there is no mechanism to address issues with regulatory uncertainty. In the tax world, there is the option to go to the ATO to ask for a binding tax ruling. In the advice world, often when a licensee approaches ASIC, they will be advised to get their own legal advice. If a licensee refers to a compliance specialist, they might get different answers. There is no forum that is available to seek out consistency and certainty. We are arguing for some publicly available mechanism to obtain certainty or alternatively to have a regular forum between ASIC, the associations and licensees to resolve matters of regulatory uncertainty. We would also recommend a forum to assist the compliance consulting community to understand ASIC's expectations.

Regulatory relief

We have put forward the list below of a range of relatively straight forward regulatory fixes to existing problems. We note that these are in large part medium term fixes and not major reforms that might otherwise emerge through either the Quality of Advice Review or the ALRC review.

We consider the key regulatory relief measures to be as follows:

- Remove the BID Safe Harbour, or repeal the 'other steps' obligation (Section 961B(2)(g)) and the ASIC record keeping class order (CO 14/923). There is a widely held view that compliance with the Best Interest Duty has become a key contributor to inefficiency and excessive cost in the advice process. Most licensees expect their advisers to follow the safe harbour steps, which is a complex process given the ASIC record keeping class order (CO 14/923). Thus, there is the proposal that this can be addressed by the removal of the safe harbour. We support this, however only in the context that regulatory certainty can be achieved by some other means. It would achieve relatively little to have the safe harbour removed if advisers could not be confident that their advice complied. We note that the ALRC have recommended an alternative approach where the safe harbour would be treated more as a guide. We have therefore proposed an alternative solution, which is to remove Section 961B(2)(g), which will remove one step that was never understood and also to repeal the ASIC class order so that the extent of prescriptive rules, and administrative workload can be scaled back. We support either option to address this issue.
- Allow advisers to be professionals and demonstrate professional judgement. Ultimately, we would like to see an outcome where financial advisers are treated more like doctors and lawyers and are permitted to meet their obligations through the ability to rely upon their professional judgement, rather than the necessity to document every step that they have taken.
- Redefine financial product advice to exclude advice on classes of products, to better enable the provision of strategic advice, without the need to prepare an SoA. Section 766B of the Corporations Act defines financial product advice in terms of a recommendation with respect to a financial product or a class of financial product. It is this inclusion of class of financial product that has deeper implications, forcing most strategic advice to be provided in the form of a full statement of advice. We would support the provision of strategic advice, where no product was recommended, through the use of a short letter. The exclusion of recommendations with respect to specific products reduces the exposure to the risk of consumer detriment. The rationalisation of the provision of strategic advice would also be beneficial to clients, as they can take advice in a two step process, where they can firstly engage in and agree to the strategy, before getting specific product advice.
- Fix FDS problems, including timing issues, small differences and changing anniversary dates. As discussed above, we would like to see the existing problems with Fee Disclosure Statements fixed, including removing the complication with timing differences and providing some discretion with respect to small differences. We would also like to see a return to the old arrangement where the client and the adviser can agree to an alternative renewal date, by bringing the renewal timing forward, rather than the current model with a fixed anniversary date.
- Rationalise disclosure documents. We are open to all suggestions to rationalise the current disclosure documents, noting that there is a high level of duplication between FSGs, SoAs, and FDSs. One option that we would like to see investigated is the removal of the need to provide Financial Services Guides.
- Annual Renewal. We recommend suspending the client consent obligations for three years to allow this obligation to be automated, enabling one signature per client. Unfortunately, the introduction of the Annual Renewal regime has been poorly designed and implemented. When significant reform is implemented so quickly, it is inevitable that the extent of coordination between different stakeholders will be sub-par. Where there was an opportunity to develop standardised efficient processes, this was wasted and there is now a complete divergence of approach across different product providers, with some supporting electronic forms and others expecting paper

copy consent forms. We believe that the Government should have played a role in driving or encouraging the development of an industry wide solution. We propose that consent forms be put on hold after the completion of the first full round (by 30 June 2022), so that efficient systems and processes can be developed. Ultimately, we believe that a client should only need to sign once and that signature should be leveraged to address the requirements of each product provider through an automated mechanism. We also propose that the backward looking (last 12 months) part of the Fee Disclosure Statement be removed, since fees are already disclosed in annual (regular) product statements. The FDS could simply refer to the most recent product statement. This would help to avoid the duplication and inconsistency in having both the product provider and the adviser report this information.

- Fix the Financial Adviser Code of Ethics. In terms of the Financial Adviser Code of Ethics, the big issues that need to be fixed are to fundamentally modify Standard 3 to ensure that it enables the careful management of conflicts, rather than a complete ban, greater certainty about the provision of limited scope advice in the context of Standard 6 and greater certainty with respect to remuneration as has been addressed in Standard 7.
- Allow broader use of Records of Advice. Consistent with the relief provided during the COVID 19 pandemic, we would like to see greater flexibility in the use of Records of Advice, including removal of the limitation around only being used in the absence of a significant change in the client's personal circumstances. This generates regulatory uncertainty and forces the use of SoAs, when often an RoA would be sufficient. We also support greater flexibility in terms of the restriction on using an RoA only where the basis or type of advice is consistent with a previous SoA. We would also support an increase in the dollar threshold for advice on small investments to be increased from $15,000 to $50,000. We also propose that the small investment RoA exemption be extended to include new product life insurance advice, where the value of the premium is below a certain threshold. This threshold could be $2,000 in total premiums.
- Reduce or eliminate the DDO regulatory obligations for financial advisers. As we understand it, DDO was intended to help avoid clients being placed into products that are inappropriate for them. Whilst financial advisers are not bound by Target Market Determinations due to the existing obligation to comply with the Best Interests Duty, the expectation that they review the TMD, consider significant dealings and the reporting obligations, means that financial advisers are still quite heavily impacted by the DDO obligations. Financial advisers see no client benefit in this and thus it seems to be extra red tape for questionable value.
- Reduce regulatory driven costs, such as the ASIC Funding Levy. Financial advice has been subject to a range of new fees and levies in recent years, some of which seem to be quite unreasonable. The relief that was provided in August 2021 on the ASIC Funding Levy is about to expire and advisers will once again be subjected to the full extent of this levy. Whilst we anticipate that the end of the Royal Commission enforcement matters will reduce the costs, this will be offset by new expenditure on the Financial Services and Credit Panel and potentially the Compensation Scheme of Last Resort. The other huge factor is the decline in adviser numbers. With 42% less advisers, in comparison with early 2019, the cost per adviser will virtually double. Unless ASIC is reducing their costs in a proportionate manner, then financial advisers will once against be subject to a very high levy for the 2022/23 year. We are conscious that the Government has commenced a review of the ASIC Funding Levy and we would propose that the relief for financial advisers is extended until the review has been completed.

Process Re-engineering/Improvement

In addition to the initiatives already discussed above, some of the key potential process reengineering initiatives are as follows:

- Greater access to client and product data through options such as the Consumer Data Right, ATO portal (or my.gov.au) and CentreLink systems. The fact find process is often a long and time consuming exercise, as clients are expected to pull together extensive information on their current financial position along with other relevant information. Advisers also need to collect information from various product providers, and this requires client authorisation, which some product providers often challenge, or require specific forms to be used. For some years, financial advisers have wanted to have access to data that is already available through the ATO Portal and the my.gov.au website. We ask the question as to why accountants can see information like superannuation contributions, Total Superannuation Balance and the Transfer Balance Cap, when this is not available to the people for whom it is most relevant? This data will not only speed up the fact find process, but also reduce the risk of providing advice. We are also very conscious of the opportunity that will be presented with the Consumer Data Right. This is an area where the Government can make a real difference. It is important that the CDR regime needs to be made easy for advisers and their clients to leverage.
- Listening to the voice of existing clients in terms of what consumer protections and advice process steps/actions add value and what don't. We believe that it is critical that the Quality of Advice Review listens to the voice of existing clients. We do not believe that they have been listened to as all the additional red tape has been added to the advice process. Existing clients did no see the need to introduce the Annual Renewal process. The voice of the client is critical in assessing which steps in the advice and servicing processes add value and which ones do not. Their voice is also critically important in understanding what documentation they want.
- Rationalise the record keeping obligations. Much time is spent in record keeping and ensuring that the client file contains everything that might be required in order to demonstrate compliance or to defend a potential complaint. Greater regulatory certainty will assist with this, however we also believe that it is an area where a significant reduction in cost is possible.
- Better enabling the use of technology and artificial intelligence in the advice process. Whilst we believe that technology has a role to play in the provision of advice, more importantly we believe that it has the opportunity to automate the provision of financial advice in a face-to-face manner. Technology already exists, such as solutions that have been developed by Padua Solutions with the development of advice strategies and the demonstration of the impact and emerging technology such as Life Bid, which will fundamentally change the life insurance advice and review process, that might assist in achieving a quantum improvement in the efficiency of advice practices.
- Further material rationalisation of the Annual Renewal process. Most clients strongly trust their financial adviser (The Value of Advice, IOOF, November 2020). They do not see the need to renew the agreement each year or to sign the number of forms that has become necessary. We believe that this legislation has gone too far and there is significant opportunity for sensible rationalisation. As discussed above, we recommend the removal of the last 12 months obligation in the FDS and greater flexibility to change anniversary dates. We have also proposed relief from the consent obligation for 3 years to enable a system solution to be developed that can be applied across the entire financial services industry.

- In a life insurance context, system changes are important to better allow amendments to existing cover, rather than needing to follow the full new product process. Life insurers should also be able to provide client data to advisers to populate a refresh of the fact find data.
- Maximising the standardisation of product provider admin and compliance processes. Compliance processes and systems should not be the subject of competitive differentiation. There is a broad range of different approaches that licensees and product providers take that causes inconsistency and often confusion. Greater leverage of standardised processes and forms could make a material difference. One important opportunity is the standardisation of third party authorisation forms, that allow advisers to have access to client information held by super funds and product providers.
- Use of industry wide standard technology. The use of technology in the financial advice process is an important contributor to efficiency, however at present the technology solutions are often disjointed, and inconsistent. Whilst much of this may not be dependent upon regulatory change, it is likely to be dependent upon regulatory certainty. There is a need for greater use of technology and thus innovation and investment to achieve that outcome. Importantly also, licenses should not be an obstacle in advisers accessing technology that will improve the efficiency of their business.

There are a lot of advisers who wish that product providers prioritised adviser efficiency and client centricity in the design and development of their processes and systems.

LIF Review and retention/increase of life insurance commissions

As discussed above, we are very concerned about the state of the life insurance advice sector and believe that it would be unsustainable in the absence of at least the preservation of existing commission arrangements. Even with the retention of the existing commission rates, we are of the view that the substantial loss of risk advisers in recent years has placed huge pressure on the capacity of the sector to meet consumer needs. We know that all the research says that Australians are not prepared to pay an upfront fee for life insurance advice and in the absence of commissions, would likely not proceed with insurance arrangements that meet their needs. Feedback from practitioners is that clients who are offered the option of an upfront fee, choose to pay via a fully disclosed commission. International experience certainly does not support moving down the path of fees and reducing commissions.

All the trends (new business volumes, adviser numbers and advised life insurance policyholders) are heading in the wrong direction, and timely action is needed to protect future access to advice on life insurance products. Underinsurance is a known problem in Australia and the evidence is suggesting that it has got materially worse in recent years and will continue to become a bigger issue over the next few years, particularly in the absence of some form of intervention.

We have suggested that the Government should address this problem by returning to the 80%/20% commission hybrid products that existed before the LIF reforms, where the quality and compliance standard was assessed as high (93% compliance) in the 2014 ASIC Report 413. We also suggest a reduction in the year two clawback from 60% to either a 33% clawback in year two, or a 50% clawback for the first six months of year 2 and then a 25% clawback from months 7 to 12 of year two.

Sustainability of Financial Advice measures

Financial adviser numbers have been under pressure for over three years, with a high volume of exits and very limited new entrants. Adviser numbers were above 28,800 at the beginning of 2019, however have declined to a point now where they are around 16,500 and expected to fall below 16,000 before the end of the 2022 calendar year. Intervention is necessary to address this situation and some Important actions could include:

- Resolving the education standard debate and providing significantly enhanced recognition of prior learning and experience. This action could have a material impact on the deliberation that is currently being undertaken by many older advisers, who have already decided not to do further education under the current model, who are working out the best time to leave the advice profession. It is not too late to change their minds.
- Actions to reduce the cost to operate advice practices, enabling improved business profitability. Addressing the other recommendations that we have put forward, will help to make financial advice practices more viable and therefore incentivise those who are currently struggling, to remain in the profession.
- Incentives for existing advisers to stay longer. We are open to the consideration of further incentives that might assist existing financial advisers to stay in the advice profession. Until a solid flow of new entrants has been established, it is important to do everything that we can to retain the quality existing advisers.
- Greater flexibility in the education pathways into financial advice. The FASEA model for new entrants was very prescriptive, reduced the available field of new entrants, and restricted the universities that they could be sourced from. Some greater flexibility in the pathway, including access to bridging courses, could lead to more new entrants into advice.
- Incentives for businesses to appoint Professional Year candidates. Attracting more new entrants into financial advice is an important solution to fixing the issue with the declining number of advisers. At present the rate of exits, far exceeds the number of new entrants. Whilst there is a small, but growing number of academically qualified potential new entrants, it is more challenging to find a placement for them. Traditionally many new entrants have come through the bank owned salaried channels, however with the banks all exiting financial advice, this is no longer an option. This has forced the load onto small business practices who have been struggling to come to terms with all the reforms underway and resultant time pressures. Small business advice practices are reluctant to invest in a Professional Year candidate when they fear that they will not remain after they have completed the program. We would support apprentice type arrangements to provide financial support to these small businesses and extra help with conducting the professional year program. We would also favour a reduction in the obligations with the Professional Year to ensure that PY candidates can be as productive as possible.
- Promotion of financial advice as an important profession. In order to incentivise young Australians to take up a career in the advice profession, financial advice needs to be perceived as an attractive profession to work in and one where it is recognised for the value that it delivers to society. The move away from the destructive perceptions that were created by the Banking Royal Commission will take further time, however there is a role to be played by a range of stakeholders including the Government, regulators and the media.
- Improved support for specialist areas. One of the main issues with the FASEA regime was the failure to recognise the different specialist areas. There was no recognition of specialist areas in the education standard and nothing was done to develop the means

for the recognition of professional specialities. We would like to see more done to recognise specialists and to promote these specialist pathways.

12. Other Feedback on the QAR Process

We would like to see the QAR project release an Interim Report for consultation, so that the financial advice sector has the opportunity to comment on potential solutions to the problems, before the report is finalised

13. Concluding Comments

The AFA supports the Quality of Advice Review and we have therefore sought to make a range of recommendations to reduce the cost and complexity of financial advice, to improve the client outcome and to ultimately enable financial advice to be a thriving profession.

Quality financial advice provides substantial benefits for those who have access to it, enabling Australians to be better prepared, feel more secure and ultimately live happier lives. Financial difficulties cause an extreme amount of problems in society, and financial advice is one important mechanism to reduce this impact. Ensuing greater access to quality advice and making it more affordable will generate substantial benefits for many Australians and Australia as a whole.

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

Yours sincerely,

Phil Anderson
Chief Executive Officer
Association of Financial Advisers Ltd

About the AFA

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

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

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

Appendix 1

Responses to Issues Paper Questions

1. What are the characteristics of quality advice for providers of advice?

Quality is typically defined as being of a high standard. Quality is a measure of the extent to which the advice provides the outcomes the client is seeking. It can be assessed in terms of ability to meet those goals and also in terms of whether it complies with the law. ASIC broadly assesses compliance with the Best Interests Duty and related obligations in terms of two key measures – 'placing the client in a better position' and 'fit for purpose'. These are both appropriate measures of quality.

Quality needs to take into account elements such as being technically correct. For example, advice that includes tax or Centrelink considerations, needs to get those technical elements correct.

Quality of advice can be defined narrowly in terms of the specific quality of the financial advice, as set out in the Statement of Advice. It could also be defined more broadly in terms of the quality of the overall financial advice experience. This broader interpretation incorporates consideration of the education, explanation and support that is provided to assist clients to achieve the objectives of the advice.

2. What are the characteristics of quality advice for consumers?

Clients typically come to a financial adviser with particular needs, that they may be able to articulate at the start, or that are determined through the advice process.

Quality in the eyes of the consumer could be assessed in terms of the probability of the advice meeting those defined needs as effectively as possible, when compared to other strategies and financial products, and in terms of the level of risk that is taken.

Advice that is capable of meeting their objectives, avoids potential complications and is achieved without taking unnecessary or unacceptable risks, could be assessed as quality.

Clients might also define quality more broadly in terms of the overall financial advice experience, including the education, explanation and support that is provided to assist them to achieve their objectives.

3. Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?

We believe that some of the regulatory change over the last 10 years will have had a positive impact on the quality of advice in a generic sense. The Best Interests Duty, has raised the bar in terms of the assessment of quality. This is the case independent of the safe harbour, which has been used in more of a procedural sense through the ASIC Class Order [14/923] and surveillance and enforcement activity. The Professional Standards legislation has also led to a likely increase in the quality of advice, through the completion of further education, increased CPD and an increased focus upon ethical considerations. In terms of the other reforms, the link to quality is more questionable.

We would also argue that an assessment of the previous regulatory reform should include an assessment of the effectiveness and efficiency of the reform in achieving higher standards of

quality. A measure that has significantly increased the cost of financial advice for only a small increase in overall quality is not an effective reform, and does not deliver value to clients.

There is also a genuine possibility that some reforms have resulted in the risk of a reduction in the quality of advice. One scenario that would be worth considering is the LIF reforms. The significant reduction in commission rates have resulted in financial advisers being paid less to provide financial advice. In many cases this has meant that advice has become uneconomical to provide, and as a result many advisers have exited this part of the market. If it costs an adviser $3,000 to provide life insurance advice and they will only be paid $1,800 to provide advice to a client with a $3,000 premium, then they are faced with the prospect of either walking away from this client or finding ways to provide the advice more cheaply. This could have a negative impact, if the wrong decisions are made.

This is of course not consistent with suggesting that the quality of advice has universally increased across the board, as many financial advisers have always been highly educated, very competent, ethical and operated to a high standard (or a combination of some of these factors). In fact, it could be argued that much of the gain could have been achieved by more direct action that was focussed upon those who were not operating to a high standard.

4. What are the factors the Review should consider in deciding whether a measure has increased the quality of advice?

It is important to understand that there has been a huge volume of reform that has impacted the financial advice profession over an extended period. Often it has been multiple reforms at the same time. Where multiple reforms are in play at the one time, it is often difficult to assess the impact of each individual reform.

It is also important to separate out those reforms that will be unlikely to have any advice quality impact, or a minimal impact on the quality of advice. Amongst these we would include:

- FDSs and Opt-in
- Tax Agent Services Act reforms
- Life Insurance Framework
- Removal of Grandfathered commissions
- Annual Renewal
- Disclosure of lack of independence
- Design and Distribution Obligations
- APRA Intervention in the IDII market
- Single Disciplinary Body
- Compensation scheme of last resort (when legislated)

There are other reforms that might have some impact in terms of the removal of inappropriate advisers from the marketplace, including:

- Reference checking
- Breach reporting and related reforms

5. What is the average cost of providing comprehensive advice to a new client?

The AFA have not done our own assessment of this important measure. We know that it is approached through two different mechanisms, being a detailed study and a survey of practitioners. Much of the reporting is on the basis of the surveys of advisers, however we would consider this to be the less reliable option.

What is really important to appreciate is that each practice has a different cost structure, based upon a range of factors, including their own processes, the technology they use, the resources they employ. It is also important to appreciate that each client is different and the investigation, education and counselling that is required and the work involved will vary.

In recent times detailed reviews have been undertaken by KPMG (released by the FSC) and ASIC as part of the Unmet Advice Needs project (although unfortunately never publicly released).

We are comfortable to say that the cost has increased materially in recent years and we understand that it is above the $3,000 mark.

6. What are the cost drivers of providing financial advice?

In our view the key steps in the advice process that drive cost are as follows:

- Collection of client data (fact find process), including research on existing products.
- Development of the strategy and product recommendations.
- Documentation of the advice, including articulation of why the advice is in the best interests of the client, and related paperwork.
- Education and counselling of the client to ensure that they understand the advice and the implications of the advice.
- Implementation of the advice, which can be extensive in some cases, particularly with life insurance, where issues emerge during the underwriting process.
- External costs, such as licensee fees, paraplanners, Government levies, Professional Indemnity Insurance etc.

It is also important to appreciate that there are other costs involved in the running of financial advice businesses, that are not so directly related to the provision of financial advice:

- Fixed costs, such as rent.
- Client renewal costs.
- Servicing costs, including in the life insurance context supporting clients in making insurance claims (which most advisers do not charge separately for).

The factors that have the greatest impact upon cost are as follows:

- Ready access to client and product data (often a problem and a delay).
- The extent of leveraging technology.
- Having the right people do the right tasks.
- Having good processes and operating in an environment of greater regulatory certainty.

In terms of the servicing and renewal of clients, the annual renewal obligations have increased costs significantly. There is now a greater level of duplication in these processes, with seeking multiple signatures from clients. Not only do advisers need to spend a lot more time on FDSs, renewal and client consent, however more support staff need to be appointed and trained to a much higher standard.

7. How are these costs apportioned across meeting regulatory requirements, time spent with clients, staffing costs (including training), fixed costs (e.g. rent), professional indemnity insurance, software/technology?

We are not in a position to answer this question, however we note that these costs are going to vary from one practice to another, based upon a broad range of factors.

8. How much is the cost of meeting the regulatory requirements a result of what the law requires and how much is a result of the processes and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?

Both the activity to meet the regulatory requirements and the expectations of licensees and product providers are material and considerable.

Different licensees require compliance with different licensee standards and also different product providers, including superannuation trustees, also require compliance with different obligations.

It is important to note that the impact of product providers is more with respect to the application process, servicing of clients and the client consent process. It also varies with respect to the Design and Distribution Obligations. These product provider expectations have been further complicated in recent years by the letters that APRA and ASIC have written to superannuation trustees, which amongst other things, has required that trustees review a sample of Statements of Advice. These types of letters, set expectations that are applied differently by different groups. It leads to more conservative processes being applied by some groups as compared to others, however the inconsistency creates significant complications and variety in processes.

9. Which elements of meeting the regulatory requirements contribute most to costs?

In terms of regulatory requirements, we would argue that the greatest factors are as follows:

- The collection of client information that is relevant to the scope of the advice. This can be particularly difficult to obtain in some cases. There should be a consistent protocol for obtaining client information from super funds, some of whom have a history of making the process difficult. Access to Government portals, such as the ATO Portal, Centrelink and my.gov.au would make a material difference.
- Sometimes defining the scope of the advice can be complicated with the interplay between the Best Interests Duty and the Code of Ethics, often resulting in a broader scope being established, than may be required. Inconsistency in the requirements between the law and the Code of Ethics create uncertainty which drives up the cost.
- Establishing the recommended strategy and the products, where addressing the consideration of alternatives and the articulation of why the advice is in the best interests of the client can prove to be time consuming.
- Addressing the consequences of product replacement, particularly where modelling of the impact on the superannuation balance over a period of time is expected.

One simple solution would be the development of an industry standard third party consent form and process

10. Have previous reforms by Government been implemented in a cost-effective way?

The simple answer to this question is a definite no. In our view, there has been a complete failure in recent years, and particularly with respect to the Banking Royal Commission recommendations to ignore the important exercise of a Regulation Impact Statement. The excuse to avoid this has been the suggestion that the Royal Commission was akin to an RIS, when this was clearly not the case.

We have also observed serious drafting mistakes, such as in the Annual Renewal legislation where advisers were expected to provide FDSs to the client on the day after the end of the FDS period (an impossible task) during the transition year.

The new breach reporting regime that commenced on 1 October 2021 is probably the most complicated piece of legislation that has been introduced in recent years, making it incredibly difficult for a small licensee to follow and thus increasing the reliance on legal advice. Confusion, uncertainty and the need for legal advice is a clear sign that it was not done in a cost-effective way.

At present, financial advisers are looking at the requirements with respect to the Design and Distribution Obligations and shaking their heads as to what the client benefit is in the extra steps that they need to take, in the context that most of the Target Market Determinations provide no value, particularly in the context of an advice relationship.

Looking more broadly, many of the FASEA reforms were implemented without the necessary level of consideration of being cost effective. We are now dealing with the consequences of this and the new Government is proposing to change the education standard, some three and a half years after it commenced. This is a clear sign of regulatory failure. Another example is the CPD requirements for financial advisers, where FASEA decided that advisers should do 40 hours in total and 9 hours on ethics and professionalism. Lawyers typically need to do 10 hours in total and find the 9 hours on ethics and professionalism quite a remarkable expectation

11. Could financial technology (fintech) reduce the cost of providing advice?

Yes financial technology could make, and in some cases already is capable of making a significant difference in reducing the cost of providing financial advice. The key areas where technology could make the most difference are as follows:

- Data collection as part of the fact find process. Ultimately, we believe that the Consumer Data Right can play an important role, however in the meantime, having access to the data contained in the ATO portal or through MyGov, would make a real difference. There are already tools that can consolidate product holding data, however this is an area where significant change, that is facilitated by the Government, is possible.
- Client portals could also make an important difference, in facilitating the exchange of information between advisers and their clients.
- Greater use of artificial intelligence in the preparation of advice that can leverage data known about the client and probable strategies, leading to the production of advice recommendations and the articulation of why the advice is in the client's best interests.
- Real time compliance oversight of financial advisers, better enabling licensees to take a less risk averse approach to setting licensee standards.

Whilst separate to the cost of actually providing financial advice, technology could make a significant difference in the completion of the annual renewal exercise and the provision of client consent to product providers. If this was done on a universal system, in a consistent manner, that could interface into all the product systems, then this would provide a huge leap forward on our current position.

12. Are there regulatory impediments to adopting technological solutions to assist in providing advice?

There are a combination of regulatory, coordination and investment impediments to achieve better use of technology to drive efficiency. Regulatory issues abound and are evidenced by the ongoing issues with the production of Fee Disclosure Statements and the fact that ASIC expects them to be based upon what fees have come out of the clients account, as opposed to the way that these systems have been built, which is in terms of what and when the fees are paid to the financial adviser. Timing, GST/RITC and small difference often create problems. In ASIC Report 636, issued in November 2019, they openly stated that advisers should access product systems to do a manual check to confirm that the FDS is correct. This is a regulatory impediment to efficiency.

The current high level of regulatory uncertainty is also a key impediment to the development of technology solutions. Why would potential investors and system developers want to invest in automating a process, when the requirements of the law are unclear and could be altered in the future by a decision of the Parliament, the Minister or ASIC?

When regulatory reform is implemented too quickly, it is impossible for industry to coordinate the development of technology and the standardisation of process. The Annual Renewal legislation was finalised in late February 2021, and was scheduled to start on 1 July 2021, a mere 4 months later. The regulatory guidance was only issued by ASIC in June 2021, having been held up as a result of changes required by drafting failures. Neither the Government, nor regulators played any role in trying to drive or support a standardised system solution. The implementation of reform should be done in a timeframe and with an deliberate approach to promote efficient application.

When regulatory change is implemented in a back to back manner with one more reform commencing before or soon after the last, and the cumulative impact of ongoing regulatory reform, where there are a high level of interdependencies, it is very problematic to automate and to keep the solutions up-to-date.

What is evident is that the experience of the recent past is very sub-optimal and we need to find a new way to achieve change in the future.

13. How should we measure demand for financial advice?

We believe that it is necessary to differentiate the need for financial advice from an awareness of a need and the actual demand for financial advice.

Some of the key triggers for needing financial advice are life events, such as the purchase of a home, the birth of a child, the change of job, the establishment/purchase of a business, the sale of a business, separation/divorce, death of a relative, redundancy and retirement. Presumably most of these life events are already the subject of publicly available data.

Many people do not appreciate that the purchase of a home, and the commencement of a large mortgage is the trigger to review their life insurance. Neither do they realise that the birth of a new child is a trigger to reassess their life insurance. Equally, they do not think about financial advice when they receive an inheritance or a redundancy payment.

Others are aware that these life events trigger the need for financial advice, yet they decide not to seek advice, sometimes because they think it will cost too much, or they do not think that they are the type of person who would get financial advice.

Demand could be measured in terms of new financial advice clients and ongoing financial advice clients, however this represents a small fraction of need and also awareness.

14. In what circumstances do people need financial advice but might not be seeking it?

As discussed above in Question 13, there are many life events that trigger the need for financial advice, however most people do not take action.

It would be interesting to do analysis on the number of people who retire each year without financial advice and what these people do as a result. How many would take the money out of the superannuation arena, without even considering the alternatives or the relative benefits. Equally, with more people retiring with a mortgage, how many of them are seeking advice to work out what is the best option for them?

15. What are the barriers to people who need or want financial advice accessing it?

The barriers to accessing financial advice include the following:

- The lack of understanding of what financial advice is and when it is needed.
- A reaction to the negative media coverage about financial advice that was generated by the Banking Royal Commission, which unfairly portrayed financial advice as a sector where misconduct was prevalent.
- The perception that financial advice is only for the rich.
- The unwillingness to pay the cost of accessing financial advice.
- The difficulty accessing financial advice. In the past many Australians would have gone to their bank to access financial advice. This is simply no longer possible. Outside of this, or a referral from a family or friend, they would not know where to start looking.
- As we understand it, even superannuation funds with advice businesses have a long waiting list for members want to access financial advice.

16. How could advice be more accessible?

The accessibility of advice is a factor of the following:

- The channels to access financial advice.
- The number of financial advisers in Australia.
- The cost of financial advice.

At present, around 10% of Australians access financial advice, and this number has been progressively declining over recent years. It is likely to continue to decline over the next few years as the number of financial advisers will inevitably fall further.

Digital advice is a potential solution, however to this point, the uptake of 'robo-advice' has been minimal. In part this is because financial advice is a service, where clients seek a relationship to first be confident that they can trust their adviser and rely on the advice that is provided. Younger Australians are potentially more likely to seek out digital advice, however this is much less likely to meet the expectations of middle aged and older Australians. What is a potential solution going forward is a hybrid form of advice that is commenced with the involvement of a human, but largely maintained in a digital format.

Most face-to-face financial practices are set up to providing ongoing advice to a relatively small number of existing clients, rather than once-off advice to a larger number of customers. This is as a result of the cost of providing financial advice and the complexity involved in commencing an advice relationship. As opposed to tax accountants, who can much more efficiently provide their services, the compliance obligations with the provision of financial advice impact the entire business model. This is a major factor impacting access to financial advice.

At present, financial advice is too expensive for many Australians and too costly for financial advisers to provide. The cost to provide advice means that advisers are only able to provide advice to a limited number of clients. If we had more advisers, and the cost to provide advice was reduced, then we would have the multiplier impact of more advisers and each adviser being capable of servicing more clients.

Achieving a quantum reduction in the cost of financial advice through regulatory and other reforms will make financial advice more affordable for Australians and also more accessible to everyday Australians.

17. Are there circumstances in which advice or certain types of advice could be provided other than by a financial adviser and, if so, what?

This question very much depends upon the needs of the client. It is certainly possible, but much more likely in the case of young Australians. It is also likely to be simple forms of financial advice and much less likely to deliver outcomes such as behavioural change. Also digital advice is likely to deliver much less in terms of emotional benefits.

18. Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?

As discussed above, there is emerging technology that is utilising artificial intelligence for the production of financial advice, where client data is utilised and standard strategies are employed. This can assist in the quicker development of advice, without necessarily any reduction in quality. This, along with the use of technology in the collection of client data, does offer the prospect of a significant increase in the automation of the production of financial advice.

The development of client portals also presents an opportunity for improved information transfer between advisers and their clients, and improved servicing for cleints.

Emerging technology in the life insurance space, such as LifeBid, has the potential to fundamentally rationalise and improve the life insurance advice process by automating a number of the stages, including quoting and pre-assessment.

Real-time compliance monitoring could also make a huge difference, enabling advisers and their licensees to have greater confidence that the advice complies with the law. This is an area where more investigation would be beneficial.

Technology will play an important part in improving the efficiency of the advice process, however in some areas it will not happen all that quickly and thus a range of other measures are required to address the fundamental issues in financial advice.

19. What is preventing new entrants into the industry with innovative, digital-first business models?

International experience with digital business models has seen a poor uptake in financial advice. The complex Australian regulatory and taxation model has for a long time been a disincentive for overseas entities to seek to enter the Australian market.

Building an innovative digital first solution would require significant investment and would involve significant risk, both of which are major disincentives. In the context of the high levels of regulatory uncertainty and the prospect of further change driven by the Quality of Advice Review, at present, this is likely to limit the level of investment in technology.

The other factor in a new entrant coming into the market is that the use of such a solution will be influenced by the licensees who are gate-keepers in terms of the introduction of new technology. Already the primary financial planning system that is used by licensees is an important determinant in terms of other systems that might be able to be used. A new innovative solution would most likely need to operate alongside the existing financial planning systems that perform broad roles. It is possible that this might be difficult to do in a competitive context.

20. Is there a practical difference between financial advice and financial product advice and should they be treated in the same way by the regulatory framework?

There is an important legal distinction between financial advice and financial product advice, in that the regulatory regime only addresses financial product advice, as is set out in section 766B(1) of the Corporations Act:

> For the purposes of this Chapter, financial product advice means a recommendation or a statement of opinion, or a report of either of those things, that:
>
> (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
>
> (b) could reasonably be regarded as being intended to have such an influence.

This definition only applies with respect to financial product advice, however it is complicated by the inclusion of the reference to a class of financial product. An adviser recommending strategies such as investing in direct shares or managed funds for the future, without recommending specific shares or funds, or alternatively salary sacrificing into super, would be considered as financial product advice, even though no specific product has been recommended. Thus, pure financial advice, that is not caught by the definition, is limited to areas like advice on budgeting and cashflow management.

It is further complicated by the parallel regime of the National Consumer Credit Act, where certain conduct may require a credit licence. This creates another relevant boundary, and a solution might need to consider both licensing regimes.

In reality, in the community, the term financial advice is used to refer to the broader classification of financial advice that includes financial product advice, but also advice of a form that does not fit under the definition in Section 766B(1). Clients do not make this distinction.

There are other factors that come into play, including the role of Professional Indemnity Insurance, where the policies often do not cover the adviser for some forms of conduct that is outside of the definition. An example of this is advice on direct property or advice on crypto currencies. Virtually all licensees prevent their advisers from providing advice on these two areas as they are typically not covered under PI policies.

In our view, there should be a single licensing regime that covers all the areas discussed above, where the requirements should be differentiated by the complexity of the product and the risk of consumer detriment.

21. Are there any impediments to a financial adviser providing financial advice more broadly, e.g. about budgeting, home ownership or Centrelink pensions? If so, what?

At present there are few limitations when it comes to advice on budgeting and Centrelink pensions, and broad advice on home ownership. Complications often emerge with recommendation provided with respect to a specific property. Client losses in this area can lead to compensation being awarded by AFCA.

Financial advisers operating where a financial services licence is not required, are subject to the limitations that might be applied by their licensee, which are often linked back to what is permitted or prevented by PI Insurance.

22. What types of financial advice should be regulated and to what extent?

In our view all forms of financial advice should be regulated, including advice provided to a mass audience through channels such as social media. We basically believe that anyone who is making recommendations about what someone should do with their money (subject to certain sensible exclusions), whether this is based upon consideration of their personal circumstances or not, should be required to be licensed.

The form of the advice should dictate the obligations that apply, such that the obligations are proportionate to the level of complexity and the risk of detriment that the client is subject to.

23. Should there be different categories of financial advice and financial product advice and if so for what purpose?

Whilst the AFA is a strong believer in the application of a level playing field for the provision of financial advice, we are also supportive of a future regime that is carefully calibrated so that the obligations are proportionate to both the complexity of the product and the level of risk of client detriment. Simple advice and strategic advice should be able to be provided with limited regulatory obligations, whereas complex personal financial product advice should be subject to more stringent obligations.

If this approach was enacted, then it would be possible to move away from the distinction between personal advice and general advice.

24. How should the different categories of advice be labelled?

We are less concerned about the application of specific labels, but instead more interested in the development of a model of graduated obligations, that better enables simple advice to be provided in a cost effective manner, but at the same time retains the necessary consumer protections.

Potential labels could include simple, moderately complex and complex advice.

25. Should advice provided to groups of consumers who share some common circumstances or characteristics of the cohort (such as targeted advertising) be regulated differently from advice provided only to an individual?

We believe that the proposal that we have put forward in this submission about a regulatory regime that is proportionate to advice complexity and the risk of consumer detriment is an appropriate solution. Thus, providing advice to a group could be addressed as part of this revised framework. Importantly, consideration needs to be given to whether the advice refers to a specific product, and whether it could be acted upon.

26. How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?

We would support financial coaches and influencers, who are providing advice in the form of financial advice as more broadly defined, being subject to the same licensing regime. As noted above, the complexity of the advice and the risk of consumer detriment could be the determinant of the level of obligations that apply to this form of advice.

We are concerned that people performing what in practice are similar functions, might be able to operate outside the regulatory regime, and thus creating a risk of unprotected consumer detriment. A graduated regulatory regime would make this more manageable.

27. How does applying and considering the distinction between general and personal advice add to the cost of providing advice?

The key determinant of the distinction is whether the clients personal circumstances have been taken into account, or a reasonable person would have expected the provider to have done so (Section 766B(3). This is not really a key factor for financial advisers, who are very cautious about providing general advice and almost aways operate on a personal advice basis. In reality the distinction is a more important issue for those who operate predominantly in the general advice space. In our view this is not a big driver of cost for financial advisers.

28. Should the scope of intra-fund advice be expanded? If so, in what way?

In answering this question, it is important to start with the basic point that intra-fund advice is not a form of financial advice, but instead a way of paying for financial advice (Section 99F of the SIS Act). Certain types of advice are allowed to be provided to clients on the basis that they are collectively paid for across the membership of a superannuation fund.

This is an effective way for super fund members to access a basic form of advice without having to individually pay for the advice. This is of course not to suggest that it does not cost the member, but is instead less transparent. This is good in the sense that it means that a broader range of people can access basic financial advice, than would otherwise be the case. It is also a potential negative in that it undermines the perceived value of financial advice by suggesting that it is available at no cost or seemingly little cost. This can impact a member's willingness to later pay for financial advice at normal commercial rates.

It is also an equity issue in that some members of the superfund who use the service are being subsidised by the broader membership base. This is a more supportable mechanism when it relates only to simple and less costly forms of financial advice that can be more cheaply provided. It is also important to appreciate that it is also most definitely conflicted advice, in that it can only relate to the investments and insurance within the fund.

We do not support an expansion of the scope of interfund advice. In our view, this will serve to further undermine the perception of the value of financial advice, increase the inequity created by those who do not use the service paying for those who do, and also expand the existing issue with conflicts of interest.

From what we understand from those who are arguing for an expansion to include non-super assets and other family members, this is a fundamental breach of the sole purpose test, and this should not be permitted, particularly if the sole purpose test is to be strictly applied to all other financial advisers. The one area where we would be more open to an expansion of scope is in the consolidation of small balances in other super funds into the main fund. A cap would need to be set for this and it could be restricted to the threshold that applies to the use of RoAs for small balance investments.

29. Should superannuation trustees be encouraged or required to provide intra-fund advice to members?

This should be a choice of the super fund trustees and should definitely not be mandated. In mandating it, they would be forced to operate a financial advice business (unless outsourced), and they would necessarily need to have the appropriate skills and resources to do this. If this was mandated, then it would offer an advantage to the larger funds, who could better absorb the increased cost. The appropriateness of the provision of intra-fund advice will depend upon the specific fund, and therefore we do not support either encouraging it or mandating it.

30. Are any other changes to the regulatory framework necessary to assist superannuation trustees to provide intra-fund advice or to more actively engage with their members particularly in relation to retirement issues?

Not in our view. We believe that a level playing field should apply to all financial advice providers, and therefore we do not see any need for any further measures to specifically assist super fund to provide intra-fund advice.

31. To what extent does the provision of intra-fund advice affect competition in the financial advice market?

The model for the provision of intra-fund advice is simpler than for other forms of advice, as no direct fees are charged and there is therefore no need for an engagement letter or disclosure of the fees in the Statement of Advice. It is also simpler to provide, as the product recommendations are limited to the existing fund. In this way, it is specifically facilitating

conduct that would not be permitted by other financial advisers, who need to consider alternative products. This does create issues with respect to a level playing field.

Also, the fact that members do not pay directly for intra-fund advice is a distortion to the broader market, meaning that members are more likely to choose this source of advice, as opposed to other financial advisers, for whom they would need to pay for financial advice. We are very conscious that this impacts the perception of both value and the appreciation of the real cost of providing financial advice, which we see as a negative for the broader market.

32. Do you think that limited scope advice can be valuable for consumers?

We most definitely think that limited scope advice can be very valuable to consumers. In reality, this is the way many clients start their advice relationship, seeking a solution to just one area of their needs. Accessing limited scope advice also provides the opportunity for financial learning, which is very beneficial in the long term.

33. What legislative changes are necessary to facilitate the delivery of limited scope advice?

Limited scope advice is currently possible, however the expectations of advisers in providing limited scope advice (from both a regulatory perspective and also a licensee's requirements) is such that the reduction in the cost is relatively limited.

The biggest issue with limited scope advice is with respect to the steps that need to be taken to confirm the scope of the advice, the amount of client data that needs to be collected and the extent to which advisers need to consider the clients broader circumstances and likely future circumstances. The obligation to consider the clients broader, long-term interests and likely circumstances is a requirement of Standard 6 of the Financial Planers and Advisers Code of Ethics 2019, and is broadly considered to be an obstacle to the confident provision of limited scope advice.

This is an area where regulatory certainty would make a large difference, and potentially significantly reduce the cost of providing this type of advice. To achieve this, we would like to see Standard 6 of the Code of Ethics fixed and specific confirmation in the legislation that limited scope advice can be provided in a form that addresses the client's needs and that they do not need to think unnecessarily broadly.

34. Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?

Financial advice is in reality provided on a spectrum, ranging for simplistic single issue advice to broad comprehensive advice. In very few cases would the advice cover all potential fields. Thus the proposition that most advice is comprehensive is missing the point. The reality is that most advice covers more than one issue.

It is also not so much the case that most advice is comprehensive, but instead that it has been prepared on the basis of the same approach that might be taken with respect to genuinely comprehensive advice. This comes down to the extent to which the collection of client data (fact find) is comprehensive and the extent to which the adviser has thought broadly about the potential implications of the advice and engaged in broader discussion with the client.

Another reality is that there is a high level of fixed cost in the production of a statement of advice, so the difference in the cost between limited and comprehensive advice is less pronounced, simply as a result of a reduced scope.

A regulatory regime that enables the application of proportionate obligations, based upon the scope, complexity and risk of the advice would better enable the efficient provision of limited scope advice.

35. Do you agree that digital advice can make financial advice more accessible and affordable?

We do agree that digital advice could make financial advice more accessible and affordable if clients were willing to pursue this channel and if they perceived that they would gain value from it. There are a range of reasons why many consumers are hesitant about using digital advice solutions. This includes many who want to work with a person. Also it comes down to people who need a lot of financial education to help them make a decision and implement the advice, or who have financial behaviours that will only be challenged and changed by holding discussions with a financial adviser.

Being in receipt of digital advice does not mean that a person will implement the advice, whether that be a budget, savings plan or acquisition of a product. In the case of life insurance advice, people want their adviser to be there at the time of claim. A digital solution is no substitute for someone who can hold your hand through difficult life stages.

As discussed earlier in our submission, the broader emotional and behavioural benefits of financial advice are not readily accessible when advice is obtained in a digital form.

36. Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?

Simple and transactional advice is better suit to digital advice. In essence it is advice in a form that can be readily implement and does not require behavioural change or ongoing oversight. Where it is complex, requires education before the decision, or support to implement and where ongoing accountability is necessary, then digital advice is much less likely to be successful.

37. Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?

Yes the risks are different. Where the financial advice is provided by a person, they are more able to confirm that the client understands the advice and that they appreciate the benefits and risks involved. Where it is digital advice, the client cannot come back to ask questions before they agree to proceed. With digital advice there is an absence of ongoing connection and accountability.

38. Should different forms of advice be regulated differently, e.g. advice provided by a digital advice tool from advice provided by a financial adviser?

The AFA supports differentiation in the obligations of providing financial advice, where the requirements are proportionate to the level of complexity and risk to the consumer. This should apply equally to financial advice provided by a person, as it applies to digital advice.

It should be the scope and complexity of the advice that dictates the obligations, rather than the channel of the advice.

39. Are you concerned that the quality of advice might be compromised by digital advice?

There are risks that the quality of advice could be compromised with both face-to-face advice as much as with digital advice. The areas where there could be greater risk with digital advice are as follows:

- Increased inability to genuinely understand the needs and objectives of the client.
- Reduced ability to confirm the clients understanding of the advice
- Reduced ability to confirm the clients understanding of the benefits and risks.

In addition, we have concerns that the client might be less suited to extracting the full value of the advice and that they may not gain the emotional benefits that they would otherwise gain from face-to-face advice.

40. Are any changes to the regulatory framework necessary to facilitate digital advice?

Other than potential broader changes to better facilitate limited scope advice and implementing a regime where the obligations are proportionate to the level of complexity and the risk of client detriment, we do not see any need for additional measures to facilitate digital advice.

41. If technology is part of the solution to making advice more accessible, who should be responsible for the advice provided (for example, an AFS licensee)?

Consistent with the current regulatory regime an AFSL, would need to be responsible for the advice. We cannot see any reason why this might need to be changed.

42. In what ways can digital advice complement human-provided advice and when should it be a substitute?

We do anticipate significant opportunity for digital advice to supplement human advice. This could occur at different points in the value chain, including in the collection of client data, in the development of strategies and product recommendations and in the production of the Statement of Advice. Where the advice is developed digitally, however provided by a human, and the client has the full opportunity to benefit from education that is provided face-to-face, behavioural changes achieved through one-on-one coaching and through the chance to discuss and question the advice, then this would still be a good consumer outcome.

We envisage that digital advice could be a substitute for human provided advice when the needs are very limited and there is reduced need for human interaction or the emotional and behavioural benefits that are derived from human interaction.

43. Do you consider that the statutory safe harbour for the best interests duty provides any benefit to consumers or advisers and would there be any prejudice to either of them if it was removed?

The whole concept of a safe harbour is to provide confidence to the provider that following these steps will prove that they have met their obligations. This was never going to be possible with the inclusion of the seventh step (Section 961B(2)(g)), which is so open ended:

> taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.

The safe harbour was also further complicated by the demanding expectations of ASIC Class Order 14/923, which turned compliance with the Best Interests Duty into a challenging record keeping exercise and resulted in a number of ASIC reports (562, 575, and 639) pointing to a low level of compliance, despite limited evidence of consumer detriment. This situation was further compounded by ASIC's report 515, which involved reviews being undertaken on large institutional licensees by the large accounting firms. Ultimately this painted a picture of the difficulty in complying with the Best Interests Duty and led to the development of large check lists by the institutionally owned licensees. This process seemed to focus on strict and demanding compliance with the process, with little emphasis on client outcomes. This is the primary background leading to the calls to remove the safe harbour.

The potential benefit of the safe harbour was initially intended to be for the adviser. It may be argued that it has become more a benefit to the client, as it has opened up much greater risk of non-compliance and thus provided the prospect of remediation. The quality of advice benefit to the client is limited at best.

In the absence of the Best Interests Duty safe harbour, there would still be the question of what the adviser would need to do to prove compliance with the Best Interests Duty. Unless this was introduced along with other steps to place a greater reliance on the financial adviser's professional judgement, then simply removing the Best Interests Duty safe harbour would have a questionable benefit. This should be further considered to assess the merits of repealing the Best Interests Duty safe harbour.

The other option is to follow the suggestion of the ALRC and make the Best Interests Duty safe harbour a guide. We would further recommend that if this was the case, then Section 961B(2)(g) should be repealed along with the ASIC class order 14/923.

44. If at all, how does complying with the safe harbour add to the cost of advice and to what extent?

The real driver of increased cost is compliance with ASIC class order 14/923, where the adviser must keep records of the information relied on and the action taken by the advice provider that satisfies each step in the safe harbour provision.

The impact has become significant, particularly amongst the institutionally owned licensees who went through the ASIC Report 515 experience. In response to this, they developed extensive checklists that all advisers were required to comply with. This included advice provided through both a Statement of Advice and a Record of Advice. The direct and indirect impact on the cost of advice was substantial.

Further the regulatory uncertainty with respect to meeting the Best Interests Duty safe harbour is another factor driving up complexity and cost, with licensees choosing to be more risk averse.

45. If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal advice?

We are not able to respond to this question as a licensee, however we would expect that licensees would want to obtain greater regulatory certainty in terms of what they would need to be able to demonstrate in order to prove compliance with the Best Interests Duty. As stated above, unless the removal of the Best Interests Duty safe harbour was accompanied by other measures that provided greater confidence and certainty, then it is most likely that licensees would remain risk averse. They may even still require their advisers to follow the old safe harbour steps.

46. To what extent can the best interests obligations (including the best interests duty, appropriate advice obligation and the conflicts priority rule) be streamlined to remove duplication?

It is the view of the AFA, that each of these three obligations are referring to broadly the same thing, which is that the client outcome is of a high standard. It would seem that if the adviser had failed to prioritise the interests of the client, then they would not have met the Best Interests Duty. Equally there seems to be duplication with respect to the Best Interests Duty and the appropriate advice obligation.

We would support the rationalisation of these three separate provisions.

47. Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?

It is the view of a large number of financial advisers that the Target Market Determinations for standard life insurance, superannuation and investment products are of very limited value to consumers. In terms of life insurance products, it is virtually impossible to see how a product that was recommended to a client in a manner that complied with the Best Interest Duty could be inconsistent with the Target Market Determination. This is just one more layer of complexity and red tape that adds to the cost of providing financial advice.

We are of the view that the Design and Distribution Obligations have simply added more complexity for clients without creating any benefit. If they had been focussed only on high risk products, then this may have generated a different outcome.

Whilst there is no harm in an adviser being aware of the TMD, it is highly unlikely to influence the advice and thus this should not be a mandated requirement. Financial advisers are not limited by the TMD, so what is the benefit in making this a requirement.

48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?

We fully acknowledge that it is more appropriate for clients to pay fees rather than for advisers to receive commissions from third parties for investment and superannuation products. Nonetheless commissions had been disclosed on all products since at least 2004, so the risk of client detriment as a result of this conflict of interest was mitigated to some extent. This is a reform that we can support, however the extent to which this has generate a client benefit is subject to further investigation and research.

More broadly, the imposition of conflicted remuneration provisions has had some positive impact and has helped to avoid any excessive benefits. Commissions were most definitely a factor in the sale of some products such as Agribusiness.

In the life insurance space, the Life Insurance Framework has helped to standardise the commission rates across different products, which helps to ensure that advisers are not picking products on the basis of the highest commissions. Whilst a conflict of interest still exists, is a manageable factor. This is an acceptable risk, in the context of the benefit s to consumers, in being able to access financial advice on life insurance products.

We are conscious that the ban on grandfathered commissions has resulted in a large number of adviser relationships being turned off. We imagine that there are some clients who were not receiving ongoing services who will benefit from these commissions being rebated, however we also suspect that there will be many tens of thousands of clients who were happy with the arrangement, who relied upon their access to a financial adviser, who now no longer have access to a financial adviser. This has been a poor outcome for many previous financial advice clients.

49. Has the ban contributed towards improving the quality of advice?

It is difficult to assess the direct impact of the ban on conflicted remuneration on the quality of advice in the context of all the other reforms happening at the same time. It can only be presumed that it has had some impact, and it is likely that it has been a positive impact.

Given that a lot of advisers had already transitioned to a fee for service model by the time of the introduction of the FoFA reforms, it is expected that the greatest impact may have been on those that were yet to move. It also may be the case that it is one factor that has contributed to the departure of some advisers from the profession who were not always doing the right thing.

50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

The ban on conflicted remuneration and more recently the ban on volume bonuses for pre-FoFA business has had a material impact. The impact has been different across different licensees and different practices. Some listed licensees have publicly disclosed the impact of the loss of grandfathered commissions and volume bonuses on their financial situation. In some cases, it was very material. Seemingly almost all licensees have responded by significantly increasing the licensee fees that they charge their advisers. This has necessarily fed through into higher costs and they have been passed onto clients as higher advice fees.

We are not aware of any impacts on the structure of advice firms, other than a progressive move away from low income clients and a contraction in the overall number of clients.

Those practices with a high percentage of grandfathered commissions will have been impacted by both a reduction in income and an increase in costs from higher licensee fees.

We expect that profitability has deteriorated in a large percentage of advice practices in recent years for this and other reasons.

51. What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.

In terms of the financial advice related exemptions to the ban that are monetary benefits, our view is as follows:

- The removal of commissions on life insurance would have a destructive impact on the life insurance market. The vast majority of clients will not pay for life insurance advice other than a small amount for the Statement of Advice. Even when offered the choice to pay a fee or a commission, consumers invariably choose a commission. This is for two obvious reasons. Firstly the cost of the advice is amortised over the first 5-7 years of the policy. Secondly, typically, they do not pay for advice if the life insurance policy is not placed. Retail advised life insurance new business has already halved in the last five years and would be expected to fall substantially further. Retail advised clients pay over 50% of life insurance premiums, so the loss of this market would have serious flow on implications for the life insurers, invariably also pushing up premiums on the group super policies.
- The removal of the exemption for execution only business through Section 963B(1)(c), that is available in the case where advice has not been provided in the last 12 months, is unlikely to have any material impact for the majority of financial advisers. We think it is most unlikely that this exemption is used to any material extent.

In terms of non-monetary benefits, relevant to financial advice, our views are as follows

- The small monetary benefits exemption remains appropriate, given the tight controls around this. The benefit is that it allows financial advisers to attend moderate events with product providers that is useful in building and maintaining relationships with people that can be used for the benefit of clients. For example, if this allows a financial adviser to attend functions with the underwriting team from a life insurer, then they can leverage this relationship to better enable cover for their clients.
- The training and education exemption continues to have an appropriate purpose, given that it permits product providers to provide education and training to financial advisers that they can utilise in the services that they provide to their clients.
- The information technology software exemptions also remains relevant as this allows product providers to make their software available to financial advisers.

None of the above non-monetary benefits are of the scale that would unreasonably influence the quality of advice and each of them have positive implications that can work in the favour of clients. We see no reason to remove access to these benefits.

52. Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?

We do not believe that there is any justification for the removal of any of the remaining exemptions (possibly with the exception of the execution only benefit). We do not believe that they create inappropriate incentives or pose risks to the quality of advice that is provided.

Since we do not believe that they negatively impact consumer outcomes, we do not believe that it is necessary to consider alternatives.

53. Has the capping of life insurance commissions led to a reduction in the level of insurance coverage or contributed to underinsurance? If so, please provide data to support this claim.

There has been a very material reduction in the number of Australians covered by retail advised life insurance policies since the LIF reforms commenced in 2018. This is illustrated in the data published by APRA through the claims and disputes data, that they release every six months. Please see the following table, which shows that the number of Australians with retail advised life insurance has declined between 9% for trauma and 18.7% for death cover. Over such a short period of time, this is a very material decline.

Individual Advised Policy Holders - '000

Category	31-Dec-18	30-Jun-20	30-Jun-21	31-Dec-21	Cumulative % Change
Death Cover	1,994	1,717	1,653	1,621	-18.7%
TPD	1,177	996	968	972	-17.4%
Trauma	826	792	768	752	-9.0%
Disability Income	911	847	816	805	-11.6%

It could be argued that this reduction is attributable to other factors, such as a decline in adviser numbers, however the decline in advisers who provide life insurance advice is in part due to the reduction in commissions that are payable.

We believe that this is compelling evidence of what has happened in a short period of time. We expect that this trend is continuing and that it would rapidly accelerate if upfront commissions were reduced further below the current 60% cap. Thus we firmly believe that LIF is contributing to an increase in the level of underinsurance, and this is only going to get worse, even if the current caps are kept in place.

54. Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.

We are unable to respond to this question.

55. What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be retained?

We believe that any further changes should only be on the basis of evidence of misconduct and detrimental client outcomes. We are not aware of any recent evidence with respect to this. Other than one or two examples, it was not a factor in the Banking Royal Commission.

We would caution against the need for further changes, just on the basis of the stated preference in the Banking Royal Commission final report.

We would also suggest reference is made to other professions. Professionals in the medical field continue to get training and education from product providers, including attendance at conferences on a scale well above and beyond what is permitted in the financial advice market. We are not aware of a reason why financial advisers should be subject to restrictions on a scale that do not apply to other professions.

56. Are consent requirements for charging non-ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?

The provision of non-ongoing fee consent forms to product providers is a much more straight forward proposition as it is a once off submission of a consent form. Nonetheless we believe that it could be better streamlined by standardisation of systems and processes and increased use of automation.

57. To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?

The requirements for ongoing fee arrangements are at present very inefficient and not at all client centric for the following reasons:

- A couple who are clients, with three separate products each, would be required to sign a total of seven forms, and would be subject to separate forms and processes for each product provider.
- Some of these forms are manual and some are automated. None of this is standardised and much of it is not automated. Neither is it client centric. Clients are amazed that they could be expected to sign so many different forms.
- We understand that product providers have needed to increase their staffing levels to manage these new obligations, which are costs that will need to be passed on to clients.
- The implementation of these reforms has been poorly thought through and this has caused unnecessary complications. Firstly, advisers were originally expected to issue FDSs to clients a day after the end of the FDS period during the transition year, which is impossible. Advisers were permitted to complete the FDSs during the transition year right up to 30 June 2022, however product providers are demanding to receive the client consent forms well in advance of the 30 June 2022 deadline. This is in conflict.

We question the need to provide these consent forms to the product providers if financial advisers are required to obtain an annual renewal and to maintain records of their compliance with these obligations. This could be audited by licensees. If a client were to complain about fees being deducted without an ongoing fee agreement, then the obligation would be on the

adviser to prove that the client has renewed. What is the benefit to the client if this is causing significant additional work for advisers, licensees and product providers? It is important to take into account that these fees are also being disclosed by product providers in annual or semi-annual product statements.

58. How could these documents be improved for consumers?

Consumers are mostly happy to provide consent, however would expect to sign just one form and not multiple forms. They would expect that one signature should be enough, and that the relay of this to product providers, if required, could be done in a automated manner.

59. Are there other ways that could more effectively provide accountability and transparency around ongoing fee arrangements and protect consumers from being charged a fee for no service?

It is important to list the existing controls that exist to protect consumers:

- Clients sign the Approval to Proceed on the Statement of Advice to agree to an ongoing fee.
- Clients sign product applications forms to confirm agreement to pay ongoing fees.
- Product providers include fees paid to financial advisers in their annual statements.
- Advisers are required to provide clients with an annual Fee Disclosure Statement.
- Advisers are required to get clients to sign renewal notices.
- Clients have access to complain to the licensee and AFCA if they become aware of fees being paid after the termination of an ongoing fee arrangement, or in the absence of agreement to pay fees.

This additional obligation to provide consent forms to product providers each year was because the Banking Royal Commission questioned whether clients paid attention to their product statements. Seemingly they saw a need to protect consumers who were not receiving services, nor receiving FDSs and not completing the renewal process, but not paying attention to their product statements.

This could be addressed through the licensees audit program, that is already looking at these issues and a sample based testing arrangement by product providers. There needs to be a more efficient solution that is less duplicative in nature.

60. How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?

The AFA have not done our own assessment of these costs, however we are aware of a range of estimates that have been prepared, suggesting that the cost could be as much as $400 per client per year. This is just the cost at the adviser end. There are costs at the licensee end and also material costs at the product provider end. Each of these costs are ultimately paid by clients.

61. To what extent, if at all, do superannuation trustees (and other product issuers) impose obligations on advisers which are in addition to those imposed by the OFA and FDS requirements in the Corporations Act 2001?

There are other obligations that have been put in place by APRA and ASIC through a joint letter to super fund trustees on 'Further guidance on oversight of advice fees charged to

members' superannuation accounts'. This letter reinforces a previous letter from April 2019 requiring that trustees undertake oversight of advice fees to ensure that they are validly being charged and that they comply with the sole purpose test. The letter also requires super fund trustees to examine Statements of Advice on a sample basis. We have objective to this as we consider this to be a breach of the privacy obligations. This letter has led to further action by trustees, including putting a cap on what advice fees can be charged to super funds.

It is important to note that the APRA guidance on the Sole Purpose Test was issued in February 2001, and has not been updated since. This is before the FSRA and well before any of the changes to FDSs and renewal notices. The guidance is not clear with respect to advice fees and this is an area of some uncertainty.

62. How do the superannuation trustee covenants, particularly the obligation to act in the best financial interests of members, affect a trustee's decision to deduct ongoing advice fees from a member's account?

This is a question predominantly for super fund trustees, however we acknowledge that super fund trustees do have important obligations that they need to comply with and they need to have some systems in place to ensure that fees are being legitimately withdrawn and for the right purpose.

63. How successful have SOAs been in addressing information asymmetry?

We do not believe that the legislative requirements for the content of an SoA is materially wrong or excessively demanding. In fact, seemingly they can be provided in a brief form that is compliant. The complication however is the extent of regulatory uncertainty in seeking to achieve this and the overlay of risk averse licensees providing extra content with the objective of managing their potential liability.

The success of the SoA in addressing information asymmetry is to some extent dependent upon the attributes of the client. For those clients who are inclined to carefully read a long and sometimes technical document, then it is effective, however we suspect that for many clients it is not read from cover to cover and probably only reviewed briefly.

It is important to note that with many advice situations, the advice is delivered verbally, and often backed up by presentations and explanations, using white boards and similar tools. The SoA is instead a document to confirm the advice that was provided verbally. This serves to better achieve the objective of the delivery of the advice.

The Statement of Advice was designed over 20 years ago, and obviously much has changed from a technology perspective since that time. It is appropriate to consider what is the right solution for the future.

64. How much does the requirement to prepare a SOA contribute to the cost of advice?

It is important to note that the advice needs to be prepared, no matter whether it is delivered verbally, through a Record of Advice or through an SoA. This question is presumably asking about the additional cost in providing financial advice in the form of an SoA. The additional costs comes in the following key areas:

- The analysis and preparation of information that is required in an SoA, but not for other forms of advice.

- In the case of the SoA being prepared by a paraplanner, the preparation of a paraplanning request form or the briefing of the paraplanner.
- The actual cost of the preparation of the SoA, whether this is done inhouse or by a paraplanner.
- The review of the SoA by the adviser before it is presented to the client and the management of any rework if required.

We are unable to provide a dollar figure and note that this will vary from one practice to another and from one client to another.

65. To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information they need to make an informed decision?

As stated above, we do not consider the SoA content requirements as set in Sections 947B or 947C of the Corporations Act to be particularly excessive. Further, in the case of replacing one product with another, the requirements set out in Section 947D are also reasonable.

What is significantly impacting on the cost and the entirely unreasonable length of the document, is the interpretation of what the law requires and how compliance consultants, lawyers and licensees have responded to these obligations.

Without the provision of more clearly defined guidelines that remove the scope for widely variable interpretations, which are ostensibly pitched as required for consumer protection, but ultimately drive overly complex compliance requirements, there is little capacity to exercise professional judgement and reduce costs.

66. To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?

ASIC issued Regulatory Guide 90 in December 2017, that includes an example SoA. This example SoA is 23 pages long. In our view, this document is too long as it includes significant duplication with respect to the explanation of why the advice is in the client's bests interests. As highlighted previously, this is an area where greater regulatory certainty is essential. Nonetheless, the example SoA in RG 90 is significantly shorter than many of the SoAs that exist in the market place.

On this basis, it is necessary to conclude that the length of SoAs is to a large extent driven by existing practices and attitudes towards risk and compliance. Nonetheless the biggest contributor to this is the sense of regulatory uncertainty and the very real fear about a large claim being awarded by AFCA. We understand why licensees take a risk averse approach to the content of SoAs, and believe that this is a critical issue to address.

67. How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?

We believe that this is an area where an important difference can be made in the client centricity of the advice process. Advice can and should be delivered through a range of more interactive means, such as videos and presentations. The law seemingly already allows the use of videos as a means to deliver advice. There will inevitably be a range of implementation issues such as how the requirements of the replacement product obligation can be simply

delivered in this form, although it may be that this is achieved through a combination of videos and presentations, with detailed information included on the screen.

Addressing this question should start by listening to the views of existing clients.

68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?

As discussed above, we would support a regime where there are reduced disclosure obligations for simple advice. We also think that the delivery of strategic advice, even though this is often caught under the class of product element in Section 766B, should be able to be provided in the form of a letter.

69. Has recent guidance assisted advisers in understanding where they are able to use ROAs rather than SOAs, and has this led to a greater provision of this simpler form of disclosure?

The guidance provided by ASIC with respect to the use of RoAs was good and it has been well received across the advice profession. We believe that there is greater opportunity to reduce regulatory uncertainty in this space and also further opportunity to increase the use of RoAs by removing the exclusions where the client's personal circumstances have changed significantly or the basis of the advice has changed. We also believe that the threshold for small investment advice should be increased from $15,000 to $50,000. We would also support the small investment amount approach being applied to new product life insurance advice, potentially with a threshold of $2,000 in combined premiums. At present Section 946AA of the Corporations Act specifically excludes life insurance advice.

At this stage we are unable to tell if the ASIC guidance has led to an increase in the usage of RoAs.

70. Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?

We warmly welcomed the COVID 19 advice related relief and have called for the continuation of this relief in a permanent sense. As mentioned above, we would support the permanent removal of the exclusion related to a significant change in personal circumstances. This is firstly a somewhat arbitrary concept, however also it should not limit the use of an RoA, where the change in personal circumstances and the potential implications can readily be addressed through the advice and documented in the RoA.

We also support the extended time that was made available to provide an SoA after time critical advice. Five business days is simply not enough, even in the pre COVID era, particularly where there is a reliance on an external paraplanner. We believe that an extension to 15 or 20 business days would be a reasonable approach.

71. Should accountants be able to provide financial advice on superannuation products outside of the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why?

This has been a sensitive and actively debated issue for a decade. It is acknowledged that the accountant's exemption did not work. Neither has the limited licensing regime, where the professional standards reforms have forced many of these limited licence advisers to leave.

We are also conscious of the argument that accountants are allowed to create companies and trusts for clients, however they are prevented from creating SMSFs.

We are aware that the accounting bodies have put forward a proposal for a simplified regime to apply to accountants for the provision of some basic types of financial advice. In the context of our proposal that the regulatory obligations should be proportionate to the complexity of the advice and the risk of client detriment, we believe that it is worth considering what broader role accountants can play and what regulatory regime should apply. Our initial thinking is that this should be limited to the establishment and close-down of an SMSF, and utilisation of the concessional superannuation contribution cap. We believe that appropriate education requirements should apply if an exemption is given, and that clients should have the protection that is made available through the internal dispute resolution regime and AFCA.

72. If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?

As discussed above, we believe that the services that are possible should be limited to the following:

- The establishment of an SMSF.
- The closure of an SMSF.
- Advice on concessional contributions to super, including salary sacrifice and personal deductible contributions, without recommending a specific product.

We would suggest that unlicensed accountants should be prevented from providing advice on any investment and insurance products.

As discussed above, we believe that the IDR regime should apply and that membership of AFCA should be a requirement in order to protect consumers.

73. What effect would allowing accountants to provide this advice have on the number of advisers in the market and the number of consumers receiving financial advice?

It would mean that more Australians could access simpler forms of advice on their superannuation, including the establishment of an SMSF. However, it is important that it should be limited to accountants who are suitably qualified in the area of SMSFs.

74. Is the limited AFS licence working as intended? What changes to the limited licence could be made to make it more accessible to accountants wanting to provide financial advice?

It is evident that the limited licensing regime is not working. There are a couple of key factors that have come to light. One is the fixed cost that comes with being a part time financial adviser, including the cost of the ASIC Funding Levy. Another factor is the significant demands involved in passing the exam and the education standard, which seems to have been a major obstacle for many accountants.

75. Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?

The licensing regime and professional standards seem to be the primary barriers, however we would argue that having the required level of technical knowledge on SMSFs is a critical consideration for any accountant wanting to provide SMSF advice.

Another potentially challenging area could be Professional Indemnity Insurance.

76. Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?

What is fundamentally obvious is that the key reforms that have impacted financial advisers over the last 10 years, including FoFA, LIF, DDO and Professional Standards only apply to financial advisers who provide personal advice to retail clients.

Financial advisers who only service wholesale clients are not required to provide FSGs, SoAs, PDSs and FDSs. Advisers who only provide advice to wholesale clients are not required to comply with the Best Interests Duty or the conflicted remuneration obligations, or to have passed an exam or achieved an increased education standard. They also pay a tiny fraction of the ASIC Funding Levy. Despite the increasing trend of financial advisers moving into this space, the Cost Recovery Implementation Statement for the 2021/22 year suggests that ASIC will spend $35,000 on the supervision of licensees in this sector and cost licensees a total of $20 each. The difference is so stark, it is in fact hard to fathom that the need for consumer protection goes from the extreme for retail clients to virtually non-existent for wholesale clients.

We suspect that in many cases, clients would have no idea what the implications are of being classified as a wholesale client, since many who would qualify, would not have the level of financial sophistication to have any understanding of the implications.

The AFA would certainly support a proactive written acknowledgement, however we do not believe that this measure alone provides sufficient consumer protection.

77. Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?

In many cases, wholesale clients will still think that their adviser has the same obligations as the other advisers who provide personal advice to retail clients. They will be completely oblivious to the different requirements. They will not understand that many of the Corporations Act obligations do not apply to their adviser. With the relatively low existing thresholds, it is difficult to understand how it is possible for a person with $2,499,000 in assets,

including their house, to be more substantially protected as a retail client, however someone with $2,501,000 being treated completely differently.

78. Should there be a requirement for a client to be informed by the adviser if they are being classified as a wholesale client and be given an explanation that this means the protections for retail clients will not apply?

We would support clients having the option to agree to being classified as a wholesale client and doing this on the basis that they have been fully informed of the difference.

79. What steps have licensees taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?

With the exit of many of the large institutions from financial advice, a significant majority of financial advisers are authorised representatives who operate their own small business (either as a licensee or authorised representative). Larger and mid sized licensees are typically not providing financial advice, but instead providing services to authorised representatives, who provide financial advice. Licensees do facilitate the provision of financial planning software and they do provide training to support their advisers to provide compliant financial advice. They are understandably also particularly focussed on ensuring that the advice that is provided is compliant. Accessibility and affordability are likely to be less important factors for them, particularly given that much of this is out of their control.

It is important to recognise that self-licensed practices are much more in the game of providing financial advice and will be motivated to do what they can to ensure that advice is provided that is quality. In the context that there is excess demand for financial advice, self-licensed practices do not have much incentive to focus upon issues that might assist with increased accessibility and affordability.

All forms of licensees are motivated to ensure good consumer outcomes, however in the current environment they feel constrained in terms of what they can do to promote access and affordability.

80. What steps have professional associations taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?

As a professional association, we have long argued for the rationalisation of the compliance obligations and overall for solutions to reduce the cost and complexity of providing financial advice. We have put forward a number of proposals including a model for annual renewal, that we believe was much more efficient and cost effective.

Promoting quality outcomes for financial advice clients is also an important part of the role that we play. This includes responding to complaints with respect to the advice provided by our members and also providing training and support to encourage the provision of quality advice. One of the important parts of being a member of a professional association is through being part of a community that encourages the exchange of ideas on best practice.

In terms of our effectiveness, we would argue that our advocacy has assisted to reduce the extent to which recent regulatory reform has been misguided and ineffective, however much of

the reform has been pushed through without due consideration to the consequences, including as a result of a lack of preparation of Regulation Impact Statements.

We have also worked hard to support financial advisers to complete the exam and to encourage them to stay in the profession, which ultimately is assisting with the issue of accessibility. Other than through our advocacy role, there is very little that we can do to make financial advice more affordable.

81. Have ASIC's recent actions in response to consultation (CP 332), including the new financial advice hub webpage and example SOAs and ROAs, assisted licensees and advisers to provide good quality and affordable advice?

We were supportive of the work that ASIC undertook as part of the unmet advice needs project (CP 332), and pleased to see the hub webpage and the work that has been done to better explain the use of RoAs. It is, however our view that we have seen too little of the outcomes of CP 332, and were disappointed that this was contingent on the availability of limited resources. Seemingly ASIC is spending over $50m in the financial advice space, and thus an additional investment in helping to fix the numerous issues in financial advice would be likely to make a material difference.

As we have repeated above, the work that needs to be done to reduce regulatory complexity is critically important, and ASIC are a central party to that.

82. Has licensee supervision and monitoring of advisers improved since the Financial Services Royal Commission?

It is our view, that the quality of supervision and monitoring was already at a high standard at most licensees before the Banking Royal Commission. It is likely that the standard has increased further as a result of the Banking Royal Commission. It is most likely also true that the management of the reference checking process has stepped up materially as a result of the focus that the Banking Royal Commission placed on advisers being able to move licensees without sufficient attention being played to their track record. This has also been subject to the recent introduction of mandated reference checking obligations.

The Banking Royal Commission put a spotlight on the important role that licensees play in supervising and monitoring their advisers. This has served to increase the level of accountability. Licensees have an important role to play in the supervision and monitoring of financial advisers and promptly responding to misconduct and consumer detriment.

83. What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice?

It is our view that these three groups can play an important role in the process to reduce regulatory uncertainty, much of which can likely be done without the need for significant regulatory change.

We also believe that improved interaction between these three important stakeholders will assist in the resolution of outstanding issues and more constructive dialogue on how to improve the efficiency of the advice process and how to reduce the cost of providing financial advice.

We have proposed the establishment of a forum to address issues with regulatory uncertainty, that would necessarily need to be inclusive of these three groups.