Joint Associations Working Group

Licensee Leadership Forum

Submission to Treasury
Quality of Advice Review - Issues Paper

Introduction

An ongoing Joint Associations Working Group (JAWG), comprising representatives of key financial services industry and financial advice professional associations, prepared this submission for the Quality of Advice Review (Review). The Associations involved are:

1. Association of Financial Advisers (AFA)
2. Boutique Financial Planning Principals Association Inc. (BFP)
3. Chartered Accountants Australia and New Zealand (CA ANZ)
4. CPA Australia
5. Financial Planning Association (FPA)
6. Financial Services Council (FSC)
7. Financial Services Institute of Australasia (FINSIA)
8. Institute of Public Accountants (IPA)
9. Licensee Leadership Forum (LLF)
10. Self Managed Super Fund Association (SMSFA)
11. Stockbrokers and Investment Advisers Association (SIAA)
12. The Advisers Association Ltd (TAA)

The 12 Associations agree and support the following key themes as the priorities for improving the accessibility, affordability and quality of financial advice for consumers:

1. Consumer Focused – putting Consumer, Customer and Client needs first.
2. Recognition of Professionalism – recognising financial advice as a profession and financial advisers as professionals.
3. Regulatory Certainty – ensuring the regulation and enforcement of the law are consistent.
4. Open Data and Innovation – standardising and sharing data to remove duplication and reduce rework.
5. Sustainability – ensuring the sustainability of the financial advice profession and practices, with a focus on continuous innovation and improvement.

The JAWG recommends the Quality of Advice Review focus on these key themes and embed them into the regulatory landscape, to overcome the accessibility and affordability issues impacting the provision of quality financial advice for consumers, customers and clients.

The intent is to have deliverable actions with outcomes. Some in the short term (12 months or less from the final report) and some in the medium to long-term (13+ months).

Most of the Associations have also made separate submissions, addressing their specific stakeholder views and issues.

Executive Summary

As the key associations representing Australia's financial services industry and professional financial advisers, the JAWG collectively represents more than 90% of advisers on the Financial Advisers Register (FAR), and the majority of financial services firms. The associations have individually and collectively taken leadership roles in their sectors in Australia and globally dating back to at least 1886.

The JAWG thanks the Review for the opportunity to provide this submission, and particularly the availability of an extension of time given the significance of all Associations working together for the benefit of the public, consumers and the profession.

Our joint associations believe in the value of financial advice and we wish to see an outcome where quality financial advice is both accessible and affordable for everyday Australians. This can be achieved by providing more regulatory certainty; streamlining the regulation and advice policies and processes; increasing the use of scoped and limited advice; providing access to already available data for financial advisers and Australian Financial Services (AFS) licensees; and moving to a more principles-based approach to regulation over time.

Access to available, affordable and quality advice for consumers is not mutually exclusive of other desired outcomes. Noting the need to maintain appropriate consumer protection and a sustainable, viable and thriving financial services industry and financial advice profession.

With the introduction of the Financial Planner and Financial Adviser professional standards that apply to the provision of financial advice, the government and regulators asked financial advisers to become professionals. That has occurred. Data from ASIC and AFCA has demonstrated that the combination of reforms such as the Future of Financial Advice (FOFA), Life Insurance Framework (LIF) and the professional standards framework have significantly improved the overall quality, education standards, competency and compliance of financial advisers. In summary, the profession has implemented and complied with these changes to demonstrate the professionalism of the sector.

In saying this, despite being seen by the vast majority of clients as trusted and valued professionals, and as demonstrated through the behavioural improvements seen by regulators and External Dispute Resolution (EDR) schemes and the decreased numbers of complaints, the government and regulators, until recently, appear to have taken the view that financial advice should remain a highly regulated environment that relies on black letter law, legislative instruments and regulatory guidelines. This has led to a complex, inconsistent, costly and difficult to comply with environment with licensees and advisers being very fearful of making even the most minor error. The cost to serve consumers, customers and clients has increased significantly, with even simple advice or a simple review taking between 10-20 hours to ensure that all regulatory and compliance requirements are satisfied.

There is also a significant mismatch between what consumers expect and what advisers are able to provide. Simple advice should be simple, cost-effective ($300-$500) and delivered quickly and efficiently. However, under the current regulatory model even simple advice often takes 60-90 days elapsed time to complete the provision and documentation of advice.

It is also important to consider the difference in needs between consumers (those not advised yet), customers (those purchasing advice services on an ad hoc basis) and clients (those in ongoing professional relationships). The current one-size-fits-all regulatory approach based on financial product advice is not relevant to many Australians' advice needs, nor the types of advice provided by professional financial advisers. The regulation of financial advice needs to provide flexibility to support consumers when they seek advice; customers when they seek specific assistance within the context of their whole financial position, and clients in ongoing advice relationships.

The Quality of Advice Review terms of reference are not limited to 'financial product advice' as defined by the Corporations Act Chapter 7; they are looking at 'financial advice' more broadly. We appreciate this distinction and believe the desired outcomes can be achieved by focusing on policy positions that provide certainty to both financial advisers and licensees, removing regulatory duplication and the complexity created through (sometimes) conflicting regulatory interpretations, which has generally led to a heightened fear by advice providers of making a minor compliance error or mistake with the resulting risk of disproportionate regulatory action.

The recommendations made below are aimed to ensure that financial advice can be provided in the best interests of consumers; professional financial advisers are able to provide professional services; consumers have easier access to quality advice; and any reform can deal with many of the inefficiencies and cost drivers affecting the affordability of advice. The themes and recommendations are interdependent, they inform each other and cannot take place in isolation.

Agreed Key Themes:

1. **Consumer Focused**

The Quality of Advice Review should result in outcomes that support access to affordable and quality professional financial advice for all Australians and ensure consumers' interests are protected and advanced when accessing financial advice.

2. **Recognition of Professionalism**

There has been a significant shift in the professionalism of financial advisers. This shift is not reflected in the regulatory framework that was designed for a different era of conflicted remuneration and vertically integrated organisations where 'advice' was considered by some as a sales and distribution channel for in-house products.

Changes to the regulatory environment should recognise the professionalism of financial advisers and enhance the reputation and health of the financial advice profession as a whole.

3. **Regulatory Certainty**

Financial advisers, when providing financial advice to consumers, are required to comply with multiple laws and regulators, with additional oversight from AFS licensees and professional associations. Also, they are subject to decisions made by an external dispute resolution scheme, the courts, and the Financial Services and Credit Panel (FSCP).

This complex legislative and regulatory environment, with a one-size-fits-all approach to different types of advice and advisers, and 'zero' tolerance for mistakes and compliance breaches, as well as onerous civil and criminal penalties, has resulted in licensees and advisers being in fear of making even a minor compliance error or a mistake. This leads to double, if not triple checking of all aspects of advice being provided and over-engineered systems and processes, which add additional cost to and delays in providing advice to consumers.

Regulatory certainty needs to be introduced and duplication removed to provide for a regulatory environment that provides consumer protection without adding significant cost and complexity to the provision of advice.

4. **Open Data and Innovation**

Improving data quality, developing and implementing standard forms for standard processes, providing broader access to financial advisers of already available data (e.g., MyGov, Centrelink) and applying Consumer Data Rights (CDR) as well as consistent principles across financial services will improve the client experience, reduce errors, reduce the time taken to provide advice and reduce the cost of providing advice to consumers.

5. **Sustainability**

A sustainable advice sector, in all its forms and propositions across the continuum of consumer advice needs, is essential to ensure that Australians can access affordable quality advice from their choice of trusted advisers. Issues impacting sustainability are often interconnected and lead to a mix of responses: substantial reduction in adviser numbers; limited new talent joining the sector; inequity in parts of the financial advice ecosystem; the costs (time, people, focus, financial) of adjusting to a consistently high volume of regulatory and legislative change; rising operational costs; and a lack of regulatory certainty, are all examples of these issues.

Ultimately, these sustainability pressures impact innovation, investment and competition which underpin a flourishing and dynamic financial advice sector that provides consumers with choices and options. Sustainability of the advice sector has broader socio-economic implications for Australia – the more Australians can build their financial independence, resilience and well-being, the less pressure there will be on governments to fund Australians who are in a less than sustainable financial position. The financial advice sector has an important role to play in reducing this pressure.

Theme: 1. Consumer Focused	
Explanation: The Quality of Advice Review should result in outcomes that support access to affordable and quality professional financial advice for all Australians that meets their needs and ensures consumers' interests are protected and advanced when accessing financial advice.	
Why? Consumer access to affordable quality advice is far less than optimal, due to the following issues: ● Current regulatory requirements are confusing, complex, and overwhelming. The fact that despite financial advisers taking all steps necessary to become a profession, outdated regulation continues to prescribe an advice process that is excessively complex and does not cater to the needs of the clients they serve. ● Current requirements mandate a one-size-fits-all advice process that does not cater for, nor consider the individual needs and circumstances of each consumer. ● The need for consumers to be able to seek advice at a point in time for a response to a specific requirement, which the current regulatory framework does not support as the full range of different client advice needs cannot be met in a cost-effective manner. ● Current definitions can be misunderstood by or are confusing to the client. For example, general advice on a financial product does not take into account the consumer's personal circumstances, yet the consumer may not appreciate this point.	
Recommendations	
Quick Wins	**Medium to long term**
1. Review, align and implement statutory and professional obligations to ensure they are consumer-focused and support the different advice needs – from limited to complex of different consumers, customers and clients. 2. Review the advice process through the lens of the consumer to ensure they are engaged, informed and protected. 3. Re-work consumer-facing advice documentation requirements to ensure they result in advice that is meaningful and understood by the individual consumer. 4. Government to continue its investment to lift the financial literacy of the community, to help Australians make informed and confident financial choices that support their financial well-being.	1. Review key terms of advice. For example, personal advice; general advice; scaled advice; intra-fund advice; digital advice; to ensure they are meaningful and understood by the consumer. 2. Develop an advice process that is aligned to the needs of different consumers and incorporates protection measures that consumers value and are prepared to pay for. 3. Support a principles-based regulatory regime that is more consumer-focused, based on recommendations from this Review and the ALRC review outcomes, and which are tied to the need for professionals to be able to respond and deliver advice aligned to different consumer and client needs.

Theme: 2. Recognition of Professionalism	
Explanation: The Quality of Advice Review is an opportunity to identify and acknowledge the benefits of professionalisation, professional education and professional standards and the powerful role these play in the future of high-quality, affordable and accessible financial advice. This will increase consumer confidence and trust in the profession. The advice profession is underpinned by: ● acting in the client's best interests ● a professional framework, including strict adherence to a code of ethics ● education standards ● continuous professional development obligations ● adoption of internal and external dispute bodies ● robust disciplinary processes, and ● a professional year and mentoring. A principles-based approach requires a professional framework of skills, experience and conduct (competency-based) rules which support the application of sound professional judgement.	
Why? Promoting sound professional judgement guided by professional standards in the application of principles, rather than driving rigid compliance with detailed prescriptive regulation has several advantages: ● Consistently better consumer outcomes across the profession and flexibility for changing circumstances. ● Lower conduct risk through the implementation of a professionalism framework that adds personal responsibility and accountability to one's peers and the broader community while meeting the expectations of employers and regulators. ● Lower compliance costs and better regulatory outcomes. ● A more risk-weighted approach to advice outcomes. ● A shift in emphasis to accountability for consumer outcomes rather than compliance, an improved consumer experience, and lower costs to consumers for advice.	
Recommendations	
Review the current legislative, regulatory and operating environment to move to a principles-based approach relying on professional judgement and professional standards for the provision of financial advice. Continue the transition to financial advice being recognised as a profession and review the operating framework (including the AFS licence structure).	
Quick Wins	**Medium and long term**
1. Review the advice process and documents to better recognise professional judgement, with the aim to	1. Clarify the obligations of the licensee and individual accountability of the financial adviser to remove unnecessary

make both less prescriptive, more straightforward and consumer-focused. 2. Provide for consumer-focused advice documentation e.g., an engagement letter commensurate with the complexity and needs of the client, instead of multiple documents repeatedly mentioning the scope of work, fees and services (e.g. FSG, SOA, Annual Advice Agreement, etc). 3. Increase the recognition of professionalism and individual adviser responsibility which should lead to appropriate and straightforward disclosure and consent documents to reduce the cost of advice and improve the client experience.	duplication and maintain appropriate consumer protection. 2. Review the FSCP and determine whether, as established, it achieves the desired and appropriate goals. 3. Move to principles-based legislation that recognises a role for co-regulation. 4. Recognise that professional associations provide the nexus between consumers, regulators, Government and the profession.

Theme: 3. Regulatory Certainty

Explanation:

Financial advisers operate in an area of law where complexity and opacity create regulatory uncertainty.

In Interim Report A: *Review of financial services legislation,* the Australian Law Reform Commission reported that:

> *'the extensive compliance costs on industry occasioned by the current regime and the difficulty for consumers in understanding their rights and entitlements suggest corporations and financial services legislation requires urgent and significant reform. Moreover, the extent to which the Corporations Act is amended by regulations and instruments which are difficult to locate and interpret raises broader rule of law concerns.'*

The key aspect of regulatory certainty that is important for financial advisers is having laws that give them the confidence to provide compliant advice, which will still be considered to be compliant in five, seven and ten years' time. In other words, financial advisers need the confidence that the regulatory goal posts will not be continually shifting and impacting negatively on the advice they have already given.

One major issue for providers of financial advice, which is an example of an area of the law that is creating regulatory uncertainty, is the safe harbour steps contained in section 961B(2) of the Corporations Act. The way the safe harbour steps have been applied by ASIC and AFCA has resulted in them adding considerably to the complexity and cost of advice as well as creating regulatory uncertainty. In particular, the 'catch-all' requirement in section 961B(2)(g) that an adviser takes 'any other step' that 'would reasonably be regarded as being in the best interests of the client' is challenging due to the open-ended nature of the enquiry that is required to satisfy it. The safe harbour steps make it difficult and more costly to provide scaled advice – they require a financial adviser to undertake a lot of work to give a limited scope service and prevent them from defining a scaled advice process.

However, removing the safe harbour steps on its own will not provide certainty. There would need to be:

- clarity from both ASIC and AFCA on what is required to satisfy the best interests duty, including what enquiries need to be undertaken and what information needs to be collected, and
- alignment (and removal of inconsistencies) between the best interests duty and the Code of Ethics, including careful modification or removal of Standard 6 of the Code of Ethics to provide greater certainty and to better enable the provision of scaled advice.

The safe harbour steps and Standard 6 of the Code of Ethics adds length and complexity to disclosure documents, particularly with the inconsistency between regulatory guidance and enforcement/EDR activity. Statements of Advice need to be streamlined. This is not possible until Standard 6 of the Code of Ethics is modified or removed to better enable the efficient provision of advice and changes are made to the law regarding the safe harbour steps. Similarly, financial advisers would use the shorter record of advice provisions more frequently if there was greater regulatory certainty around the circumstances in which they could be used.

Why?

While prescription in regulations results in complexity and costs, adoption of a principles-based approach brings its own complexity and risk if there is no regulatory certainty. However, the current regulatory regime is onerous. A breach of a civil penalty provision can give rise to a civil action for loss or damage and be the basis of an action against the AFS licensee for breach of its licence conditions. The maximum penalties available for a breach of licence are very substantial.

The adviser may also be subject to a banning order or referred to the FSCP.

<table>
<tr><td colspan="2">Recommendations
There is a need for a single, consistent regime of regulation that facilitates the efficient provision of financial advice and provides confidence for licensees to establish practical rules that are consistent with the law and consumer needs.</td></tr>
<tr><td>Quick Wins</td><td>Medium and long term</td></tr>
<tr><td>

Remove the safe harbour steps while providing clarity on what is needed to satisfy the best interests duty.
Ensure the legislative framework provides regulatory certainty without prescription to enable:

provision of shorter Statements of Advice
definition and efficient delivery of limited or scoped advice
ascertainment of what data needs to be collected to provide advice
increased use of Records of Advice
more effective and concise dealing with the issue of alternative strategies and products
determination of what data needs to be included in the client file as opposed to what needs to be included in the Statement of Advice, and
increased use of professional judgement.

Amend or repeal the legislation and relevant legislative instruments to enable rationalisation, standardisation and automation of the Annual Renewal and Consent process and Fee Disclosure Statements (FDS).
Ensure consumer accessibility to risk advice by retaining the life insurance framework.
Provide certainty to the profession in relation to existing remuneration models and with regards to compliance with Standard 3 of the Code of Ethics.

</td><td>

Ensure the voice of the advised client is present in all regulatory changes.
Require ASIC to build a stronger engagement model with the sector by formally establishing a consultation group framework, similar to the Australian Taxation Office (ATO) consultation groups, comprising:

financial advisers
AFS licensees
financial product providers
professional associations, and
other key stakeholders.

Deliver a single source of regulatory truth for financial advice by streamlining the scale and complexity of the law and regulations to achieve this aim.

</td></tr>
</table>

Theme: 4. Open Data and Innovation

Explanation:

There is significant unnecessary waste in the system that leads to additional cost, time and resource requirements for consumers and advice providers. Much of this waste could be reduced or eliminated through access to up-to-date, reliable data that is already available within the financial services ecosystem. Access to this data will allow financial advisers to provide better advice to clients, including the ability to proactively trigger services based on clients achieving or falling behind on goals, in turn adding to the value of the advice experience for consumers. The cost of accessing data will also reduce significantly allowing advice to be provided more cost-effectively and more quickly to the consumer, customer and client.

While privacy and security are always a concern, the data already exists in the system. Therefore, subject to the client's consent, the focus should be on making it available in a secure and confidential manner for their benefit. This will improve efficiency, attract and enable clients across all generations to take up cost-effective and timely advice services and solutions.

Why?

- Australians will benefit from having easy access to all of their financial data when and where they need it. This aligns with the Consumer Data Rights (CDR) intent.
- Data ceases to be the friction point that it currently is in financial advice for advisers, consumers, and product and solution providers.
- The profession becomes easier to deal with for clients and everyday Australians, because standardisation will assist access to and affordability of advice.
- It improves the quality and efficiency and reduces the cost of providing advice.
- Open data allows scalability of advice services for the consumer.
- Straight-through implementation of all advice services aligns with consumer expectations of timing.
- Access to open data will drive innovation and investment in advice.
- It will improve reporting to and from the industry and the financial advice profession through a standardised data dictionary.
- Consumers of advice will ultimately be the beneficiaries of an open data approach that provides for greater optionality and experience.

Recommendations:

Make accurate and timely data available in a secure manner.

Quick Wins	**Medium and long term**
1. Standardised third party data collection authorities forms for all products. 2. CDR access for financial advisers (professional authority and data feed into advice and product technology). 3. Consider access to the ATO portal and creation of a standardised superannuation data application programming interface (API).	1. Roll out the CDR to all financial products to provide secure and efficient access to the client's financial data. 2. Legislative/ regulatory mandate to use universal financial services data standards built off the CDR. 3. Centrelink/ Aged Care data upload for trusted professionals. 4. Research access to financial advice

	data. 5. Universal straight-through implementation. 6. Digital advice – clarity around the use and availability of regulatory sandbox for testing innovation in advice delivery.

Theme: 5. Sustainability

Explanation:

A sustainable financial advice sector is needed to support the growing financial advice needs of the community, noting drivers such as compulsory superannuation; increasingly complex financial markets and products; increasing household wealth; and a fundamental need to support an individual's financial well-being over their lifetime.

Why?

The financial advice sector has experienced significant regulatory reform for nearly two decades. While there is strong support by the JAWG to ensure there is robust regulation to protect those who seek advice, many of these regulatory reforms have arguably created a complex advice framework that has priced many consumers out of initially seeking financial advice, while confusing existing clients who do not recognise the benefits in the additional complexity.

While there are still a number of large AFS licensees (particularly in stockbroking and investment advice), the reforms have seen the exit of many larger AFS licensees, resulting in a sector that is largely small-to-medium businesses trying to navigate and comply with their complex regulatory obligations in order to try to continue to support their clients.

The excessive complexity, compliance costs, hardening professional indemnity insurance market, inappropriate one-size-fits-all education standards and changing obligations have seen many advisers leave the personal advice sector. Those who remain have to increase their fees to remain viable. As a result, this has left many clients orphaned and seen costs grow, which acts as a barrier to accessing affordable advice.

The reforms have also seen a concerning decline in the pipeline of new entrants to the market, raising significant concerns around the sustainability – let alone potential growth – of the sector.

Yet, the advice needs of the community continue to grow and place pressure on other key policy measures such as the age pension, health and aged care.

Reform is needed to stabilise the sector and support growth to ensure the advice needs of the community can be met now and into the future.

Recommendations

Quick Wins	**Medium and long term**
1. Develop a profession-wide position on the tax deductibility of initial and ongoing advice fees. 2. Review funding and levy mechanisms, including the ASIC Industry Funding Model, to ensure they are sustainable and proportionate to the costs of the regulated sector. 3. Retain the higher education entry standards but review the one-size fits-all pathways and the specific obligations of the professional year to encourage more new entrants into the sector, including like-minded professionals. 4. Prepare and issue Regulatory Impact	1. Progress the deregulation agenda to address the constraining and complex regulation on small-to-medium financial advice businesses, to support economic growth and productivity. 2. Create an environment which supports the digital transformation of financial advice businesses through clear regulatory guidance to facilitate more efficient and competitive advice delivery, while ensuring the appropriate level of cyber resilience for advice firms in the context of the Government's Essential 8 framework. 3. Ensure that a one-size-fits-all approach

Statements for any proposed reform to ensure the principles of policy development are upheld. These should consider and analyse the cost and potential benefit to the consumer, customer and client.	to regulatory reform is not continued in financial advice given the current and potential variation in consumer advice propositions, specialisations and business models. 4. Promote and enable the sponsoring and collaboration between academia and the financial services industry to develop evidence-based research and reliable data sources, to inform ongoing regulatory reform and consumer, community and economic benefits of advice.

Association of Financial Advisers

Phil Anderson

Chief Executive Officer

Boutique Financial Planning Principals Association

Angela Martyn

President

Chartered Accountants Australia and New Zealand

Ainslie van Onselen

Chief Executive Officer

CPA Australia

Andrew Hunter

Chief Executive Officer

Financial Planning Association of Australia

Sarah Abood

Chief Executive Officer

Financial Services Council

Blake Briggs

Chief Executive Officer

Financial Services Institute of Australasia (FINSIA)

Yasser El-Ansary

Chief Executive Officer & Managing Director

Institute of Public Accountants

Andrew Conway

Chief Executive Officer

Licensee Leadership Forum

Matthew Fogarty

Co-Convenor of the Licensee Leadership Forum & Chief Executive Officer, Fitzpatricks Private Wealth

Self Managed Super Fund Association

John Maroney

Chief Executive Officer

Stockbrokers and Investment Advisers Association

Judith Fox

Chief Executive Officer

The Advisers Association Ltd

Neil Macdonald

Chief Executive Officer