



FINANCIAL
SERVICES
COUNCIL

ASIC Consultation Paper 332: Promoting access to affordable advice for consumers

FSC Submission

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1. About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advice licensees and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2. Executive Summary

The FSC welcomes the opportunity to submit to *ASIC Consultation Paper 332: Promoting access to affordable advice for consumers*. It has had ongoing engagement with ASIC on this issue. The FSC seeks an advice process that leaves consumers in a better position than when they began it.

Better utilising the existing regulatory framework governing financial advice is a positive step, however it is possible legislative change might be needed in future to most effectively address the issues ASIC seeks to resolve. The FSC has provided feedback on scaled advice provision last year (see Section 8) recommending consistency with FASEA's Guidance on the Code of Ethics, the Corporations Act, and Regulatory Guidance.

It also recommended a pilot of the use of a Record of Advice (**ROA**) for scaled advice provision and updates to *RG 244: Giving information, general advice and scaled advice* and *RG 90: Example Statement of Advice: Scaled Advice* for a new consumer. This submission builds on those initial proposals with additional recommendations for resolving the barriers, costs and issues associated with the provision of personal and digital advice. These recommendations include:

- Consideration of the applicability of the safe harbour steps to the provision of limited/scaled advice be recommended by ASIC as part of the Review of the Quality of Advice in 2022 and that the timing of this review is brought forward.
- Additional updates to the following regulatory guides:
 - RG 244: Giving information, general advice and scaled advice¹
 - RG 255: Providing digital financial product advice to retail clients²
 - RG 90: Example Statement of Advice: Scaled Advice for a new client³
 - RG 175: Licensing: Financial product advisers Conduct and disclosure⁴
 - RG 255: Providing Digital Advice⁵
- Data standardisation to generate efficiencies, innovation and the adoption of technology while ensuring competent regulation of the industry;
- The production of holistic, educational industry standard materials to support compliance;
- Clarification of ASIC and APRA's Joint Letter regarding the Sole Purpose Test and its applicability to financial advice; and
- The need for specific guidance on what is considered strategic financial advice.

¹ [RG 244 Giving information, general advice and scaled advice | ASIC - Australian Securities and Investments Commission](#)

² [RG 255 Providing digital financial product advice to retail clients | ASIC - Australian Securities and Investments Commission](#)

³ [RG 90 Example Statement of Advice: Scaled advice for a new client | ASIC - Australian Securities and Investments Commission](#)

⁴ [RG 175 Licensing: Financial product advisers—Conduct and disclosure | ASIC - Australian Securities and Investments Commission](#)

⁵ [RG 255 Providing digital financial product advice to retail clients | ASIC - Australian Securities and Investments Commission](#)

3. FSC Recommendations

1. The scheduled Government-led review of the Safe Harbour steps pertaining to the provision of financial advice to be conducted by June 2022, consider the applicability of these steps to scaled advice.
2. The timing of the Review of the Quality of Advice should be brought forward with regard to other reviews of advice being conducted by industry and government currently.
3. ASIC work with industry to revise *RG 244 Giving information, general advice and scaled advice* and *RG 90 Example Statement of Advice: Scaled advice* for a new consumer with clearer language and more detailed and specific examples pertaining to the provision of scaled or limited financial advice.
4. *RG 175: Licensing: Financial product advisers* is updated to reflect the FASEA Code of Ethics.
5. *RG 244: Giving information, general advice and scaled advice* is updated to include
 - a. specific examples where retirement advice is scaled for clients that include examples of the scoping process required when providing scaled or “limited” advice in these scenarios
 - b. Additional examples pertaining to risk and protection advice that is scaled.
6. APRA and ASIC letter on the sole purpose test is clarified in relation to scaled advice provision.
7. ASIC work with industry on measures to standardise industry data to reduce the cost of providing financial advice.
8. ASIC develop industry standard product information and educational materials to better assist the consistency and compliant provision of financial advice.
9. ASIC develop specific guidance on what is considered strategic financial advice.
10. *RG 255 Providing digital financial product advice* be updated to better enable the provision of compliant digital advice with the FSC’s proposed considerations and consulted on further with industry in 2021.

4. Safe Harbour steps and scaled or limited advice

4.1 Challenges facing the financial advice sector

Laws and regulation are driving up the cost of financial advice in Australia and placing it out of reach for Australians who need it most and this must change. Despite the improved financial and wellbeing outcomes it offers consumers, and the long-term flow on benefits this has for the economy (e.g. estimated reductions in government expenditure on the Age Pension as a result of more consumers seeking advice), advice is further out of reach than ever for consumers, most at risk of poor financial decisions and the lasting consequences this has for them and their families.

The cost of providing that advice today (even scaled/limited scope) is significantly higher than what consumers are prepared to pay. Unless that can be fixed, the unsatisfied demand for advice will continue to exist. A high upfront cost of advice is likely to discourage certain consumers from obtaining the advice they need.

There is a need to significantly improve the processes, rules and regulations around scaled and limited scope advice, this includes the need to simplify advice documents, make them simpler and easier to produce and understand. While consumers may be engaged, they often do not see the need for the complexity in advice processes especially through an independent financial adviser. This can be frustrating for consumers trying to address their immediate advice needs.

4.2 Applicability of the Safe Harbour Steps to scaled advice

The fundamental obligation on advice provision is the Best Interest Duty (**BID**). The safe harbour steps established in subsection 2 of Section 964B of the Corporations Act, and explained in RG 175, have become an entrenched seven step process for meeting this obligation. The safe harbour steps, when introduced, were intended as *one* way by which advice could be deemed legally compliant with BID. Codification of the steps in the Corporations Act and RG 175 mean the steps are now the *only* way by which the industry can comply with its legal obligations when providing personal advice.

There is a demonstrable benefit to the safe harbour steps with regard to their application to complex or comprehensive personal advice, where a wider set of a consumer's circumstances must be taken into account for the advice to be compliant.

However, BID can be difficult to meet for limited or scaled advice without considering the consumer's full relevant circumstances. In particular, the following paragraphs within RG 244 are not clear:

- *RG244.71: 'You can adjust the level of enquiries to reflect the nature of the advice sought'; and*
- *RG244.72: 'In general, as the complexity of a client's relevant circumstances increases, it is likely that you will need to expand the scale of your inquiries'.*

Without being able to demonstrate that reasonable enquiries have been made (under the above guidance), it is difficult to make an assessment as to whether it is appropriate to provide limited advice in the consumer's best interest. This uncertainty regarding the extent of reasonable enquiries tends to result in superfluous, lengthy and onerous processes to

demonstrate an understanding of the consumer's circumstances under the above guidance (including broader long-term interests and likely future circumstances).

Certain limited advice strategies have broader effects which cannot be effectively scoped out of the advice in the consumer's best interest, thus requiring more costly advice to be provided. For example, superannuation consolidation advice will generally require consideration of consumer's existing insurances held within the consolidation process. This has been particularly apparent to some Members since the implementation of the Putting Members Interest First (**PMIF**) and Protecting Your Super Package (**PYSP**) changes.

This process might not be considered necessary in cases of scaled or simple advice. Moreover, compliance with the safe harbour steps does not necessarily mean advice is in a consumer's best interests – the primary legal obligation when providing personal advice. The application and communication of this guidance from ASIC is further complicated at a practical level when considering the FASEA Code of Ethics that has been legislated since RG 175 was issued.

This can have the perverse outcome of an adviser clearly acting in the best interests of the consumer, but not having met the administrative requirements of safe harbour and being deemed to have breached BID. This results in investigations by the licensee which have shown that the advice was likely to place the consumer in a better position and that they did not suffer any detriment. The costs of these investigations are inevitably borne by the consumer.

ASIC's COVID-19 relief was difficult to rely on, particularly for new consumers given the amount of information required to be collected to meet BID. There was lower uptake of \$300 ROA relief amongst authorised representatives of licensees (*See Question 10 of the Appendix*). This is because most advisers would be unlikely to be able to provide the advice, including producing the advice document and maintaining the records required to support that advice, for \$300. There was a greater number of advisers that relied on the COVID-19 relief in respect of using an ROA despite there being a significant difference in the consumer's circumstances as a result of COVID-19.

4.3 Implementation of Royal Commission Recommendation 2.3

The onset of the COVID-19 pandemic, and the adoption of new regulatory standards and legislative requirements suggests a closer look at how the safe harbour steps are applied is needed.

The Financial Services Royal Commission (**FSRC**) in Recommendation 2.3 sought that a Review of the Quality of Advice take place by Government in consultation with ASIC by June 2022 and that this review consider modification of the safe harbour steps.⁶ Industry cautions

⁶ Recommendation 2.3 Royal Commission, Final Report Pages 177-78: *"In three years' time, there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. The review should preferably be completed by 30 June 2022, but no later than 31 December 2022. Among other things, that review should consider whether it is necessary to retain the 'safe harbour' provision in section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed."*

the difficulty this presents – safe harbour steps overlay advice provision with an objective rather than subjective test for compliant advice. However, the rigidity of this test, and its implications for the consumer ultimately inhibiting access to advice in their best interests should be within the scope of any review of advice quality.

This FSRC Recommendation was made prior to the onset of the COVID-19 pandemic and its economic impact which has led to an increased focus on freeing up scaled or single-issue advice, and advice in general (the objective of CP332). The FSC affirms this recommendation suggesting scaled advice and the applicability of the safe harbour steps to its provision feature prominently in this review with ASIC's support.

Ensuring the sustainability of these steps and optimal protections for the consumer, the review should examine whether:

- The level of inquiry, as it pertains to scaled or limited advice, be based on the nature of advice provided or the complexity of the consumer's relevant circumstances?
- Does the complexity of the consumer's circumstances preclude the ability to limit enquiries where the nature of advice is limited, yet the consumer has complex relevant circumstances?

ASIC should consider whether the steps required for the provision of scaled or limited advice. It could potentially consider whether advice would be, likely on a reasonable basis, to place the consumer in a better position and is in their best interests; and whether the adviser has met their fiduciary obligations by placing the consumer's interests above their own and any related party. This should turn on matters of fact.

Recommendation: The scheduled Government-led review of the Safe Harbour steps pertaining to the provision of financial advice to be conducted by June 2022, consider the applicability of these provisions to scaled advice.

4.4 Alignment of timeline of the Review of the Quality of Advice

A number of milestones and reviews are underway or are scheduled in the course of the next year for which the Review of the Quality of Advice should have consideration for including but not limited to:

- Implementation of the FSRC-related legislation
- Industry-led development of solutions and reviews of the financial advice industry such as the FSC's Future of Advice project and its Green Paper on Financial Advice
- Australian Law Reform Commission's Review of the Corporations Act and Corporations Regulations expected to be completed in 2023
- Treasury's analysis of financial literacy
- The Department of Social Services' consultation on an industry funding model for financial counselling

Much of this work was planned prior to the onset of the pandemic making a revision of the timeline of implementing Royal Commission recommendation 2.3 and its scheduled delivery more prescient.

More commentary on issues relating to the interaction of the safe harbour provisions with the FASEA Code of Ethics and record keeping requirements is outlined in the FSC Response to Question 1 (*See Question 1 of the Appendix*).

Recommendation: The timing of the Review of the Quality of Advice should be brought forward with regard to other reviews of advice being conducted by industry and government currently.

5. Consistent and clear guidance

Overlap between ASIC Regulatory Guides and the FASEA Code of Ethics requirements has made guidance difficult to apply to all circumstances. Regulatory Guides and the examples these contain are general in nature. Continued engagement between industry and regulators to provide greater clarity and certainty for Licensees will help address these challenges in the interest of providing affordable and accessible advice to consumers. While improved guidance will help Licensees strengthen their guidelines, tools and training, further guidance and additional scenarios should not place further obligations on the current advice process. When law and regulation changes, compliance systems have to adapt to these changes which in turn impacts an advice business' operating costs, and therefore the cost to provide advice.

While some of the proposals relating to the Code of Ethics might not currently sit within ASIC's powers, this will change from June 2021 onwards as the Financial Adviser Standards and Ethics Authority (**FASEA**) is wound up, and its primary responsibilities are transferred to the Financial Services and Credit Panel (**FSCP**) within ASIC and standard setting responsibilities to Treasury.⁷

5.1 Additional proposed updates to RG 244

RG 244 requires an update to ensure its examples are simpler, realistic and to a standard that aids the application of its principles to more nuanced situations with confidence. Specifically, the Guidance is out-of-date and does not account for the FASEA Code of Ethics advisers must comply with, or wholly reflect the guidance given in Appendix 3 of ASIC Report 515⁸. Additional changes beyond those provided in response to Question 2, 16 and 17 of Appendix 1 are set out below:

- **Clarification of 'Critical issues'**: Safe Harbour Step 2 states that the scope of advice does not exclude any 'critical issues'. This requirement is subjective and it would be helpful if ASIC could develop a matrix of advice clearly explaining what 'critical issues' are deemed inappropriate to scope out of advice for particular scaled advice areas.
 - An example of this may be where the consumer is seeking personal insurance advice to protect an immediate need, but does not wish to obtain (or pay for) advice related to superannuation (as is often a request of new home buyers). This scenario often results in consumers opting out of advice altogether rather than obtaining advice to address their single issue concern.

RG 244.63 states 'When assessing whether an advice provider has complied with the best interests duty, we will consider whether a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice provided. For further detail, see RG 175.228–RG 175.235'

- The above guidance could be enhanced to clarify that the concept of a 'better position' could be limited with reference to the limited nature of the advice being provided.

⁷ Australian Government Media Release. December 2020. [Strengthening and streamlining oversight of the financial advice sector | Treasury Ministers](#)

⁸ [REP 515: Financial advice: Review of how large institutions oversee their advisers.](#)

- **Legal obligations:** Table 2 in RG 244.64 states ‘*Use your judgement and training to decide whether, by limiting the scope of the advice, you can provide scaled advice that meets your legal obligations.*’
 - The above guidance should be expanded to include the scenario by where the consumer limits the scale of the advice and where the onus falls on the Financial Planner to use their judgement when determining the appropriateness of limiting the scope of the advice.
- **Development of additional Statement of Advice (SOA) templates:** These should be tailored to specific topics (i.e. limited advice scenarios), which clearly demonstrate the content required. The templates could be supported by Fact Find templates (i.e. Financial Needs Analysis) tailored to specific topics, which also demonstrates the extent of inquiries required.

5.2 Statement of Advice (SOA) and RG 90

A review of the SOA requirements should be undertaken to ensure disclosure does not come at the cost of clear, concise and effective information, that helps consumer determine whether to proceed with advice improving the consumer journey overall.

The current experience with call scripts and guides, as the disclosure requirements for some interactions, undermines a seamless and positive consumer experience and outcome. It also diminishes the ability of the consumer to understand and make an informed decision due to an overload of information and financial jargon.

The content in RG 90 – issued in December 2017 – should align with more recent research on what consumer-friendly advice documents should look like. From a design perspective, this might include concepts such as:

- progressive disclosure,
- design for search and scanning,
- additions of diagrams and charts.

A number of areas have been identified in RG 90 that should be updated:

- RG 90.50 states that ‘*we designed the example SOA based on what we think is good disclosure practice (not best disclosure practice) for an SOA dealing with such a financial advice scenario.*’ While this provides some assurance around the quality of the guidance, it does not provide certainty in the event of legal challenge against a Licensee or include best practice examples to also demonstrate adherence to FASEA Code of Ethics requirements.
- RG 90.28 states that ‘*the level of detail for each matter is generally what a person as a retail client would reasonably require to make a decision about whether to act on the advice: see s947B(3) and 947C(3)*’. While this provides guidance generally, it does not provide certainty in the event of legal challenge against a Licensee or include best practice examples to also demonstrate adherence to FASEA Code of Ethics requirements (in particular what constitutes sufficient information to obtain a consumer’s free, prior and informed consent).
- RG 90.63 states that ‘*while the client file would contain more detailed information about the client’s personal circumstances and financial situation, we did not consider it necessary to include all of this information in the example SOA. We recognise that the level of relevant personal and financial information included in an SOA may vary depending on the scope and complexity of the advice being sought and the circumstances of the particular client.*’ This section could be improved with additional

examples of where more information is needed and how this relates to the advice being sought. It would also benefit from referencing Table 3 (RG 244.73) in RG244, which could be expanded further.

- RG 90.85 states that '*where personal advice is, or may be, based on incomplete or inaccurate information, a warning must be given to the client. If the SOA is the means by which the advice is provided, or the SOA is given to the client at the same time as the advice is provided, the warning may be given by including it in the SOA: see s961H.*' This section could be expanded to provide further clarity around requirements for incomplete or inaccurate information that is not relevant to the advice or subject matter being provided.
- In appendix 2 of RG 90, the example SOA provides details on insurance recommendation and commissions. While the FSC agrees with the concept of a summary, a recommended product overview being placed before the advice recommendations is not necessarily the most appropriate format to aid a consumer's understanding of the financial advice they are receiving.
- Further guidance is needed on the length of the projections and costs in future years detailed in the example SOA within appendix 2 of the Regulatory Guide.

Recommendation: ASIC work with industry to revise *RG 244 Giving information, general advice and scaled advice* and *RG 90 Example Statement of Advice: Scaled advice* for a new consumer with clearer language and more detailed and specific examples pertaining to the provision of scaled or limited financial advice.

5.3 Update to RG 175: Licensing: Financial product advisers

The introduction of the FASEA Code of Ethics imposes a higher level of professional obligations on financial advisers, and indirectly AFSLs. RG175 (last issued in November 2017) has not been updated to specifically accommodate the 12 standards and how they impact a financial adviser's conduct and disclosure obligations. Updating RG 175 for these matters will benefit consumers by improving regulatory compliance across the industry, ensuring advice provided aligns to all legal obligations under the Corporations Act 2001, both Pt 7.7A as well as well as the FASEA amendments.

Recommendation: *RG 175: Licensing: Financial product advisers* is updated to reflect the FASEA Code of Ethics.

5.4 Retirement advice

A substantial trigger for advice is the need for advice on retirement. However there is disagreement about which aspects of this advice would fall within scaled advice or more comprehensive personal advice. This could be resolved through better examples provided by ASIC that sit outside the framework of intra-fund advice. For example, guidance needs to help advice businesses understand consumer with simple needs.

5.5 Risk and protection advice

Advice on risk and protection is also an area for which better guidance on limited advice would be useful.

RG244 contains one life insurance example provided, which focuses on intra-fund advice given by a super call centre. The Regulatory Guide should include:

- An example of how limited advice may be provided for consumers who are seeking to make changes to their life insurance cover.
- An example of how scaled advice could assist with risk is the growing gap of unprotected mortgages with the removal of Consumer Credit Insurance (CCI) from the market. Advice that focuses on protecting the risk created by a new debt would be really valuable to Australians

Recommendation RG 244: *Giving information, general advice and scaled advice* is updated to include:

- a. specific examples where retirement advice is scaled for clients that include example of the scoping process required when providing scaled or “limited” advice in these scenarios.
- b. Additional examples pertaining to risk and protection advice that is scaled.

5.6 Intra-fund advice

Enhancing the availability of superannuation and retirement advice to consumers at low or no cost, that can meet more consumer’s needs, will ensure better access and affordability of advice. For many consumers going to their super fund is a way to access advice however it is unclear what steps should be taken for providing this advice in a number of scenarios.

For example, if there is a partner involved it is not explicit that an adviser needs to consider their circumstances and compliance with the sole purpose test.⁹ There is a fine line between what advice satisfies the requirements of the sole purpose test and what advice does not. A particular scenario is when there are elements outside the subject of the advice necessary to the provision of that advice in relation to the interest in the fund. The limited guidance available has not been refreshed since 2001.¹⁰ Clarification of a joint letter from ASIC and APRA has been anticipated for some time and movement on this would be welcome from industry. This clarity should ensure a level playing field across industry and clarify:

- Who can provide intra-fund advice, for example advisers operating in self-employed practice¹¹
- What advice this can include

Recommendation: APRA and ASIC letter on the sole purpose test is clarified in relation to scaled advice provision.

At present, superannuation funds need to carefully navigate personal advice delivery in light of:

⁹ SIS Act

¹⁰ The SUPERANNUATION CIRCULAR NO. III.A.4 issued in 2001. (Source: [OSS Act and SIS Act Ancillary Purposes Compared Appendix A \(apra.gov.au\)](#))

¹¹ For example, does the licensee need to be owned by the product manufacturer or could another licensee limit their advice to intrafund advice and invoice the superannuation fund for the intrafund advice provided.

- Section 961 of the Corporations Act 2001, and
- Section 99F of the Superannuation Industry Supervision Act 1993 (**SIS Act**); and
- the FASEA Code of Ethics (s921 of the Corporations Act 2001).

A superannuation fund might not provide advice to members on their cashflow and debt management or Centrelink optimisation. However, in order to meet BID and the FASEA Code of Ethics requirements, they are permitted to ask appropriate questions on these and other areas to determine if appropriate intra-fund advice can be provided.

ASIC should provide more detailed guidance in consultation with APRA in ASIC Information Sheet 168 in relation to compliance with Section 99f of the SIS Act and the ability to provide superannuation members with ancillary, supportive 'strategic advice' on issues such as cashflow and debt management (i.e. non-financial product advice) and Centrelink optimisation which supports intra-fund advice providers to meet a consumer's primary objective to receive superannuation accumulation retirement planning advice.

If superannuation funds who deliver personal intra-fund advice could provide ancillary, supportive advice in a Statement of Advice or Record of Advice on cashflow, debt management (e.g. we recommend you withdraw \$X from superannuation and \$X from your cash reserves to pay out your home loan at the time of your retirement), and Centrelink optimisation without concern of potentially breaching these provisions for the primary purpose of providing quality retirement planning advice, it would greatly improve consumer experience, increase advice accessibility and remove perceived or actual barriers to delivering quality, simple advice collectively charged to superannuation members. A scenario in Example 8¹² of RG 244 appears to indicate that Centrelink advice can actually be provided within the Intra-fund advice scope. This should be clarified.

A broader response on this issue from the FSC is set out in Question 5 of the Appendix.

5.7 Terminology

The terminology should convey to a consumer the nature of the advice they are to receive. On that basis, other than limited advice, other terms as proposed would not necessarily convey to a consumer not familiar with the lexicon of the financial services industry, the nature of the advice they will be receiving.

¹² *Example 8 in RG presents a scenario of a Member calling their super fund for advice on whether should make a lump sum withdrawal from his pension account or use his home loan redraw facility to maximise his age pension entitlements. In the SoA, the adviser recommends the member draw down a lump sum from his pension account to fund the \$25,000 he needs for home renovation and commented that "The reason we recommend this is that, according to our calculations, if you use funds from your pension account, you will reduce the amount of your assets that are assessable under the Centrelink assets test and will be entitled to a pension of \$499.00 per fortnight, which is \$37.50 more than you are receiving now. If you were to use funds from your home mortgage redraw facility, your age pension entitlement would not alter, but you would have to make payments into the mortgage account to repay the additional \$25,000 borrowed." The fee section of the Statement of Advice then outlines that 'This advice was provided at no additional cost to you. It is part of our overall member service'.*

Changes in terminology should accompany changes in other advice terms, definitions or classifications. There are however definitional issues that persist for which ASIC could consider, such as the precise boundary between scaled and intra-fund advice that is not necessarily clear to the consumer.

If ASIC determines a change to the name scaled advice is necessary, limited advice would be preferable by the FSC as best resonating with consumer awareness and understanding.

6. Personal Advice

6.1 Data standardisation

Data standardisation across the industry would contribute significantly to reducing the operating costs of licensees and advice providers, thereby reducing the cost of advice for consumers across all spectrums of advice, from limited advice to comprehensive advice. For example, IT systems used to support compliance systems have to be updated with changing legislative or regulatory requirements. This adds to the cost of operating an advice business that could be reduced through better industry data standardisation.¹³ Members have noted the considerable cost of software, along with other overheads such as staff. Improvements to systems to achieve business efficiency, or improved consumer outcomes, are put aside in order to make changes to keep the software in line with legislation.

Data standardisation could offer a range of benefits that include:

- 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 payments 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
- Improved compliance outcomes
- Optimisation of the algorithms that are needed for automated simple advice

Currently, data is fragmented across the industry, resulting in a lack of innovation and adoption of technology. The lack of certainty about how to interpret compliance requirements, again stymies investment in digital developments because of the significant risk premium.

Data analytics should be used proactively to highlight how advice could help a consumer at particular 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 individual goals and circumstances. The efficiencies generated by technology will not be properly realised unless there is a significant improvement in data standardisation across the industry.

As well as data standardisation, system improvements, and process simplification should extend through a value chain that works together with the Regulator and Government to address issues of affordability. This could include digitising the end-to-end process more effectively, such as through the use of Application Programming Interfaces (**APIs**) and data-feeds. This would help reduce the cost and time of producing advice documents and make it easier, for advisers to provide advice, implement recommendations and attend to reviews (and make changes as they go) at lower cost.

Please see response to Question 4 in the Appendix on how technology has been used by industry to reduce cost.

Recommendation: ASIC work with industry on measures to standardise industry data to reduce the cost of providing financial advice.

6.2 Industry standardisation of product information and educational material

Industry standard educational material, to which all advice providers could refer consumers for consistent explanations about key concepts, simple strategies and common products would promote common understanding amongst consumers, and create efficiencies in the advice process for advice providers. This could be achieved in several ways:

- **Fact Sheets:** Much of the content of an SOA is often devoted to non-personalised information about products or strategies. It would make sense for these 'fact sheets' to be standard across the industry, and for all advice providers to be able to refer to them / use incorporation by reference to include this educational material in advice documents. ASIC could include this material on its MoneySmart website. Having consistent information and terminology would improve community understanding of the benefits and risks of key strategies. It would also reduce the cost of producing advice documents.
- **Holistic support:** Regular interactions between ASIC and advisers, videos of Q+A sessions from ASIC to advisers, role plays of consumer-adviser interactions (e.g. that demonstrate how the scope of advice could be limited)

For more information on other initiatives for standardising product information and educational materials please refer to Question 18 of Appendix 1.

Recommendation: ASIC develop industry standard product information and educational materials to better assist the consistency and compliant provision of financial advice.

6.3 Strategic advice

Advisers provide strategic and product advice, depending on the needs of the individual consumer. Advisers are most likely to provide both strategic and product advice, as the majority of consumers want help with product selection.

Rice Warner notes in its Future of Advice report¹⁴:

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.

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 considered strategic advice, as it does not involve a product recommendation. If this approach were adopted, there could be a

¹⁴ 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>

market for simple advice to be provided to consumers in relation to existing products, for example, superannuation. This would be akin to intra-fund advice, in the sense that the advice is limited to the consumer's interest in that fund.

Where strategic advice is being provided in relation to products, this should not be an implied recommendation of that product if a consumer decides to implement a strategic recommendation.

ASIC develop specific guidance on what is considered strategic financial advice, its parameters and examples illustrating where that advice is appropriate, that is consulted on with industry, would be welcomed.

Recommendation: ASIC develop specific guidance on what is considered strategic financial advice.

7. Digital advice

Digital advice is expensive and considerably difficult for business' to deliver. Digital advice includes general or personal advice, and has the potential to be a convenient and low-cost option for retail consumers who may not otherwise seek advice. Rice Warner's *Future of Advice* report highlighted that while some consumers are more open to digital advice (namely Gen Y and Z), the majority of people prefer face to face advice.¹⁵ However, COVID-19 has disrupted people's usual means of engagement, and consumers are utilising digital experiences more than compared to pre-pandemic. Complex advice would not be suited to digital advice, unless the consumer had a sophisticated understanding of financial products, and was able to understand the advice provided, without the need for human interaction.

Scaled advice is mostly general in nature and does not provide the direction the client is after. With current disclosure and documentation requirements it is also difficult to deliver this to a "scale" environment and meet both regulatory and consumer expectations.

7.1 Digital Advice and RG 255

Industry would benefit from comprehensive guidance that deals specifically with digital advice. *RG 255 Providing digital financial product advice*¹⁶ attempts to provide some guidance, however the obligations applying to the provision of traditional (i.e. non-digital) financial product advice and digital advice are the same making it less attractive for providers in Australia. Limited advice is not consistently provided to consumers digitally in part due to advice provider focus on consistently complying with all regulatory obligations.

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 as the outdated guidance in RG244 in relation to scaled advice (see above), there is a reluctance to make the upfront investment.

A revision of RG 255 as well as other regulatory levers of digital advice should consider the following issues:

- **Flexibility:** The current requirements for digital advice require many consumers to be triaged out of the process making 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:** Sustainable provision and regulation of digital advice needs to ensure a level playing field in which technological delivery of advice is subject to the same standards that the licensing and disciplinary regime will require of the broader value chain – financial planners, AFSL holders, product providers and other entities. Assumptions as to the quality of advice provision by a machine should be the same across that value chain for example, how a consumer's circumstances might be considered or treated by such delivery modes should be anticipated and finalised language in Regulatory Guidance should clarify this.

¹⁵ Page 13, Future of Advice Report, Rice Warner ([RW-Future-of-Advice-Report.pdf \(ricewarner.com\)](#))

¹⁶ [RG 255 Providing digital financial product advice to retail clients | ASIC - Australian Securities and Investments Commission](#)

- **Application of the Best Interests Duty in a Digital advice context:** While RG255 seeks to address issues relating to the application of the Best Interests Duty it is unclear how a full digital solution might adapt the Code of Ethics.
- **Delivery of Product comparisons and product recommendations:** these can be more difficult to deliver digitally given the requirement to align to a range of consumer needs to a product recommendation. Superannuation topics are inherently complicated and there is limited ability to deliver more complex advice digitally.

Recommendation: *RG 255 Providing digital financial product advice* be updated to better enable the provision of compliant digital advice with the FSC's proposed considerations and consulted on further with industry in 2021.

8. Appendix

Below is a response to a series of questions provided to ASIC in October 2020 relating to scaled advice.

Responses to questions on scaled advice provision

KEY POINTS

- The FSC seeks a two-year trial permitting the use of a Record of Advice (ROA) for the provision of scaled advice and this should be monitored by ASIC
- ASIC should update regulatory guidance (e.g. RG 244) and other instruments as this trial commences, to ensure consistency with the FASEA Code of Ethics and clarity in relation to other issues specified in the below response
- A holistic approach from ASIC will be needed as to the resources and support it provides industry during this trial
- Beyond examples provided in this response and the Appendix, Members can detail further examples at its meeting with ASIC on 15 October. These examples are provided as evidence not of a specific issue but to provide context to the responses given
- The FSC will shortly be making further pronouncements on financial advice launching its Future of Advice research this month and a Green Paper on Financial Advice early next year and would welcome the opportunity to submit to ASIC's upcoming consultation on scaled advice

RESPONSES

1. What are the specific regulatory barriers to providing scaled advice? For example, is it ensuring compliance with legal obligations or, is it due to licensees being concerned about the perceived risk regarding the provision of scaled advice?

General comments

While there are no specific regulatory barriers to providing scaled advice, Licensees are concerned about the perceived risk regarding the provision of scaled advice, closely followed by ensuring compliance with legal, ethical, and regulatory obligations. The concern is risk related. For example, that the personal advice (advice) should have considered a broader range of circumstances for the consumer (i.e. that the scaling is not justified or has been 'directed' by the Financial Adviser) and that the advice will be criticised at a later point in time.

The Corporations Act does not prohibit or prevent the provision of scaled advice. However the regulatory guidance could be clarified further to assist relevant advice providers to understand how to meet their statutory obligations when providing scaled advice means the cost of managing compliance for both advisers and licensees add to the core cost of providing advice to consumers, particularly when the advice is provided by a human (i.e. non-digital). For example, *RG 244 Giving information, general advice and scaled advice* does not adequately cater for FASEA's Guidance on the Code of Ethics ("**the Code**") that has been released in various iterations and currently subject to consultation. While the seventh step of the Safe Harbour provisions has been better defined in *RG 175 Licensing: Financial product advice – Conduct and Disclosure* it is used conservatively causing anxiety in the advice industry when trying to ensure compliance.

The cost of scaled advice is not at a price-point that average Australians are prepared to pay. It is relatively expensive to run a financial advice business in Australia. The education standards and requirements of the Financial Adviser Standards and Ethics Authority (**FASEA**), the cost of technology to facilitate more efficient modelling of advice outcomes, product comparisons and documentation of advice, all contribute to the cost of advice, as do normal business overheads, such as registration and licensing fees, offices, insurance, and equipment. Considering this and the risk premium for providing advice, which arguably does not noticeably decrease for scoped advice (particularly while there is uncertainty about the application of the legislative rules relating to scoping) vis-à-vis holistic advice, there is little to support a business case for a business model built around scaled advice. Limited intrafund advice might be considered an exception in that it can currently be collectively charged for across superannuation fund membership.

The current legislative framework was developed around the giving of product recommendations (hence the legislated term of *financial product advice*, rather than the more generic “financial advice”). As noted above, this imposes onerous documentation requirements on advisers, for all types of advice, regardless of whether or not a financial product is recommended. Given the challenges faced by the advice industry in providing affordable advice to more Australians, ASIC and Treasury should work with the industry to reconsider the current licensing and legislative framework. For example, it may be appropriate to simplify requirements in relation to strategic advice (ie, no product recommendation) and simple advice (to be defined).

The Best Interest Duty and FASEA Code of Ethics: scoping and record keeping

Scoping

A commonly identified challenge in providing scaled advice is uncertainty around how extensive inquiries into a client’s circumstances must be. This results in advisers and licensees being cautious in undertaking or requiring extensive fact finding with clients, before agreeing the scope, which is resource intensive. Advisers are uncomfortable narrowing the scope of advice, for fear that they will later be found not to have acted in the client’s best interests because they excluded areas of advice, even though those areas were not sought by the consumer nor intrinsically linked to the agreed scope.

The FSC acknowledges that the FASEA Code of Ethics does not fall within ASIC’s remit however regulatory guidance should be consistent as to reduce this uncertainty.

Reconciling the Safe Harbour provisions and Standard 6

The catch-all provision of the Safe Harbour steps (s961B(2)(g)) and particularly the introduction of the Code has compounded the uncertainty as to the extent advice can be scoped. Standard 6 of the Code establishes:

You must take into account the broad effects arising from the client acting on your advice and actively consider the client’s broader, long-term interests and likely circumstances.

The broad nature of this standard makes it difficult for advisers to provide advice on one discrete advice need the consumer has sought advice on. This results in more holistic but more costly advice being offered to consumers. For example, an adviser should not be able to ‘scope out’ a broader advice need where there is a reasonable likelihood their advice could cause detriment to a scoped need (e.g. Centrelink or taxation). However, clear

guidance should be provided from FASEA on how this standard relates to scoping, and to what extent scoping is permissible and complying with the standard.

Where a client lodges a complaint to the Australian Financial Complaints Authority (**AFCA**) it has wide-ranging powers to determine any aspect of what the scope of the advice should have been. Standard 6 of the Code uses an insurance example from the guidance that implies an expansive set of considerations an adviser should account for. Determining this is subjective, as such, further clarification on specific areas of advice that could be scaled would be welcome.

The outcome of this uncertainty in relation to scoping is that advisers undertake complete holistic advice discovery with the client. This results in no difference in adviser effort in the consumer discovery phase for scaled advice compared to holistic advice and thus, results in a similar cost base to produce the advice.

It has also meant that consumers are assumed to be incapable of accepting responsibility for the scope of the advice provided to them. Consumers need to instruct the adviser that for some matters the adviser should be able to assume the client understands the impact of excluding these matters unless it is evident this is not the case.

Record keeping

Advisers have a statutory duty to act in the best interests of their client. Section 961B(2) of the Corporations Act provides that an adviser will satisfy that duty if they can *prove* that they have met each of the safe harbour steps set out in that subsection. This has created an undue focus on creating a body of evidence to demonstrate that the safe harbour steps have been met. There needs to be an adjustment to focus more on the outcome of the advice (i.e the appropriateness of the advice – section 961G) rather than documenting the process that has been undertaken to arrive at the advice (proving the advice with an appropriate level of documentation 961B).

Recording information to demonstrate compliance with the best interest duty takes time, and the more time taken to provide advice, the greater the cost. Other professions are not necessarily required to document and evidence their thinking to arrive at a recommendation or series of recommendations to the extent the advice industry is required to. The approach that in the absence of proof, the adviser has not acted in the client's best interests. The level of detail required in advice documents and working papers to evidence that an adviser has acted in the best interests of their client is significant, and thus time consuming. *RG 90 Example Statement of Advice* contains a few different scaled advice scenarios include the financial adviser application of the FASEA Code of Ethics, the industry has only one scaled advice example to model the Statement of Advice from.

ASIC should explain what records or evidence it expects to be included in a client file, including the advice document, to prove that the adviser has satisfied their duty to act in the best interests of the client in a manner that is pragmatic and designed to manage cost – which does not appear to be a consideration. The case studies used to illustrate this should have some complexity such as scenarios where there may be multiple appropriate alternatives, as simple case studies are of minimal value and often do not reflect the reality of client scenarios. Providing examples of client files that would *not* be sufficient to prove that the adviser had satisfied the safe harbour steps would also be useful.

Impact of regulatory obligations on client experience

Managing client expectations versus the regulatory obligations constrains the adviser and consumer experience. Consumers can be quite explicit when seeking advice, however the

processes involved in ensuring obligations are satisfied can result in a delay in the execution of advice, or clients being somewhat unsatisfied with all the perceived unnecessary statements, comments, documentation and confirmations. Much of the advice process is designed around expectations in place for AFSLs to comply (i.e. risk management) not necessarily for the consumer.

Regulatory guidance

The risk appetite of Members is greatly influenced by the statements of the Regulator and other bodies.

RG244: Giving information, general advice and scaled advice has not been updated since 2012. It should be updated in several ways:

- Take into account the matters set out in Appendix 3 of *ASIC Report 515 - Financial advice: Review of how large institutions oversee their advisers* and to reflect the requirements of the FASEA Code of Ethics. Many licensees have adopted the requirements outlined Appendix 3 of Report 515 as regulatory guidance, however, ASIC has not been clear whether these requirements supersede previous RGs.
- A number of the examples in RG244 are limited to advice about the client's interest in a particular super fund (presumably intra-fund advice). It would be helpful to have these same factual scenarios addressed in a non-intra fund context, to clearly demonstrate how the process may change, if at all.
- It would also be useful to show product being scoped out, where the client has general questions about maximising income in retirement.
- In relation to examples 2 and 3 of RG 244, it would be more realistic to see a client with more than one super fund.

Members have noted that since the implementation of the Code on 1 January 2020, there have not been any publications from either ASIC or FASEA that provide context as to how scaled advice works within the context of the Code, how regulatory requirements have changed as a result, and whether existing regulatory guidance is still fit for purpose (for instance, RG244). This has required licensees to take risk-based approaches to providing advice in certain scenarios, as a compliance-based approach is not possible due to the lack of cohesive guidance from regulators. In certain instances, guidance from legal firms and consultancies is sought to confirm in-house interpretations and mitigate risks. This comes as a further cost to the industry.

2. Can you quantify the impact that regulation has on the cost of delivering and receiving financial advice?

In general, the impact of regulation on Licensees over the recent years has resulted in a doubling of resources in the support and compliance personnel and practice development teams within an Australian Financial Services License (**AFSL**). The investment in assurance, training, technology, human resources, monitoring and supervision, coaching governance and advice tools have contributed to a significant increase in fixed costs within AFSLs.

Examples are provided by Members to illustrate this situation and summarised in the below Appendix.

Example A: Estimated costs of delivery and contingent factors

One Member estimated costs in delivering financial advice have been estimated to be approximately 10% of total operating expenditure in one instance. This is made up of salary expenses for staff members to operate regulatory and compliance functions within the business, and regulatory expenses such as maintaining AFSL and other general obligations. The impact of the heightened regulatory requirements associated with FASEA are estimated to have added approximately 30% more effort required to prepare a Statement of Advice (**SOA**). This is based on unquantifiable factors such as additional time spent complying with regulatory disclosure obligations preparing SOAs, longer advice appointments with consumers, and impacts on preparation time associated with the lack of clarity for obligations associated with FASEA. Where advisers historically have made risk assessed determinations pertaining to scaled advice, the introduction of the Code has led to a need to take a common approach for all.

Example B: Impact within an advice business

In illustrating the cost profile one Member noted with Advice Practices the investment in:

- Non-Advice Support staff has increased by approximately 30% to ensure obligations are met (including the vetting of process and advice to mitigate risk of non-compliance). This is a substantial increase in fixed costs for any enterprise.
- Advice Staff have seen reduced productivity due to a plethora of requirements needing to be vetted internally or reconfirmed with clients - in order to ensure compliance with legislative and regulatory obligations (given the concerns on the perceived risks). This is also tracking at around 30%.

For clients, the impact generally has been:

- clients with smaller balances (e.g. up to \$200,000.00) have been deemed as being uncommercial and are often declined advice. We note, that these are the types of clients that require financial advice.
- across many Practices, advice fees have been revised upwards resulting in a doubling or trebling of minimum advice fees (in real terms). Many practices view their minimum fee going forward to be at least 5,000, well beyond most consumers, yet the demand for advice is growing (reference ASIC's own analysis)

Example C: Fee Disclosure Statements

Another example is the Fee Disclosure Statement (**FDS**) – given the recent FDS report that highlighted system wide issues with systemised data accuracy from platforms (e.g. timing issues) and ASIC's black letter compliance approach to the law, licensees are must tell every adviser to manually check every single FDS to the consumer, because being a dollar over or a day late represents a breach and potentially results in consumer remediation. Allowing for materiality is an example of a simple change that would immediately reduce costs and improve risk appetite in licensees.

Other comments

The opportunity cost of not increasing access to affordable scaled advice is likely to be significant as the Australian population ages and the cost of providing income and support services to retirees becomes a potentially unsustainable cost for governments as tax and other revenue falls with workforce participation rates.

Consumer testing conducted by Rice Warner in 2018 suggested that Australians are unwilling to pay anything for financial advice, and only a small percentage are prepared to

pay more than \$250. However, the cost (without profit margin) to provide that advice is significantly greater – somewhere in the range of \$400 to \$1100, with the cost depending on factors including, but not limited to, whether it is intra-fund advice or not and how prescriptive the advice process is. Providing quality advice requires an investment of time to understand a consumer's goals and circumstances as well as a certain level of expertise, which have an associated cost. Where there is ambiguity in relation to legislative or regulatory requirements, costs increase, putting even simple advice outside the range that consumers are willing to pay.

The Financial Advice Report by *Investment Trends* in September 2018 illustrated a significant and growing gap between the amount consumers are willing to pay for financial advice and the cost of delivering advice. The average cost of full advice is \$2500 and the estimate from planners is of the average cost to deliver scaled advice is \$1,200. This is then compared to the amount that consumers would be prepared to pay for financial planners advice at \$530. This underlines a need by industry to demonstrate value to the public, but regulation can be simplified to assist that process. Trialling the use of the Record of Advice while updating regulatory instruments cited in this response is the best vehicle for achieving that.

Other Members while not providing data have cited areas where they had attributed the cost-impact of regulation to be adviser costs as well that of their compliance team.

3. Aside from the cost imposed by regulation, what are the other components that attribute to the cost of providing financial advice?

Members have identified the following additional costs of providing financial advice:

- Time (to produce Statements of Advice and dealing with product manufacturers)
- Regulatory bodies - requirement to comply with multiple regulatory bodies simultaneously, each with separate requirements. This includes ASIC, FASEA, and Tax Practitioners Board (**TPB**) and a proposed Single Disciplinary Body. This has resulted in a layered approach to regulation, where each body imposes regulations 'on top' of broader obligations. It would be more cost-effective and ease the regulatory burden on relevant providers to have one set of professional standards for advisers to comply with. Unnecessary duplication between the TPB, ASIC and FASEA should be removed (e.g. It is worth noting there are multiple codes of ethics to comply with TPB, FASEA and industry associations).
- Vetting viability of clients to ensure commerciality
- Professional Indemnity Insurance – this is escalating out of control, fees doubling over the last two years
- Licence registration fees
- Annual ASIC supervision levies
- Information Technology costs (incl. technology required for advice and data management)
- Human Resources (recruiting and training experienced staff),
- Cyber security and privacy requirements
- Cost of education to advisers
- AFCA fees
- Professional memberships
- Staff
- Opportunity cost – when advice takes longer than consumer wants they may not proceed

Consistency

To deliver scaled advice efficiently there is often a need for investment in specific advice modelling software designed for scaled advice. Regulation of the key processes and assumptions for scaled advice would support advice providers by removing the need for each provider to create their own advice framework. This supports additional benefits for the client by creating consistency. As such scaled advice would need to be defined to ensure clarity when standard assumptions apply.

4. What technology have your members been able to implement in order to overcome the cost and regulatory barriers?

Software solutions have been limited in application due to complexity of implementation and cost. Members have elected to customise CRM systems and Advice tools with specialist software to support compliance.

Technological improvements associated with regulatory requirements have been related to gaining operational efficiencies in data and record keeping including:

- video meetings (as a result of COVID-19) has reduced meeting times and travel times for advisers and consumers. It should be noted that practices are now recording their video meetings, which is arguably the best possible file note, but consumes huge volumes of storage and not required of other professions.
- email acceptance and digital signatures.
- 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 client files; and
- declarations being done via email or verbally that previously required wet client signatures, and utilising video conferencing to meet certain identification and Anti Money Laundering and Counter Terrorism Financing legislation (**AML/CTF**) requirements where possible.

Technological improvements come at a cost which given their infancy may not be recovered (e.g. investments in software development to ensure compliance with Fee Disclosure Statements overcome a regulatory barrier but at a cost). Digital signatures, digital fact finds, client online portals are all offered to advisers in carrying out client transactions, to improve efficiencies. Members might use programs that in some instances will attract set up and staffing costs that assist licensees with Section 912a compliance.

It is difficult to provide face-to-face, and even phone-based advice, within the range consumers are prepared to pay for that advice. Developing digital advice models may address this, however, the ambiguity associated with the application of some safe harbour steps, in particular, in relation to scoping and product recommendations is a barrier to investment in this area.

Significant capital investment is being made into fintech, but this investment is made in Regulatory Technology or “regtech” and not into developing digital advice models given the the upfront costs, time to develop appropriate algorithms and the future compliance. The ASIC Fintech sandbox (now the Australian Government enhanced regulatory sandbox) does not extend to existing AFS licensees who are prepared to invest in developing new models. Developing a digital solution will take time given the task for ensuring compliance.

5. How does the current financial advice model, including fee structures, need to change in order for limited, scaled or single-issue advice to be commercially viable and/or attractive?

Financial advice should be cheaper to provide through less regulation (and resulting paperwork required of the adviser) along with technological solutions that are fit for purpose for scaled advice. Members are reluctant to advocate a regulator in effect prescribing a business model.

Providing guidelines for the cost of scaled advice supports advisers in providing a consistent framework although prescribing set amounts may limit the ability for advisers and licensees to implement a scaled advice framework which is commercially viable. As was demonstrated with the \$300 cap on advice fees under the relief provided with the ASIC Corporation (COVID-19 Advice Related Relief) instrument 2020/355 through a low take up rate.

Resolving uncertainty surrounding the provision of intra-fund advice

Currently, there is regulatory uncertainty as to the extent that intra-fund advice can be provided and still comply with s99F of the Superannuation Industry Supervision Act (**SIS Act**) 1993. This was highlighted during the Royal Commission. APRA was scheduled to release guidance to superannuation fund Trustees in early 2020, however this was delayed due to the COVID-19 pandemic and no specific delivery timeframe has been provided. Clarification from APRA and ASIC on this issue would allow scaled advice to be provided by superannuation funds with less regulatory ambiguity, therefore improving outcomes for consumers and reducing the risk factors to superannuation trustees.

Broadening the categories of advice that can be provided under intra-fund advice as this could also assist scaled advice provision. Concurrently, the same rules (i.e. limiting the advice to the client's existing product only) could apply to advice given by non-intra-fund providers, subject to any necessary restrictions or conditions.

In reviewing scaled advice frameworks, the superannuation Intra-fund model for collectively charging for certain types of simple superannuation advice may be expanded to include more advice areas for members seeking advice, consideration and trialling would be needed to assess what services could be provided under this definition.

Reduced regulatory obligations

Advice which addresses basic or simple needs should be freed from some requirements (e.g. simple life insurance, switching investments within a platform (including to the cash account so it can be withdrawn); the multilayered opt in and consent process adds little value but great cost. Members have also raised other areas for consideration, although the FSC acknowledges this is not necessarily matters on which ASIC can act:

- The cost to switch
- reduction in complexity and duplication of being registered with bodies (e.g. TPB)
- Barriers to entry – impact of self-licensing versus joining an AFSL on the cost to provide scaled advice

6. Are there other subject areas you consider well suited to limited or scaled advice?

Much advice that is supplementary to comprehensive advice (e.g. increasing super contributions, changing insurance coverage levels) is suitable for scaled advice and considered lower risk than other types of advice.

This includes advice related to financial product investment allocations, superannuation accounts, and simple retirement planning. This advice is unlikely to impact a consumer's broader financial circumstances as the advice is confined to the specific product or in a tax environment that does not impact the consumer's personal taxation situation. Advice that is required to address a specific time critical or specialist advice need may include insurance, aged care, and estate planning advice. This advice is likely to require a specialist due to the complexity of the advice required, or is being put in place specifically to address a certain advice need that consumers want to focus on at a point in time (such as wealth protection).

Members have provided examples of other subject areas well suited to scaled advice:

- Debt management advice
- Home loan advice
- Estate planning
- Investment advice (including within Superannuation)
- Insurance advice
- Superannuation contribution advice (one-off)
- Pension amount advice where investment is not changing
- Basic life insurance (death cover)
- Income protection
- Salary sacrifice
- One-off contributions to super
- Younger person basic pack: set up super for Superannuation Guarantee **(SG)** (first time or new job, or employer doesn't have one or not sure if you should use)

These are provided as examples and the FSC would like to work further with ASIC on refining these should their consideration as falling within the definition of scaled advice be progressed.

Implementing the Productivity Commission – Recommendation 10.1 would prevent clients from seeking financial advice and then seeking further advice on home loans effectively going through the advice process twice as both providers must meet their own best interest obligations.¹⁷

7. Is this cost savings achieved only through the reduced disclosure obligations i.e. a ROA rather than a SOA? Do you have any cost estimates regarding the average cost of advice were you able to provide an ROA as opposed to an SOA for scaled advice? If not is this something you can provide?

The ROA trial the FSC proposes would result in efficiency gains in the production, vetting and presentation of the advice document in several ways:

- **Production:** Typically, a comprehensive Record of Advice **(ROA)** that is given to a client (8 -12 pages) takes 1/3 of the time to produce when compared to a basic SOA.

¹⁷ *Competition in the Australian Financial System*. Productivity Commission Recommendation 10.1 – ASIC to assess a new license to allow financial advisers to advise on home loans. “ASIC should assess the feasibility of financial advisers providing advice on home loans and other credit products, via a new Australian Financial Services License that would not require a separate Australian Credit License to be obtained”. Source: <https://www.pc.gov.au/inquiries/completed/financial-system/report/financial-system-overview.pdf>

- **Vetting:** Comprehensive ROA's take 1/3 of the time to vet at Practice or Licensee level. Given the size of the document it is also easier to identify any errors or inconsistencies.
- **Presentation:** Clients prefer these comprehensive ROA's as they are easier to understand. This also allows extra time for more discussion and interaction between adviser and clients. Client attention span is also improved when advice is presented in a simpler manner – resulting in improved engagement.

In implementing the trial:

- consideration should be given to incorporate existing regulatory arrangements for ROAs to be provided verbally for simple advice strategies (such as investment switches, variation to investment savings plans, or debt repayments) to provide a significant time saving and optimise the value of the trial.
- To afford the industry a tangible time saving in preparing advice that will allow for more cost-effective advice to be provided to consumers, regulatory guidance should be provided on how licensees can streamline SOAs to be more digestible for consumers without compromising meaningful disclosure obligations. This could be accommodated through an update to RG90, with more example SOAs provided with varying degrees of complexity.
- A review should be undertaken on the disclosures that are relevant for single issue scaled advice. This would need to be aligned with a review of the Corporations Act 961B to ensure a modified best interest approach can be practically applied for scaled advice.

8. How does it compare with existing arrangements?

There are two key areas where Members felt this would compare with existing arrangements:

- advice potentially being able to be provided verbally through an ROA that would previously have required a documented SOA, and
- being able to provide advice through an ROA where a consumer's circumstances have changed.

Existing arrangements allow for a ROA to be utilised when providing further advice, in conjunction with a SOA provided at an earlier date. This results in a time-saving as the majority of regulatory obligations have been met in formulating the SOA, and unless the consumer's financial circumstances have materially changed this information is still fit for purpose. This allows for a streamlined advice process, as past work can be utilised in providing the further advice. If relief is provided to allow for a ROA in lieu of a SOA for scaled advice, unless the client has previously received advice from the Licensee, then the time and cost savings are unlikely, and would be comparable to existing arrangements. However, there are instances where an SOA must be provided even in the instances of further advice (for example, if there has been a material change in circumstance in the client's situation). In these circumstances, there is likely a time and cost saving that can be realised if relief were provided in these circumstances.

Current arrangements require an SOA to be provided to a client in every instance where further advice is not being provided, regardless of the complexity of the advice. Existing regulatory obligations allow for an ROA to be provided to a client verbally as long as it incorporates all the material aspects of the risks and consequences of the advice. If regulatory relief is provided to allow for ROAs to be utilised for single-issue or scaled advice,

and this is incorporated the ability to provide this advice verbally without the requirement to issue an advice document, this could significantly improve efficiency in delivering this type of advice. A timelier advice process can be achieved and ensures that the client is receiving advice in a clear, comprehensive and timely manner.

9. Do you have any price sensitivity data to support the notion that there will be improved access to advice (which we understand to mean more people will access advice because it's cheaper)? If so, is there any forecast of this increased demand?

Some Members noted that they did not have sufficient data to respond to this question.

Example D: Price points

One Member noted their organisation utilised three price points over the last two years (excluding the intra-fund advice offering). The percentage of clients to proceed from an initial advice meeting to receiving a Statement of Advice was 95% for a \$550 price point, 75% for a \$1,200 price point, and 50% for a \$2,900 price point. This indicated that price sensitivity played a significant factor in a consumer's decision to access advice, with a lower price point improving access to advice.

10. Are you aware of any consumer experiences where the COVID relief has been successfully used by the provider?

Some Members noted that they did not have reliable data to respond to this question.

In line with previous feedback to ASIC, the existing legal framework has limited the application of ROA relief. There have been numerous instances however in which existing clients have appreciated receiving timely advice in what has been an extremely volatile period. Some Members noted a significant number of clients would not have received advice as a SOA would have been too onerous/time consuming. Allowing use of an ROA for existing clients kept cost down.

Example E: ROA & COVID-19 Relief

Between 20 April 2020 and 16 August 2020, one member reported that advisers provided a total of 19,207 ROAs to clients. Of that total, 133 were ROAs relating to early release of super (\$300 fee cap), and a further 731 were provided to clients whose circumstances had changed significantly (and would otherwise have had to be provided with an SOA). The broadening of the definition of providing entity, as per the temporary COVID Advice relief would be a welcome change. We would suggest that the concept of providing entity should extend to licensees and their representatives within the same corporate group, where the compliance related services provided to those entities are the same or substantially similar, as in practical terms, there will be the same standards being applied across all advice providers.

In responding to these questions Members noted that Advice software supports the documentation of advice as either an ROA or an SOA. However, the SOA or ROA is merely the output of the advice process, and document production, using advice software. The majority of time in the advice process is not spent generating the advice document.

As noted in responses to other questions, cost savings are more likely to be achieved by providing certainty in relation to the steps in the advice process (e.g. safe harbour steps), rather than reduced disclosure obligations in the advice document itself.

In some instances relief with ASIC Corporation (COVID-19 Advice Related Relief) instrument 2020/355 which capped the advice fee at \$300 resulted in advice being subsidised by the advice provider to cover the costs of delivering the advice; or advice providers being unable to offer the advice. This particularly impacted new clients where no previous client discovery had been completed.

It is estimated that a large portion of super members who accessed their super through the early release provisions did so without receiving financial advice. The impact here is many super fund members may not have considered all other alternatives which an adviser would have reviewed or understood the longer-term impact of a reduced super balance to their super balance at retirement.

The COVID-19 relief is similar to what is currently being used by advisers for Small Investments although this threshold amount has not been updated since 2005. A review of this threshold would support the delivery of scaled advice with a ROA. Two applicable provisions are in focus:

- Corporations Act 2001 – Section 946AA – Small investments – Statement of Advice not required
- Corporations Regulation – Reg 7.7 09A – Situations in which Statement of Advice is not required: small investments threshold where the threshold amount is \$15,000 or less.
- Corporations Regulations – Regulation 7.7.10AE – Situations in which Statement of Advice is not required (applies as if section 946B of the Act were omitted and the following section substituted): The providing entity does not have to give the client a Statement of Advice for particular advice (the further advice) if the providing entity has previously given the client a Statement of Advice that set out client's relevant personal circumstances in relation to the advice.

Consideration must also be given as to how this applies to consumers that are new to advice as the majority of consumers seeking scaled advice for the first time will also be seeking financial advice for the first time.

11. What other ways would a two year trial of using an ROA for scaled advice reduce costs? Does advice software support the provision of limited or scaled advice and deliver cost benefits?

Current advice software supports the provision of limited or scaled advice, and as such this could be implemented with minimal effort. The potential extent of the cost savings that could potentially be delivered has been outlined by some Members in the course of a trial. Advice software supports the documentation of advice as either an ROA or an SOA.

It is presently difficult to determine savings without knowing the advice areas, instances of advice that would be permissible under a changed model. Members noted that the trial would enable time to be invested to produce comprehensive ROA documents (that are still provided to clients) in order to ensure success during the trial period. It is envisaged more clients would be able to receive advice, especially those that require it.

A two-year trial of using an ROA for scaled advice would give us the 'sandbox' to understand if licensees can reduce our demands on advisers including for in lengthy SOAs. It would enable Members to assess how to apply the Best Interest Duty practically to scaled advice. Potentially software can assist with this but Members are confident output meets regulatory requirements. A 'Regulatory Sandbox' could also provide a framework for licensees to test scaled advice concepts on a smaller scale. This could include:

- The advice modules for scaled advice
- The best delivery channels
- The technology requirements
- The time and cost to deliver the advice

Consideration would need to be given to expanding the eligibility for use of the Enhanced Regulatory Sandbox¹⁸ to allow licensees to test the provision of scaled advice.

12. What are the other factors than should be considered in determining consumer value? How can they be leveraged?

The speed at which an advice document can be provided to the consumer is an important consideration, particularly as demonstrated earlier in 2020 with the significant movements in the market as a result of COVID-19 disruption. Consumers want answers quickly in these situations and ROAs can be delivered in a shorter timeframe

Consumers perceive value from advice differently, with some consumers placing value of tangible benefits derived and others prioritising peace of mind and feelings of security. Advice regulation has historically been focussed on recommendations pertaining to financial products, and the tangible benefits afforded to consumers. This has permeated the Code, with Standard 7 requiring the advice provider to consider if their advice represents value for money. While these are factors an advice provider should consider, it emphasises that financial advice must demonstrate a financial benefit to consumers, rather than an emotional one. There is an opportunity for the financial planning industry to better leverage the emotional value that a financial planner can provide clients, in addition to the financial value.

The focus here should be on what the client needs at a particular point in time. Whether the relationship is ongoing, or more transactional in nature should be determined by the needs of the client and their circumstances, rather than whether they have been provided holistic or limited advice. The ability for consumers to access scaled advice allows them to experience advice and provides them personal insight into the value of advice, which is one of the biggest barriers for consumers in seeking advice. This applies even if the consumer has a range of advice needs but only receives scaled advice in one area. Based on the clients' needs they can then choose if (and when) they want to seek more holistic advice.

13. Are you aware of any business models that have been unsuccessful in providing limited or scaled advice?

Members could not identify any models they were aware of that were unsuccessful in providing limited or scaled advice. Some Members noted cases of some investment advice, or limited advice to set up Self-Managed Super Funds (**SMSFs**) to hold property is an example of scaling advice that has gone wrong in some instances.

Members noted the focus should be on what the client needs at a particular point in time. Whether the relationship is ongoing, or more transactional in nature should be determined by the needs of the client and their circumstances, rather than whether they have been provided holistic or limited advice.

¹⁸ INFO 248 Enhanced regulatory sandbox – *eligibility requires providers to not currently be authorised by an AFS licence or credit licence to provide the same financial services or products or engage in the same credit activities that you are proposing to test.*

14. How would ongoing advice services operate within a limited/ scaled advice model?

Ongoing advice services are viable within a limited or scaled advice model. A client receiving scaled advice may still require ongoing advice with respect to the limited advice they have received. This is particularly the case for more complex advice, that may present a risk to consumers if the advice is not regularly reviewed. In this respect, an ongoing advice service would operate similarly to a holistic advice service, where a consumer would be entitled to receive advice at a future point in time with respect to the original advice being provided. Such services would continue to operate through clear client agreement, understanding and disclosure.

Other Members noted this would depend on the client's need for ongoing advice. For example, if advice was scaled to just look at super contributions at a point in time, then there is not an ongoing service being offered. If the scaled advice was about building a portfolio for retirement, then ongoing advice might be appropriate as the goal needs to be managed.

Scaled advice is likely to be more suited to a transactional advice offer which will allow clients to experience advice. Based on the client's needs, they can choose if (and when) they want to seek more holistic advice and if this should be an ongoing advice service. Some Members noted they no longer offered ongoing services and were therefore not well placed to answer this question.

15. What is more likely to lead to an ongoing relationship with a consumer – the provision of holistic advice or limited/ scaled advice?

The likelihood of an ongoing relationship with a consumer is more related to the complexity of the advice being provided, and the potential requirement for ongoing maintenance or monitoring of financial products and strategies, rather than whether it is limited or scaled. The distinction between scaled advice and one-off advice should also be kept in mind. ROAs are used for ongoing advice with existing clients. Holistic advice to this end is more likely to lead to an ongoing relationship but the ongoing advice may be scaled to issues within the holistic plan.

Clients being provided scaled advice that is complex in nature are more likely to require an ongoing advice relationship as the advice is likely to require variation over time, rather than a client with simple financial circumstances seeking holistic advice that is more likely to be 'set and forget'. For example, a client being provided advice related solely to a margin lending strategy is more likely to require ongoing advice to ensure the strategy remains appropriate, compared to a client who only possesses superannuation being provided holistic advice which is unlikely to materially vary over time. Additionally, many consumers seek an ongoing advice relationship for the peace of mind it affords, regardless of the complexity or nature of the advice being provided. For this reason, both scaled advice and holistic advice could lead to an ongoing relationship with a consumer if the advice provided meets the consumer's ongoing advice needs (scaled or holistic), is affordable, and provides value (tangible or otherwise) then the consumer will continue to seek advice from the advice provider if the relationship is established.

Episodic advice is provided when it is needed in a timely manner at a price point the consumer is willing to pay would be the most likely reason to establish a trusted adviser role for the planner with the consumer and build an ongoing relationship

16. Do your members find the guidance and examples in RG244 helpful in providing limited/scaled advice? If not, why is that?

The guidance provided under RG244 is helpful in providing guidance on regulatory obligations related to scaled advice under the Corporations Act 2001, in particular Pt 7.7A. It was noted however that *RG 244: Giving information, general advice and scaled advice* has not been updated since 2012.

How the guidance could be updated in the following ways:

- RG244 should be updated to take into account the matters set out in Appendix 3 of ASIC Report 515 - Financial advice: Review of how large institutions oversee their advisers and to reflect the requirements of the FASEA Code of Ethics. Many licensees have adopted the requirements outlined Appendix 3 of Report 515 as regulatory guidance, however, ASIC has not been clear whether these requirements supersede previous RGs.
- Members noted the examples in RG244 highlight the number of adviser questions that are currently required to satisfy the Corporations Act Section 961B and the Code of Ethics and are based on the requirements for holistic advice. In these examples the consumer answers succinctly and provides limited additional information which is not aligned to the current advice experience.
- The Code has introduced a number of Standards that significantly impact a Financial Adviser's ability to provide advice that limits consideration to specific issues rather than holistic financial advice. As RG244 has not been updated with respect to the FASEA Code of Ethics, and no comparable document has been published by FASEA with respect to the Code, there is currently significant ambiguity as to how regulatory requirements have changed with respect to scaled advice. It is acknowledged this will be a matter for FASEA but is provided as an example for ASIC's information.
- A number of the examples in RG244 are limited to advice about the client's interest in a particular super fund (presumably intra-fund advice). Members noted it would be helpful to have these same factual scenarios addressed in a non-intra fund context, to clearly demonstrate how the process may change, if at all. It would also be useful to show product being scoped out, where the client has general questions about maximising income in retirement. In relation to examples 2 and 3, it would be more realistic to see a client with more than one super fund. Members acknowledge the subjective nature of advice provides a challenge given the many different client scenarios that can arise. It is hard to put a standard approach in place for every situation, and an adviser may believe they have considered all relevant aspects needed for the scaled advice, but ASIC or AFCA may disagree. To this end the RG 244 examples must be read in their exact application so are of limited value.

17. What types of examples would be more helpful?

In addition to the responses given to Question 16, Members note further areas which could be reviewed when it comes to improving the clarity and applicability of examples:

- To enable the industry to improve in this regard, the most beneficial examples would be related to the distinctions between regulatory requirements pre and post implementation of the FASEA Code of Ethics, with a focus on how advice can be provided in an efficient and cost-effective manner without compromising advice quality. This will allow Financial Advisers the ability to understand the changes to regulatory requirements with respect to FASEA, but also ensure that guidance is provided on meaningful disclosure obligations.
- Guidance could be improved to be more reflective of the realistic and actual client engagements or experiences. For example, when a client has quite explicit requests

and needs, understands the risks and only wants specific advice (or provides explicit advice instructions).

- ASIC should state specific situations which could be treated as scaled advice or with a modified best interest duty. This should also include instances where ASIC provide examples on when advice *must not* be provided (i.e. declined). Examples on how an Adviser would use their professional judgement to decline advice would be a significant boon.
- More work is required on the framework and as to how advisers satisfy the Corporations Act 961B and the FASEA Code of Ethics to enable them to limit the subject matter for scaled advice in a compliant cost-effective way. Following a more robust scaled advice framework examples should be provided in a range of advice areas.

18. How would you like to receive updated ASIC guidance in relation to scaled advice – updated regulatory guide, checklist, standalone examples of scaled advice, video, combination of all etc?

Guidance provided by ASIC would be most beneficial through updated regulatory guides, and examples of scaled advice through case studies. This updated guidance would ideally contain:

- specific checklists
- standalone examples of scaled advice
- agreements/disclosures required
- sample warnings during the fact-finding process, SOAs and ongoing review meetings
- examples of where advice cannot reasonably be provided in a scaled advice offering

ASIC could consider the establishment of an ‘advice unit’ to provide rulings to interpret advice legislation and also roll out information sessions for AFSL staff to attend to ask questions. Advice requirements are couched in terms of whether peers would consider the actions taken were reasonable, however, there is no peer group to consider this. Clarifying regulatory requirements is critical for investment in advice.

19. What can ASIC do to assist industry with providing more scaled advice?

The FSC seeks a two-year trial in which the Record of Advice is permitted for the provision of scaled advice providing the opportunity to assess and resolve these issues. As part of this trial updates to RG 244 and RG 90 should take place. Members seek from ASIC clear expectations as to the specific types of advice where it sees that scaled advice can be safely provided. As canvassed in our responses many of the issues preventing the provision of scaled advice relate to a lack of clarity across various regulatory instruments and definitional issues as to how scaled advice is defined.

Streamlined guidance

ASIC can assist the industry to provide more scaled advice by clarifying regulatory obligations in more detail, and collaborate with FASEA to publish joint guidance that addresses all regulatory aspects of scaled advice. As outlined above, there has been an inadequate amount of guidance by ASIC and FASEA with respect to the FASEA Code of Ethics, particularly in relation to Standard 3, Standard 5, and Standard 6. Practical guidance, with specific scenarios and case studies, will enable the industry to adopt best practice and ensure consistency between Licensees in how scaled advice is being provided to consumers.

A practical understanding how the actual advice process operates between an adviser and a client is needed, as well as client attitudes with regards to the numerous and somewhat lengthy documents, (e.g. Financial Services Guides, Statements of Advice, Fee Disclosure Statement and the Product Disclosure Statement). Consideration of these factors with updated guidance for the structure of Fact Finds, SOAs and Reviews will help build workable commercial and compliance frameworks.

For consideration

Insofar as it sits within ASIC's powers consideration could be given to the following proposals although progressing the trial and updates to relevant Regulatory guidance is the first step ASIC can take. Consideration could from there be given to the following:

- ***Creation of a modified best interest guide for scaled advice.*** This may take a similar approach to the modified best interest duty applied to Authorised Deposit-taking Institutions (**ADIs**).
- In addition, consideration should be given to a review of the Small Investment guidance (including the threshold) to provide advice without the need for a ROA. New guidance should address the current constraints for scaled advice within:
 - Corporations Act s961B
 - FASEA Code of Ethics - Standard 6
- ***Review the approach for new advice clients (not existing advice clients) where no client discovery (fact find) has been completed in the past.*** This is likely to represent a large portion of clients that seek scaled advice.
- ***Implement a regulatory sandbox*** to support advisers and licensees understand (and test) the requirements that are needed to deliver scaled advice in a compliant cost-effective way.

SUMMARY OF EXAMPLES

To illustrate the issues presented by the existing regulation Members have provided examples below

Question 2

Example A: Estimated costs of delivery and contingent factors

One Member estimated costs in delivering financial advice have been estimated to be approximately 10% of total operating expenditure in one instance. This is made up of salary expenses for staff members to operate regulatory and compliance functions within the business, and regulatory expenses such as maintaining AFSL and other general obligations. The impact of the heightened regulatory requirements associated with FASEA are estimated to have added approximately 30% more effort required to prepare a Statement of Advice (**SOA**). This is based on unquantifiable factors such as additional time spent complying with regulatory disclosure obligations preparing SOAs, longer advice appointments with consumers, and impacts on preparation time associated with the lack of clarity for obligations associated with FASEA. Where advisers historically have made risk assessed determinations pertaining to scaled advice, the introduction of FASEA's Code of Ethics has led to a need to take a common approach for all.

Example B: Impact within an advice business

In illustrating the cost profile one Member noted with Advice Practices the investment in:

- *Non-Advice Support staff* has increased by approximately 30% to ensure obligations are met (including the vetting of process and advice to mitigate risk of non-compliance). This is a substantial increase in fixed costs for any enterprise.
- *Advice Staff*: Reduced productivity due to a plethora of requirements needing to be vetted internally or reconfirmed with clients - in order to ensure compliance with legislative and regulatory obligations (given the concerns on the perceived risks). This is also tracking at around 30%.

For clients, the impact generally has been as one Member noted:

- clients with smaller balances (e.g. up to \$200,000.00) have been deemed as being uncommercial and are often declined advice. We note, that these are the types of clients that require financial advice.
- across many Practices, advice fees have been revised upwards resulting in a doubling or trebling of minimum advice fees (in real terms). Many practices view their minimum fee going forward to be at least 5,000, well beyond most consumers, yet the demand for advice is growing (reference ASIC's own analysis

Example C: Fee Disclosure Statements

Another example is the Fee Disclosure Statement (**FDS**) – given the recent FDS report that highlighted system wide issues with systemised data accuracy from platforms (e.g. timing issues) and ASIC's black letter compliance approach to the law, licensees must tell every adviser to manually check every single FDS to the consumer, because being a dollar over or a day late represents a breach and potentially consumer remediation. Allowing for materiality is an example of a simple change that would immediately reduce costs and improve risk appetite in licensees.

Question 9

Example D: Price points

One Member noted their organisation utilised three price points over the last two years (excluding the intra-fund advice offering). The percentage of clients to proceed from an initial advice meeting to receiving a Statement of Advice was 95% for a \$550 price point, 75% for a \$1,200 price point, and 50% for a \$2,900 price point. This indicated that price sensitivity played a significant factor in a consumer's decision to access advice, with a lower price point improving access to advice.

Question 10

Example E: ROA & COVID-19 Relief

Between 20 April 2020 and 16 August 2020, one member reported that advisers provided a total of 19,207 ROAs to clients. Of that total, 133 were ROAs relating to early release of super (\$300 fee cap), and a further 731 were provided to clients whose circumstances had changed significantly (and would otherwise have had to be provided with an SOA). The broadening of the definition of providing entity, as per the temporary COVID Advice relief would be a welcome change. We would suggest that the concept of providing entity should extend to licensees and their representatives within the same corporate group, where the compliance related services provided to those entities are the same or substantially similar, as in practical terms, there will be the same standards being applied across all advice providers.

In responding to this questions Members noted that Advice software supports the documentation of advice as either an ROA or an SOA. However, the SOA/ROA is merely the output of the advice process, and document production, using advice software. The majority of time in the advice process is not spent generating the advice document.

As noted in responses to other questions, cost savings are more likely to be achieved by providing certainty in relation to the steps in the advice process (e.g. safe harbour steps), rather than reduced disclosure obligations in the advice document itself.

In some instances relief with ASIC Corporation (COVID-19 Advice Related Relief) instrument 2020/355 which capped the advice fee at \$300 resulted in advice being subsidised by the advice provider to cover the costs of delivering the advice; or advice providers being unable to offer the advice. This particularly impacted new clients where no previous client discovery had been completed.

It is estimated that a large portion of super members who accessed their super through the early release provisions did so without receiving financial advice. The impact here is many super fund members may not have considered all other alternatives which an adviser would have reviewed or understood the longer-term impact of a reduced super balance to their super balance at retirement.

Additional example

Example 6 – scaled advice

To illustrate the issues presented by the existing regulation Members have provided examples/commentary below.

Example 6 – scaled advice, from RG244: Giving information, general advice and scaled advice

Scenario (paraphrased): A member is thinking about making some extra contributions to her superannuation. She asks the adviser if they can tell her the best way to do this.

- The adviser explains the advice is limited.
- The adviser explains they can only consider her interest in the ABC Superannuation Fund.

- The adviser says that if she has debt, she should weigh up the benefits of repaying debt first, before putting extra money into superannuation.
- The adviser is charging for the advice, so it is not intra-fund advice (ie, it is not collectively funded).

Questions / comments:

The following comments are intended to be generally illustrative of some of the challenges members face in scoping advice.

- On what basis does the adviser limit the advice to her interest in the ABC Superannuation Fund? Would they not be required to consider whether she had other superannuation accounts, and if so, make a recommendation about which fund the extra contributions (if any) should be paid in to? Section 961B(2)(e) requires an advice provider to conduct reasonable investigations into financial products that might achieve the objectives and meet the needs of the client, vis-à-vis the advice they have sought. Likewise, section 961B(2)(f) requires the advice provider to base all judgments in advising the client on the client's relevant circumstances. Would another superannuation account held by the member not be considered a relevant circumstance?
- On what basis is the adviser acting in the member's best interest in scoping out the client's debt, before knowing whether this was a relevant personal circumstance? RG175.283 notes that an advice provider needs to use their judgment in deciding on the scope of the advice, and must do so in a way that is consistent with the client's relevant circumstances and the subject matter of the advice they are seeking. In contemplating additional contributions to super, it seems difficult to account for how an adviser could exclude an understanding of the client's debts, when establishing the scope of the advice, as these contributions might be inconsistent with the client's relevant circumstances.

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