26 September 2022

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

Consultation: Quality of Advice Review – Proposals Paper

Thank you for the opportunity to respond to the Quality of Advice Review Proposals Paper, dated 29 August 2022.

Insignia Financial has been helping Australians secure their financial future since 1846. Today, we are a business dedicated to the financial wellbeing needs of Australians. With an extensive network of approximately 1,600[1] financial advisers, we are also one of Australia's leading superannuation fund providers with more than $297.5 billion in Funds Under Management and Administration (FUMA) as at 30 June 2022, and over 2 million clients throughout Australia. Insignia Financial is an organisation committed to looking after and securing the future of its clients and members with an ambition to create financial wellbeing for every Australian.

As an organisation we view the Quality of Advice Review as an opportunity to ensure quality advice is affordable and accessible for more Australians, improving their financial wellbeing. We are generally supportive of the concepts outlined in the Proposals Paper and are of the view they will improve the affordability and accessibility of quality advice which, as the proposal paper acknowledges, the current system is not delivering.

We also recognise the importance of the proposals working together as a package. Removing any one element could impact the efficacy of other elements and may not work as intended.

Consumer protection is vital to ensuring consumers feel and are adequately protected whenever they receive information and advice. These protections need to be balanced with the benefits consumers receive from having access to affordable services. We believe consumers are substantially better off getting good advice rather than receiving none at all.

The law recognises the need to strike the right balance given a main objective of the law is to promote "confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services" (s760A of the Corporations Act). Consumers want and deserve the confidence they get from consumer protections, and they also want access to good services, including advice.

[1] Adviser numbers for the Insignia Financial network were 1,600 as at 30 June 2022 (Source: *Insignia Financial Annual Financial Report* - 30 June 2022)

In addition, we would like to note the following:

- We believe the proposals, if enacted, in conjunction with the following existing consumer protections will provide an appropriate and high level of consumer protection [in most scenarios],:
    - Design and distribution obligations
    - AFS and credit licence general obligations (including to provide financial services efficiently, honestly and fairly, to manage conflicts of interest and to ensure representatives are adequately trained and competent)
    - Prohibition of misleading and deceptive conduct; and
    - Anti-hawking

- In addition to these important protections, “relevant providers” will continue to be obligated to comply with the Code of Ethics, including the requirement to act in the best interests of their clients and to meet educational and training requirements.

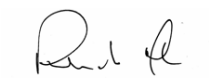
- Non-relevant providers should not be required to meet the same education standard as relevant providers, however there should be a specified and standardised minimum training requirement. Consumers of this form of advice should have the confidence it is provided by individuals who have met a minimum and standardised level of training. Further consideration to the training standards for providers of personal advice, who are not relevant providers, is required to ensure consistency.

- Further consideration should be given to the terminology of “relevant provider” and non-“relevant provider”. It is important for consumers to understand who is giving them advice and what they can expect from them, and these terms will not be meaningful for consumers. Important differences between the two terms, including the different obligations attaching to the two classes of adviser, are even less likely to be understood by consumers.

- The current restrictions on the use of the terms "financial adviser" and "financial planner" should continue to apply so only relevant providers bound by the professional standards obligations and the Code of Ethics should be permitted to use these terms. A separate and distinct term should be adopted for non-relevant providers of personal advice.

Please find following our responses to the specific questions posed in the proposals paper. If you have any questions in relation to the submission, please contact Francine McMullen via email at Francine.Mcmullen@insigniafinancial.com.au.

Yours Sincerely,



Renato Mota

Chief Executive Officer

Insignia Financial Ltd

Questions
Intended outcomes
1) Do you agree that advisers and product issuers should be able to provide to personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?
Yes. Please see our subsequent responses for further details on our views.
What should be regulated?
2) In your view, are the proposed changes to the definition of 'personal advice' likely to: **a) reduce regulatory uncertainty?** **b) facilitate the provision of more personal advice to consumers?** **c) improve the ability of financial institutions to help their clients?**
a) Yes. We consider the proposed changes to the definition of 'personal advice' are likely to reduce regulatory uncertainty. Determining when a provider 'has or holds' information about the client's objectives, needs or any aspect of their financial situation should be more certain than the test today of whether the provider has 'considered' or might reasonably have been expected to have 'considered' one or more of the client's objectives, financial situation or needs. Subject to the following points, we think the provider 'having or holding' information is an appropriate test: • We query the proposed identity of the 'provider' ie whether it is proposed to be the individual providing the advice (as is often considered to be the case in relation to the existing definition of personal advice in s766B(3)) or the advice licensee who the individual represents. The identity of the provider seems to be an issue of significance for the Proposals Paper insofar as it may affect important questions including who 'has or holds' information and who owes the obligation to provide 'good advice'.

- We also query whether a clarification should be proposed to the verbs 'has or holds' which would carve out, explicitly, any personal information held by the provider the use of which would not be permissible under the *Privacy Act 1988* (Cth). In particular, Australian Privacy Principle 6 might limit the use a provider could make of a person's previously collected personal information to circumstances where the person has 'consented' (within the meaning of that Act) or would 'reasonably expect' the provider to use it in that way. Where a person has not consented, or has actively asked for their personal information not be used, we would have a concern that the proposal would operate to require its use in contravention of that Principle.
- One area where the proposals in their current form will potentially create uncertainty is how the personal advice obligations will apply to mass marketing or one to many communications where the provider has or holds information about a person, for example advertising, investment research, marketing campaigns or client seminars. We request that further consideration be given to how the proposals are intended to apply in these scenarios (notwithstanding the existing provisions that will continue to apply such as DDO, anti-hawking etc).

As noted in the Proposal Paper, the proposals are intended to work together. We agree this is critical. Whilst the definition of 'personal advice' itself is likely to be more certain, it is equally as important that the obligations which are proposed to attach to the provision of personal advice also provide sufficient certainty.

b) Yes. We consider the proposed changes to the definition of 'personal advice' are likely to facilitate the provision of more personal advice to consumers.

The proposed definition of personal advice is broader than the current definition. As a result, many consumers who today receive "general advice" would, under the proposed changes, receive "personal advice".

We do not think the proposed change to the definition will have a significant impact on consumers who currently receive personal advice.

c) We consider the proposed changes to the definition of 'personal advice' are in many cases likely to improve the ability of financial institutions to help their clients, but in some cases it might cost more to do so.

We agree with the observations made in the Proposals Paper that many of the concerns faced today arise due to the obligations attaching to personal advice, rather than the definition itself. To avoid potentially providing personal advice with the additional disclosure obligations that attach, organisations who wish to provide general advice today avoid asking questions and engaging with consumers using information they hold about a customer. We support changing the obligations which attach to the provision of personal advice to allow providers of advice to use information they have to tailor the advice they provide to their customers. We consider this will more likely result in consumers being provided with advice that is helpful and relevant to their needs. We say more about this in our response to Question 5 below.

3) In relation to the proposed de-regulation of 'general advice' - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?

a) **If not, what additional safeguards do you think would be required?**

There are two scenarios to consider:

1. Where the unregulated "general advice" is provided by an unlicensed person (ie a person who is not an AFS or credit licensee or a representative of a licensee). Although there are likely to be sufficient safeguards in many cases, on balance we think the remaining consumer protections may not be sufficient in all cases.
2. Where the unregulated "general advice" is provided by a licensee or a representative of a licensee. We feel more confident there will be sufficient safeguards in this scenario (as compared to the first scenario) since it reflects our current experience.

In relation to the first scenario, we would not go as far as the Proposals Paper does to say that "it is difficult to see how the regulation of general advice (as a financial service of itself) provides *any* benefit to consumers" (p13; our emphasis). Regulating general advice to ensure only licensed persons can provide it benefits consumers given:

- Licensed persons are legally required to be trained and competent to provide that advice as compared to unlicensed persons and
- Consequently, the advice provided by licensed persons is held to a higher standard as compared to advice provided by unlicensed persons. Regulated persons must also be supervised by ASIC and be subject to the conditions of that licence and the general obligations attaching to it (eg s912A of the Corporations Act).

In our view, removing that benefit to consumers may result in the remaining safeguards being insufficient. We note three relevant matters which we think ought to be considered in light of the loss of that benefit:

i. **The proposed amended definition of "personal advice"**
As stated in response to Question 2 above, the proposed definition would capture a significantly broader range of advice than is currently captured, primarily because the definition will capture where the advice provider merely "has" information personal to the client rather than, as is currently the case, "considered" (or reasonably appears to have considered) that information. With the broadening of the definition in this way, the scope of activity that is currently "general advice" shrinks (see s766B(4) of the Corporations Act).

ii. **The level of risk attaching to "general advice"**
"General advice" poses a significantly lower level of risk to a consumer as compared to "personal advice". That is primarily because, in our experience, a

consumer who receives general advice is much less likely to act on the advice as compared to a consumer who receives personal advice. We would not expect that to change even if "general advice" were to be de-regulated. Furthermore, even if a consumer were to act on "general advice" we think the proposed changes to the "personal advice" scope and obligations are likely to mean the consumer would be able to make enquiries in the nature of personal advice before acquiring or disposing of the financial product or service the object of the general advice.

iii. **The level of consumer protection which would remain even if that advice were to be de-regulated**

We agree with the Proposals Paper that the prohibition on misleading or deceptive conduct would apply to de-regulated "general advice". That prohibition provides, in our view, protection of extremely wide application. The prohibition applies in respect of acts or omissions. It applies in respect of written and verbal representations. It applies in respect of conduct in fact misleading or "likely" to mislead. A breach of the prohibition allows a person who has suffered loss to seek compensation, including against any third person "involved" in the breach. If sufficient multiple persons have suffered loss, in many jurisdictions, a breach of this prohibition can found a representative proceeding (ie a class action). Separately, regulators can also seek large civil penalties for breaches (see, eg, s12DB of the ASIC Act; ASIC v Dover Financial Advisers Pty Ltd [2019] FCA 1932, [91] (O'Bryan J)). For these reasons the prohibition against misleading or deceptive conduct provides very substantial consumer protection.

We would also note that, even if "general advice" were to be de-regulated, consumers would continue to enjoy the consumer protection currently applicable in respect of the persons who deal in the financial products and services the object of the advice. Those persons would continue to be required to be licensed and subject to the various obligations attaching to the licence. They could not remunerate the person providing the de-regulated "general advice" in breach of the conflicted renumeration provisions. They could not offer the product in breach of their design and distribution obligations. Various consumer protection provisions also apply to any contract entered into.

In the second scenario, even if "general advice" were to be de-regulated, the licensee who provides (or whose representative provides) that advice would remain subject to its licence related obligations, including importantly the general obligations stated in s912A of the Corporations Act. As noted at page 13 of the Proposals Paper, these obligations include the obligation to do all things necessary to ensure the "financial services are provided efficiently, honestly and fairly". Although the advice would no longer be a "financial service", the obligation would continue to have application given the broad definition of the "provision of a financial service" in s766A of the Corporations Act. Other general obligations against which the provision of de-regulated "general advice" could be assessed include the obligations to:

- "have in place adequate arrangements for the management of conflicts of interest";
- "take reasonable steps to ensure that its representatives comply with the financial services laws" (which "laws" are defined broadly in s761A of the Corporations Act, and include the prohibition (contained in multiple laws) against misleading or deceptive conduct); and

- "ensure that its representatives are adequately trained".

Ten of the general obligations (including those referred to above) are civil penalty provisions attracting large civil penalty liability (s912A(5A) of the Corporations Act).

In addition, a licensee providing "general advice" would be subject to the same protections as would apply in the first scenario. In our view, in the second scenario consumers would continue to enjoy a high level of consumer protection and one which is substantially the same as the level they currently enjoy.

a) Separate to the proposal to license what is currently "general advice" outlined above, we also propose minimum training standards for non-relevant providers. We have outlined this in our response to Question 8.

It is important that consumers understand who is providing the personal advice and the education and ethical standards that person is held to. As such, it is important that the current restrictions on use of the terms "financial adviser" and "financial planner" as set out in s923C of the Corporations Act continue to apply. Only relevant providers bound by the professional standards obligations and the Code of Ethics should be permitted to use these terms. A different specified term should be applied to non-relevant providers of personal advice.

How should personal advice be regulated?

4) In your view, what impact does the replacement of the best interest obligations with the obligation to provide 'good advice' have on:

a) the quality of financial advice provided to consumers?

b) the time and cost required to produce advice?

There are 3 categories to consider.

1) **Personal advice from a professional adviser**: For personal advice given by a professional financial adviser (a relevant provider), we think the change will have little direct impact on the quality of advice provided to clients. This is because relevant providers must still comply with professional standards in the Code of Ethics. As noted in the Proposals Paper, the Code of Ethics covers the same topics as the best interest obligations in Chapter 7, but it does so in different ways.

   However, we strongly support shifting the focus from the process of formulating advice (together with prescribed disclosures) to the content of the advice. We consider the proposal to provide good advice supports this shift in focus. Together with the proposed removal of the obligation to provide a statement of advice, we expect the removal of the best interest obligations in Chapter 7 will give providers more confidence in providing advice in ways that clients want

and reduce the focus on demonstrating compliance with regulatory requirements such as the safe harbour steps. We are hopeful that this will in turn reduce the time and cost required to produce advice, making advice more cost-effective for consumers. We consider the record keeping requirement to maintain complete records of advice and the approach of ASIC and AFCA to regulatory proceedings and complaints will impact significantly on whether savings are in fact realised. The penalties which will apply to breaches of the proposed regime will also be relevant factors in the approach to compliance adopted by licensees.

2) **Personal advice today given by a person who is not a relevant provider:** We acknowledge it might seem that the quality of advice would be adversely impacted by replacing the best interest obligations with an obligation to provide good advice. Our view is consumers will be sufficiently protected by the requirement to provide good advice, in addition to existing consumer protection provisions, particularly the design and distribution obligations.

3) **General advice that becomes personal advice**: As noted above, the change to the definition of personal advice would mean many consumers who today receive "general advice" would in the future receive "personal advice". The good advice test will afford greater consumer protections to those customers than the standards that exist today and is more likely to be relevant and useful to the consumer. Advice that is "reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice provided" is good or quality advice. The time and cost in providing good advice may increase under the proposed changes. The provision of good advice as personal advice will be more onerous in terms of considering the information the provider has about the consumer and additional record keeping and training requirements, all of which may add to the cost of providing such advice. The proposal to require a written record of the advice to be provided on request may also increase the cost of providing advice. There is not currently an equivalent obligation when providing general advice. We would welcome clarification of whether proposal 9 and the ability to request a written copy of advice is intended to apply to the provision of all personal advice, or only personal advice provided by relevant providers. In our view, it should only apply to relevant providers.

We would not support broadening the definition of personal advice and retaining the current best interest and related obligations. We think this would result in organisations choosing not to provide personal advice in many situations and would discourage innovation in digital advice delivery. This outcome would be contrary to the purpose of the review to make advice more accessible and affordable.

5) Does the replacement of the best interest obligations with the obligation to provide 'good advice' make it easier for advisers and institutions to:

a) provide limited advice to consumers?

b) provide advice to consumers using technological solutions (e.g. digital advice)?

a) **Limited Advice** - We have considered the impact of the proposed changes for limited advice in relation to who provides the advice:

i. **Personal advice from a professional adviser**: We do not think the proposed changes will significantly change the considerations which apply today to the provision of limited or scaled advice to clients of relevant providers. For relevant providers, replacing the best interest obligations with the obligation to provide good advice will ensure the focus shifts from a process driven compliance framework to one that more correctly focuses on the outcome for clients. We note, however, relevant providers will still be bound by the Code of Ethics which will require them to act in the best interests of their clients and to actively consider a client's broader, long-term interests and likely circumstances.

ii. **Personal advice today given by a person who is not a relevant provider:** Yes, we think it will. In our experience, process driven requirements to demonstrate compliance with the safe harbour steps has meant providers have been reluctant to give limited advice. The obligation to provide good advice will ensure the focus shifts from a process driven compliance framework to one that more correctly focuses on the outcome for clients and the need for advice on a particular topic.

iii. **General advice that becomes personal advice**: For advice providers that currently only provide general advice, the requirements will be greater than they are today. Under the proposed framework, this would be personal advice and, where information is held about an individual, it will require that information to be considered when providing that advice. This will require additional training and additional records to be created and retained. Whilst this may increase the cost to provide this type of advice, it will ensure recipients of that advice will receive information that is likely to be more relevant to them.

b) **Digital advice**: The proposed changes will make it easier for institutions to provide digital advice given it is outcomes focused. The current best interest obligations, and in particular the safe harbour steps, are not currently well suited for digital advice. ASIC's Regulatory Guide 255 provides good guidance on many aspects in providing digital advice. However, in relation to best interest obligations, it only states that Best Interest Duty applies but doesn't explain how it applies and what the requirements are.

6) What else (if anything) is required to better facilitate the provision of:

a) **limited advice?**

b) **digital advice?**

Personal advice from a professional adviser: For relevant providers, Standard 6 of the Code of Ethics should be reviewed to better enable the provision of limited advice to their clients. The obligation to "take into account the broad effects arising from the client acting on advice and actively consider the client's broader, long-term interests and likely circumstances" may be at odds with a client's desire to obtain advice about a limited topic. In our experience, the Standard materially contributes to licensees and advisers only being willing to provide clients with comprehensive advice, increasing the cost of that advice to consumers.

Personal advice today given by a person who is not a relevant provider (including digital advice): Because 'good' advice shifts the focus from the advice process to the outcome, we think there is sufficient flexibility within the proposed changes to support the provision of limited and digital advice by people other than relevant providers. We have made comments above about the potential impacts broadening the definition of financial advice will have on record keeping, training requirements and the ability to request a copy of the advice provided and which in turn will impact on the cost of advice to consumers. In our view, those factors apply equally to limited and more comprehensive personal advice given by someone other than a relevant provider. Our concerns that Standard 6 of the Code of Ethics drives providers to give comprehensive advice does not apply to this category of advice.

7) In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:

a) **the quality of financial advice?**

b) **the affordability and accessibility of financial advice?**

Please see our response to question 4 under the heading "Personal advice from a professional adviser".

The definition of a 'relevant provider' is important. It determines when the professional standards apply. As noted in the Proposal Paper, the application of professional standards where advice is simple is unnecessary and may act as an impediment to the provision of personal advice.

There are two elements of the proposed definition of 'relevant provider' which we think may capture activities not intended to be subject to professional standards:

1. An individual is a relevant provider where "there is an ongoing advice relationship between the adviser and the client".
2. An individual is a relevant provider where "the client has a reasonable expectation that such a relationship exists".

In our submission to the Issues Paper, we expressed the view that the definition of financial product advice should be entirely objective. We now make the same submission about the subjective element of the definition of relevant provider. Increasingly, the same staff member in a call centre or member services team will provide end to end service for the customer. This means they may assist a customer with multiple queries and provide advice in relation to several matters, potentially during multiple calls. We do not consider that this type of interaction should result in the staff member becoming a relevant provider, even if the client considers there to be an ongoing advice relationship.

The Proposal Paper notes that personal advice about products that are not 'relevant financial products' (basic banking products, general insurance or consumer credit insurance) could continue to be provided by a person who is not a relevant provider, albeit still regulated. In this case the provider would be required to meet the requirement to provide good advice. We support this position. We recommend applying the same requirements to a relevant provider when providing

personal advice on these types of products. A similar exemption may also be appropriate when recommending a corporate action to groups of clients. We think this will assist in keeping the cost of advice down and is not dissimilar to the approach taken with these types of products today under a modified best interests duty.

8) In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?

a) **If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?**

Licensees are required under section 912A of the Corporations Act to ensure their representatives are adequately trained and competent.

Whilst we don't suggest providers of personal advice under the proposed framework who will not be relevant providers should be required to meet the same education standard as relevant providers, we do believe there should be a specified and standardised minimum training requirement. Consumers of this advice should have the confidence it is provided by individuals who have met a minimum and standardised level of training. Further consideration to the training standards for providers of personal advice, who are not relevant providers, is required to ensure consistency.

ASIC currently states that RG 146 continues to apply to people who provide general advice. To meet the training requirements outlined in RG 146, individuals historically completed a Diploma of Financial Planning (or its equivalent). The diploma was delivered by registered training organisations under a training package that has since been deleted. As such, training organisations no longer offer this qualification.

Whilst we don't think the current standard of RG 146 will likely be sufficient for non-relevant providers who provide personal advice RG 146 knowledge areas could be used as a starting point to build on to create an appropriate training standard for these advice providers. Whilst we don't think non-relevant providers should be bound by the Code of Ethics relevant ethical values in the Code could form part of the training standard for these providers of personal advice.

A formal training package should be developed to encourage training organisations to develop and offer suitable training.

Whatever training standard is set, it is important there is appropriate flexibility for an assessment to be made as to what elements of the training standard are required based on the type of advice that will be required and the advice provider's relevant knowledge, skills and experience. As is recognised in the proposals paper and concepts put forward overly prescriptive requirements have a negative impact on the accessibility and affordability of advice.

Superannuation funds and intra-fund advice

9) Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):

a) **make it easier for superannuation trustees to provide personal advice to their members?**

b) **make it easier for members to access the advice they need at the time they need it?**

a) Yes. Regulatory certainty on these topics will give trustees more confidence to offer (and provide) personal advice to members about their interests in the fund and consider information about the member that is relevant to their interests in the fund. Together with the other proposed reforms (subject to the following comment), we consider the changes will make it easier for trustees to provide personal advice to members, either directly or by referring clients to a financial adviser.

We query, however, whether the collective charging by a superannuation fund trustee of advice fees as proposed in Proposal 6 is intended to result in the advice to a member being provided by a "relevant provider". On one view, this would likely result in a reduced accessibility to advice by members of superannuation funds.

We agree with the observations in the Proposals Paper that although the proposals will enable a trustee to provide advice to members in a broader range of circumstances, a trustee's willingness to do so will be impacted by their duties to members and other SIS Act requirements including the sole purpose test. A member seeking advice about matters outside their interest in the fund will need to obtain it from another provider.

b) As noted in our earlier submission, under the proposed reforms we consider around 60% of members may still be unable to obtain the advice they seek.

Disclosure documents

10) Do the streamlined disclosure requirements for ongoing fee arrangements:

a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?

b) negatively impact consumers, and if so, how and to what extent?

a) Yes. Removing the requirement to provide an FDS and ongoing fee arrangement requirement will reduce the regulatory burden on advisers and the cost of providing advice. This will in turn improve the affordability and accessibility of advice.

b) Removing these requirements will not have a negative impact on customers. In our experience, clients are focused on what fees will be incurred in the future and what services they will receive. The requirement for clients to consent annually to ongoing advice fees is an appropriate consumer protection mechanism. It affords clients the opportunity to consider, at least annually, if they wish to continue paying for ongoing advice. It is also important to ensure clients continue to have flexibility in how they pay for advice under any proposed changes, for example, clients who wish to pay by instalments should have the flexibility to continue to do so.

11) Will removing the requirement to give clients a statement of advice:

a) reduce the cost of providing advice, and if so, to what extent?

b) negatively impact consumers, and if so, to what extent?

Please see our response to question 4.

12) In your view, will the proposed change for giving a financial services guide:

a) reduce regulatory burden for advisers and licensees, and if so, to what extent?

b) negatively impact consumers, and if so, to what extent?

a) Yes, allowing advice providers more flexibility in the way they provide information to consumers will reduce the regulatory burden for advisers and licensees. We think the benefit will only be marginal because FSGs are typically provided to clients in electronic form and are often made available on their website.

b) We do not think the proposal will negatively impact consumers. It is not proposed to change the information in an FSG. Consumers will be directed to where the information can be obtained.

Design and distribution obligations

13) What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:

a) **the design and development of financial products?**

b) **target market determinations?**

a) There would be negligible impacts to bring new products to market if the proposed amendments were to be implemented. We believe that the proposed changes would put the onus properly on the product issuer to determine out of market distributions. The product issuer has the ability to change the product in response to complaints directed onward from financial advisers. This is a logical change and one which we support.

b) It will reduce the additional reporting obligations on distributors. We support the view that relevant providers should only report the number and nature of complaints. This information is relevant in assisting product issuers to determine if changes are necessary to product design and the Target Market Determinations. We also support the view that the law should be amended to prevent product issuers from imposing additional reporting obligations on relevant providers through Target Market Determinations. These proposals will reduce the design and distribution monitoring and additional reporting obligations, which should ultimately increase the affordability of advice to consumers.

Transition and enforcement

14) What transitional arrangements are necessary to implement these reforms?

The reforms being proposed are substantial and will require an adequate transition period to implement. We suggest a period of at least 12 months. Once the reforms commence, we think it would be appropriate for ASIC to adopt, as they did for FOFA and DDO, a facilitative compliance approach. It would be appropriate to consider if and how any breach reporting obligations should apply to any reforms that are implemented.

Given the interrelated nature of the reforms, it is important that all proposals are introduced at the same time.

There should also be the option to opt-in to adopting the reforms earlier if a business is ready to do so given their potential benefits.

General

15) Do you have any other comments or feedback?

a) Further consideration should be given to the terminology of "relevant provider" and non-"relevant provider". It is important for consumers to understand who is giving them advice and what they can expect from them. Important differences between the two terms, including the different obligations attaching to the two classes of adviser, are even less likely to be understood by consumers.

b) In relation to enforcement more generally, we look forward to any proposal which considers any intended operation of the civil penalty regime to these proposals. In our view, any operation of the penalty regime to these proposals should be fair and proportionate, having regard to:

   i. the nature and scale of the businesses operated by authorised representatives and advice licensees

   ii. the calculation of penalties which may be imposed under that regime (as set out in s1317G (including with reference to the definition of "annual turnover" in s761A))

   iii. ASIC's practice of bringing civil penalty proceedings against authorised representatives and advice licensees for multiple contraventions over multiple periods of time

   iv. the likely impact of those penalties on the businesses operated by authorised representatives and advice licensees

   v. the fact that many of a licensee's general obligations under s912A are already civil penalty provisions (see s912A(5A))

   vi. the fact that the prohibition against "false and misleading" conduct (which operates the same way as misleading or deceptive conduct – see ASIC v Dover Financial Advisers Pty Ltd [2019] FCA 1932, [91] (O'Bryan J)) is already a civil penalty provision and

   vii. the comparable penalty regimes (if any) applicable to other industries which provide "advice" to customers (eg legal advice).