3 June 2022

Secretariat, Quality of Advice Review
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

By email: AdviceReview@treasury.gov.au

RE: Public submission, Quality of Advice Review – Issues Paper

Dear Sir/Madam,

Please find attached herewith a public submission which addresses Questions 1 to 19.

I have read the submission guidelines and now provide the requested detail.

I am a CERTIFIED FINANCIAL PLANNER® Member of the Financial Planning Association of Australia (FPA). I hold a Bachelors Degree in Economics from Monash University 1996 and a Graduate Diploma in Financial Planning 2014 as well as other qualifications. I have passed the FASEA Adviser exam.

After a number of years in Banking, Financial Services and Funds Management I commenced in the Advice Industry in 2010 and have held positions in Financial Planning Practice Management and AFSL Governance (Risk & Compliance). I have been a current provider on the ASIC FAR until fairly recently, Number 000296089, and anticipate returning to be a provider on conclusion of my current role.

I have not addressed the challenges of advice compliance in this submission as it is reasonable to think that others will do that adequately.

In this submission, I have made four (4) key points:

1. That quality of advice is largely a function of the strategies recommended by a provider, rather than product selection or other criteria.
2. To improve the quality of advice, further consideration should be given to the minimum credentials for AFSL Management where the Licensee gives advice to retail clients.
3. With the law and regulations as they currently are, advice documents are required to be highly customised for individual consumers and it is not a simple matter to make the process of issuing them, and completing other attendances associated with advice, more efficient.
4. To make advice more accessible, a change should be made to SECT 766B(1)(a) to remove the words “or class of financial products”.

I make this submission as an individual and it is wholly unrelated to my current employment.

This submission is 10 pages in total, including this covering letter, and there are no further attachments.

Yours faithfully,

J P Grigg

RESPONSE TO QOAR ISSUES PAPER QUESTIONS Q1 to 19

Preliminary

We refer to the Glossary in the Issues paper and advise that in this document we have used the following terms in addition to the ones you have set out:

Term	**Definition**
Advice	Is financial product advice as defined by SECT 766B in particular (1)(a)&(b) given to a *retail client* and as further explained by RG 244.
INFO	An ASIC Information sheet which provides "concise guidance on a specific process or compliance issue or an overview of detailed guidance."
Law	Corporations Act 2001 (Cth)
OSN	A consumers' 'objectives, financial situation and needs' from SECT 961B (2)(b)(ii) being the clients' relevant circumstances
PDS	Product Disclosure Statement
Provider	A relevant provider as defined at SECT 910A, being a Financial Adviser, a restricted term under SECT 923C, who is current on the ASIC Financial Adviser Register ("FAR")
REG	A Corporations Act 2001 (Cth) regulation
Regulation	Any rule being delegated law from any Regulator which an AFSL and/or provider (or others) must comply with
Regulator	ASIC, Treasury, OAIC, Austrac, APRA, ATO or ACCC all of whom are part of the regulatory framework for the provision of advice noting that FASEA has now been wound up and the TPB no longer regulates providers after 31 December 2021
RG	ASIC Regulatory Guide
RM	A Responsible Manager of an AFSL, See RG 105
SECT	A section from the Corporations Act 2001 (Cth)

Quality of Advice

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

For a provider, the characteristics of quality advice are:

- *Appropriate Scope - The provider has clearly stated what matters they are and are not giving advice about and why. The provider has an adequate knowledge of the consumers OSN and has exercised sound professional judgement in determining the scope with the consumer. From the Scope, the ambit of the advice is clear between the provider and consumer, and*
- *Benefit - A reasonable person would conclude that the recommendations made by a provider, each on their own, or as a combination, improves, or are very likely to improve, the financial position of a consumer either immediately, in the medium and/or long term, and/or*
- *Protection - The recommendations help in some way, whether through insurance or other strategies, to protect the financial situation of a consumer (and consequently family members) from some type of disadvantage upon the happening of some adverse event/s, and*
- *Sound reasoning - In the Better Position Statement of the SoA, the provider has linked their recommendations to the consumers OSN and explained the expected outcomes and benefits of them so as to demonstrate the appropriateness, logic and compelling worth of the advice.*

For a consumer, the characteristics of quality advice are;

- *Benefit - The recommendations address the needs and attainable objectives a consumer has expressed (and potentially also needs identified by the provider) as far as it is practical to do so, and in an optimal way, given the consumers situation, and*
- *Understanding - The recommendations have been given in such a way that the consumer understands how they will benefit from them now and/or in the future given their present situation and they also understand the terms of the engagement with the provider, and*
- *Value for money - In recognition of the benefits which follow over time from advice recommendations, the consumer feels that they have received good value for money by seeking advice from a provider*

Recommendations and advice

Advice is as defined in the Preliminary to this submission. A provider gives advice in the form of recommendations in an SoA, and later an RoA, to consumers. Recommendations will be in either of two advice categories;

A. Advice in relation to a specific financial product: to acquire, dispose of, continue to hold, or vary an interest, or
B. Advice in relation to a class of products, for example making salary sacrifice (additional) concessional contributions and/or non-concessional contributions to a super fund, making superannuation death benefit nominations and so on.

Strategy

Most Recommendations in category B and some Recommendations under category A (such as varying an interest in or acquiring a new product to manage risk) are often referred to as "strategies".

Strategy is where the quality, and the value, of the work of a provider is most discernible. These are the practical plans, based on a consumers financial situation, to achieve their needs and objectives.

Quality

RG 175 from 175.247 to 175.251 instructs a provider what quality advice is. Advice should be compliant with the law and regulations, and also ethical, so with that assumed, a compliance checklist is unhelpful to determine advice quality. **From all compliant and ethical advice, we should be able to identify the features of some advice which meet a high standard**.

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

The following regulatory changes have improved or are likely to improve the quality of advice:

- *With the exception 961B(2)(g) of the Corporations Act 2001 "taken any other step" which is unreasonable, the balance of the requirements at SECT 961B(2)(a) to (f) (the "Best Interests Duty") are far and away a superior standard to that which existed previously – the 'appropriate advice rule' which was set out in SECT 945A(1) now repealed.*
- *The Adviser exam. Whistly arguably poorly composed by FASEA, a competency exam is a reasonable requirement, being a measure of a providers knowledge of the law and regulations.*

To enable further improvement the quality of advice, the competency requirements for AFSL Management should be considered.

Regulatory changes and AFSL Management

A Director, Officer or RM of an AFSL is not required to: be, or have been, a provider, have passed the Adviser exam and hold particular financial planning qualifications. Other than a minor change to RG 105, regulatory changes over several years relate only to what a provider must do in giving advice and what credentials they must have and there have been no substantial changes in relation to AFSL Management retail financial planning credentials. This is curious as the AFSL is responsible for the advice given to a consumer. Whilst the Legislature and Regulators continue to be concerned mostly with providers, there remains a significant prospect for error and omission by AFSL Management. Were at least some AFSL Management required to have at least the same credentials as providers, and potentially be subject to the same disciplinary actions, one cannot help but think there is the greatest possible prospect of further improvement possible in advice quality.

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

Where a measure has already been introduced with the intention of increasing the quality of advice, that measure needs to be able to assessed, and then be assessed by ASIC after it has been implemented to determine if the intention was achieved or not. This is binary. A measure either improved or enhanced one of the characteristics of quality of advice given in the answer to ***Questions 1 & 2*** *or it did not.*

Cost of Advice

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

A) *In a 2020 release, the FPA stated that its members charge on average $2,671 to prepare an SoA. I would expect the profit margin for that figure at that time to be close to zero given the inputs into an SoA. (1)*

B) *According to the 2022 Adviser ratings Landscape report, released 28 April 2022, the median cost for ongoing advice services was $3,256 per annum. This seems reasonable. (2)*

(1) FPA https://fpa.com.au/news/the-national-opportunity-that-is-financial-planning/
(2) Adviser Ratings Media https://www.adviserratings.com.au/media/adviser-ratings-landscape-report-illustrates-impacts-of-falling-adviser-numbers-with-further-to-go/

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

Excluding business operating costs common to many enterprises:

- Advice documentation and related costs. Production cost of an SoA and time cost of: ongoing documentation required at each regular and ad hoc (being on request) interaction with a consumer, (RoA, File Notes), ongoing AML/CTF inc ID expiry, annual FDS, annual customer review documentation and reporting, ongoing fee arrangement documentation (now annual renewal), interaction with advice auditors (annually).
- Main professional costs. PI insurance, AFSL Adviser licensing fees OR "own AFSL" Compliance Management costs which varies widely, and the ASIC levy.
- Costs relating to capacity constraints. As the legal and regulatory requirements to service consumers have become more onerous, then the provider must add additional resources such as para planning and support staff which may increase the price of services to the consumer and/or providers cease to service some consumers.

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

Please see our detailed answers to **Questions 5 and 6** above.

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

Likely about half of what is currently in an SoA (which averages some 50 pages for comprehensive advice plus additional pages for appendices such as projections and may then total 70 pages) would be material a competent provider would choose to include for their own part and which would cover all of the legal and regulatory requirements. Of the balance, all of the further inclusions in an SoA which contribute to its length are requirements of the AFS licensee – particularly large AFSL who take a risk averse approach.

Whether or not a consumer is inclined to read through a very large advice document, and whether they are able to understand it, is entirely another matter.

Superannuation trustees and platform operators play little part in the form and substance of advice documents or the process. Their concerns primarily relate to the bona fides and purpose of advice fees deducted from a consumers account and whether the agreed services have been delivered. Most, or perhaps all now, require a refreshed ongoing fee arrangement (the consumers consent to deduct fees) for retail clients to be provided annually. Superannuation trustees do also restrain providers in the quantum and basis of fees that may be charged and they do require certain other broad assurances from an AFSL from time to time in the form of attestations to various matters.

AFSL and providers

- AFSL may be classified by their number of providers, as: large (100+), medium (20 to 99), small (5 to 19) and very small (<5).
- Providers are a mix of person employed by an AFSL and self-employed individuals authorised by a third-party AFSL.
- At 3 June 2022, there are 1,987 AFSL and 16,634 providers on the FAR as determined by Wealth Data which I understand makes use of information from ASIC. (1)
- Some providers are authorised by an AFSL which is part of an ASX listed financial group. The balance of providers are authorized by unlisted companies holding an AFSL.
- Some providers are associated in some way with an AFSL which is also a Product Issuer.

AFSLs are not generic, as I have attempted to illustrate above. The AFSL, and not the provider, is primarily responsible for the advice given to a consumer and the other attendances associated with that advice. Being liable for the advice, large and medium AFSL often specify the form and substance of advice documents down to font style and size. The advice process is documented. The AFSL framing of what an advice document must contain, when it must be issued and what Policies the provider must comply with, are comprehensive guidance for a provider. This is true to a greater degree for large and medium AFSL. For small and very small AFSL, a provider may often be a Director or Senior Manager and so may have some say in the advice process. However, in all AFSL, a provider does not have discretion to interpret and apply the law and regulations in a different way than the AFSL has determined and instructed them.

In general, providers refer to AFSL Policy framing in the provision of advice and do not ordinarily refer directly to the law and regulations. Interpretation of the law and regulations, and development of procedures to deal with advice obligations is done by AFSL Management and usually also Compliance staff or Compliance consultants for small and very small AFSL.

We explain at **Question 11** that an SoA is required by ASIC to be a customized document. Almost regardless of changes to the specifics of the law and regulations over time (though all still needing to be observed), and excluding what an AFSL might require from time to time, an SoA would still need to be a fairly detailed piece as a provider needs to capture in it a great deal about the clients' OSN, their recommendations and the effect of their recommendations. This concerns professionalism and competence in the delivery of advice.

(1) Wealth Data https://wealthdata.com.au/blog-1/financial-adviser-movement-june2-2022

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

Please see the first and second points in our answer to ***Question 6*** *above.*

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

If we imagine that the purpose of the question is to inquire about the relative efficiency with which the Industry adapted to previous reforms, and the cost of doing so, we must conclude that the Industry was highly responsive to each previous reform and addressed them in a timely manner. However, the cost of doing so in system software updates, external legal fees, project teams, and additional compliance personnel developing revised workflow procedures at all AFSL contributed significantly to the increased cost of giving advice to consumers, in many cases through higher AFSL licensing fees for providers.

Technology Solutions

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

Whether fintech can produce advice which meets the requirements of the law and regulations, as well as anything ASIC may think is appropriate from time to time, and then it be found in a dispute to have been satisfactory, it yet to be seen.

It seems reasonable to say we have seen advances in production processes over time result in improvement in the quality, and sometimes a reduction in price, of some goods and services. Generally, improvements in economic efficiency take place most notably in the production of goods and services where there is a high quantity of production and the goods and services produced are fairly standardized.

Advice is a highly customized service and does not easily lend itself to standardization – in fact ASIC have warned AFSL and providers against standardization through "generic text" in RG 175.214 and on several other occasions including in INFO 267(1). A provider is required to produce a custom advice document for each consumer which takes into account their particular OSN. This might be reasonable but it is also peculiar given that we rely so heavily in other aspects of financial services upon standardized contracts for things such as Insurance and Mortgages and then compensate for the relative bargaining position of the parties and fairness, amongst other things, through the Consumer Law. If we could take that standardized approach in advice we would see the price of it decrease significantly.

(1) ASIC INFO 267 https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/tips-for-giving-limited-advice/

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

No. There do not seem to us to be anything significant, from a regulatory standpoint, restraining providers from testing and then adopting worthwhile new tech solutions.

Consumer Demand/Access

13. How should we measure demand for financial advice?

In economics, the quantity solution for demand is the number of units sold, and for the price, at the intersection of the demand and supply curves. The actual quantity of demand for advice is then: the total number of persons who have an investment or superannuation account, an insurance policy or a stockbroking account (which is not an execution only account) with a provider attached to it as their “Nominated Adviser Representative”. I am unaware how I would obtain this data.

Advice supply is constrained & inelastic and advice demand is price sensitive in some consumer segments such as many young persons, persons with low account balances or persons who do not understand the benefits of quality advice.

We could take the question to mean “How should we measure the latent demand for financial advice?”

Most, if not all persons, would benefit from quality financial advice. This is especially, but not solely, the case for pre-retirees. As they approach the end of their working life, they benefit enormously from having the complexity of the superannuation laws and regulations and the Centrelink rules explained simply to them and a plan prepared so that they are able to make the most of building up their retirement nest egg and then later enjoying the security of what is for most is (under the Transfer Balance Cap) a tax-free superannuation income stream in retirement.

According to the ABS in 2020, 3.12% of the female population is aged between 50-54 and 3.09% is aged between 55 and 59. For the male population these figures are 2.97% and 2.96% respectively. So, for a total of more than 12% of the population of 25.7M, we then have a pool of more than 3 million persons who would be very strong candidates for advice but who may or may not have sought advice from a provider (1).

(1) ABS https://www.abs.gov.au/articles/twenty-years-population-change#ageing-population

What would the demand be if the public understood advice and what it could do for them?

Please see our answer to the **Question 13** above.

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

Please see our answer to **Question 15** below.

We have previously made the point herein that the supply of advice is at the moment both constrained and inelastic and the demand for advice is, in part, price sensitive.

Consumers ought to consider obtaining advice, which might be limited advice, in relation to major financial decisions such as: investing large sums, planning for the future education of children, inheritance, divorce, death of a partner, and business sale or wind up. Anecdotally, approaching retirement age or actually preparing to retire are the circumstances that lead most consumers to seek advice.

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

On 26 August 2019, ASIC published a Media Release 19-223MR which "reveals the barriers faced by consumers when considering financial advice" (1). See also ASIC REP 627 (2). I am in agreement with what ASIC have said in these two documents and furthermore do not think a lot has changed since the date of these documents. Broadly the most significant of the barriers faced by consumers are: understanding what initial, episodic or ongoing advice is, and the benefits that results from it and, for some consumers, the cost of it relative to either or both their income and financial assets.

(1) ASIC 19-223 MR 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/
(2) ASIC REP 267 op. cit.

16. How could advice be more accessible?

I suggest that in SECT 766B(1)(a) removing the words "or class of financial products" would be enormously worthwhile to make advice more accessible. *However, if the law was so changed, it should only be permissible for a provider to make a recommendation to a consumer in relation to a class of financial products and not any other person who might lack sufficient expertise.*

Providing simple or entry level advice

Without these words "or class of financial products", advice is then only related to a specific financial product – category A from **Questions 1 and 2** above. With this change, a provider would be able to give a type of advice, perhaps at what we might call "simple or entry level".

It would benefit some consumers, based on their OSN, to contribute more to super. With the law as it currently stands, a provider may not make such a recommendation without the need to give, or have given in the recent past, to that consumer a complete SoA which is a lengthy and expensive attendance. A provider ought to be able to give sensible and worthwhile recommendations without the need for an SoA. The following simple or entry level advice scenarios would be possible under this change.

A recommendation to a person in relation to a class of products:

- to make a salary sacrifice contributions, make a spouse contribution, to make a personal tax-deductible contribution or to make "catch-up" contributions to superannuation
- to make a lump sum (non-concessional) contribution to superannuation, and
- to determine the level of cover for an insurance policy, and
- to make a binding death benefit nomination to their super fund, and
- (who is an Executor) to understand and deal with the superannuation of a deceased person which is not an estate asset.

We note in relation to the foregoing that simple or entry level advice may encourage a consumer to seek comprehensive advice either immediately or at a future point in time with perhaps other needs in mind.

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

There are already circumstances where certain types of advice (but not financial product advice where an AFSL is required) is given by persons other than providers.

Factual information about tax, and tax advice, is given by a Registered Tax Agent who is involved in the preparation and lodgement of tax returns for Self-Managed Superannuation Funds (SMSF) which represent close to a third of the national super savings pool. Accountants also benefit from REG 7.1.33A where they can give broad asset allocation advice to consumers who are trustees of an SMSF. As I understand it, Lawyers are exempt from the AFSL regime. Legal advice may be given to consumers by lawyers under SECT 766 5(a)&(b) such as, I expect, assisting an executor in relation to an estate about the tax consequences of estate distribution including liability for Capital Gains Tax (CGT) and the treatment of Super death benefits.

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

Please see our detailed answer to **Question 11** above.

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

There does not appear to be any significant barriers preventing new entrants bringing innovative, digital-first business models to market other than the need to obtain an AFSL – which is, of course, a crucial step. In fact in the last 18 months there have been a number of this type of new entrants. The standards to enter the market seem quite low in fact.

I pointed out at **Question 3** that not any of: a Director, an Officer nor the RM of an AFSL is required to:

- Currently be, or have been, a provider for any particular period or at any time,
- Have passed the Exam, and
- Hold any particular financial planning qualifications.

I also mentioned in **Question 11** that ASIC require a provider to produce a highly customized advice document for a consumer and we are yet to see an example of the approach that ASIC, or in fact AFCA, may take in relation to advice issued by digital-first business models.

End of submission