



AFFORDABLE AND ACCESSIBLE ADVICE:

FSC GREEN PAPER
ON FINANCIAL ADVICE

2021



CONTENTS

1. Foreword	2
2. Financial advice in Australia	3
3. What is the problem we are trying to solve?	6
3.1 Regulation	6
3.2 Changing costs of an advice business	7
3.3 Future policy reform	8
4. Principles-based regulation	9
5. A new model of advice	11
5.1 The separation of product from advice	20
5.2 Simple Personal Advice: the consumer at the centre of the advice process	21
5.3 Complex personal advice	24
5.4 Strategic advice under the new model	27
5.5 Improving access to intra-fund advice	28
5.6 Specialised advice under the new model	31
5.7 General Information	32
6. The advice process: Reduced Documentation & Consumer-driven advice	34
7. Best interests duty and safe harbour steps	40
8. Renewing the licensing and registration of professional financial advice	43
9. Education standards and professionalism	48
10. Unleashing the benefits of data and technology	51
10.1 Data standardisation	52
10.2 Automation and technology	54
10.3 Digital advice	55
11. Tax deductibility and incentives	57
12. Appendix: Timeline	58
13. Appendix: Law and regulation of financial advice	59
14. Appendix: Proposed licensing and registration framework for financial advice	62

1. FOREWORD



The financial advice industry is facing significant challenges, with rising regulatory requirements and cost pressures undermining the economics of the sector.

Consumers now face an average advice fee of around \$3,240,¹ and are experiencing an unsustainable rate of increase of 28 per cent in just two years.

In just five years, however, all financial advisers will be degree qualified, ethics tested and subject to a professional regime that exceeds that of many other professions. Financial advisers currently practicing will have to have passed the FASEA exam by 2022 and completed all other education requirements by 2026.²

The Financial Services Council (FSC) is issuing this Green Paper to lead the public policy debate on how the financial advice sector should be governed once it is professionalised. Our aim is to lower the cost of providing financial advice, without undermining the quality of advice provided to consumers or eroding important consumer protections.

The FSC supports the Best Interests Duty remaining the bedrock of the advice sector and for advisers to be held to a high standard of education and subject to a Code of Ethics. There are significant opportunities, however, to reduce the cost and complexity of providing financial advice.

Rice Warner's Future of Advice report and consultation with industry bodies and consumer groups has led the FSC to conclude a simpler, consumer-driven advice process is needed to ensure Australians can access affordable advice. Consumer

testing for the FSC by research agency Pollinate shows that 64 per cent of consumers (who have purchased financial advice or are open to considering it) are more likely to seek advice if the advice process is simpler and less costly.³

The proposals in this Green Paper are therefore bold and canvass fundamental changes to the regulatory framework, including:

- Abolishing the 'safe harbour' steps that are unnecessary and administratively complex, while giving financial advisers a false sense of protection;
- Removing complex jargon that confuses consumers by breaking all advice into either general information or personal advice; and
- Abolishing unwieldy Statements of Advice (**SOAs**), and replacing them with Letters of Advice, which would be short, concise and consumer orientated.

The majority of consumers support reducing unnecessary red tape across the financial advice industry if it lowers the cost of financial advice without weakening consumer protections.

In addition to these proposals the Green Paper poses a range of questions where the FSC is seeking industry and public feedback in advance of finalising a White Paper later this year.

Consultation on this Green Paper is open until 1 July 2021 and submissions can be sent to

financialadvice@fsc.org.au.

SALLY LOANE
Chief Executive Officer

¹ Sydney Morning Herald Source: [Dramatic rise in advice fees as adviser numbers dive \(smh.com.au\)](#) (2 February 2021)

² 'FASEA welcomes certainty around Exam and Education Extension' (June 2020) Source: [FASEA welcomes certainty around Exam and Education extension | Financial Adviser Standards and Ethics Authority Ltd](#)

³ Pollinate, 3

2. FINANCIAL ADVICE IN AUSTRALIA

The Australian economy is undergoing some of the largest adjustments since the Second World War. A key development underway is the \$3 trillion intergenerational wealth transfer from Baby Boomers to Millennials. This has coincided with the rise of the 'Millennial investor', with an estimated two-fifths of Millennial and Generation Z invested in shares in 2020.⁴ Conversely those with limited financial means still have considerable unmet advice needs.

Despite the demand for advice that these fundamental shifts are creating, financial advice is increasingly out of reach for these consumers. This has been influenced by:

- The exit of major banks from wealth management, consolidating or closing dealer groups⁵, and transforming their advice delivery models altogether;
- Evolution of different parts of the legislative framework governing financial advice over the past decade (e.g Future of Financial Advice reforms, the Life Insurance Framework and implementation of the Financial Services Royal Commission's recommendations⁶); and
- COVID-19 has reshaped the needs of consumers and the ways advice businesses work.

This poses a number of challenges and impacts for Australia's financial advice sector:

- A growing 'advice gap' - the group of Australians on low to middle incomes with considerable advice needs who have a low propensity to pay for financial advice;
- Surging demand for scaled and single-issue advice;
- Compliance now a core function of advice businesses and a key driver of cost;
- A reducing number of financial advisers capable of providing this financial advice;
- Reduced social license and trust in the profession;
- Rising barriers to entry to the profession as a post Financial Adviser Standards and Ethics Authority (**FASEA**) regime emerges despite raising the professionalism of financial advisers⁷; and
- Risk of unlicensed advice and 'influencers'⁸.

⁴ Australian Financial Review. Source: [Investing 'under the influence' \(afr.com\)](#) (8 Jan 2021)

⁵ Australian Financial Review. 'As big banks exit wealth, Hub 24 sees an opportunity' Source: <https://www.afr.com/companies/financial-services/as-big-banks-exit-wealth-hub24-sees-an-opportunity-20201221-p56p6cf>

⁶ Financial Services Royal Commission implementation includes annual renewal and opt-in requirements, breach reporting requirements, reference checking obligations, a disciplinary body and an end to grandfathered conflicted remuneration

⁷ *Choice and Access to Life Insurance (CALI) White Paper*, March 2020

⁸ Australian Financial Review. Source: [Investing 'under the influence' \(afr.com\)](#) (8 Jan 2021)

The importance of financial advice

The intrinsic value of financial advice to Australian consumers and the economy is well canvassed:⁹

- Rice Warner’s modelling showed the potential financial advice has to reduce the cost of the Age Pension and increase National Savings;
- CoreData research showing that if advice was available to all Australians, the total economic uplift could be \$630.3 billion a year and Age Pension outlays would be reduced by 21.6 per cent;¹⁰
- KPMG research showing consumers could be \$100,000 better off by receiving advice conducted in 2011.¹¹

There is consistent research on the individual and economic benefits of advice, despite its cost increasing. Quantification of its value or ‘the Advice Dividend’¹², however, could be improved through better data standardisation across the industry (see ‘Unleashing the benefits of data and technology’).

Consumers recognise the value of good financial advice

Pollinate’s consumer testing categorised its sample of consumers into three groups:¹³

- **Users:** 26 per cent of Australians who were ‘users’ of financial advice who had sought financial advice in the past. Users of financial advice are more likely to be males aged over 65, earning a personal income of \$150,000 who are retired and own their own home. They are less likely to be unemployed or living and renting with parents.
- **Considerers:** 42 per cent of Australians were ‘considerers’ of financial advice and open to purchasing it. Considerers are more likely to be females aged 35 or over living in metropolitan areas working full time or in study.

- **Rejectors:** 32 per cent of consumers were ‘rejectors’ of financial advice who had not purchased advice and would never consider seeking it. Rejectors of financial advice are more likely to be families living in regional Australia with their highest level of education being Year 10 and earning a personal income of less than \$40,000, renting a home and have previously been unemployed.

Consumers who have sought financial advice agree it results in positive life outcomes:¹⁴

- 71 per cent of consumers agreed, or strongly agreed, the financial advice they had received helped them achieve greater financial confidence;
- 70 per cent agreed, or strongly agreed, it helped improve their financial situation;
- 68 per cent felt it had given them greater peace of mind;
- 59 per cent agreed or strongly agreed it had improved their overall life satisfaction.

The benefits of financial advice are seen across different income brackets. Most Australians want to do more with their finances - 43 per cent of consumers feeling they should do more about their financial situation than they currently are.¹⁵ COVID-19 has put financial security in focus, despite seeking professional financial advice becoming further out of reach for consumers.

⁹ Rice Warner, Future of Advice Report

¹⁰ Value of Advice Report 2020. CPA Australia. (Source: <https://www.cpaaustralia.com.au/-/media/corporate/allfiles/document/professional-resources/public-practice/the-value-of-advice-research-report.pdf?la=en&rev=231ba5abaa354f8696c4146c1eb378c5>)

¹¹ KPMG Econtech. Value Proposition of Financial Advisory Networks Update and Extension. 18 January 2011.

¹² Advice Dividend - IOOF

¹³ Pollinate, 20-21

¹⁴ Pollinate, 54

¹⁵ Pollinate, 56

Growing advice needs

Retirement income, buying a house and inheriting wealth are the primary triggers of advice need in Australia consistently among those using or considering engaging with a financial adviser as well as those who have rejected seeking financial advice.¹⁶

A considerable number of consumers are also seeking advice on taking out personal loans, starting a new job or redundancy payouts.¹⁷ As the number of consumers who cannot access financial advice grows there are many advice needs that are becoming under-served. For example:

- One in five young Australians, aged 25 to 35, have dependents who will face financial hardship if they die because they have less insurance than the community standard;¹⁸
- 20 per cent of middle-aged Australians, aged 35-44 have less life insurance than the community standard, predominantly middle-income households with children and mortgages;¹⁹
- Consumers retiring with modest superannuation account balances drawing on the Age Pension are unadvised;
- The rise of influencers²⁰ and consumers looking beyond seeking professional financial advice open sources of information such as online.

Physical and psychological barriers to seeking advice

The cost of getting advice and perceived value are the key barriers to seeking advice among Australians who have never sought advice.²¹ Three drivers of change define the barriers to seeking financial advice²²:

- **Capability** - for example a person might not know who they would trust or where to start when seeking advice.
- **Opportunity** - the direct cost of advice is simply too high for the consumer. Cost falls under the opportunity barrier.
- **Motivation** - the consumer doesn't have enough income or assets they consider necessary to seek advice, a desire to control finances by themselves.

Pollinate's research concludes that reducing cost makes advice feel more accessible to consumers.

Consumers often rely on those they already know when choosing a specific financial advisor whether it be a family, friend or other professional, underlying the importance that the consumer places on trust in both the advice they receive, who gives that advice and who connects them with an adviser.

The FSC has included proposals for simplifying the advice process significantly to reduce cost, while improving the consumer journey, trust and awareness to reduce these barriers.

¹⁶ Pollinate, 15

¹⁷ Pollinate, 15

¹⁸ *Choice and Access to Life Insurance (CALI) White Paper*, March 2020

¹⁹ *Choice and Access to Life Insurance (CALI) White Paper*, March 2020

²⁰ Australian Financial Review. Source: Investing 'under the influence' (afr.com) (8 Jan 2021)

²¹ Pollinate, 23-25

²² Pollinate, 22-26

3. WHAT IS THE PROBLEM WE ARE TRYING TO SOLVE?

Increasing regulation increases the volume of disclosure or required steps a financial adviser or advice business must take when serving consumers. This increases the costs of operating an advice business and conducting the advice process. These costs are ultimately worn by consumers.

Regulatory complexity also adds to the uncertainty and compliance risk informing future business decision-making that ultimately see services end or curtailed as compliance trumps service delivery.

3.1 REGULATION

The laws and regulation of financial advice since the introduction of the Financial Services Reform Act in 2002 has been subject to continual evolution. They are currently the subject of a comprehensive review by the Australian Law Reform Commission (ALRC).²³

The Financial Services Reform Act in 2002 introduced the Australian Financial Services License (AFSL) and the Statement of Advice. The Future of Financial Advice Act (FOFA) and the implementation of Royal Commission legislation are the latest developments. The biggest change has been the end of conflicted remuneration. Financial advisers are now held to much higher standards of education and ethics.

Advice regulation is underpinned by several pieces of legislation (see Appendix Law and regulation of financial advice'). In particular, Chapter 7 of the Corporations Act 2001 was introduced at a time that did not necessarily contemplate financial technology, or global events such as the pandemic, and when financial advice was a distribution or sales channel for product providers. Technology, changing business

models and reforms have rendered this Act and others unwieldy and difficult to administer. The complexity of the legislative framework is compounded by additional regulatory instruments:

- Regulatory guides (see Appendix *Law and regulation of financial advice*);
- Determinations of the Australian Financial Complaints Authority (AFCA);
- Codes of Ethics; and
- Legislative Instruments.

These are often inconsistent and trigger caution from compliance teams. This caution has created problems in a number of ways:

- **Provision of scaled or limited advice on basic issues for consumers at a time of economic downturn has become problematic:** The provision of limited or scaled advice is complicated by the lack of consistency between RG 244 and Standard 6 of the Code of Ethics.
- **Constantly changing regulation has made manual compliance difficult:** manual compliance is costly, with an increased risk of human error.
- **Diminished value of advice to consumers:** Compliance obligations have made the provision of advice time-consuming, impeding value for money for consumers.

Stripping back unnecessary layers of regulation and red tape that prevent access to good quality financial advice will ensure maximum benefit is provided to consumers.

²³ Australian Law Reform Commission. *Review of the Legislative Framework for Corporations and Financial Services Regulation*. Source: <https://www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/>

WHAT IS THE PROBLEM WE ARE TRYING TO SOLVE?

3.2 CHANGING COSTS OF AN ADVICE BUSINESS

The theatre of an increasingly changing regulatory landscape is increasing costs for financial advisers.

Regulatory Costs	Cost of Operating an Advice Business
<ul style="list-style-type: none"> ▪ ASIC levies ▪ License Registration levies ▪ Professional Indemnity (PI) Insurance ▪ AFCA Fees ▪ Registration with the Tax Practitioners Board (TPB) ▪ Changes to education standards and requirements ▪ Cyber security and privacy requirements ▪ Regulator fact-finds ▪ Product comparisons and research ▪ Record keeping requirements 	<ul style="list-style-type: none"> ▪ Technology costs to facilitate more efficient modelling of advice outcomes ▪ Time overheads activity ▪ Costs of education to advisers ▪ Staff ▪ Opportunity cost when advice takes longer they might not want to proceed ▪ Professional memberships ▪ Wages and salaries ▪ Insurance ▪ Rental and property costs ▪ Tax
<p>Future regulatory costs</p> <ul style="list-style-type: none"> ▪ Compensation Scheme of Last Resort (CSLR) ▪ Financial Accountability Regime ▪ Fees to the Financial Services and Credit Panel ▪ Industry funding model for Financial Counsellors ▪ Incoming reference checking protocol ▪ Design and Distribution Obligations (DDO) 	

Regulation has a direct impact on the costs of running an advice business: Providing advice incurs considerable costs to an advice business. This relates to meeting compliance obligations, and adhering to multiple codes of compliance²⁴, paying fees to, and interacting with multiple bodies.²⁵ There is now a layered approach to regulation, where each body imposes regulations 'on top' of broader obligations. Every time such levers change, this creates a cost that is largely worn by the consumer. This is to support compliance that in principle seems necessary but that delivers no apparent value or benefit to the consumer, nor is efficient. Consumers who purchase financial advice would expect to pay for the value they receive not necessarily funding the cost of compliance.

There is a disconnect between the cost of advice and the propensity to pay: As regulation continually adds to the costs of advice, a substantial disconnect exists between a consumer's propensity to pay for various forms of advice, and the actual cost to provide advice. Rice Warner's *Future of Advice* report showed consumers are very price sensitive and do not wish to pay more than \$500 for advice.

The incoming Design and Distribution Obligations (DDO) obligations to cost of providing advice: The incoming DDO, and additional consumer protection, will impose further costs on advice licensees. For the regulatory net to be sustainable this will need to be reviewed in time. The FSC acknowledges the potential implications the DDO could have on implementing the proposals contained in this Green Paper and welcomes submissions on this point.

²⁴ For example, the FASEA Code of Ethics, the Corporations Act obligations, or regulatory guides
²⁵ For example, ASIC, FASEA, the Tax Practitioners Board

3.3 SUMMARY OF FSC PROPOSALS

The goal of laws and regulation is to protect consumers and promote confidence. However there is now a layered approach to regulation, despite heightened standards of professionalism and service delivery.

Future policy reform should aim to strip back these layers and in its place redesign the model of advice and the advice process altogether by:

- Realigning and simplifying the definitions and classifications of financial advice;
- Removing the safe harbour steps so that the Code of Ethics is the single tool to meet the Best Interests Duty;
- Aligning documentation and disclosure requirements with consumer needs and the level of risk by abolishing the Statement of Advice in favour of a scaleable Letter of Advice;
- Updating the licensing regime in a manner that retains the benefits of capital adequacy for advice businesses to operate which the AFSL regime offers, balanced with the need to ensure advisers are more responsible for the advice they provide;
- Maintaining the existing education standards and professional framework for financial advice as the industry continues to professionalise and mature;
- Embarking on comprehensive data standardisation and centralisation of key information to drive consistency and efficiency across industry; and
- Consider principles-based regulation to improve simplicity for consumers and advice businesses.



4. PRINCIPLES-BASED REGULATION

Industry needs certainty in the law and how it will be interpreted. Rice Warner recommended that resolving complexity of the advice system begins by establishing the principles underpinning its regulatory need and models of delivery. Conflicts between what the law says and how it is interpreted by regulators is a key driver of the conservatism of licensees.

The *Future of Advice* Report proposed the following principles:

- **Simplicity**
- **Affordability**
- **Consistency**
- **Accessibility**
- **Quality**

Embedding core principles to focus compliance would reduce complexity. A principle such as 'simplicity' could apply to documentation to ensure advice remains user-friendly for consumers. Affordability and accessibility for consumers would need to be more strictly defined.

A principles-based approach to financial advice regulation is also lower risk under the new DDO regime, as the DDO requirements will ensure that financial product issuers know whether their consumers fall within their target market for their products.

Proposal

RECOMMENDATION

The FSC supports a long-term principles-based approach to regulation, and recommends consideration of regulatory principles to guide the advice industry should accompany changes to key legislation governing financial advice such as the Corporations Act 2001.

RECOMMENDATION

Consistent with the development of an advice profession, the principles should remain outside the law, and instead be managed through a single set of industry standards, developed and maintained by the single disciplinary regime.

Principles should be supported with legislated definitions of advice. Principles based approaches to law and regulation should aim to overall reduce the consumer's reliance on government support in retirement, encourage Australians to address unmet advice needs, and promote affordability and accessibility.

There are many instruments already in use that set out established principles governing the provision of advice, for example, the Code of Ethics. Given the evolution of advice law in the past 20 years, a single source for principles should be established, such as the single disciplinary regime.

Rationale

- High-level principles could better focus advice regulation where objective or prescriptive legislation cannot guide activity across industry;
- Principles could aid the interpretation of law and regulation in a holistic manner;
- High level principles could help guide policymakers, regulators and industry more effectively; and
- The stability of the financial advice regulatory framework can be secured through a set of core, pragmatic principles

An advantage of a principles-based approach is that it acknowledges the professionalisation of financial advisers. For example, interpreting simple and complex advice should be principles-based and rely on professional judgment.

DISCUSSION

- Would set regulatory principles improve the level of complexity in the regulation of financial advice?
- Should these principles be codified in law?
- What other principles should guide advice regulation beyond those listed above?
- Would regulatory principles promote confidence and stability while reducing cost?



5. A NEW MODEL OF ADVICE

Financial advice needs to be appealing and simple. As advice professionalises, it remains compliance-focused with disclosure requirements put ahead of the consumer's needs.

The current model of advice is misaligned from the consumer protection framework. Simple low risk advice is currently subject to the same level of regulation as high-risk advice, that now sits within a regulatory framework that was established when advice was conflicted.²⁶ How advice is defined, classified and aligned to the risk a consumer incurs, determines the overall level of trust in the system.

This section outlines how the FSC aims to free up access to financial advice with a more flexible model of advice that puts consumer's interests at its core.

Impact of the High Court's General Advice decision

The FSC interprets the recent decision of the High Court in *Westpac Securities Administration Ltd & Anor v ASIC* [2021] HCA 3 ("**the General Advice decision**") as demonstrating that the traditional model of General Advice is unworkable in almost all circumstances.

The High Court focused on whether the provider had *in fact* considered one or more of the Member's objectives, circumstances or goals as per their obligations under the Corporations Act. The High Court held that a financial adviser can have *considered* the objectives of a member without

actively and comprehensively evaluating the member's financial affairs and that advice can be deemed to be personal advice if it considers any one of the objectives, financial situation or needs of the consumer.²⁷

Crucially, where there is a possibility that a reasonable person might expect the financial adviser to have in fact considered one or more of the person's objectives, financial situation or needs, the advice will be personal advice and subject to correspondingly more onerous obligations.²⁸

With General Advice effectively unworkable as a model simple direct engagement with consumers is likely to trigger personal advice requirements, therefore increasing regulatory costs for businesses.

The High Court's decision makes clear the need for a robust, clearly defined model of advice to allow industry participants to navigate the Corporations Act.

The existing definitions and classifications of advice no longer work for consumers

Rice Warner identified nine different broad definitions and classifications of advice.²⁹ These definitions trigger a range of disclosure requirements, and thus varying depths of complexity for advice businesses and the consumer.

26 Page 3, *Future of Advice*. Rice Warner. "The current regime was developed when conflicted remuneration was the norm, and many products provided poor value. The focus is still on selecting the right product, even though many products, such as MySuper, carry relatively low risks for consumers."

27 [Don't take it personally - High Court clarifies the test for personal financial advice - Hall & Wilcox \(hallandwilcox.com.au\)](#)

28 [Don't take it personally - High Court clarifies the test for personal financial advice - Hall & Wilcox \(hallandwilcox.com.au\)](#)

29 Page 21, *Future of Advice*. Rice Warner

Consumers are confused about the difference between personal advice and general advice. This is despite ASIC Report 614 noting:³⁰

“The distinction between personal and general advice is important because the level of consumer protection afforded to consumers who receive advice differs significantly, depending on whether the advice they receive is personal or general”

It would seem these definitions are no longer reflective of consumer expectations around what advice is meant to be. The blurred line between personal and general advice now inhibits the provision of some level of scoped (or scaled) support (e.g. provision of information) or advice to consumers.

As was noted by the Retirement Income Review³¹:

“Complexity and uncertainty, a lack of financial advice and guidance, and low levels of financial literacy are impeding people from understanding the system. As a result, some people fail to adequately plan for retirement and make poor decisions about how to use their savings in retirement.”

The existing model stifles innovation and flexibility. The increasing influence of technology and digital is raising an unavoidable question about what exactly advice is and how it will be provided in a post-COVID-19 economy.³² This relates to discussions not only about how advice is defined and classified, but the licensing, professional requirements, and other obligations on its provision over time.

ASIC’s consumer research shows consumers support the need for simple, piece by piece, and affordable advice³³ and a much simpler set of advice arrangements within the advice process.

The risk-based approach

A redesigned model of advice that is built around consumers and their needs, rather than evolving legislation and rules, is needed. In removing the layer of unnecessary cost, duplication and regulation currently preventing advice provision, the FSC seeks to reform the model of advice so it is simpler and clearer for both the consumer and advice providers.

Rice Warner proposed advice as either strategic or financial product advice. Within personal advice that would remain mostly advice about products, Rice Warner distinguishes between simple and complex personal advice, doing away with the term general advice and amalgamating numerous definitions of factual information, and education, redefining these as general information.

This has been likened to creating a ladder.³⁴ Constructing a ladder with lowest rung, general, proceeding to more complex.³⁵ A good advice ladder must be sturdy, safe and have a professional, such as the financial adviser, holding that ladder.³⁶ The further a consumer progresses up the rungs of the ladder the more stringent the consumer protection must be.³⁷

This approach acknowledges the flexibility consumers seek which is not currently enabled by the binary personal and general advice model.

Rice Warner proposed reclassifying advice a strategic advice and financial product advice. Financial product advice would take the form of the following definitions:

- **General Information**
- **Simple Personal Advice**
- **Complex Personal Advice**
- **Strategic Advice**
- **Specialised Advice**

30 ASIC Report 614 Financial Advice: Mind the Gap <https://download.asic.gov.au/media/5054882/rep614-published-28-march-2019.pdf>

31 Page 23. Retirement Income Review: Final Report. <https://treasury.gov.au/sites/default/files/2021-02/p2020-100554-udcomplete-report.pdf>

32 Australian Financial Review. Source: Investing ‘under the influence’ (afr.com) (8 Jan 2021)

33 Financial advice: What consumers really think. ASIC Report 627. Source: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-223mr-consumers-see-value-in-financial-advice-but-lack-of-trust-remains-an-issue/#:~:text=ASIC%E2%80%99s%20Report%20627%20Financial%20advice:%20What%20consumers%20really%20attitudes%20towards%20financial%20advice%20and%20the%20advice%20industry.>

34 Industry feedback, Future of Advice Summit 2020

35 Ibid

36 Ibid

37 Ibid

A simpler model of advice is also consistent with the new DDO regime, which requires financial product issuers to know whether their consumers fall within the target market for their products. This is a significant, new check on whether the advice being provided is consistent with the needs of the consumers and the products being selected.

Proposal

While at a minimum a distinction between personal advice and general information is essential the FSC supports simplification of advice definitions but would welcome input from stakeholders on an alternate model.

RECOMMENDATION

Adopt a new financial advice model that is legislated to establish clear segments of:

- a. General Information
- b. Personal Advice
 - Simple Personal Advice
 - Complex Personal Advice
 - o Specialised Advice

RECOMMENDATION

What would normally be provided as strategic or product advice should be provided as Simple Personal Advice or Complex Personal Advice.

RECOMMENDATION

The Corporations Act be amended to provide a legal test for General Information, Simple Personal Advice and Complex Personal Advice

1. Has the entity provided a statement or opinion intended to support the consumer in making a decision in relation to a particular financial product or class of financial product which statement or opinion takes into account the consumer's objectives, situation or needs?
 - a. If yes, then Personal Advice
 - b. If no, then General Information
2. Is the personal advice limited only to those areas outlined in a legislative instrument?
 - a. If yes, then simple personal advice
 - b. If no, then complex personal advice

In accordance with the law, RG 175 be rewritten to determine the factors of whether advice is:

- Simple Personal Advice
- Complex Personal Advice
- General Information

And

The Regulatory Guide should also set out the circumstances for when intra-fund advice, strategic advice, and specialised advice are provided under the:

- Simple Personal Advice and
- Complex Personal Advice

Consumers support reform of the financial advice model to make it simpler

With many consumers receiving financial advice not understanding whether that advice is personal advice or general advice, reform of the model is needed. Almost 3 out of 4 Australians feel that simpler definitions of advice are easier to understand and most think a redefined model would be an improvement on the way the industry currently communicates.³⁸

Pollinate’s research demonstrated that consumers regard simpler definitions as a good or excellent idea.³⁹ Nevertheless the consumer testing suggested a strong need to clarify and ‘sell’ the value of simple personal advice.⁴⁰

Who would benefit from the proposals

The FSC seeks a more iterative financial advice process in which consumer needs are better triaged. This would benefit those open to seeking advice but who are unsure about their financial future, who might be about to buy a house, start a new job or take out a personal loan.⁴¹ To recognise the value of financial advice, consumers often benefit from the first-time engagement on simple advice needs not incentivised by the current model of advice. Simplifying the advice model and documentation requirements can reduce the long-term costs of operating an advice business.



38 Pollinate research, 35
39 Pollinate research, 58
40 Pollinate research, 59
41 Pollinate research, 58

Summary of the redesigned model:

General Information
<p><i>Incorporates 'General Advice' that does not take into account personal circumstances as well as Education and Factual Information.</i></p> <p>Provided by:</p> <ul style="list-style-type: none"> ▪ Licensee or adviser <p>Documentation:</p> <ul style="list-style-type: none"> ▪ Financial Services Guide (FSG) and Product Disclosure Statement (PDS) <p>Education:</p> <ul style="list-style-type: none"> ▪ Requirements to be determined by the regulator for professionals routinely providing General Information as financial service providers and non-financial services providers <p>Requirement:</p> <ul style="list-style-type: none"> ▪ Code of Ethics - Education requirements with possible exemptions for non-financial services providers

Personal Advice	
Simple Personal Advice	Complex Personal Advice (CPA)
<p>Definition: <i>Advice that is not General Information that takes into account personal circumstances but only recommends products in set areas.</i></p> <p>Provided by: Licensee or Adviser</p> <p>Documentation:</p> <ul style="list-style-type: none"> ▪ Fact find limited to matters directly relevant to the subject matter of advice sought ▪ 'Letter of Advice' outlining: <ul style="list-style-type: none"> - Advice sought - Relevant circumstances - Recommendation and rationale ▪ FSG and PDS <p>Education:</p> <ul style="list-style-type: none"> ▪ Existing RG146/FASEA requirements ▪ FASEA Bachelor (equivalent or higher) ▪ Professional Year (PY) candidates to start provision of advice here <p>Requirement:</p> <ul style="list-style-type: none"> ▪ Code of Ethics ▪ Best Interests Duty 	<p>Definition: <i>Advice that is not Simple Personal Advice but recommends products and a strategy for implementation.</i></p> <p>Provided by: Licensee or Adviser</p> <p>Documentation:</p> <ul style="list-style-type: none"> ▪ Fact find limited to matters directly relevant to the subject matter of advice sought ▪ 'Letter of Advice' outlining: <ul style="list-style-type: none"> - Advice sought - Relevant circumstances - Recommendation and rationale ▪ FSG and PDS <p>Education:</p> <ul style="list-style-type: none"> ▪ Existing RG146/FASEA requirements ▪ FASEA Bachelor (equivalent or higher) <p>Requirement:</p> <ul style="list-style-type: none"> ▪ Code of Ethics ▪ Best Interests Duty

	<p>CPA - Specialised Advice: <i>This is Complex Personal Advice relating to a specialist field which is outside the skillset of most practitioners and requires specific expertise.⁴² A restricted form of complex advice.</i></p> <p>Provided by: Licensee or Adviser</p> <p>Documentation:</p> <ul style="list-style-type: none"> ▪ Fact find limited to matters directly relevant to the subject matter of advice sought ▪ 'Letter of Advice' outlining: <ul style="list-style-type: none"> - Advice sought - Relevant circumstances - Recommendation and rationale ▪ FSG and PDS <p>Education:</p> <ul style="list-style-type: none"> ▪ Existing RG146/FASEA requirements ▪ FASEA Bachelor (equivalent or higher) <p>Requirement:</p> <ul style="list-style-type: none"> ▪ Code of Ethics ▪ Best Interests Duty
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Strategic Advice and Intra-fund Advice
<p><i>NB: Both strategic and intra-fund advice would be categorised as simple and complex personal advice. This advice would no longer carry the labels 'strategic' or 'intra-fund' and would either simply be permitted as simple or complex personal advice. This has been marked out however to show the reader how the proposals seek to change the model of advice.</i></p> <p>Provided by: Licensee or Adviser</p> <p>Documentation: This would depend whether the advice</p> <p>Education: Depends on whether provided as simple or complex personal advice</p> <p>Requirement:</p> <ul style="list-style-type: none"> ▪ Code of Ethics ▪ Best Interests Duty

42 Page 27, Rice Warner. Future of Advice report (October 2020)

Definitions in law not regulation

Advice should remain a financial service as per Corporations Regulation 7.1.33A. The FSC regards it as a matter for Parliament to make the appropriate determinations on what advice is simple or complex, and should therefore legislate. It would be the role of the Regulator to provide guidance on the new definitions as these are introduced.

The FSC accepts that this is a regime which defines advice, and is not principles-based. Determinations by Parliament will be needed on the precise barriers across each category.

RECOMMENDATION

Revisions to the model of advice should be defined in law to provide certainty for compliance systems across the advice value chain.

Simple or Complex?

The FSC acknowledges the challenge, and subjective nature, of demarcating between simple and complex advice. What is simple for one consumer is complex for another. For example, retirement advice might be relatively simple while for consumers with complex family structures and assets it could be more complex.

What is a simple or complex need might be determined by a range of factors including:

- The circumstances of the consumer;
- Product recommendations; and
- Type of advice.

This issue is a policy-related question to be addressed by parliamentarians through laws and regulation that reflect society's view of the risk associated with different types of advice. All such advice is currently provided under complex labels that confuse consumers and that carry costly documentation and disclosure requirements.

The FSC believes its proposed model is better aligned to consumer expectations and their understanding of advice. Undoubtedly reforms that introduce a ladder of advice with simple personal advice at its centre needs to be clear about what consumers should and should not expect to receive compared with other advice. The risk of simple personal advice that falls short of consumer expectations should be avoided.⁴³

RECOMMENDATION

The FSC is recommending the same documentation and disclosure requirements for both simple and personal complex advice. As such the Government should prioritise simplifying the documentation requirements.

RECOMMENDATION

The definition and demarcation between Simple and Complex Personal advice is a matter for Parliament, to be set out in legislation and clarified and enforced through a Legislative Instrument as well as RG 175.

RECOMMENDATION

In principle, the FSC supports the Advice Matrix as proposed by Rice Warner but with the inclusion of Strategic and Intra-fund advice as Simple and Personal Advice, and Specialised Advice categories included under Complex Personal Advice.

RECOMMENDATION

The FSC recommends that the Advice Matrix be considered by Government and Regulators and be subject to public consultation as to appropriate advice topics and products.

43 Pollinate, Slide 5

It might be that industry and the broader public consider defining simple or complex personal advice as unnecessary given the FSC is advocating the same documentation and other requirements for both types of personal advice. Nevertheless, the FSC is putting this model forward as part of the Green Paper consultation as it seeks a holistic discussion on the regulation of financial advice.

Minimum standards of competency and licence to operate

The FSC seeks to ensure that advice is delivered by an appropriately qualified, professional financial adviser. Authorised Representatives (**ARs**) must be appropriately educated⁴⁴ and ASIC specifies these standards in RG 146. There is a very clear expectation that advice in all forms sits under a robust regime of education and professional standards.

General Information would for example include 'factual information' and the old aspects of 'general advice' that do not take personal circumstances into account. Consultation would be needed to determine

the appropriate extent to which providers remain bound to the licensing regime. For example, a determination would be needed on whether the dissemination of marketing material would be categorised as General Information, often by professionals who are not financial advisers, that while informing and educating consumers, does not necessarily take into account the personal circumstances of the consumer.

RECOMMENDATION

The existing education requirements and professional standards regime for providing financial advice should remain, with a review of the requirements for those providing general information to be set with a requirement for providers of general information in the course of their role as financial service providers to be "properly educated" under the new model. A lighter touch regime of obligations for anyone giving general information should be considered.



44 Corporations Act 2001

Rationale

- **A ladder-styled approach** to the advice process that is more iterative and consumer-driven and seen by consumers as a step in the right direction for financial advice.⁴⁵
- **Simpler regime for the consumer that is easier to understand:** Pollinate’s research indicated consumers feel the new definitions are easier to understand.⁴⁶
- **Streamlined documentation requirements to support the model of advice have been well received by consumers to reduce cost:** Documentation plays a vital role in the consumer journey and experience. Consumer testing shows the proposed reforms make financial advice feel more accessible - financially and psychologically.⁴⁷
- **Improved consumer understanding, awareness and choice:** Consumers should know they are getting personal advice when it is tailored to a consumer’s circumstances and needs and can be relied on. The provision of simple personal advice would enable consumers to access this advice without product recommendations (except on certain topics prescribed by regulation) but which takes into account their personal situations.
- **Proper demarcation between ‘Advice’ versus ‘Information’:** Clear lines between what is information and what is advice can help eliminate complexity, confusion and improve consumer awareness.
- **Strengthened professional role of the post-FASEA financial adviser in triaging consumers into tailored strategies and products suited to their needs.**

For consideration

Updated definitions of advice along these lines should consider and resolve the following risks that FSC welcomes feedback on:

- **Impact of the model on product issuers:** The model could see a relaxing of requirements on one part of the advice value chain and increases in other parts, when the differences between general information and simple personal advice are considered. For example, it is not intended that a product issuer be subject to conducting a Fact Find and a Letter of Advice.
- **Interaction with the Design and Distribution Obligations (DDO):** How would product providers ensure that all distributors make target market determinations where the model of advice has been revised.
- **Holistic regulatory support:** The new definitions would require guidance from ASIC. ASIC could provide explicit examples of what constitutes simple or complex personal advice.

DISCUSSION

- Is the proposed model an improvement on the current regime (e.g. personal versus general advice, comprehensive and scaled or limited advice)?
- Who should decide what is simple or complex advice and how should definitions of advice be defined?
- What services and products would be best suited to the proposed model?
- How could the model be improved to reduce the cost of advice?
 - How could the proposed model be adjusted for implementation of the Design and Distribution Obligations?

45 Pollinate research, 50
46 Pollinate research, 58
47 Pollinate research, 51

5.1 THE SEPARATION OF PRODUCT FROM ADVICE

For advice to be recognised as a profession, the service must be defined around responding to a consumer’s needs, not anchored in product or non-product labels, or on a traditional product basis.

A distinction must be drawn between advice about products, that can also include advice on many other issues beyond financial products, and a set legal definition of “Financial Product advice”. While advice should permit for the recommendation of products, the FSC believes product advice as defined in the Corporations Act should be removed or amended substantially.

Financial product advice under the proposed model in practice would continue to be advice that evaluates, compares, or recommends one or more financial products or services, but should not be component of the model of advice or specified in legislation. Simple personal advice, while retaining product advice for certain areas, would also incorporate strategic advice elements tying more life-centric considerations into the advice model than is enabled currently.

RECOMMENDATION

Advice about products is Simple Personal Advice or Complex Personal Advice with the restrictions on its provision where it occurs under Simple Personal Advice.

RECOMMENDATION

Financial product advice as defined in Section 766B of the Corporations Act be removed.

Rationale

- The Financial Services Royal Commission (FSRC) was silent on the issue of breaking the nexus between product and advice. The FSC believes recent changes to bring about a more regulated and professional industry warrant the separation between product from advice as currently defined.
- Existing law refers to product advice and class of product, this means providing advice about a class of product such as strategies or a basket of options to a consumer is caught by the financial product advice definition. The existing law was drafted in a way to protect consumers from product flogging during an era of conflicted remuneration.

Ultimately, the definition of advice should be linked to consumer goals and objectives and areas of advice. Strategic advice could be simple or complex with a move away from a product-based definition of these terms, and it would not need to be a separate category.

DISCUSSION

- Should product be separate from advice?
- How best would this separation be incorporated into the scaled/limited-comprehensive model of advice currently?

5.2 SIMPLE PERSONAL ADVICE: THE CONSUMER AT THE CENTRE OF THE ADVICE PROCESS

Consumer-driven scoping and experience of financial advice

Simple personal advice should become the pillar of the model of advice, revitalising the role of the professional financial adviser managing the advice process, and putting the consumer at the centre of scoping their advice.

It also introduces a stepping-stone approach into the advice process. Much of what is scaled or limited advice now could be categorised as simple personal advice, which can lead to more complex personal advice over time.

Rice Warner intended simple personal advice as advice dealing with well understood financial needs and Financial Products (such as MySuper) and those that are nominated under DDO as being for average family consumers.⁴⁸ Regardless of wealth level, for a consumer aged 40, about half the value of the advice is derived from simple guidance in respect of savings.⁴⁹

This category of advice, as with others, would be bound by the Code of Ethics and the statutory Best Interests Duty but no longer be bound by the safe harbour steps. It would include simplified documentation requirements, being a requirement of a Fact Find and a simple Letter of Advice outlining the consumer's circumstances, recommendations and rationale for why. These obligations would displace the requirement for an expensive Statement of Advice.

Proposal

RECOMMENDATION

Simple personal advice should be defined as advice not recommending a product or class of products but presenting a range of strategy options to consumers to support or assist decision making and that takes into account a consumer's personal circumstances. It would likely incorporate elements of General Advice and the definition of Education. The Regulator would be empowered to permit product recommendations for simple personal advice for set topic areas.

RECOMMENDATION

A schedule of advice areas permissible for the provision of Simple Personal Advice should be created by Legislative Instrument through Treasury or an appropriate Regulator following changes to the definitions of advice and public consultation.

Simple personal advice would predominantly include intra-fund advice and strategic advice that takes into account a consumer's personal circumstances but only provides product recommendations for select group of areas. It could include digital advice and phone-based advice.

48 Page 27. *Future of Advice* report. Rice Warner

49 Page 15. *Future of Advice* report. Rice Warner

Rationale

- **Introduces a nudge that makes the consumer more aware of advice they are receiving and options with the option of progressing more complex or higher-risk advice:** The consumer would know up front what the advice would cost but end up with more holistic advice allowing the consumer to control the journey with more entry points for disclosure and consent likely reducing its cost. Introducing a nudge into the advice process makes the consumer more aware of their decision.
- **Simple personal advice acknowledges the professionalism of the new advice industry:** Incorporates the professional judgement of a cohort of financial advisers into the advice process more explicitly. The need to incorporate the judgement of the of professional financial adviser into the advice process was a point made by the Association of Financial Advisers (AFA) in reference to limited advice earlier this year.⁵⁰
- **More holistic advice:** Under this model a financial adviser is better enabled to demonstrate options available to consumers in a holistic manner, and to understand the benefits that would be derived from accessing intra-fund, or other forms of advice and recognising the inherent value of advice.
- **A ladder of advice within the advice process that provides a guardrail for consumers accessing advice determined to be lower risk** before proceeding with complex personal advice options. This definition enables the consumer a lighter entry point into advice on basic needs that is less costly to provide and lower risk.
- **Ensures the advice is consistent with the consumer's circumstances, lowering the risk of inappropriate advice through a well-designed triage process.** This is to ensure that consumers with more complex circumstances are redirected to alternative advice pathways.

CASE STUDY A: SIMPLE PERSONAL ADVICE

Consumer circumstances

Sam, aged 25, speaks with a Financial Adviser to get personal advice about how to invest his cash savings and surplus cash flow. He is single with no dependants and currently saves \$250 per fortnight in his bank account for a deposit on his first home. With the cash rate at a record lows and concerns of the inflation risk, Sam would like to get advice on the alternative investment option/s for his cash savings of \$15,000 and surplus cash flow savings of \$6,500 p.a. Sam has \$45,000 within ABC Super and he wants to ensure his super funds are also appropriately invested. The Financial Adviser raised personal insurance as a further advised need with Sam, but he confirms that he only wants to focus on the investment of his super and cash savings as well as the surplus cash flow today.

Personal Advice

The Financial Adviser recommends Sam:

- Invest his cash savings of \$15,000 in a high interest savings account as an emergency fund;
- Use his surplus cash flow to make regular pre-tax contributions of \$250 per fortnight to his super under the First Home Super Saver Scheme (FHSS) and invest conservatively given the short investment timeframes for the FHSS contributions; and
- Invest his remaining super funds in line with his risk profile.

Commentary

The above recommendations are considered Simple Personal Advice. A 'Letter of Advice' instead of a full Statement of Advice is prepared for Sam. The Letter of Advice outlines the advice sought by Sam, his circumstances, recommendations as well as the rationale for those recommendations.

⁵⁰ Page 10. 'AFA Submission - CP 332: Promoting access to affordable advice for consumers'. Association of Financial Advisers (AFA). "We appreciate the point made in paragraph 29 that 'financial advisers can use their judgement to decide on the scope of the advice in a way that is consistent with a consumer's relevant circumstances and the subject matter of the advice the consumer is seeking'. Financial advisers want to be empowered to use their professional judgement, and we believe that they should be. Many of them are highly educated and well qualified. Many have years of experience. It seems to us that for too long they have not been trusted to demonstrate professional judgement. We strongly favour moving in a sensible transition towards increase reliance on professional judgement, as is permitted by other professions. Reliance on professional judgement does require greater certainty and consistency" [AFA-Submission-ASIC-CP-332-18-January-2021-Final.pdf \(kinstacdn.com\)](#)

DISCUSSION

- For simple personal advice to be viable it should be clearly defined so consumers know what they are getting. While simple personal advice would be defined in law, should products and topics that sit under simple personal advice be set by a regulator?
- Are there any specific ways to define simple personal advice to ensure its adequately separate from general information?
- How can simple personal advice be improved to better interact with incoming DDO requirements?
- How could this model be improved to reduce the cost of advice, provide maximum benefit to consumers?

5.3 COMPLEX PERSONAL ADVICE

Complex personal advice would be advice that is not simple personal advice and may also specifically include products and strategic topics that are known to be complex and or risky. As with the definition of simple personal advice, complex personal advice would include intra-fund advice and strategic advice that takes into account a consumer's personal circumstances and makes recommendations beyond the areas permissible under simple personal advice.

Proposal

RECOMMENDATION

Complex personal advice should be advice that is not considered simple personal advice and be defined in law. Complex personal advice would be subject to a revised Letter of Advice, the Code of Ethics and the Best Interests Duty under a model in which the safe harbour steps are removed.



CASE STUDY B: COMPLEX PERSONAL ADVICE

The below scenario sets out how complex personal advice could work for which the FSC would welcome feedback from stakeholders.

Consumer circumstances

Mark (35 years old) and Linda (34 years old), speak with a Financial Adviser to get personal advice about how to invest their surplus cash flow. The couple has two young kids. They were making the minimum repayments towards their home loan when Linda was on maternity leave. Now that Linda has gone back to work, they believe that they will have a surplus of \$800 per fortnight (\$20,800 p.a.). They have heard about using gearing strategy to accelerate the process of wealth creation and are interested in that.

Mark and Linda only hold default personal insurances within their super funds and they would like to have their insurance needs reviewed to ensure they and their family will be protected in the event of death, illness or disability.

Personal advice

The Financial Adviser has the trade-off conversation with the couple and helps them prioritise their conflicting objectives. The couple has agreed that it is most important for them to have adequate level of personal insurances to cover themselves and the family members. Wealth creation is then of a higher priority to them than accelerating debt repayments given the interest rate is currently at the historical low. Both members of the couple are determined to be aggressive investors through the risk profiling assessment.

The Financial Adviser conducts full personal insurance needs analysis and compares the alternative insurance products with their existing covers.

The Financial Adviser recommend Mark and Linda:

- Replace their existing default insurance covers with XYZ insurance covers and take out additional trauma cover;
- Borrow \$200,000 as a lump sum to invest in a managed fund;
- Use their remaining surplus cash flow to pay down their non-deductible loan; and
- Pay interest only repayments on their investment loan.

Commentary

The above recommendations involve comprehensive insurance advice and gearing strategy and are, therefore, considered as Complex Personal Advice. A Letter of Advice would be prepared to provide this advice to the couple.

5.4 STRATEGIC ADVICE UNDER THE NEW MODEL

Rice Warner defined strategic advice as:

*“advice used to **assist** a consumer to control their finances and set a financial plan. Its purpose is to determine the mix of generic Financial Products, and the size and timing of the financial commitment to each, that a consumer would need to meet their identified goals. This advice could influence a consumer to decide to purchase or change a Financial Product or service or indeed their spending behaviour. However, it would not be advice recommending any product.”⁵²*

Proposal

Personal advice is inherently strategic. Rice Warner notes the lack of integration of strategic advice within the current advice model to the benefit of consumers.⁵³ Strategic advice should sit within the definition of simple personal advice and complex personal advice. Strategic-type advice should be anchored in a consumer’s needs and goals than on a traditional product basis.

As financial advice becomes a profession, there should be a strengthened role for the financial adviser in having a more holistic, and strategic role within the advice process. The existing model of advice does not best enable this with many restrictions on the strategic and life-centric advice currently offered. Creating an additional standalone category of ‘strategic advice’ when consumers and industry need simplicity would also be counteractive to this goal. For these reasons the FSC recommends this type of advice be provided as simple or complex personal advice.

RECOMMENDATION

Strategic advice be permitted under Simple Personal Advice and Complex Personal Advice and should not be defined separately.

How it would work

- **Adviser-led, strategic triaging across simple and complex personal advice definitions:** Strategic advice would be defined under the legal definitions of Simple Personal Advice and Complex Personal Advice. Currently, if a consumer already holds a financial product, and does not want advice about alternative products available, it is not clear the advice they receive would be considered strategic advice, as it does not involve a product recommendation. Acknowledging this scenario through the simple personal advice category would better enable simple personal advice needs to be met, and where the risk goes beyond this, provide the strategic advice under the Complex Personal Advice distinction provided to consumers in relation to existing products.
- **Reduced documentation and therefore cost to serve:** This advice, provided as simple personal advice, would in most cases not meet the requirements of General Information and should still be subject to a Fact-Find and Letter of Advice.
- **Restrictions would need to be imposed for certain scenarios:** Consideration would need to be given to situations relating to inappropriate advice for example, advice relating to borrowing arrangements, tax schemes or mortgage funds.

⁵² Page 26, Rice Warner *Future of Advice* Report

⁵³ *In addition, there are areas where consumers receive important strategic advice which falls outside the legal definitions. An example is advice about budgeting and saving. This is an important aspect of any financial plan - if you cannot spend less than you earn, you simply cannot save. Yet advice on this matter is often delivered by Money Coaches or Charities without the need to comply with any formal licensing regime.* Page 4, Rice Warner, *Future of Advice* Report (October 2020) <https://www.ricewarner.com/wp-content/uploads/2020/10/RW-Future-of-Advice-Report.pdf>

Rationale

- **Streamlines the advice model and allows for flexible provision across simple and complex categories.**
- **Strategic advice without product recommendations could still be provided** but under the categorisation of simple personal advice and subject to the same requirements. It is important to note product advice would be removed from the Corporations Act.
- **Alignment with consumer needs:** Enabling strategic-type of advice to be provided under the Simple Personal Advice distinction where it takes into account the circumstances of a consumer but does not make recommendations to the consumer best caters to this need, with the flexibility of it being provided under Complex Personal Advice. Consumers would have the option of progressing to complex personal advice at a later stage of the advice process.

DISCUSSION

- Should Strategic Advice be spread across Simple and Personal Advice categories?
- Are there different ways strategic-type advice be provided under the new model of advice in a manner that best enables the adviser to add value to a consumer's experience?

5.5 INTRA-FUND ADVICE

Intra-fund advice ensures access to advice for a large cohort of consumers

Rice Warner defined intra-fund advice as scaled advice about one or more topics which include personal information about the consumer and their interest in a single superannuation fund in which they are already a member.⁵⁴ Intra-fund advice benefits the advice industry in two ways:

- **First-time engagements with professional advice:** Particularly for consumers approaching retirement who have modest superannuation balances. This often involves simple, tailored advice that overcomes many of the oft-quoted barriers to obtaining advice, for example its cost and accessibility.
- **Demonstrates the value of financial advice:** This increases the likelihood of members to obtain further advice to assist their financial and general wellbeing. Given the significant benefits intra-fund advice can have for members, regulation governing advice should incentivise its uptake while ensuring strict controls on any unscrupulous provision.

The majority of Australian retirees are facing into retirement with a fairly modest retirement income. While public spending on the Age Pension currently continues to rise, research such as Rice Warner's modelling shows a well-advised cohort of consumers could see a reduction in government expenditure on the Age Pension by 13 per cent.⁵⁵

Most consumers seeking intra-fund advice have simple retirement scenarios to plan with advice needs, often relating to:

- Managing or navigating their superannuation;
- Aligning superannuation with their pension needs; and
- Understanding their insurance coverage and its impact on their balance.

⁵⁴ Rice Warner, *Future of Advice* report, page 21
⁵⁵ Rice Warner, *Future of Advice* report

Proposal

RECOMMENDATION

Intra-fund advice should be permitted under Simple Personal Advice and Complex Personal Advice, it should not be defined separately, and be provided mostly as Simple Personal Advice, or where specific product recommendations are made, as complex personal advice.

How it would work

- There would be no changes to its existing requirements on how intra-fund advice would be provided beyond reduced documentation requirements that apply to personal advice.
- In most cases intra-fund advice will meet the requirements of Simple Personal Advice under this proposal, but in some instances it may need to be provided as Complex Personal Advice.
- The law that applies to intra-fund applies to all other advice, except for two differences:
 - it is very narrow and is charged across the whole membership base; and
 - is subsidised across the fund.
- Intra-fund advice provision is currently supported within legislation⁵⁶ by a collective charging model where all members of a MySuper product or fund are charged a fee which enables them to access intra-fund advice at no further additional cost. Intra-fund advice cannot be 'removed' to the extent that intra-fund advice refers not just to the scope of the advice provided, but also to that advice collectively charged across the fund's membership.
- The trustee's ability to spread the cost of intra-fund advice as provided currently across all members would remain. Intra-fund advice is defined by reference to the cost of advice borne by all members of the fund.

RECOMMENDATION

The existing charging model for intra-fund advice used by Registered Superannuation Entities (RSEs) should be retained.

Interaction with the sole purpose test

- Intra-fund advice is subject to s99f of the Superannuation Industry Supervision Act, and comprehensive regulatory guidance is necessary for giving superannuation trustees certainty that advice provided under this regime is compliant both with the law and specifically the sole purpose test. Under the proposed model, APRA and ASIC would need to clarify:
 - What simple personal advice falls within the parameters of the 'sole-purpose test' is essential for enabling super trustees to provide members services with a sufficient level of regulatory certainty.
 - In the absence of regulatory certainty, financial advisers and super trustees are inclined to adopt a cautious compliance advice on simple matters (pushing up cost), or not provide the advice at all.
 - By assisting to achieve clearer regulatory parameters and agitating for reduced compliance frameworks, financial advice could be made to be more cost-efficient and therefore more accessible to consumers.

RECOMMENDATION

Regulators should consult on the parameters of intra-fund advice provision under a Simple and Complex model for Personal Advice.

56 Section 99F of the SIS Act

Rationale

- More Australians seeking advice through their super fund at low cost as Simple or Complex Personal Advice would have the potential benefit of:
 - reducing the number of multiple super accounts
 - addressing under-insurance
 - enabling advice on the most efficient use of retirement incomes for members planning for, or currently in retirement
 - prompt funds to innovate and explore robo-advice or other technology-based models to further reduce costs to members.
- Broadens the scope of personal advice that super funds can provide, incentivising more funds offering financial advice if their offer is scalable and can be delivered at low cost and lower risk, as well as enabling competition.
- A nominal fee for some single-issue advice linked to super and retirement could serve as a useful gateway to introduce the value and associated benefits of advice.

DISCUSSION

- What topics could intra-fund advice cover for either simple personal advice or complex personal advice?
- What controls should exist on the provision of intra-fund advice under this model?



5.6 SPECIALISED ADVICE UNDER THE NEW MODEL

Proposal

Specialised advice should be provided as complex personal advice under the new model. As services become more complex and a professional advice industry develops, financial advisers should be enabled to earn the right to promote themselves as specialists in particular areas. However, this should be determined in accordance with an objective, industry-wide criteria which must be met (and maintained) in order to use the specialist designation.

Authorisation to provide specialised advice should be managed through a national accreditation framework for those advice areas considered to be specialist. Specialised advice could include but not necessarily be limited to:

- Self Managed Super Fund (**SMSF**) advice
- Aged Care
- Certain complex products

RECOMMENDATION

Specialised advice sits within the category of Complex Personal Advice and be subject to the same requirements for its provision and licensing.

RECOMMENDATION

Specialised advice provision should be subject to standards set by Treasury and the Financial Services and Credit Panel.

How it would work

Industry criteria and requirements would be needed for providers of specialised advice to ensure standardisation and scrutiny. This responsibility should be assumed by the incoming disciplinary regime for financial advice. Specialised advice would be a form of Complex Personal Advice.

Rationale

- This model enables the financial planning industry and business models to specialise; and
- Incentivises innovation and excellence by advice professionals.

DISCUSSION

- How could the proposed definition of specialised advice as provided under complex advice be improved to enable tomorrow's financial advisers to specialise?
- What topics should complex (specialised) personal advice cover?

5.7 GENERAL INFORMATION

What *information* and *advice* is, is central to a consumer's autonomy and understanding when seeking professional assistance with their finances. Factual information or information provided that neither accounts for a consumer's personal circumstances or makes specific product recommendations is often considered by a consumer to be 'advice'.

How these concepts are defined is therefore essential to the integrity of the profession and the services it offers.

General Information as a standalone category was recommended by the FSC as part of the Murray Financial Systems Inquiry in 2014. Multiple reports in the past decade have recommended the creation of General Information:

- Joint Parliamentary Committee on Corporations and Financial Services Report into proposals to lift the professional education and ethical standards in the financial advice industry;
- Productivity Commission's Inquiry into Competition in the Australian Financial System

The FSC proposes this category so that consumers can get answers to questions that might not reflect their personal circumstances, and not receive product recommendations.

Proposal

RECOMMENDATION

The term General Information should be legislated consolidating the remaining elements of 'General Advice', and the definitions of 'Education' and 'Factual Information' under the category of General Information.

How it would work

- General Advice as a standalone definition would be abolished and its elements subsumed by general information and simple personal advice.
- General Information would largely be factual information and education such as marketing material. While General Advice would be done away with, consumer needs would be met primarily by simple personal advice and general information.
- General Information would not account for the personal circumstances of a consumer and would be purely factual, otherwise it would be Simple Personal Advice.
- General Information might be provided by an adviser in the course of their duties but in most cases would trigger simple or complex personal advice requirements.
- Its provision would be subject to controls such as the FASEA Code of Ethics or a modified version.

Financial counselling and other providers of General Information

- Financial counsellors providing General Information should be exempted from the regime in recognition of the support they provide low income or vulnerable consumers who cannot afford professional advice. Financial counsellors should not be subject to more obligations than they are currently.
- There is a broader question about whether, when an individual gives general information, they are obliged to a certain set of obligations. This will usually depend on the circumstances where General Information is given (eg professionally or non-professionally). Money Coaches, for example, sit outside the regulatory regime governing advice currently.
- General Information would need to be provided by professionals that are properly educated, but not to the standard of the professional requirements of the FASEA regime. The Government should define this requirement.

- **Not advice but subject to licensing:** Providing General Information would not necessarily require signing onto an AFSL unless provided in the course of the advice process. General information could be provided by any individual but it would potentially bind that provider by the Code of Ethics enforced by ASIC. It would maintain the existing qualifications framework with sufficient flexibility.
- **Informing consumers versus making recommendations:** General Information that links to product applications, where there is an implied recommendation, would be regulated. This activity should not necessarily be prohibited outright, for there may be value in directing consumers to areas where they can access further information about products. Alternative requirements should be developed to ensure consumers are aware of the details of the provider of General Information, and to require details of any conflicts that may support the General Information being provided, and costs involved. Providing purely product information or access to portals availing it to consumers would be permissible however. Guidance would be needed on what behaviour constitutes simple personal advice.
- **Targeted marketing should be permissible:** Targeting a demographic for marketing purposes is different from including a person's personal circumstances and persuading a consumer to take a direction on a particular product. Marketing a financial product requires an individual to be licensed under the ASIC Act. A distinction would be needed in implementing the category of General Information.

Rationale

- **Clear separation between advice and information for consumers and advice providers:** A new regulatory regime should ensure publicly available information is no longer framed as 'advice' under a sustainable regulatory model even if advisers still provide it in addition to providing Simple or Complex Personal advice.
- **Potential for consistent standards of advice provision beyond the advice industry:** Advice should be the domain of its profession and require a qualified person to provide it. General Information would still be used by advisers to explain the benefits and features of strategies and products.

DISCUSSION

- What is the most practical way to ensure a fair and equitable regime for the provision of General Information by financial advisers, financial counsellors and other actors?
- Could existing obligations on financial counsellors be incorporated into the Code of Ethics regime that does not exacerbate pressure on the sector?
- What are the best safeguards to ensure General Information achieves its intended aim?

6. ADVICE PROCESS: DOCUMENTATION & CONSUMER-DRIVEN ADVICE

Disclosure and documentation are a primary output of the financial advice process today. However outdated documentation and record keeping requirements have arisen as a result of overregulation and regulatory duplication.

Advice should be clear, concise and effective. Disclosure involves elaborate fact-find and risk profiling exercises that are not always necessary to meet the needs of consumers seeking advice. Consumers engaging an adviser can expect to be provided with:

- Financial Services Guide;
- Product Disclosure Statements; and
- Statement of Advice.

The FSC supports substantially simplifying the documentation and disclosure requirements for all forms of financial advice. Feedback from industry is that reduced documentation requirements would have the single largest impact on lowering the cost of financial advice. This is distinct, however, from reducing the evidence base advisers are required to hold on file to demonstrate why they made their recommendations.

Consumer testing commissioned by the FSC shows most of those consumers considering seeking financial advice agree reduced documentation is a good idea to reduce cost,⁵⁷ and lowering cost is the top reason why consumers think reform is a good or excellent idea.⁵⁸

The experience of many licensees is that consumers struggle to navigate the templated, long-form documentation in the advice process. While existing obligations are considered scalable, the industry has struggled to scale back those obligations confidently in relation to simple consumer circumstances and goals underlying the need for a change of those requirements.

The Statement of Advice and other documentation are out of date

The current documentation and disclosure regime protects consumers but does not anticipate the consumer experience. Disclosure requirements are also reflective of an advice process that existed decades ago.

A modern disclosure regime should reflect the professionalisation of advice and the emergence of regulatory technology and technology-based compliance solutions. The level of documentation required does not align to other professions such as law, accountancy or medicine.

A typical SOA has been estimated to cost between \$2,400 and \$3,000 and could in some instances be 80 pages long. Long-term a focus will be needed as to what aspects of the SOA, and the advice process, could be centrally provided or clarified for consumers at a reduced cost. Regulatory guidance in future should contribute to a more industry-standard document that is simpler to prepare.

⁵⁷ Pollinate research, 40

⁵⁸ Pollinate research, 41

Consumer testing for the FSC revealed:

- 7 in 10 Australians who have sought financial advice read all the documentation provided by their advisor⁵⁹ and 4 in 5 understood most if not all of the documentation.⁶⁰
- Those who have sought financial advice feel the documentation is useful - many consumers tested rated it as improving understanding, and making them feel like they were in control.⁶¹

Consumer testing indicates while there is little negativity around the reduction of documentation for simple advice, consumers want reassurance that the quality of advice is not compromised by “deregulation” of the industry - and the FSC shares this view.⁶²

Proposal

RECOMMENDATION

The FSC proposes that the following simplified documentation requirements for each of the new advice categories should apply:

- Complex Personal Advice - Fact Find and a Letter of Advice
- Simple Personal Advice - Fact Find and a Letter of Advice
- General Information - this should carry with it obligations to provide Financial Services Guides and Product Disclosure Statements in certain instances with exemptions to this requirement set by the Regulator.

RECOMMENDATION

The Statement of Advice should be abolished and in its place a Letter of Advice, requiring a substantially shortened and relevant presentation of strategies and advice to consumers. This should apply to all forms of personal financial advice.

The Letter of Advice (LOA)

A Letter of Advice (**LOA**) would be permitted for the provision of all personal advice and it is intended to be a scaleable document focused on the information that a consumer needs to understand what recommendations are being made and how they are appropriate for a consumer’s personal circumstances.

Guidance would be needed from Regulators in terms of the data required of advice providers to collect for specific subject matters and the level of detail that needs to be in an advice document.

This letter should be permitted to be provided digitally or hard copy. The introduction of the Letter of Advice should not suggest a ‘dumbing down’ of the advice process but be approached from better assisting consumers to understand the advice they are receiving. Records of Advice would remain where a Letter of Advice is issued or reviewed.

The objective is to streamline record-keeping requirements and reduce overall length and complexity of the advice document. The information that an adviser must keep on file would be based on what is required to justify the advice given in the event of an audit or claim.

RECOMMENDATION

The Letter of Advice (LOA) should at a minimum outline:

1. Advice sought
2. Relevant circumstances
3. Recommendation and rationale

Requirements of the LOA should be driven by the need for consumer to understand and make informed consent when receiving advice that is higher risk. The content of that advice should be whatever the consumer needs in order to make an informed decision about whether or not to follow the advice. Unnecessary disclosure that does not add value for a consumer should be removed.

59 Pollinate research, 66

60 Pollinate research, 67

61 Pollinate research, 67

62 Pollinate research, 4

The Letter of Advice should take a similar format to the Working Papers used by accounting bodies. Working papers to deliver advice under the existing model, or a reformed model, allow the volume of documentation to be scaled and less cumbersome.

Below sets out how a consumer-driven advice process could look with a new Letter of Advice:

CASE STUDY C: LETTER OF ADVICE WITHIN THE ADVICE PROCESS

Step 1: engagement letter/phone call/email:

- Scope - determination of what's in and out, risks. Consider generic risks 'fact sheets' for out of scope advice.
- Cost of advice
- Restrictions (on what adviser can do, if any) / conflicts

Step 2: Letter of Advice

- Goals
- Recommendations, including rationale and risks/trade offs
- Product comparison (simplified), where relevant
- Product costs (where relevant)

Step 3: Consumer file

- Consumer circs
- Relevant research/modelling, where required

CASE STUDY D: LETTER OF ADVICE

Scenario 1

- Married couple, Marie aged 64 and Ronald aged 65
- Own their own home, no mortgage
- Superannuation funds, combined total of \$500,000
- No other significant investments

Goal

- Retire with an income of \$35,000 per year
- \$5,000 per year for annual holidays

Fact finding

- Confirm health
- Confirm assets
- Confirm liabilities
- Confirm super balances
- Confirm estate planning arrangements - including dependants and beneficiaries (2 - 3 pages in total)

Advice

- Commence account-based pension
- Establish aged pension - maximise income entitlements
- Referral for estate planning needs (wills, powers of attorney)

Advice documentation

- Letter of advice confirming
 - Pension drawdown
 - Aged pension entitlements
 - Graph to show rundown of pension assets based on drawdown and investment returns (to life expectancy)
- Explanation of why the advice is appropriate
- Details of legal representative to seek advice on estate planning needs

This is a vastly simpler and more bespoke documentation to support the consumer's understanding of the advice they receive.

CASE STUDY E: LETTER OF ADVICE

- Married couple, Bob aged 64 and Ryan aged 65
- Own their own home, no mortgage
- Investment property - value \$650,000/ investment loan \$220,000
- Self-managed superannuation fund, combined total of \$2,950,000
- Direct shares in Bob's name - current value \$135k
- Bob has two daughters, aged 40 and 42 - non-dependant
- Ryan has two sons, from two separate marriages
- One of Ryan's sons is divorced. The other is happily married.

Goal

- Retire with an income of \$120,000 per year
- \$25,000 per year for annual holidays
- Ensure safe transfer of wealth to children
- Sell down investment property and re-invest to maximise returns
- Receive ongoing advice to manage non-super investments

Fact finding

- Confirm health
- Confirm assets
- Confirm liabilities
- Confirm super balances
- Confirm investment balances
- Confirm estate planning arrangements - including dependants and beneficiaries (~12 pages in total)

Advice

- Commence account-based pension managing transfer balance caps and total super balance
- Diversify share portfolio
- Establish non-super investment structure on sale of investment property
- Referral to accountant to consider benefits of a family trust

Referral for estate planning needs (wills, powers of attorney)

Advice documentation

Letter of advice confirming

- Pension drawdown
- Investment income
- Recommendations to diversify share portfolio
- Graph to show rundown of pension assets based on drawdown and investment returns (to life expectancy)

Explanation of why the advice is appropriate considering alternatives

Details of legal representative to seek advice on estate planning needs

Details of referral to accountant

Agreement on ongoing engagement

Rationale

- Clear and concise documentation better aligned with the risk of the advice provided will build consumer confidence and improve trust in advice.
- Streamlined documentation requirements for all advice whether the definitions and classifications of advice are reformed or remain the same.
- Improved consumer journey with lighter documentation that is more easily understood.
- Consumers support reducing the level of documentation to provide cheaper advice:⁶³
 - 62 per cent agree or strongly agree it will encourage everyday Australians to seek financial advice;
 - 60 per cent agree or strongly agree it will positively impact consumers; and
 - 51 per cent either agree or strongly agree it will improve how the advice industry works.

63 Pollinate research, 47

DDO and the Advice process

The Design and Distribution Obligations start in October 2021 and will make substantial changes to the advice process and information available to financial advisers. Product issuers will be required to make Target Market Determinations (**TMDs**) that indicate whether particular products are suitable for classes of consumers.

TMDs will be available for advisers and advice licensees and will enable products to be filtered out of the research or product comparison process. This will in theory reduce the cost to compare products in making recommendations as formulated by the Best Interests Duty. For example, a financial adviser with 300 products on their database might only need to consider 20 for a particular consumer.

Consideration of a TMD should be viewed as a form of compliance with the Best Interests Duty by ASIC, further underlining the rationale for removal of the safe harbour steps as the mechanism by which the Best Interests Duty is met.

Further improvements and efficiencies

CURRENT DISCLOSURE OBLIGATIONS FOR PERSONAL ADVICE

1. Best Interests Duty
2. Provide a Financial Services Guide
3. Provide consumer appropriate financial advice
4. Statement of Advice
5. Warn consumer of advice based on incomplete or inaccurate information
6. Prioritise interests of consumers even if there is a conflict
7. Provide a PDS before the consumer commits to a strategy

A more efficient and consumer-centric advice process could be aided by a central portal for common documents. Industry and government should work on a model for how this would be delivered in a compliant and complete manner to reduce costs, and increase the information available to consumers. Research shows a considerable portion of consumers refer to government websites and expert influencers when choosing an adviser, demonstrating the importance of ensuring consumers access the right information.⁶⁴

Technological improvements and simplification could also be made to the Financial Services Guide and Product Disclosure Statement and other documentation requirements in several ways:

- **Financial Services Guide (FSG) and Product Disclosure Statement (PDS) information issued centrally:** Government should consider whether FSGs should be retained or required in their current form, or whether the Financial Adviser Register (FAR) could be leveraged to make available essential information.
- **Harmonising forms of consent:** FSC members are already leading work to harmonise advice fee consent and independence disclosure, an incoming requirement resulting from the Financial Services Royal Commission. This could be an area in which greater collaboration between industry and regulators could be progressed.
- **Revamping the Financial Advisers Register:** The FAR should be able to provide information about an adviser's qualifications and areas of expertise and other essential information.
- **Greater development of online tools to empower consumers:** MoneySmart and the ATO's comparator tool should be expanded and given greater emphasis as a means of encouraging consumers to engage critically with their finances.

64 Pollinate research, 28

Record keeping

Advisers need to retain sufficient records to support and justify their advice. Whether that information is captured in a fact find, file notes, or reformed SOA or LOA is a matter for the adviser or licensee. The consumer should be given enough information to be able to make an informed decision as to whether or not they want to follow the advice.

The Best Interests Duty applies regardless of the consumer's circumstances and should not change based on a change in a consumer's circumstances. However, it is true the evidence required to be retained on file to demonstrate compliance with BID may not all need updating each time financial advice is provided if existing material remains current and accurate.

Significant simplification of record keeping requirements and cost reductions could be achieved by data standardisation. Currently, each licensee and product provider runs and maintains their own point-to-point systems and their own adviser codes. It would reduce cost, improve fee transparency and data quality if such a clearinghouse linked to a standard identifier (eg FAR number) were implemented.

DISCUSSION

- How should legislative requirements regarding the Statement of Advice be reformed to best support the delivery of a leaner, more relevant and more easily digested Letter of Advice?
- What documents could be stored digitally and centrally?
- How could day-to-day costs of advice businesses be reduced through digital documentation?
- How should documentation requirements and technological solutions integrate with DDO?
- What improvements to the documentation requirements for General Information could be made with regard to Financial Services Guides and Product Disclosure Statements?



7. BEST INTERESTS DUTY AND SAFE HARBOUR STEPS

The Best Interests Duty is the foundation of the consumer protection framework governing financial advice. It prevents wrongdoing and misconduct from taking place across the advice industry. It puts personal financial advice on a footing of thorough investigation and delivery that is in the maximum interest of consumers.

The core legal steps by which advisers and providers have to ensure compliance with this obligation were codified the 'Safe Harbour steps'⁶⁵ - a seven step legal process for meeting the Best Interests Duty. However, a catch-all provision - Step 7 of the Safe Harbour requires the adviser to⁶⁶:

Take any other step that would reasonably be regarded as being in the best interests of the consumer.

Step 7 appears to apportion near complete liability to advisers and licensees preventing financial advice being given. This might be considered necessary when providing comprehensive advice, however it has undermined the provision of scaled, simple issue and low risk financial advice. The Safe Harbour steps were intended as one way of meeting obligations under the Corporations Act and not necessarily the only way.

An entrenched and rigid process has developed by which industry, acting in accordance with these steps, has led to advice being driven by record-

keeping, processes and checklists. This in turn confuses consumers and undermines the overall trust they have in the advice process, despite the intention of the consumer protection framework to enhance it. Ultimately, it has also prevented the provision of scaled advice because providers struggle to guarantee its compliance with the law.

The test for meeting these obligations in effect is to meet documentation requirements before meeting the overarching duty to provide advice in a consumer's best interests, and validating this. Despite not being unlawful, the introduction of the FASEA Code of Ethics and its inconsistency between Standard 6 of the Code, with Step 7 of the Safe Harbour, creates uncertainty that the advice they are providing consumers is compliant.

ASIC regulates in a manner where the evidence that each safe harbour step has been met, is not retained on a consumer's file, then the advice is considered not to be in the best interests of the consumer. ASIC Report 515 showed that in the majority of cases, when these instances are investigated, it is determined that the consumer was placed in a better position and did not necessarily suffer detriment from the advice.⁶⁷ Since ASIC Report 515, the overheads in relation to compliance with the Best Interests Duty and other compliance have increased.

65 S961b(2) Corporations Act 2001, RG 175: Licensing: Financial product advisers—Conduct and Disclosure (November 2017) [Regulatory Guide RG 175 Licensing: Financial product advisers—Conduct and disclosure \(asic.gov.au\)](#)

66 RG 175.268 (g) [Regulatory Guide RG 175 Licensing: Financial product advisers—Conduct and disclosure \(asic.gov.au\)](#)

67 ASIC. Report 515: Financial advice. Review of how large institutions oversee their advisers. (Source: <https://www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-515-financial-advice-review-of-how-large-institutions-oversee-their-advisers/>) March 2017

Achieving a genuine safe harbour

The Best Interests Duty⁶⁸ was introduced in 2013 in an era of conflicted remuneration and ‘product flogging’. Since that time, a more rigorous conduct regime has been introduced and advice is becoming a more professional industry. To be sustainable long-term there is a question about how the Best Interests Duty should evolve. The Government should consider abolishing the safe harbour.

The Financial Services Royal Commission recommended the safe harbour steps by which the Best Interests Duty is met should be reviewed as part of a review of the quality of advice. The Royal Commission noted a ‘tick a box’ approach to compliance had resulted.⁶⁹ In his Final Report Commissioner Kenneth Hayne AC QC suggested the safe harbour steps be abolished:⁷⁰

“Another option would be to remove the safe harbour provision entirely. In my view, such a change would not be without merit. As I have said, the safe harbour provision currently has the effect that, in practice, an adviser is required to make little or no independent inquiry into, or assessment of, products. 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 consumers.”

The reality of the economic impact of COVID-19 spurring the need for accessing advice and reducing its cost makes removing the safe harbour steps a logical step.

The Code of Ethics

The introduction of the Code of Ethics in 2017 raises further questions about whether Best Interests Duty obligations should be retained in their current form. Financial advisers are required to meet the standards set out in the FASEA Code of Ethics, while the Best Interests Duty is essentially a requirement to retain a body of evidence to demonstrate how the adviser has acted in the consumer’s best interest.

The Code of Ethics’ primarily would be strengthened by removing the safe harbour steps as the financial adviser would be obliged to meet the Best Interests Duty based on their own ethical approach, rather than an administrative process.

68 Section 961B(1) Corporations Act 2001

69 *“Another option would be to remove the safe harbour provision entirely. In my view, such a change would not be without merit. As I have said, the safe harbour provision currently has the effect that, in practice, an adviser is required to make little or no independent inquiry into, or assessment of, products. 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 consumers.”* Page 177, Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Source: <https://financialservices.royalcommission.gov.au/Pages/default.html>

70 Page 177, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report (Vol 1). Source: <https://financialservices.royalcommission.gov.au/Pages/default.html>

Proposal

RECOMMENDATION

The Best Interests Duty should be retained and the Safe Harbour steps abolished. The Code of Ethics should be the primary instrument and single source of truth for determining compliance with the Best Interests Duty. This should apply to all forms of advice.

Amended legislation should create a fiduciary duty to ensure advice is in the best interests of the consumer as opposed to complying with an administrative process led by the safe harbour steps.

The accompanying Letter of Advice requirements would be undertaken to ensure that disclosure does not impede the ability for a consumer to be provided with clear, concise and effective information to help them make a decision about whether to proceed with the advice.

Guidance for advisers to assist them only collect and research information relevant to the subject matter of advice being sought would help ensure the consumer is clear on the advice that is being provided.

Strengthening the role of the Code of Ethics

Whereas the Code of Ethics has until now been a source of tension and confusion, the current environment presents an opportunity to make it the foundational reference point for delivering quality and compliant financial advice by a profession that has matured.

It makes sense for there to be a singular code that governs the quality, delivery and professionalism of advice. As such the Code of Ethics should replace the Safe Harbour steps relating to the provision of all advice. The Code of Ethics would need to be amended to ensure that it is fit for purpose.

FASEA Guidance does not give a safe harbour defence and as such there is a question justifying its retention with so many other and more detailed levers of consumer protection in place.

These changes will support compliant advice provision with confidence, while ensuring access to advice that is more responsive to a wider set of needs at a time of economic recovery.

The requirement to take into account circumstances immaterial to responding effectively to simple advice should be amended to encourage the provision of scaled or limited advice.

DISCUSSION

- Are the safe harbour steps the most effective way to balance consumer protection with meeting the needs of consumers, or is the FSC's proposal to abolish them appropriate?
- Are there alternate frameworks for meeting the Best Interests Duty beyond the FSC's proposals?
- Should the manner in which compliance with the Best Interests Duty be subjective or objective? Should such obligations be prescribed by regulation or in statute?
- Should a further Modified Best Interests Duty apply to some or all advice? Or should the existing Best Interests Duty be retained?

8. RENEWING THE LICENSING AND REGISTRATION OF PROFESSIONAL FINANCIAL ADVICE

The Federal Government will this year introduce legislation cementing the Financial Services and Credit Panel (**FSCP**) within ASIC as the disciplinary body for financial advisers. Treasury will assume the role of standard-setter for the industry and be empowered to create legislative instruments (**LIs**).

As the advice industry transitions to a profession, undergoing some of the biggest changes since the Financial Services Reform Act 2002, the FSC proposes an update to the registration and licensing of financial advice.

See Appendix - *Proposed licensing and registration framework for financial advice*.

A changing advice value chain

Coupled with rising costs caused by regulation and duplication, and as advice transitions to a registered profession, the licensing and registration regulatory regime should be reformed.

The Safe Harbour steps by which the Best Interests Duty obligations have resulted in liability flowing to licensees and advisers disproportionately. How the licensing regime is determined as advice becomes a profession will impact the spread of responsibilities and functions of the licensee and adviser.

Retaining the benefits of the Australian Financial Services License (AFSLs)

AFSL holders are required to have adequate resources to hold their license, meaning they are more likely to have adequate resources to remediate consumers, as well as viable models for supervising, monitoring and equipping advice professionals. The benefits of this should not be lost as advice transitions towards a profession.

While financial advisers can self-license under the current system, Group AFSLs play an important role in the supervision and monitoring of individual advisers within their business. Irrespective of size, licensees require professional indemnity insurance (**PI**) that carry minimum capital requirements to finance excesses on claims.

The current legislative and policy direction of advice affirms a role for licensees within the advice industry as well as providing a mechanism by which to promote consistency. The introduction of new reference checking, information sharing requirements and breach reporting requirements for licensees reflects the importance of their ongoing role.

It is unreasonable for ASIC, or the incoming single disciplinary body, to supervise and monitor individual advisers consistently and sufficiently to the extent AFSL-holders currently do. Removing this role would make it near impossible to monitor and provide independent audits of an adviser to the single disciplinary body.

Stabilisation of the industry as advice transitions toward a profession

Premature proliferation of a sector of solely self-licensed financial advisers, without the option to sign onto a Group AFSL while being individually registered, could create a moral risk for consumers. This could occur if individual advisers exit the industry leaving consumers orphaned and unremediated for misconduct. This consideration should influence future changes to the licensing of financial advice.

The FSC seeks a sustainable industry that is more responsible for the advice they provide and supports changes in this direction. The Best Interests Duty, and associated duties apply to the individual advice provider, as does the Code of Ethics.

Consistent with transitioning advice to a profession and the need to retain the obvious benefits and adequate protection for consumers, the proposed revisions to the licensing framework in this document seek to address this.

The FSC seeks to ensure all consumers have the benefit of ASIC's regulatory oversight (a level playing field for ASIC's monitoring) where financial advisers to have adequate PI insurance in the event of a claim and adequate capital arrangements.

Background

In handing down the Final Report of the Financial Services Royal Commission, Commissioner Hayne wrote⁷¹:

Under a system of individual registration, [Australian Financial Services License] AFSL holders would maintain all of their existing obligations in relation to financial advisers. The new system would not detract in any way from the existing obligations of AFSL holders who employ financial advisers or appoint authorised representatives. Rather, it

would ensure that financial advisers who fail to adhere to the standards expected of them would face consequences that extend beyond their employment with or appointment by a particular licensee and affect their capacity to provide financial advice more generally.

Commissioner Hayne also noted said:

AFSL holders should continue to have primary responsibility for monitoring and disciplining advisers.⁷²

Objective of a revised licensing regime

The objective of this revised regime proposed by the FSC is to ensure that advisers derive their authority from AFSL holders, but to practice must also be registered with the FSCP.

The FSCP would be responsible for the Financial Advisers Register (**FAR**). It would be the primary oversight body with responsibility for financial advisers, and its core function would be issuing a 'practicing certificate' to advisers admitting them to the profession as either self-licensed practitioners or as part of a group AFSL. Advisers would derive authority from AFSL holders to deliver advice as their Representatives. This change would see a shift in some responsibilities from licensees to advisers, while AFSLs would continue to be licensed through ASIC.

A practicing certificate, reference check and relevant audits would not preclude an adviser from moving around the industry. Where an adviser elects to be self-licensed it would need to be a condition of registration with the FSCP that services have been externally provided.

71 Page 214, Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
72 Page 217, Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Proposal

RECOMMENDATION

The monitoring and supervision framework provided by AFSLs remains relevant and necessary. The FSC does not support the removal of financial advice from the AFSL regime.

RECOMMENDATION

The FSC's proposed licensing model for financial advice should be adopted consistent with the introduction of the disciplinary body and the extension of requirements on financial advisers set down for 2024 and 2026.

Under this model the Licensee would retain a number of responsibilities but others would need to shift to the Adviser. Licensee reporting pertaining to advisers would flow only to the FSCP. Advisers would be responsible for their conduct and the advice they give per the obligations imposed on them by their AFSL. The adviser would be accountable for meeting their obligations to provide advice consistent with the law and the Licensee would be accountable for ensuring that the adviser is appropriately supervised and insured.

Implementation and timing

ASIC, through the FSCP, will become the disciplinary body, and the registration body for advisers (ASIC has oversight of the Financial Advisers Register). The role of the standard-setter, a role now held by FASEA, will shift to Treasury in 2021. ASIC will continue to provide regulatory guidance and oversee the Financial Services and Credit Panel.

Introduction of the FSC's proposed changes should coincide with the transfer of responsibilities from FASEA to Treasury and ASIC and the introduction of Compensation Scheme of Last Resort, but not before the expiration of the transitional FASEA exam and education requirements. Introduction of any changes should be phased given the current economic environment and the need for a holistic approach.

Legislative and regulatory change will depend on the responsibilities and functions that define the dual licensing system (eg Corporations Act, AFSL regime). This requires consideration and engagement between AFS licensees, financial advisers, and other industry and government stakeholders to achieve reduced regulatory duplication and cost.

Rationale

Rationalising the responsibilities between licensees and advisers is an opportunity to achieve:

- **A regime where advisers are more directly accountable for the advice they provide.**
- **Retention of the benefits of the existing AFSL regime:**
 - Enhances consumer protections in a complex policy space (governance, operating standards, supervision and Professional Indemnity insurance);
 - Financial capacity requirements;
 - An important monitoring and supervision layer;
 - Carries obligations to report poor conduct to regulators;
 - Capacity to invest in technology, training and guidance for advisers;
- **Reduced duplication, in particular between the Tax Practitioners Board (TPB), ASIC and FASEA**
- **Governance of financial advice analogous to other professions:**
 - For example, law, accountancy and medicine by way of setting industry standards, determining a fit and proper person, regular registration and individual accountability.

- **Improved consumer protection and professionalism** by having a practicing certificate, advisers will be accountable for maintaining and/or renewing their practising certificate to ensure they are able to continue to provide financial advice.
- **Transparency:**
 - The proposed model would increase transparency at an adviser level for regulators, AFS licensees, and consumers of financial advice relating to conduct, compliance with professional standards and any disciplinary infringements.
 - This will lead to efficiencies within the industry (e.g. a firm looking to employ an adviser will be able to quickly identify previous conduct history of an individual adviser). Independently registering advisers will also assist with mobility between licensees.
 - AFSL holders will be able to rely on a practicing certificate as evidence that the adviser has been subject to appropriate monitoring by an AFSL holder or external file reviewer and that propriety checks have been undertaken on an ongoing basis by the FSCP.
- **Reduced conflicts of interest** as the FSCP could be an avenue for advisers and AFS licensees to obtain guidance (e.g. to seek guidance confidentially on a potential conflict of interest situation). Providing an avenue for complaints to be raised, heard and determined by a regulator body.
- The disciplinary regime would be responsible for the FAR in conjunction with individual advisers, with advisers having access to update details, such as uploading completed CPD training, apply or maintain practising certificate and update individual adviser personal details.

Licensee oversight

A single regulator replacing the supervision of 21,000 advisers would be logistically difficult with significant implications for taxpayers and consumers of financial advice. For these reasons, the proposed framework would see an adviser still operate as member of a licensee (akin to a lawyer holding a practising certificate, but working for a legal practice).

The difference would be that the licensee, while not being responsible for the advice provided, would still be obligated to supervise the adviser and take action by reporting misconduct to the FSCP. The FSCP, would also be responsible for registration and investigate, discipline and sanction. The FSCP would investigate escalated issues pertaining to advisers. Licensees would provide training or take action if audits found issues or produced other investigations. Authorised Representatives (**ARs**) represent licensees, but to practice would also need a practicing certificate and be individually responsible and accountable for meeting obligations.

In the longer term, if advisers were required to apply for an AFSL, this would be an onerous obligation. There are significant requirements to have sufficient financial resources to carry on the proposed financial services business and develop compliance plans, which is challenging for individual advisers.

Flexible licensing arrangements can ensure a secure a stable and professional industry

Placing compliance responsibilities totally on the individual, in other words (“**Self Licensing**”) could have the unintended consequence that financial advisers are required to source their own professional indemnity insurance to cover individual risk.

The requirement to have and maintain an AFSL at an individual level lacks economies of scale and has high monetary and time costs. This could otherwise be used on servicing consumers and building consumer relationships. The higher costs for the adviser are passed onto the consumer, making financial advice less accessible and limited to attracting generally high and ultra-high net worth consumers only. The increased costs and requirements may further reduce the number of financial advisers in the industry, leaving more consumers ‘orphaned’ without guidance. Nevertheless, reducing barriers for individual licensees overtime may encourage more entrants to the industry, or slow the attrition, thus improving consumer outcomes.

DISCUSSION

- Are there alternatives to the AFSL model that would still ensure stability of the industry as advice transitions toward a profession?
- If advisers were self-licensed only, could the stability of industry be guaranteed?



9. EDUCATION STANDARDS AND PROFESSIONALISM

Higher education requirements and professional standards ensure trust in financial advice. For nearly four years, advice has been undergoing a far-reaching transition from selling products to providing professional financial advice.

While many advisers have left the industry many are retraining and the majority are passing the FASEA exam⁷³. All advisers in just a few years will all be degree qualified, ethics tested and subject to a professional regime that exceeds that of other professions. Financial advisers currently practicing will have to have passed the FASEA exam by 2022 and completed all other education requirements by 2026.⁷⁴

There are several challenges for professionalism to be considered in changing the model and licensing requirements of financial advice:

- There is a need to ensure that changes to the model, licensing and disclosure regime maintain the existing education standards and professional requirements;
- The rise of unlicensed financial advice; and
- The need for quality, affordable and accessible financial advice as the number of financial advisers decreases, at least in the short-term.

The current period of disruption will in time generate a profession that looks different in the years ahead.

Developing a professional, qualified and specialised financial planning profession is key to overcoming some of the key barriers cited by consumers when accessing advice. While trust features as a driver in consumer testing, knowing whether an adviser is qualified or suitable is also a trigger for both those who are considering purchasing financial advice, and those who reject it.⁷⁵

Proposal

As financial advice transitions toward a profession and advice becomes qualifications-based, the FSC is of the view that further changes to the qualifications framework should not be made at this time. Consumers need reassurance that the advice they are getting is appropriate, and that the adviser is trained and qualified. This view is reinforced by Pollinate's consumer testing.

Future changes to this framework should accompany changes in the definitions and classifications of advice. The provision of financial advice under the proposed model should only be provided by trained professionals. Strict requirements should apply for the provision of General Information that while being separate from advice should be subject to the Code of Ethics or a consented requirement that does not dilute requirements on individuals providing information to consumers.

73 "Australian financial advisers continue to demonstrate how adept they are at taking rapid evolution in their stride. The majority have already taken the FASEA exam, achieving a self-reported pass rate of more than 80 per cent. Adding to this, most advisers already hold, or expect to hold, an approved bachelor's degree or equivalent before the January 2026 deadline." Page 3. *Post Pandemic Australian Advice Landscape*. Source: <https://www.coredata.com.au/pdf/Post-Pandemic-Australian-Advice-Landscape.pdf>

74 'FASEA welcomes certainty around Exam and Education Extension' (June 2020) Source: [FASEA welcomes certainty around Exam and Education extension | Financial Adviser Standards and Ethics Authority Ltd](#)

75 Pollinate Research, Slide 26

RECOMMENDATION

All financial advice under the existing model, or as Simple and Complex Personal Advice, should be delivered by trained and qualified financial advisers, subject to the Code of Ethics and RG146.

RECOMMENDATION

General Information should be subject to the Code of Ethics and specified training, education and professional requirements where it is provided as part of employment and or in conjunction with advice services. Where it does not it should be subject to the Code of Ethics for actors providing information but not routinely providing financial services. Actors such as Money Coaches should be subject to the licensing regime.

All advice professionals and providers would need practical training on what is *advice* versus *information* under the proposed model is. A level of strategic and product knowledge is required to know when triage points become appropriate. With tertiary education to be the minimum requirement for personal advice going forwards, there may be a need for further delineation between simple and complex personal advice as well as general information.

Training and support from ASIC to upskill advice professionals on what constitutes compliant advice should also be considered whether the model of advice changes or is retained. Industry standard educational material, such as fact sheets and regular interactions between ASIC and advisers, videos of Q+A sessions of ASIC to advisers, role plays of consumer-adviser interactions (eg that demonstrate how the scope of advice could be limited) are examples.⁷⁶

Features of the framework under the new model

General Information

- All providers should be subject to the Code of Ethics requirements, however the Code should be revised so as not to create barriers to the provision of General Information.
- There would need to be monitoring obligations on individuals providing General Information regularly and in the course of their employment as financial advisers.
- There should be a supervision framework for advisers routinely providing this information in conjunction with other forms of advice and in the course of their employment.
- No minimum training requirements but any material that is product-related or takes into account personal circumstances will then trigger simple or personal advice requirements and therefore require RG 146 compliance.

Simple Personal Advice

- Simple personal advice would be delivered by a trained, qualified and licensed financial adviser.
- Existing RG 146 requirements would apply to the provision of simple personal advice and providers would need a Bachelor's degree or higher as per the extended education requirements.
- Financial advisers undergoing their Professional Year (**PY**) to provide Simple Personal Advice could be considered from the commencement of their PY.
- Simple personal advice would not be delivered by call-centres overseen by financial advisers.

For Complex Personal Advice

- Complex personal advice would be delivered by a trained, qualified and licensed financial adviser.
- Existing RG 146 requirements would apply and providers would need a Bachelor's degree or higher as per the extended education requirements.

⁷⁶ Page 17, FSC Submission. ASIC Consultation CP 332: Promoting access to affordable advice for consumers

DISCUSSION

- As the single disciplinary body takes effect what is the future of the qualifications and education standards framework?
- What should be the specific requirements of financial advisers and licensees providing General Information, in the course of their duties, to ensure a proper guardrail between advice and information?
- What requirements should be imposed on providers of General Information who are not financial advisers?
- Should there be flexibility in respect of a financial adviser undertaking their professional year and providing simple personal advice (eg, can an adviser in their Professional Year provide simple advice, provided a qualified adviser reviews the advice)?



10. UNLEASHING THE BENEFITS OF DATA AND TECHNOLOGY

COVID-19 has turned business thinking about advice on its head. Data and technology are improving the advice process and a revitalised role of the financial adviser and licensee are being discussed as the platform-based economy reshapes the consumer and business interface.

Eight out of ten Australian consumers are shopping online⁷⁷ as small or medium-sized enterprises (**SMEs**) are using apps to streamline business operations⁷⁸ and cloud storage is driving the unbundling of business models. Digitisation is removing manual practice across the Australian economy as businesses turn to Zoom, Skype or Microsoft Teams to conduct the advice process or communicate internally and externally. There is a growing prevalence of cyber-crime and an increasing imperative to protect private personal data. The integration of emerging markets also presents opportunities as the number of consumers retiring increases with considerable assets in need of management.

COVID-19 tested the business resilience of advice. Many interactions and continuing professional development (**CPD**) are now being conducted online rather than in-person. The rise of smaller advice businesses and mid-tier licensees reflects a tendency toward smaller business units and self-employment.

Artificial Intelligence and machine learning could drive efficiency and financial performance of advice businesses and the advice process there has been discussion on the 'Netflixing'⁷⁹ of advice business models around the world. The emergence of compliance firms also presents a new opportunity for rapid and precision-based compliance within a vast and evolving regulatory net. The rise of 'Legtech', which translates law into code is an example of how the compliance process for preparing advice can be implemented and sped up.

Federal Government initiatives to harness these changes in the past two years include:

- Beginning the rollout of the Consumer Data Right (**CDR**) to banking and eventually other sectors;
- Implementing a Fintech Regulatory Sandbox;
- Reviewing how key financial advice laws become technology neutral as part of its deregulation agenda; and
- Implementing the Jobmaker Digital Business Plan.

ALRC in the next three years will complete its review of financial services and corporations laws looking at this issue through a prism of creating law that is sustainable, navigable and workable.

77 State of Australia E-commerce, 2019. (Source: <https://www.webalive.com.au/ecommerce-statistics-australia/>)

78 New report: How digital connectivity is helping Australian small businesses thrive. (Source: <https://www.xero.com/small-business-insights/new-report-how-digital-connectivity-is-helping-australian-small-businesses-thrive/>)

79 McKinsey. 'On the cusp of change: North American Wealth Management in 2030'. (Source: <https://www.mckinsey.com/industries/financial-services/our-insights/on-the-cusp-of-change-north-american-wealth-management-in-2030#>)

Technology, and harnessing data to increase its uptake, is needed. While these changes demonstrate a shift towards automating the advice process and compliance, consumers continue to seek human-interactions with a financial adviser. Consumers are happy to receive advice online provided there is ‘a human at the other end’ (ie someone who can be held responsible and accountable).⁸⁰ Relationships are still considered by consumers as essential for trust.⁸¹

10.1 DATA STANDARDISATION

A major impediment to technological innovation is a lack of consistent data across the industry. Advice businesses are under pressure to ensure they are operating at maximum efficiency. Financial advisers in the course of their duties amass considerable data that remains highly decentralised and fragmented across industry, and which could be better optimised. This disincentivises innovation, digitisation and the adoption of technology due to the significant risk premium created by a lack of certainty about how to interpret compliance requirements.

Data standardisation will renew the advice process and reduce the operating costs of licensees and advice providers, thereby reducing the cost of advice for consumers across the spectrum of advice under a simplified model. Delivering advice more quickly should deliver reduced paperwork and cost as well as greater accuracy and precision through algorithms and better data.

Financial Advice Industry Data Project

There is a need for product and advice providers to work together to generate affordable advice. Digitising the end-to-end process better (eg using application programming interfaces (**APIs**), and data-feeds) to reduce the cost and time taken to produce advice documents and other forms of disclosure, will make it easier and cheaper for advisers to provide that advice, implement their recommendations and then attend to reviews, before necessary amendments and provide that advice at lower cost.

Much advice is currently held in free text, in many cases stored manually, not electronically, making it unsearchable and impossible to generate insights on the type of advice being provided to consumers. The provision of robo-advice compared with other advice will generate different standards of data that could be better utilised.

RECOMMENDATION

ASIC should work with industry on measures to standardise industry data to reduce the cost of providing financial advice. Measures could include mapping:

- Consumer numbers
- Adviser numbers (cross checked with ASIC’s Financial Advisers Register)
- Regulatory and operating costs
- Types of advice under the new model
- The prices consumers are paying for different types of advice
- Other insights that can be identified and tracked consistently

RECOMMENDATION

Industry-led standardisation of common documents and educational materials, under the direction of the regulator, should be available on a central, consumer-facing portal to ensure consistent ways of explaining:

- Available products and services
- Key/common concepts of the advice process

⁸⁰ Pollinate, 4.
⁸¹ Pollinate, 4.

Rationale

- Improves accessibility of advice, by expanding opportunities to digitise advice or adopt alternate and more nimble models;
- Supports a consistent industry practice and approach to compliance;
- Reduces the operating costs of licensees and advice providers, thereby reducing the cost of advice for consumers across all spectrums of advice:
 - Efficient and high standard production of advice documents and associated record keeping to assist the manual transfer of data;
 - More precise monitoring and supervision;
 - Improved payment processing times;
 - Improved consolidation and access to records kept across multiple systems;
 - Accessing product information from providers in order to perform product comparisons – industry standard information about basic products and strategies to which all advice providers can refer when relevant; and
 - Improved compliance outcomes.
- Data analytics should be used proactively to highlight how advice could help a consumer through life stages and/or with particular attributes. This is one way to provide an “on ramp” to move consumers towards obtaining advice tailored specifically to their consumer goals and circumstances.
- The creation of simple and complex advice proportionate to risk, provides scope for using data, artificial intelligence and machine-based learning to:
 - Assess different types of financial advice
 - Identify themes when a consumer is exposed to advice
 - Greater monitoring of data to prevent poor consumer outcomes.

Advice Unit

ASIC should establish an Advice Unit that could be tasked with responsibilities that include:

- Development and promotion of industry-standard materials
- Support automation of the advice process to reduce the cost of advice
- Holistic support to the profession (eg sessions for AFSL holders and advisers, Q+A and video material to support professionalisation and deepen best practice)
- Provide rulings to interpret legislation potentially through the Financial Services and Credit Panel
- Implement a regulatory sandbox to support advisers and licensees to understand (and test) the requirements that are needed to deliver advice in a compliant cost-effective way.

Rationale

- The United Kingdom's Financial Conduct Authority established an Advice Unit following the Retail Distribution Review to support the automation of advice.⁸²
- A similar unit should be established here but with a wider remit. ASIC could consider the establishment of an ‘advice unit’ to provide rulings to interpret advice legislation.
- This would ensure a more holistic approach to management of the profession.

Adoption of technology and its benefits will remain in the abstract until comprehensive and centralised standardised data is available.

⁸² “We have seen a range of new automated services emerge since 2016. The FCA established the Advice Unit in May 2016 to help firms develop their automated models. Since then, it has received 137 applications seeking regulatory feedback, with 65 applications accepted. We are also aware of numerous services still in development, which did not involve the Advice Unit.” Evaluation of the Impact of the Retail Distribution Review and the Financial Advice Market Review. Financial Conduct Authority. (Source: <https://www.fca.org.uk/publication/corporate/evaluation-of-the-impact-of-the-rdr-and-famr.pdf>)

10.2 AUTOMATION AND TECHNOLOGY

COVID-19 has inflicted severe economic and financial damage to many lives, however it has also modernised the industry and ushered in more streamlined working practices.⁸³ Technological improvements associated with regulatory requirements have been related to gaining operational efficiencies and include:

- **Video meetings:** reduced meeting times for advisers and consumers. Many practices are now recording their video meetings, which provide greater insights than written file notes, but which consume huge volumes of storage. As technology like video conferencing that has long existed but seldom been used has enabled new forms of consumer interactions, new practices have enabled advisers to work more efficiently and productively.⁸⁴
- **Email acceptance and digital signatures:** have provided a more efficient vehicle for consent to implement recommendations aligning with consumer needs and objectives.
- **Call recording of advice appointments:** allowing for streamlined file notes that suit the operational needs of the business rather than transcribing the nature of the appointment;
- **Enhanced scanning systems** that automatically catalogue documentation electronically in consumer files; and
- **Declarations** are being made via email or verbally that previously required wet consumer signatures, and utilising video conferencing to meet certain identification and Anti Money Laundering and Counter Terrorism Financing legislation (**AML/CTF**) requirements where possible.

Technology and cost

Technology-driven cost reduction across the advice value chain can come at a cost to advice businesses, when viewed in the context of ever-changing and ever-expanding regulations and rules that compliance systems must adjust for.

The cost of these improvements might not be recovered (e.g. investments in software development to ensure compliance with Fee Disclosure Statements (**FDS**) overcome a regulatory barriers). The cost of software or support is one of the highest components of advice (outside staff). There is only so much that can be done in an IT system at a time. This means improvements to systems for business efficiency and consumer outcomes at times are put aside in order to make changes to keep the software in line with legislation.

Every change to legislation or regulations, however minor, can carry, for example, tax, superannuation and/or life insurance implications for an advice business and for consumers. Digital signatures, digital fact finds, consumer online portals are all offered to advisers in carrying out consumer transactions to improve efficiencies. Licensees might use programs that in some instances will attract set up and staffing costs that assist licensees with compliance with Section 912a of the Corporations Act 2001.

Consequently, the IT systems that support advice recommendations have to be constantly updated to comply with legislation, creating an expensive and ongoing issue for industry. Software solutions have been limited in application due to the complexity of implementation and cost. A number of FSC Members have elected to customise consumer relationship management (**CRM**) systems and advice tools with specialist software to support compliance.

⁸³ Page 3. Post Pandemic Australian Advice Landscape. Source: https://www.coredata.com.au/pdf/Post-Pandemic_Australian_Advice_Landscape.pdf

⁸⁴ Page 3. Post Pandemic Australian Advice Landscape. Source: https://www.coredata.com.au/pdf/Post-Pandemic_Australian_Advice_Landscape.pdf

Proposal

RECOMMENDATION

The proposed Industry Data Project and the proposed ASIC Advice Unit should monitor the costs of automation within the advice process to identify efficiencies and enhancements to industry practice and the regulatory net.

DISCUSSION

- Where does the role of technology fit in the advice process? Where does it stop and start when it comes to providing professional financial advice?
- Many advice businesses have invested considerably in efficiencies but remain without a simple, cost effective way to produce compliant, quality advice. How can future industry and government investment reduce cost and improve consumer outcomes?
- What is the role of artificial intelligence in the advice process and regulation of the industry?

10.3 DIGITAL ADVICE

It is difficult to provide face-to-face advice, and even phone-based advice, within the range consumers are prepared to pay. Developing effective and viable digital advice models might address this, however the ambiguity associated with the application of some safe harbour steps (as noted) in relation to scoping and product recommendations is a barrier to investment in this area.⁸⁵

Comprehensive guidance that deals specifically with digital advice in relation to the current regime, or where definitions are recategorised as simple versus complex, is inevitable. How digital advice is defined under the existing model of advice, or a changed model of advice, should be considered carefully, including the potential benefits of the Consumer Data Right regime as it is extended across financial services.

The European Banking Authority's (**EBA**) *Report on Automation in Financial Advice* in 2016 found that divergent definitions of 'advice' across the banking, securities and insurance sectors were one of the main barriers to automated advice. Some respondents to the EBA's discussion paper also raised questions about the applicability of relevant European law and regulations to the different emerging business models used to offer automated advice.

RECOMMENDATION

RG255 Providing digital financial product advice should be updated irrespective of changes to the model of advice to enable the provision of compliant digital advice.

85 FSC Submission - ASIC CP 332: Promoting access to affordable advice for consumers (February 2021)

*RG 255 Providing digital financial product advice*⁸⁶ establishes obligations applying to the provision of traditional (eg non-digital) financial product advice and digital advice that are the same. This inflexibility makes digital advice less attractive for providers in Australia. Future updates to RG255 should encourage a level playing. Digital-based delivery of advice should be subject to the same standards that the licensing and disciplinary regime will require of the broader value chain - financial advisers, AFSL holders, product providers and other entities.⁸⁷

A revision of RG 255 should consider the following issues:

- **Flexibility:** The current requirements for digital advice for many consumers to be triaged out of the process makes the provision of digital advice to consumers who have not been previously engaged very difficult. Building a regulatory framework that encourages full digital or “hybrid digital advice” models will allow advice businesses to offer ordinary investors equivalent but more affordable services for consumers with relatively simple advice needs.
- **A level playing field:** Online is suitable for delivery of advice and is welcomed by consumers provided there is a ‘human’ at the other end who is accountable.⁸⁸ Sustainable provision and regulation of digital advice needs to ensure a level playing field in which the technological delivery of advice is subject to same standards that the licensing and disciplinary regime will require of the broader value chain - financial advisers, AFSL holders, product providers and other entities. Assumptions as to the quality of advice provision by a machine should be the same across the value chain, for example, how a consumer’s circumstances might be considered or treated by such delivery mechanism should be anticipated and finalised language in Regulatory Guidance should clarify this.
- **Application of the Best Interests Duty in a Digital advice context:** There should be specific expectations set out about the impact on compliance that is created by the nuances of a face-to-face advice process versus a digitally delivered advice process. This should align with the FSC’s recommendations to remove the safe harbour steps and proposed redefinitions and classifications of advice.
- **Delivery of product comparisons and product recommendations:** these can be more difficult to deliver digitally given the requirement to align the range of consumer needs to a product recommendation. For example, superannuation topics can be complicated and there is limited ability to deliver more complex advice digitally.
- **Incentivising the development of algorithms:** Digital personal advice in many instances relies on algorithms. There is significant investment required to develop the algorithms, and given the uncertainty of the application of FASEA requirements, as well outdated regulatory guidance, there is a reluctance to make upfront investment.

⁸⁶ ASIC. RG 255: Providing digital financial product advice to consumers. Source: <https://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-255-providing-digital-financial-product-advice-to-retail-consumers/#:~:text=RG%20255%20Providing%20digital%20financial%20product%20advice%20to%20without%20the%20direct%20involvement%20of%20a%20human%20adviser>

⁸⁷ See Appendix. FSC Submission - ASIC CP 332: Promoting access to affordable advice for consumers (February 2021)

⁸⁸ Pollinate, 4

11. TAX DEDUCTIBILITY AND INCENTIVES

Certain types of financial advice are already tax deductible, such as advice on tax or assets that generate taxable income.⁸⁹ This extends also to income protection life insurance, and financial advice on superannuation which is deductible for the relevant superannuation fund.⁹⁰

The capped rate proposed by Rice Warner was recommended to incentivise first time engagement with an adviser given the high likelihood that that first time engagement would have consumers realising the value of advice.

Greater engagement could also support better financial literacy. Ensuring adequate access to a range of qualified professionals and expertise to support financial literacy and decision-making is of concern against a backdrop of emerging providers of unlicensed financial advice. Consumers are responsive to the benefit of financial advice when they receive it and making advice tax deductible means the benefit passes directly to consumers.

RECOMMENDATION

The Government should enable all financial advice to be tax deductible irrespective of whether it generates taxable income, the Government should consider a capped or uncapped rate.

Rationale

- A number of areas of advice that could be identified for tax deductibility include:
 - The impact of a capped model of the maximum general price point of \$500 compared with the average minimum cost of providing advice at \$2,500-\$5000.
 - A limit could be indexed every few years for simplicity and to give confidence in consumers to retain a fairly constant level of deductible advice.
 - Changing Australian Tax Office (**ATO**) rules for certain superannuation advice to make it tax deductible in acknowledgment of the link between advice and increased super contributions that increases future taxable income should also be considered.
 - Future changes should not interfere with the existing uncapped tax deductibility arrangements for ongoing financial advice.
 - Any cap on upfront advice should be set at a much higher level, consistent with the cost of providing financial advice.
- Advised consumers are more likely to fund more of their retirement compared to consumers that do not access advice. This can in turn reduce a consumer's reliance on the Age Pension providing a benefit both to the Government's fiscal policy and taxpayers. Any savings from reduced Age Pension payments could be redirected to taxpayers or to other fiscal spending. It should be recognised that by endorsing financial advice by way of a tax deduction, the Federal Government can shift the behaviour of taxpayers and encourage them to engage with their finances via a financial adviser.

⁸⁹ Rice Warner's Future of Advice report

⁹⁰ Rice Warner's Future of Advice report

12. APPENDIX: TIMELINE

Key policy decisions on the future of advice will be made by the Government, regulators and the other bodies in the next three years.

The FSC's Green Paper and White Paper are vehicles by which industry can achieve consensus and offer solutions to support decisions, reduce cost and increase the access and affordability of financial advice.

Year	Milestone
2021	Q2
	<ul style="list-style-type: none"> FSC Green Paper - Future of Advice released ASIC CP332: Promoting access to affordable advice consumers roundtables Expected release of Exposure Draft legislation for the Compensation Scheme of Last Resort Treasury expected to release exposure draft legislation for single disciplinary body. Legislation and introduction of the single disciplinary body
	Q3
	<ul style="list-style-type: none"> Intended release of the FSC's White Paper on financial advice
2022	Q4
	<ul style="list-style-type: none"> ALRC first interim report due relating to definitions in corporations and financial services legislation (November)
2022	Q2-Q4
	<ul style="list-style-type: none"> Review of the Quality of Advice as recommended by the Financial Services Royal Commission
2022	Q4
	<ul style="list-style-type: none"> ALRC second interim report due - regulatory design and hierarchy of primary law provisions, regulations, class orders and standards
2023	Q3
	<ul style="list-style-type: none"> ALRC third interim report due - potential reframing or restructuring of Chapter 7 of the Corporations Act
2023	Q4
	<ul style="list-style-type: none"> Final Report - Australian Law Reform Commission

13. APPENDIX: LAW AND REGULATION OF FINANCIAL ADVICE

Below lists key financial advice laws and regulations:⁹¹

Corporations Act 2001

- Regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance and deposit-taking
- The Act contains the provisions on regulating financial services

ASIC Act 2001

- Manages the performance of the financial system and entities in it. Promotes confident and informed participation by investors and consumers in the financial system
- The Act and unfair contracts in financial services

Insurance Contracts Act 1984

- Applies to life and general insurance contracts and seeks to establish a fair balance between the rights and obligations of insurers and consumers
- The Act addresses the duty of disclosure and for the parties to act in utmost good faith

Superannuation Industry (Supervision) Act 1993

- Regulation of all superannuation funds ASIC is responsible for the sections on disclosure and interactions with consumers (fund members)

Consumer Credit Protection Act 2009

- Regulates Australian companies and financial services organisations and professionals who deal and advise in credit

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)

- Requires regulated entities to have an AML/CTF plan and to identify their consumers Applies to financial advisers Financial Transaction Reports Act 1988 (FTR Act) and also requires regulated entities to report suspicious transactions or transactions over a certain threshold

Additional applicable laws:

- Competition and Consumer Act (CCA)
- Privacy Act 1988
- National Consumer Credit Protection Act

⁹¹ Source: Kaplan Professional

Codes of Practice

- ePayments code (developed and monitored by ASIC)
- Code of Banking Practice (developed by the Australian Bankers Association)
- Mutual Banking Code of Practice (developed by the Customer Owned Banking Association)
- Life Insurance Code of Practice (developed by the Financial Services Council)
- General Insurance Code of Practice (developed by the Insurance Council of Australia)
- Insurance Brokers' Code of Practice (developed by the National Insurance Brokers Association of Australia)
- FPA Code of Professional Practice (developed by the Financial Planning Association of Australia)

ASIC Regulatory Guides⁹²

Regulatory Guides and Licensing Kits	Issued
RG1 AFS Licensing Kit: Part 1 – Applying for and varying an AFS license <i>The application process to assess whether the applicant is of good fame and character and has the competence, resources and risk management systems to provide the desired financial services</i>	January 2021
RG2 AFS Licensing Kit: Part 2 – Preparing your AFS license application <i>The details of completing the application including the financial services to be provided and the responsible managers who will run the business</i>	January 2021
RG 3 AFS Licensing Kit: Part 3 – Preparing your additional proofs <i>Explains the 'additional' proof documents applicants may be asked to send to ASIC</i>	December 2020
RG36 Licensing: Financial product advice and dealing <i>Defines 'advice', financial product advice and the obligations of licensees and representatives</i>	June 2016
RG78 Breach reporting by AFS licensees <i>Explains when licensees must report an actual or likely breach of legislation to ASIC</i>	March 2020
RG90 Example Statement of advice: Scaled advice for a new consumer <i>Explains the approach licensees and representatives should take when providing scaled or limited advice and includes example SOA</i>	December 2017
RG104 Licensing: Meeting the general obligations <i>More detail on managing the licensees obligations</i>	April 2020
RG105 Licensing: Organisational competence <i>Detail on the educational and experience requirement of responsible managers</i>	April 2020
RG146 Licensing: Training of financial product advisers <i>Minimum educational requirements for advisers 165 Licensing: Internal and external dispute resolution Explains the requirements for acceptable procedures and services</i>	July 2012

⁹² Source: Kaplan Professional

APPENDIX: LAWS AND REGULATIONS OF FINANCIAL ADVICE

<p>RG166 Licensing: Financial requirements <i>More detail on requirements to have sufficient capital and cash flow and for accounts to be audited</i></p>	September 2017
<p>175 Licensing: Financial product advisers – conduct and disclosure <i>Explains requirements when giving financial product advice, key disclosure documents and the best interests duty</i></p>	November 2017
<p>RG244 Giving information, general advice and scaled advice <i>Explains requirements when giving financial product advice and examples of meeting and failing the best interests duty</i></p>	December 2012
<p>RG246 Conflicted remuneration <i>Gives guidance to licensees and their representatives on conflicted and banned remuneration arrangements</i></p>	December 2010
<p>RG255 Providing digital financial product advice to retail consumers <i>Brings together some of the issues that persons providing digital advice to retail consumers need to consider when operating in Australia—from the licensing stage (i.e. obtaining an Australian financial services (AFS) licence) through to the actual provision of advice</i></p>	August 2016

14. APPENDIX: PROPOSED LICENSING AND REGISTRATION FRAMEWORK FOR FINANCIAL ADVICE

Licensing and Registration of Financial Advice

Australian Financial Services Licence (AFSL) holders

- Accountable to ASIC and for maintaining its regulatory requirements of an Australian Financial Services License (AFSL) holder
- Pays fees to ASIC
- Complies with financial services laws as a requirement of the monitoring and supervision framework
- Provides letter of authority to advisers (based on adviser competency and license conditions) - subject to registration with single disciplinary body
- Responsible for the services that as AFSLs they provide to the adviser
- Responsible for oversight of adviser in meeting the obligations imposed on them by the AFSL
- Must have in place sufficient supervision and monitoring procedures to ensure advice provided complies with the law (e.g. Best Interests Duty)
- Reports mandatory notifications and significant breaches to Financial Services and Credit Panel (**FSCP**)
- Provides training, education and supervision to advisers (e.g. guidance, tools and advice templates), ensure advisers are aware of their obligations and meet disclosure requirements and required advice standards
- Undertakes investigations, rectification, remediation and performance management actions of issues or concerns
- Responds to personal or professional reference checks from prospective licensees from Financial Services and Credit Panel
- Ensures ability to access consumer records (record keeping obligations)
- Provides access to research (both internal and cost aggregated external research houses) to facilitate disclosure of costs, loss of benefits and other significant consequences when recommending product replacement
- Respond to complaints and develop/maintain internal dispute resolution system that complies with ASIC requirements
- Register and maintain membership of approved external dispute resolution scheme
- Ensure there are adequate resources to operate licensee services effectively and efficiently
- Receive complaints, conduct investigations and consumer remediation where required
- Report mandatory notifications and significant breaches to the FSCP for Advisers non-Compliance
- Report non-compliance to ASIC for licensee non-compliance

Note: Where an AFSL appoints authorised representatives to provide advice, these obligations apply in relation to those authorised representatives. Where AFSL holder employs advisers, these obligations apply in relation to employed advisers. Where an adviser holds an AFSL, the obligations related to monitoring and supervision would not apply.

Adviser

- Must have a practicing certificate issued by the Single Disciplinary and Registration Body (SDRB) - NB: This would most likely be the Financial Services and Credit Panel within ASIC and is individually responsible for obtaining this
- Pays fees to the FSCP
- Must be a Representative of the AFSL holder or an AFSL holder
- Responsible for the advice they give, acting in a consumer's best interests and the associated risk of providing the advice
- Required to reapply/re-register with the FSCP on an agreed term either 12 or 24 months. This authorisation would move with the adviser as they move about the industry - they would uncouple from their AFSL and move to another AFSL while retaining their authorisation/registration
- Individually responsible for maintaining own conduct, qualifications, ongoing training, conduct and compliance with Code of Ethics and professional standards
- Adhere to a CPD Plan annually and report to FSCP as part of re-registration
- Responsible for their own conduct
- Self-identify minor breaches of legislative requirements (including the Code)
- Work with licensee to resolve issues
- Identify and report significant breaches by peers to FSCP
- Reports to the FSCP in respect of their obligation to satisfy all legal requirements in providing advice (e.g. Code of Ethics, Best Interests Duty)
- Where there is a conflict with their own interests, or those of one of their related parties, prioritise the interests of the consumer; and
- Maintaining obligations with AFS licensees
- Maintain adequate records
- Condition of registration for self-licensed advisers to demonstrate their services have been externally provided, and provision of background checks such as police record and bankruptcy checks

Note: These obligations apply regardless of whether an adviser holds an AFSL, is employed by an AFSL holder or is an authorised representative of an AFSL holder.

Shared responsibilities of the Licensee and Adviser

- Licensees and advisers would continue to work together in respect of reporting to the FSCP this would include:
 - Update information
 - Adviser misconduct and self-reporting
 - Adviser Best Interests Duty and Code of Ethics compliance
- Management of conflicts of interest - licensees provide guidance to advisers on disclosing remuneration, benefits and conflicts of interest
- Have adequate financial and technological resources to operate
- Consumer protection
- Payment of fees - Advisers pay fees to registration body, AFSLs pay their fees to ASIC. Advisers pay AFSL for licensing. Market forces could allow licensees and advisers flexibility in terms of how these are paid

ASIC

- Regulator of licensees
- Develops and issues regulatory guidance instructs licensees in the discharge of their regulatory and legal obligations
- AFSL audit of License Requirements and capital adequacy requirements where applicable (raise the bars for entry to ensure consumer protection, reduce the need for the CSLR)
- Investigates significant breaches of licensee obligations
- Determines fit and proper and required education for Responsible Managers of AFSLs

Financial Services and Credit Panel within ASIC (FSCP)

- The single body for licensing of advisers with one registration fee. It would encompass:
 - Financial Advisers Register (**FAR**)
 - TPB registration for Tax Financial Advisers
 - Take over FASEA responsibilities related to examination
 - Monitor and discipline breaches of the code (As per the original intent of code monitoring bodies)
 - Set standards for advice and code compliant advice
 - Responsible for the FASEA Exam

Further detail of responsibilities:

- Regulator of advisers
- Responsible for maintaining the Financial Advisers Register. The FAR would include the recording of:
 - individual adviser entry into, and removal from, the profession;
 - issuance of practising certificates;
 - continuing professional development (**CPD**);
 - the setting of professional standards;
 - monitoring and enforcing financial advisers' infringements.
- Set minimum requirements for individual registration - education, police check, bankruptcy check, references). If an adviser is deregistered they can no longer be employed by, or hold, an AFSL
- Sets minimum requirements for individual re-registration - CPD and ongoing fit and proper person checks
- Ensures minimum requirements for initial registration and ongoing re-registration are met
- Oversees ethical standards of advisers, determines requirements for a fit and proper person
- Set professional standards for advice that can be used as a benchmark for AFCA cases or legal proceedings
- Sets and enforces disciplinary procedures. This would include implementing an appropriate review process for disputed disciplinary decisions
- Investigates concern about adviser conduct and applies sanctions (e.g. cancellation of registration)
- Liaises with licensee where the appropriate response is licensee-led remediation activities (including additional training)

- Power to report systemic concerns at a licensee level to ASIC with an agreed information sharing protocol
- Determines compliance with requirements for ongoing registration/re-registration (e.g. completion of CPD)
- Conduct random adviser audits of compliance with obligations
- Responds to breach reports from licensees in relation to the Code of Ethics and Corporations Act
- Proactive thematic (time in motion) reviews
- Centralises/standardise AFSL adviser audits requirements. Setting a standard that licensees can adopt for audit of advice for consistency
- Responsible for consulting on a 'common agreement' around licensee and adviser responsibilities, and that of any other regulators with oversight of their operations, to ensure clarity and consistent application of the law, guidance and professional standards

Treasury

- Issuing of all legislative instruments currently under the remit of FASEA (e.g. Code, Education requirements, etc.)
 - Sets standards relating to PI insurance and capital requirements, to minimise reliance on a CSLR
 - The CSLR should be funded at an adviser level, equally and fairly on a per adviser basis. To ensure there is a level playing field and to reduce moral risk associated with smaller, poorly capitalised AFS Licensees relying on the CSLR
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Disclaimer

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