10 June 2022

Michelle Levy
Review Chair
Quality of Advice Review
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Ms Levy

Consultation: Quality of Advice Review

Thank you for the opportunity to respond to the Quality of Advice Review Issues Paper, dated March 2022.

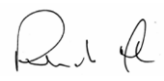
Insignia Financial has been helping Australians secure their financial future since 1846 and today, we are a business dedicated to the financial wellbeing needs of Australians. With an extensive network of over 1,765[1] financial advisers and one of Australia's leading superannuation fund providers, with $227 billion in funds under administration, Insignia Financial is committed to looking after and securing the future of over 2.2 million clients and members.

Insignia Financial is optimistic about the future of advice. We believe this review is an excellent opportunity to ensure that quality advice is affordable and accessible for more Australians improving their financial wellbeing. Insignia Financial recognises consumer needs exist along a continuum. To address these financial needs, we propose the law should allow the provision of financial information (under current consumer protections), financial insights (low cost, lower regulatory obligations) and financial product advice (including limited scope, single-issue advice and holistic product advice) (higher cost, higher regulatory obligations).

In our experience, many Australians are looking for affordable, accessible financial guidance which the current system is not able to deliver. Our proposed approach would better match consumer needs with regulatory protections reflecting where a consumer's needs are on the continuum making advice more accessible to all.

We have expanded on these points in the following section and addressed the Quality of Advice Review Issues Paper questions in Appendix 1 of this document. If you have any questions in relation to the submission, please contact Francine McMullen via email at Francine.Mcmullen@insigniafinancial.com.au.

Yours Sincerely,



Renato Mota

Chief Executive Officer

[1] Adviser numbers for the Insignia Financial network were 1,765 as at 31 December 2021 (Source: *Insignia Financial Q2 FY22 Quarterly Business Update*, ASX Release - 27 January 2022)

Insignia Financial
Quality of Advice Review - Response to Issues Paper

June 2022

Contents

Introduction

The *Corporations Act 2001 (Cth)* ('Corporations Act') imposes a single licensing regime for financial sales, advice and dealings in relation to financial products. It deals with product and advice together. This does not reflect the needs and wants of consumers today. To address the continuum of consumer financial needs, this nexus between product sales and advice needs to be broken.

Many individuals do not need or want personal financial *product* advice recommendations, nor do they always need a new product. In our experience, they want to understand i) their financial position; ii) the choices available to them; and iii) the context that can empower their decision-making process in order to improve their financial wellbeing.

To make advice more affordable and accessible we make several recommendations as set out below.

Recommendation 1 'Financial Insights'

We recommend introducing the term 'financial insights' to the Corporations Act to facilitate appropriately regulated provision of financial coaching.

To better meet the needs of consumers and provide clarity for consumers and providers, the making of fair and reasonable statements of opinion about a financial product, a class of financial product and other financial matters should be regulated but not as 'financial product advice'. An appropriate term by which to regulate them may be 'financial insights.'

The definition of 'financial insights', should:

- be simple;
- allow for strategic recommendations not involving a financial product;
- refer to the concept of statements of opinion; and
- be entirely *objective*.

Financial insights should be regulated similarly to the way in which 'general advice' is currently regulated. For example, the person providing financial insights would need to be accredited in accordance with ASIC's *Regulatory Guide 146 Licensing: Training of financial product advisers* for Tier II advice.

In addition, we believe a warning (ie a 'no-advice warning') should be provided by the person providing the financial insights (discussed further in our responses to questions 20-27 in Appendix 1). Financial product advice and financial insights should be clearly delineated in a manner that is easily understood.

Case Study – Financial insights

Sam is 49 years old and plans to retire at 63. They currently have $350,000 in superannuation, but they aren't sure if they are in the right superannuation fund. They are particularly worried about fees after seeing news reports declaring some superannuation funds are charging high fees.

Sam goes to the website of the superfund and finds a page on fees that present fees for three different balance types. None represent their balance, nor the fees charged between now and retirement.

To make further enquiry, Sam calls the free advice service provided by her superfund. They inform Sam they aren't allowed to calculate fees for Sam's specific situation because it relies on personal information, which may meet the criteria for personal advice. Sam is referred to an adviser, but Sam doesn't proceed with advice because of the higher fees for comprehensive advice.

Under the current legislative framework there is too much uncertainty as to what is deemed personal advice versus general advice. This prevents qualified teams from providing clients like Sam with the guidance they seek. Under the proposed framework, Sam could have used an online calculator that projects fees based on their balance, their age, their investment option, and their target retirement date. If Sam wanted to discuss the details of this projection, or have one prepared by a financial coach, this would also be available to Sam. The coach could even explain to Sam why in some cases fees are paid in exchange for different features, benefits and services that Sam might deem worthy of the additional expense.

Recommendation 2 Financial Product Advice

We recommend removing the definitions of 'personal advice' and 'general advice' and modifying the definition of 'financial product advice' in the Corporations Act, focusing its use only on express recommendations.

The definition of 'financial product advice' should:

- Remove the concept of general advice. Financial product advice would therefore be the same as personal advice.
- Only include express advice (removing the blurred line of 'implicit' advice).
- Reflect that advice relates to a recommendation of a product and removing 'statement of opinion' from the definition.
- Not include subjective clauses which are difficult to apply and create regulatory uncertainty.
- Allow ASIC to create an "advice list", which would list expressions and practices ASIC specifies are advice.

The best interests obligations would apply to financial product advice but not financial insights. The new definition of financial product advice should allow all financial system participants, including consumers, to know with a high degree of certainty when advice is and is not being provided and what is subject to best interests obligations.

To provide a financial product advice recommendation, the advice provider would still need to comply with a best interests duty, be authorised as a financial adviser, meet the professional standards and comply with the code of ethics.

The regulator should have legislated powers to create a list of terms/activities that only advisers providing financial product advice would be authorised to use, for example 'making a recommendation' in respect of a financial product.

As outlined below, we recommend disclosure obligations for financial product advice should be scaled to suit the complexity of the advice, from simple disclosure for limited advice (including Intra-fund advice) to more comprehensive disclosure for holistic advice.

Financial Information
The current law does not regulate the provision of this information outside the general law and consumer protection provisions (e.g. misleading or deceptive conduct provisions). We believe the law should not be changed in this respect, other than by the additional requirement of a 'no-advice warning' (discussed further in our responses to questions 20-27 in Appendix 1).

Recommendation 3 Advice documentation does not meet consumer needs

For financial product advice, we recommend a scalable disclosure regime reflecting the complexity of advice, from limited (including Intra-fund advice) through to holistic advice.

What consumers want to understand from a financial product advice recommendation is that the adviser has considered the relevant information and options (relevant to their goals) and recommended a course of action that is in their best interests.

A simple advice document which addresses how the advice will help them achieve their financial goals, supported by the advice conversation, would be more beneficial to assisting consumers to decide if they should act on the advice than the current extensive statements of advice which, in our experience, many clients find overwhelming and mostly don't read.

ASIC's 'Report 632 Disclosure: Why it shouldn't be the default' highlights, advice disclosure documents should be designed with consumer needs, capabilities and expectations in mind, and this will aid in minimising regulatory costs and build customer trust.

Terminology in disclosure documents should be more client friendly. Terms such as 'scope of advice' are adviser centric and add complexity. From a consumer's perspective, they have goals that they want to achieve or gaps that they are not aware of that an adviser will identify. The advice document should address these goals and/or gaps, rather than setting out 'scope of advice'. Where an adviser has identified a gap that a client does not want addressed during their discovery meeting, they can simply call this out in the advice document as a limitation. This would simplify the readability of the advice.

The legislative and regulatory framework for advice documentation should facilitate the adviser using their professional judgement to determine what level of information needs to be included in the advice document, based on the complexity of the advice, to make the recommendations clear to the consumer. Limited advice should equate to a simple advice document which the consumer can easily understand and digest.

The advice disclosure document should be able to be scaled to reflect the complexity of the advice and scenarios that are more likely to give rise to conflicts of interest. For example, if the advice recommendation is that the adviser be nominated on the client's account / product for ongoing management, then more comprehensive disclosure should be required. Where advice fees are being paid from a product or the product is issued by a related party, there is greater risk of a conflict developing between the adviser's and client's interests. In these circumstances and where holistic financial advice is provided, advice disclosures would be scaled up to provide more comprehensive details, with regulatory clarity as to what needs to be included in the disclosures. The scaled-up disclosures should take into account Code of Ethics obligations as well as the advice conversation. Similarly, where an adviser recommends a new product replace

one of the client's existing product/s, higher disclosures might be required compared to a recommendation limited to a client's existing products.

Advisers should still have a defendable client file and we suggest that regulatory guidance be provided as to what documents/evidence needs to be kept on file. The record on file should demonstrate the adviser has conducted adequate research to conclude their recommendations are in the client's best interests and appropriate, and the adviser has met the requirements of the Code of Ethics.

Recommendation 4 Collectively charged limited advice (intra-fund)

We recommend expanding the scope of collectively charged limited financial product advice that a superannuation trustee can provide to members.

Australia has a strong and effective superannuation system and for many individuals, superannuation is their main financial asset outside of home ownership. Superannuation members should be able to access the advice they need in an affordable manner. Being able to access collectively charged limited financial product advice from their super fund (as permitted under s99F of the *Superannuation Industry (Supervision) Act 1993 (Cth)* (SIS Act)) provides this opportunity.

Currently the types of advice that can be accessed this way are too narrow in scope to be useful to a broad spectrum of superannuation members. Our experience is more than 60% of members who seek collectively charged advice are triaged out. Expanding the scope of collectively charged limited advice alongside the introduction of Financial Insights would enable more superannuation fund members to obtain the advice and guidance they need but currently can't access.

Intra-fund advice (which falls under the definition of limited financial product advice) provided by the super trustee, and related to existing superannuation the client holds, should be able to be collectively charged to the members of the fund if it does not require ongoing advice. This should include considering insurance in superannuation, pension products and other superannuation accounts held by the member outside of the superannuation product.

The regulatory requirements for this advice should continue to be the same framework that currently governs intra-fund advice including the requirements outlined in *Regulatory Guide 244 Giving information, general advice and scaled advice*. In the case for consolidation advice, for example, the level of inquiry (RG 244.69-73) would need to be adjusted to include information specific to the superfunds held by the member, such as any tailored fee and/or insurance arrangements the client may benefit from as part of a workplace super plan. This includes complying with the best interests duty and Code of Ethics requirements.

Matters that would be in-scope under the expanded definition:

In-scope	Out of scope
• All matters currently in-scope under s99F of the SIS Act • Superannuation advice including where the member holds other APRA regulated superannuation accounts with other product issuers • Consolidation advice • Insurance in superannuation advice (not limited to cover the member has within the account held with the provider) • Advice on retirement income options and products (ie pension account vs lump sum withdrawal, tax based and aged based queries)	• Advice where the consumer is not currently a member of the fund • Advice where the member requires an ongoing advice relationship (ie advice where the member would reasonably expect a review, further advice or monitoring of implementation) • Advice taking into account the spouse's circumstances • Advice on superannuation accounts where the member has a self-managed superannuation fund (SMSF)

Case Study – Limited superannuation advice collective charged to members of the fund

Johan is 46 and is a member of Sunny Days Super Fund. Johan contacts the fund to seek advice on whether he will have adequate funds for retirement and what he can do now to contribute more to his retirement savings. Johan has changed employers a number of times over the years and currently has three different superannuation funds. Johan has limited spare income and is not interested in paying for comprehensive advice.

Johan has an initial conversation with the intra-fund adviser from his superannuation fund and spends time answering questions. When he discloses that he has other superannuation accounts the adviser tells him they cannot proceed and offers to put Johan in touch with a financial adviser who can provide comprehensive advice. Johan is angry and frustrated as he just wants this one piece of guidance on his superannuation to maximise his retirement savings. He doesn't have the money to pay for comprehensive advice.

Under the current legislative framework Johan would not be able to obtain collectively charged advice from his superannuation fund as he holds other superannuation accounts with other providers. This creates a poor experience and often results in consumers who would benefit from some advice remaining unadvised as they can't or won't pay for comprehensive advice.

Recommendation 5 Safe harbour steps

In line with the Australian Law Reform Commission's (ALRC) proposal in their Interim Report A we support the proposal to remove s961B(2) from the Corporations Act (ie the safe harbour steps).

There have been a number of important reforms to financial advice regulation since the safe harbour steps were introduced which we consider reduce the need for a legislated safe harbour process. Amendments to the Corporations Act have raised the education, training and ethical standards of financial advisers and helped refocus them from providing commercial services to acting as professionals. In our view, this supports our proposal that the statutory safe harbour steps are no longer warranted.

Removing the statutory safe harbour steps and adopting a principles-based approach will further allow the law to focus on the appropriateness of the advice (as per section 961G of the Corporations Act), rather than the process.

This will also reduce the cost of advice, improving accessibility, as demonstrated by our case study below. The safe harbour steps add time and complexity to the advice process and can impede the delivery of limited advice. We have further expanded on our position in relation to the safe harbour steps in our responses to questions 43-47 in Appendix 1.

Case Study – client seeking single issue advice
Shannon, 32, contacts a financial adviser in their local area as they want advice on investing $100,000 that they recently inherited. The financial adviser identifies that Shannon has other advice needs such as insurance and cashflow, but Shannon is clear that at this stage they only want the requested advice on investing the inheritance. Whilst the law allows the adviser to provided limited advice, the adviser is unsure how to comply with the safe harbour steps in this scenario and so feels they must either convince Shannon to accept and pay for comprehensive advice or decline to provide the advice to Shannon. This results in a poor client experience.

Recommendation 6 Practicing certificate issued by a centralised body

We recommend that advisers are issued with a practising certificate by a central regulated body that ensures all advisers are subject to the same requirements and assessed against the same level of standards.

To improve confidence and trust in advice consumers should know their adviser has been assessed as fit and proper by a regulated body that ensures all advisers are subject to the same requirements. This body or bodies should issue practicing certificates.

The AFSL regime would remain but the body/ies that issue the practicing certificate would ensure advisers are fit and proper, meet initial and ongoing training requirements, and have no unpaid AFCA determinations or serious compliance concerns.

Advisers would be unable to be authorised or employed by an AFSL or registered with the single disciplinary body unless they had a practicing certificate.

This could operate in a similar way to issuing practicing certificates to other professions as per the following examples:

- **Solicitors -** *To practise as a solicitor in NSW, you must hold either an Australian practising certificate issued by the Law Society of New South Wales, or a practising certificate issued by the designated regulatory authority in another Australian jurisdiction*[2] *and equivalent requirements in other states and territories*.
- **Accountants –** '*A member who offers professional accounting and/or related services to the public is required to hold an IPA Professional Practice Certificate (PPC)*'[3].

[2] lawsociety.com.au/practising-law-in-NSW/working-as-a-solicitor-in-NSW/your-practising-certificate

[3] https://www.publicaccountants.org.au/membership/ppc/eligibility-and-requirements

Conclusion

Insignia Financial believes consumer needs exist along a continuum and the regulatory system does not currently meet consumer needs. This leads to poor client experience and a lost opportunity for Australians to benefit from receiving financial advice to improve their financial wellbeing.

The changes to advice regulation suggested above would help ensure more Australians seek and receive quality advice that is accessible and affordable, to help improve their financial wellbeing.

Appendix 1 addresses the specific questions asked in the Issues Paper. We look forward to further engagement with the advice review team and providing any further assistance necessary.

Appendix 1 – Issues Paper Question Responses

FRAMEWORK FOR REVIEW

QUALITY FINANCIAL ADVICE

Questions		Insignia Financial Response
1	What are the characteristics of quality advice for providers of advice?	The characteristics of quality advice include advice that: • can be delivered efficiently, including simplified disclosure • delivers value for consumers • complies with the law and regulatory requirements • makes a difference to the consumer's financial wellbeing • is in the consumer's best interests
2	What are the characteristics of quality advice for consumers?	The characteristics of quality advice include advice that: • helps clients achieve their financial wellbeing goals • can be trusted and gives consumers confidence • is cost effective and value for money • complies with the law and regulatory requirements • disclosure is easy to understand
3	Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?	Requiring advice to be in the best interests of the consumer and appropriate for their circumstances has driven improvements in the quality of advice. However, the associated safe harbour steps create additional administrative burden, adding to the time and cost to prepare advice. The changes to conflicted remuneration and removal of the grandfathering exemption for investment commissions, plus the introduction of the Life Insurance Framework reforms have removed potential conflicts of interest and created an advice environment which prioritised the consumers interests.
4	What are the factors the Review should consider in deciding whether a measure has increased the quality of advice?	• Is the advice profession able to meet consumer needs? • Improved outcomes for consumers • Increased accessibility of advice for consumers • Is the required disclosure appropriate to meet consumer needs? • Impact on cost to produce advice • Does the change result in a reduction of reportable breaches and/or consumer complaints?

AFFORDABLE FINANCIAL ADVICE

Questions		**Insignia Financial Response**
5	What is the average cost of providing comprehensive advice to a new client?	Typically, the average cost of advice is around $5000 per client. This can vary significantly depending on a range of factors including the nature of the advice and service offering.
6	What are the cost drivers of providing financial advice?	In terms of the provision of advice to a client the main cost drivers are: • Uncertainty about whether advice is general advice or personal advice which leads advisers to treat advice as personal advice and provide a Statement of Advice (SOA) or Record of Advice (ROA), which may not be necessary and are costly to consumers. • Compliance – complying with the safe harbour steps and associated file note documentation adds time to the advice process, which ultimately adds cost to the consumer. • Advice Documentation – The actual development of the document itself is a significant cost impost. • Operating costs – to manage the end-to-end framework requires effective support systems including technology and compliance frameworks, professional indemnity insurance and infrastructure costs.
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?	The actual cost allocation would depend on the business and how it is structured. Costs in decreasing proportion would include: • Adviser (client facing) and support staff (client service/administrative teams) staffing costs - noting a large portion of these costs are linked to compliance costs (education, training, compliance, advice review) • Other administration/ fixed costs (rent, IT infrastructure, other) • Governance/operational compliance costs • Software/technology • Other advice delivery costs • Professional Indemnity Insurance • Industry levies
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?	As a business we want to ensure we comply with the spirit and letter of the law. We are also influenced by our and the industry's experience with the regulator, for example Report 515. Also contributing to the cost of meeting regulatory requirements is the obligations of other industry participants. For example, a trustee has to ensure that members interests are being looked after; to do this they impose their own level of requirements onto advisers who are also obligated to provide advice in the client's best interests.

9	Which elements of meeting the regulatory requirements contribute most to costs?	**Documenting advice** - specifically the detail and complexity required in scoping, product replacement recommendations, ensuring the file demonstrates the adviser is complying with the safe harbour steps, and repetitive disclosure. **Restrictive** ability to use ROA and / or Limited Advice in simple scenarios. **Fee disclosure requirements -** Fees are disclosed in multiple places including the SOA, on the application form, on the Client Service Agreement, on the fee consent form and in the Fee Disclosure Statement (FDS). Streamlining this may reduce cost. **Fee consent process** - In the absence of an ASIC implemented or industry standard document or process there is variation in the fee consent process for different product issuers. Streamlining this may reduce cost. **Client documentation** – In addition to preparing advice documentation, advisers are also required to prepare and provide copies of other documents to meet regulatory requirements (examples below). This requires time and adds to the cost of advice. Clients are provided with these documents which as well as increasing the cost of the advice, can negatively impact the client experience. By way of example, a new client typically receives the following documents required to meet regulatory and compliance requirements: Initial meeting • FSG/ privacy policy • Terms of Engagement Initial advice • Statement of Advice • Multiple PDSs • Target Market Determinations (TMDs) Implementation of product recommendations • Client Consent forms, including fee consents • Product Application / Insurance application forms • Client services agreement Many of these documents are also required when an existing client receives subsequent advice.
10	Have previous reforms by Government been implemented in a cost-effective way?	Most reforms are generally costly to deliver. In most cases, licensees will review the reforms, determine impact assessments from a client, adviser, technology and product perspective and then need to consider the change management and training impacts to roll-out. This

		assessment generally involves a large number of stakeholders in-order to execute well.
11	Could financial technology (fintech) reduce the cost of providing advice?	Yes, but more needs to be done to overcome barriers preventing development of and access to fintech. We have provided some suggestions in the following questions (12, 18, 19) on barriers and changes that could overcome these.
12	Are there regulatory impediments to adopting technological solutions to assist in providing advice?	We don't believe there are significant regulatory impediments to adopting technological solutions. However, there is a lack of clarity around how the regulatory requirements apply to automated personal advice solutions, particularly from a product comparison perspective. Some changes that could be driven by regulatory intervention include: • An incentive or requirement for advice technology providers to have open application programming interfaces (APIs) so that data and tools can be seamlessly merged to a single output. • Expansion of Open Finance to other wealth management products, in addition to superannuation. • An industry data dictionary for financial advice to assist in sharing data between client, advisers and providers.

ACCESSIBLE FINANCIAL ADVICE

Questions		Insignia Financial Response
13	How should we measure demand for financial advice?	Insignia Financial is able to assess the demand for advice through our adviser network. Customer enquiries to our member support teams that are aspirational in nature rather than transactional typically highlight a demand for advice. For example, “I want to plan for my retirement” or “How to I best invest an inheritance?” It is difficult to ascertain how to measure this demand quantitatively, however, Investment Trends regularly report on ‘unmet advice’ demand.
14	In what circumstances do people need financial advice but might not be seeking it?	In our experience, many Australians are looking for affordable, accessible financial guidance which the current system is not able to deliver. Circumstances where people who need financial advice might not be seeking it include: • the help they seek is too expensive or they believe it will be too expensive or not provide value for the cost outlay • they would benefit from advice but think they can do it themselves (ie they underestimate the complexity or over-estimate their capability) • they aren’t aware of the advice options available to them.
15	What are the barriers to people who need or want financial advice accessing it?	The current regulatory system which deals with products and advice together does not match consumer financial needs. • **Affordable options:** For those consumers who cannot afford the price of holistic personal advice there is a lack of affordable options and where these options do exist eg intra-fund advice, consumers are often unaware of them. Consumers seeking limited advice may struggle to find an adviser willing to provide this as the current regulatory framework funnels clients towards holistic advice due to concerns with the safe harbour steps and Code of Ethics requirements. • **Price:** Cost of advice is a significant barrier, with research indicating there is a significant gap between what consumers are willing to pay and what it costs to provide the advice • **Understanding:** Consumers may recognise they need assistance with their financial needs but may not seek advice because they don’t know where to start, they are not looking for a specific product and don’t understand how financial product advice and/or financial insights can help them. • **Trust** – An important component of the move to a profession is building consumer trust in financial advice. There are significant changes underway throughout the advice industry to lift professional standards. However, we acknowledge rebuilding consumer trust will take time and investment.

16	How could advice be more accessible?	Overhauling the current regulatory framework to reduce complexity and better enable limited advice provision and to provide greater clarity where there is current uncertainty. Examples of uncertainty and complexity which is affecting accessibility includes: • the risk of being found by the courts or regulator to have provided personal advice because you held information about the client where the intent was to only provide general advice. • Lengthy Statements of Advice to evidence compliance with safe harbour requirements but which often add little value to the client experience or client understanding. To better meet the needs of consumers and provide clarity for consumers and providers, the making of fair and reasonable statements of opinion about a financial product, a class of financial product and other financial matters should be regulated but not as 'financial product advice'. An appropriate term by which to regulate them may be 'financial insights'. We also recommend modifying the definition of financial product advice in the Corporations Act 2001, removing the distinction between general and personal advice. The definition of 'financial product advice' should: • Be simplified by the removal of the concepts of personal and general advice. • Only include express advice (removing the blurred line of 'implicit' advice). • Reflect that advice relates to a recommendation and removing 'statement of opinion' from the definition. • Not include subjective clauses which are subject to misinterpretation. A simple advice document which addresses how the advice will help them achieve their financial goals, supported by the advice conversation, would be more beneficial to assisting consumers to decide if they should act on the advice than the current extensive statements of advice which, in our experience, many clients find overwhelming and mostly don't read. The advice disclosure document should be able to be scaled to reflect the complexity of the advice and scenarios that are more likely to give rise to conflicts of interest. Removing the statutory safe harbour steps and adopting a principles-based approach will further allow the law to focus on the appropriateness of the advice (as per section 961G of the Corporations Act), rather than the process. This will also reduce the cost of advice improving accessibility.
17	Are there circumstances in which advice or certain	We believe there is an opportunity to have super fund comparison tools (perhaps utilising the consumer data right)

	types of advice could be provided other than by a financial adviser and, if so, what?	which can recommend a superannuation fund for consumers. Digital advice is also a way to provide advice in a cost effective and accessible way for consumers. In addition, there is a lot that can continue to be done with education and information which could help consumers better understand basic investing principles and which need not involve giving advice.
18	Could financial advisers and consumers benefit from advisers using fintech solutions to assist with compliance and the preparation of advice?	We agree consumers could benefit from advisers using fintech solutions. For example, an adviser could provide strategic advice and technology could be used for the product recommendation. Changes that would facilitate this include: • Expanding the Consumer Data Right for wealth products and creating an industry wide data dictionary so that fact finding and product comparison can be automated would be a significant advantage. • Treasury should commence engagement with the profession as soon as possible to progress expansion of Open Finance for superannuation and other wealth products by setting timelines, key objectives and a roadmap. • Access to data via the expanded Consumer Data Right and fintech for fact finding and product comparison would free up advisers to spend time on strategic advice and educating clients and reduce the cost of advice for consumers. Direct from source data also has the potential to be more accurate than data provided manually by the consumer during the fact find, improving quality and efficiency. • Technology that enables clients to give permission to their adviser, for advisers to be able to extract superannuation and other relevant payment data from Government agencies such as Centrelink and the ATO would also improve efficiency. • Effective self-serve technology could improve financial literacy and create better consumer engagement with their finances. This is dependent on appropriate digital solutions that support the continuum of advice – i.e. the client needs are considered first, and all extended experiences (e.g. “financial insights” (see our response to Q23 below) and financial product advice, including intra-fund, comprehensive, etc) are built as add-ons to that self-serve first experience.

19	What is preventing new entrants into the industry with innovative, digital-first business models?	Issues preventing innovative, digital-first business models include: • The legislation is written with face-to-face comprehensive financial product advice in mind (eg s766B's reference to the advice provider having "considered"), therefore digital-first business models struggle to create simple user experiences, because they're forced to retrofit an advice process designed around a human financial adviser into a digital experience. In doing so, they struggle to understand their compliance risk. This stifles innovation and doesn't allow for a client first approach to delivering advice in a digital channel. • The cost of development and integration into incumbent systems (which is where the current data is held) is also an important consideration. Many of the fintechs coming into the market solve for a single element of the advice process. The integration of these technologies is complex. The user experience must also be considered. The cost of running these technologies is also not insignificant, particularly where multiple applications and user licenses are required. • We've also found that many consumers (especially in the pre-retiree / retiree cohort) prefer to talk to a person rather than solely dealing with a digital tool.

REGULATORY FRAMEWORK

TYPES OF ADVICE

GENERAL ADVICE AND PERSONAL ADVICE

Questions		**Insignia Financial Response**
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?	Yes, we believe there is a difference between 'financial advice' and 'financial product advice'. And, no, both forms of advice should not be treated in the same way by the regulatory framework. We understand 'financial advice' to refer to advice which is agnostic about one or more financial products, but which is 'financial' in nature. This form of advice does not ordinarily, in our experience, result in the client acquiring a particular financial product. It can be likened to legal or accounting advice, which is not regulated by the Corporations Act. Similarly, that form of advice should generally not be regulated by the Corporations Act. 'Financial product advice', in our experience, in most cases results in the client acquiring and/or disposing of a financial product, in particular the financial product which is the subject of the advice. In addition, that kind of advice is the advice which is more likely (as compared to 'financial advice') to be given by a person who is conflicted. For that reason, 'financial product advice' is more likely to result in the 'dealing' of a financial product (which in our experience is the main reason a client might suffer loss) and should be regulated by the Corporations Act.
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?	Yes, we believe there are impediments to financial advisers providing 'financial advice' (rather than 'financial product advice'). The primary impediment relates to the uncertainty created by the current definition of 'financial product advice' and Australian Financial Services (AFS) licensees' liability with respect to the advice. AFS licensees are required — including directly by general obligations in s912A(1) and indirectly by liability creating provisions in ss916L and 961M(2) of the Corporations Act — to have strict compliance systems, including systems for ensuring advisers do not provide inappropriate advice. One way licensees seek to comply with these obligations is to authorise advisers to provide advice with respect to financial products approved by the licensee and which are listed on 'approved product lists'. In our experience, some advisers who are asked to advise on financial matters more broadly than an approved product may feel reluctant to do so for fear of failing to comply with applicable requirements. Another way licensees seek to comply with their requirements is to require advisers to use a statement of advice template which, out of an abundance of caution, is much longer for many forms of advice than may be required by the law or which may meet ASIC's expectations. In our

		experience, many advisers who are asked to advise on financial matters more broadly than an approved product feel uncertainty in relation to whether that advice is 'financial product advice' (within the current meaning of the term) such that they are required to prepare a statement of advice. Because the statement of advice template creates a volume of work for the adviser that is disproportionate (and uneconomical for the client) in the circumstances, advisers feel reluctant to provide this advice and charge their clients for it.
22	What types of financial advice should be regulated and to what extent?	As discussed above, only 'financial product advice' (as we suggest it be redefined) should be regulated by the Corporations Act. Other forms of advice should generally not be regulated by the Corporations Act but be subject to the general law, including contract and tort law, and consumer protection laws including the prohibition on misleading or deceptive conduct. We say 'generally' because it may be desirable for the Corporations Act to regulate, in addition to 'financial product advice' (discussed below), a small number of significant topics which are 'financial' in nature but which do not relate to a financial product (eg aged care advice). An appropriate method of regulating these topics might be to add them to the definition of 'financial product advice'.
23	Should there be different categories of financial advice and financial product advice and if so for what purpose?	Generally no, there should not be different categories of 'financial product advice' in the law. (And, as we have said above, there should not be 'financial advice' as a separate category of regulated advice.) The Corporations Act should be amended to remove the distinction between 'general' and 'personal' advice, so that only 'financial product advice' remains. However, together with that, the definition of 'financial product advice' should be changed. The new definition of financial product advice should allow all financial system participants to know with a high degree of certainty when advice is and is not being provided, with the result of allowing participants to know when a representative is and is not subject to any fiduciary-like 'best interests obligations'. The new definition of financial product advice would be best served through the inclusion of three components: - one which sets out a statutory definition; - a second which permits ASIC through legislative instrument to identify particular expressions and practices which also constitute financial product advice (ie ASIC's 'advice list'); and - a third which permits persons to apply to ASIC for relief from the requirements of 'financial product advice' in respect of particular practices.

		In relation to the statutory definition of financial product advice, we believe it should: - be simple; - include only express advice (whereas courts have held that the current definition of advice includes *implicit* advice, which creates significant uncertainty about whether the provision of information is 'advice'); - not include statements of opinion (whereas the current definition in s766B(1) includes statements of opinion, which also creates significant uncertainty about whether use of descriptive terms (including, eg, 'low cost') is 'advice'); and - be entirely *objective* (whereas the current definition in s766B(1) contains a subjective limb in paragraph (a)). For example, a suitable definition may be 'an express recommendation, or a report of a recommendation, in relation to a particular financial product or class of financial products'. The law currently includes various exceptions to the definitions of 'financial product advice' and 'personal advice'. These exceptions would continue to apply. In addition, the law should allow regulations to identify any other exceptions considered suitable. One example might be a securities report sent to investors on a mailing list which includes one or more general recommendations in respect of listed securities. In relation to the second component (ie ASIC's 'advice list'), ASIC would list various expressions and practices which constitute financial product advice. For example, ASIC might list the expressions 'I recommend', 'I advise', 'I suggest', 'you need', and 'you should' (and their various formulations including negative formulations) as they relate to financial products as well as specific practices constituting advice such as indicating to a customer there is only one obvious choice of financial product. ASIC could conduct periodic surveillance of product issuers' scripts and other documents to identify what expressions representatives are using in the market for consideration as to whether those expressions should be added to the 'advice list'. In relation to the third component (ie relief), product issuers and others would be able to apply to ASIC for ASIC to determine that a particular practice does not attract the requirements of 'financial product advice'. For example, if the 'securities report' example referred to above were not considered suitable as an exception to definition of 'financial product advice', the author of that report could

		apply for relief from the requirements of financial product advice for reports of that nature. Separate to these changes to 'financial product advice', we believe the making of statements of opinion about a financial product, a class of financial product and other financial matters should be regulated but not as 'financial product advice'. An appropriate term by which to regulate them is 'financial insights'. In relation to the definition of 'financial insights', we believe it should: - be simple; - refer to the concept of statements of opinion (which would carry over from the current definition in s766B(1)); and - be entirely *objective* (whereas the current definition in s766B(1) contains a subjective limb in paragraph (a)). For example, a suitable definition may be 'a statement of opinion in relation to a particular financial product, class of financial products or a person's financial objectives, situation or needs that is not financial product advice'. Noting there needs to be a regulatory ability to exempt certain activities. Financial insights would be regulated in some ways similarly to the way in which 'general advice' is currently regulated. This would include that individuals who provide financial insights must be accredited in accordance with the requirements in RG 246 for general advice. In addition, where a financial insight is provided, we believe a warning (ie a 'no-advice warning') should be required to be provided by the person providing the insights (discussed further below). Separate to financial product advice and financial insights would be 'information' in respect of a financial product. The current law does not regulate the provision of this information outside the general law and consumer protection provisions (eg misleading or deceptive conduct provisions). We believe the law should not be changed in this respect, other than by the additional requirement of a 'no-advice warning' (discussed further below). Amending the law as proposed above is desirable as it will allow 'advice' and 'non-advice' to be divided with a simplicity easily understood by all industry participants, including consumers, product issuer employees and others involved in discussions about financial products (including advisers). It splits 'advice' and 'non-advice' allowing providers of 'advice' to be subject to fiduciary-like best interests obligations and providers of 'non-advice' not to be subject to those obligations. This split does not currently

		exist. Rather, currently, providers of general advice are not subject to fiduciary-like obligations. But that fact is not likely to be obvious to all customers. In addition, the current blurry lines between, firstly, 'information' and 'financial product advice' (including because the latter includes statements of opinion and *implied* advice) and, secondly, 'general' and 'personal' advice (including because it applies when the provider of the advice has *considered* information about the customer) means from a compliance perspective there is an extremely high risk of failure (and a subsequent imposition of fiduciary-like obligations on the representative) anytime a representative has a discussion with a customer about a financial product relevant to the circumstances of that customer. In our experience, a consequence of the current law is that representatives discussing financial products with customers in a way that is relevant and meaningful to the customer (but which is not deliberate personal advice) often poses too great a compliance risk and is banned. Instead, discussions are stripped of relevance and are often scripted, with the consequence of customers receiving not useful information and poor customer experience. Our proposed amendment to the Corporations Act would allow those discussions to take place, albeit with appropriate safeguards. More specifically, provided appropriate 'no-advice warnings' are given (discussed further below) and financial product advice is in fact not given, our proposed amendment will allow a representative of a product issuer without providing advice to: - discuss (by providing financial insights or mere information) financial products issued by that issuer, regardless of whether that representative has or does not have information personal to the customer. Currently, this kind of discussion in our experience may be prevented (for reasons relating to unacceptable compliance risk) other than in a personal advice context; and - discuss (by providng financial insights) aspects of financial products which the representative considers are its positive aspects. This would include adding any additional comments about the financial product which might be considered an 'opinion' within the current meaning of that term in s766B(1) (again, provided the representative does not provide 'advice'). As we say above, the Corporations Act should be amended to require that an appropriate 'no-advice warning' be given at the same time as any financial insights or financial information is provided in respect of a financial product or class of products. (The 'general advice warning' currently required by s949A would no longer be required.) The warning would have two parts, the first part being required at the same time as the insights or information are provided

		and the second part being required where a customer asks for advice despite the first part of the warning already having been given. The first part should include the following elements: i. the identity of the person represented by the representative providing the [insights/information]; ii. the fact that the representative acts in that person's interests rather than the customer's interests; iii. the fact that the representative is only providing [insights/information] and is not providing advice; iv. advice can be obtained only from an adviser; and v. the fact that an adviser acts in the customer's best interests. A compliant 'no-advice' warning used at the start of a discussion between a representative and a customer might in this way be 'before we continue, I need to be clear that I represent Licensee Co Ltd, and act in its interests rather than yours. I can provide [insights/information] about our products, and how you use [them/it] to decide what to do is up to you. But I can't give you any advice about what's best for you. You can get advice, if you'd like it, but only from an adviser. An adviser will act in your best interests." The second part of the 'no-advice warning' would respond to customers' requests for advice, for example, 'what should I do?' In those circumstances, representatives (who are not advisers) should respond to any subsequent request for advice from the customer by repeating points (iii) and (iv) from the 'no-advice warning' above. A compliant response might in this way be 'As I mentioned before, I can only provide [insights/information] and cannot provide any advice. You can get advice but only from an adviser.' As stated above, the blurred lines between current definitions of 'financial product advice' and 'personal advice' create multiple levels of difficulty for industry participants and customers. (An example is the Westpac Securities case where Courts held personal advice had been provided even though it was not intended to be provided and in spite of the use of a 'general advice warning' – see *Westpac Securities Administration Ltd v ASIC* [2021] HCA 3, [87]; see also *ASIC v Westpac Securities Administration Ltd* [2019] FCAFC 187, [234], [266].) They also create confusion in our experience as to when the fiduciary-like best interests obligations do and do not apply to representatives discussing financial products with customers.

		We believe our proposed amendments would significantly reduce the definitional difficulties which currently exist. The distinction between 'advice' (attracting best interests duties) and 'non-advice' (not attracting those duties) would be much simpler, and through ASIC's 'advice list' and relief allow ASIC to provide certainty for all industry participants as to what constitutes advice. Our proposed 'no-advice warning' would add additional clarity for customers in relation to both the fact that advice is not being provided and the representative discussing the financial product does not act in the customers' best interests. In our view, reducing confusion in this way also assists in justifying the law's imposition of fiduciary-like obligations on a representative. That is because, in the general law, fiduciary obligations must be accepted 'voluntarily' (see, eg, J Edelman, 'When Do Fiduciary Duties Arise?' (2010) 126 *Law Quarterly Review* 302). It may be queried whether any distinction between 'financial insights' and 'financial information' is even necessary. In our view, that distinction is useful because it allows for the regulation (albeit a lesser form than for advice) of discussions about a financial product and other financial matters which will include statements of opinion but not prevent an unauthorised person from providing mere information to another person. For that reason, we believe there is sense in making that distinction. In practice, we expect (much like currently the provision of financial product information is for the abundance of caution treated as potentially being the provision of general advice) the provision of information will be treated as potentially being the provision of financial insights. Separately, in relation to our proposed form of 'financial product advice', the law should continue to allow limited forms of 'financial product advice' in the same way that it currently permits so-called 'limited' or 'scaled' advice. This is partly because advice will continue to be required in limited contexts such as 'intra fund' advice in a superannuation fund context. We do not believe that the law should prescribe different requirements for that advice. Finally, we wish to add that although above we have suggested amendments to the "Corporations Act" there may be merit in the Review considering the option of removing the concept of "financial product advice" (and its related requirements) from the Corporations Act and creating a new Act to govern the new concepts of "financial product advice" and "financial insights" (and their related requirements). We would expect the new Act to be regulated by ASIC, given the persistent connection of the conduct regulated by that Act with "financial products". A benefit in doing so may be equally symbolic, insofar as it would likely represent a significant shift in the regulation of the financial advice industry.

24	How should the different categories of advice be labelled?	As stated above, in our view the law should only regulate 'financial product advice' as one category. We refer above, however, to the discussion about our proposed additional regulation of 'financial insights'.
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?	As stated above, 'financial product advice' should be redefined. Our proposed definition would not, in the usual course, result in advice being provided in the context of advertising. The fact that 'targeted advertising' may currently be 'personal advice' attracting fiduciary-like best interests obligations is an example of a problem with the current law.
26	How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?	As proposed above, 'financial product advice' would be regulated. (As we say above, it may be desirable for the Corporations Act to regulate a small number of significant topics which are 'financial' in nature but which do not relate to a financial product (eg aged care advice). An appropriate method of regulating these topics might be to add them to the definition of 'financial product advice'.) If 'alternative advice providers' provide 'financial product advice', they should be regulated as advisers. Also as proposed above, 'financial insights' would be regulated. If 'alternative advice providers' do not provide 'financial product advice' but provide 'financial insights', they should be regulated as providers of insights. If 'alternative advice providers' do not provide either 'financial product advice' or 'financial insights' they should not be regulated by the financial product advice or financial insights provisions but be subject to the general law and consumer protection provisions (eg misleading or deceptive conduct provisions).
27	How does applying and considering the distinction between general and personal advice add to the cost of providing advice?	As discussed above, the blurred lines created by the current law (including in respect of the definition of 'personal advice') mean a representative can very easily provide personal advice without intending to do so. From a compliance perspective there is a high risk of failure (and a subsequent imposition of fiduciary-like obligations on the representative and related liability on the licensee) anytime a representative has a discussion with a customer about a financial product relevant to the circumstances of that customer.

		There are two main consequences of this. First, because 'general advice' discussions of this nature pose too great a compliance risk, they are not offered. In this way the 'general' and 'personal' advice distinction limits the way in which customers can obtain financial product information useful to them. Customers who seek this kind of discussion are often referred to advisers for personal advice. However, in our experience most customers of this nature refuse the personal advice discussion for cost or time related reasons. For the customers who accept the personal advice costs, those costs range from hundreds to thousands of dollars. In addition, we note a personal advice discussion requires the preparation of a statement of advice, which takes a significant period of time ranging from days to weeks. Some of these customers would likely have preferred a 'no advice' discussion as contemplated by our proposed changes to the law. Secondly, the general and personal advice distinction creates significant compliance costs. These costs include: - training (and retraining) and supervision of representatives; - technology costs, to restrict or allow representatives' access to certain information personal to the customer; - legal advice necessary to approve processes and prepare scripts; - complaints and rectification. We estimate these costs to be significantly greater than the costs which would be incurred in the event our proposed changes to the law were to be made. The 'advice' and 'no-advice' distinction (which would be the principal focus of compliance) would be much simpler, resulting in simpler training, simpler systems, simpler legal advice and less representative and customer confusion, which we believe would reduce complaints and remediation costs. Reduced complaints may also, over time, result in lower professional indemnity insurance premiums.

INTRA-FUND ADVICE

Questions		Insignia Financial Response
28	Should the scope of intra-fund advice be expanded? If so, in what way?	Yes, possible areas where the scope of advice that can be collectively charged to members could be expanded to include: • Considering the client's total super portfolio even when they hold other superannuation accounts with other providers • Consolidation advice • Insurance in super advice • Tax based and aged based queries • Retirement and transition to retirement advice in so far as it relates to their superannuation monies. Noting advisers will still be obligated to comply with same framework that currently governs intra-fund advice including the requirements outlined in Regulatory Guide 244 Giving information, general advice and scaled advice. This includes complying with the best interests duty and provide appropriate advice. Clarity would be needed as to how expanding the scope of collectively charged advice provided by superannuation funds complies with the sole purpose test.
29	Should superannuation trustees be encouraged or required to provide intra-fund advice to members?	Superannuation trustees should be encouraged to provide this level of advice to their members. Intra-fund advice is a way to help members better understand how their super works and make better decisions in how they manage their super money so that they can have a better retirement outcome.
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?	We have highlighted in our answers above (Q 20-29) some of the changes we think are necessary. Please refer to these answers.
31	To what extent does the provision of intra-fund advice affect competition in the financial advice market?	Our view is that these advice offerings complement rather than compete. As we noted in the main body of our submission, for many individuals their superannuation is their main financial asset (outside of home ownership). For many of these consumers, being able to access collectively charged limited financial advice from their super fund (under s99F of the SIS Act) will provide them with an opportunity to access advice they otherwise wouldn't be able to pay for. This gives these consumers the opportunity to improve their financial wellbeing.

LIMITED SCOPE ADVICE

Questions		Insignia Financial Response
32	Do you think that limited scope advice can be valuable for consumers?	Yes. Limited scope advice (which would fall under the definition of 'financial product advice') can be valuable for clients if it allows them to obtain professional advice on specified topic(s) at a lower cost. As we have noted above, advice needs are on a continuum and not all clients need or want comprehensive advice. For some clients, the cost associated with comprehensive advice is an impediment. We consider that limited advice should be a viable alternative. It is important to note that the provision of limited financial advice does not equate to a reduction in the quality of advice. Consumers seek out advice when they have a specific question they need answered. Often, they only need help: • answering that specific question; or • they don't have the money to pay for more advice; or • they don't see the value in looking at other areas of their situation right now. Our experience observing new client meetings confirms the financial need of the client is often limited to specific issues they wish to address. We need to put the consumers' needs first and deliver what they are asking for. The current framework makes it difficult to help consumers with their specific needs.
33	What legislative changes are necessary to facilitate the delivery of limited scope advice?	The statutory safe harbour for the best interests duty should be removed to facilitate the delivery of limited scope advice. In our experience, advisers tend to provide more comprehensive advice than what a client seeks, for fear that if they uncover other needs and do not address them, they could be deemed to be not acting in the best interests of their clients. Advisers also tend to conduct the same enquiries for limited advice as they would for comprehensive advice for fear of not satisfying the statutory best interests duty. We consider that removal of the statutory safe harbour may therefore enable consumer's needs to be met by advisers providing limited advice to those clients who have requested it (as appropriate), rather than defaulting to providing more comprehensive financial advice for fear of not complying with legislative requirements. This will make advice more accessible.

		Please refer to our response to questions 43-45 for more detailed commentary in relation to our submission regarding the removal of the statutory safe harbour. Please also refer to our response to question 46 for our submission in relation to streamlining the best interests obligations. We also consider that appropriate additions should be made to Standard 6 of the Code of Ethics to facilitate the provision of limited advice. Standard 6 of the Code of Ethics requires an adviser to take into account the broad effects arising from the client acting on the advice and actively consider the client's broader, long-term interests and likely circumstances. The Explanatory Statement to the Code of Ethics notes that this standard reflects section 961B of the Corporations Act (ie. the best interests obligations). Although we do not object to Standard 6 in the context of the provision of comprehensive advice and otherwise consider that it supports our submission for the removal of the safe harbour provisions from the best interests' duty, we consider that clarification about the obligations of an adviser in the context of limited advice should be made. Ultimately financial advisers and superannuation trustees should be able to use their expertise, skills and professional judgement to deliver quality limited advice, having regard to their legal obligations (including their obligations under the Code of Ethics) and regulatory guidance.
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?	There are drivers of cost in the advice process which may result in advisers providing comprehensive advice rather than limited scope advice, as the price points for these types of advice are different and advisers may be unable to cover their costs with limited advice. These cost drivers include: • The time taken to understand the client's needs and objectives and risk tolerance before the adviser can determine the scope of advice. • The advice documentation requirements remain the same for limited and comprehensive advice so the time and cost of preparing a Statement of Advice doesn't change.

DIGITAL ADVICE

Questions		Insignia Financial Response
35	Do you agree that digital advice can make financial advice more accessible and affordable?	Yes, we agree that digital advice can make financial advice more accessible and affordable, although we note that digital advice is not a comprehensive solution for all clients. Digital advice can be delivered in a scalable manner to allow it to be delivered to a greater audience at an affordable price. For example, our digital intra-fund advice tool produces around 10 times the number of SOAs our intra-fund advisers are able to produce each month. The key is ensuring that it is developed with a consumer centric design, making it easy for consumers to engage with and understand the decision making and application process along the way. Aspects like goals-based tools and scenario calculators can help individuals model their retirement goal and what they need to do to get there.
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?	Types of advice that may be better suited to digital advice include: • Single topic or limited advice • Investment choice • Tax and aged based queries • Intra-fund advice including insurance coverage and super consolidation • Strategic only advice (ie with no product comparison) Digital advice can fill the gap for these types of limited advice where in person advice may be too expensive for some consumers.
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 advice is provided digitally. With digital advice there may be a risk that the consumer may not have the level of financial literacy to fully understand the advice. There is also an assumption with digital advice that the consumer has understood everything where they have made positive elections to indicate they have. In contrast, when advice is delivered face to face, the adviser can explain information and confirm understanding. They can pick up on verbal/non-verbal cues that would suggest the individual has not understood and provide further information. We consider that hybrid advice, connecting a consumer with a phone or face to face adviser as part of the digital

		advice process, can be a good support tool for consumers, allowing them to ask questions to confirm their understanding.
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?	No. All types of financial product advice should be regulated in the same way. However, regulatory guidance should be provided that specifically explains how these obligations can be met by a digital advice tool.
39	Are you concerned that the quality of advice might be compromised by digital advice?	We are not concerned that the quality of advice might be compromised by digital advice. However, as noted in our response to question 37, there are associated risks that could be managed with more current guidance. Whilst ASIC has provided guidance for digital advice in *Regulatory Guide 255 Providing digital financial product advice to retail clients*, this guidance only states that best interests duty applies but does not provide guidance as to how this applies in a digital sense. We note that this regulatory guide was provided in August 2016 and that technology has advanced significantly since then. We would welcome more current guidance.
40	Are any changes to the regulatory framework necessary to facilitate digital advice?	The changes we have proposed in relation to advice definitions, disclosure documentation and removal of the safe harbour steps would assist in facilitating digital advice. They will reduce compliance risk and encourage investment in 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)?	The current law makes different persons responsible for the advice provided in different ways. The AFS licensee bears most responsibility under ss961K(1) and 961M. The AFS licensee should continue to be responsible for all types of financial product advice it provides. In respect of the best interests obligations in particular, the current law imposes those obligations on the “person who offers personal advice through a computer program” (see s961(6)). We expect this person would be in many cases the AFS licensee. That person should continue to be responsible for those obligations.
42	In what ways can digital advice complement human-provided advice and when should it be a substitute?	Digital advice can fill the gap where in person advice may be too expensive for some consumers. We consider that hybrid advice, connecting a consumer with a phone or face to face adviser as part of the digital advice process, can be a good support tool for consumers, allowing them to ask questions to confirm their understanding.

BEST INTERESTS AND RELATED OBLIGATIONS

Questions		Insignia Financial Response
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 statutory safe harbour steps have created unintended consequences which do not benefit consumers. The best interests' duty and related obligations were originally introduced under the Future of Financial Advice ('FOFA') reforms to address concerns about consumer confidence in advisers by improving the quality of financial advice. The intention has always been for safe harbour to be one way an adviser could demonstrate they had acted in the best interests of their client. However, as recent case law and the regulatory posture observed through ASIC Report 515 suggests, meeting safe harbour has become the only way to effectively demonstrate compliance with the bests interests duty. It has therefore problematically become a 'tick a box' exercise. In our experience, there are numerous examples where advisers have clearly acted in the best interests of their client, but were not able to efficiently meet the administrative requirements of safe harbour. In this regard, it appears that Commissioner Hayne's comment on page 176 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report that *'By prescribing particular steps that must be taken, and allowing advisers to adopt a 'tick a box' approach to compliance, the safe harbour provision has the potential to undermine the broader obligation for advisers to act in the best interests of their clients'* has highlighted a real concern. Compliance with the safe harbour steps has added unnecessary time and complexity to the advice process, which has ultimately resulted in more costly advice for consumers. There is a misalignment between the administrative effort required to be applied to meet the current bests interests threshold (imposed as a consequence of safe harbour) and the additional incremental utility a consumer might achieve through the application of that process. This is particularly true in the case of limited advice. In our experience, safe harbour is prohibitive to enabling limited advice to be provided to consumers (for the reasons outlined in our response to question 44). The statutory safe harbour steps should be removed from the Corporations Act. Removal would allow for a principles-based advice model under the existing regulatory framework which would better balance the administrative and compliance effort required with the need to protect consumers and facilitate the availability of affordable high quality financial advice.

		We note that this approach has already been adopted in other comparable areas of the law where similar statutory safe harbour provisions do not apply. For example, the best financial interests' duty imposed on superannuation trustees in s52 of the *Superannuation Industry (Supervision) Act* 1993 (Cth) and best interests duty imposed on credit licensees and representatives in ss158LA and 158LE of *National Consumer Credit Protection Act* 2009 (Cth). In recent times, amendments to the Corporations Act have raised the education, training and ethical standards of financial advisers. Increasing professionalism of financial advice supports our proposal that the statutory safe harbour steps are no longer warranted. We note in particular that Standard 2 of the Code of Ethics imposes a duty to '*act with integrity and in the bests interests*' of each client. The Code of Ethics already adopts a principles-based approach, which we consider to be more appropriate for a profession. Guidance on what it means to act in a client's 'best interest' is in turn provided in the Explanatory Statement to the Code. Removing the statutory safe harbour steps and adopting a principles-based approach will further allow the law to focus on the appropriateness of the advice (as per section 961G of the Corporations Act), rather than the process. Should the Review find that the statutory safe harbour steps should remain, it is our alternative submission that, at a minimum, the safe harbour step in clause s961B(2)(g) (being the obligation to '*take any other step that, at the time the advice is provided, would reasonably be regarded as being in the bests interest of the client, given the client's relevant circumstances')* should be removed. This 'catch all' safe harbour step creates uncertainty and confusion, resulting in increased costs for consumers. This issue is compounded in the context of limited advice.
44	If at all, how does complying with the safe harbour add to the cost of advice and to what extent?	There is an observed misalignment between the administrative effort required to be applied to meet the current best interests threshold and corresponding record keeping requirements and client outcomes. Compliance with the safe harbour steps has added unnecessary time and complexity to the advice process, which has ultimately resulted in more costly advice for consumers. In relation to limited advice, compliance with the statutory safe harbour steps often makes the cost of providing advice unaffordable. Section 961B(2)(b)(ii) of the statutory safe harbour steps requires an adviser to identify the client's relevant circumstances in relation to the subject matter of the advice being sought. Furthermore, s961B(2)(c) requires an adviser to make reasonable inquiries to obtain complete and accurate information if it is reasonably apparent that information relating to the client's relevant circumstances is

		incomplete or inaccurate. In the case of limited advice, when determining a client's circumstances relevant to the advice being sought, there are often other matters that are discovered that may not be directly connected with the subject matter of the advice. Although the Note in s961B of the Corporations Act recognises that a client may seek scaled or limited advice and that the inquiries made by an adviser can be tailored to the advice sought, in practice the ambiguity as to what constitutes 'reasonable inquiries', means that advisers tend to conduct the same enquiries for limited advice as they would for comprehensive advice. This often has the effect of expanding the subject matter of advice beyond that which the client is seeking and willing to pay for whilst increasing the cost to provide that advice. Furthermore, as noted in our response to question 43, the safe harbour step in s961(B)(2)(g) of the Corporations Act has resulted, in practice, with advisers typically providing more comprehensive financial advice to their clients, thus limiting access for clients who can't afford to pay for comprehensive advice.
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?	Removal of the statutory safe harbour provisions would provide greater flexibility for advisers to assess the steps required to satisfy their best interests duty, on a case-by-case basis. Removal of the safe harbour provisions would not result in any derogation of the quality of advice provided to consumers. It would, however, reduce the administrative burden currently imposed on advisers who are concerned about complying with their best interest obligations and have resorted to a tick a box approach. In circumstances where limited advice is requested by a consumer, we consider that removal of the safe harbour steps would reduce the costs incurred to provide limited advice and increase the likelihood of limited advice being provided. Removal of safe harbour would help remove the fear and uncertainty for advisers who currently tend to conduct the same enquiries for limited advice as they would for comprehensive advice. As noted in our response to question 44, the safe harbour steps often cause advisers to expand the subject matter of advice beyond that which the client is seeking and willing to pay for whilst increasing the cost to provide that advice. Please also refer to our response to question 33 in relation to legislative changes required to facilitate the provision of limited advice.
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?	The current best interests obligations under Part 7.7A Division 2 of the Corporations Act contain best interests duty (ss961B - 961F), appropriate advice obligation (s961G), duty to warn the client of incomplete of inaccurate information (s961H) and conflict priority rule (s961J). Each of the provisions is a civil penalty provision if an adviser fails to comply with any of the provision. It is also stated in the *Revised Explanatory Memorandum* for the *Corporations*

		Amendment (Further Future of Financial Advice Measures) Bill 2012 that these obligations are intended to be interrelated: To a certain extent, the process of providing advice (as regulated in section 961B), the quality of advice (as regulated in section 961G) and conflicts of interests (as regulated in section 961J) are interrelated issues. Together, the provisions operate to implement the policy framework for ensuring financial advisers act in all circumstances in the best interests of the client. This means an adviser may breach all four best interests obligations and face up to four separate civil penalties under this Division. For the purpose of this question, we have limited our response to streamlining ss961B, 961G, 961H and 961K. While interrelated obligations can provide stronger and more comprehensive policy framework for the regulation of financial advice, we are of the view that they are disproportionate to the need for consumer protection and the compliance and regulation costs. **Proposed amendments to streamlining the best interests obligations** Each obligation, and the subject matter each obligation seeks to regulate should be clearly distinguishable. As an overarching response, on the basis that safe harbour steps are removed from s961B (as outlined in our responses to questions 43-45), we agree with streamlining the four best interests obligations by the following ways: **1. Repealing section 961H duty to warn the client of the information is incomplete or inaccurate** Section 961H concerns an obligation to warn the client if the advice is or may be based on incomplete or inaccurate information. This obligation should be removed because it is incidental to the best interests duty and appropriate advice obligation. The duty to warn should not be regulated by the Corporations Act but be subject to tort law, and consumer protection laws. The duty to warn is part of due care and skill expected of a professional and should not be regulated by the Act. Further, section 961H(3) refers to the requirement to provide warnings in the Statement of Advice (s961H(3)). This is a duplication of section 947B(2) and section 947C(2) as the requirement to provide warning is already covered under those sections.

		2. Amalgamating best interests duty (s961B) and conflicts priority rule (s961J) The ALRC has also noted that there is a significant degree of overlap across the obligation to give priority to the interests of the client and the obligation to act in the best interests of the client in relation to the advice, as the ALRC says *'[a]cting in the best interests of a client would arguably always require prioritising their interests over those of the provider'*.[4] We agree with ALRC's position that these two obligations carry a high level of similarities as they originated from equity to describe the duties of a fiduciary. The best interests duty would require an adviser to give priority to the interests of the client, when giving advice. We believe these two obligations should be amalgamated into the single core best interests obligation. **3. Appropriate advice obligation should be a standalone obligation (s961G) (and not refer to the best interests duty)** ASIC has noted that failure to comply with a step of the safe harbour in relation to the best interests duty will often result in a breach in the obligation to give appropriate advice.[5] In practice, acting in the clients' best interests duty does not automatically mean that the advice given is appropriate, and vice versa. The adviser may act in the best interests of the client when providing advice but the resulting advice may not be appropriate. We propose to distinguish the difference between best interests duty and appropriate advice obligation, as they serve two different purposes. We propose a removal of safe harbour steps in the best interests duty. Removal of these steps means the best interest duty would be re-defined, with a shift in focus from a process-orientated duty to a principles-based duty. If best interest duty is a principles-based duty, informed by the standard of care expressed under section 961E (what would be regarded as 'best interests' of the client) and the Code of Ethics applicable to the advisers, the appropriate advice obligation should be a standalone obligation concerning the quality of the advice, rather than the advisers' ethics or conduct. We propose removing 'best interests duty' wordings from the proposed amendment of section 961G and de-linking best interests duty from appropriate advice obligation. We also propose regulatory guidance to be provided concerning ASIC's view on the appropriateness of advice, to ensure uniformity across the profession.

[4] ALRC Interim Report, p 539.

[5] ASIC 2017, *Report 575: SMSFs: Improving the quality of advice and member experiences*, p 69, https://download.asic.gov.au/media/4779820/rep-575-published-28-june-2018.pdf.

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?	No. We support the current position that advisers should not be required to consider the target market determination for a financial product before providing personal advice about that product because, in these circumstances, the adviser is providing advice tailored to the consumer's individual circumstances. However, we consider that personal financial advice (which under our submission would become 'financial product advice') should be completely exempted from the design and distribution obligations regime. Currently, financial advisers are exempt from the requirement to take reasonable steps to ensure consistency with the target market determinations when providing personal advice (on the basis it falls within the definition of 'excluded conduct' under s994A of the Corporations Act). However, advisers must still comply with obligations under the design and distribution regime relating to reporting and record keeping. For example, financial advisers must provide reporting to issuers on complaints received in relation to the product and when they become aware of a significant dealing in the product that is not consistent with that product's target market determination. We do not consider there to be any material benefit to consumers in being required to report on significant dealings in circumstances where the dealing occurs from personal advice given that advice is subject to the best interests duty. We also do not consider there to be any need to require complaints reporting under the design and distribution obligations regime because if an advice licensee or adviser received a complaint about a financial product or issuer of that product, the complainant would be directed to refer that complaint to the product issuer directly as the relevant financial services licensee.

CONFLICTED REMUNERATION

Questions		**Insignia Financial Response**
48	To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?	In association with the obligation to provide advice in the client's best interests, the ban on conflicted remuneration has assisted financial advice to move from an industry incentivised by product sales to a profession that prioritises the client's interests.
49	Has the ban contributed towards improving the quality of advice?	Yes. We have seen demonstrable improvements to the quality of advice since the introduction of the Future of Financial Advice reforms.
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?	Yes, profitability of advice firms reduced with the removal of income previously derived from conflicted remuneration. This has resulted in the full cost of advice being passed onto the clients in the form of initial advice and adviser service fees, and/or adviser's no longer servicing clients if they are unable to afford increased fees. Clients who cannot afford increased fees no longer have access to advice.
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.	Life Insurance exemption: Best interest duty requirements have had a positive impact on the quality of Insurance advice however affordability has already been impacted by reductions in insurance commissions and removal would increase this trend. Clients who cannot afford advice fees will not have access to advice which has a higher impact on life insurance advice due to the different characteristics of a limited advice life insurance client. Also, if this exemption was removed additional specialist advisers would leave the profession, directly impacting the accessibility of life insurance advice due to fewer advisers. The exemptions related to training and technology contribute to increased quality of advice through quality education from education partners and reduced costs for technology which increase efficiencies in the advice process and reducing cost for consumers.
52	Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?	This has already been done through best interests duty and the Life Insurance Framework (LIF) requirement for alignment of commissions across providers.
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.	In simple terms there has been a material reduction in the level of insurance coverage since the capping of advised life insurance commissions in 2016. In its response to Senate Estimates Hearing questions in February 2022, APRA confirmed that new business premium volumes of retail-advised life insurance had declined by 47% in the 5 years to June 2021 adding that the reduction in new business volumes over the past five years was attributable to

		a combination of factors, including declining risk specialist adviser numbers and changes to commission structures.[6] **Risk Specialist Advisers are exiting financial planning at a rate 2.5 times faster than holistic advisers** We have witnessed first-hand declining adviser numbers during this time within our own advice networks and the industry more generally. <u>Industry data</u> The *Adviser Ratings Landscape Report* 2022 estimates that around 1,200 risk specialists (advisers who are wholly or mostly risk insurance advisers) remain in the profession as at the end of 2021, with 609 having departed during 2021.[7] While total advisers in the Financial Advisers Register currently number approx. 17,000, predictions are that this could fall to 13,000 by the end of 2023.[8] Superimposing this decline against risk specialist adviser numbers using the information from the *Adviser Ratings Landscape Report* which noted that risk specialist advisers are leaving the industry at a rate 2.5 times greater than other advisers could see specialist risk advisers fall to about 900 by the end of 2023. <u>Insignia Financial / IOOF licensees declining Risk Specialist Adviser numbers</u> Our experience in losing risk specialist advisers who've permanently left the profession is similar. Risk Specialist advisers across our 6 AFSLs numbered just over 100 Authorised Representatives at the end of 2016. Today while Insignia represents about 10% of advisers in Australia, the total of Insurance Specialists identified within our advice AFSLs is just 46. **Cost to serve** While the impact of Life Insurance Framework (LIF) which effectively halved initial year 1 "new business" commissions (i.e. from up to 120% to 60% max.), the uplift in regulatory compliance measures along with increased education / professional standards requirements, has simultaneously raised the cost to serve consumers needing financial protection advice. In November 2019, Plan for Life Actuaries modelled the impacts of LIF's current 60% initial commission against the costs to deliver and implement insurance advice. Across the 161 participant financial advisers surveyed, it was found that the most straight forward insurance advice (less than 10% of clients) would require no fewer than 4 hours work, with the most complex implementations requiring over 10 hours of

[6] https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId3-EstimatesRoundId13-PortfolioId17-QuestionNumber30

[7] https://www.adviservoice.com.au/2022/04/adviser-ratings-landscape-report-illustrates-impacts-of-falling-adviser-numbers-with-further-to-go/

[8] https://www.ifa.com.au/news/31082-over-2-000-more-advisers-predicted-to-exit-industry-in-2022

		work. The vast majority of life insurance implementations (approx. 63%) took between 6 to 8 hours to complete. Their findings were published in a white paper "*Cost and efficiency of delivering life insurance advice*"[9] which showed the cost to deliver simple advice exceeded year 1 commission by about 15%, while complex insurance advice costs could exceed year 1 commission by approx. 50%. The white paper included the following table which showed that for a simple policy (e.g. Life only premium at $1,500 per annum), upfront commission is less than the associated costs to deliver the advice, and as policy complexity increased (shown under the higher "*complex policy*" increasing premium examples), commission alone was manifestly inadequate to cover these costs. As the bottom line indicates, in the case of each of the annual premium examples, relying on commission alone currently sees advisers incurring an upfront loss when advising and implementing life insurance strategies. The commercial outcome of reduced revenue coupled with a higher cost to serve has resulted in a pricing model that, in our experience, sees the vast majority of financial advisers regularly tell their practice development managers that advising and implementing life insurance strategy alone (i.e. without retirement planning and investment advice) is loss making and therefore insurance advice is no longer offered on a stand-alone basis.
54	Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.	**House and Contents** Under insurance is a present issue and has been for some time. With the current inflation and cost of living pressures and lack of insurance options in the Far North Queensland region (spreading to broader Qld now) clients have a budget spend for insurance, therefore reducing the sums insured to match the premium they can afford. For example, their home might be worth to replace $500,000 but when they do the online quote the premiums are outside their budget so they

	Simple Policy			Complex Policy	
	$	$	$	$	$
Annual premium	1,500	2,500	3,500	4,500	5,500
60% Upfront commission	900	1,500	2,100	2,700	3,300
less Cost	1,000	2,000	3,000	4,000	5,000
Commission less cost =	**-100**	**-500**	**-900**	**-1,300**	**-1,700**

[9] https://static1.squarespace.com/static/555d2cb3e4b03820b3f7e907/t/5df6c1c603e32e5334aada2e/1576452553126/Exec+Summary+-+Cost+and+Efficiency+of+Delivering+Life+Insurance+Advice.pdf

		reduce the sum down until it fits inside their budget – thus underinsuring. **Commercial clients** Under insurance is a present issue and has been for some time. Brokers will talk to the clients about correct insurance and will push back when clients want to reduce the sum insured. However, again clients are budget focused and sometimes not fully aware of the ramifications of reducing covers (because they do have an underinsurance clause) and do not take the advice of the broker and leave the sums low, to fit inside their budget. Issues then arise at claim time with the underinsurance clause kicking in causing lower than expected settlements. Clients are not factoring in the increased costs of building in the current environment. Whilst House and Contents sums insured have a CPI (Consumer Price Index) increase, this falls well short of the new replacement values. On Commercial policies there is no CPI increase.
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?	Consideration should be given to levels of underinsurance and the impact this would have on fiscal policy and reliance on social security due to reduced affordability.

CHARGING ARRANGEMENTS

Questions		**Insignia Financial Response**
56	Are consent requirements for charging non-ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?	The consent requirements for advice fees in superannuation are not working effectively for two main reasons: 1. There is widespread variation in trustee requirements. 2. This requirement adds to the volume of consents the client needs to sign during the advice process and leads to client frustration, excessive administration and creates client confusion. For example, clients may misunderstand and think there is an additional fee to the fees they consented to in other documents such as the service agreement or authority to proceed. This could be addressed by introducing a standard form which can be used across product providers.
57	To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?	As an organisation we have chosen to offer clients fixed term fee arrangements of up to 12 months, rather than ongoing fee arrangements so we will not be making detailed submissions in relation to this topic. However, Insignia Financial supports the changes that have been made to ensure consent for fee deductions (for non-ongoing fee arrangements) from a member's account is captured before a fee is charged. The documents and the supporting process should always ensure that members are given sufficient information and disclosure of fees being charged and time to make an informed decision and providing formal consent to fees (upfront or ongoing) being charged. Given the changes to the fee consent arrangements are relatively recent, it may be appropriate to observe the effectiveness of the new process before assessing whether further changes may be necessary.
58	How could these documents be improved for consumers?	Please see our response to question 57.
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?	The following changes could provide more accountability and transparency around fee deductions being deducted from member's accounts generally: • Clear disclosure on member annual statements for fees being charged – both as a percentage and dollar disclosure of fees. • Ensuring a formal consent is collected by the adviser prior to the fee being charged (as per current advice fees in superannuation requirements). Consent requirements should be streamlined to reduce the number of forms needing to be signed.

60	How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?	As an organisation we have chosen to offer clients fixed term fee arrangements and as such do not provide a view on the cost of providing an FDS.
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?	Many trustees impose limits on the advice fees which can be deducted from a customer's superannuation fund and/or place limits on the types of services that the fees can fund. It is now common for Trustees to require advisers and licensees to provide information about how they comply with OFA, FDS and other service commitments and to require supporting evidence that advice has been provided, such as statements of advice.
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?	The trustee covenants do affect a trustee's decision with a reverse burden of proof incumbent on the trustee. Therefore, trustees are required to have the right policies, processes and frameworks in place to ensure that fees are charged only where disclosure is clear and consent has been given.

DISCLOSURE DOCUMENTS

Questions		**Insignia Financial Response**
63	How successful have SOAs been in addressing information asymmetry?	In an effort to meet all possible compliance obligations (and mitigate risk), SOAs have become very long and can be difficult for a consumer to comprehend. In many cases the volume and technical nature of the information can be daunting to the consumer. In our experience, many consumers do not read these documents and prefer to be guided by their adviser. As noted in Report 632 Disclosure: Why it shouldn't be the default '*Disclosure is not then the silver bullet it was once believed to be. It places a heavy burden on consumers to, for example, overcome complexity and sophisticated sales strategies. Some research suggests that disclosure may be used more often by those of us who are already more informed and engaged.*' Arguably the requirements in the Code of Ethics which require the adviser to satisfy themselves that the client understands the advice provided is more effective.
64	How much does the requirement to prepare a SOA contribute to the cost of advice?	The requirement to prepare a statement of advice contributes significantly to the cost of producing advice. Reducing documentation and record keeping requirements, particularly where consumer risk is low, will be key to reducing costs.
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?	Our submission suggests that the current distinction between personal and general financial product advice be removed. As a result, all provisions which rely on the personal and general advice distinction will need to be reviewed, including Division 3 of Part 7.7 of the Corporations Act. That Division applies specifically in relation to personal advice situations and contains the SOA and ROA requirements. In our view, generally speaking the current regulatory disclosure regime in Division 3 should apply to the revised definition of financial product advice we have suggested in this submission. In our view, 'financial insights', as we described earlier in our submission, would not be regulated by Division 3 and would not, for instance, require a disclosure document such as an SOA or ROA. However, a mandatory no-advice warning would be required as set out in our submission. Insignia Financial generally supports a more principles-based approach to regulation. We consider that a legislative and regulatory framework for advice documentation that better facilitates the adviser using their professional judgement to determine what level of information needs to be included in the advice document to make the

		recommendations clear to the consumer would produce more client friendly documents. An example of principles-based guidance is found in Standard 5 of the Code of Ethics which requires advisers to ensure clients understand their advice to be sufficiently broad enough to address this requirement. Similarly, s947B(3) and C(3) already specifies "the level of detail about a matter that is required [in an SOA] is such as a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client". Guidance as to how the regulator will interpret and enforce these existing principles is required. This could be facilitated by the regulator continuing to adopt its current facilitative and consultative posture [and further guidance about its expectations around limited scope and single-issue advice]. In our experience, using SOAs to demonstrate compliance with the safe harbour steps and to meet record keeping requirements and addressing the matters set out in ASIC regulatory guide 175 results in lengthy disclosure documents. We consider that removing the safe harbour steps will in turn mean that licensees will feel more confident in reducing the content in SOAs. To the extent it is necessary for the law to prescribe information to be included in an SOA or ROA, we consider incorporation by reference should generally be permitted so that advice documents do not unnecessarily duplicate information being provided to clients. By way of example, section 946B contains the requirements for when further market related advice can be given without the need to issue the client with an SOA. Section 946B(3) provides "However, in the same communication as is used to provide the further market-related advice to the client, the client must be given the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires." The requirement for the disclosure to be made 'in the same communication' prevents those disclosures being made by referring the client to the earlier advice where the disclosures were set out. Some specific areas where current disclosure requirements contribute to the length or complexity of documents and the time taken to prepare with limited benefit to consumers include: • Scope of Advice – scope of advice is very adviser centric terminology and not client friendly language. From a client's perspective, the advice document should confirm the goals the client wants to achieve that the advice will address and highlight gaps the client may have they are not aware of. Where the adviser has identified gaps that the client does not want to address this can simply be called out in the advice document.

		• Product replacement - Product replacement tables with the breakdown of fees can be overwhelming to clients. Ultimately this can be made simpler by outlining the total product cost to clients rather than all the individual components of the fees such as administration fees, transaction fees, buy/sell contribution fees etc which are already disclosed in the PDS. In many cases the table needs to be produced twice (first in a "like for like" comparison and next showing the replacement implications based on the replacement without like for like). To aid the client we could instead disclose the total cost in the advice document with a note that a detailed breakdown of the underlying fees can be provided upon request – this would ensure clients see what's important (ie total product fees) yet still have the option for the detail if they want it. • Duplicating information in the advice document and FSG – There is currently quite a lot of repetition of information set out in the Financial Services Guide (FSG) and the SOA. Rather than duplicating this information it would be beneficial if this could be incorporated by reference to the FSG. For example: whilst the total cost of initial and ongoing advice fees should be disclosed in the advice document, currently additional detail is included that is also referenced in the Financial Services Guide (FSG), such as the split between amounts retained by the licensee vs. the adviser. Other examples of duplicated information include related party relationships, referral relationships etc. Please refer to the main body of our submission for other feedback on how advice documentation could be improved and simplified.
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?	The length of disclosure documents is driven by advisers and AFS licensee seeking to confidently meet the perceived expectations of the regulator.
67	How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?	For financial product advice we recommend a scalable disclosure regime reflecting the complexity of advice. What consumers want to understand from a financial product advice recommendation is that the adviser has considered the relevant information and options and recommended a course of action that is in their best interests.

		A simple advice document which addresses how the advice will help them achieve their financial goals, supported by the advice conversation, would be more beneficial to assisting consumers to decide if they should act on the advice than the current extensive statements of advice which, in our experience, many clients find overwhelming and mostly don't read. Terminology in disclosure documents should be more client friendly. Other amendments could include: • Establishing a universal library of all Product Disclosure Statements and Financial Services Guides so consumers can access these in one place. • Creating a standardised document format to enable consumers to compare more easily. • Addressing the current requirement to repeat the same or similar disclosures in multiple documents, which does not assist client understanding. • Encouraging advisers to use standardised information to support content requirements that is unlikely to vary between customers. For example, in our experience, SOAs include information about 'market risk' in relation to investment recommendations. ASIC could develop standardised descriptions of that risk. The regulatory requirements for advice disclosure documents should consider the obligations under the Code of Ethics for advisers to satisfy themselves that the client understands the advice.
68	Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?	The legislative and regulatory framework for advice documentation should facilitate the adviser using their professional judgement to determine what level of information needs to be included in the advice document to make the above recommendations clear to the consumer. Simple advice should equate to a simple document which the consumer can easily understand. Higher disclosure requirements should apply where a client's circumstances and/or advice is more complex and the potential for consumer harm is higher.
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 recent guidance from ASIC has been useful in providing guidance on the circumstances in which an ROA can be used. However, we believe an advice document should always be scalable.
70	Are there elements of the COVID-19 advice-related relief for disclosure	Notwithstanding our comments in relation to a simplified advice document, areas where regulatory relief could be provided in relation to the use of ROAs include:

	obligations which should be permanently retained? If so, why?	• Expanding the ability to use ROAs for simple advice scenarios. For example, commencing a pension within the same product and meeting the existing income needs. • Where the client is transitioning to a new adviser and both advisers are operating under business rules which are materially the same (eg moving to a different licensee within the same parent company even though there may be a change in the "providing entity"). This will reduce the cost impost to clients.

ACCOUNTANTS PROVIDING FINANCIAL ADVICE

Questions		**Insignia Financial Response**
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?	No. As financial advice transitions to a profession it is important to ensure individuals providing advice are qualified as a professional financial adviser/planner.
72	If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?	We do not believe an exemption should be granted.
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?	Consumers are best protected when all persons providing advice are subject to the same requirements. We believe the recommendations we proposed in this submission will improve accessibility of advice.
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?	Consumers are best protected when all persons providing advice are subject to the same requirements.
75	Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?	Advice regarding an SMSF is not just about the trust structure, consideration also needs to be given to appropriate investments and insurance, which accountants are less likely to be familiar with.

CONSENT ARRANGEMENTS FOR WHOLESALE CLIENT AND SOPHISTICATED INVESTOR CLASSIFICATION

Questions		**Insignia Financial Response**
76	Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?	It is important clients being classified as a wholesale client under s761G(7)(c) are told of the classification and what it means and understand the implications. This would support the existing customer protection requirement for an accountant's certificate confirming they meet the criteria to be treated as a wholesale client. As noted in response to question 78, we support a requirement to ensure these warnings are provided to a client, but do not think it is necessary to require a client to agree in writing that they are being classified as such.
77	Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?	We support clarifying the law to ensure consumers are told they are a sophisticated investor or wholesale client and are given an explanation of the consequences of the classification.
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?	Yes. An adviser should explain what it means to be treated as a wholesale client particularly with respect to the consumer protections that do not apply.

OTHER MEASURES TO IMPROVE THE QUALITY, AFFORDABILITY AND ACCESSIBILITY OF ADVICE (ASIC, LICENSEES, PROFESSIONAL INDUSTRY ASSOCIATIONS)

Questions		Insignia Financial Response
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?	Insignia Financial licensees have taken a number of steps to improve the quality of advice including: - Ongoing adviser training and coaching - Revised and simplified licensee standards - Revision of the advice review process - Goals based digital concept illustrators to help clients understand goal trade-offs and goal achievement - Simplifying advice templates to reduce duplication To improve the accessibility and affordability of advice, Insignia Financial licensees have: - Developed a digital intra-fund advice tool for superfund members to access advice - Developed an intra-fund personal advice offering - Invested in technology that provides efficiencies for advisers thereby reducing costs for consumers - Increased focus on general advice solutions and financial coaching for consumers where a need for personal advice is not identified As previously noted, overcoming some of the current challenges in relation to advice documentation, consent requirements, limitations on advice that can be centrally funded by the super fund and access to technology and data would assist licensees to further improve the quality, accessibility and affordability of advice.
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?	Professional associations have developed guidance and templates to assist advisers to provide financial advice more efficiently whilst engaging with regulators and legislators on issues that impact the quality, accessibility and affordability of advice.
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?	As a concept ASIC's financial advice hub is a great idea and it is useful to advisers and licensees to have all advice related resources in one place. Further improvements such as aligning the relevant content on the financial advice hub to the stages in the advice process would be beneficial in terms of navigation and finding relevant information. ASIC's recent guidance on limited advice has been useful but doesn't resolve the broader challenges of complying with best interests obligations and the code of ethics when

		providing limited advice and doesn't resolve advice disclosure issues. In our experience, the sample advice documents provided by ASIC tend to include relatively simplistic scenarios which do not provide advisers and licensees with guidance for more complex scenarios. For example, ASIC provides an example ROA for hold advice, which is useful but a simple scenario and is not a scenario around which advisers struggle to understand the requirements. An example of an ROA with portfolio changes that reflect the regulator's expectations with respect to disclosing asset allocations, portfolio switches and the associated implications would be useful.
82	Has licensee supervision and monitoring of advisers improved since the Financial Services Royal Commission?	In our view, licensee supervision and monitoring of advisers has improved since the Financial Services Royal Commission, however we consider the catalyst for improvement to have been the publication of ASIC REP 515 and ASIC REP 562 reviews, released in March 2017 and January 2018 respectively. Since the publication of the two reports, Insignia has significantly invested in (i) improving the quality of its advice and (ii) the effectiveness of its advice processes, across all AFSLs in the Insignia Group. Insignia has undertaken a number of actions to uplift its governance frameworks, advice assurance processes and licensee Professional Standards, including: • introduction of a new set of audit standards and a new externally assured audit questionnaire and scorecard that addressed any best interests duty compliance gaps; • introduction of single set of Professional Standards, that include detailed guidance and uplifted requirements with respect to: record keeping requirements; advice process; conflicts management; • harmonisation and centralisation of advice complaints, incident management, risk and compliance forums and governance framework relating to advice matters; • improvements in the existing Consequence Management Framework. The ongoing review and improvement of established internal processes also took into consideration findings from the Financial Services Royal Commission, as well as the changing regulatory environment.
83	What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice?	Licensees and professional associations provide guidance based on the regulatory and legislative framework, which in Australia is very complex. This needs to be addressed rather than relying on licensees and professional associations. Some matters which could be addressed by legislative changes or by ASIC include:

		<u>Reduce complexity in the legislative and regulatory framework</u> The legislative and regulatory framework in Australia is very complex, and, in some case, ambiguous. For example, in Part 7.6 of the Corporations Act there are obligations on a 'person', 'advice provider', 'representative', 'authorised representative' and 'Licensee'. As noted by the ALRC, "complexity matters because it makes the law difficult to understand. In turn, this makes it harder for consumers and their advocates to know their rights and be able to exercise them; for practitioners to be able to advise their clients confidently; for regulated entities to know how to comply with the law; and for regulators to enforce the law. Complexity may also give rise to rule of law concerns. We all bear the consequences of legislative complexity, including through increased costs for financial products and services, and in publicly funding courts and regulators to wade through the legislative thicket." It is important for industry participants to provide feedback as part of these reviews to ensure the needs and concerns of all industry participants are heard and understood and can be addressed. We are supportive of the work being undertaken by the Australian Law Reform Commission to reframe and restructure Chapter 7. ASIC could assist by simplifying the content and form of the guidance it provides. Currently, ASIC issues Regulatory Guides, Information Sheets, and Instruments. Often the guidance is broad and does not address technical or complex aspects of the law in a simplified way. Financial advisers would be assisted by guidance which sets out ASIC's views in areas where the legislative and regulatory framework is unclear, particularly in areas such as minor or non-reportable breaches that only arise due to the complex application of the current framework.