



FSC  
**WHITE PAPER  
ON FINANCIAL  
ADVICE**

2021



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# 1. CEO FOREWORD



The financial advice industry has reached an important milestone – it has become a profession. The regulatory framework designed to professionalise the industry prescribes compliance obligations at every step of the advice

process. It is an unprecedented driver of cost for financial advisers and consumers and is past its use-by-date.

It is time for regulation to evolve with the profession and reflect the fact that financial advisers operate in a mature industry and are aligned with the interests of their clients.

In this *White Paper on Financial Advice* the Financial Services Council (FSC) maps out a simplified and less costly regulatory framework suitable for the industry's new, elevated status.

Our recommendations, supported by independent analysis by KPMG, delivers for advisers and consumers – not only in opportunities to reduce fees, but also through increased protections for up to 275,300 consumers who could be reclassified as retail clients and brought into the consumer protection framework.

Our White Paper sets a clear timetable for reducing the cost of delivering financial advice for the 19,000 advisers employed in the industry. Our recommendations will improve the economics of the advice industry, lower the cost of delivering advice to clients and increase the number of Australians who can access advice.

The FSC's White Paper proposes to:

- Expand consumer protections by raising the threshold under which consumers are identified as 'retail clients' to those with assets of less than \$5 million and index the threshold to CPI;
- Abolish the safe harbour steps for complying with the Best Interests Duty;
- Abolish lengthy, complex Statements of Advice for a simpler, consumer-focused 'Letter of Advice';
- Break the nexus between financial product and advice, and remove complex labels for different categories of advice, by recognising two categories - 'Personal Advice' and 'General Information' and
- Move to sustainable self-regulation by 2030 that supports prior learning and individual registration and update the Australian Financial Services Licensing Regime.

New KPMG modelling has demonstrated that the cost per client of the current advice process within the existing regulatory regime is \$5,334.<sup>1</sup>

KPMG's analysis shows that if the FSC's key recommendations, abolishing the safe harbour steps, introducing Letters of Advice and simplifying the categories of advice, were fully implemented the cost of providing advice would be reduced by almost \$2,000 per client, or 37 per cent.

KPMG's modelling shows the FSC's recommendations:

- Will reduce the cost of providing financial advice per client from \$5,334 to \$3,466;<sup>2</sup>
- Would save financial advisers up to 32 per cent of time when providing advice to clients;<sup>3</sup>
- Allow advisers to provide advice to up to an additional 44 new clients each year;<sup>4</sup>
- Enable advisers to produce 2.2 Letters of Advice as opposed to 1.5 Statements of Advice per adviser per week.<sup>5</sup>

Financial advisers are experts at helping consumers make complex financial decisions, and too much of their time is spent completing 'back office' compliance requirements. Addressing the compliance burden will reduce the time required to complete the advice process from 23.9 hours to under 16.8 hours per client.

KPMG's analysis also shows that over the long-term the FSC's recommendations have the potential to generate cost savings for the advice industry of \$91 billion over 20 years.

The FSC has welcomed the support and constructive feedback we have received from the advice industry, consumer advocates and FSC members. Having led this debate with our Green Paper we now urge the Government to give financial advisers and the advice industry a more positive future.

We want to see financial advice businesses grow and thrive, and we want to see the past few years of significant reform and professionalisation of the sector rewarded with a regulatory framework that trusts advisers' professional judgement.

We call on the Government to commit to our plan.

**SALLY LOANE**  
Chief Executive Officer

1 KPMG Research Page 6.

2 KPMG Research Page 6.

3 KPMG Research Page 7.

4 KPMG Research Page 47.

5 KPMG Research Page 47.

## 2. TIMELINE TO REFORM FINANCIAL ADVICE

The FSC is prescribing a timeline to implement the recommendations in this White Paper to prioritise recommendations that will have the biggest impact on reducing the cost of advice.

The timeline outlined below recognises that holistic reform is complex and is best implemented in tranches, but that there is also an urgency to reduce the regulatory burden on the advice industry.

The FSC's proposed timetable prioritises the reforms that will materially reduce the cost of providing financial advice while ensuring subsequent tranches remain part of a 'big picture' approach that provides certainty and hope for advice businesses.

IN 2023	AFTER 2026	BY 2030
<ul style="list-style-type: none"> <li>▪ Safe harbour steps abolished</li> <li>▪ Code of Ethics amended<sup>6</sup></li> <li>▪ Letter of Advice with scalable advice obligations introduced</li> <li>▪ Statement of Advice and Record of Advice abolished</li> <li>▪ Wholesale client asset test threshold increased and indexed</li> <li>▪ Breach reporting framework revised</li> <li>▪ Consult and clarify framework for licensees and advisers to support individual registration</li> <li>▪ Regulatory Guidance to become more exemplary than prescriptive</li> <li>▪ ASIC Advice Unit established</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislate personal advice and general information - abolish redundant terms and separate product from advice</li> <li>▪ Update licensing and registration framework</li> <li>▪ Introduction of a 'practising certificate'</li> <li>▪ Prior learning and equivalent pathways recognised</li> <li>▪ Accreditation to be conducted by universities and Registered Training Organisations (RTOs)</li> <li>▪ Commencement of principles-based regulatory framework</li> <li>▪ Tax deductibility or rebate for all financial advice</li> </ul>	<ul style="list-style-type: none"> <li>▪ Self-regulation by the industry</li> <li>▪ Principles-based regulatory framework fully implemented</li> <li>▪ Increased role for professional bodies and industry standards</li> </ul>
<b>ONGOING REFORMS</b>		
<ul style="list-style-type: none"> <li>▪ Data standardisation</li> <li>▪ Measures to enable financial advice providers to access consumer data</li> </ul>		

<sup>6</sup> Financial Planners and Advisers Code of Ethics 2019 is made under paragraph 92U(2)(b) of the Corporations Act 2001 (the Act) and all relevant providers of financial advisers must comply with the Code under Section 92IE of the Act.

## 3. SIMPLIFYING FINANCIAL ADVICE REGULATION

### Removing the safe harbour steps in the Best Interest Duty

#### RECOMMENDATION 1:

The Best Interests Duty in Section 961B (1) of the Corporations Act 2001 should be retained, and the safe harbour steps in Section 961B (2) of the Act abolished in 2023.

The Code of Ethics should be amended to reflect this reform but not in effect reimpose the safe harbour requirements as principles. The Code of Ethics should remain principles-based and evolve as the sector evolves.

Removal of the safe harbour steps should be the first priority of the Government to enable a principles-based advice model under the existing regulatory framework.

Compliance with these steps, introduced as a requirement for meeting the Best Interests Duty in 2013, is a key driver of cost<sup>7</sup> and prohibitive to enabling limited advice to be provided to consumers. The steps impose specific obligations on the provision of personal advice that must be followed to meet the best interests of the consumer. This means that low risk financial advice on simple issues is commercially unviable for many advice

businesses because for such advice to be compliant, it would require the advice to have factored in any other circumstances under Section 961B(2)(g) of the Corporations Act 2001 (the Corporations Act).

Abolishing the safe harbour steps should occur in 2023, immediately following the completion of the Government's Quality of Financial Advice Review.

In practice the safe harbour steps have resulted in a system where meeting the Best Interests requirement has become a 'tick-box exercise'.<sup>8</sup> Regulators have also deemed advice to not to have complied with the Best Interests Duty if the safe harbour steps are not followed.

The Code of Ethics<sup>9</sup> should support compliance with the Best Interests Duty but not be the sole overriding measure by which the Best Interests Duty is met.<sup>10</sup> The Best Interests Duty alone should be the overriding legal duty on providers of financial advice. The process for meeting that duty should not be prescribed but based on the principles established in the Code.

<sup>7</sup> Feedback from across the advice community is that this the number one driver of cost and the biggest obstacle to accessing affordable and compliant scalable advice aligned with consumer needs.

<sup>8</sup> Volume 1 of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, noted that there may be merit in abolishing the Safe Harbour steps as they have the potential to undermine the broader obligation for adviser to act in the best interests of consumers, if advisers are treating these steps as a "tick box" compliance exercise and paying little attention to actually assessing the financial products they are recommending. As Commissioner Hayne noted "there is no clear justification for retaining s961B (2), it should be repealed". Although in the Final Report, Commissioner Hayne expressed a view that he did not favour replacing the current Safe Harbor steps with another prescriptive approach on how financial advisers can comply with the Best Interests Duty.

<sup>9</sup> Financial Planners and Advisers Code of Ethics 2019. (Source: <https://www.legislation.gov.au/Details/F2019L00117>).

<sup>10</sup> Page 42. *Affordable and accessible: FSC Green Paper on financial advice* (April 2021).

## Amending the Code of Ethics and enabling a principles-based system

### RECOMMENDATION 2:

Following the abolition of the safe harbour steps the Government should reissue the Code of Ethics. Supporting guidance should also be amended to be more principles-based and less prescriptive.

The following standards would be amended to reflect the removal of the safe harbour steps:

- Standard 3 - Conflicts (Ethical behaviour)<sup>11</sup>
- Standard 5 - Best interests (Client care)
- Standard 6 - Broad effects (Client care)
- Standard 7 - Consent (Quality process)
- Standard 8 - Record keeping (Quality process)

While the steps required to comply with the Best Interests Duty should not be prescribed in law, the abolition of the safe harbour steps will trigger the need to amend the Code in respect of the above standards. Standard 8 of the Code, for example, relates to record keeping requirements that rely on the safe harbour steps and would have to be changed. Participants in KPMG's research agreed that the Code of Conduct requirement to "take into account the broad effects arising from the client acting on your advice and actively consider the clients broader, longer-term interests and likely circumstances"<sup>13</sup> was a major hurdle impeding limited advice.<sup>14</sup>

Reform should not replicate the safe harbour steps in the Code, but enable a more seamless interaction between the Code and the Best Interests Duty within the Corporations Act. It should provide a foundation for the long-term principles-based regulation of financial advice in which the professional judgement of the advice provider is at its centre. The advice provider should be able to demonstrate compliance with their fiduciary obligation in different ways based on the individual consumer.

Section 921E of the Corporations Act requires all relevant providers (as defined in Section 910A of the Act) to comply with the Standards prescribed in a Code of Ethics made by The Financial Adviser Standards and Ethics Authority (FASEA) under paragraph 921U(2)(b) of the Act.<sup>12</sup> Following the legislative passage of the new disciplinary regime, issuing of the Code will be the responsibility of Government and oversight of the Code the responsibility of ASIC. When abolishing the safe harbour steps the Government should consult on a redrafted Code.

<sup>11</sup> For example, one of these contradictions is that it is possible for an advice provider to manage conflicts of interest when providing advice under the Corporations Act while the FASEA Code prohibits advisers for providing advice if there are any conflicts of interest.

<sup>12</sup> Financial Planners and advisers Code of Ethics 2019 Guide.

<sup>13</sup> FASEA, Code of Ethics Standard 6, 2020.

<sup>14</sup> KPMG research Page 16.

## The breach reporting and civil penalties framework

### RECOMMENDATION 3:

The breach reporting framework and the civil penalties regime should be reformed following the abolition of the safe harbour steps to reflect an environment in which conduct is judged against the professional judgment of the adviser.

### RECOMMENDATION 4:

Following its assumption of responsibility for oversight of the Code of Ethics in 2022, ASIC should refocus its approach to enforcement and surveillance of advice in relation to whether the overall position of the consumer is improved, not minor or technical breaches immaterial to that.

The breach reporting framework should be realigned with a reformed Code of Ethics to ensure the civil penalties regime is proportionate. Financial advisers should be trusted and encouraged to demonstrate professional judgement, not be subject to harsh penalties for technical breaches of the law.

For example, under a principles-based application of the law, certain penalties which relate to record keeping would be unduly punitive relative to the outcome or behaviour it is intended to address. As file audit and compliance programs have become more costly, a principles-based approach should be adopted.

Future guidance around a reformed Code should focus on demonstrating the 'how' rather than the prescribing the 'what'. Previous guidance has attracted criticism for prescribing the advice process than setting out examples of 'what good looks like'.

For example, guidance should provide examples of what an ethical or professional advice provider looks like, how they approach their work and in what manner. This would be more suitable to a profession than specific directions on what to do topic-by-topic, which implies a prescribed advice process.

## Impact on the cost of financial advice

KPMG estimates the advice process to cost \$5334.64. By removing the safe harbour steps, whether the Code of Ethics is strengthened or not, will reduce the cost of financial advice by between 9-11 per cent.<sup>15</sup>

Removal of the safe harbour steps alone will reduce the cost of advice by 11 per cent to \$4746.84.<sup>16</sup> With the Code of Ethics being used as a tool to support compliance the removal of the safe harbour steps would reduce the cost of advice to \$4,853.02 – a 9 per cent reduction.<sup>17</sup>

This measure will reduce cost and time within the advice process.<sup>18</sup> Respondents to KPMG's research agreed it needed to be considered alongside the strengthening of the Code of Ethics and rationalisation of legislation and regulation.<sup>19</sup>

15 KPMG Research Page 28.

16 KPMG Research Page 28.

17 KPMG Research Page 28.

18 KPMG Research Page 27.

19 KPMG Research Page 33.

## 4. A CONSUMER-DRIVEN ADVICE PROCESS

Professional judgment should be the determinant factor in delivering financial advice. The FSC supports reforms that allow financial advisers to rely on their professional judgement to determine the correct scope of the advice without being encumbered by costly and complex documentation requirements.

The advice process should be reformed to allow for streamlined record-keeping and a reduction in the overall length and complexity of advice documents.

The FSC proposes requiring one set of scalable advice obligations that can be applied to all forms of personal advice, irrespective of the provider (e.g. financial adviser, product issuer, stockbroker, or accountant). Such benefits will allow variation in service offerings without diminishing the fundamentals of consumer protection whether the personal advice provided is limited or comprehensive.

The current documentation and disclosure requirements drive up the cost of providing financial advice and diminish its value in two ways:

1. Onerous preparation and presentation of consumer-facing documentation; and
2. Complex and prescriptive information gathering, analysis and research not necessarily relevant to a consumer, but mandatory, that sits behind the documents.

Reforms to the consumer protection framework over the last decade have generated an advice process driven by compliance, not the needs of individual consumers. This compliance-driven process is used to demonstrate that the law has been followed, rather than to demonstrate value to consumers. Statements of Advice are a defensive compliance document.

Reducing the complexity and detail of advice documents to reduce the cost of advice is supported by consumers. Consumer testing by Pollinate confirmed that 64 per cent of consumers support simplifying financial advice and reducing its cost, while 62 per cent supported a reduction in documentation to encourage Australians to seek advice.<sup>20</sup>

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<sup>20</sup> Pollinate research commissioned by the FSC for the Financial Advice Green Paper.

## Simple documentation for all personal financial advice

### RECOMMENDATION 5:

The provision of a Letter of Advice should apply to all forms of personal advice, be able to be provided physically or digitally, and comprise three requirements:

1. Specify the subject matter and scope of the financial advice sought;
2. The circumstances of the consumer relevant to that financial advice sought; and
3. The recommendation relevant to the subject of the advice that is given in accordance with the Best Interests Duty and a reasonable rationale for that advice.

Satisfaction of these requirements should ultimately rest on the professional judgement of the advice provider and regulators should set reasonable and clear requirements around the data and record keeping with respect to Standard 8 of the Code of Ethics and Section 947B of the Corporations Act.

The Statement of Advice and its requirements in Section 947B of the Corporations Act should be amended to reflect the requirements of the Letter of Advice. The requirement to provide a Record of Advice should be abolished.

This simplification supports an advice document that consumers understand and provides only the information the consumer needs to decide whether to implement the advice.

Despite efforts to provide regulatory guidance on what a shorter Statement of Advice should look like, and a statutory requirement to be 'clear concise and effective,'<sup>21</sup> the sector continues to produce lengthy Statements of Advice. This is because of onerous disclosure requirements and the risk of penalties for breaches of disclosure requirements even where the statutory obligations have been met and there is no evidence of consumer harm.

Under the new regime an advice provider would state their advice and the reasons for their advice. No more information be provided beyond what the client needs to make an informed decision and be aware of the costs, services and relevant products.

The advice provider would be enabled, for example, to use judgement about whether or not to include modelling or projections. This will help develop a culture of disclosing what is commensurate to the risk of the financial advice being sought, rather than a catch-all approach.

<sup>21</sup> Subsections 947B (6) and 947C (6) of the Corporations Act 2001.

## Scalable advice obligations

### RECOMMENDATION 6:

The advice provider should be free to determine whether the following aspects of the advice process are necessary to be presented to a consumer, or retained on file, to comply with the Best Interests Duty:

- Fact finds for limited advice
- Obligation to provide a Product Disclosure Statement<sup>22</sup>
- Additional disclaimers not directly relevant to a consumer
- Projections
- File notes
- Alternative strategies or products
- Certain information about a consumer
- Ongoing servicing<sup>23</sup>

A key contributor to the cost of advice is the fact find and level of inquiry when providing limited advice. Mandatory disclosure requirements in an attempt to protect consumers have had the unintended consequence of generating a 'cookie cutter' approach to the advice process.<sup>24</sup> The advice provider should be able to use their professional judgement as to what an advice document should or should not contain, and what they should or should not record or consider in order to comply with the Best Interests Duty.

Disclosure required for personal advice should be proportionate to the complexity of the advice. Personal advice that does not recommend a product or class of products might involve less documentation and should not require comparison or analysis of available products. The circumstances of a consumer with complex advice needs, however, might require advice that includes product research, comparisons and analysis, and a greater level of disclosure.

The sufficiency of disclosure where the adviser has greater freedom to use their professional judgement would be viewed in the context of the amended Best Interests Duty and Code of Ethics.

The goals, needs and anticipated outcomes of implementing the advice should still be reflected in the advice document, but not to the extent currently required to demonstrate that the advice is compliant. Instead, advisers would keep on file information that supports the type of advice given, to respond to any audit or claim.

The current regulatory framework has also undermined the relationship between licensees and financial advisers as risk aversion has compelled the industry to go beyond the law. Individual licensees should continue to set policies and procedures for authorised representatives (**ARs**). However, in a simpler, principles-based regulatory environment they would have greater confidence that their record keeping demonstrates compliance.

With the nexus between product and advice removed (See *Redesigning the model of financial advice*), the new documentation requirements facilitate an advice model reflective of the strategic value of advice.

<sup>22</sup> Providing a Product Disclosure Statement should not be necessary in all instances and the discretion to provide such should be determined in accordance with the individual consumer's needs and professional judgement of the adviser.

<sup>23</sup> Should not be automatic but be driven by the customer when doing so is perceived as relevant and valuable.

<sup>24</sup> For example, existing documentation requirements require a Statement of Advice for all forms of personal advice, even where products are not recommended, and the extensive product research analysis that is mandated is irrelevant to the consumer's circumstances. This profoundly affects the cost of financial advice, in particular financial advice that is simple and low risk to the consumer. There are extensive analytical and research requirements that apply to financial advice that along with detailed fee tables must also be disclosed to a consumer.

## Electronic standardisation and centralisation of advice processes

### RECOMMENDATION 7:

The Government should work with the industry to improve the take-up and effectiveness of electronic methods of disclosure, consent, and transactions, including through standardised processes and forms.

### RECOMMENDATION 8:

Industry-led, standardised documents and educational materials should be available through a public portal to ensure consistent ways of explaining:

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

The Government should facilitate the centralisation of common documents and development of industry-standard consent forms on a modern technology platform.

An example of this is the joint FSC and FPA project to develop a standard form for compliance with advice fee consent requirements and independence disclosure obligations. Consolidation of the required presentation of fees into a singular, annualised consent form (such as the Fee Disclosure Statement) could be one way to reduce the cost of advice for consumers.<sup>25</sup> The current requirements compel the presentation of tables of numbers to outline fees, rather than a simple requirement to display how fees are charged or deducted when a fee arrangement commences.

### CASE STUDY: GERMANY

Advisers are required to provide consumers with a product information sheet for each investment the consumer is advised to purchase. The product information sheet should contain all the information required for an investor to make an informed comparison across financial instruments, including the nature of the recommended financial instrument, how it works, and its associated costs and risks.

To improve readability, the information sheet must be no longer than two or three pages and written in a clear way. The information sheet must be provided in a "timely manner" before a contract on a transaction is executed.<sup>26</sup>

Source: RAND Corporation.

<sup>25</sup> For example, the impact of the recent Fee Disclosure Statement (FDS) and Annual Opt In regulations, an outcome of implementing the Royal Commission's Recommendation 2.1 will drive up costs for AFSL-holders and advisers in the form of technology and document changes, increased supervision by AFSL-holders, duplication of consent requirements by multiple product providers). Producing a transition year FDS and Opt In (without factoring in the cost to the AFSL-holders of upgrading technology or providing training, and compliance support) will involve additional hours to produce, and extra costs for consumers. In this situation the consumer will be charged for the privilege of being told what they have paid.

<sup>26</sup> RAND. 'Effective Disclosures in Financial Decisionmaking' (Source: [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1200/RR1270/RAND\\_RR1270.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1200/RR1270/RAND_RR1270.pdf)).

### CASE STUDY: LOW-COST ACCESS TO LIMITED ADVICE

As the regulatory framework would be realigned to the level of complexity of the consumer's needs the FSC's proposed reforms will free up access to limited advice. This will reduce the cost and risk to advice businesses and bring about a process driven by consumers' needs than compliance and disclosure.

Retirement advice may be relatively simple for some consumers, whilst for others with complex family structures and more assets it could be complex. Consumers may have simple advice needs within several advice topics, including:

- Cashflow and budgeting
- Retirement Planning
- Estate Planning
- Debt management
- Insurance

When providing advice to consumers with simple advice needs, preparing a Statement of Advice can become time and cost prohibitive for the consumer. An alternative option is for the advice to be delivered by way of a simple advice record.

### Impact on the cost of financial advice

KPMG has determined that replacing the Statement of Advice with the Letter of Advice would reduce the time taken to produce advice by 17 per cent<sup>27</sup>, from 23.9 hours to 19.9 hours.<sup>28</sup> This change would reduce the cost of providing advice by \$917.24, from \$5334.64 to \$4,417.40.<sup>29</sup>

This reform would also enable advisers to produce 2.2 Letters of Advice per week with simpler requirements as opposed to 1.5 Statements of Advice per adviser under current, more complex requirements.<sup>30</sup>

This does not account for further potential gains by removing the Record of Advice from the advice process and supporting this regime with scalable advice obligations, or efficiencies gained through electronic consents which could reduce the cost of advice further.

<sup>27</sup> KPMG Research Page 28.

<sup>28</sup> KPMG Research Page 29.

<sup>29</sup> KPMG Research Page 29.

<sup>30</sup> KPMG Research Page 47.

## 5. EXPAND CONSUMER PROTECTIONS IN FINANCIAL ADVICE

A \$3.5 trillion wealth transfer from baby boomers to future generations is underway in the Australian economy.<sup>31</sup> This wealth transfer has been turbocharged by strong increases in residential property prices across Australia.

It is increasingly unclear, however, whether the average consumer will be adequately protected by advice law over the long-term based on the current definitions of retail and wholesale client.<sup>32</sup> The FSC supports amending the definitions of retail and wholesale client to expand the number of consumers protected under financial advice regulation.

### Increase and index the asset test for wholesale clients

The Corporations Act presumes all consumers are retail clients unless they meet one or more of the below tests:

- **Accountant's certificate test:** a wholesale client must have net assets of at least \$2.5 million or gross amount for each of the two financial years of at least \$250,000.
- **Price value test:** A person or entity invests where the entry price is \$500,000 or more.
- **Professional investor test:**<sup>33</sup> this applies to financial services licensees, super funds and APRA-regulated bodies or a person controlling gross assets of \$10 million.

- **Small scale offerings:**<sup>34</sup> This exception provides that a regulated disclosure document is not required if a person makes a personal offer of securities that results in securities being issued or transferred to 20 or fewer persons with no more than \$2 million being raised in any rolling 12-month period.

The thresholds for meeting the requirements of a wholesale client are based on 1991 figures.<sup>35</sup> Treasury in 2011 consulted on a range of options for changing the thresholds and tests, however there was no subsequent reform and the thresholds have not been indexed.

The significant transfer of wealth between generations and the rapid growth of property prices has increased the proportion of consumers who now qualify as a *wholesale client* as a result of the asset component of the net income test remaining at \$2.5 million.

The FSC is concerned that an increasing number of consumers are not protected by the consumer protection framework for financial advice.

Meeting the thresholds for a wholesale client triggers significantly different compliance obligations.<sup>36</sup> The distinction protects retail clients in the advice process and allows wholesale clients to invest in

<sup>31</sup> McCrindle, 2016, Wealth Transfer Report, A Report for No More Practice, September.

<sup>32</sup> Professional Planner. 'Hanrahan: Updating retail/wholesale client definitions 'urgent''. Licensee Summit 2021. (Source: <https://www.professionalplanner.com.au/2021/06/hanrahan-updating-retail-wholesale-client-definitions-urgent/>) (8 June 2021).

<sup>33</sup> Section 9 and 76IG(7)(d) of the Corporations Act.

<sup>34</sup> Also known as "the 20/12 rule" is contained in section 708(1) of the Corporations Act.

<sup>35</sup> AXA and Charter Financial Planning Submission to Treasury's Options Paper (Source: <https://treasury.gov.au/sites/default/files/2020-01/axa.pdf>).

<sup>36</sup> Retail clients are afforded all the consumer protections under the Future of Financial Advice (FOFA) reforms - they must receive a Financial Service Guide (FSG), a Product Disclosure Statement (PDS), Statement of Advice (SOA) and access to external dispute resolution (EDR) scheme; Wholesale clients may have access to a wider range of investments, but do not enjoy the additional disclosure protections.

more complex financial products.<sup>37</sup> In effect it means wholesale clients are not covered by the consumer protection framework.

The FSC supports amending the definition of retail and wholesale clients to ensure a greater proportion of financial advice consumers are considered 'retail' clients, and hence fall within the consumer protection framework.

#### **RECOMMENDATION 9:**

The distinction between wholesale and retail client should be retained, as well as an objective test for assessing clients, but the asset test threshold amended and indexed.

- In 2023 the threshold for the asset test for determining a wholesale client should increase to \$5 million and be indexed to the Consumer Price Index.
- The other tests should remain unchanged, including the \$250,000 income threshold.
- An existing wholesale client that would be reclassified as a retail client as a result of this change can opt to remain a wholesale client if this election is made within a two-year transition period.
- Following the completion of the FASEA transition period in 2026, the Government should review whether an objective threshold is necessary and instead be replaced by allowing financial advisers to use their professional judgement to determine who is a wholesale client, as guided by the statutory Best Interests Duty and Code of Ethics framework.

The FSC estimates that this adjustment to the definition of retail and wholesale clients would bring an additional 275,300 clients into the consumer protection framework. This same cohort of consumers would benefit from a substantially improved consumer protection framework when considering the changes to the safe harbour steps, documentation requirements and reforms to the model of advice outlined in Chapter 6.

Under the FSC's proposed reform, existing wholesale clients should be provided transitional arrangements under the current definition to avoid significant disruption for clients and for advice models. Financial advisers and their clients should be given a two-year transitional period, during which all existing clients would be assessed as retail or wholesale under the new regime. To ensure appropriate interaction with terms such as the definition of 'sophisticated investors', the FSC recognises consequential amendments could be needed.

Within the two-year transitional period an existing wholesale client that would be reclassified as a retail client if their assets are below the \$5 million threshold, should also be given the opportunity to notify their adviser, in writing, that they opt to remain a wholesale client.

The FSC also supports transitioning away from an objective threshold for defining a wholesale client, in favour of relying on advisers' professional judgement.

As the advice sector completes its formal transition to new education standards and professional requirements by 2026, the FSC recommends the Government consider whether advisers be given authority to determine whether their customers are sophisticated, wholesale clients based on their evidence compiled through the advice process.

<sup>37</sup> One Investment. Retail v Wholesale investors in the provision of financial services. (Source: <https://www.oneinvestment.com.au/retail-v-wholesale-investors-in-the-provision-of-financial-services/>).

## 6. REDESIGN THE MODEL OF FINANCIAL ADVICE

To make financial advice more accessible to consumers the FSC proposes the Government consolidate the multiple complex labels used to describe different types of advice and remove the nexus between advice and product.

Reducing cost is only part of the objective of this change. Consumers do not readily understand the difference between advice and information and do not always have an understanding of what good financial advice entails. The rise of technological disruption and 'finfluencers'<sup>38</sup> demonstrates just how fluid the borders between different definitions of advice and information have become.

Removing the definition of 'financial product advice' from the Corporations Act will help ensure advice is agnostic of financial product. The FSC recognises that consumers seek strategic advice over product specific recommendations, and advice regulation should focus on *how* to use products to achieve consumers' goals.

The High Court's decision<sup>39</sup> on the parameters of *General Advice* has also rendered the current definitions of financial advice unworkable in the long-term. The Design and Distribution Obligations (DDO) started in October 2021 and require consideration of a consumer's circumstances to fit the target market determination (TMD). These changes have given rise to the need for a clear definition of personal advice that can be seamlessly provided by the many interlocking segments of the advice industry, including advisers, licensees, product issuers, stockbrokers and accountants.

The existing framework consists of nine different definitions of advice,<sup>40</sup> such as 'intra-fund advice', 'strategic advice', 'scaled/limited advice', which are confusing regulatory terms that do not resonate with consumers. Analogous with other professions, the FSC seeks a regime in which an advice provider either provides financial advice or does not, with all advice considered *personal advice* except where it is simply *general information*.

<sup>38</sup> Yahoo Finance. '82k on TikTok: Who are Australia's top money influencers' (Source: <https://au.finance.yahoo.com/news/australia-finfluencers-203857361.html>).

<sup>39</sup> Westpac Securities Administration Ltd & Anor v ASIC (2021) HCA 3.

<sup>40</sup> Page 3, *Future of Advice*. Rice Warner.

## The demarcation between advice and information agnostic of product

### RECOMMENDATION 10:

The Government should reform or remove the definition of 'financial product advice' in Section 766B in the Corporations Act and legislate definitions of 'personal advice' and 'general information'.

The complex web of different categories of advice should be simplified into 'personal advice' and 'general information', confirming the proposal raised in our *Green Paper*.

In our *Green Paper*, however, the FSC proposed the sub-categories of '*simple personal advice*' and '*complex personal advice*'. Each would have carried different restrictions albeit with identical and more simplified, disclosure requirements.

Following consultation and feedback the FSC believes this distinction adds unnecessary complexity of the financial advice model. Consumers are less focused on what constitutes simple or complex advice, but instead seek a simple advice process. The FSC has therefore not proceeded with the '*simple*' and '*complex*' personal advice labels as a recommendation.

Whilst there is a clear market for simple, piecemeal advice this can be achieved by clearly defining personal advice, reducing the cost of advice and removing the nexus between advice and financial product.<sup>41</sup>

## Personal Advice

### RECOMMENDATION 11:

Personal advice should be defined in legislation as advice that considers the personal circumstances of an individual consumer. The current education and professional standards should continue to apply to providers of personal financial advice. Personal financial advice should only be provided by a trained qualified financial adviser.

### RECOMMENDATION 12:

'Intra-fund' advice, 'strategic' advice, 'specialised' advice would all simply be *personal advice*.

Specialised advice should be a restricted form of personal advice and the persons authorised to provide such advice should be a matter for the profession and enforced through standards. The scope of restrictions that should apply to providers of specialised personal advice should be a matter for ASIC and Treasury. The Quality of Financial Advice review should identify a framework for implementation after 2023.

The Quality of Financial Advice Review should review the parameters in which intrafund advice can be provided and provide further guidance to the industry.

Any information that considers the individual circumstances of a consumer would constitute personal advice and therefore trigger the reformed Best Interests Duty obligations and the Letter of Advice disclosure obligations.

<sup>41</sup> Consumer testing by the FSC found three out of four Australians feel that simpler definitions of advice are easier to understand and most think a redefined model would be an improvement on the way the sector currently communicates.

## General Information

### RECOMMENDATION 13:

'General Information' is factual information that is not specific to an individual consumer's circumstances and which does not make or imply recommendations.

General Information should be legislated and consolidate the remaining elements of 'General Advice', as well as the existing concepts of 'Education' and 'Factual Information'.

ASIC should support the interpretation of General Information with regulatory guidance.

is taking into account an individual's circumstances. Information outside the personal advice framework would constitute general information.

The regulator should make determinations and exemptions in respect of activity that might include targeted information aimed at a cohort of people rather than accounting for an individual's circumstances. Just providing general information in and of itself should not qualify as personal advice for example if it targets groups of people.

The Government should emphasise the "individual consumer's circumstances", not personal circumstances, which could have a much broader application.

### CASE STUDY: LIFE INSURANCE

Confirming how much life insurance cover a consumer *currently* has would be regarded as *General Information*. Providing guidance on how much insurance a consumer *should* have would be *Personal Advice*.

The result of the High Court's General Advice decision means much of the activity undertaken by advice businesses previously considered general advice now constitutes personal advice. The FSC proposes resolving this issue by creating a clear legal distinction between what is personal advice and what is general information, and that distinction

	PERSONAL ADVICE	GENERAL INFORMATION
<b>Definitions and classifications to be repealed:</b>	<ul style="list-style-type: none"> <li>▪ 'Intra-fund'</li> <li>▪ 'Strategic'</li> <li>▪ 'Comprehensive'</li> <li>▪ 'Specialised'</li> <li>▪ 'Scaled' or 'Limited'</li> </ul>	<ul style="list-style-type: none"> <li>▪ 'Factual information'</li> <li>▪ 'Education'</li> </ul>
<b>Statutory and regulatory scheme:</b>	<ul style="list-style-type: none"> <li>▪ Legislated definition in the Corporations Act</li> <li>▪ Regulatory Guidance</li> <li>▪ Sector standards governing specialists (See <i>specialised provision of personal advice</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislated definition in the Corporations Act</li> <li>▪ Regulatory Guidance</li> </ul>
<b>Obligations:</b>	<ul style="list-style-type: none"> <li>▪ Best Interests Duty (No safe harbour steps) + Code of Ethics</li> <li>▪ Letter of Advice</li> <li>▪ FASEA Education Standard</li> <li>▪ Scalable advice obligations</li> </ul>	<ul style="list-style-type: none"> <li>▪ Best Interests Duty (No safe harbour steps) + Code of Ethics</li> <li>▪ Diploma-level module or specialism if it involves a human interaction and for which a fee is charged</li> </ul>

## Licensing and education requirements for Personal Advice and General Information

### RECOMMENDATION 14:

Following the establishment of Personal Advice and General Information the following adjustments to the licensing and education requirements should be made:

- The provision of General Information where there is a human interaction and remuneration should be subject to the Code of Ethics.
- Providers of General Information that carry a human interaction should consist of a diploma-level qualification, minimum core competencies specific to the topic of general information being provided and 20 hours of continuing professional development (CPD).
- Published General Information should be approved by an individual with the equivalent qualifications.
- The 'General Advice' warning should be amended for General Information and include a statement the recipient might benefit from seeking personal advice that considers their personal circumstances.<sup>42</sup>

Financial Counsellors should be exempt from the regime and not subject to more obligations than they are currently in delivering counselling services.

The FASEA standards were designed with a personal advice lens. The reform of the model of advice after 2026 would therefore trigger the need to update the licensing and education requirements around the provision of 'General Information'. The cost and significant disruption the implementation of the FASEA framework on the sector can not be understated, nor can in its impact on raising the level of professionalism of the sector.

Providers of General Information who collect remuneration of any kind for that service should be subject to the licensing, professional and education regime overlaying advice provision. The increased risk of unlicensed financial advice across digital platforms should be mitigated, and for these reasons such activity should be subject to the regulatory regime.

Revisions to the framework overseeing the provision of General Information should include a requirement that the provider be *properly educated* to deliver services that are within the scope of the advice provider's expertise. Providers remunerated for providing General Information should hold a diploma-level qualification supported by a minimum requirement of 20 CPD hours. These should ensure the provider has sufficient training on the differences between General Information and Personal Advice and training that covers the product category subject to the General Information.

For example, personnel in contact centres, operations and insurance claims handling, who only provide General Information, should not require the same education and training requirements as an adviser who provides personal financial advice.

### Impact on the cost of financial advice

Re-labelling or simplifying the model of financial advice even with distinctions of simple and complex will still likely result in a 9 per cent reduction in the cost of advice or reduce the cost of the advice process from \$5,334.64 to \$4,865.39.<sup>43</sup>

<sup>42</sup> Similar to the recommendation proposed in the Financial Planning Association's Policy Platform Affordable Advice Sustainable Profession 2020 (Source: <https://fpa.com.au/wp-content/uploads/2020/06/FPA-Policy-Platform-2020-FINAL.pdf>).

<sup>43</sup> KPMG Research, Page 28.

## 7. PRINCIPLES-BASED REGULATION AND GUIDANCE

The reform of the safe harbour steps and surrounding changes to the Code of Ethics will achieve gains towards the principles-based regulation of financial advice. The proposals outlined in this chapter are aimed at shifting regulation from being primarily objective and prescriptive, to one guided by principles, outcomes, and professional judgement.

Financial advice law and regulation has become prohibitively complex, which has been recognised by the Australian Law Reform Commission (ALRC) through its review of corporations law<sup>44</sup>. The recommendations in this section and the White Paper more broadly aim to provide a framework by which this issue could be resolved over coming years.

Regulation of financial advice should reflect other professions, which have far fewer administrative and disclosure requirements. The financial advice sector is different to the one that existed when the Financial Services Reform legislation was introduced in the early 2000s. Grandfathered conflicted remuneration has ended; financial advisers are now subject to a Code of Ethics; professional standards and education requirements have been embedded and advice-related legislation arising from the Financial Services Royal Commission and DDO laws have been implemented.

Confusion arising from existing regulatory guidance is impacting how licensees judge risk, and the processes they put in place to manage risk. Regulatory Guidance, rather than law, has often been used as the basis on which regulators apply penalties for breaches.

This is not a regulatory regime that incentivises professional judgement or continuous improvement, but rather one that presumes all financial advice is in breach of the law unless proven otherwise. This regime increases the cost of providing financial advice, and causes a 'cookie cutter' approach that do not reflect consumers' needs. The FSC supports a principles-based system with exemplary, rather than prescriptive regulatory guidance.

Moving to a principles-based approach will take time. Reforms to introduce a comprehensive principles-based framework should not be implemented until 2026 and significant preparatory work aligning with the Quality of Financial Advice Review and ALRC Review has been undertaken. These proposals are intended to inform the recommendations coming out of those reviews.

<sup>44</sup> Australian Law Reform Commission, The Regulatory Ecosystem for Financial Services. (Source: <https://www.alrc.gov.au/wp-content/uploads/2021/05/The-Financial-Services-Regulatory-Ecosystem-1.pdf>).

## New regulatory infrastructure: guidance and road-testing

### RECOMMENDATION 15:

ASIC should establish an Advice Unit tasked with responsibilities to support the gradual introduction of a principles-based regulatory approach ahead of 2026 with responsibilities that include:

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

### RECOMMENDATION 16:

The system of regulatory guidance to support the interpretation of laws relating to financial advice should be retained, however their format should be reviewed. A principles-based regulatory system should be supported by guidance that is *exemplary*, only prescriptive when necessary and aligned with the Code of Ethics.

Regulatory guidance should be revised by the ASIC Advice Unit in consultation with the industry and prioritise the following regulatory guides:

- RG 244: Giving information, general advice, and scaled advice
- RG 255: Providing digital financial product advice to retail clients
- RG 90: Example Statement of Advice: Scaled Advice for a new client
- RG 175: Licensing: Financial product advisers Conduct and disclosure

Building on ASIC's review of the cost of advice<sup>45</sup> the regulator should establish a unit to facilitate outcomes from this review to support the transition to a principles-based advice system. A panel should be appointed to provide technical expertise to support the rewrite of regulatory guidance to make it more exemplary and compatible with everyday advice situations to promote the sector's understanding of obligations.

Given the increased complexity of regulation and ASIC's discretion over financial advice, it would be appropriate for businesses to confirm compliance with the regulator. Guidance should be road tested with the sector before it is released. This should be a more holistic process that ensures regulatory guidance can be implemented across compliance systems consistently. This would support the objective of preparing the industry for self-regulation.

<sup>45</sup> ASIC Consultation Paper 332: Promoting access to affordable advice for consumers (Source: <https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-332-promoting-access-to-affordable-advice-for-consumers/>).

Consideration should be given to the volume, function, and language of regulatory guidance. For example, the open-ended nature of 'better position' or 'consumer detriment', should be defined in the context of overall advice quality, not technical process. This review of guidance is the first step towards a principles-based system.

## Principles-based regulation

### RECOMMENDATION 17:

The FSC supports a principles-based regulatory approach to the advice sector.

The Government should consider how the legislative framework in the Corporations Act and the ASIC Act can be orientated towards a principles-based form of compliance:

- Future of Financial Advice Framework;
- the Code of Ethics; and
- the Financial Services Royal Commission reforms (breach reporting, reference checking, annual renewal and the single disciplinary body).

In reviewing the legislation, the following principles and objectives should be considered:

- Simplicity
- Affordability
- Consistency
- Quality
- Accessibility
- Transparency

The Quality of Financial Advice Review should consider a greater role for sector standards and advise on a framework to commence implementation between 2026 and 2030.

### RECOMMENDATION 18:

In relation to the relevant legislation, if, at the conclusion of the Quality of Advice review and the ALRC review, the Government continues to amend the Corporations Act via regulations and legislative instruments, those amendments should be incorporated into the Corporations Act no more frequently than on a bi-annual basis.

### RECOMMENDATION 19:

Consistent with the development of an advice profession, the principles or specified outcomes should remain outside the law, and instead be managed through a single set of regulatory or sector standards.

Principles-based regulation can be distinguished from rules-based regulation in that it does not necessarily prescribe detailed steps that must be complied with, but rather sets an overall objective that must be achieved.<sup>46</sup> In this way, principles-based regulation seeks to provide an overarching framework that guides and assists regulated entities to develop an appreciation of the core goals of the regulatory scheme.<sup>47</sup>

Legislative change codifying a principles-based approach beyond the reformed Best Interests Duty and Code of Ethics, and a more holistic approach from the Regulator, must be clear to prevent litigation. A principles-based regime should support compliance with the Best Interests Duty as the benchmark by which financial advice delivery should be judged.

For example, the Government might review whether the Code of Ethics could include principles around simplicity and quality to strengthen requirements around the consumer experience rather than the volume of disclosure.

<sup>46</sup> Australian Law Reform Commission 'Regulatory Theory' (2010) <<https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/4-regulating-privacy/regulatory-theory/>>.

<sup>47</sup> Ibid.

The below table shows how the ALRC or the Government might approach the issue of aligning legislative requirements with a principles-based approach.

<b>Reconciling the existing regulatory framework with a principles-based framework</b>	
Objectives of the advice system: <b>Quality, Affordability and Accessibility</b>	
<b>Transparency</b>	Breach reporting
<b>Quality</b>	Reflective of legislative or regulatory outcomes of the Quality of Advice Review
<b>Consistency</b>	Reflect the Code of Ethics and professional framework, single disciplinary body
<b>Simplicity</b>	Regulatory guidance that is exemplary, statutory rules that are clear



## 8. A SUSTAINABLE ADVICE PROFESSION

Reforms that define financial advice will have consequential changes to the education standards and professional requirements that the sector is transitioning to by 2026. It will also necessitate updates to the licensing and registration framework to ensure financial advisers are more responsible for the advice they provide.

The FSC supports changes that recognise prior study and continuing professional development (CPD). The education framework should also recognise the role of professional bodies in supporting the advice industry as a career pathway and attracting new financial advisers.

Education requirements have increased the cost of advice, however it is important for professional standards to be given time to mature. The FSC recommends no changes take place until 2026. The FSC supports changes over the medium-term to deliver a professional framework that is more inclusive of different qualifications or development pathways that reflect the FASEA standards.

### Recognition of pathways and qualifications

#### RECOMMENDATION 20:

To support the sustainability of the profession the following changes to the FASEA regime should be made after 2026:

- Recognition of prior learning and equivalent pathways
- Assessment of whether industry-developed courses and qualifications meet the FASEA education and continuing professional development standard offered by tertiary institutions
- For providers of General Information, a 20 hours CPD requirement should apply commensurate with the topic of general information being provided and this should be prescribed.

The framework should ensure advice providers are appropriately educated for the advice they give, and that everyone providing financial advice meets a universal standard of education. While the current framework achieves this, a consequence is that prior learning or equivalent study is not acknowledged, assumes all practitioners are financial advisers, and does not contemplate a role for professional bodies in upskilling the profession.<sup>48</sup>

The FSC agrees with the need for the FASEA Education Standard to adequately recognise previous study; for CPD that has been completed since the commencement of the Financial Services Reform Act in 2002, and to avoid a 'one size fits all approach'.

There is also a question about whether the standard-setter is equipped to appropriately assess the suitability of courses that meet its standards. Reform should limit accreditation and assessment to tertiary education providers that can assess the suitability of qualifications that meet the education standard. The standard-setter should be limited to issuing legislative instruments outlining the requirements for the qualifications.

Flexibility is also required for the CPD requirements for financial advisers - the existing 40-hour requirement does not achieve the policy objective of being properly educated to provide Personal Advice. This standard should require a set number of CPD hours dedicated to the topic of the advice being provided.

For example, an advice provider should need a certain number of hours on superannuation-related CPD towards meeting their existing 40 hours requirement. This would not see more CPD hours required of advice providers but rather ensure that the CPD hours being undertaken are relevant to the advice they provide.

## Self-regulation by 2030

### RECOMMENDATION 21:

The Government should develop a framework that gives professional bodies oversight of the profession after 2026.

This would include requiring financial advisers to have capital adequacy and Professional Indemnity Insurance as the basis for self-regulation by 2030. The Government should identify areas where self-regulation and industry standards can serve the objectives of improving financial advice for consumers.

As the new regulatory architecture brought about by the Financial Services Royal Commission is implemented, along with a principles-based approach, the need for devolution of regulation of the sector and a greater role for standards will become pronounced. Removal of the safe harbour steps and greater reliance on the Code of Ethics will also provide impetus for the regulatory process to be handed to professional bodies.

The framework for a self-governing profession should be implemented gradually and be informed by findings from the Quality of Financial Advice Review. Such a framework should supplement clear legal requirements and exemplary regulatory guidance.

Prescriptive requirements could be better administered by the industry and enforced through standards as trends emerge. For example, the Accounting Professional & Ethical Standards board publishes standards which address broad issues but rarely go into the detail of ASIC guidance. Accountants are expected to reference the standards, then use professional judgment in day-to-day situations.

<sup>48</sup> Many professionals who must meet the standard while practicing what is financial advice, are not per se financial advisers, for example, accountants, investment advisers or stockbrokers.

## Specialised provision of personal advice

### RECOMMENDATION 22:

Financial advisers operating as 'specialists' should be subject to extra minimum education and continuing professional development requirements. A registered training organisation (RTO) should be able to accredit courses taken towards attainment of these requirements.

The determination of who can promote themselves as providers of specialised personal advice is a matter for the profession to be set through industry standards. The law should be amended to enable the Minister to mandate that professional bodies can standardise and enforce the requirements for providers of specialised personal advice.

Rather than creating an extra category of 'specialised advice' there would be an industry-determined restriction on advice providers permitted to promote themselves as specialists in certain fields.

Specialised advice should be an authorisation to provide Personal Advice on certain topics that can only be provided by an advice provider in accordance with set industry-wide criteria. This restriction could, for example, apply to the establishment of multi-generational self-managed superannuation funds, and advice on complex financial products. Specialised Personal Advice should not be a category of advice and would be subject to the same regulations as other forms of personal advice.

# 9. LICENSING AND REGISTRATION

## **RECOMMENDATION 23:**

The supervision framework provided by Australian Financial Services License (AFSL) holders remains relevant and necessary to protect consumers. The FSC does not support removal of financial advice from the AFSL regime.

Reform should clarify the role of the AFSL holder and the advice provider following the introduction of the single disciplinary regime from 2022 and the passing of the responsibility to register to the individual advice provider in 2023. Regulatory guidance should clarify the delineation of responsibility following its implementation.

## **RECOMMENDATION 24:**

The Government should consult on a framework that clarifies responsibilities of financial advisers and AFSL holders from 2023 onwards and after financial advisers are permitted to register individually. The framework should consider minimum professional indemnity requirements for financial advisers and articulate a clear delineation of liability between AFSL holders and financial advisers.

Financial advisers should be responsible for the advice they provide and this White Paper has outlined reforms that place greater reliance on their professional judgement. The AFSL plays a fundamental role, beyond product-related issues, to the long-term stability of the advice profession by offering training and supervision and compliance systems to support the quality of financial advice. Without clear responsibilities for both financial advisers and AFSL holders the spread of risk will be unclear and increase the cost of advice.

While a self-licensed model for financial advice could increase costs for advisers, the licensing regime should not be limited to a residual role relative to licensees. Detailed consultation on this spread of responsibilities is necessary prior to individual registration coming into effect. The FSC has proposed a model for how to share responsibilities between AFSL holders and licensees<sup>50</sup> to inform Government consultation.

## **RECOMMENDATION 25:**

The FSC supports reviewing terms such as 'financial planner' and 'financial adviser' to ensure consumers are protected from unlicensed financial advice.<sup>49</sup> As the system of individual registration takes effect the Government should consider the introduction of a formalised practicing certificate issued when an adviser registers.

<sup>49</sup> Review of these terms has been recommended by the Financial Planning Association in its platform Affordable Advice, Sustainable Profession.

<sup>50</sup> See 'Appendix Proposed Licensing and Registration Framework for Financial Advice' page 62 Affordable and Accessible Advice: FSC Green Paper on financial advice.

## Equal liability for all providers of financial advice

### RECOMMENDATION 26:

Liability between authorised representatives and corporate authorised representatives should be attached to the financial advice provided and assessed against the Best Interests Duty and Code of Ethics framework.

From 2023, liability will remain with the licensee that is disproportionate to the objective of making the advice provider more responsible for the advice they provide. A disparity persists between the penalties that apply to misconduct for financial advisers employed by the licensee known as Corporate Authorised Representatives (CARs) versus those authorised to provide financial advice.

Authorised Representatives (ARs) do not enjoy the same protection as CARs. For an employed advice provider, a suspended breach applies but in terms of any financial compensation owed to a consumer, responsibility remains with the licensee.

There is a concern over whether an individual representative could be pursued by ASIC for not meeting requirements under Section 961 of the Corporations Act.

Under a regime in which an advice provider will be responsible for being individually registered, but authorised to provide personal advice, their employment status should not be the determinant factor in liability. An assessment of the advice provided against the Code of Ethics should prevail, with implications for that financial adviser's ability to practice.

The penalties applicable to financial advisers employed by the licensee and those applicable to the AR of an advice business should be the same. This scenario is oriented around consumer remediation, not making financial advisers responsible for the financial advice provided. Consideration as to how this framework interacts with employment law in relation to CARs and the law of vicarious liability should be considered. Practical issues, such as many CARs not sourcing their own Professional Indemnity insurance, should be considered.

# 10. DATA AND TECHNOLOGY

Reforms should be implemented to improve regulation of digital advice solutions, enable access to consumer data to ensure better informed advice, and better data standardisation. Together technology focused reforms would drive innovation and an automated advice process.

The regulatory framework has not kept up with technology and impedes the collection of data essential to achieving data standardisation. There are no universal insights with the integrity to inform sound policy and regulatory settings for the sector in future years that contemplate disruption in financial services.

## Digital advice

### RECOMMENDATION 27:

*RG 255 Providing digital financial product advice to retail consumers<sup>51</sup>* should be updated irrespective of changes to the definitions of advice to enable compliance by emerging technologies.

Regulatory guidance impacting the provision of digital advice should be updated to include greater examples of how its requirements should apply in practice. The requirements that arise from the provision of personal financial advice under the safe harbour steps are prohibitive to the provision of digital advice, both in terms of the types of advice permissible and level of enquiry required to justify digital advice.

Technology and artificial intelligence should be enabled a lot more than is currently permissible at the start of the advice process. RG 255 should be updated to reflect how digital advice or platform-based solutions and technology should apply to the existing statutory framework and be updated should the model of advice be changed in line with the reforms outlined in this White Paper, specifically removal of the safe harbour steps and introduction of a Letter of Advice.

Revised guidance should enable models which support consumers to leverage data to access appropriate general information or perform certain administrative functions while using interfaces such as calculators to decide if they want to progress to personal advice.

### RECOMMENDATION 28:

The proposed Advice Sector Data Project and ASIC Advice Unit should monitor the costs of automation within the advice process to identify enhancements to regulation.

<sup>51</sup> RG 255 Providing digital financial product advice to retail consumers (Source: <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-255-providing-digital-financial-product-advice-to-retail-consumers/>).

## Better access to consumer data

### RECOMMENDATION 29:

The Government should work with the sector to enable access to consumer data. This should include but not be limited to enabling access in respect of three areas:

- The Australian Taxation Office (ATO)<sup>52</sup> and Centrelink improving their online access arrangements to ensure financial advisers can act on behalf of their consumers with respect to their tax obligations and benefits administered by Centrelink<sup>53</sup>
- Access to Births, Deaths and Marriages information
- Rollout of the Consumer Data Right (CDR) to financial advisers by 2030

Improved efficiency and reduced risk will also come with improved access to consumer data and will strengthen the overall protection of consumers. This should be the first step in reforms to improve the quality of information, efficiency, and decision-making for consumers.

## Data standardisation

### RECOMMENDATION 30:

The FSC supports standardisation and collection of sector data to reduce the cost of financial advice. Data that should be collected include:

- Numbers of clients
- Number of registered financial advisers
- Regulatory and operating costs
- Types of advice provided
- Prices consumers are paying for financial advice

The system for data collection should have capacity to identify and monitor changes in the industry.

This reform should have appropriate controls to ensure commercially sensitive information about individual consumers, licensees or financial advisers, such as regulatory and operating costs, is not shared with other sector participants.

<sup>52</sup> Tax agents have access to consumer data through the ATO portal. Financial advisers do not have access to this data, even though it is sitting within the my.gov.au system. This data would be very valuable, particularly to understand income history, super contributions and superannuation balance information. Having access to this data would reduce the risk of excess contributions and help to avoid additional time-consuming steps to confirm information.

<sup>53</sup> As recommended in the Financial Planning Association's 2020 Policy Platform Affordable Advice, Sustainable Profession.

# 11. TAX INCENTIVES FOR PROFESSIONAL FINANCIAL ADVICE

## RECOMMENDATION 31:

The Government should explore how the tax system can be used to incentivise the uptake of financial advice, including the following options:

- A means tested tax rebate
- One-off \$500 payment for upfront financial advice
- Tax deductibility at a capped or uncapped rate

The Quality of Financial Advice Review should consider a framework for implementation from 2026 subject to improved consumer outcomes.

These measures could enable improved access to or increased affordability of advice for consumers. This should be viewed in the context of the insights posed by the most recent Intergenerational Report<sup>54</sup> which show a considerable proportion of the population in retirement, with more costly and complex financial needs, underlining the need for professional financial advice.

Advised consumers are better positioned to self-fund their retirement compared to individuals who do not access advice. Maximising retirement incomes reduces a consumer's reliance on the Age Pension and provides a benefit both to the Government's fiscal position and taxpayers. Rice Warner's modelling has shown that the provision of advice could result in a one per cent uplift in the investment earnings of Australians, with national savings increasing by approximately \$2 trillion over 30 years.<sup>55</sup>

The cost of these options would be offset by the social benefits of incentivising disengaged cohorts of consumers to engage in financial advice to help meet their financial needs.

<sup>54</sup> 2021 Intergenerational Report. Australian Government The Treasury. (Source: <https://treasury.gov.au/publication/2021-intergenerational-report>).  
<sup>55</sup> Page 19. 'Future of Advice'. Rice Warner. (Source: <https://www.ricewarner.com/wp-content/uploads/2020/10/RW-Future-of-Advice-Report.pdf>).



