



Quality of Advice Review – Issues Paper

FSC Submission

June 2022



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About the Financial Services Council

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

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

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

Executive Summary

The FSC welcomes the opportunity to submit to the *Review of the Quality of Financial Advice Issues Paper*. Financial advice remains out of reach for a significant number of consumers due to a complex and costly regulatory framework that is no longer fit for purpose in delivering affordable, accessible and ultimately simpler advice.

The FSC responds to the Quality of Advice Review (**the Review**) Issues Paper in two parts.

Part 1 responds to the Issues Paper's questions proposing a personal advice framework placing limited-type advice at the centre of the regulatory framework to enable consumers to get advice on the issues they want, when they want it by digital or other means to be achieved through three key changes:

FSC PERSONAL ADVICE FRAMEWORK

- the abolition of the safe harbour steps for complying with the Best Interests Duty and amending the Code of Ethics to reflect this change;
- the introduction of a technology-neutral Letter of Advice with simplified requirements supported by scalable advice obligations; and
- redefining advice with a personal advice-general information framework in a manner agnostic of financial product that is consulted on with industry before implementation.

In the submission the FSC refers to this framework as its “**proposed personal advice framework**” in acknowledgement that all advice is personal but capable of being scaled up or down in terms of disclosure and obligations aligned to the professional judgement of the adviser and the consumer need clarified ultimately in the scope with the consumer. All advice would be termed, and recognised, as ‘personal advice’ aligned with the consumer perspective (eg. Intra fund advice, limited advice, digital advice would all be regarded as personal advice).

The framework would also be positioned with several other foundations:

- The retention of the Australian Financial Services License and the introduction of a practicing certificate for financial advisers administered by a central body.
- Intra fund advice to be incorporated into the proposed personal advice framework.
- No exemption to the personal advice framework for the accounting profession.
- Removal of personal advice from the Design and Distribution Obligations (**DDO**).
- A system of principles-based requirements, and industry-led compliance to characterise annual renewal and the interactions between trustees, advisers, platforms in honouring fee consent obligations to consumers.
- Redevelopment of regulatory guidance that is more exemplary and providing the Regulator greater capacity to engage industry on compliance such as an expansion of the fintech regulatory sandbox.

- Redefining the thresholds for wholesale investors and in-building a method by which a financial adviser can ascertain the suitability of a consumer for distinction as a wholesale consumer.

Part 2 sets out the FSC's evaluation and assessment of the Life Insurance Framework and conflicted remuneration recommending:

- the retention of the ban on conflicted remuneration and exemptions for non Life Insurance Products.
- the retention of the Life Insurance Framework and measures to address underinsurance levels.

The FSC would welcome the opportunity to discuss its submission and provide additional insight to the Review.

FSC Recommendations

1. 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' and break the nexus with financial product.

Personal advice should be defined in legislation as advice that considers the personal circumstances of an individual consumer and personal recommendation for the consumer to take action. 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 qualified financial adviser. The Government should consult on this definition before it is legislated and implemented. Personal advice should be fully exempt from the design and distribution obligations ie no requirement to report significant dealings outside the TMD or report complaints outside the existing IDR requirements.

'Intra-fund' advice, as with terms such as 'strategic' advice, 'specialised' advice should be referred to as personal financial advice in acknowledgement that they are the same types of activity subject to the same requirements. The activity currently provided by superannuation funds should be brought within the FSC's proposed personal advice framework and subject to the simpler framework proposed by the FSC supported by scalable disclosure obligations.

'General Information' is factual information that is not specific to an individual consumer's circumstances and which does not make or imply personal recommendations. General Information should be legislated and conceptually consolidate the remaining elements of 'General Advice', as well as the existing concepts of 'Education' and 'Factual Information'. Information for mass consumption or cohort guidance (eg people in Y demographic typically do Z) should form part of the 'general information' definition. ASIC should support the revised definitions by providing regulatory guidance and Government should consult this definition before it is legislated and implemented.

2. The proposed definitions of advice and supporting regulations should be consulted on by Government. As outlined in further detail in the response to Question 22, the Government's consultation should focus on:

- Timing of such a reform.
- Sufficiency of the personal advice and general information framework.
- Adjustments to the professional requirements and education framework and the parameters of 'individual circumstances'
- Establishing the regulatory requirements for general information.
- Addressing activity that in certain advice scenarios transcends the personal advice-general information distinctions.
- Digitally delivered advice and information.
- Adjustments to the professional requirements and education framework.

How other frameworks currently governing certain interactions can be aligned to conform to this framework.

3. Personal advice that should be restricted in terms of who is authorised to provide it because it requires a specialised competency or level of training, should be determined by 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.

4. Financial advice provided by superannuation funds is a critical way in which consumer access financial advice and should be part of, supported by, the lighter-touch regulatory regime the FSC's proposes. (See *FSC's personal advice framework*).

As Intra fund advice is brought under the new framework, the Government should consult on the scope of advice provided by superannuation funds and other changes to s99F of the Superannuation Industry (Supervision) Act 1993 to fully integrate such advice into the personal advice framework with minimal disruption.

This change would not impact the services superannuation funds currently provide but would make them more susceptible to competition as the limited advice framework is implemented. Consideration of specific topics of advice outside of the superannuation fund should be reviewed through consultation with industry.

5. Personal advice provided by a superannuation funds and related to only superannuation should be able to be collectively charged to the members of the fund, as long as it meets the limitations of not being complex and not requiring ongoing advice. This should include superannuation only advice taking into account the insurance in the member's superannuation account, pension products and other superannuation accounts held by the member outside of the product for the purpose of advising on the member's interest in that fund.

6. Limited scope advice is personal advice, and should be labelled as such, under the *FSC's personal advice framework* allowing all advice to be scoped scaled up or down in terms of disclosure and format.

This framework should incorporate specialised personal financial advice, intra fund advice and advice provided by digital means placing limited advice at the centre of the advice framework.

7. Digital is personal advice, and should be labelled as such, under the FSC's personal advice framework allowing such advice to be scoped scaled up or down in terms of disclosure and format.

Consultation should occur to ensure advice or information delivered by technological or digital means is subject to the same consumer protections as other forms advice but potentially different requirements given appropriately conforming to their medium.⁸ A formal channel to engage with ASIC on advice matters (digital or otherwise) should be established. This could comprise of an expansion to ASIC's fintech regulatory sandbox to AFSL-holders with functions in respect of personal advice provided digitally that involve:

- Providing indicative compliance of advice solutions before these are taken to market through either:
 - formal feedback
 - binding ruling that solutions comply, signed off by an independent expert.

RG 255 Providing digital financial product advice to retail consumers should be updated irrespective of changes to the definitions of advice to enable compliance by emerging technologies, and as noted above, ASIC initiatives such as the Fintech Regulatory Sandbox should be expanded to existing AFS licensees to support innovation of digital advice offerings.

9. 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 several areas:

- Engagement with the profession as soon as possible to progress expansion of Open Finance for superannuation and other wealth products by setting timelines, key objectives and a roadmap, and rollout of Consumer Data Right (**CDR**) to financial advice by 2030, or sooner if practicable.
- As the CDR is rolled out consideration should be given as to how data from government agencies can be leveraged to support a more integrated consumer experience. This should consider leveraging data from:
 - The Australian Tax Office (ATO).
 - Births, Deaths and Marriages.
 - Centrelink.

10. Where it reduces the cost of providing advice, the FSC supports standardisation and collection of sector data to reduce the cost of financial advice. Data that should be collected include:

- Numbers of consumers.
- 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.

11. The Best Interests Duty in Section 961B (1) of the Corporations Act 2001 should be retained, and the safe harbour steps as they pertain to financial advice in Section 961B (2) of the Act abolished. The Code of Ethics should be amended to reflect this reform but not in effect reimpose the safe harbour steps as principles. The Code of Ethics should remain principles-based and evolve as the sector evolves. The Review should consider incorporating the safe harbour steps into Regulatory Guidance if it does not increase the cost of providing financial advice.

12. While removal of the safe harbour steps is the FSC's preference, and the most optimal way to reduce the cost of providing advice without diminishing consumer protections, should the Review be inclined not recommend such a change it should consider several alternatives:

- Removal of subsection 961(B)(2)(g) of the Corporations Act requiring to take any other step, that at the time of the advice being provided would reasonably be regarded as being in the best interests of the consumer.
- Amending the Best Interests Duty to have regard for the "scope and nature" of advice could support limited advice provision with greater confidence and certainty of compliance, if it is not inclined to make a recommendation in favour of the abolition of the safe harbour steps.

Amend ASIC's class order on record keeping that requires advisers to document evidence they have demonstrated compliance with the safe harbour steps.

13. 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).
- Standard 5 – Best interests (Consumer care).
- Standard 6 – Broad effects (Consumer care).
- Standard 7 – Consent (Quality process).
- Standard 8 – Record keeping (Quality process).

These changes should be consulted on prior to implementation along with other standards to ensure the overall framework is streamlined.

14. A system of principles-based requirements, and industry-led compliance should characterise the implementation of annual renewal and the interactions between trustees, advisers, platforms in honouring fee consent obligations to consumers.

As such the legislation should be amended to reflect a simple set of requirements of what objectives should be met at law, with industry determining the format to meet the overarching obligations in the legislation rather than ASIC's legislative instruments that should be repealed or amended:

- ASIC Corporations (Consent to Deductions – Ongoing Fee Arrangements) Instrument 2021/124.
- ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2021/126.

Government should work with industry and mandate a single standard form for consent requirements and fee disclosure statements, while identifying other areas where standardisation can improve the consumer experience and reduce cost.

15. Joint letters between APRA and ASIC issued in 2019 and 2021 have not provided sufficient clarity as to trustee oversight of the advice process. Government, Regulators and Industry should work together to ensure the areas of clarification that of concern to industry are addressed that include:

- Cost (time and money) of making SOAs available to trustees due to privacy issues
- Whether APRA, as the regulator of trustees, expects SOA checking to be part of a broader compliance checking (eg a response to other red flag indicators) or a random sampling of all advice fees?
- Broader concerns about consistency of trustee interpretation of the Sole Purpose Test.

16. 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:

- Specify the subject matter and scope of the financial advice sought;
- The circumstances of the consumer relevant to that financial advice sought; and
- 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.

17. 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.
- Additional disclaimers not directly relevant to a consumer Projections File notes.
- Alternative strategies or products.
- Certain information about a consumer ongoing servicing.

Other steps within the advice process subject to consultation with the sector.

18. The provision of all personal financial advice should be subject to the same regulatory requirements, the FSC does not support an exemption to the licensing requirements for the accounting profession to provide personal financial advice.

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

- The threshold for the asset test for determining a wholesale consumer 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 consumer that would be reclassified as a retail consumer as a result of this change can opt to remain a wholesale consumer if this election is made within a two-year transition period.
- Following the completion of the transition period for meeting professional standards and education requirements 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 consumer, as guided by the statutory Best Interests Duty and Code of Ethics framework.

The FSC supports requirements for a consumer to agree with an adviser to be classified as a wholesale consumer however consultation is needed on the most appropriate and flexible format this.

20. 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.

- The Government should consult on a framework that clarifies responsibilities of financial advisers and AFSL holders. The framework should consider minimum professional indemnity requirements for financial advisers and articulate a clear delineation of liability between AFSL holders and financial advisers.¹
- The terms such as ‘financial planner’ and ‘financial adviser’ to ensure consumers are protected from unlicensed financial advice.
- As the system of individual registration takes effect the Government should consider the introduction of a formalised practicing certificate issued when an adviser registers.

The Regulator should conduct representative cross sampling of the industry in investigating capital adequacy of advice businesses operating in the sector to ensure consumer protection.

21. Alignment is needed across ASIC’s regulatory, policy and enforcement arms with approach to the regulatory framework to ensure regulatory certainty for advice businesses. This should include a revision of the breach reporting requirements following reforms to the advice framework and recalibration of responsibilities between licensees and financial advisers.

¹ See Green Paper’s proposed set of responsibilities for licensees and advisers for implementation post the introduction of individual registration in 2023. This framework was developed prior to the introduction of the exposure draft legislation implementing the Better Advice Act 2021 but should support the Review’s conceptualisation of the licensing regime and how responsibilities are recalibrated.

22. 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.

23. 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 consumers.
- RG 90: Example Statement of Advice: Scaled Advice for a new consumer.
- RG 175: Licensing: Financial product advisers Conduct and disclosure.

24. 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.

25. As it pertains to non-life insurance products, the ban on conflicted remuneration and exemptions should not be changed.

26. The FSC recommends:

- The current exemption to the ban on conflicted remuneration for life risk insurance products should be retained, together with Life Insurance Framework in its current form
- the adoption of FSC's recommendations to further address underinsurance levels, which have increased over the past decade due to various regulatory reforms.

Part 1: Financial Advice

1. Quality

1.1 Summary of Key Points

- Value, affordability access, scalability, independence and confidence are key markers of advice quality that can be improved for consumers and advice providers under a simpler framework for the advice sector.
- Reform in recent years to improve professionalisation and remove conflicts from the industry have worked to enhance the overall quality of financial advice but have made advice compliance-focused rather than consumer-focused, and placing advice increasingly out of reach for Australians
- Metrics for measuring the quality of advice should have regard for the cost to produce, the arising benefits to consumers that are proportional to the cost, management of conflicts, the cultural approach to regulatory enforcement, and the overall simplicity of the legal framework for a variety of intermediaries who provide advice.
- **The adoption of the FSC's personal advice framework will secure the benefits of changes in recent years while delivering a simpler overall framework.**

1.2 Responses to questions

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

There are several characteristics of quality of advice for providers:

- **Value** – the advice provided places the consumer in a better position and matches the specific needs and objectives of the individual consumer on the advice they seek and the regulatory framework supports providers to deliver that advice in accordance with that objective with low costs of production.
- **Affordability** – providers can offer a range of advice solutions that can be produced at minimal cost.
- **Efficiency** – the advice is produced in a timely manner and can be altered with ease as needs, circumstances and goals change.
- **Scalability** – by way of:
 - Format – the medium or combination of mediums in which it is delivered to a consumer aligned with the scope of their advice and their individual experience
 - Obligations – the level of disclosure in the advice process for every individual consumer is proportionate to and the advice sought and scaled up or down as their goals, needs and circumstances change.
- **Independence** – the advice provided is based on the professional judgement of those providing it, and informed by clear and consistent professional standards and principles.
- **Consistency** – There should be a level field across different structures and channels such as technology or digital offerings, and traditional face to face solutions.

The FSC proposes an alternate framework to support these characteristics.

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

The consumer experience is the foundation on which quality advice is delivered. Key characteristics of quality advice include:

- **Value** – the advice consumers purchase is specific to the needs and objectives on which they seek that advice while placing them in a better position, and is sought in an environment in which they have range of different advice solutions to choose from.
- **Affordability** – the advice provided is affordable for consumers and the price of ‘single issue’. More than 100,000 consumers over the past year dropped out of their advice services, taking the total cohort of advised Australians to just 10.1 per cent of the adult population, down from 13.9 per cent in 2018.²
- **Accessibility** – It should be easy for consumers to seek out and obtain Financial Advice which meets their needs.
- **Efficiency** – the advice is received by the consumer in a timely manner and can be altered with ease as their needs, circumstances and goals change.
- **Relevance** – the advice provided is scalable and specific to their individual needs they are seeking advice on even if it draws attention to other matters regarding the consumer’s financial position and overall financial wellbeing
- **Simplicity** – the advice is presented in a manner the consumer can best understand and useful in making decisions. It must be easy for consumers to understand and it must be delivered cost effectively. This means simpler processes, shorter, better documentation delivered in multiple channels, and improved ways of delivering simple advice which does not carry high risks for consumers.
- **Confidence** – the advice ensures a consumer feels more empowered and secure about their financial affairs and that the advice they are receiving has been delivered in a manner subject to professionalism and appropriate levels of education and insight. Advice not only supports financial decisions and outcomes but improves psychological well-being and peace of mind related to a consumer’s financial decisions which often trigger advice need.
- **Improved outcomes for the consumer** – quality advice should improve the consumer’s wellbeing.

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

On balance, while improvements have been made to the professional standards and consumer protection, the impact means that advice is now more costly advice is and increasingly compliance focused rather than consumer focused.

Reform in the past decade has not been a “silver bullet” and there are still areas of law which are unclear, contradictory, and difficult to regulate and monitor (for example the safe harbour steps), this has profoundly impacted the cost, complexity and consumer experience the recommendations in this submission seek to resolve.

² Australian Financial Review. ‘100,000 quit financial advice as fees jump another 8pc’. Source: <https://www.afr.com/companies/financial-services/100-000-quit-financial-advice-as-fees-jump-another-8pc-20220418-p5ae5t>

By way of example:

- The introduction of the Best Interests Duty³ and an end to conflicted remuneration⁴ has aligned the interests of consumers and financial advisers, promoting the protection of consumers, and reduced a number of inherent conflicts of interest that existed in the industry prior to the Future of Financial Advice (**FoFA**) reforms, however the steps and broader regulatory requirements are contradictory.
- Financial Services Reform legislation in 2002 introduced a single licensing regime which has aided in providing uniformity, regulation and compliance of the industry, however it also introduced the Statement of Advice requirements which have become problematic as the advice sector has evolved.
- Introduction of professional standards⁵ has aided in the quality of advice provided to consumers by ensuring financial advisers have a minimum level of qualifications, undertake continuing professional development (consistent with other professions such as lawyers, by way of example) and they comply with a code of ethics providing an alternate principles-based system of administering financial advice. However, uncertainty as to further change to education pathways creates further uncertainty among the industry from constantly changing goalposts.
- The Life Insurance Framework (LIF) introduced in 2017: This has achieved its outcomes of improving the quality of advice by reducing conflicts of interest where policies were replaced for reasons that were not always in the best interests of consumers. Extending the clawback period to a uniform two years and capping the maximum upfront and trail commissions payable, has eliminated any bias towards the highest paying commission. Now where policies are replaced, they are done for legitimate reasons that improve the interests of their consumers or better respond to their changing circumstances.
- The changes implemented because of the Hayne Royal Commission, such as the end to grandfathered conflicted remuneration further enhanced the intent of the FoFA reforms remedying conflicts of interest, along with new breach reporting, reference checking, and information sharing requirements which have been implemented with speed often with little opportunity for the industry to prepare or communication with the Regulator (**ASIC**).

The sequencing, implementation and assumptions behind the regulatory net all contributes to the cost of advice worn by consumers who purchase it. An increasingly large cohort of consumers are in need of advice, often on simple or basic issues and the regulatory requirements that apply to this advice are in significant parts contradictory or do not contemplate the day to day practical realities of the advice process. The Review

³ A statutory obligation to act in the best interests consumers when providing financial product advice, financial advisers not must act not merely to protect consumers' interests but rather to act in their best interests even when this was potentially detrimental to the financial adviser.

⁴ Removal of certain forms of conflicted remuneration, enhanced disclosure requirements for ongoing fee arrangements and introduced 'grandfathering' of certain conflicted remuneration.

⁵ This was a significant reform as it sought to introduce minimum standards of compliance and expertise across the industry.

presents a significant opportunity to reconcile the law around a simpler framework that is fit for purpose.

The FSC's recommendations are aligned with this objective to transform the consumer experience and reduce cost and complexity through the adoption of its proposed personal advice framework.

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

While there are invariably more consumer protections in law for which the Review should have regard for, the critical factors the Review should consider in assessing overall improvements in the quality of advice:

- **Engagement** – measured by number of consumers taking up advice, engaging online advice tools and making enquiries about advice. Survey data around attitudes to advice of advised and unadvised consumers.
- **Cost to produce advice** – KPMG have estimated a cost of \$5,334 to deliver comprehensive advice,⁶ with the median price charged to consumers across all advice types is \$3,529 having increased eight per cent in the past year and 40 per cent over the past three years.⁷
- **Proportionality** – The benefit to consumers is proportional to the cost in delivering the measure. There needs to be some reconciliation of whether the increase in cost of advice arising from the regulatory framework is commensurate with the level of consumer protection it offers. There might be incremental improvement in quality with each layer of the regulatory framework, but it will be marginal relative to the cost.
- **Management of conflicts** – have measures to reduce conflicts where the interests of consumers otherwise not have been provided improved the quality of advice.
- **Culture** – there is ongoing concern that conflicting approaches between overall regulatory *policy* and regulatory *enforcement* is driving providers of financial advice to adopt higher standards than the law which is resulting in less innovation and higher risk aversion in regards to provision of advice particularly to segments of the market seeking scaled or limited advice.
- **Simplicity of the legal framework** – As noted, there are considerably more laws and regulations some arguably serving dual purposes (eg the Safe Harbour steps and the Code of Ethics are respectively objective and subjective legal steps for achieving the same ends and there as is confusion about their application and role).
 - **Implementation** – whether the current framework makes it easier to prepare and implement advice or not.

⁶ KPMG Cost profile of the financial advice sector

⁷ “*The Adviser Ratings 2022 Financial Advice Landscape Report* has found the median fees charged to consumers increased from \$3256 to \$3529 a year, representing an 8 per cent spike, or 40 per cent over the three years to December 2021. The estimate includes both scaled-limited and comprehensive-ongoing forms of advice and would be closer to \$5000 a year if restricted to the latter. Australian Financial Review. ‘100,000 quit financial advice as fees jump another 8pc’. Source: <https://www.afr.com/companies/financial-services/100-000-quit-financial-advice-as-fees-jump-another-8pc-20220418-p5ae5t>

- **Support for different forms of advice** – the law is broadly technology-neutral but the nervousness of industry as a result of the enforcement approach has inhibited widespread low-cost alternatives to providing advice beyond in writing paper-based models.
- **Reduction in complaints and incidents of consumer detriment** – another measure of improved quality in advice should be a reduction in complaints and a reduction in the incidents of consumer detriment identified by licensees and regulators.

2. Affordability

2.1 Summary of Key Points

- While substantial legislative change has improved the quality of advice the cost of producing financial advice and the price consumers pay for it has increased substantially.
- For retail consumers, KPMG estimates the cost of the typical advice process as \$5334⁸. The most recent studies have found the median fees charge consumers has risen to \$3,529 (an increase of eight per cent in the past year, and forty percent in the last three years).⁹
- This impacts the compliance costs of an advice provider in addition to the operating costs of running an advice business, primarily the time taken to prepare financial advice, which are all ultimately worn by consumers
- Financial technology can, and is, playing a key role in the advice process however faces a number of impediments that could be resolved by the personal advice framework the FSC proposes.
- **Affordability will be best secured through the adoption of the personal advice framework proposed by the FSC.**

2.2 Responses to questions

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

For retail consumers, KPMG estimates the cost of the typical advice process as \$5334¹⁰. The most recent studies have found the median fees charge consumers has risen to \$3,529 (an increase of eight per cent in the past year, and forty percent in the last three years).¹¹

This arises from the extensive fact-finding obligations advisers have to deliver comprehensive and detailed wealth plans. However, this assumes all advice is and should be *comprehensive*, ultimately driving up costs in time and resources involved.

While the law permits the provision of scaled advice, many surrounding obligations that have been gradually added to the advice process and a rigorous approach to

⁸ KPMG Cost profile of the Australian financial advice sector.

⁹ Australian Financial Review. '100,000 quit financial advice as fees jump another 8pc'. Source: <https://www.afr.com/companies/financial-services/100-000-quit-financial-advice-as-fees-jump-another-8pc-20220418-p5ae5t>

¹⁰ KPMG Cost profile of the Australian financial advice sector.

¹¹ Australian Financial Review. '100,000 quit financial advice as fees jump another 8pc'. Source: <https://www.afr.com/companies/financial-services/100-000-quit-financial-advice-as-fees-jump-another-8pc-20220418-p5ae5t>

enforcement, have effectively prevented innovation of limited advice offerings geared towards consumers falling within the advice gap. As Rice Warner notes¹²:

For practitioners, the current operating environment provides several impediments. The intersection of technological change, requirements on adviser education, training, and ethical standards along with fallout from The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission) and other reviews have created a plethora of operating hurdles which impede the delivery of quality information to Australians.

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

There is now a layered approach to regulation, where each body imposes regulations 'on top of broader obligations. Every time such levers are changed by Parliament, or by the Regulator, this creates a cost that is largely worn by the consumer. This is to support compliance that in principle seems necessary but that delivers no apparent value or benefit to the consumer, nor is efficient. Consumers who purchase financial advice would expect to pay for the value they receive not necessarily funding the cost of compliance. There is also uncertainty around the cost involved (eg system builds) as a result of relatively new regulation that includes:

- the breach reporting framework
- Your Future Your Super,
- the Retirement Income Covenant,
- the Design and Distribution Obligations (**DDO**)
- Advice fee consent obligations

Regulation has a direct impact on the costs of running an advice business (eg the cost and time involved to meet obligations, and adhering to multiple codes of compliance, paying fees to, and interacting with multiple bodies). This sits outside the ongoing costs of advice businesses (eg wages and salaries, rental and property costs, insurance, costs of upskilling and professional development and training or tax).

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

Compliance has become a core function of advice businesses. Multiple overlapping regulations (eg safe harbour steps versus the Code of Ethics), or laws that are expanded beyond their meaning in the form of regulatory guidance are interpreted by legal and compliance teams that then counsel advice businesses as they provide their services. Significant effort and cost to get third party opinions such as legal, compliance and actuarial to gauge whether an advice solution is compliant with the law is prohibitive and

¹² Page 6. Future of Advice Report. October 2020. Source: <https://www.fsc.org.au/policy/advice/future-of-advice-report#:~:text=On%2020%20October%2C%20the%20FSC,and%20its%20future%20in%20detail.>

unnecessary. The evolving regulatory framework makes it increasingly harder for these businesses to price in risk and strengthen their focus on choice.

The FSC's *Green Paper* illustrates how these costs might be looked at by an advice licensee¹³:

Regulatory costs:

- ASIC levies
- License registration levies
- Professional Indemnity (**PI**) Insurance
- AFCA fees
- Changes to education standards and requirements
- Cybersecurity and privacy requirements
- Regulator fact-finds
- Product comparisons and research
- Record keeping requirements

Future regulatory requirements:

- Compensation Scheme of Last Resort (**CSLR**)
- Financial Accountability Regime
- Fees to the Financial Services and Credit Panel
- Incoming reference checking protocol
- Design and Distribution Obligations

Cost of operating an advice business:

- Technology costs to facilitate more efficient modelling of advice outcomes
- Time overheads activity
- Educating financial advisers
- Opportunity costs where advice takes longer and a consumer does not wish to proceed
- Professional memberships
- Wages and salaries
- Insurance
- Rental and property costs
- Tax

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

Quantifying the cost of meeting regulatory or legislative obligations will depend on the specific regulatory or legislative requirement and advice businesses will have different systems for managing these costs. The current regulatory framework prescribes a detailed

¹³ Page 7. *Affordable and accessible FSC Green Paper on financial advice* (April 2021). Source: <https://www.fsc.org.au/policy/advice/green-paper#:~:text=The%20Green%20Paper%20also%20includes,to%20build%20certainty%20and%20confidence.>

advice process to be conducted with consumers by a financial adviser or AFSL holder which takes considerable time.

KPMG identified time as a considerable factor in the cost of producing advice and found that by removing some of these regulations without diminishing the fundamentals of consumer protection \$2000 could effectively be removed from the estimated \$5334 it takes to prepare advice notwithstanding the costs incurred because of an ongoing advice relationship.¹⁴ This would save advisers up to 32 per cent of their time when providing advice to consumers and allow advisers to provide financial advice to 44 new consumers per year.¹⁵

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

Apportioning costs will depend on how an advice business is structured (eg size, type of advice offering). For example, a smaller advice business might not have the scale that a larger advice business has in managing costs. Monitoring and supervision, particularly of authorised representatives (ie, not employed advisers) is costly.

However, systemising regulatory requirements across sometimes large compliance systems to ensure regulation is applied consistently has become burdensome as a result of factors that include:

- Legislative Instruments, Regulatory guidance that is open ended or prescriptive
- Rigid approaches to enforcement by the Regulator for technical breaches and a lack of materiality or significance considerations in the law.
- Higher standards of professionalism and education that require Australian Financial Services License (**AFSL**) holders update systems to ensure that can keep accurate records related to training and education requirements of financial advisers
- A lack of practical considerations as to how regulation is applied to the day-to-day realities for advice businesses.
 - For example, the scheduling of four financial adviser exams has deterred professional year candidates to from progressing despite considerable investment by licensees in their development, due to the lack of on-demand availability of the exam.
- Baseline set up costs of running or establishing an advice business (lack of access to Professional Indemnity insurance, tax, or staffing overheads)

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

See also answer to Question 3. The sequencing and passage of legislative change has often occurred in isolation from one another including:

- The introduction of professional standards and education requirements seeks to compel a principles-based framework for meeting obligations under the Best

¹⁴ KPMG Cost profile of the financial advice sector

¹⁵ KPMG Cost profile of the financial advice sector

Interests Duty that jars with the prescriptive requirements of the safe harbour steps.

- For example, Standard 6 of the Code of Ethics and the requirement to consider any other circumstances under the safe harbour steps are regarded to have made the sector less confident in being able to provide limited advice – an issue the FSC’s proposed personal advice framework seeks to resolve.
- The speed of Royal Commission legislation mandating an annual renewal and fee consent process gave industry little time to effectively prepare standardised options for meeting these obligations to reduce costs. While guidance has been issued by industry (See *Charging arrangements*) ASIC was limited in what it could communicate to industry before annual renewal and fee consent obligations were passed.
- The breach reporting framework takes a catch all approach to the reporting of certain breaches and breach of civil penalty provisions, to the regulator for procedural errors or oversight adding to the costs of AFSL holders.
- The DDO impose high and unnecessary costs on financial advisers:
 - Investment platforms can use the personal advice DDO exemption if they are implementing advice from an in-house adviser, but it is very difficult to obtain this exemption if the platform is implementing advice from an external (or independent) adviser – imposing high compliance costs on both independent advisers and platforms.¹⁶
 - The DDO exemption relating to personal advice is only available for advisers that “arrange” dealings, and is not available for advisers that conduct the dealing themselves. There is no clear policy reason for this omission, as the substantial protections of personal advice apply both to arranging dealings and the dealings themselves.¹⁷
 - The DDO imposes requirements for advisers to report complaints to product issuers – but these requirements substantially overlap with Internal Dispute Reporting (**IDR**) requirements. The DDO and IDR requirements have different reporting periods and deadlines, have different content requirements, and may cover the same or different complaints. This is pure red tape with no benefit to consumers, advisers or product issuers.
 - Despite the personal advice exemption advisers are required to report significant dealings outside the TMD to the product issuer however the product issuer excludes significant dealings related to personal advice from their ASIC reporting, so the requirement is unnecessary. Removing personal advice from the DDO regime should be considered.

Consumers are paying for the costs of these changes as advice is downgraded or hollowed out by the prioritisation of compliance with a vast array of laws. This ultimately comes at the expense of value – time spent with consumers to improve understanding.

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

¹⁶ For more details, see pages 52–53 of the [FSC submission on ASIC’s CP 325: draft regulatory guide on the DDO](#) and section 3.1.2 and 3.4 of the [FSC submission on draft DDO regulations](#).

¹⁷ For more details, see section 3.1.1 of the [FSC submission on draft DDO regulations](#).

Financial technology (**Fintech**) solutions can assist advisers to cut through complexity in the production of advice thereby reducing the cost of advice. Fintech can reduce the cost of financial advice ways that include:

- Enabling advisers to deliver advice in a manner that better engages consumers (e.g., more interactive, visual, comprehensible) increasing understanding of the advice, connecting the consumer and data in real-time supporting advisers to track and deliver on consumer objectives and goals
- The costs in staffing or hiring people,
- Reduced time taken to prepare advice,
- Reducing paperwork and
- Greater accuracy and a reduced the margin for error.

This would complement other face-to-face advice channels and reduce the turnaround time involved.

The benefits of an increased role for fintech in the advice process include:

- Greater ownership of the advice process by the consumer.
- Complimenting other advice channels, for example, after a face-to-face meeting all advice could be digital.
- The ability to generate information and data themselves in a scalable manner.
- More effective implementation of the advice consumers are provided.
- Capturing and transferring data between consumers, advisers and other market service or product providers.
- Regulatory technology (eg scanning of documents to reduce errors and video recording to remove the need for lengthy written file notes)

Examples of successful initiatives which include fintech-driven advice include:

- **The emergence of platforms** that provide data analytics or tools to assist advisers in undertaking comparative analysis and bulk transitions. They collect consumer data in bulk transitions to efficiently transition adviser consumer books. These solutions reduce cost and complexity for financial advisers and reduce the risk of administration errors.

The incorporation of financial technology into the delivery of advice is not without some risk and should be subject to the same regulatory framework that applies to traditional models of delivery. While it is in many parts, reform of the framework by removing the safe harbour steps, simplifying documentation and disclosure and clearer definitions of personal advice and general information will support choice and innovation in advice solutions across different mediums. Fintech can also enable robo-advice to reach consumers who can't or won't access holistic personal advice.

While many compelling digital advice offerings have emerged under the current framework this should not be an argument for retaining the current framework when it lacks sound fundamentals.

(See *Digital advice*)

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

There are two key impediments to the role of technology and widespread innovation in the advice process:

- **The regulatory framework** impedes the role of financial technology in the advice implementation process which is highly manual and time consuming with multiple forms and consents required to be completed by the consumer. The FSC views

that reform of the law in line with its recommendations under its proposed personal advice framework will provide the regulatory certainty needed to see more digital advice solutions enter the market and become a central form of advice provision in the future. Less complexity in the regulations around the provision of ongoing robo-advice would make advice a more conducive channel for servicing the ongoing simple advice needs of consumers further underlining the imperative for reform.

- In relation to the use of digital advice, where financial technology intersects considerably, take up of this service is often limited by concerns about the consumer experience. There are many parts of the advice journey that require an overlay professional judgement, which is often difficult to do digitally. This often means having to exit the consumer from the digital advice process and engage in human intervention. This exit is often abrupt and disrupts the process, often resulting in some consumers electing not to continue to with the advice. In other cases, the increased cost of face to face advice means that it is no longer affordable.
- **The limited role of the regulator to indicate compliance:** An issue for businesses seeking to offer digital or technology-based solutions is the lack of confidence they can have that taking their initiative to market it will comply with the regulatory framework. In many instances the Regulator enforces the law and expands on it where it is authorised to do so. This deters innovation and competition in solutions because there is less certainty that these initiatives comply.

(See Digital Advice)

3. Accessibility

3.1 Summary of Key Points

- Demand for advice can be measured in range of ways for example demand for comprehensive advice versus limited-type advice otherwise forgone by providers to pressure on contact centres from consumers seeking advice that could not be provided.
- Triggers of certain life events (e.g. redundancy or buying a home) as well as the desire for a second opinion to improve an individual consumer's well being and financial self confidence are all circumstances in which financial advice might be sought, in which time, cost, perceived value are all key factors that will determine the motivations of consumers to do so.
- **A simpler advice process achieved through reform of the regulatory framework, as proposed by the FSC will enhance the accessibility of financial advice for Australian consumers less inclined to seek out a comprehensive wealth plan at a higher cost, but more inclined to seek advice on simple or basic issues, irrespective of whether those needs are simple or complex or whether the advice is delivered by digital or traditional means.**

3.2 Responses to questions

13. How should we measure demand for financial advice?

There are several areas the Review could examine in ascertaining demand for financial advice:

- Level of demand for full comprehensive advice as envisaged by the regulatory framework versus the demand for advice on single issues or scaled advice.
- Engagement with advisers that does not result in advice being provided (imperfect, as could have gone elsewhere, but may provide some insight).
- Pressure on contact centres for advice businesses and product providers (i.e. waiting times; queries that could have been answered through digital advice etc)
- Demand for educational content and self-service needs (e.g. use of websites, calculators, accessing accounts or changing investment mixes).
- Number of consumers with superannuation accounts not currently advised
- Mortgage holders that do not hold life insurance.
- Industry based surveys that seek to gauge demand for advice from a consumer perspective.

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

There are several circumstances where consumers who might otherwise purchase advice do not seek it:

- Consumers who are trying to improve their financial literacy
- Consumers who do not have the time to sit down with an adviser during working hours or cannot afford to see an adviser
- Budgeting and cashflow advice and support (might not be financial product advice)

- Life events (changes in circumstances but may not be aware of the need/benefit of advice for example engaging with their super or retirement income, buying a home).
- Basic insurance product advice, where consumers are either not purchasing appropriate cover or purchasing directly without personal advice due to the perceived and actual cost of that.

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

There are several barriers to people who need or want financial advice accessing it:

- **Cost:** Financial advice as currently regulated is costly to deliver and consumers believe it to be too expensive in relation to what they perceive as its value. Most consumers are not prepared to pay more than \$500 for financial advice.¹⁸
- **Motivation:** might not have sufficient income or assets to realise their goals or make the necessary decisions to achieve these, and as such not professional financial advice.
- **Time:** The time taken for a consumer to engage with the advice and comprehend advice provided
- **Awareness:** Awareness of the benefits of professional financial advice
- **Capability:** For example a person might not know who they would trust or where to start when seeking advice.
- **Consent:** Consumers are required to provide multiple consents in different forms to proceed with advice implementation.
- **Provider or medium of advice:** Many advice models are defined by the nature of provider (eg intra fund advice) or medium (eg digital or in writing) that each have limits or differences that can be barrier to advice for different consumers.
- **Disclosure:** consumers are presented with substantial volumes of disclosure and documentation required under the regulatory framework not necessarily specific to their needs or understanding of the ultimate intent of the advice.
- **Value:** This is difficult for consumers to quantify without an immediate return.
 - Life insurance - where consumers might not be able to comprehend the life events life insurance policies could guard against,
 - Superannuation - where changes in life circumstances are hard to predict and their impact on maximising a consumer's retirement income.
- **Trust:** The industry has been dealing with reputational issues following the Hayne Royal Commission although there are examples of trust increasing since that time.¹⁹
- **Scope:** It is particularly difficult to provide scaled advice efficiently²⁰ The delivery of the advice service is heavily focused on compliance rather than the consumer's strategy.²¹ Consumers may have the impression that the scope of advice may be broader than they want, due to an advice provider's understanding of the

¹⁸ Page 11. Future of Advice Report, Rice Warner. Source:

<https://www.fsc.org.au/policy/advice/future-of-advice-report#:~:text=On%2020%20October%2C%20the%20FSC,and%20its%20future%20in%20detail.>

¹⁹ <https://www.professionalplanner.com.au/2022/01/trust-in-advice-hits-post-royal-commission-high-coredata/>

²⁰ Future of Advice report

²¹ Future of Advice report

regulatory requirements. This can be construed by consumers as advisers trying to make more money, as opposed to trying to comply with their understanding of the law. To comply with their obligations under the law or the Code of Ethics, they are required to consider broader circumstances. This can mean that the adviser must provide advice for a wider scope of topics than the consumer wants. This either increases the cost or it creates challenges in agreeing the scope, or can mean the consumer walks away because its more than they want at that time.

- **Low general financial literacy of consumers.**
- **Supply of financial advisors has reduced:** as a result of increased regulatory complexity when engaging with retail consumers, amongst other challenges, such as changes to remuneration (excluded as Conflicted Remuneration) and increasing educational thresholds. Not all of these are negative, however, do contribute to a reduced number of professional advisors

Reducing cost makes advice feel more accessible to consumers. Consumers often rely on those they already know when choosing a specific financial adviser whether it be a family, friend or other professional, underlying the importance that the consumer places on trust in both the advice they receive, who gives that advice and who connects them with an adviser.

16. How could advice be more accessible?

Consumers have a diverse range of advice needs that exist along a spectrum from the need for education and factual information through to the need for holistic advice and an ongoing relationship with a financial adviser. The regulatory framework including the disclosure requirements should support the provision of advice along this spectrum toward an ongoing advice relationship rather than conceptualising advice need under binary framework between limited/scope advice and comprehensive advice. Advice needs along the spectrum may include:

- Consumer education, factual information and general advice
- Intra fund
- Episodic advice/ limited scope advice
- Strategic advice (without a product recommendation)
- Holistic advice (strategic advice across a number of areas, including product recommendations)

The needs of consumers struggling to access advice will be better met through allowing all advice to be scoped under the FSC's proposed personal advice framework and achieved through three key reforms:

1. Removal of the safe harbour steps for meeting the Best Interests Duty while updating the Code of Ethics to support the Code to become the primary source of guidance when seeking confirmation as to how the duty can be satisfied.
2. Abolition of the Statement of Advice requirements in favour of a Letter of Advice supported by scalable advice obligations that would see certain disclosure requirements removed where the scope or nature of the advice requires less extensive levels of disclosure, vis-a-vis a comprehensive wealth strategy. The FSC settled on a 'Letter of Advice' model with simpler requirements to imply a shorter document however advice should be supported by the law to be provided to a consumer in a variety of ways (eg digitally rather than in the paper-based format the law currently implies).
3. Proper demarcation between advice and information such as the introduction of a definition of personal financial advice and general information.

This would mean all advice is referred to and considered personal advice but the disclosure and level of detail sitting behind it would depend on the scope agreed with the consumer and the professional judgement of the adviser in accordance with strict consumer protections allowing advice to be scaled up or down along the spectrum of need. Reform of the regulatory framework to better support the provision of limited advice and a simpler advice process driven by the needs of consumers along a more certain regulatory footing encouraging more bespoke advice.

A range of other measures should be considered:

- **Design and Distribution Obligations:** Removal of significant red tape burden that is imposed on advisers, including the red tape issues raised in response to question 10:
 - Reducing red tape on independent advisers by ensuring the investment platforms can access the personal advice exemption from the Design and Distribution Obligations (**DDO**) when the platform implements the instructions of the independent adviser.²²
 - Ensuring the DDO exemption relating to personal advice is available for advisers that conduct dealings, as well as advisers that “arrange” dealings.²³
 - Review and remove the duplication of DDO complaint reporting and Internal Dispute Resolution (**IDR**) reporting requirements on advisers (and all product distributors more broadly).
 - Make personal advice fully exempt from the DDO regime ie where personal advice is provided in relation to a dealing there should be no requirement to make reports to product issuers, in particular report significant dealings outside the TMD.
- **Tax:** The Review may also consider the current framework of tax incentives and deductions, and whether these are sufficient, or best tailored in their current form to support accessibility for consumers. The FSC’s White Paper advocated the Government explore options which included:
 - A means tested tax rebate
 - A one-off \$500 payment for upfront financial advice
 - Tax deductibility at a capped or uncapped rate
- Other measures could take the form of a tax credit, offset or voucher targeted at consumers on low to middle incomes to access professional financial advice.

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

Financial counsellors

Financial counsellors play an important role in assisting vulnerable consumers experiencing financial hardship which precludes them from financial advice providers. The FSC is satisfied the existing financial counselling regime is adequate in regulating the financial counselling sector, and additional resources from industry are not required.

²² For more details, see pages 52–53 of the the [FSC submission on ASIC’s CP 325: draft regulatory guide on the DDO](#) and section 3.1.2 and 3.4 of the [FSC submission on draft DDO regulations](#).

²³ For more details, see section 3.1.1 of the [FSC submission on draft DDO regulations](#).

Digital and technologically-delivered advice

While research shows consumers are generally in favour of a human at least assisting the advice process if not providing financial advice altogether there are several areas where types of advice or general information could be provided by alternate mediums other than a financial adviser under the AFSL framework:

- Chatbots
- Digital educational content
- Digital Calculators, estimates and projections

The above would enable advisers and product manufacturers to take consumers further along the consumer journey in developing their broad product understanding, without trying to 'sell' the product. This could assist unadvised consumers to make more informed decisions about whether a product is suited for them. It could also help a consumer identify whether they need financial advice or whether they need limited financial advice on a particular suite of products or type of investment, for example.

Product provision

Consumers could greatly benefit from improved product advice from product issuers and product distributors (other than advisers) through two changes to Design and Distribution Obligations (**DDO**) outlined below. These issues affect product issuers that deal direct with customers (including superannuation funds), comparison websites and direct investment platforms (platforms without advisers), amongst others:

- The law should be clarified so that distributors can obtain the exemption from personal advice requirements when they voluntarily comply with the DDO. Currently, distributors can collect information from customers without this being classified as personal advice – but only if the distributor is required to comply with the DDO. If the distributor is voluntarily complying with the DDO, this exemption may not be available, so distributors may decide not to implement voluntary DDO compliance (which ASIC has encouraged in several important cases), or distributors may not ask questions of customers to improve product targeting. Clarifying the law in this area would improve customer outcomes.
- ASIC in its regulatory guide on the DDO has effectively discouraged product distributors (that are not personal advisers) from engaging in product filtering.²⁴ This for example means a distributor of investment funds is discouraged from asking for an investor's risk appetite, investment goals, and liquidity preferences, and then filtering a displayed product list in accordance with investor preferences. There would clearly be improved customer outcomes if product filtering were not just permitted, but encouraged.²⁵
- Make personal advice fully exempt from the DDO regime ie where personal advice is provided in relation to a dealing there should be no requirement to report significant dealings outside the TMD.

²⁴ RG 274.191–2 states product distributors should avoid asking questions of customers that may influence a customer's decisions. This is effectively discourages product filtering.

²⁵ For more details, see pages 48–50 of the [FSC submission on ASIC's CP 325: draft regulatory guide on the DDO](#).

The FSC's proposed personal advice framework reduce the cost of providing advice and make advice on single or basic issues easier to provide will help support the cohorts of consumers these areas cater to.

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

Yes. There are several ways in which financial technology can be better supported by the regulatory framework and industry along with incoming regulatory developments that will have a positive impact:

- **Standardisation:** Some platform providers make advice document templates available via their platform, eg, ROA templates for investment switches. Standardising these types of forms would assist with compliance, advice preparation and reduce costs (See *Charging arrangements* where this issue is discussed further)
- **Consumer Data Right (CDR):** CDR will enable faster fact finds and updating of consumer information, as well as product queries and comparisons. Consumers will also benefit from product comparisons enabled through CDR.

Rice Warner notes:²⁶

We note that technological tools such as robo-advice can guide consumers toward strong defaults, but they are underutilised. This is supported by research produced by ASIC which found that only 1% of surveyed participants had used robo-advice, despite 19% of participants being open to robo-advice once it was explained to them.

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

The existing framework impedes standardisation and innovation given its complexity and the uncertainty associated with the scoping of advice. It needs to be streamlined to:

- enable a level regulatory playing field for all forms of advice that is simpler and more certain
- facilitates optimal leveraging of consumer data to drive efficiencies and a better consumer experience.
- Enable an advice process driven less by the requirement to disclose information that is not relevant to the advice the consumer is ultimately seeking.

4. Types of advice

4.1 Summary of Key Points

- The existing terminology is not consumer centric and should encompass a broader range of activities to better demarcate between *advice* and *information*.
- The FSC seeks the introduction of personal advice and general information to break the nexus with financial product better aligned to consumer understanding and that caters to the difference nuances of traditional and digital mediums
- **Personal advice would be advice taking into account individual circumstances and making a personal recommendation to the consumer to take action, with terms such as ‘factual information’, and ‘education’ without such personal advice requirements constituting ‘general information’.**
 - **Simplifying the labelling of financial advice in this manner will 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 \$4,865.39.²⁷**
- **Changes to definitions should consider the removal of personal advice from the Design and Distribution Obligations (DDO)**
- The Government should consult on changes to consolidate definitions of advice as such changes are implemented.

4.2 Recommendations

Recommendation 1

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’ and break the nexus with financial product.

Personal advice should be defined in legislation as advice that considers the personal circumstances of an individual consumer and personal recommendation for the consumer to take action. 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 qualified financial adviser. The Government should consult on this definition before it is legislated and implemented. Personal advice should be fully exempt from the design and distribution obligations ie no requirement to report significant dealings outside the TMD or report complaints outside the existing IDR requirements.

‘Intra-fund’ advice, as with terms such as ‘strategic’ advice, ‘specialised’ advice should be referred to as personal financial advice in acknowledgement that they are the same types of activity subject to the same requirements. The activity currently provided by superannuation funds should be brought within the FSC’s proposed personal advice framework and subject to the simpler framework proposed by the FSC supported by scalable disclosure obligations.

'General Information' is factual information that is not specific to an individual consumer's circumstances and which does not make or imply personal recommendations. General Information should be legislated and conceptually consolidate the remaining elements of 'General Advice', as well as the existing concepts of 'Education' and 'Factual Information'. Information for mass consumption or cohort guidance (eg people in Y demographic typically do Z) should form part of the 'general information' definition. ASIC should support the revised definitions by providing regulatory guidance and Government should consult this definition before it is legislated and implemented.

Recommendation 2

The proposed definitions of advice and supporting regulations should be consulted on by Government. As outlined in further detail in the response to Question 22, the Government's consultation should focus on:

- Timing of such a reform.
- Sufficiency of personal advice and general information framework.
- Adjustments to the professional requirements and education framework and the parameters of 'individual circumstances'.
- Establishing the regulatory requirements for general information.
- Addressing activity that in certain advice scenarios transcends the personal advice-general information distinctions.
- Digitally delivered advice and information.
- Adjustments to the professional requirements and education framework.
- How other frameworks currently governing certain interactions can be aligned to conform to this framework.

Recommendation 3

Personal advice that should be restricted in terms of who is authorised to provide it because it requires a specialised competency or level of training, should be determined by 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.

4.3 Responses to questions

20. Is there a practical difference between financial advice and financial product advice and should they be treated in the same way by the regulatory framework?

There practical differences between these terms and the FSC makes the following observations:

- **The existing terminology is not consumer-centric and needs to appropriately demarcate between advice and information.** For this reason all types of personal advice should just be labelled 'personal advice' leaving the provider to explain to consumers the scope, limitations, benefits, and cost of each channel. It

makes it easier for the member and obvious that personal advice is being given and is easier to differentiate with general information.

- **Financial advice should be agnostic of financial product but not exclude it.** Financial product advice assumes that in all instances a recommendation about a product or class of products will be made to a consumer. The law should be reformed to break this nexus with financial product acknowledging that in many but not all instances 'financial advice' will encompass a product recommendation but makes many other recommendations beyond a financial product essential in meeting the needs of consumers.
- **Financial advice is a broader term, that encompasses low-risk activities not currently captured under the definition of financial product advice.** This includes activity such as budgeting and cashflow services. The nature of financial advice is such that it will often relate to other factors beyond advice on financial products. For example, certain consumer cohorts might be more likely to seek advice on cashflow and budgeting that is currently too costly for advice businesses to provide to these consumers.

Reform of these definitions (eg personal advice-general information, supported by scalable disclosure obligations with simplified requirements for meeting the Best Interests Duty, as proposed, will ensure the legal framework can support a *spectrum* of advice need than the current *binary* assumption about advice need the law envisages (discussed further under *Limited scope advice*).

21. Are there any impediments to a financial adviser providing financial advice more broadly, e.g. about budgeting, home ownership or Centrelink pensions? If so, what?

While there are strictly speaking no legal impediments to providing such advice, other factors such as licensee risk appetite and PI insurance cover will determine what advice (outside of financial product advice) can be provided by a financial adviser.

22. What types of financial advice should be regulated and to what extent?

Labels of advice such as 'limited', 'intra fund' or 'specialised' should be abolished in acknowledgment of all advice being a professional advice and better demarcating it from general information that does not take into account an individual's circumstances and makes a personal recommendation. Breaking the nexus between financial advice and financial products would acknowledge that financial advice is not always tied to a product or product regime simplify and support the recognition of the industry's transition to a profession, rather than a sales or distribution force. Where there is regulatory certainty, industry is enabled to innovate. Innovation drives growth and sustainability. In turn this enables uplift in services for consumers.

Personal advice should not encompass advice that is provided to cohorts of consumers based on common characteristics, such as age, income bands, marital status, no. of dependants. Such changes will ensure more flexible models of advice provision, for example the use of calculators.

Government consultation on the proposed definitions

Under the FSC's proposed personal advice framework. definitions will achieve greater overall clarity as to what is advice and what is information. While there is a strong need to

properly demarcate between what is *advice* and *information* in relation to consumers definitions should be consulted before implementing this framework is implemented. The FSC notes the definitions and labelling of personal advice and general advice are also a focus of the Australian Law Reform Commission's Financial Services Legislation Inquiry, and consideration would need to be given as to sequence in which definitional reform occurs. The Government's consultation should focus on:

- **Timing:** The FSC *White Paper* advocated reform aligns with the completion of the transition period for meeting professional standards and education requirements in 2026 to minimise disruption. It would follow the removal of the safe harbour steps and simplification of documentation and disclosure requirements
- **Sufficiency of personal advice and general information framework:** This aspect of the consultation should examine:
 - **Whether the proposed definitions of personal advice and general information are fit for purpose;**
 - **Whether these definitions best capture practical differences between what are considered financial advice and financial product advice as well as advice and information; and**
 - **Whether any exemptions that should apply where such activity transcends the personal advice and general information distinction.** An area to be considered would be reading in of the reasonable person might expect the advice provided to have considered the following factors how this would apply under a regime more reliant on the professional judgement of the advice provider under Section 766(3) of the Corporations Act.
- **Establishing the regulatory requirements for general information and the parameters:** Clear guardrails around General Information, that while not being personal advice and not requiring as extensive requirements, would need to be established to prevent business models exploiting such requirements. This aspect of the consultation should examine, for example, the difference between advice to a *cohort* of consumers as opposed to *individual* consumers, or whether two individuals would make a cohort or more. It should also consult on how activity such as marketing material would sit within the General Information framework in that it is intended to persuade consumers but does not account for their individual circumstances.
 - The consultation would need to consider how general information is regulated where a fee is charged on commercial basis as opposed to providing this advice free of charge.
- **Addressing activity that in certain advice scenarios transcends the personal advice-general information distinctions:** The Government should consult on such a framework to better clarify activity that could fall in each category. For example, where recommendations or statements of opinion in relation to products are given to groups of consumers such as investment research, product marketing and call centre interactions with representatives of product issuers. This is because we understand that "general information" as described by the FSC is information that does not make or imply recommendations. In circumstances where a recommendation is given (even if not personalised) the giver ought to be bound to disclose fees and conflicts).
- **Digitally-delivered advice and information:** What is provided to consumers should be subject to the same consumer protections. However, there might be different requirements that contemplate the nuances of digital mediums as different from human-delivered advice. The personal advice definition should contemplate such scenarios to ensure a level playing field. This issue should be a focus of consultation as changes to the definitions are implemented.

- The consultation on a personal advice-general information framework should consider what these requirements should be.
 - For example, product issuers of superannuation, insurance and investment products should be able to be provided under what is currently termed limited or digital advice (**personal advice** under the proposed framework) in relation to the usage of their own products in accordance with the scope agreed with a consumer. The below examples while certainly accounting for individual circumstances under the proposed framework as *personal advice* would not necessarily require as extensive levels of disclosure in all instances and would more closely resemble the levels of disclosure provided under general advice:
 - The amount of contributions (initial and regular) required to meet their savings goals.
 - The portfolio allocation of investment options that can be used to meet the savings goal.

This would facilitate more meaningful retirement projections and give members more information about their contribution caps, and how they could maximise those. If members are not able to do certain things through a financial adviser they might require more educational information.

- **Adjustments to the professional requirements and education framework:** The FSC notes that the professional standards and education standards are outside the Review's Terms of Reference. In the FSC's White Paper, where it advocates definitions of personal advice and general information it also proposed a set of requirements for providers of general information, that, should definitions of advice change, also be subject to consultation. The White Paper noted that such a framework should support²⁸:
 - 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 individual circumstances can provide recommended actions.
 - Financial Counsellors should be exempt from the regime and not subject to more obligations than they have currently in delivering counselling services.
- **How other frameworks currently governing certain interactions can be aligned to conform to this framework.** Current advice definitions have not evolved to compliment recent policy changes such as the Retirement Income Covenant and Anti-Hawking.
 - For example, under personal advice-general information framework guidance on anti-hawking should be reviewed to ensure that reasonable contact is possible, particularly with reference to advice on key products such as those required under the Retirement Income Covenant as the new framework is

introduced. It is already very difficult to discuss a retirement product with a superannuation member if they are not in that product already (unless initiated by the member).

23. Should there be different categories of financial advice and financial product advice and if so for what purpose?

Personal advice should be defined in a manner that captures the nuances of *recommending* or *referring* to products, or product classes but that such will not always be advice on *specific* products or classes of products. The definition should acknowledge that advice will not in all circumstances include such recommendations and to that end is subject to lower levels of disclosure obligations as determined by the advice provider in accordance with their obligations under the Best Interests Duty and the Code of Ethics. In practice, there is a difference between financial advice that does not refer to products/classes of product, for example, cashflow and budgeting advice versus advice that refers to a financial product. The former should not be subject to the same requirements as financial product advice, as no product knowledge is required.

The Government should, as part of consultation with industry, consider how these definitions best acknowledge essential differences in financial advice and financial product advice to ensure they are workable and reflective of different consumer needs (See Recommendation 2).

24. How should the different categories of advice be labelled?

The complex web of different categories of advice should be simplified into 'personal advice' and 'general information'. Re-labelling or simplifying the model of financial advice will 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 \$4,865.39.²⁹

Personal advice

Any information that considers the individual circumstances of a consumer and makes an explicit recommendation would constitute personal advice and therefore trigger the reformed Best Interests Duty obligations and the Letter of Advice disclosure obligations (see *Disclosure documents*). Much activity currently provided as General Advice would be called 'Personal advice' under this framework but involve the same or less disclosure obligations than it does now and be provided on a more certain regulatory footing. For example, the comparison of products would require potentially less research than that required for the making of a product recommendation.

The regulatory framework should be centred on the advice needs of consumers and should facilitate the provision of that advice. The definition enables strategic advice that is fit for purpose to be provided to consumers who need it according to their goals (which may not pertain to any product).

²⁹ KPMG research, Page 28.

The regulatory framework currently assumes that all “personal financial product advice” involves advice about more financial products and as such is not always fit for purpose for the consumer and the situation of the consumer

A simplified “personal advice” definition would be scalable. Such advice could more readily be limited or comprehensive, or according to the consumer’s need. The factor that should determine the scope of personal advice should be consumer need.

General Information

The FSC proposes a clear legal distinction between what is *personal advice* and what is *general information*. That distinction should turn on whether the advice takes into account an individual’s circumstances not just *personal circumstances*, and makes a personal recommendation as required under the current definition. Information outside the personal advice framework would constitute general information but should be subject to certain requirements established through further consultation.

This distinction should clarify that information or advice that is prepared for/aimed at a cohort of people with some common characteristics is not personal advice, because it does not take into account the circumstances of any one specific individual. Just providing general information in and of itself should not qualify as personal advice for example if it targets groups of people. The FSC emphasises a definition of the “individual consumer’s circumstances”, not personal circumstances, which could have a much broader application. This would accommodate the nuances of digital or technology-based solutions that account for an individual’s circumstances differently to traditional forms of advice provision.

If it is reasonably apparent that the information is suitable for ‘mass consumption’ – i.e. if it’s reasonable for a consumer to understand that the content they read may be read by someone else and be equally true - it should be safely categorised as general information.

In its earlier *Green Paper*, the FSC did explore 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 would add unnecessary complexity of the financial advice model creating an additional disclosure regime. Consumers are less focused on what constitutes simple or complex advice, but instead seek a clear advice process that delivers on what they value. 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.

25. Should advice provided to groups of consumers who share some common circumstances or characteristics of the cohort (such as targeted advertising) be regulated differently from advice provided only to an individual?

Under the FSC's proposed framework certain exemptions should apply to support the provision of information to certain cohorts of consumers and this should be consulted on.³⁰ As such the FSC recommends defining personal advice that accounts for an *individual's* circumstances rather than *personal* circumstances. This means personal characteristics on cohorts would fall under the definition of general information. This supports a limited advice offering for all products and channels to assist cohorts, never the less the boundaries of individual circumstances should be expanded upon and clarified through consultation before these definitions are legislated and implemented. For example, a consumer will unlikely know whether the provider has provided the advice to a cohort or just to them individually and the limits of the regulatory framework to this end should be resolved through such consultation.

General Information, subject to consultation should include educational information in relation to strategies and/or financial products that can take into account factual information about age group, income, life stage, marital status, gender identity, what product a consumer holds, employment status, employment industry, employer, or complaints. Such information would still be subject to anti hawking regulation and regulation regarding deceptive or misleading conduct and a duty to act efficiently, fairly and honestly. Mathematically driven or factually verified information such as that yielded by calculators would be included in this framework.

The need for a personal advice-general information distinction which properly demarcates information from professional advice is underlined further by the introduction of the DDO, Retirement Income Covenant³¹ and Consumer Data Right (**CDR**). The regulatory framework will need to intersect with these frameworks. These frameworks will be able to intersect with a scalable disclosure framework with clearer definitions than the current framework. There are current marketing exemptions in the current framework however it is unclear how they relate to targeted advertising as the current laws are technology neutral.

26. How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?

Financial advisers are members of a profession and unlicensed financial advice providers should be stopped by the Regulator, including 'finfluencers', primarily engaging consumers through digital or online platforms.

³⁰ For example, marketing material can currently be provided individuals based on their life stage (e.g. use demographic information). However, as a result of the High Court's General Advice decision such activity is legally precarious.

³¹ The Retirement Income Covenant, for example, requires Registrable Superannuation Entities (**RSE**) licensees to consider personal circumstances of different cohorts of members in a retirement phase.

Financial coaches or influencers are subject to the same legal duties when it comes to

- (1) providing personal financial product advice,
- (2) dealing in a financial product, as AFS licensees (or authorised representatives) and
- (3) not making misleading or deceptive statements.

However, it is undeniable that society is changing with its increased reliance on social media and this corresponds to an increase risk of general public falling prey to Finfluencers. ASIC has recently issued Information Sheet 269 'Discussing financial products and services online' and has increasingly sought to crack down on unlicensed financial advice. Where these activities do not constitute personal advice or general information, the activities could be brought within the domain of the ASIC Act should they constitute a financial service.

There is a need to regulate finfluencer activity, to ensure they are compliant with the law. There are questions surrounding the monetary and non-monetary benefits finfluencers receive, as these are in many ways akin to be conflicted remuneration (albeit not relating to personal financial product advice). Equally, robustly defined legislated terms should allow for regulation to evolve with, support and not deter changes in the market and emerging models of advice provision while ensuring consistently applied levels of education and professionalism.

The FSC's proposals will achieve this clearer framework reducing cost and withstand dynamic change making the sector safer and more attractive for new advice providers but not in a manner that diminishes the consumer protection. It will provide the right incentives for new, smaller advice solutions to enter the market but which conform to strong fundamentals of consumer protection.

27. How does applying and considering the distinction between general and personal advice add to the cost of providing advice?

Most consumers do not understand the difference between advice and information in the context of transition to a profession, what that profession is licensed to deliver should be clearly defined in a manner that aligns with the consumer experience. The result of the High Court's General Advice decision means most activity undertaken by advice businesses previously considered general advice now constitutes personal advice (see *Commentary on the High Court's General Advice decision*). The complexity of the distinction has created a heavy reliance on legal and compliance functions within advice businesses to review, provide legal advice, develop frameworks and train the business on whether their business is compliant. It also inhibits digital innovation and the innovation of smaller advice businesses.

5. Intra fund advice

5.1 Summary of Key Points

- Personal advice provided by superannuation funds is a critical entry point for consumers to the advice system.
- **Integrating this form of advice within the broader personal advice framework proposed by the FSC, would see it labelled as personal advice enhancing the benefits this advice offers and ensure strong protections and choice for consumers.**
- In bringing this form of personal advice under the same framework the Government should:
 - consult on changes to s99F of the Superannuation Industry (Supervision) Act 1993 to support this change with regards to its scope.
 - Such advice related to only superannuation should be able to be collectively charged to the members of the fund, as long as it meets the limitations of not being complex and not requiring ongoing advice.

5.2 Recommendations

Recommendation 4

Financial advice provided by superannuation funds is a critical way in which consumer access financial advice and should be part of, supported by, the lighter-touch regulatory regime the FSC's proposes. (See *FSC's personal advice framework*).

As Intra fund advice is brought under the new framework, the Government should consult on the scope of advice provided by superannuation funds and other changes to s99F of the Superannuation Industry (Supervision) Act 1993 to fully integrate such advice into the personal advice framework with minimal disruption.

This change would not impact the services superannuation funds currently provide but would make them more susceptible to competition as the limited advice framework is implemented. Consideration of specific topics of advice outside of the superannuation fund should be reviewed through consultation with industry.

Recommendation 5

Personal advice provided by a superannuation funds and related to only superannuation should be able to be collectively charged to the members of the fund, as long as it meets the limitations of not being complex and not requiring ongoing advice. This should include superannuation only advice taking into account the insurance in the member's superannuation account, pension products and other superannuation accounts held by the member outside of the product for the purpose of advising on the member's interest in that fund.

5.3 Responses to questions

28. Should the scope of intra-fund advice be expanded? If so, in what way?

Personal advice provided by superannuation funds in which consumer access advice and following the establishment of a level regulatory framework this should be looked at. Such a matter should certainly be reviewed following the incorporation of services provided as intra-fund advice into the FSC's proposed personal advice framework which will attract more flexible requirements in which the safe harbour steps are abolished, with scalable documentation and disclosure requirements and more robust definitions of advice.

The objective of ensuring consumers can access professional financial advice is better served by incorporating all advice into a single framework. As advocated in earlier sections, the disclosure regime around its provision would become scalable to the specific needs or subject of the advice scoped. Were the advice scenario under the personal advice-general information framework to become more complex it would trigger greater disclosure. This would improve the Member's experience when transacting advice with their fund or beyond it. For example, Members seeking more comprehensive advice on retirement income strategies accounting for Age Pension eligibility, Centrelink payments and non-super income and assets would be progressed along the proposed personal advice framework and this scenario referred to a financial adviser.

Personal advice under the FSC's framework provided by the super fund and related to only superannuation, should be able to be collectively charged to the members of the fund, as long as it meets the limitations of not being complex and not requiring ongoing advice. This should include superannuation only advice taking into account the insurance in superannuation, pension products and other superannuation accounts held by the member outside of the product.

The Government should, in implementing this reform, as with proposed changes to the broader definitions of advice (see *Types of advice*), consult on permissible topics could be considered to address changes in the sector and to ensure advice more closely aligned with consumer needs or products and services outside the fund. Personal advice provided by the super fund and related to only superannuation should be able to be collectively charged to the members of the fund, as long as it meets the limitations of not being complex and not requiring ongoing advice.

The consultation should consider scope of personal advice provided by super funds as to

- Personal advice only taking into account the insurance in superannuation, pension products and other superannuation accounts held by the member outside of the product.
- the member's entitlement to the age pension, both for themselves and their spouse (where applicable).

The consultation should inform the release of guidance about what advice can be provided in relation to the member's interest in the relevant super fund.

29. Should superannuation trustees be encouraged or required to provide intra-fund advice to members?

There is no reason why trustees should not be encouraged to provide such advice to members were it incorporated into the FSC's proposed personal advice framework.

Superannuation trustees should engage with members in accordance with the Sole Purpose Test and where a situation in which a consumer requires personal advice then the superannuation trustee should be positioned to provide personal advice limited in its nature under the FSC's proposed framework in accordance with the Best Interests Duty.

Intra-fund advice, or specifically personal advice provided by superannuation trustees that is collectively paid for by the members of the fund, is by its nature limited in scope.

Most intra-fund advice provides members value by answering simple and specific questions regarding how they can optimise their superannuation savings for retirement. Indeed, given it is simple in nature, the value is often in its simplicity. Moreover, it is likely that personal advice will provide greater value to the member when it is tailored to their stated need, making them more likely to implement the advice provided. The FSC's proposed framework would continue to support such scenarios.

30. Are any other changes to the regulatory framework necessary to assist superannuation trustees to provide intra-fund advice or to more actively engage with their members particularly in relation to retirement issues?

The removal of the safe harbour steps, introducing the Letter of Advice with scalable advice obligations and introduction of personal advice and general information will result in a lighter touch personal advice regulatory framework making limited-styled advice provision by superannuation funds currently sitting under the intra-fund advice framework possible.

Aligning the interests of consumers and advisers for activity currently considered 'intra fund' advice should be brought under the limited advice framework for two reasons:

- **Improved competition in the sector and choice for consumers**
- **Removal of perceived conflicts with this category of advice.** While nothing should prevent funds per se providing such advice, it should be a part of, and conform to, the personal advice framework as proposed by the FSC aligning consumer and adviser interests while managing perceived conflicts.
- **Retirement income need is a primary advice need and that superannuation trustees play a vital role in meeting this need**

31. To what extent does the provision of intra-fund advice affect competition in the financial advice market?

Intra fund advice is charged for differently and this is regulated under s99F of the Superannuation Industry Supervision Act, and might be limited to a single product, it is a vital access point for consumers to advice.

Intra fund advice is not competitive in addressing the needs of consumers who would otherwise seek advice elsewhere were it less costly. As currently structured, intra fund advice does not allow for more comprehensive retirement advice and as such should be integrated into an alternative framework in which limited advice becomes the entry point into the advice process for consumers while allowing non-super advice offerings to compete to improve consumer outcomes.

By contrast to other advice providers by virtue of the regulatory regime face significant difficulty in narrowing the scope of their advice to a single product only, particularly where

the consumer may hold more than one product. Remediating this issue with the FSC's proposed framework

6. Limited scope advice

6.1 Summary of Key Points

- The current framework restricts the capacity of the advice sector offer limited scope advice on basic or simple issues (eg. Engaging with superannuation or confirming levels of life insurance cover) envisages a comprehensive advice process for all consumers that does not acknowledge the spectrum of advice needs a consumer has and that every advice need of a consumer is different.
- Advice providers have to consider a range of circumstances and information well beyond the specific needs consumers seek making them less inclined to provide such advice because of the vast web of regulation they are obliged to comply with.
- **The personal advice framework proposed by the FSC would enable all advice to align to the spectrum of consumer by abolishing the safe harbour steps, introducing definitions of personal advice and general information, and introducing a Letter of Advice supporting the level of disclosure to be scaled up or down in accordance with consumer needs.**
- The scope of the advice is just as important as the disclosure sitting behind it which determines the overall experience of the consumer who seeks a simpler process and these changes would align it to that experience.
- Under the FSC's framework, the professional judgement of the adviser, in accordance with the individual situation, of the consumer would drive the level of disclosure involved – the more complex the issue the level of disclosure and vice versa, where circumstances change, additional disclosure through the Letter of Advice could be issued

6.2 Recommendations

Recommendation 6

Limited scope advice is personal advice, and should be labelled as such, under the *FSC's personal advice framework* allowing all advice to be scoped scaled up or down in terms of disclosure and format.

This framework should incorporate specialised personal financial advice, intra fund advice and advice provided by digital means placing limited advice at the centre of the advice framework.

6.3 Responses to questions

32. Do you think that limited scope advice can be valuable for consumers?

Yes. Limited scope advice not only relates more to the vast bulk of advice needs but also adds value where the alternative is no advice at all for a consumer. As responses to questions 32-34 show, consumers often seek advice on specific topics but cannot afford to participate in a the comprehensive advice process which is what many providers

consider presents less risk to the provider. Examples of consumer life cycle stages or triggers for limited advice would include:

- redundancy,
- other work changes,
- contributions to superannuation,
- changing levels of life insurance cover
- buying a home,
- having a child
- solving insurance needs³²
- retirement income planning needs

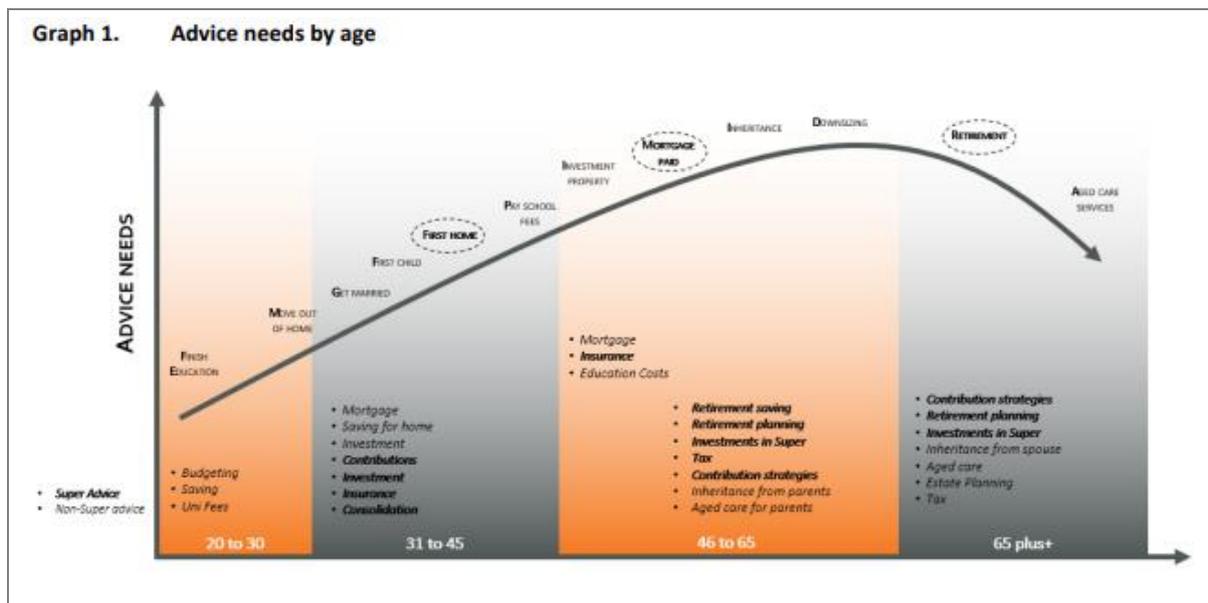
Advice providers consider that the current framework does not facilitate being able to easily help consumers who see an adviser with a ‘problem to solve’. The discovery process required under the current regime is extensive and drives up the cost of the advice for the consumer in these circumstances. One of the reasons for this is the “catch all” last step of the safe harbour (S961B(2)(g)), and the other is Standard 6 of the Code of Ethics which requires advisers to

*“...take into account the broad effects arising from the consumer acting on your advice and **actively consider the consumer’s broader, long-term interests and likely circumstances.**” [our emphasis]*

There does not appear to be a materiality threshold applied when considering whether related or other advice areas should be within scope. This results in the sector often feeling like there is no alternative but to broaden (unnecessarily) the scope of their inquiries in order not to fall foul of regulatory requirements.

The below table from Rice Warner illustrates varying advice needs at different life stages:

³² The Regulatory burden on the preventing basic life insurance need being met is noted in a White Paper prepared by MLC Life in December 2019 that notes: “*As the complexity of a consumer’s insurance needs increases there is an increase in the cost of providing advice due to the amount of time and extent of the adviser’s experience required along with the nature of the policies normally required. The summary table below illustrates that for a simple policy (e.g. term life premium at \$1,500 per annum) upfront commission is less than the associated costs to deliver the advice, and as policy complexity increases (as illustrated by the increasing premium example) commission alone is inadequate to cover these costs.*” Source: Page 3, Cost and efficiency of delivering life insurance advice, MLC, 2019 <https://www.mlcinsurance.com.au/-/media/32260667ecb44b81ad179a4d4e71c328.ashx>



33. What legislative changes are necessary to facilitate the delivery of limited scope advice?

The current legal and regulatory regime is preventing limited advice in two ways

- **Perception of consumer needs versus actual:** The current regime is perceived to have been designed for the provision of comprehensive advice, but with the flexibility to be 'scaled back' for advice that is narrower in scope. In reality, there is insufficient understanding and confidence in undertaking this scaling exercise, particularly when taking into account ASIC's approach to file audits, the final step of the BID safe harbour and Standard 6 of the Code of Ethics. Clearer legislative obligations are required.
- **Different laws make advice providers less confident in providing limited advice solutions:** This is due to the vast array of laws that add cost into its provision and advice more generally.
 - For example, the conflation of different laws for example the safe harbour steps, the Code of Ethics and regulatory guidance have created confusion about the overriding obligation when advising. Judicial precedents such as the *Westpac* decision as to the boundaries between personal and general advice have complicated this further.
 - safe harbour steps are difficult to apply to single-issue advice which does not consider a consumer's full financial requirements, strategies and goals.³³ Industry's experience is that when assessing whether an advice provider has acted in the consumer's best interest, this is assessed only in terms of whether the adviser has demonstrated compliance with all of the safe harbour steps. This, in conjunction with Code of Ethics Standard 6, have left the industry grappling with how these provisions can and should apply in a 'limited advice' context. Given the high risk/low return profile of

most licensees, there is minimal appetite for limited advice, which is unlikely to change until there is greater certainty about scoping.

The FSC's limited scope advice model will be achieved through the FSC's Personal Advice framework by:

1. Abolishing the safe harbour steps for meeting the Best Interests Duty and the reissuing of the Code of Ethics to reflect this.
2. Introduction of the Letter of Advice that would be supported by scalable disclosure obligations and the abolition of the Statement of Advice and Record of Advice
3. Creation of the personal advice and general information distinction.

These changes are the most sustainable statutory platform by which limited advice can be provided in a manner that gives regulatory certainty while removing the binary assumption that exists within legislation and replacing it with a principles-based scalable disclosure regime driven by consumer need and professional judgement.

The FSC's limited advice framework would improve on the current model of advice in several ways:

- **Consumer need becomes the 'north star' of advice provision**
- **A clear and certain footing for providing personal financial advice limited in scope, by introducing a principles-based regulatory framework:** The personal advice-general information framework, will offer advice scalability which meets consumer preferences and enhances accessibility and affordability overall. It will mean significantly greater capacity to innovate more bespoke solutions.
- **Greater flexibility to cater to the spectrum of consumer needs**
- **Providing a safer environment for advice providers to frame and scope advice in accordance with the consumer's needs:** Financial advisers require a safe environment for providing limited advice to solve a consumer need. Such a safe environment would serve to promote the ongoing and long-term nature of the professional adviser-consumer relationship over the consumer's lifetime according to their changing needs. Promotion of an ongoing professional relationship should be appropriately supported by the regulatory framework.
- **Increased partnership:** A limitation of the comprehensive model of advice is that it prevents advice businesses partnering with others where advice cannot be provided in-house. If one organisation cannot provide for all of a consumer's needs (due to scale, or specialisation) it may be more beneficial to allow for referral, rather than simply rejecting the consumer for lack of suitability, or providing a less tailored service. This issue was canvassed in a consultation by the former Financial Adviser Standards and Ethics Authority (**FASEA**) for which industry ultimately agreed on tightening the language to address this issue but no change following that change has been forthcoming since the FASEA was wound up.

See *Appendix: How the regulatory framework prevents limited advice.*

34. Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?

Changing positions on how regulation is enforced by the regulator drives industry to often adopt higher standards than the law. This creates friction between licensees and financial advisers, a situation further compounded when a Regulator will pursue technical breaches

of legislation with minimal impact on a consumer where these breaches are not systemic in nature.

Another perspective that encourages advisers to provide comprehensive advice rather than limited scale advice is simply the value conversation with consumers. The time and effort in scoping and scaling limited advice often pushes it to a price point that the adviser finds hard to justify and the consumer finds hard to reconcile (e.g. "I just want a simple recommendation"). Advisers want to convert as many opportunities into fee paying advice as possible, therefore they are more likely to be able to justify the time, effort and expense of comprehensive advice than the relatively expensive limited advice, when the customer scope is considered and therefore they select the opportunities with the least friction.

This will unlikely change unless there is an inherently clearer framework as the FSC proposes that acknowledges the professional judgement of financial advisers and the needs of consumers in driving the advice process.

7. Digital advice

7.1 Summary of Key Points

- **There needs to be a level regulatory playing field whether advice is delivered by traditional or digital means** – digital advice is personal advice and should be supported by a regulatory framework that anticipates scenarios where advice is delivered by these means
- **Integration of digitally delivered advice into the FSC’s proposed personal advice framework** seeks to better cater different forms of digitally-delivered personal advice by abolishing the safe harbour steps, consolidating the existing definitions of advice into personal advice and general information and introducing a Letter of Advice supported by scalable advice obligations.
- **The FSC also seeks additional changes to enable industry to seek indications of compliance from the Regulator; the expansion of the Fintech Regulatory Sandbox; and advancing the Consumer Data Right framework to enable the financial advice sector leverage government-held data on consumers to improve the overall consumer experience and drive efficiency.**

7.2 Recommendations

Recommendation 7

Digital is personal advice, and should be labelled as such, under the *FSC’s personal advice framework* allowing such advice to be scoped scaled up or down in terms of disclosure and format.

Consultation should occur to ensure advice or information delivered by technological or digital means is subject to the same consumer protections as other forms advice but potentially different requirements given appropriately conforming to their medium.

Recommendation 8

A formal channel to engage with ASIC on advice matters (digital or otherwise) should be established. This could comprise of an expansion to ASIC’s fintech regulatory sandbox to AFSL-holders with functions in respect of personal advice provided digitally that involve:

- Providing indicative compliance of advice solutions before these are taken to market through either:
 - formal feedback, or
 - binding ruling that solutions comply, signed off by an independent expert.

RG 255 Providing digital financial product advice to retail consumers should be updated irrespective of changes to the definitions of advice to enable compliance by emerging technologies, and as noted above, ASIC initiatives such as the Fintech Regulatory Sandbox should be expanded to existing AFS licensees to support innovation of digital advice offerings.

Recommendation 9

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 several areas:

- Engagement with the profession as soon as possible to progress expansion of Open Finance for superannuation and other wealth products by setting timelines, key objectives and a roadmap, and rollout of Consumer Data Right (CDR) to financial advice by 2030, or sooner if practicable.
- As the CDR is rolled out consideration should be given as to how data from government agencies can be leveraged to support a more integrated consumer experience. This should consider leveraging data from:
 - The Australian Tax Office (ATO), Births, Deaths and Marriages
 - Centrelink

Recommendation 10

Where it reduces the cost of providing advice, the FSC supports standardisation and collection of sector data to reduce the cost of financial advice. Data that should be collected include:

- Numbers of consumers.
- 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.

7.3 Responses to questions

35. Do you agree that digital advice can make financial advice more accessible and affordable?

Digital advice can serve the needs and preferences of consumer cohorts over their lifetimes or at different points in time. Digital advice subject to the same requirements (except for the Code of Ethics) as all personal advice offers several benefits:

- Reduced cost and greater efficiency
- Easier access for consumers to make informed decisions improving their financial wellbeing and financial literacy
- Significantly greater mediums by which to provide advice than can be provided with certainty under the existing framework at scale
- Generally available 24/7.

Accessibility and affordability of advice for all Australians is increased by the provision and delivery of advice through digital mediums. The Regulatory Framework should enable more Australians to access affordable advice. A more flexible approach by the regulator is needed. Ensuring a simpler framework for all personal financial advice less geared around the medium of delivery will support innovation and uptake of digital advice.

36. Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?

Digital advice is better suited to one-off or transactional advice, where the scope can be more clearly defined. It is less suited to situations where a consumer is not clear on what their goal or objective is in obtaining the advice.

Understanding a consumer's goals will in many situations require a human to assist a consumer to articulate what is important to them, and to prioritise their goals. A consumer might require advice that is strategic in nature, not necessarily requiring specific product recommendations. This advice is likely to be provided with certainty of its compliance through the simpler requirements proposed above.

Digital advice has appeal across all consumer cohorts who have discrete needs and require quick and efficient

- When a consumer has a limited or discrete need for advice (i.e. that is best served through convenient or quick access, rather than through a more fulsome experience engaging with a financial adviser).
- When providing low risk advice, or guidance and support (that is not financial product advice), which could, in some situations, accompany advice involving a financial plan/strategy, that is provided by an adviser.

Depending on how a consumer's circumstances are accounted for under a personal advice-general information framework, there are many parts of an advice engagement that could also be assisted more comprehensively by digital solutions through a simpler framework. For example:

- How to invest Super based on the options available in a fund.
- Insurance Needs Analysis – How much cover a consumer might need then it is up to the consumer to compare and source product
- Completing the paperwork online and assisting with Age Pension applications
- Implementation of advice – There is an opportunity for a lot of advice implementation to be done digitally rather than the traditional paper based.

37. Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?

A well developed and executed triage process is important to ensure that the advice need of the consumer is, and remains, capable of being addressed via digital advice.

The lack of a human interaction at different points in the advice process, where a 'live' adviser would take the opportunity to confirm that the scope remains appropriate, and that there are no other consumer circumstances that are integral to the advice that have not been disclosed, inevitably poses risks, if the digital model does not have 'exit ramps' for consumers where the digital process can no longer cater to their needs and/or circumstances. Risk can indeed be reduced by enabling technology (eg chatbots) to bridge gaps in the advice process but should not necessarily replace a human.

It is important that the obligations attaching to providers of digital advice are the same as those for advice providers in other mediums, such as face-to-face. This underscores the

need to have a flexible and scalable set of obligations that are genuinely technology-neutral.

38. Should different forms of advice be regulated differently, e.g. advice provided by a digital advice tool from advice provided by a financial adviser?

Digital advice should not be differently regulated. The digital medium should be viewed as an enabler of advice. It is important not to create a two-speed environment. This would be likely to lead to complexity (eg, where a hybrid digital-F2F advice model is employed) and inequality in the 'protection outcomes' for consumers. For example, if some obligations do not apply to digital providers, then consumers of advice delivered via that medium will ultimately not have the benefit of all the regulatory protections afforded to consumers of advice delivered via other means.

Regulation of tools will require different regulation to that of a financial adviser however, the advice component and obligations that underpin that advice should be the same. The personal advice-general information framework the FSC proposes seeks to remedy this issue supporting innovative digital tools and education material for both consumers and financial advisers. The limited advice framework as proposed by the FSC is technology-neutral. It would enable greater access to digital advice helps to prevent consumers being worse off in the absence of advice by encouraging mass market adoption of low-cost advice by consumer cohorts not currently engaged with the advice industry.

There should ultimately be two legal categories of advice in the form of a personal advice and general information framework. In addition, certain advice areas should carry industry-level regulation where they have been designated as specialist areas of advice. Otherwise, the same regulatory obligations should apply, regardless of how the advice is provided. The role of professional associations setting standards in this area is discussed further in 'Other measures to improve the quality, affordability and accessibility of advice'.

39. Are you concerned that the quality of advice might be compromised by digital advice?

If done well, the quality should not be compromised. The requirements for quality and relevance of advice should be the same. The medium of delivery is not a substitute for adequacy or quality of the advice offered.

Further consideration should be given to the hawking provisions, to enable advice providers to remind consumers that they may want to take action in relation to the digital advice they have received.

40. Are any changes to the regulatory framework necessary to facilitate digital advice?

Yes. Along with the FSC's core proposals in this submission that would bring digital advice within a limited advice framework, there are several issues and the changes the Review should consider.

ASIC's approach

Licensees are keen to pilot digital solutions for consumers with simple needs or lower balances but are uncertain of the way ASIC interprets legislation regarding the scoping of advice and the Best Interests Duty, and the impact when these interpretations change.

ASIC's approach to enforcement is driving undue caution among advisers and AFSLs and preventing innovation in the advice sector. The only way to test the solution with consumers and obtain the opinion of ASIC is to provide advice and accept the risk. The market needs a regulatory signal that digital advice solutions can be compliant. Absent such a signal investment by licensees will not occur. Despite the Government's expectation the sector should be bolder in their use of digital solutions, there is a reluctance from advisers to adopt new solutions without explicit indications from the Regulator that such solutions will be compliant.

- The ability of industry to roadtest solutions to ensure they comply with the law would address this issue
- Opening up initiatives such as the Fintech regulatory sandbox would also support innovation in advice.

Interpretation of the Best Interests Duty in the context of Digital Advice

While the Corporations Act is technologically neutral in the way a financial adviser can provide financial product advice and ASIC publicly states it regulates the industry consistent with this position (please refer to ASIC Regulatory Guide 244 'Giving information, general advice and scaled advice' (December 2012), at paragraph 244.95)), in practice there is a disjunct between traditional advice and digital advice.

As the provision of personal financial product advice is heavily regulated and the Corporations Act imposes a high standard on the provision of personal financial advice, in practice this can make it difficult to use technological solutions to deliver digital advice. Unlike a traditional advice model, a digital advice model has a number of additional impediments, for example:

- The ability of a digital advice tool to make additional relevant inquiries, is more limited than through a face-to-face advice model, as consumers are guided through a pre-determined set of questions with little to no ability to seek additional information. Without adequate triage processes, this could result consumers potentially receiving inferior advice compared to a traditional advice model.
- Digital advice tools are designed with a specific areas of advice in mind. Digital advice tool cannot comprehend the personal mannerism or traits of a consumer when receiving information and it is not possible to make inquiries outside of a pre-determined set of questions.

There are discrepancies as to whether digital advice solutions can rely on the safe harbour not in order show compliance with the Best Interests Duty arising from the approach taken by the Regulator. Accordingly, digital advice tools generally are unable to satisfy the best interest duty in Section 961B(1) of the Corporations Act and must instead rely on the best interests safe harbour in Section 961B(2). As a result of the digital advice tools will be reduced in the scope of financial product advice to be provided and often rely on extensive disclaimers to seek to reduce liability.

The Code of Ethics does not apply to digital advice although s961B of the Corporations Act does, which means providers will generally lean on meeting the Safe Harbours Steps to demonstrate they have met the Best Interests Duty. There are also instances where a digital advice tool may not be able to rely on the safe harbour exemption. For example, if the financial advice tool sought to provide intra-fund advice this would not be able to

satisfy the safe harbour exemption as the tool could not undertake a reasonable investigation into other financial products to comply with Section 961B(2)(e) of the Corporations Act as the intra-fund advice rules prohibit advice on financial products other than the member's superannuation product. Accordingly, this could result in a digital advice tool which is less beneficial to consumers as compared with traditional advice.

For these reasons the FSC believes that removing the safe harbour given the uncertainty about the rationale for such a provision in the long-term will best support digital and limited advice offerings but consideration of alternate definitions of the Best Interests Duty with regard to the nature and scope of advice should be examined by the Review (this is discussed further in *Bests Interests Duty and related obligations*). Reform of the safe harbour should not reduce the regulatory standards on which the digital advice offerings rely.

Digital advice tools face a dilemma not readily apparent in a traditional advice format, that is where a consumer leaves the digital advice tool before completing the process. In order to comply with the disclosure laws, a statement of advice is required to be sent to the member at various exit points to comply with the legislative requirements (as the consumer has received personal advice along the way). However, we query whether in practice this operates as an effective form of regulation or disclosure as it does not appear to us to have any material benefit to the consumers who receive this document. The proposed Letter of Advice, which is technology neutral, supported by scalable advice obligations would rectify this issue in that the disclosure compelled with an SOA would not necessarily apply in all circumstances because the level of disclosure would follow the need and agreed scope with the consumer.

Consumer Data Right and access to consumer data

Greater engagement between Government and Industry on specific timelines and frameworks for enabling access to consumer data (Recommendation 10) underpinned by the FSC's personal advice framework will further support digital advice innovation and enable greater certainty for advice delivered by this medium.

41. If technology is part of the solution to making advice more accessible, who should be responsible for the advice provided (for example, an AFS licensee)?

The provider of the tool. Where advice is provided direct to a consumer, the provider is presumably an AFS licensee. If an adviser uses the tool to supplement their personal advice, then the adviser should be responsible for their ultimate advice. Financial advisers would remain subject to the Best Interests Duty and the Code of Ethics as professionals.

42. In what ways can digital advice complement human-provided advice and when should it be a substitute?

See answers to questions 35 and 36.

8. Best Interests Duty and related obligations

8.1 Summary of Key Points

- Introduced prior to the professional framework the safe harbour has ultimately compelled extensive disclosure, research and fact finding that has rippled through the advice process and into the consumer experience in manner never intended.
- **The prescriptive safe harbour steps for meeting the Best Interests Duty conflict with the principles based regime envisaged by the Code of Ethics limiting the capacity of the advice sector deliver lower risk advice on simple or basic issues for consumers.**
- **The safe harbour steps should be abolished to better support advice to be provided in different ways and cater to different needs while conforming same ultimate principle obligation that is the Best Interests Duty itself.**
- Such changes will ensure an advice process that is driven by what the consumer needs and wants and the professional judgement of the financial adviser.
 - **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.**³⁴
- Regulatory guidance and the Code of Ethics should be updated to support this reform given they contemplate scenarios for the safe harbour steps overlying the advice process.

8.2 Recommendations

Recommendation 11

The Best Interests Duty in Section 961B (1) of the Corporations Act 2001 should be retained, and the safe harbour steps as they pertain to financial advice in Section 961B (2) of the Act abolished. The Code of Ethics should be amended to reflect this reform but not in effect reimpose the safe harbour steps as principles. The Code of Ethics should remain principles-based and evolve as the sector evolves. The Review should consider incorporating the safe harbour steps into Regulatory Guidance if it does not increase the cost of providing financial advice.

Recommendation 12

While removal of the safe harbour steps is the FSC's preference, and the most optimal way to reduce the cost of providing advice without diminishing consumer protections, should the Review be inclined not recommend such a change it should consider several alternatives:

³⁴ Page 28. KPMG *Cost profile of financial advice sector*.
Page 58

- Removal of subsection 961(B)(2)(g) of the Corporations Act requiring to take any other step, that at the time of the advice being provided would reasonably be regarded as being in the best interests of the consumer.
- Amending the Best Interests Duty to have regard for the “scope and nature” of advice could support limited advice provision with greater confidence and certainty of compliance, if it is not inclined to make a recommendation in favour of the abolition of the safe harbour steps.
- Amend ASIC’s class order on record keeping that requires advisers to document evidence they have demonstrated compliance with the safe harbour steps.

Recommendation 13

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).
- Standard 5 – Best interests (Consumer care).
- Standard 6 – Broad effects (Consumer care).
- Standard 7 – Consent (Quality process).
- Standard 8 – Record keeping (Quality process).

These changes should be consulted on prior to implementation along with other standards to ensure the overall framework is streamlined.

8.3 Responses to questions

43. Do you consider that the statutory safe harbour for the best interests duty provides any benefit to consumers or advisers and would there be any prejudice to either of them if it was removed?

In the context of regulatory changes that have occurred since the safe harbour steps were introduced, the rationale for retaining them is not clear. The safe harbour exemption is in practice applied in a ‘checklist’ or ‘tick a box’ approach and is focused on satisfying the individual steps rather than the underlying principles. At a time where industry has moved to a more professional framework, this would suggest the need for its removal (the first reform under the FSC’s Personal Advice framework set out in Recommendation 15) a more principles-based approach to providing advice geared around the professional judgement of financial advisers.

The safe harbour exemption does have some benefit in providing a framework for advisers to consider as a minimum standard. However, uses a checklist to enforce an evidentiary burden to provide proof individual factors have been considered in preparing advice with considerable time and cost and little identifiable benefit for consumers.

Removal of the safe harbour steps would have several benefits:

- flexibility to apply a principles-based approach to different factual scenarios;

- moving away from a mechanical tick a box mentality which tends to result in disclosure/documentation that is compliance focused, rather than consumer focused
- recognises that the financial advice at times is inherently complex and adopting rigid processes does not in and of itself result in a better quality of advice for consumers.

The safe harbour steps were intended to be one *possible* way (but not the *only* way) of meeting the Best Interests Duty. In practice, and particularly since the publication of ASIC Report 515 in 2017, practice is considered not to have complied with the *best interests duty* if evidence matching each of the *safe harbour* steps cannot be found.

Retaining the Best Interests Duty without these specific safe harbour steps will realise the policy intent of a professional framework and consumer protection. Until this is done an effective legal 'gridlock' will remain between the prescriptive requirements of the safe harbour and the principles-based requirements of the Code of Ethics. Regulatory Guide 175 *Licensing: Financial product advisers* should be amended to reflect this change and its overall form consulted on with the advice sector. Previous guidance, such as RG 175, 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.

44. If at all, how does complying with the safe harbour add to the cost of advice and to what extent? If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal 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.³⁵ Removal of the safe harbour steps alone will reduce the cost of advice by 11 per cent to \$4746.84.³⁶ 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.³⁷ This measure will reduce cost and time within the advice process.³⁸ Respondents to KPMG's research agreed it needed to be considered alongside the amending the Code of Ethics and rationalisation of legislation and regulation.³⁹

45. If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal advice?

³⁵ KPMG research page 28

³⁶ KPMG research page 28

³⁷ KPMG research page 28

³⁸ KPMG research page 28

³⁹ KPMG research page 28

Removal of these steps would reduce the time taken to prepare advice that is still ultimately subject to the core Best Interests Duty and ensure advice is specific to the core needs and issues consumers are seeking advice on. This would not diminish the overriding obligation an advice provider has but it would remove the *prescription* in the law used by enforcement when specific safe harbour steps are not taken. It would also enable recourse to the general Best Interests Duty and Code of Ethics, a more principles-based framework and ultimately allow advice quality to be judged by whether or not the advice further's the consumer's interests, rather than by breaches of technical aspects of law immaterial to the ultimate interests of a consumer. The requirement to consider other circumstances of a consumer (s961B(2)(g) (See *Limited scope advice*) has been a key provision steering advice providers towards offering comprehensive advice undermining the provision of scoped advice and the development of limited advice models.

The safe harbour steps compel a time-consuming exercise by advice providers in checking advice is compliant while then relaying this in advice documents not to provide value for consumers but to show compliance (eg record keeping). The effect of these rules duplicates the processes industry must go through for the purpose of demonstrating compliance with the law already captured by other obligations (eg Code of Ethics) that contributes to the costs of advice worn by the consumer but that does not necessarily add value.

46. To what extent can the best interests obligations (including the best interests duty, appropriate advice obligation and the conflicts priority rule) be streamlined to remove duplication?

Abolishing the safe harbour steps will address the confusion around their ultimate purpose, support limited and digital advice provision, and enable focus on the core Best Interests Duty obligation and how advice meets that requirement.

Are there alternatives to abolishing the safe harbour steps?

Several alternatives to removing the safe harbour have been suggested on the basis that removing them outright removes a prescriptive and in part vague checklist. While certainly this is the intended effect of such a change, retaining the provisions will continue to be used by the Regulator as a means of enforcement on technical breaches meaning scoping advice will ultimately more difficult to provide. Moreover the steps conflict with the Standards set out Code of Ethics ultimately hampering the speed with which the sector is professionalising. While the safe harbour steps should be removed, the Review could consider alternatives and consultation would be needed on before such changes are implemented. The Review should consider:

- Removal of subsection 961(B)(2)(g) of the Corporations Act requiring to take any other step, that at the time of the advice being provided would reasonably be regarded as being in the best interests of the consumer.
- Amending the Best Interests Duty to have regard for the “scope and nature” of advice could support limited advice provision with greater confidence and certainty

of compliance, if it is not inclined to make a recommendation in favour of the abolition of the safe harbour steps.⁴⁰

- Amend ASIC's Record Keeping Class Order that requires advisers to document evidence they have demonstrated compliance with the safe harbour steps.
- Inclusion of the safe harbour steps in an ASIC regulatory guide provided the steps are not being used unduly as an enforcement tool.

Certainly, all such changes would ensure greater regulatory certainty. The FSC's preference is that the safe harbour steps in the legislation are repealed to ultimately support a principles-based framework and a clear set of rules for enforcement to have regard to. The impact of retaining the safe harbour steps in their current form is they will continue to have a pervasive influence on the advice process until they are removed

Issues to address when removing the safe harbour steps

- **The Code of Ethics in a regulatory framework without the safe harbour steps:** As mentioned the Code of Ethics would need to be reissued in abolishing the safe harbour steps from the Corporations Act. **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 prescribing the 'what'.
- **Application:** It is important to note that the safe harbour steps are relied on by a range of financial intermediaries across the financial system such as banking. The problematic nature of this provision has an acute impact on the regulation of the financial advice sector given its overlap with the Code of Ethics and the broader ecosystem of regulatory guidance and enforcement that is not analogous with other sectors each with separate codes and regulatory levers. As such the FSC advocates the provision is removed for the financial advice sector.
- **Best versus better position:** There is continuing uncertainty of whether best interests duty requires placing the consumer in a "*better position*" or the "*best position*"
ASIC has consistently said that acting in a consumer's best interest does not require a provider to achieve the best position for the consumer, but rather that the consumer should be in a *better* position than had they not received the advice. However, it is unclear what the legal position is if there is a range of recommendations that could be given and all result in the consumer being in a

⁴⁰ Incorporating language into the Best Interests Duty itself, requiring advice to have regard to the nature and scope of advice could give greater flexibility to the industry to provide limited advice with certainty that it is compliant addressing the unintended consequences of the safe harbour requirements that advice should factor in any other circumstances well beyond the scope of the advice sought.

better position. In practice there is uncertainty in the industry, including with regulators, there is an implied belief (which is unfounded in law) that a financial adviser should place a consumer in the “best position” (or in an “even better” position where they may be another option which could have placed the consumer in an even better position than the position the consumer was in). Accordingly, clarification that the best interest duty does not impose any obligation to place a consumer in the “best position” or where it turns out there could be range of better positions, place the consumer the “best” of those better positions.

- **Process versus principles-based outcomes:** Financial advisers have both the duty of *best interests* and *appropriate advice*. One goes to process and the other to quality. We question the need to regulate the process provided the goal of quality of advice is satisfied. The guidance on what is required to satisfy the appropriate advice requirement is not much different to the guidance for satisfying the best interests obligation. The best interests obligation as a result of the safe harbour steps, has become process oriented such that the advice is focused on a ‘tick a box’ mentality which does not have a corresponding benefit on the advice provided.
- **Consumer instructions:** Unlike other industries for example the legal industry, financial advisers are unable to simply rely on the instructions of their consumers because of the overriding best interests duty. ASIC says that advisers must question and test the instructions prior to relying on them in order to satisfy their duties. There should be scope for advisers to rely (not wilfully blindly) on consumer instructions as other professionals are able and still comply with their best interests obligations.
- **Past performance:** It is our understanding that in practice, due to the fact that past performance is not a guarantee of future performance, when financial advisers advise on investment options (including switching investment products) not all financial advisers consider historical performance of an investment option (but do focus on fees). While we understand the rationale, it seems perverse that a consumer can be recommended an investment option which is inferior in performance but has a lower fee. Consideration of past performance in terms of the future is a difficult issue and a matter to be looked at as the safe harbour steps are abolished.

Removal of the safe harbour provides the basis for principles-based regulation

Other than effecting wider provision of limited-scope advice and digital advice, reforms to the Best Interests Duty would provide the basis of a principles-based regulatory system currently being explored in the Australian Law Reform Commission’s (**ALRC’s**) review of financial services legislation. 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.⁴¹ 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

⁴¹ Australian Law Reform Commission ‘Regulatory Theory’ (2010)
Page 63

scheme.⁴² Legislative change codifying a principles-based approach beyond the reformed Best Interests Duty and Code of Ethics under the *White Paper's* proposed changes, 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* or other principles to strengthen requirements around the consumer experience rather than the volume of disclosure.

47. Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?

No. Currently there is no requirement for a financial adviser to consider a Target Market Determination (**TMD**) when providing personal advice, although ASIC has indicated that a financial adviser should consider a TMD when providing advice in order to comply with their best interests duty (see RG 274.202).

We do not consider this approach needs to be strengthened further with a **requirement** for advisers to consider a TMD.

More broadly, there is an issue around the compatibility of the DDO regime and the personal advice regime which is considered elsewhere in this submission in response to questions 10, 16 and 17. Personal advice should be fully exempt from the design and distribution obligations ie no requirement to report significant dealings outside the TMD or report complaints outside the existing IDR requirements.

9. Charging arrangements

9.1 Summary of Key Points

- The existing charging arrangements largely set out in the annual consent legislation which took effect in July 2021, and the fee disclosure statement (**FDSs**) are contributing to a multiplicity of forms impacting the consumer experience and missing the overall intention of the legislation despite industry attempts at standardising to resolve this while reducing cost.
- A key pain point has been the lack of synchronicity between the annual consent obligations and application of the Sole Purpose Test set out in the Superannuation Industry (Supervision) Act 1993.
- **A system of principles-based requirements, and industry-led compliance to characterise annual renewal and the interactions between trustees, advisers, platforms in honouring fee consent obligations to consumers.**
 - **Letters issued in 2019 and 2021 between ASIC and APRA have not clarified appropriately the responsibilities of trustees in relation to the oversight of the advice process - these letters should be repealed.**
 - **Legislative Instruments for the current regime should be amended or repealed to better support industry-led standardisation mandating the ultimate principles that should characterise consent, but that are less prescriptive as to the content requirements for meeting these obligations that are better served from standards and guidance delivered by industry that anticipates and captures the scenarios they're intended to cover with accuracy.**

9.2 Recommendations

Recommendation 14

A system of principles-based requirements, and industry-led ways of compliance should characterise the implementation of annual renewal and the interactions between trustees, advisers, platforms in honouring fee consent obligations to consumers.

As such the legislation should be amended to reflect a simple set of requirements of what objectives should be met at law, with industry determining the format to meet the overarching obligations in the legislation rather than ASIC's legislative instruments that should be repealed or amended:

- ASIC Corporations (Consent to Deductions – Ongoing Fee Arrangements) Instrument 2021/124.
- ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2021/126

Government should work with industry and mandate a single standard form for consent requirements and fee disclosure statements, while identifying other areas where standardisation can improve the consumer experience and reduce cost.

Recommendation 15

Joint letters between APRA and ASIC issued in 2019 and 2021 have not provided sufficient clarity as to trustee oversight of the advice process. Government, Regulators and Industry should work together to ensure the areas of clarification that of concern to industry are addressed that include:

- Cost (time and money) of making SOAs available to trustees due to privacy issues
- Whether APRA, as the regulator of trustees, expects SOA checking to be part of a broader compliance checking (eg a response to other red flag indicators) or a random sampling of all advice fees?
- Broader concerns about consistency of trustee interpretation of the Sole Purpose Test

9.3 Responses to questions

56. Are consent requirements for charging non ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?

The Legislation and Legislative Instruments should be repealed or amended to support a single form achieved through government and industry collaboration (See response to Question 57).

The FSC in December 2021 attempted to provide some relief for the sector by issuing guidance to support a more consistent approach from industry for meeting regulations that involve significant administration between advice providers and product issuers. The open-ended nature of these Legislative Instruments have led to different systems being adopted by which to comply and different interpretations of how to comply. The limits of ASIC's ability to give indications of compliance has exacerbated regulatory uncertainty. Consultation in advance of fee disclosure requirements being passed by Parliament further limited what the Regulator could say to industry in advance. The effect of the current framework has been to bombard consumers with multiple forms that effectively are required for each product. The consent requirements are prescriptive to the extent they do not contemplate the variance in how platforms and advice providers are compositioned. Platforms require comfort that fees charged from that platform have been agreed and conform to the Sole Purpose Test, while advice providers need confidence their process is compliant with the Best Interests Duty. The consent process has been convoluted by supporting legislative instruments. Whether this takes the form of a standard in future will not resolve the complexity and specificity ASIC's Legislative Instrument stipulate in respect of content. As such we recommend that industry and government work together to reduce the multiplicity of forms to a single form.

57. To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?

Consumers should not have to sign multiple forms to authorise the same fee. A single consent form should be developed, that can be relied on by advisers, platform operators and super trustees, in order to pay an advice fee to the consumer's adviser. A precedent for this can be found in the introduction of the Superannuation rollover form, and the

conditions attached to the processing of rollover requests. A further area where standardisation might be needed is the Fee Disclosure Statement in order to align the data the FDS contains with the consent requirements.

Improving consent requirements

Amending or repealing ASIC's legislative instruments and where necessary the legislation should conform to the following principles:

- **Principles based requirements, industry-led compliance:** There should be requirements on industry as to the information to include in a FDS but the content requirements prescribing the language to be used issued by ASIC is problematic and does not reflect the interactions that take place between financial advice and other sectors of financial services such as trustees and product providers. Industry should take the role of developing guidance and standards on meeting these requirements that more accurately reflects the consumer experience and changing it as that consumer experience change. Prescribing every particular type of cell of information as the instruments do should be the domain of industry which are closer to the varying transactions these instruments should capture.
- **View of fees as ongoing fee arrangements:** Industry has questions whether fixed term fees such as annual fees, could nonetheless be viewed as ongoing fee arrangements. Greater clarity needs to be provided here.
- **Consumer experience:** Relating to the legislation governing annual renewal, Annual renewal requirements have not accounted for the situational realities of consumers and advisers in engaging with the advice process. For example, the requirement around engaging with a consumer 60 days following the expiry of consent and situations where a consumer cannot be contacted. What should be a straightforward requirement to obtain consent at the expiry of a year long fee arrangement has become significantly more complex in terms of how consumers are transitioned between ongoing and non-ongoing fee arrangements. Consideration as to how this will work today as well as in the future justifies a more principles-based approach to how fee information is communicated.
- **Authority to proceed (ATP):** ASIC guidance regarding the date the OFA was "entered into", provides the specific example of the date the consumer signs an Authority to Proceed, even if the consumer begins paying fees and receiving services on a later date. Industry could benefit from a more principles-based approach where Fee Recipients determine the Anniversary Day based upon their business model and their interactions or relationship with the consumer (i.e., where business models use a consumer agreement as well as an ATP, that business could take the date of the consumer agreement even if it was signed later, or determining the OFA was entered into when consumer transfers funds under management). This would need to be reconciled with the requirements on superannuation trustees to track when ongoing fee arrangements end (i.e. the total 150 day period and when such ends if the anniversary date not the same each year).
- **Flexibility to change the Anniversary Day of an ongoing fee arrangement:** Industry would benefit with the flexibility to bring forward and change that date and where this inflexibility to change the Anniversary Day may cause issues, is with respect to "grouped" accounts which may have several OFAs with differing Anniversary Days and no method for Fee Recipients to streamline those days
- **Clarify the assignability of consents between fee recipients**

S 962C(3) contemplates that the rights of a previous fee recipient may be assigned to another person, and it is the person who currently holds the rights in relation to the arrangement that is the fee recipient. Reviewing the legislation should clarify what obligations the current fee recipient has to obtain the written consent required in Sub Div C.

- For example, if the previous fee recipient has complied with the requirements in s 962R and s 962S, it is not clear whether the current fee recipient is able to rely on that for the remaining course of the consent? Or alternatively does the current fee recipient independently need to obtain a consent? Consent obligations may affect the book value of the customer base transferred in dealer or adviser sales, and accordingly, industry seeks clarity on their consent obligations in these circumstances. In some cases, the consumer will be receiving the same services and paying the same fee, for which they have consented to, and in some circumstances being provided by the same individual adviser (despite a change in a AFSL).
- **Clarify that deferred fees can be deducted after expiry of a consent**
It is common practice for fees to be paid in arrears, i.e. fees relating to a month will be deducted from an account in the following month. In some situations, the actual deduction may occur after the expiry of the written consent. Trustees would appreciate confirmation that this practice can continue without seeking a new consent, as the fees have in all other respects been agreed to, and fee recipients would be entitled to those fees. This would require a mandate from Government for standardizing the FDS.
- **Validity of consent at the time of making a deduction:** Industry notes that throughout the course of the consent, details contained within the written consent may change. This may be range from trivial things such as the contact details of the fee recipient, to more material information, such as the reasonable estimate of the ongoing fee (for example, due to large fluctuations in an account balance with a percentage-based adviser service fee). In these cases there has not been a variation of the fee arrangement, and industry seeks clarity that the consent continues to remain valid and there are no obligations to seek an updated consent.
- **Clarify consent information in relation to new ongoing fee arrangements:** S 5(3)(e) of ASIC Instrument 2021/124 requires the consent to include information in respect of the 'upcoming year' where the 'upcoming year is a period of 12 months beginning on a day that is no more than 30 days after the fee recipient gives or makes available to the account holder all of the information that s (5) requires to be included in the written consent. Industry notes that there are practical difficulties in how subsection this can be complied with in conjunction with (5)(h)(i) which requires a statement to the effect that the consent will cease to have effect up to 150 days after the anniversary day for the ongoing fee arrangement. The anniversary day, being the day on which the arrangement was entered into, is unknown at the time the written consent is prepared. Clarity is needed on how both these requirements can be complied with through a principles-based approach.

58. How could these documents be improved for consumers?

See Recommendation 17.

A concern for standardisation to date has been the pace of regulatory change forcing system builds across the industry that have led to different forms. This disincentivises standardisation because to do so requires individual businesses to adjust their processes

due to costs. However, standardisation that is clearly mandated while incurring significant costs in the short-term, can, if done properly and comprehensively with the right of collaboration and understanding between the regulator and industry achieve dramatic efficiencies and cost reductions long-term and an improved consumer experience. Initial standardisation of consent requirements and FDSs and other areas industry and government identify would be a welcome step in seeking to reduce the cost of providing advice.

Advice providers should have greater flexibility as to how information is presented in documentation about fees and this should conform to the risk and scope of the advice provided. It should be incumbent on the advice provider to justify how that information is presented against the overriding obligations such as the Best Interests Duty and the Code of Ethics. This flexibility would enable a greater role for industry to develop standard approaches to consent which could be updated as models of delivery and consumer preferences change.

Agree in principle to this. This would also need to work along with the Trustees' obligation to not allow a fee to be deducted from the member's super account unless we have consent.

A standard form has been very difficult to come to agreement on especially as each platforms have different fee structures and options. This underlines the need for a principles-based model in which ASIC's legislative instruments are repealed. Implementing a standardised form that is not consistent with account holders' existing consent forms will also have a large impact on how platforms accept forms and will possibly further reduce the use of digital channel (i.e. submitting a standard printable form to all platforms). The fee recipient section required by legislative instrument, this has added unnecessary complexity to the process, as long as the adviser is listed on the form this should be sufficient.

59. Are there other ways that could more effectively provide accountability and transparency around ongoing fee arrangements and protect consumers from being charged a fee for no service?

Yes. The primary way this information should be communicated is in writing however the format should be determined by the advice provider (eg digital, SMS messaging or hyperlinks) rather than stipulated in the legislative instrument.

60. How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?

Data on this point is not readily available. The cost impact notwithstanding the legislation being in effect for less than a year is anecdotally regarded as significant although this will hinge on the ability of an advice business to scale costs. This would be greatly addressed through the standardisation measures proposed in Recommendation 17 (see also response to Question 58).

Many licensees have implemented their own processes which was a driving factor in the FSC issuing guidance to its members which includes retail superannuation funds, life insurance, and funds management sectors, for meeting fee consent obligations rather

than a standard that would impose a requirement on all FSC members to implement that standard. The FSC is monitoring the uptake of the guidance and will revisit the possibility of developing a specific standard. Implementation of a standard will consequently require system changes for some licensees increasing their costs.

61. To what extent, if at all, do superannuation trustees (and other product issuers) impose obligations on advisers which are in addition to those imposed by the OFA and FDS requirements in the Corporations Act 2001?

Where interaction with a trustee is concerned, the advice process is indirectly affected by the Sole Purpose Test and other provisions with the ambit of the Superannuation Industry Supervision Act 1993 and the consistency of its application. How these intersect remains a point of contention between industry and regulators. Joint letters between APRA and ASIC have been issued twice, in 2019 and then in 2021 which aim clarify how varying legislative provisions apply offer little certainty.

A key impact has been the expectations regarding trustee oversight of using adviser documentation, such as Statement of Advice (**SOA**) checking. The FSC's concerns include:

- **Cost (time and money)** of making SOAs available to trustees due to privacy issues
- **Whether APRA, as the regulator of trustees, expects SOA checking to be part of a broader compliance checking** (eg a response to other red flag indicators) or a random sampling of all advice fees?
- **Broader concerns about consistency of trustee interpretation of the Sole Purpose Test**

These letters should be repealed to address the practical concerns of industry and harmonise the compliance of trustees and advice providers across the Sole Purpose Test and Best Interests Duty.

62. How do the superannuation trustee covenants, particularly the obligation to act in the best financial interests of members, affect a trustee's decision to deduct ongoing advice fees from a member's account?

On the basis the superannuation trustee is exercising its power in deducting ongoing advice fees from a member's account, the Best Financial Interest duty is relevant. This requires the trustee to have in place appropriate monitoring of advice fees that are deducted from a member's account. However, under the advice regulatory framework, an entirely separate set of obligations apply even though many of these are similar. This is additional to further frameworks overlaying the determination of a product's suitability such as the Design and Distribution obligations.

10. Disclosure documents

10.1 Summary of Key Points

- Despite a requirement to be clear, concise and effective, in an of itself, the Statement of Advice (**SOA**) introduced in 2002 as a mechanism for standardising and improving the information consumers get when seeking advice has since become overlaid with a raft of obligations driving these documents to become compliance-focused rather than consumer focused.
- Sixty-four per cent of consumers (who have purchased financial advice or are open to considering it) are more likely to seek advice if the advice process is simpler and less costly.⁴³
- **The FSC advocates the SOA and Record of Advice (ROA) requirements are consolidated into a ‘Letter of Advice’ that is technology neutral which is overlaid with simply the Best Interests Duty (with the safe harbour steps repealed) and the introduction of personal advice and general information).**
- KPMG has determined that replacing the SOA with the Letter of Advice would:
 - reduce the time taken to produce advice by 17 per cent⁴⁴, from 23.9 hours to 19.9 hours.
 - This change would reduce the cost of providing advice by \$917.24, from \$5334.64 to \$4,417.40.⁴⁵
- These simpler requirements and overall personal advice framework will enable advice and disclosure to be driven by the individual need and circumstances of the consumer and the professional judgement of the financial adviser being scaled up or down in accordance with the complexity of the advice and allow for record-keeping and a reduction in the overall length and complexity of advice documents.

10.2 Recommendations

Recommendation 16

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.

⁴³ Affordable and accessible advice. FSC Green Paper on Financial Advice

⁴⁴ Page 28. KPMG *Cost profile of financial advice sector*.

⁴⁵ Page 29. KPMG *Cost profile of financial advice sector*.

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.

Recommendation 17

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.
- Additional disclaimers not directly relevant to a consumer Projections File notes
- Alternative strategies or products.
- Certain information about a consumer ongoing servicing.
- Other steps with in the advice process subject to consultation with the sector.

10.3 Responses to questions

63. How successful have SOAs been in addressing information asymmetry?

The Statement of Advice (**SOA**) requirements were introduced as part of the Financial Services Reform Act in 2002 as a primary means of reducing information asymmetry via disclosure.

SOA's have been part of the legislative requirements for years, but have become virtually unworkable for several reasons:

- The content requirements of SOAs are arguably more suited to documenting comprehensive advice, and are not well suited to a narrow scope of the advice that might be sought by the consumer.
- SOAs can become out of date as circumstances change posing a risk to consumers if they are not changed and when they are changed there is a separate disclosure process required by law to provide a Record of Advice when circumstances change although what exactly constitutes a change in circumstances to trigger this is not clear.

The current documentation and disclosure requirements, including but not limited to the SOA drive up the cost of providing financial advice and diminish its value in two ways:

- Onerous preparation and presentation of consumer-facing documentation;
- Complex and prescriptive information gathering, analysis and research not necessarily relevant to a consumer, but mandatory, that sits behind the documents, as a result of a cautious approach to complying with the best interests duty and Code of Ethics standards.

As Rice Warner notes:⁴⁶

“...the content of Statements of Advice (SoA) is focused on compliance rather than assisting consumers to understand their plan. The length and complexity of SoA’s increases the likelihood of error and the majority, like house mortgage contracts and general insurance policies, go largely unread. This complexity has diluted the delivery of an SoA’s core function, that is, to inform the consumer about the advice they are receiving.”

Sixty-four per cent of consumers (who have purchased financial advice or are open to considering it) are more likely to seek advice if the advice process is simpler and less costly.⁴⁷ While many consumers might ‘read’ disclosure documents, the more important question is whether this improves their overall understanding of the specific advice they are receiving. What a consumer understands will depend heavily on a variety of subjective factors (eg their own circumstances, their interaction with the advice provider and technology). Yet the disclosure regime does not recognise this and is limited conceptually to a paper-based framework envisaging a comprehensive advice offering, not a limited advice offering that can be scaled up into comprehensive offering if needed.

Certainly over disclosing can work insidiously to protect consumers providing them information they might not think to ask about when engaging with an adviser but more often than not it serves to convolute the advice relationship.

64. How much does the requirement to prepare a SOA contribute to the cost of advice?

There is no question the SOA in practice becoming too long in length and time to prepare, and therefore a costly part of the overall advice process. In practice much of its content consists of disclaimers and disclosures of information repeated back to a consumer in a “Fact Find”. There is a question of how valuable full disclosure to a consumer is, even where it provides considerable or even all possible information.

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 as such 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.⁴⁸

65. To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs

⁴⁶ Page 22. Rice Warner. Future of Advice Report. (October 2020).

⁴⁷ FSC Green Paper on Financial Advice

⁴⁸ Pollinate research commissioned by the FSC for the Financial Advice Green Paper.

while still ensuring that consumers have the information they need to make an informed decision?

As with other professions such as law, accounting, tax or medicine, professional judgment should be the determinant factor in delivering financial advice. The FSC supports reforms that:

- **Allow financial advisers to rely on their professional judgment to determine the appropriate scope of advice**, which is accompanied by commensurate disclosure or documentation requirements that are not costly or complex.
- **Allow for 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.
- **Simpler and clearer requirements underpinned by the removal of the safe harbour steps and introduction of a technology-neutral Letter of Advice with scalable advice obligations** to focus enforcement action on breaches of law relating to a consumer's overall position, and *materiality* in acting on technical breaches of legislation immaterial to the overall position of the consumer.

KPMG has determined that replacing the SOA with the Letter of Advice would reduce the time taken to produce advice by 17 per cent⁴⁹, from 23.9 hours to 19.9 hours. This change would reduce the cost of providing advice by \$917.24, from \$5334.64 to \$4,417.40.⁵⁰ 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.⁵¹ 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.

As the role of the traditional financial adviser changes, and with that the nature of financial advice, the regulatory framework needs to be fit for purpose in not assuming many traditional paper-based or disclosure based components that might not exist in future or will be delivered through non-traditional mediums.

As such, the Letter of Advice and scalable advice obligations, under the FSC's personal advice framework, anticipate the reality of the consumer experience retaining obligations to disclose information but ensuring that disclosure is sufficiently relevant to the consumer and determined in accordance with professional judgement. Clearer footings such as this will refocus compliance systems on following the law rather than putting them in a position where a higher standard than the law is systemised unnecessarily because of uncertainty around regulatory enforcement.

⁴⁹ KPMG research, Page 28.

⁵⁰ KPMG research, Page 29.

⁵¹ KPMG research, Page 29.

66. To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?

A combination of open-ended requirements such as disclosure (eg safe harbour steps, ASIC's class order relating to documentation) and a rigorous approach to enforcement spurring risk aversion from advice providers to such an extent that it prevents offerings of scoped personal advice as outlined in previous answers. The approach of the Regulator and its reference to the regulatory framework ultimately discourages proactivity (there is no regulatory road-testing see *Digital advice*) and drives overcompliance by the sector.

Despite an obligation in the law for the SOA to be clear, concise and effective this provision is thwarted by other obligations to disclose other documentation. The current system compels a comprehensive advice service and the current disclosure regime essentially maps prescribed disclosure to this service. The point of disclosure should be to ensure the consumer has the information needed to make an informed decision. Both the advice and the disclosure should be scalable. The experience and engagement of the consumer that comes from "how the advice is provided" is a significant factor in consumer understanding and greater reliance should be placed on the professional judgement of the adviser providing the advice.

Rice Warner cites a range advice documents in the advice process:

- Fact finds
- Fee Disclosure Statements
- Statement of Advice
- Record of Advice
- Opt-in requirements

Rice Warner notes:⁵²

*Many of these documents are lengthy, particularly an SoA where a range of needs are addressed, and a range of products might be compared. There is no flexibility in using these documents; **the requirements are similar whether the advice is simple, single issue or complex.** Further, there is no triaging based on the risks faced by a consumer – so simple risk-free advice has the same legal requirements as a high-risk plan or recommendations regarding high risk products; this leads to higher costs than most consumers will bear.*

67. How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?

See recommendations and responses to Questions 65 and 66.

68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?

Digital and limited advice offerings would in many instances be better suited to reduced disclosure documents or conveyance of their information through alternate means.

Certainly not all digital advice would necessarily justify less disclosure however this determination needs to accord with the situation of the individual consumer rather than be prescribed to apply to all consumers irrespective of their circumstances.

The Letter of Advice supported by scalable advice obligations will deliver an overall simpler and more relevant consumer experience typically associated with what would be expected under a limited advice framework. This would in effect compliment the benefits of a more streamlined regulatory framework in which the safe harbour steps are abolished the Code of Ethics guiding the conduct of advice providers when providing limited advice offerings. The process would be scaled up or down in accordance with the individual consumer's circumstances.

69. Has recent guidance assisted advisers in understanding where they are able to use ROAs rather than SOAs, and has this led to a greater provision of this simpler form of disclosure?

ASIC's issuing of holistic materials and infographics to support the sector to better understand their obligations when providing a Record of Advice and Limited Advice is welcome, and industry contributed to the consultation on their development.

Ultimately, however, it is the regulatory framework that is problematic despite efforts to reconcile it by the Regulatory. The obligations are inherently complex (eg there remain separate disclosure regimes for when the circumstances of a consumer change that derogate from present-day advice scenarios for consumers).

The regulatory regime should support the level of disclosure is scaled up or down at the determination of the advice provider in a manner proportionate to the specific consumer, which is then judged against a central overriding obligation in the form of the Best Interests Duty.

For this reason the regulatory framework needs to be reformed by Parliament to achieve the objective of simplicity for consumers and advice providers.

70. Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?

Many FSC members found it difficult to take advantage of this relief because of a concern in doing so they would then be in breach of their Best Interests Duty obligations. This underlines the perverse nature of having competing obligations on advice and financial advisers that has accumulated over time rather than consolidating these requirements. It explains further how compliance culture and a desire for consistency is driven by having competing legislative requirements and differing interpretations and guidance.

Under the FSC's proposed model, a separate Record of Advice process would not be necessary when the circumstances of a consumer change because the advice provider would be obligated to communicate this to a consumer by virtue of the reformed Bests Interests Duty obligations and Code of Ethics requirements. The format would be determined by the financial adviser whom it could be expected would issue a form of disclosure resembling a Record of Advice but in a format suitable to the needs of the consumer they are interacting with as opposed to a prescribed 'one size fits all' approach.

11. Accountant's exemption

11.1 Summary of Key Points

- **The FSC does support the reintroduction of the accountant's exemption to the AFSL regime.**
- Accounting is one of a range of professions providing incidental financial advice to consumers.
- A simpler and clearer framework will support the overall delivery of financial advice delivery by different intermediaries providing financial advice across financial services.
- While a review of the professional standards regime is outside the scope of the Review, the FSC acknowledges that improvements should be looked at to more seamlessly accommodate the qualifications and expertise of other professions that provide financial advice. However financial advice requires a consistent definition and set of licensing requirements in the interests of protecting consumers and ensuring a level playing field.

11.2 Recommendations

Recommendation 18

The provision of all personal financial advice should be subject to the same regulatory requirements, the FSC does not support an exemption to the licensing requirements for the accounting profession to provide personal financial advice.

11.3 Responses to questions

71. Should accountants be able to provide financial advice on superannuation products outside of the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why?

While such a measure is intended to support the goal of access to financial advice and indeed more people are turning to accountants in the absence of being able to access professional advice, this pragmatic concern should not motivate exemptions to one part of regime. Such would be counteractive to the objective of delivering a consistent regime underpinned by robust professional standards within an affordable and accessible framework.

While a review of the professional standards regime is outside the scope of the Review, the FSC acknowledges that improvements should be looked at to more seamlessly accommodate the qualifications and expertise of other professions that provide financial advice. However financial advice requires a consistent definition and set of licensing requirements in the interests of protecting consumers and ensuring a level playing field.

72. If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?

The FSC does not support an exemption to the licensing requirements for the accounting profession to provide personal financial advice. To do so would create different licensing requirements for providing the same type of advice.

73. What effect would allowing accountants to provide this advice have on the number of advisers in the market and the number of consumers receiving financial advice?

While an exemption would nominally improve access to advice by virtue of more advisers providing such advice, this would subject to significantly different licensing requirements which is thereby counteractive. Section 14 of the submission deals with the Accountants exemption. Requiring accountants to be licensed like other advice providers, is that it limits reputational to the advice profession more generally if those purporting to be providing advice risks are providing inappropriate advice. It's a similar argument to requiring influencers to be regulated. Consumers think they are getting advice, but the consumer protections aren't at the same level therefore tarnishing the broader industry if the consumer thinks they are getting the same service. The Melissa Caddick factor.

74. Is the limited AFS licence working as intended? What changes to the limited licence could be made to make it more accessible to accountants wanting to provide financial advice?

No changes to the limited AFSL regime have been identified to support more accountants to provide financial advice. Streamlining the regulatory framework overall will support a limited advice type offering across the advice ecosystem irrespective of who provides whether that is an advice licensee, a superannuation fund, product provider or a provider of incidental financial advice outside the financial advice profession.

75. Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?

The accounting profession is impacted by the same regulatory requirements as other providers of financial advice. The FSC advocates reforms to streamline and simplify these requirements to reduce cost.

12. Consent arrangements for wholesale consumers

12.1 Summary of Key Points

- Redefining the thresholds for wholesale investors and in-building a method by which a financial adviser can ascertain the suitability of a consumer for distinction as a wholesale consumer should be progressed
- The wholesale investor test is informed by data reflective of wealth patterns as they were in 1991.
- **As to specific consent requirements, the FSC supports requirements for a consumer to agree with an adviser to be classified as a wholesale consumer however consultation is needed on the most appropriate and flexible format this should take that acknowledges its impact and avoids undue disruption and cost.**
- The FSC notes the specific requirements for determining a wholesale investor are a focus of the ALRC's financial services legislation inquiry and supports changes recommended by the Review to align with the broader consideration of this regime.

12.2 Recommendations

Recommendation 19

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

- The threshold for the asset test for determining a wholesale consumer 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 consumer that would be reclassified as a retail consumer as a result of this change can opt to remain a wholesale consumer if this election is made within a two-year transition period.
- Following the completion of the transition period for meeting professional standards and education requirements 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 consumer, as guided by the statutory Best Interests Duty and Code of Ethics framework.

The FSC supports requirements for a consumer to agree with an adviser to be classified as a wholesale consumer however consultation is needed on the most appropriate and flexible format this should take that acknowledges its impact and avoids undue disruption and cost.

12.3 Responses to questions

76. Should there be a requirement for a consumer to agree with the adviser in writing to being classified as a wholesale consumer?

Yes. Although this reform should follow changes to the asset thresholds and be subject to a two year transition period should serve the purpose of informing a consumer of their rights and ensuring and understanding. While an 'in-writing' requirement would make the most sense it is not the only way this information could be communicated and should not be imposed in a manner that adds unnecessary cost or that runs counter to ultimate objective of improved information asymmetry.

77. Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale consumer?

Notwithstanding updates to the asset thresholds to align with changing wealth patterns of consumers, consultation is needed on how this understanding would be achieved. For example this might take the form of requesting certain information an adviser should ascertain from a consumer or convey to them.

78. Should there be a requirement for a consumer to be informed by the adviser if they are being classified as a wholesale consumer and be given an explanation that this means the protections for retail consumers will not apply?

Yes.

13. Other measures to improve the quality, affordability and accessibility of advice

13.1 Summary of Key Points

- **The AFSL regime is an important aspect of consumer protection and should be retained however certain steps should be taken to support the professionalisation and autonomy of financial advisers**
 - This should include the introduction of an individual practicing certificate to coincide with the shift to individual registration of financial advisers in 2023.
- There is a need to ensure there is greater alignment from the regulator between its policy and enforcement functions to deliver greater regulatory certainty and ensure greater rigour as to its assessment of a diverse range of advice providers as to their capital adequacy and professional indemnity (PI) insurance capacity.

13.2 Recommendations

Recommendation 20

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.

- The Government should consult on a framework that clarifies responsibilities of financial advisers and AFSL holders. The framework should consider minimum professional indemnity requirements for financial advisers and articulate a clear delineation of liability between AFSL holders and financial advisers.⁵³
- The terms such as ‘financial planner’ and ‘financial adviser’ to ensure consumers are protected from unlicensed financial advice.
- As the system of individual registration takes effect the Government should consider the introduction of a formalised practicing certificate issued when an adviser registers.
- The Regulator should conduct representative cross sampling of the industry in investigating capital adequacy of advice businesses operating in the sector to ensure consumer protection.

Recommendation 21

Alignment is needed across ASIC’s regulatory, policy and enforcement arms with approach to the regulatory framework to ensure regulatory certainty for advice businesses. This should include a revision of the breach reporting requirements following

⁵³ See Green Paper’s proposed set of responsibilities for licensees and advisers for implementation post the introduction of individual registration in 2023. This framework was developed prior to the introduction of the exposure draft legislation implementing the Better Advice Act 2021 but should support the Review’s conceptualisation of the licensing regime and how responsibilities are recalibrated.

reforms to the advice framework and recalibration of responsibilities between licensees and financial advisers.

Recommendation 22

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 23

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 consumers.
- RG 90: Example Statement of Advice: Scaled Advice for a new consumer
- RG 175: Licensing: Financial product advisers Conduct and disclosure.

Recommendation 24

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.

13.3 Responses to questions

79. What steps have licensees taken to improve the quality, accessibility and affordability of advice? How have steps affected the quality, accessibility, and affordability of advice?

There are several ways in which AFSL-holders have taken steps to reduce costs or prevent additional cost in the provision of financial advice to consumers. The AFSL regime

is an important tool for protecting consumers and allowing consistency across the sector which provide several benefits:

- **Cost reduction:** The AFSL regime enables authorized representatives pool their costs under a group licensing framework by which to secure training, supervision and professional indemnity insurance or other means to participate in the industry supporting a more stable supply of professional financial advisers. This impacts both the access and affordability of financial advice. As noted in earlier responses, simplifying the regulatory framework will resolve the issue of licensee caution in the face of rigid enforcement action enabling further cost reduction.
- **Consistency:** The training and supervisory frameworks and AFSL might offer will ensure a level of consistency in the advice given as a result of the firms ability to scale costs.
- **Consumer protection:** Enabling group AFSL frameworks ensures a level of consumer protection that would not exist were only self-licensing permitted. Self-licensing is still an option for advisers under the current framework. Financial advisers who seeking to form their own licensing or business is permissible but comes at significant cost given the risk of becoming a sole operator. It is group AFSL frameworks that are positioned to remediate consumers in the event of misconduct or an advice business exiting the sector.
- **Self-licensing is already permissible under the current regulatory framework:** A scenario in which only self-licensing was permissible would pose structural risks to the financial advice sector. Nevertheless in the context of a professionalized industry, the objective of properly acknowledging the professionalism and independence of advisers is best served through the introduction of a practicing certificate and other measures set out in Recommendation 23.

As such the FSC does not support the removal of the AFSL regime from financial advice given the significant risks to consumers and the effect of further destabilizing the industry this would have.

80. What steps have professional associations taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?

The FSC has taken steps to reduce the cost of financial advice in several ways:

- **Guidance:** In December 2021, following consultation with stakeholders in the advice sector the FSC adopted *Guidance Note 43: Advice fee consent requirements*. The guidance is aimed at supporting consistent data points and information being shared between advisers, trustees and product issuers to meet their fee consent obligations under the annual renewal legislation which took effect in July 2021. The FSC is monitoring how the guidance can be improved by way of cost reduction but given the early stages of its implementation it is not yet possible to assess its impact by way of quantitative insight. Anecdotal feedback has shown that the guidance has been welcomed however there is a desire for an industry standard to ensure optimal consistency. The guidance was originally intended however FSC members resolved that compelling a standard albeit a more ideal lever would result on system changes in the industry and therefore increased cost. The FSC is closely considering this issue as it considers feedback from the sector and will act accordingly. Importantly, while measures such as industry standards can support cost reduction, they are not a panacea for inherently problematic

regulation which impose significant costs on advice businesses that require the attention of regulators and Parliament.

- **Engaging regulators on holistic materials:** The FSC has engaged the Regulator on materials to support compliant limited advice, SOAs and ROAs under the current framework and have welcomed this engagement.
- **Design and Distribution Obligations (DDO):** The FSC has developed several industry template/guidance products for the DDO – in particular template Target Market Determinations (TMDs), industry guidance on applying DDO and TMDs to investment portfolios, a template distributor due diligence questionnaire, and industry data standards relating to data required to be transmitted under the DDO. These products are encouraging industry standardisation, reducing the costs on advisers and advice licensees which would otherwise have to deal with numerous different industry approaches. The FSC has also developed guidance on the meaning of ‘significant dealing’ which is specifically designed to assist advisers in meeting their DDO obligations. The FSC is licensing these products to the industry or providing them to the industry free of charge.

The role of professional associations limited in how it can reduce cost outside of the regulatory framework however their role in setting industry standards for ensuring consistent approaches to compliance is a key in which they can potentially impact cost. Moreover reform of the regulatory framework presents an opportunity for professional associations to have a greater role in regulating the sector and protecting consumers given their access to expertise and proximity to the more technical aspects and nuances of applying regulation across compliance systems.

81. Have ASIC’s recent actions in response to consultation (CP 332), including the new financial advice hub webpage and example SOAs and ROAs, assisted licensees and advisers to provide good quality and affordable advice?

These are welcome changes however until the broader regulatory framework ASIC is tasked with enforcing these will have minimal impact. As noted in the Recommendations regulatory certainty should be achieved through greater alignment across ASIC’s enforcement and policy making functions and enabling industry to ‘roadtest’ compliance with the regulator before taking solutions to market.

Limits of ASIC’s ability to effect change given the Regulatory framework

As ASIC’s Consultation Paper 332 demonstrated many of the necessary changes to reduce cost require legislative change outside the power of the Regulator. The Regulator is also currently limited not only in terms of its powers but also how it engages the advice sector prior to laws coming into effect. While ASIC can, and in numerous instances, has attempted to consult industry prior to laws taking effect, its independence constrains its ability to presume or comment on how law might apply which limits the ability of industry to prepare for a regulatory regime coming into effect. This was notable in two instances:

- Communication ahead of the implementation of annual renewal
- The release of regulations under the Better Advice Act.

Expanding the sandbox and allowing regulatory road-testing

Significant cost-reductions would be achieved from enabling industry to test with the regulator whether a proposed solution for consumers would, on the facts presented,

comply or not comply with law, in effect enabling the market to regulatory 'road-test' initiatives to check they are more or less compliant.

It would offer incentives for a substantially regulated sector to innovate and better address consumer needs. Initiatives such as the Fintech Regulatory sandbox are a good example of like mechanisms for enabling innovation and testing best practice. Instead the regulatory burden and inability of the Regulator to provide indications of compliance while pursuing enforcement of a complex legal framework more rigidly is deterring innovation and fuels a compliance culture.

82. Has licensee supervision and monitoring of advisers improved since the Financial Services Royal Commission?

The impact of the regulatory framework on licensee supervision and monitoring has been profound. The approach to enforcement has fuelled caution in how advice is provided consistently and often seen adoption of standards higher than the law. This has led to advice becoming compliance-focused rather than consumer focus and measures to simplify the regulatory framework as proposed by the FSC would resolve this issue.

Breach reporting and other Royal Commission legislation

The introduction of reference checking, information sharing requirements and breach reporting is intended to substantially improve the regulation of the sector and consistency. Much of this legislation has been in effect for the sector for less than a year and introduces many much needed reforms.

As outlined (See responses under *Charging arrangements*) the issues created by such reforms relate less to their merits or policy intent of these reforms that in many ways go to improving the consistency and reputation of the profession, but rather the legal concepts and their capacity to contemplate practical features of different advice settings for consumers. The consequence has been costly system change implemented at a significant pace in respect of reforms including but not limited to:

- The introduction of reference checking and information sharing measures
- The significantly higher number of breach reports that will need to be filed under the breach reporting regime that adds costs into the advice process.

The intent of these changes will take time to bed in as best practice around how these requirements are met evolves. The industry is expecting a substantial volume of breach reports requiring careful oversight even where the breach itself is not overly significant. There is a question about the resource pressure this places on the advice sector at the expense of providing value to consumers.

83. What further actions could ASIC, licensees or professional associations take to improve the quality, accessibility or affordability of financial advice?

There are several further actions that should be considered:

- ASIC should issue a centralised practising certificate approach to financial advisers as individual registration comes into force in 2023.⁵⁴ While the AFSL regime should remain but there should central body responsible for issuing advisers with a practising certificate ensuring advisers remain fit and proper, meet initial and ongoing training requirements and have no unpaid AFCA determinations or serious compliance concerns. This approach would ensure consumers have confidence that every adviser in the industry is assessed against the same level of professional standards and meets the same requirements. The FSC advocated in its White Paper this could be achieved from 2026 with a long-term view handing over responsibilities to industry associations with the objective of self-regulation after reforms to the overall advice framework to reduce cost had been achieved.
- Following reform of the personal advice and general information framework exemplary regulatory guidance would ensure robust regulation between the two categories without providing additional layers of complexity. This would include amore effective approach to online tools and calculators which under current advice laws may be deemed as giving personal advice. This limits what education and visual guidance can be given to consumers and potentially lead to poor financial outcomes.

⁵⁴ The practising certificate operate in a similar way to the practising certificate issued by the Law Society to solicitors - *To practise as a solicitor in NSW, you must hold either an Australian practising certificate issued by the Law Society's Council or a practising certificate issued by the designated regulatory authority in another Australian jurisdiction* (lawsociety.com.au/practising-law-in-NSW/working-as-a-solicitor-in-NSW/your-practising-certificate)

Part 2: Life Insurance and conflicted remuneration

Life Insurance and conflicted remuneration

Recommendations

Recommendation 25

As it pertains to non-life insurance products, the ban on conflicted remuneration and exemptions should not be changed.

Recommendation 26

The FSC recommends:

- The current exemption to the ban on conflicted remuneration for life risk insurance products should be retained, together with the Life Insurance Framework in its current form.
- The adoption of FSC's recommendations to further address underinsurance levels, which have increased over the past decade due to various regulatory reforms.

Introduction

The FSC, the peak body that represents all Life Insurers in Australia, supports a well-functioning advice industry that sees consumers buying life insurance products that are right for them and are affordable for the long term.

When industry and the Government came together to establish the Life Insurance Framework, its purpose was to address the poor-quality advice consumers were receiving and reduce customer lapse rates.

For this Quality of Advice Review, the FSC has engaged NMG Consulting (NMG) to evaluate the Life Insurance Framework using the key measurements that ASIC used in their 2014 Retail Advice review. In addition, NMG has provided an up-to-date analysis of underinsurance levels among Australians.

From this evaluation, the FSC sees several proof points that demonstrate improvements in the quality of life risk advice consumers have received since the commencement of the Life Insurance Framework along with better alignment of adviser and consumer interests. However, there has been an increased underinsurance gap among Australians caused by both reduced accessibility and affordability which in turn affects the sustainability of the industry, due to shrinking risk pools driving up prices and reinforcing the adverse selection spiral that will see relatively healthy consumers with a perceived lower risk of choosing to cancel their cover.

Therefore, we are of the belief that the Life Insurance Framework, which includes an amended exemption to the ban on conflicted remuneration, must be retained to continually improve the quality of risk advice Australians receive and to prevent a collapse of the life risk market.

To address the growing underinsurance levels, the FSC recommends adoption of our recommendations to reduce the cost of providing advice, with emphasis on removing barriers for consumers to receive limited scope advice

About NMG Consulting

NMG Consulting is a multinational specialist financial services consultancy focused on the insurance, reinsurance and investment industries. NMG also runs periodic research and analytics studies including in relation to consumer, adviser and corporate attitudes to life insurance and aggregation, and analysis of industry stock/flow and profitability metrics (both internationally and in Australia). NMG's Australian life insurance studies form a key part of the information base supporting the analysis and conclusions in this submission.

Background

In 2014 ASIC undertook a review into retail insurance advice. The report identified high lapse rates and evidence of poor advice, linked to the more dominant upfront remuneration model.

Lapse Rates

ASIC noted that from 2011 to 2013 lapse rates are lowest in the first year of the policy and increase sharply from the first to the second year⁵⁵ and remain high for stepped premium policies.⁵⁶ ASIC also highlighted the significant high lapse rates for an upfront commission model relative to a hybrid model.

Clawback Rates

In addition, ASIC identified a key warning sign for poor advice can be a high clawback rate of advisers as they are a telling indicator that advisers are recommending and selling products to consumers who do not inevitably need them.

ASIC Recommendations

ASIC subsequently made the following recommendations on behalf of the consumer to ensure the quality of the advice they receive is not affected by what they identified as conflicts of interests between insurers, advisers and consumers⁵⁷;

- a) address misaligned incentives in their distribution channels;
- b) address lapse rates on an industry-wide and insurer-by-insurer basis (e.g. by considering measures to encourage product retention); and

⁵⁵ ASIC Report 413 Review of retail life insurance, p 30

⁵⁶ ASIC Report 413 Review of retail life insurance, p 31

⁵⁷ ASIC Report 413 Review of retail life insurance

- c) review their remuneration arrangements to ensure that they support good-quality outcomes for consumers and better manage the conflicts of interest within those arrangements.

Summary of the Life Insurance Framework and its Objectives

Introduction of the Life Insurance Framework

The Government, with bipartisan support and endorsed by industry, introduced the Life Insurance Framework (LIF) which commenced on 1 January 2018. LIF amended the exemption from the ban on conflicted remuneration by introducing caps under which commissions will be permitted to be paid, as well as arrangements to ‘clawback’ commissions where policies lapse in the first two years.⁵⁸ The Objective of LIF was to reduce conflicts and misaligned incentives.

Remuneration Structure under LIF

When LIF came into effect on 1 January 2018 it introduced a capping of commission payments with a three-year transition period. LIF now permits maximum upfront commission of 60% and a maximum 20% and a maximum ongoing commission of 20% which is in line with the hybrid remuneration model identified by ASIC as delivering quality advice for consumers.

Importantly, the commission rates payable are standardised across all life insurers to advisers to remove any conflict when providing advice on products. When a commission payable is standard across all insurers, it removes the misaligned incentive to advise one product over the other. Because life risk products have an exemption to the ban on conflicted remuneration, a standardised commission rate is crucial when aligning consumers with advisers’ interests.

Clawbacks

To address the high lapse rates and to reduce churn, LIF introduced a two-year clawback provision where:

Cancellation or reduction within 12 months following issue of the policy or addition for which upfront commission was paid	100% of the commission
Cancellation or reduction during clawback period and <u>after the first 12 months</u> following issue or addition for which upfront commission was paid	60% of the commission

⁵⁸ Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016 (Cth)
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Evaluation of the effectiveness of the Life Insurance Framework

About the FSC's Evaluation

FSC engaged NMG to undertake an analysis of the Life Insurance Framework using the same key measurements that ASIC undertook in 2014.

NMG used data from its proprietary NMG Risk Distribution Monitor database (which sources new business, existing policy holder numbers and lapse activity of policies from life risk insurers in the Australian market).

Findings

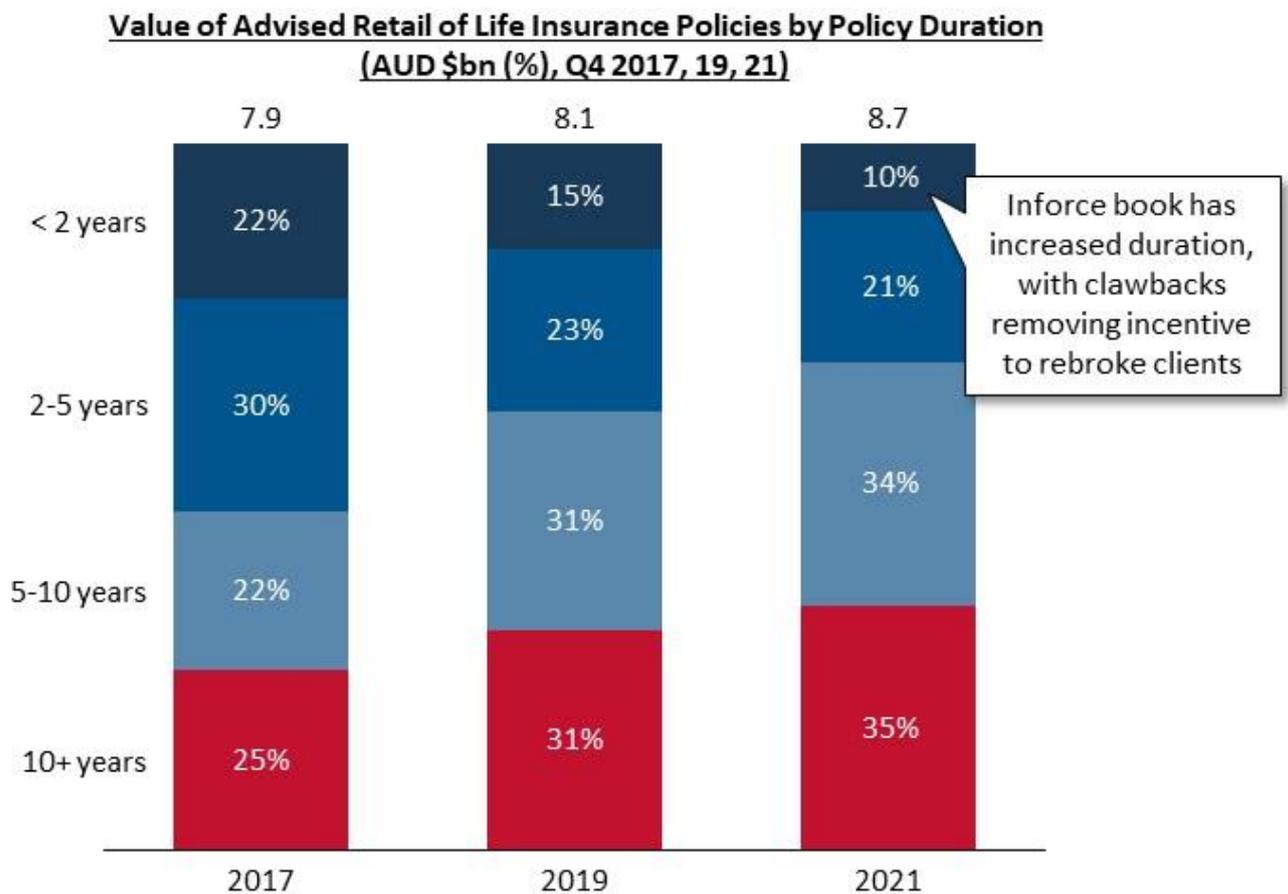
The data shows several key indicators from our evaluation which shows that the Life Insurance Framework is working to align consumer and adviser interests. Specifically:

- There has been a change in adviser and consumer behaviour with evidence of;
 - The mix of new business has skewed more towards new to market sales rather than re-broking. Evident in the reduction of re-broking policies from 59% in 2015 to 43% in 2021 coupled with a stable new-to-market sales per adviser.
 - Lapsing of policies in the early years has reduced significantly – with no material uplift in lapse after the end of the 2-year clawback period.
 - The value of clawbacks has reduced by 40%
- Greater product retention with;
 - The average policy duration increasing, and a
 - Significant reduction in the proportion of policies under a 3-year duration.

Shifting adviser focus and advice business models

We have seen several underlying trends which point to improved quality of advice outcomes for consumers of life risk advice:

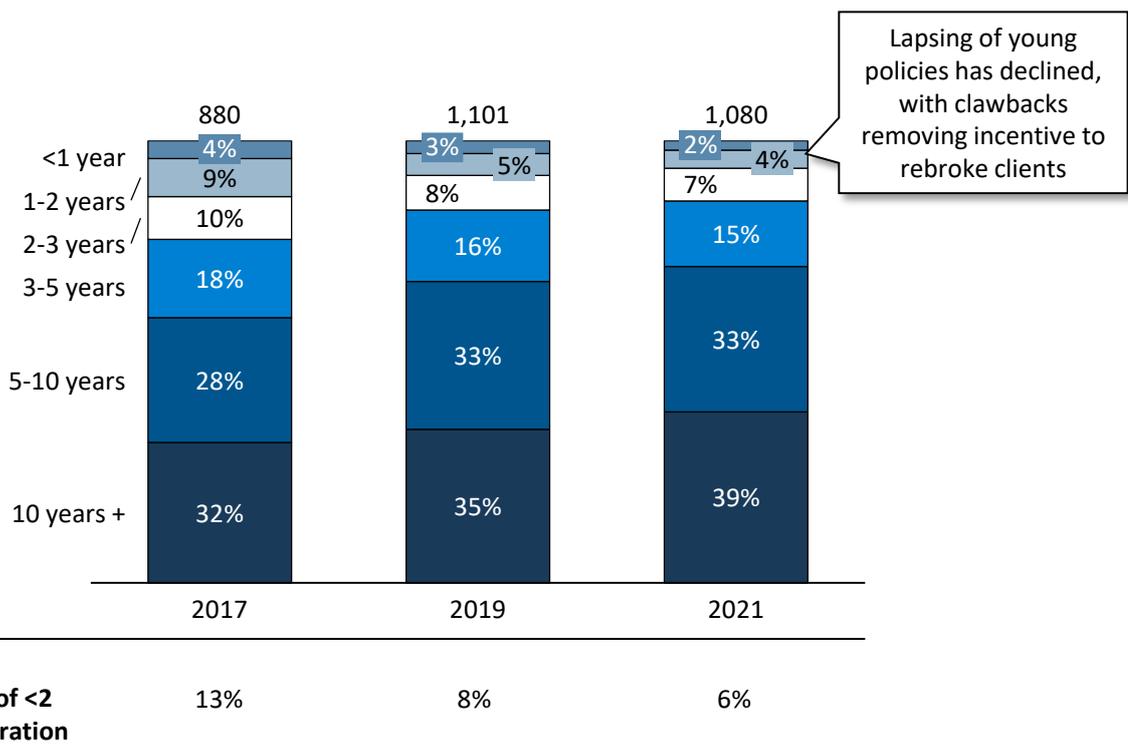
- a) A significant fall in lapsing of policies that have been held for up to 2 years,
- b) Average duration of policies has increased



Of noting is the average policy duration increasing with 52% of policies being 5 years and under to now being only 31%. This decrease supports a change in behaviour from advisers.

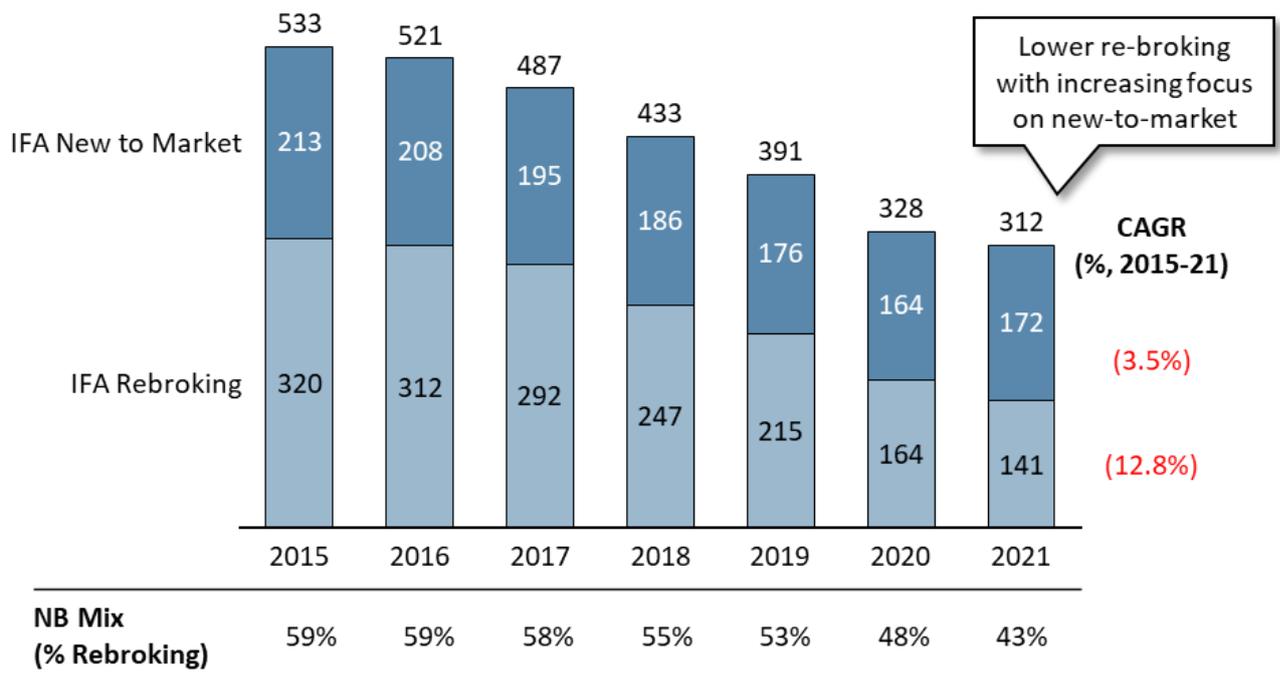
Upon further analysis of policy lapsing experience, there is no material jump at the end of the clawback period with lapsing well below in the levels seen in younger policies in 2017.

Advised Retail Life Insurance Lapse by Policy Age
(Rolling 12m, AUD \$m, 2017, 19, 21)



- c) a greater focus on new-to-market consumers away from re-broking of existing consumers

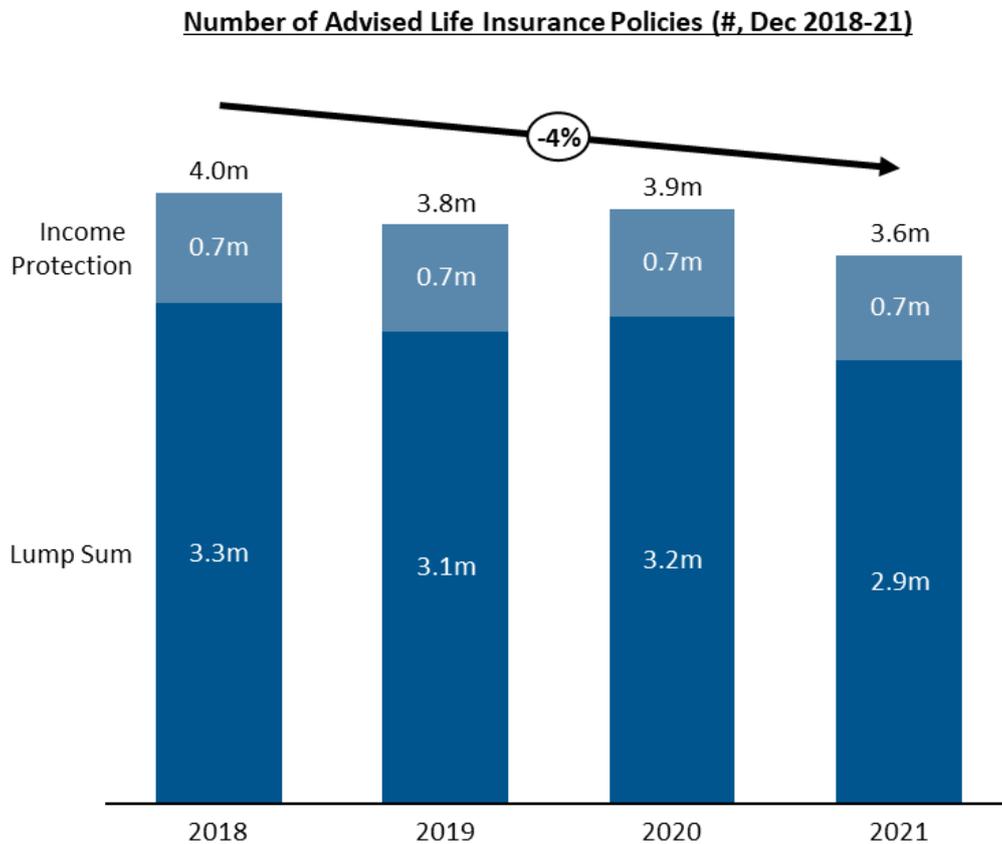
**Advised Retail Life Insurance New Business Premiums by Source
(Rolling 12m, AUD \$m, Q4 2015 – 21)**



This repositioning is a consequence of the remuneration model under the Life Insurance Framework.⁵⁹ Namely, reduced incentive to rebroke existing consumers towards a greater focus on extending policy duration for existing consumers and attracting new-to-market consumers which was a key objective when establishing the Life Insurance Framework. However, this reduction in new to market consumers from \$213m to \$172m is showing that new business is declining 3.5% p.a. which is reducing the risk pool.

⁵⁹ Note, restricted remuneration model has significantly reduced likelihood of conflicted remuneration due to adviser remuneration being the same across all products.

However, there has been a decline in the number of advised policies over the last few years.



Source: NMG Risk Distribution Monitor Study

Conclusion

From FSC's evaluation, the Life Insurance Framework has been successful in addressing issues raised by ASIC's 2014 Review into Retail Life Insurance. Customers are holding onto their life insurance policies for longer and are growing in number along with a significant reduction in 'churn' coupled with a fall in lapse rates despite declining number of advised policies since 2018. In addition, there has been a 40% reduction in the number of clawbacks during that period.

Underinsurance

To understand the level of underinsurance in Australia, FSC engaged NMG to leverage primary research into community attitudes, several proprietary NMG information sources and various external (industry based) data sources.

Community Expectations for Life Insurance

NMG runs a bi-annual consumer-based study to understand community expectations of life risk. This study was first run in 2019 and was primary fieldwork via online study and focus groups, conducted by a third-party consumer research agency (to better understand NMG's evaluation please see explanatory statement in the Appendix).

Analysis

2022 Community Expectations and Key Findings

There is a high level of community awareness of the role of life insurance plays and a clear 'community standard' in terms of cover needed to cover debts (e.g. mortgage) and income needs. However, awareness of life insurance isn't directly correlated to uptake of life insurance products.

The community standard expresses community expectations about what friends, family and neighbours should be insured for in terms of life-stage (especially with regard to dependants), income and debt levels.⁶⁰

To satisfy this community standard, default insurance in super is insufficient for many consumers. We can therefore identify what proportion of consumers should obtain additional life insurance cover and estimate the coverage that would be required to satisfy the community standard.

The proportion of individuals in different age cohorts who need additional coverage is shown below. This also highlights changes between 2019, when this was first researched, and now

⁶⁰ The community standard expresses community expectations about what friends, family and neighbours should be insured for in terms of life-stage (especially with regard to dependants), income and debt levels. As life risk insurance is a community good (the benefits of participation largely accrue to parties other than the primary participant), the community standard is regarded as an appropriate measure against which to assess the adequacy (underinsurance) of life risk insurance. However, the community standard should be regarded as the level below which individual risk impacts the broader community (thus the minimum standard, not a cap or maximum). As a result, the market should be open to (and supportive of) individuals and families choosing to purchase benefits above the community standard, and consider whether policy settings support such choices; equally we should ensure that higher levels of benefits purchase in certain community segments do not distort aggregate comparisons aligned to community expectations.

in 2021. Of note is the general increase in community expectation post COVID (which has seen a slight increase in awareness of need for insurance).

Current Underinsurance in Australia

Comparing the community standard to current insurance cover, there are still some significant pockets of the market where there is underinsurance.

Death/TPD Underinsurance by age band (Q4 2021):

<u>Age Band</u>	<u>Gap Type⁶¹</u>	<u>% Underinsured</u>	<u>Ave underinsurance gap</u>
<u>< 35 years</u>	<u>Default</u>	<u>0.1-</u>	<u>\$200,000</u>
	<u>Additional</u>	<u>9.0</u>	<u>\$330,000</u>
<u>35 – 45 years</u>	<u>Default</u>	<u>0.2</u>	<u>\$210,000</u>
	<u>Additional</u>	<u>6.0</u>	<u>\$460,000</u>
<u>45 – 55 years</u>	<u>Default</u>	<u>0.2</u>	<u>\$120,000</u>
	<u>Additional</u>	<u>2.6</u>	<u>\$540,000</u>
<u>55+ years</u>	<u>Default</u>	<u>0.3</u>	<u>\$30,000</u>
	<u>Additional</u>	<u>1.1</u>	<u>\$290,000</u>

In terms of demographics, most of the default gap arises with self-employed people without default cover in their super fund. However, additional gap arises with:

- Single parents in younger ages, and couples with or without children in older ages
- Main (sole) income earner in higher earning families

⁶¹ There are two types of underinsurance gaps which arise – those who have no cover but should have default cover in super [‘Default’], and those who have default cover in super but have additional needs beyond what group cover provides [‘Additional’].

Income Protection underinsurance by age band (Q4 2021):

<u>Age Band</u>	<u>Gap Type⁹</u>	<u>% Underinsured</u>	<u>Ave underinsurance gap</u>
<u>< 35 years</u>	<u>Default</u>	<u>15.6</u>	<u>\$24,000 p.a.</u>
	<u>Additional</u>	<u>=</u>	<u>=</u>
<u>35 – 45 years</u>	<u>Default</u>	<u>21.1</u>	<u>\$27,000 p.a.</u>
	<u>Additional</u>	<u>1.6</u>	<u>\$48,000 p.a.</u>
<u>45 – 55 years</u>	<u>Default</u>	<u>19.7</u>	<u>\$26,000 p.a.</u>
	<u>Additional</u>	<u>1.0</u>	<u>\$46,000 p.a.</u>
<u>55+ years</u>	<u>Default</u>	<u>21.2</u>	<u>\$24,000 p.a.</u>
	<u>Additional</u>	<u>1.5</u>	<u>\$42,000 p.a.</u>

With income protection, most of the default gap arises with only a limited number of super funds providing basic group income protection cover for families with dependants. Additional gap arises with couples (with children) in higher earning families.

Conclusion

As a result of this (unanticipated) increase in community expectation we have seen an increase to the underinsurance gap. Comparing actual life risk coverage to the community standard shows there remains a level of underinsurance, particularly for people aged 45 years and younger.

While the underinsurance gap has increased slightly over the last few years, it has been supported by strong premium growth with consumers who currently have a life insurance policy. If (as expected) new life risk sales remain historically low within a capped commission regime, lapses at older ages will be unlikely to be offset by premium increases, which will see further increases in underinsurance with younger ages having an increasing impact on sustainability of retail life insurance.

Responses

48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?

Conflicted remuneration – in general

The ban on conflicted remuneration with certain exemptions, for non-life insurance products has removed conflicts from the sector which will formally complete its transition to a set of professional requirements and education standards in 2026.

Over the recent years, the industry has adapted to reforms that have included:

- The introduction of the Best Interests Duty framework
- The introduction of a Code of Ethics relating to how advice providers conduct themselves in relation to consumers
- Design and Distribution Obligations
- Breach Reporting obligations
- Reference checking and disclosure of a lack of independence requirements
- Advice fee consent obligations

As the more recent reforms outlined above are bedded in, there is inevitable focus away from removing conflicts to ensuring advice is affordable and accessible and furthering the consideration of the consumer experience by achieving a regime of financial advice which sits under one framework and that is scalable. There are consumer-centred justifications for retaining exemptions to the ban in respect of Life Insurance products discussed below.

Exemption to the Ban on Conflicted Remuneration

The FSC recommends retaining the existing exemption to the ban on conflicted remuneration when providing advice on life risk insurance products.

The exemption to the ban on conflicted remuneration to advisers, when providing advice on life insurance, has had bipartisan support since the FOFA reforms in 2013. With the need for life insurance not being well understood by the general public, the exemption was introduced to ensure consumers can access affordable advice on life insurance and therefore the cost of receiving that advice would not be a barrier to uptake of life insurance.

For example, research shows that consumers do not proactively purchase life insurance and that distribution drives coverage in every developed market across the globe. In all markets studied, government has a central role in ensuring take up of life insurance.⁶²

As life Insurance is a product that is needed when personal tragedy occurs, in most cases it is not a product that is front and centre of a consumer when seeking advice on their financial needs. If a consumer receiving advice is asked to pay an additional up-front fee

⁶² Choices & Access to Life Insurance, 'Challenges confronting the Australian life insurance market', 2020, p 5

for receiving specialist risk advice, it would result in considerably less insurance being distributed through advisers due to affordability and therefore contribute to underinsurance levels that currently exist in Australia.

Further, a commission model aligns consumers with advisers in a more efficient and cost effective manner as the adviser is only remunerated when the adviser is able to successfully place the consumer in a product that's right for them.⁶³ If advisers were remunerated under a fee for service model, the customer would be required to pay a significant upfront fee to the adviser for advice on a product they may not receive, due to underwriting, which would be a disincentive for consumers to request and pay for life risk advice.

The Life Insurance Framework

When the Life Insurance Framework was introduced in 2018, commission rates payable were standardised across all life insurers to advisers to remove any potential conflict when providing advice on life risk insurance products. This assisted advisers to not recommend products that pay the highest commission, taking away the incentive to sell one product over the other therefore prioritising product placement with consumers that best meet their needs.

The FSC's analysis has shown that LIF, along with other other advice, compliance, code and education measures introduced, has now improved the quality of advice that consumers are receiving by having 'churn' reducing, clawbacks have reduced and consumers are retaining the life insurance product for longer thus aligning consumer and advisers interests.

49. Has the ban contributed towards improving the quality of advice?

Yes, when also considering other measures which have contributed to improving the quality of advice consumers now receive. While there has been significant reform of the sector since the ban on conflicted remuneration was introduced, industry has adjusted with most of the industry shifting to 'fee for service' business structures with changes in composition of advice businesses across the industry. With conflicts being managed across the sector, concerns for the quality of advice are now focused on addressing issues pertaining to their direct consumer experience. For these reasons the FSC proposes reforms to simplify the framework to account for the difference forms and models of advice provision.

In respects LIF, data and evidence collected by the FSC, shown above, demonstrates that it has significantly improved the quality of advice by decreasing 'churn' and reducing lapse clawback rates thus aligning the interests of advisers with consumers and therefore improving consumer outcomes.

The FSC recommends keeping the amended exemption to the ban on conflicted remuneration as it has directly improved the quality of advice consumers now receive.

50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

Yes. The ban on conflicted remuneration in tandem with other reforms to the regulatory framework and economic conditions have driven change in the sector:

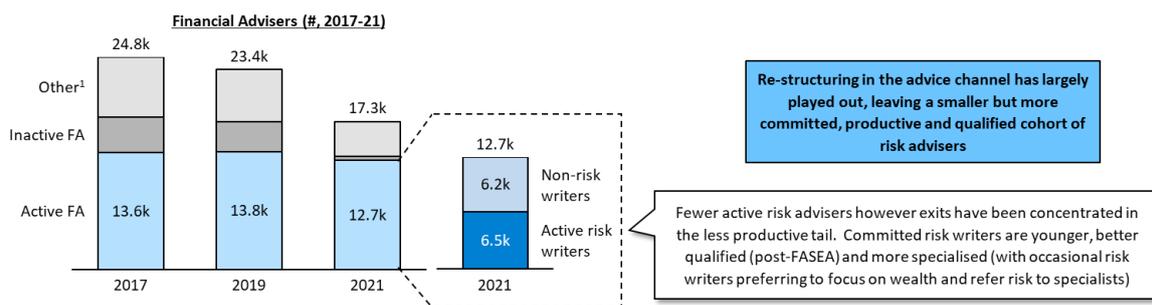
- a change in the size and composition of advice licensees which are smaller operators in contrast to larger institutional advice licensees with many businesses moving to fee for service models.
- Increasing reliance on digital means to address an escalating compliance burden, particular in respect of meeting annual consent or other disclosure obligations.
- There has been a sizeable reduction in the number of financial advisers with many exiting the industry and others adapting to more rigorous education and professional requirements. There remains barriers or lack of a clear pathway to incentivise graduates and new entrants to the profession.
- A limited capacity of the sector to meet the advice needs of consumers on low to middle incomes through piece-meal or scoped advice offerings with advice increasingly being within the capacity of those on higher incomes.
- The onset of the COVID-19 pandemic and changing economic conditions underlined a marked increase in the need for financial advice for which the Regulator in granting moderate relief from the disclosure regime in respect of SOAs and ROAs that was repealed in April 2022.

While the industry has professionalised key parts of the advice framework require reform to accommodate this change and the ban on conflicted remuneration.

Advisers writing Life Insurance

From data sourced from NMG, the FSC notes that the amended exemption to the ban on conflicted remuneration, along with varying levels of compliance and financial adviser professional requirements, has contributed to a significant shift in advice business models which has led to a decrease in the number of advisers.

There has also been an exit of advisers who were providing occasional advice on life insurance risk advice, but we are now seeing a cohort who are more committed to providing life risk advice, who are younger, better qualified (post-FASEA) and with a specialised focus in life risk advice.



However, this ongoing decline in total number of advisers, combined with the rational adviser shift to focus on fewer, higher value consumers and more frequent reviews will reduce coverage to less than 15% of the financially active population within 3 years.

The focus of risk advisers will then be servicing only a range of 200 – 300 consumers per adviser with a three year or shorter review cycle. This implies a highly productive, sustainable and high quality ‘best advice’ model, that narrowly supports informed decisions by only the wealthiest and most financially sophisticated 10% - 15% of the population (with a resulting skew to older ages/more complex cases).⁶⁴

Conclusion

If current trends continue, risk advisers will continue to focus on high net wealth individuals and not expand their business to focus to different cohorts.

51. What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.

Removal of the exemptions would decimate the life risk industry at a time as it is either transitioned to much stronger consumer protections that mitigate or manage conflicts to align adviser and consumer interests, but it would also dramatically decrease the minimal access that consumers currently have to life risk advice.

Also, as detailed in the answer to question 53, any further reduction in younger demographics from the risk pool would have detrimental effects to the sustainability of the industry.

With this in mind, the FSC supports retaining the existing amended exemption to the ban on conflicted remuneration to advisers when providing advice on life insurance within the Life Insurance Framework.

As noted previously the exemption to the ban on conflicted remuneration to advisers, when providing advice on life insurance, has had bipartisan support since the introduction of the exemption when the Future of Financial Advice Reforms were introduced in 2013.

This exemption, introduced to ensure consumers can access affordable advice on life insurance and the cost of providing that advice would not be a barrier to uptake of life insurance.

⁶⁴ Choices & Access to Life Insurance, ‘Challenges confronting the Australian life insurance market’, 2020, p 11
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For example, life insurance is a product that is needed when personal tragedy occurs. In most cases it is not a product that is front and centre of a consumer when seeking advice on their financial needs. If a consumer receiving advice is asked to pay an additional up-front fee for receiving specialist risk advice, from analysis shown above, it would result in considerably less insurance being sold through advisers due to affordability and therefore contribute to the underinsurance levels that currently exist in Australia. In addition, research shows that consumers do not proactively purchase life insurance and that distribution drives coverage in every developed market across the globe. In all markets studied, government has a central role in ensuring take up of life insurance.⁶⁵

If this exemption was removed, it will lead to reduced competition in the market for life insurance products, because fewer products would be sold by independent financial advisers that advise on products from multiple insurers, and instead more products would be sold directly by insurers, with the customer needing to do their own product comparisons which is difficult for complex life insurance products.

The benefit of this exemption to advisers is that they provide their consumers a choice in the product that consumers receive similar to the service mortgage brokers provide – and the removal of commissions for either would result in reduced competition for the relevant product, with the customer ultimately losing out.

In addition, the issues outlined above are heightened for younger consumers, who with lower premiums, if are forced to pay a high upfront fee that would be considerably more than the annual premium they need to pay, would only add to the barriers they currently face when obtaining financial advice.

Lastly, if the exemption was removed this would have a detrimental effect to specialist risk advisers. If the current structure for remunerating advisers was abolished, that there would be a further reduction in the number of advisers providing specialist risk advice to consumers and therefore decrease the accessibility and affordability for consumers.

In the absence of alternative mechanisms for individual cover adoption or informed choice, an outright ban on commissions can be expected to accelerate the decline in life risk adviser numbers and coverage. As a result, it's everyday Australians who will not be able to access advice for the first time, existing consumers who will not be able to increase individual coverage associated with having a family or buying a home; or returning consumers who will not be able to plot appropriate glide paths to reduce cover at older ages.⁶⁶

Subsequently, any future changes to commission arrangements will occur in the context of, pressure on base coverage via default insurance in super, which is not provided to all members, and a contracting financial adviser market.

⁶⁵ Choices & Access to Life Insurance, 'Challenges confronting the Australian life insurance market', 2020, p 5

⁶⁶ Choices & Access to Life Insurance, 'Challenges confronting the Australian life insurance market', 2020, p 10.

52. Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?

While the ban and exemption should be retained several changes should be considered to further improve consumer outcomes:

- Adoption of the FSC's personal advice framework that acknowledges the professional judgement of the financial adviser
- Abolition of the safe harbour steps for complying with the Best Interests Duty
- Adoption of Letter of Advice and broader simplification of advice documents
- Introduction of personal advice and general information

There remain outstanding policy issues in respect of Standard 3 of the Code of Ethics which was consulted on in the final weeks of FASEA. Despite strong support for changing the Guidance on the Code to align it with the standard, the former body cited discord across the industry as a justification to retain the existing language. This was an unusual response from a body setting standards overseeing the profession, in relation to conflicts. Moreover, there has been no communication with industry or the sector in response to this issue and the FSC would welcome reconsideration of the consultation.

Lastly, from our evaluation show earlier, the FSC recommends that the Life Insurance Framework should be retained in its current form. Alternative remuneration structures or amendments to the Life Insurance Framework are not supported to protect consumer access to affordable advice on life risk insurance.

53. Has the capping of life insurance commissions led to a reduction in the level of insurance coverage or contributed to underinsurance? If so, please provide data to support this claim.

Introduction

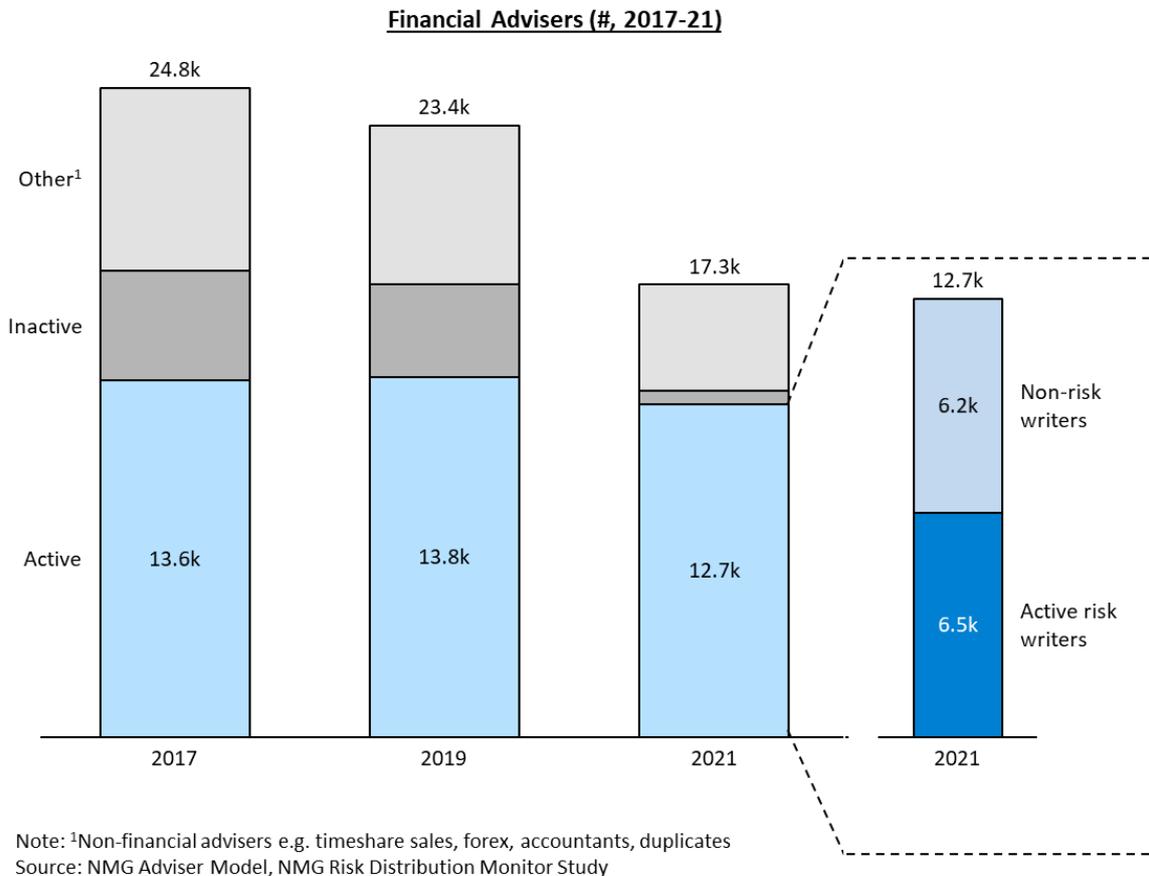
In recent years, the number of risk advisers have decreased as advice has become less affordable. Consumer research has also shown that the level of underinsurance has been trending upwards, particularly among younger cohorts. While the causes of underinsurance may be varied and complex, reduced affordability and accessibility of advice would undoubtedly have contributed to underinsurance. Advice is an indispensable part of the insurance ecosystem. This is because advice, in its many forms, not only enable new customers to address their protection needs, but they can also assist to ensure cover remain appropriate throughout a customer's life stages.

From NMG analysis, Australians are generally underinsured versus the community expectation. As demonstrated on page 101 and 102 of this submission, evidence shows an underinsurance gap amongst younger Australians aged 25 – 45 years old.

The FSC is concerned that any reduction or removal in the LIF cap will further significantly undermine the affordability of advice in circumstances where LIF has delivered on its policy intent of removing conflict and placing customer interests first but also any reduction or removal would increase the underinsurance gap in the years to come.

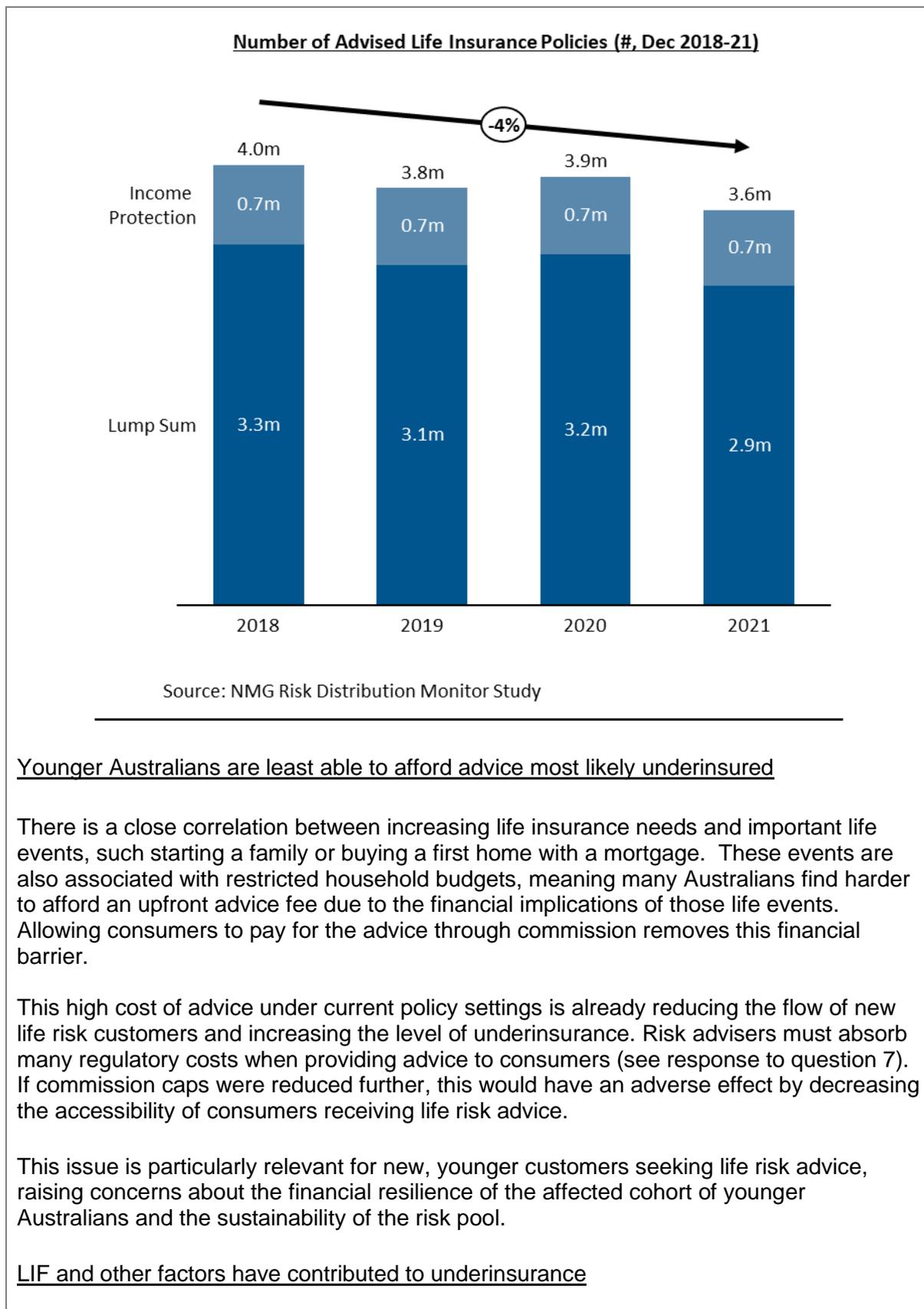
Risk Advisers decreasing, and advice becoming affordable only to the rich

The capping of commissions aligns consumer interests with advisers by removing any potential perceived conflict of interest. While commissions provide consumers with a valuable option to pay for access to life risk advice, the time, cost, and complexity of producing risk advice along with increased educational and professional requirements, have contributed to advisers departing the market, with those remaining tending to focus on fewer, high-net-worth consumers.



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In turn, this has led to a reduction in the number of consumers who can access advice despite having a need for life insurance, because there are fewer advisers providing it and those who do are advising fewer consumers given the regulatory requirements.

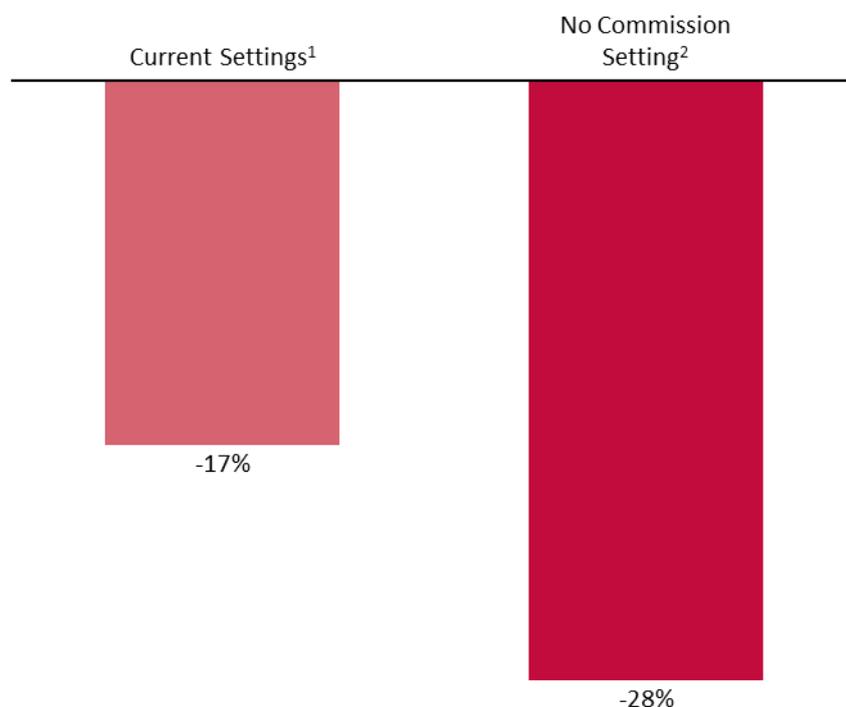


It is important to recognise LIF has not occurred in a vacuum. There have been many other regulatory settings which have contributed to a reduced level of risk advice. For example, this submission has detailed the difficulty in selling life insurance under a general advice model. In addition, the disappearance of bancassurance products coupled with anti-hawking provisions have decreased the uptake of life insurance, particularly for those who are commencing or increasing mortgages. Other significant roadblocks for life insurance are found in other distribution channels, with recent superannuation reforms⁶⁸ reducing the levels of life insurance among some younger and lower income groups. Lastly, the educational and professional standards to which advisers must adhere, while increasing the quality of risk advice, have contributed to advisers departing the market therefore decreasing the accessibility of obtaining risk advice.

Reduction and removal of the LIF cap will reduce adviser accessibility and further exacerbate our underinsurance problem

When considering these concerns on the decreasing number of advisers providing risk advice, the existing underinsurance levels outlined above and regulatory settings that have contributed to underinsurance amongst Australians, the FSC with NMG has projected that if capped commissions within the Life Insurance Framework were removed, or reduced, this will most likely lead to a detrimental effect on underinsurance levels across all age groups.

Estimated fall in # advised life insurance policies (% , Dec 2021-26)



Notes: The estimated fall is the mid-point of a range of outcomes (of potential consumer behaviour) in each scenario with the following characteristics:

1. Current setting projects a bottoming of life risk advised sales in 2022, and then growing at 4%p.a. (with no change in lapse profile).
2. No Commission setting projects a significant decline in advised risk sales due to removal of commissions, and increase in lapses from reduced re-broking and lower partial lapses

Source: NMG Risk Distribution Monitory Study, NMG Market Model, NMG estimates

On current projections by 2026 there will be an overall increase of 17% to underinsurance based on current regulatory settings. If the commission arrangements on life risk products were removed, this underinsurance gap would subsequently increase to 28% by 2026.

Conclusion

Addressing underinsurance levels is an important step in ensuring financial security of all Australians particularly younger families starting on their financial journey of owning a home. With adviser numbers decreasing, and underinsurance growing disproportionately in younger Australians, the FSC recommends adopting recommendations that reduce the complexity and cost of providing advice.

If recommendations are adopted that reduce the cost of providing advice, the FSC believes they will both; protect Australian consumers by increasing their accessibility to the advice system and encouraging take up of life insurance products.

Therefore, the FSC recommends against changes to the remuneration options available to consumers and advisers as this could further adversely affect adviser numbers that provide risk advice, and further increase the underinsurance levels currently observed.

54. Is under insurance a present or emerging issue for any retail general insurance products? If so, please provide data to support this claim.

Not applicable.

55. What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be retained?

The FSC supports retaining the existing exemption. See response to Question 48.

Appendix: Practical example of how the regulatory framework prevents limited advice

Many consumers who want advice are not seeking comprehensive advice. This is mainly reserved for those closer to retirement or those with particularly complex needs. Many consumers seek advice about 1 or 2 topics. Life insurance advice fits neatly into what many would describe as Limited Advice (or scaled or single issue advice).

As noted in responding to the Review's questions, one of the main issues with the provision of Limited Advice is the disconnect between what the Corporations Act requires, when scoping and scaling the advice, relative to what the Code of Ethics and other requirements such as the safe harbour requires of advisers.

In the Corporations Act, to satisfy safe harbour the adviser has to have considered a customer's relevant circumstances. This is supported by ASIC's RG 175 and Info Sheet 267 which states that scoped advice (as its described in the Info Sheet) can be delivered *if consideration is given to the customer's objectives and what they want advice on*. However the Code of Ethics requires advisers to have considered a customer's **broader** circumstances and **likely future** circumstances.

Conflict arises due to these inconsistencies. In practice, where there are inconsistencies, licensees require advisers to satisfy the higher threshold - in this case considering not only the relevant circumstances but also the broader circumstances and likely future circumstances.

How this framework is applied to Life Insurance

Applying these requirements to a life insurance advice scenario this means we need to understand the customers situation to determine appropriate types and levels of cover. Practically, it is highly likely that there are other advice needs identified through the process undertaken by the adviser in seeking to meet their obligations requiring further engagement with the customer.

What we end up with is a customer seeking some pretty simple life insurance advice, but the adviser needs to:

- Understand their current situation in detail to determine appropriate cover types and levels - the information here generally raises other advice needs which need to be discussed and resolved with the customer,
- Consider likely future circumstances - which may also generate additional considerations or advice areas which need to be resolved with the customer,
- Use the information to identify appropriate cover levels and types - generally a customers' insurance need is greater than their affordability which raises another loop point,
- Re-engage with the customer to resolve affordability challenges, trades off and prioritisations through the process, and
- Then revisit the advice scope and outcomes of these further discussions to determine the advice

This is all occurring before any advice is given meaning there is no such thing as a simple insurance scenario any longer because the complexity of considerations within insurance

advice, overlaid with the regulatory framework noted above, means that it is far from simple, and can lead to a very prolonged and frustrating process for a customer to engage in.

This increases the likelihood that the adviser is unable to provide advice within the scope requested by the customer, leading to increased cost, complexity and time due to the expanded scope which becomes necessary through the scoping and scaling process. In some cases, advisers have to decline to provide advice to the customer if the agreed scope can't be agreed. Alternatively, after satisfying these scoping and scaling obligations, the adviser may be comfortable that the scope of the advice can be limited to life insurance only (the customer's objectives) but it has taken a long time and increased the cost of delivery to get to that point.

When you consider the many people cannot afford life insurance from their cashflow, this opens up conversations about funding the cost of life insurance through superannuation. The recently issued Info Sheet 267 includes an example of providing insurance advice where funding may be done through superannuation. Throughout the info sheet it refers to the need to understand the super fund and affordability of using this as a funding mechanism, in order to provide the insurance advice. This increases the cost and complexity in delivering advice for what the consumer considered was a relevant simple request.

Appendix: Additional Data Analysis from NMG Consulting

The NMG Life Risk Community Expectations (2019, 2021)⁶⁹ study focuses on 1,000+ consumers broadly representative of the Australian insurable market for life insurance advice (i.e. Australians aged 21 to 65, with income between \$20,000 and \$150,000).

An important element of the study is to ensure it includes participants who had experience with financial advice, those that did not but still purchase life insurance, and participants that only have life insurance in default group superannuation policies.

To establish the community standard⁷⁰ NMG built on the quantitative and qualitative results from their Life Risk Community Expectations study, to establish a rules-based approach to determine broad insurance needs as a function of key socio-, economic- and demographic markers.

These rules are mapped onto a population matrix (based on ABS and ATO data), reflecting age, income, primary residence mortgage debt and household dependants.

NMG quantify this benefit distribution in terms of coverage through establishing first whether, for a give model point in the matrix, default insurance in super cover would suffice, or whether the model point would require individual cover, or whether a combination would be appropriate; and then apply the average insurance in super, individual (or combined) premium, as appropriate to the model point at standard rates (i.e. no additional risk loadings).

Industry data

In addition, NMG also sourced and calibrated to various industry data sources to ensure the findings are reflective of the Australian market.

APRA Data

- Annual MySuper Statistics June 2018, 2021

⁶⁹ Australian Life Insurance Market Research Report, NMG Consulting, 2020 along with updated analysis from NMG for this submission to Quality of Advice Review

⁷⁰ The community standard expresses community expectations about what friends, family and neighbours should be insured for in terms of life-stage (especially with regard to dependants), income and debt levels. As life risk insurance is a community good (the benefits of participation largely accrue to parties other than the primary participant), the community standard is regarded as an appropriate measure against which to assess the adequacy (underinsurance) of life risk insurance. However, the community standard should be regarded as the level below which individual risk impacts the broader community (thus the minimum standard, not a cap or maximum). As a result, the market should be open to (and supportive of) individuals and families choosing to purchase benefits above the community standard, and consider whether policy settings support such choices; equally we should ensure that higher levels of benefits purchase in certain community segments do not distort aggregate comparisons aligned to community expectations.

- Life Insurance Claims and Disputes Data June 2019, 2021

ATO Data

- Taxation statistics 2016–17, Selected items, by sex, taxable status, age range and taxable income range, 2010-11 to 2016–17 income years

ABS Data sourced

- 41300, Table 6, Housing Occupancy and Costs, Australia, 2017–18
- 65230DO010_201718 Household Income and Wealth, Australia: Summary of Results, 2017–18
- 2071.0 Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016
- 6302.0 Average Weekly Earnings, Australia 6302.0 Average Weekly Earnings, Australia
- 6202.0 Labour Force, Australia Table 1. Labour force status by Sex, Australia - Trend, Seasonally adjusted and Original
- 41300, Table 9, Housing Occupancy and Costs, Australia, 2017–18
- 63060DO003_201805 Employee Earnings and Hours, Australia, May 2018
- 65230DO003_201516 Household Income and Wealth, Australia: Summary of Results, 2015–16