Australian Government
The Treasury

TSY/AU

Quality of Advice Review – Proposals Paper

Financial Services Council

September 2022

Consultation process

Request for feedback and comments

Interested parties are invited to provide feedback on the proposals for reform listed in the Quality of Advice Review Proposals Paper using the template in Appendix 1. Consultation will close on Friday 23 September 2022.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses in a Word or RTF format via email. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All of the information (including the author's name and address) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

View our submission guidelines for further information.

Closing date for submissions: 23 September 2022

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Consultation template

Organisation: Financial Services Council

Questions
Intended outcomes
1. Do you agree that advisers and product issuers should be able to provide to personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?

We agree that more advice should be regulated as personal advice, as opposed to general advice or intra-fund advice – and that by imposing a higher bar on these interactions including by a good advice duty and streamlining a range of personal advice obligations consumers will be better served and have more protections available to them than they do today.

That is why the FSC welcomes the proposals and congratulates Michelle Levy on offering a sustainable vision for the regulation of financial advice in Australia. These proposals will support access to affordable, quality advice, and expand the consumer protection framework and expanding it to more consumers.

The benefits of the proposals will achieve:

- **Increased access to personal advice:** achieved as a result of a simpler and less costly for providers and consumers.
- **Stronger consumer protections:** a complex set of obligations ultimately make it difficult to protect consumers and deters industry from delivering them, the proposals to consolidate these obligations in the form of the Good Advice Duty (Non-relevant Providers) and Code of Ethics (Relevant Providers) are welcome.
- **A clear definition of personal advice as sustainable, accessible and regulated professional activity:** The paper's proposals provide a foundation for this activity to be delivered across different channels capable of adapting to dynamic changes in financial products and financial services over time.
- **Better utilisation of data and other information to improve consumer outcomes:** The proposals will create a regulatory environment that encourages the use of data and information held by organisations large or small to improve consumer outcomes and this submission outlines points to consider for effective implementation of this new framework.
- **Consumer-focused as well as as conduct-focused:** Regulate advice based on the content that is given to the consumer rather than carrying different conduct obligations relating to each provider.
- **Unleash limited and digitally delivered advice:** Better support the provision of personal advice through digital tools.

- **Independent and impartial advice:** Further support the removal of actual or perceived conflicts.
- **Reduce unnecessary documentation and make advice more easy to understand:** by allowing advisers to determine disclosure in accordance with the needs of the actual consumer they are dealing with and their needs, not an assumption in law about what all consumers want.

To ensure effective implementation of these reforms the FSC notes:

- The reforms should be implemented in full coordinated by Treasury, Industry and ASIC on a co-designed basis as soon as possible with a 12 month lead in that minimises disruption to consumers and businesses. This should include consultation with industry to determine prioritisation of guidance requirements and determination of 'go live' dates where the impact of a reform is cross-organisational (eg single form for advice fee consents).
- Further guidance should only further reinforce the use of professional judgement, support understanding of the sector to enable their professional judgement, while supporting a simpler and clearer experience of advice overall, and reduce cost (e.g. Updating the Code of Ethics is updated to reflect updated disclosure and Best Interests requirements as a result of the paper's proposals being implemented).

What should be regulated?

2. In your view, are the proposed changes to the definition of 'personal advice' likely to:

a) reduce regulatory uncertainty?

b) facilitate the provision of more personal advice to consumers?

c) improve the ability of financial institutions to help their clients?

We support the proposals to expand the definition of personal advice supported by appropriate record keeping requirements. The expanded definition of personal advice will allow:

- **More consumers to be protected** under the new framework as personal advice is redefined and expanded to cover a broader range of activities
- **Greater regulatory certainty** as a proper separation between what is advice and what is information is achieved
- **Greater efficiency and leveraging of data and information to** support improved consumer outcomes

Realising these benefits will be conditional on several factors:

- **Clarity as to the information a relevant provider holds:** The proposal is that organisations who *hold* information on consumers should be supported to provide personal advice to retail clients. The Proposals Paper notes that: *'Good advice' is advice that would be reasonably likely to benefit the client, having*

regard to the information that is available to the provider and relevant to the agreed scope of the advice at the time the advice is provided.[1] However, if one body corporate *holds* information on a consumer, what would be the obligations of another body corporate as to requirements to consider that information. Clarity is needed on where information needs to sit in order to have knowledge – at an individual level or organisational level (eg per AFSL holder). Without clarity on this point the proposals could have the adverse effect of increasing regulatory uncertainty rather than reducing it.

- **'Recommendations' or 'opinions' in a personal advice setting:** Consensus is needed on these terms to ensure effective implementation of a clear definition of personal advice. Not doing so could lead to many personal advice discussions not being treated in line with the proposal's objectives. A solution would be to revise the law to clarify that a recommendation or opinion does not constitute *'personal advice' merely because the provider holds information collected for the purpose of complying with the Design and Distribution Obligations* **(DDO)**. There is also a question whether certain interactions should be treated as personal advice:
    - *Call centre discussions* - There is a high probability much of the activity call centre operators undertake will be classified as personal advice by nature of the provider happening to hold information about the client and discussing financial products. This is a positive proposal and should be encouraged. To support confidence in the sector to provide more personal advice compliantly in call centre settings several matters should be considered:
        - There remains a question about how factual information would sit in such interactions and at what point a provider of such information becomes a relevant provider of personal advice (e.g. a consumer confirming their sum insured).
        - A potential way to limit personal advice interactions for call centre services unsuited to providing advice, would be to prevent recommendations being made or referring clients to relevant providers or third parties although referrals might not offer the best consumer/member experience if an AFSL holder is looking to minimise call centres having personal advice interactions.
    - *Product filtering based on consumer inputs or choices.*
    - *Communication to a member informing them of a trustee decision to close a particular investment option in which they are invested and move all holdings into a different (equivalent) investment option.*
- **Defining the term and parameters of personal advice in legislation:** To achieve the clarity and certainty a clear definition in legislation is needed. The nature and extent of personal advice provided by a non-relevant provider should be considered having regard to the risks of liability it can expose the trustee and membership. The assumption that personal advice is being provided when the provider is in possession of relevant personal information is consistent with the *Westpac* case and Hayne Royal Commission and reflects the expectations of consumers. Regulatory guidance should only support understanding of clearly defined legislative terms.

[1] Page 8, Proposals Paper.

- **Final proposals for legislating personal advice should be subject to public consultation:** This should consider options for ensuring personal advice and non-personal advice activity align with consumer expectations to achieve the policy intent of separating advice from information and how advice provided by relevant providers and non-relevant providers will be understood by consumers.

- **Industry and regulatory cooperation on what is 'advice' and 'information' under the new framework:** Given the experience of industry to date under the current prescriptive framework, there is a wider question about a greater role for self-regulation or co-regulation under a principles-based framework where expertise and a practical understanding of advice will be an essential tool for supporting best practice and robust regulatory oversight. However, with the proposed law change and ASIC issuing more examples in its refreshed regulatory guidance, regulatory certainty and broader innovation in the sector can be achieved to improve consumer outcomes.
- **Good Advice and Code of Ethics frameworks:** Removal of the reasonable person test under s 766B(3)(b) reduces uncertainty, and increases access to personal advice for a wide range of consumers. The proposals will create opportunities for institutions to meet advice needs of consumers under a separate Good Advice and Code of Ethics frameworks each for relevant and non-relevant providers. It is important there is a strong overlay of this framework to the definition to prevent conflicts and poor consumer outcomes, supported by appropriate regulatory guidance only where it is needed.

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

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

The current definition of general advice is problematic and provides little benefit to consumers. The broadening of the personal advice definition will capture conversations which would, under the existing regime, have been considered general advice or information.

The FSC welcomes the proposed changes to remove general advice but it is important that appropriate safeguards are in place in respect of several areas:

- **Appropriate training and supervision of non-relevant providers under the new framework:** There is a question arising as to what educational standards would be required to provide personal advice about financial products across non-relevant providers. ASIC's *RG 146: Licensing: Training of financial product advisers* provides guidance on education levels for the provision of financial product advice to retail clients, but personal advice to retail clients is now subject to higher education standards, so RG 146 presently applies to 'general advice' (GA) only. It appears incongruous that any providers of PA in the future would subject to a lower education standard than those presently providing general advice. Consultation on what this looks like might look at

incorporating of some of the existing financial adviser education standards or whether the current consumer protection framework for misleading and deceptive conduct is sufficient. RG 146 provides an exception for advertising and adviser audiences.[2]

- **Influencers and digital media:** ASIC has recently issued guidance making it clear that influencers that promote financial products cannot give general advice unless licensed.[3] ASIC notes their popularity and pulling power, and the channels through which they operate are highly influential and therefore potentially harmful to consumers. Further consideration should be given to whether the general consumer protections will provide sufficient protection against consumer harm arising from advice provided by influencers and other similar channels including paid media endorsements, such as morning talk shows on popular TV networks, social media and above the line advertising (i.e. TV and billboards).
- **Capturing appropriate activity under the personal advice and-non personal advice definition:** There is a question about where certain activity could and should sit under the proposed framework which could have unintended consequences:[4]
    - **Investment research:** Investment research assists the selection, or avoidance, of investment options, and is a tool for supporting the provision of good advice. It is important investment research continues meet community expectations with regard to quality and integrity. Investment research can cover individual securities (equities) and managed investments (managed funds, Exchange Traded Funds (ETFs, and listed investment companies). The research provides a written opinion, commentary, and a recommendation or rating on the product without regard to any information about the user. Often this research will be informed by robust methodologies, processes, and a global research organisation to deliver quality research to our clients. Much of this research will be distributed under an AFSL which would not necessarily be the case under the proposed model.

      Investment research can often make a recommendation (buy, sell, hold, outperform, etc) and is currently defined as *general advice*. Under the proposed framework, if it was provided by an institution to a client where the institution holds personal details about the client, it is unclear whether this would be personal advice (attracting potentially higher obligations than necessary due simply to a definition of advice) or non-personal advice (attracting substantially fewer obligations).

      An unintended consequence might be incentivising online influencers outside of the new Good Advice framework. It is not reasonable to assume the provider of investment research, presentation discussions, or similar material can account for individual circumstances whether they have or hold information about any particular client's objectives, needs or any aspect of the client's financial situations in

[2] RG146.17, RG 145: Licensing: Training of financial product advisers. Source: https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-146-licensing-training-of-financial-product-advisers/

[4] 22-054MR ASIC issues information for social media influencers and licensees | ASIC - Australian Securities and Investments Commission.

these circumstances and classifying the same as personal advice will cause a shrinkage of these types of services across the industry. We di not consider it likely that such an audience or a client would expect that their personal circumstances have been considered in these circumstances.

The Review should give solid consideration to maintaining the obligations set out in RG 79: Research report providers: Improving the quality of investment research.[5]

- **One-to-many interactions (e.g. Seminars):** While the Proposals Paper notes it is not intended that seminars would be considered a personal advice interaction under the new framework, the Proposals Paper notes that a one-to-many scenario such as an education seminar a General Advice Warning **(GAW)** would not need to be given, and an Australian Financial Services License **(AFSL)** authorisation would not be required. This implies the situation will not constitute advice. However, we note that product providers are aware of those attending and can obtain a certain amount of information on attendees if required.
  - For example, if a seminar presenter expresses an opinion about a product, and the organisation they work for holds attendees personal information, is it advice? It underlines the need for an exemption or careful drafting of the final definitions of personal advice to exclude one to many interactions regardless of the information held by the provider.
- **Written material addressed to individual consumers:** For written material addressed to an individual client, it should be easier to set appropriate controls to avoid expressing an opinion in that circumstance. Consideration towards the additional training and after call work will be necessary if more interactions are treated as personal advice by non-relevant providers. Questions that arise to this end include:

- Clarity on the following would support the provision of information and support improved consumer outcomes:

[5]RG 79: Research report providers: Improving the quality of investment research. As identified in RG 79.2, research report providers perform an important 'gatekeeping' function in the financial advice industry by:

(a) identifying products to consider for inclusion on approved product lists;

(b) assisting financial advisers to formulate financial advice for retail investors; and

(c) providing research for use directly by retail investors in making investment decisions.

https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-79-research-report-providers-improving-the-quality-of-investment-research/

  - **Record keeping:** The level of record keeping required to demonstrate the information provided to consumers, and support providers in managing complaints and regulatory investigation (e.g. note taking, use of ROAs by non-relevant providers, training requirements).
  - **Guidance on advice competency for product issuers and superannuation trustees:** to ensure employees providing information on financial products are suitably trained and monitored and aware of their obligations under the new framework.
  - **Referral mechanisms:** Consider effective referral mechanisms for consumers with complex advice needs to ensure they access appropriate Advice.
- **Transitional arrangements as general advice becomes factual information or personal advice** (eg clarity for providers and consumers as the types of activity being undertaken change in terms of their labelling and obligations).
- **Protected terms:** It is important that consumers understand who is providing the personal advice under the new proposed definition and what standards this person is held to. As such, we think it is important that the terms "financial adviser" and "financial planner" continue to be protected terms, as currently set out in s923C of the Corporations Act so that only relevant providers can use these terms. A separate and unique term could be specified for non-relevant providers of personal advice to make the distinction clearer.
- **Applicability of the Design and Distribution Obligations:** The concept of 'General Advice' is key to the operation of provisions in the Corporations Act in relation to DDO, as well as Conflicted Remuneration, and it is recognised in the consultation paper that its removal will create a regulatory gap. The consultation paper clearly states the Conflicted Remuneration provisions will be applied in relation to the provision of information about a product, as well as the provision of Personal Advice (which incidentally would broaden the application of those provisions). However, it is not clear how DDO will apply. It is necessary to consider how the DDO regime applies not only to distributors of financial products (the consultation proposes changes be made in relation to the exemption for Personal Advice), but also to product issuers themselves. Currently, issuers take reasonable steps to identify the target market when providing general advice, but it is not necessary to do so when providing information about a financial product only – nil advice. Product issuers will require clarity as to the extent they should consider DDO obligations when they promote their funds; as they would no longer be able to consider those provisions on the basis of whether general advice is being provided.

  We would appreciate the opportunity to have a further discussion with the Review on the application of DDO to 'General Advice' and the provision of information, particularly the appropriateness of applying the DDO 'reasonable steps' requirements to advertising, promotion and one to many interactions.

How should personal advice be regulated?

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

a) the quality of financial advice provided to consumers?

b) the time and cost required to produce advice?

To be clear, the proposals paper does not suggest the replacement of the best interest obligation with respect to personal advice as for relevant providers as defined today. The proposals paper argues for the introduction of a good advice duty for non-relevant providers, a duty that does not exist today in the context of general advice.

Updating the Best Interests obligations would align Australia with other markets such as the United Kingdom, where a new Consumer Duty was implemented in July this year which requires businesses and individuals to deliver 'good' outcomes for consumers.

The duplication of obligations needs to be rationalised. Under the proposals, the same level of consumer protection is achieved through different mechanisms – the Code of Ethics in the case of advisers, with the Best Interests obligations included in the Code, and the introduction of a 'Good Advice Duty'. Existing regulation simply does not acknowledge the differences between product issuers and advisers while they still provide advice. The regulatory framework, focusing primarily on conduct, rather than content as the paper notes, prevents advice rather than protects consumers as best it could:

The FSC supports this change that will provide several benefits:

- **Enable consumer-focused advice not compliance-focussed advice:** The proposals will place professional judgement at the centre of advice and offer value to consumers. Supporting professional judgement is best achieved by removing the safe harbour steps and allowing the Code of Ethics to perform the principles-based function intended. Consolidating the duties overlaying advice provision between the Good Advice Duty and the Code of Ethics will acknowledge the professional judgement of advisers and make the consumer protection framework clear. It cannot be regarded that the existing framework supports professional judgement of advisers, instead commanding a deeply prescribed advice process inhibiting the use of professional judgement.
- **Introduce a principles-based form of regulation and remove prescription:** Advice is regulated by a confusing web of regulations that are both prescriptive (e.g., the Safe Harbour steps) and principles-based (e.g. Best Interests Duty, and the Code of Ethics).

- **Reduce time taken to prepare advice and therefore cost:** KPMG estimates the advice process to cost $5334.64.[6] By removing the safe harbour steps, whether the Code of Ethics is amended or not, will reduce the cost of financial advice by between 9-11 per cent.[7] Removal of the safe harbour steps alone will reduce the cost of advice by 11 per cent to $4746.84.[8] With a revised 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.[9] This measure will reduce cost and time within the advice process.[10] Respondents to KPMG's research agreed it needed to be considered alongside rationalisation of legislation and regulation.[11]

The FSC makes several observations to support the effective implementation of the proposals paper:

- **More concise advice will be available to consumers:** Removal of the safe harbour steps will remove much of the prescription driving up the cost and time taken to prepare advice which does not necessarily provide any extra value or protection to consumers. The removal of the Statement of Advice will further revamp the experience of advice.
- **A clear definition of Good Advice will remove the subjective nature of the Best Interests obligations currently in legislation and minimise the risk of lower quality advice:** The proposal to provide good advice – advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided is significant. This change reflects a clear metric for assessing quality. While many options may exist for a client's situation, the election for a particular course of action that will reasonably likely benefit the client may be possible for all options considered by the adviser. Examples of good advice would assist with formulating best practice especially in the case of non-relevant providers.
- **Further Guidance on Good Advice should not prescribe what good advice looks like but reinforce good advice being determined in accordance with professional judgement:** with the Best Interests and related obligations incorporated into the Code of Ethics without the safe harbour, and a new Good Advice Duty, the question as to what good advice looks like under these principles-based frameworks will rightly sit with the provider and the consumer not in in prescriptive guidance. "Good advice" (and the effort to arrive at giving good advice) should be determined by the context in which it is given – e.g. insurance call centre representative versus financial planner. 'Good Advice' should be assessed objectively based on reasonable likelihood (advantage or disadvantage to client) in the context it is given.
    - **Examples of Good Advice:** What constitutes good advice will depend on the individual client. Exemplary guidance on how the Good Advice Duty can be applied differently to encourage more flexible thinking and approaches when providing good advice to consumers would be welcome but

[6] Page 7, FSC White Paper on Financial Advice.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.

should not encourage 'cookie cutter' approaches to, or be used as a basis for, providing good advice. For example, a discussion around consolidation but making the client aware of key considerations might be considered 'good advice'.

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

a) provide limited advice to consumers?

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

Yes, the proposals will support limited advice and technological solutions by:

- **Removing prescription under the current framework that drives up cost and time taken to prepare advice** (e.g. the Safe Harbour steps which require the consideration of any other circumstances).
- **Better allow personalisation of systems and tailoring of information to suit individual consumers:** Advice can be tailored to the consumer requirements without the obligation to consider their wider circumstances. There will be pronounced benefits where the relevant provider is concerned. Expansion of digital and online advice to clients who would fall outside the remit of ongoing services arrangements improves access to advice. The obligation to provide Good Advice is a content-focused duty as opposed to the conduct-related duty in the form of Best Interests Duty. As such the channel of delivery will matter less than the overall quality of the advice which should be a priority of any consumer protection framework.
- **Support more comprehensive record keeping and data but enabling this to be presented in a consumer-facing manner that is relevant.**
- **Provide greater capacity to effectively scope advice which the current interaction of the Best Interests Duty and Code of Ethics does not permit:** Noting that without changes to Standard 6 of the Code of Ethics it is our view that it will remain difficult for relevant provider to limit the scope of advice given the obligations to consider the client's broader, long-term circumstances.
- **Clearly defining digital advice obligations in terms of providing good advice and the ban on conflicted remuneration but acknowledging its nuances as compared with human-delivered advice.**
- **Bringing Australia's regulations into line with markets in which limited and digital advice solutions are at the centre.** The United Kingdom being a good example. The experience of some FSC members in the United Kingdom suggests this change will make it easier for advisers and institutions to provide limited advice, noting that there is a difference between the role ASIC performs here and the approach that FCA takes in the UK. See section 6a for more

discussion on our thinking on additional proposed changes to ASIC's role. UK advisers, building societies, wealth managers and some banks readily use limited advice solutions and we believe far more limited advice adoption would exist in Australia.

The FSC would note the following issues should be considered:

- **Future of the safe harbour:** While the safe harbour steps at a minimum should be removed from legislation, these should not be replaced under a new regulatory framework. They could provide a reference point for how more in depth advice could be provided but given that Good Advice will hinge not on the conduct but the content of the advice provided in relation to an individual consumer.

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

a) limited advice?

b) digital advice?

The Review addresses the objectives of the FSC's personal advice framework in that while it acknowledges a structure for relevant providers and financial advisers, it establishes a singular definition of advice which the FSC supports. It means a range of digitally formatted and scoped options can be provided to more consumers. To further support the provision of limited or digital advice to consumers, the FSC suggests:

- **Leveraging existing government and consumer data:** Initiatives like allowing advisers to access MyGov (i.e Australian Tax Office **(ATO)** and Centrelink as permitted for other professionals, such as accountants, will go a long way in making it more efficient for the advice sector to assist consumers. In addition extending the Consumer Data Right **(CDR)**, recently successfully deployed via open banking, to open finance so financial advisers can get access to superannuation and insurance information is also linked to making advice more affordable to consumers.
- **Redefining ASIC's model of engagement with industry under a Good Advice framework:** ASIC should work with industry to proactively introduce advice-based innovations (non-digital and digital) into the market beyond the facilitative approach set out in the proposals paper. If defined clearly, this change should facilitate more organisations providing more personal advice to consumers. The FSC has proposed regulatory road-testing enabling market entrants and participants to seek indicative compliance from the Regulator before an idea is taken to market rather than after to incentivise innovation. A range of ways could be explored, for example, case managers assigned to businesses to consider regulatory fitness of proposed solutions before these are taken to market. Approaches to key terms such as 'deemed significant' would also need to be considered under an outcomes-based Good Advice Duty to focus on ultimately consumer outcomes rather than the approach to compliance or conduct in each situation.
- **Retaining regulatory settings that are effective**: *RG 255 Digital Advice* establishes requirements in relation to calculators (eg obligations to test algorithms, ensure providers are competent to deliver such advice and that appropriate record keeping obligations are adhered to in a digital advice setting).

- **Consideration as to the placement of 'Robo advice'**: It appears that the intention of the review is that Robo-Advice is excluded from advice given by a Relevant Provider. A Robo-Adviser may satisfy all the definitions of a relevant provider except the "provider is an individual" as above it will be important that the definitions align with the intention of the review. If Robo Advice is captured:
  - for whom might existing Relevant Provider education requirements apply (e.g. Responsible Manager/s).
  - If the robo advice provider (by an AFSL licenced to provide advice) charges a fee, does this constitute being a Relevant Provider?
  - For a Product Provider that utilised a digital advice tool in engaging with a client – would advice obligations sit with the digital advice issuer or the licensee of the Product Provider.
- **Responsible manager oversight of digitally-delivered advice:** Requirement for oversight of the advice delivered by a digital tool to be provided by a Responsible Manager framework would support the quality of advice and ensure broader consumer protection.[12]

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

a) the quality of financial advice?

b) the affordability and accessibility of financial advice?

The FSC supports the proposed changes as appropriate. The question of affordability will hinge on the parameters of the Good Advice obligation and how it applies to relevant providers to the overall introduction of a principles-based approach to advice delivery is welcome. This should not have a negative impact on the professionalism of the industry and the quality of financial advice. Application of the Code of Ethics with relevant amendments in light of the safe harbour steps being abolished would support the provision of quality financial advice.

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

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

[12] RG 255: Digital Advice. RG 255.36: You also need to be aware that we require digital advice licensees to have at least one responsible manager who meets the minimum training and competence standards that apply to advisers (i.e. natural persons who provide financial product advice to retail clients): see RG 255.48–RG 255.54.

Consistency of standards and education requirements has been a core objective of professionalisation in recent years and changes to the advice framework should retain this. The FSC makes several observations:

- The professional standards framework should continue to allow providers and non-relevant providers to move around the industry drawing from a common body of knowledge and qualifications. Representatives providing information on financial products should hold minimum qualifications and skills, and be required to maintain these in changing regulatory and technical environment. These qualifications should form a subset of the qualifications met by "relevant providers". This supports the provision of 'good advice' and forms the basis for career and skill progression into a "relevant provider".
- Professional judgement will determine much of the advice process under the proposals the Review is considering.
- There is a question about what standards and qualifications apply across different channels of advice delivery (eg Robo versus financial advisers).
- To support the quality of education and consistent application, any courses or training be aligned with the requirements of registered training organisation, or aligned with clear industry or regulatory standards.
- Training requirements to include the understanding of referral mechanisms for consumers with complex needs to ensure they access appropriate advice

Superannuation funds and intra-fund advice

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

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

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

Personal advice provided by superannuation funds will be invariably easier to provide under these proposals. The benefits of these proposals include:

- **Regulatory certainty for superannuation funds:** Proposal 5 would provide regulatory certainty that superannuation fund trustees can provide personal advice about retirement. Good retirement advice requires it to be meaningful for members, and it can only be meaningful if trustees can take into account the member's family situation and social security entitlements. While many in the sector have often accounted for these circumstances before providing 'intra fund' advice under the current framework, the removal of s 99F will provide a broader and more certain scope on which superannuation funds can provide this advice.
- **Easier for members to access advice at the time they need it:** Proposal 6 provides clarity and flexibility for superannuation trustees to determine the most efficient (scalable, low cost) and practical strategies to embed the Retirement Income Covenant **(RIC)**.

Such advice is an important access point for consumers and this should be incentivised. The FSC notes:

- **Superannuation funds and Registrable Superannuation Entities (RSEs) will be positioned to provide better advice to members on their retirement income needs:** The proposals would expand the scope of advice to be delivered by superannuation funds by amalgamating s 99F and s 62 of the Superannuation (Industry) Supervision Act 1993 **("the SIS Act")**. This provides a more certain regulatory footing on which funds provide advice to an increasing number of consumers (members) with retirement income needs. The removal of the charging rules or collective charging restrictions would need to be balanced to ensure that other members in the fund are not disadvantaged by the proposed repeal of S99F in the SIS Act. While the paper promotes a principles-based approach to acting in the member's best financial interest to allocate costs between members fairly, it leaves the risk open to have members disadvantaged. This however, may be mitigated with requirements imposed under the Your Future, Your Super Members Best Financial Interest Duty and proposed enhancements to SPS 515 Member Outcomes with respect to fee setting principles.
- **The role of the Trustee should be clearer:** The current s 99F is specifically dealing with prohibiting certain charging arrangements relating to certain advice provided by the Trustee or employee of the trustee under certain circumstances. It currently doesn't overtly permit trustees to provide personal advice, or meet the cost of providing advice from the assets of the fund. There would be need for clarity in terms of what the Trustee is then allowed to do, where the proposals make reference to clarifying the sole purpose test as one avenue in facilitating that. Section 3.3 of the Proposals Paper also states that the Sole Purpose Test would be amended to permit trustees to "provide advice to members about their interests in the fund" and to this end consolidation would appear to sit outside of this and final reform proposals should be clearer on the intent and scope of this change.
- **Allow trustees more flexibility to determine what will be in the best interests for providing advice to members, particularly with impending Retirement Income Covenant (RIC) obligations**. The changes could also assist trustees with their Retirement Income Strategy. The transition to retirement phase is often a trigger point for people wanting advice for the first time, and with its complexities such advice is generally not cheap. This (proposed change) is potentially increasing the cost that all members of that fund would be bearing, but not all members would be availing themselves of that advice. The FSC notes however the obligation trustees have to allocate costs fairly between members and any potential risk to members is mitigated by the Best Financial Interests Duty[13] and APRA Prudential Standard SPS 515.[14]
- **Clarity to support personal advice provided by superannuation funds:** There are several areas for which clarity would support the delivery of personal advice by superannuation funds under the new framework
    - **RIC obligations:** Under the Retirement Income Covenant, the advice should consider age pension and other retirement savings. The proposals paper notes that the advice must be centred on the member's interests in the Fund but can take into consideration other key information like age pension. It's not clear what "centred" means compared to "limited to".

[13] Section 52(2)(c) of the *Superannuation Industry (Supervision) Act 1993* (Cth)

[14] Prudential Standard SPS 515: Strategic Planning and Member Outcomes: https://www.apra.gov.au/sites/default/files/sps_515_strategic_planning_and_member_outcomes_december_2018_0.pdf

  - **Payment of fees:** Section 4.3 suggests Trustees could review the advice in the event fees are paid to an adviser from a clients superannuation account. Given most Trustees would not be advice experts what guidelines will there be to assist in what to check and monitor remains an area for clarification in finalised proposals. The Proposals Paper notes the review does not intend a change to what Trustees do now, but this does seem to be a change for Trustees and advisers with potential privacy issues.
  - **Anti-hawking:** Anti-Hawking provisions established in *RG 38: The hawking prohibition* has made it harder to discuss retirement products in a Fund for a member currently in accumulation phase. This goes against the Retirement Income Covenant and the ability to assist members with Interests in your Fund unless the member initiates the conversation. While RG 38 does not prevent superannuation trustees from using real-time communications to contact a member who is approaching retirement with information about different retirement income products provided the trustee does not make an offer, final reforms should revise the anti-hawking regulations to align with the new regulatory regime for personal advice.
- **There is a need to ensure trustees have appropriate capital reserves where costs are borne by the fund's assets:** The proposals could potentially open up a risk to the trustee where it provides personal advice to members and ensuring it has adequate resources to meet any liabilities in connection with giving that advice. If the goal is to provide more affordable access to Australians to financial advice, then this area needs to be addressed to encourage superannuation funds to do so without exacerbated fear of liabilities, balanced with appropriate consumer/member protections. There is concern also about the previous "fee for no service" that was exposed during the Royal Commission. This is an important consideration if funds begin charging across a fund for more in-depth advice. A number of assumptions could be made from the proposals as to how personal advice provided by superannuation funds would sit under the proposed framework:
  - An increase in additional disclosures to ensure members understand the nature of the advice provided (i.e. its limitation) and how its charged. Would this assist members?
  - A requirement on staff to be appropriately educated and ongoing education provided to ensure they can adequately review a members financial situation and provide 'Good Advice' to the member.
  - Trustees will be positioned to provide advice at a lower cost and therefore accommodate those members that are not currently able to obtain advice due to financial restrictions.
- **Clarity on trustee obligations regarding oversight of advice fees**: In relation to Proposal 7 which permits trustees to deduct advice fees from a member's superannuation account, further clarity is needed on what responsibility a trustee has to ensure the advice that an advice fee is subject to, relates to the member's interest in the fund. It is not practical nor in the member's best interest, for trustees to be expected to review an advice or audit advisers. The proposals paper likens the obligation to insurance premiums stating, "The SIS Act requires trustees to determine whether insurance premiums would unreasonably erode members' retirement incomes, paying for financial advice from superannuation raises the same question." Insurers and advisers are not the same. Trustees may deal with only a few insurers, however, will deal with thousands of advisers. If trustees were required to audit the services advisers were charging for, they would have to outsource this, costing the trustee (and ultimately members) heavily, which would not be in members'

best financial interests. In determining whether the fee is fair, it is not clear how far trustees should have to go in assessing the financial advice. Advisers/dealer groups are independently licenced and so responsibility should rest with the adviser/dealer group to monitor activities of advisers. A superannuation trustee in this sense should not take the role of a quasi-regulator. While prescription should wherever be possible should be avoided under reforms to the regulatory framework, it could be useful to have practical prescribed controls that Trustees are able to rely on such as:

- a member's direction
- An adviser's obligations under their licence
- Advisers/dealer groups to audit advisers and check that their advice is reasonable to the fee and related to member's interest in the fund.
- Adviser periodic attestations that their advice which is subject to the advice fees from the super fund, is in relation to the member's interest in the fund and is reasonable as assessed by the adviser
- Fee caps
- Fee deduction frequency limits
- Fees can only be deducted if there are sufficient funds in the account

The Proposal suggests that these controls do not need to be prescribed in legislation, however leaving it open puts a significant compliance burden on Trustees, that increases costs which are ultimately passed on to members, which is contrary to what this Proposal is trying to achieve in reducing the regulatory burden.

Disclosure documents

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

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

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

The proposals for disclosure should be implemented as a matter of priority. These will alleviate much of the confusion relating to the interaction of consent and fee disclosure obligations, and that make standardisation of these obligations difficult. The benefits of such proposals will:

- **Offer more value to consumers while reducing time and administration:** Currently they are required to obtain their own fee consents, produce an FDS and most product providers will require their own consents. Removing this obligation will reduce duplication and cost. For consumers, they are often confused as to why they need to complete so many forms to have a fee deducted from their account.

- **Make the disclosure consumers ultimately experience easier to understand and less confusing building their overall trust and confidence in the advice they are receiving.** Consumers currently have to complete considerable paperwork to have fees deducted from their account.

The FSC notes that in implementing such a proposal that:

- **Simplification of the fee consent process should not make oversight of the advice fee deduction process more difficult:** Consultation on more detailed proposals will be needed to better understand how they would operate in practice and the extent to which the changes would impact existing processes to collect consent.
- **Legislative overhaul of fee consent is needed:** There would still be the issue of legislative "re-work" of the legislation implementing fee consent obligations following the Financial Services Royal Commission which the FSC focused on it its initial submission to the Review.
    - **Member directions:** There would be a regulatory cost involved in this along with building strategic solutions to cater for the member direction. There would need to be consideration for how often a Member would provide their direction or consent to the trustee, and what form of direction/consent would be acceptable. There is also a question as to what happens when a member wants their adviser to act on their behalf, what kind of direction or consent will be allowable.
- **Privacy issues are resolved:** Privacy concerns that would inevitably arise by permitting a consent form to cover multiple products would need to be resolved

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

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

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

The FSC supports the complete removal of the Statement of Advice and believes significant costs reductions will be achieve as a result. Even if the Statement of Advice was replaced by a shorter, less onerous form of documentation (e.g. Letter of Advice), sizeable reductions in cost would be achieved.

The proposals paper strikes a balance between these two imperatives by placing the determination of what disclosure goes where within the consumer experience in the hands of professionally, trained and qualified financial advisers. A modern disclosure regime should reflect the professionalisation of advice and the emergence of regulatory technology and technology-based compliance solutions. The level of documentation required does not align to other professions such as law, accountancy or medicine.

Removing the requirement to provide a Statement of Advice will not negatively impact consumers. Conversely, as a static, paper-based document, the SOA risks becoming out of date and to that end its retention poses a potential risk to consumers. The obligation to maintain complete records (which already exist under Standard 8 of the code of ethics) of the advice they provide and to provide a written record of advice to a client on request. This proposal is consumer centric as it enables the client to engage in the manner they choose. The misleading and deceptive conduct obligations still apply as does the Code of Ethics.

The FSC supports this change for several reasons:

- Remove one size fits all styled advice aligning it to the individual consumer experience.
- Significantly reduce costs and time taken to prepare financial advice and better enable providers to summarise their advice in a relevant and compliant manner which provides value.
- It will ultimately focus advice delivery on the individual consumer rather than compliance.
- Important record keeping obligations are retained, with records available to consumers on request.

In implementing the abolition of the SOA the following issues should be considered:

- **Standard 8 of the Code of Ethics:** These changes complement the requirements of Standard 8 of the Code of Ethics. We support a reduction in the size by removing the need to capture the client's current situation, removal of alternative strategies and other steps not necessarily applicable to all individual consumer advice scenarios.
- **Record keeping:** Under a principles-based framework record keeping should be determined in accordance with professional judgement, assuming these proposals are implemented in full. The extent to which guidance is needed this will depend on final proposals and it is possible clarity on what constitutes sufficient record keeping could assist industry to deliver the new advice framework cohesively. The importance of 'technology neutral' guidance is noted, to permit recording of advice verbally, digitally or written and the adoption of new and emerging technology capabilities.

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

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

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

The FSC's members have identified no identifiable negative impacts of the proposals regarding Financial Services Guides **(FSG)** and note:

- The proposals still retain an obligation to make available an FSG but with greater discretion on how this is presented to consumers.
- The defensive nature of the existing documentation requirements is more likely to confuse consumers than improve their overall understanding.

- Giving providers discretion will reduce the regulatory burden as advisers will not need to produce one each time as they can direct clients to the online version

The information contained in FSGs is mostly not time sensitive although these should be kept up to date.

Design and distribution obligations

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

a) the design and development of financial products?

b) target market determinations?

The FSC is not expecting that the Design and Distribution Obligations **(DDO)** proposals will have a substantial impact on the design and development of financial products, or on Target Market Determinations **(TMDs)**. With this context, the FSC makes more general comments about the DDO proposals.

Proposed changes to DDO for personal advice from 'relevant providers'

The FSC supports the removal of the requirement for the notification of significant dealings and for the ability for issuers to require reports on 'any other issue'. The FSC considers these requirements are not necessary, and the requirement for distributors to report significant dealings relating to financial advice is of limited usefulness as issuers do not have to report any such dealings to ASIC. It is unclear why distributors would have to report dealings to issuers where issuers are entitled to an exemption on reporting to ASIC.

It is proposed that the DDO complaints reporting requirement be retained. The FSC submits that it would be preferable to remove this requirement to the extent that it overlaps with other requirements to report complaints under Internal Dispute Resolution (IDR). The retention of duplicated complaint reporting requirements is unnecessary red tape that just increases the costs of financial advice with no benefit to customers or product issuers. The definition of complaint for DDO and the IDR regimes is very similar, if not identical, and in many cases a distributor will report complaints to a product issuer as part of the distributor's compliance with IDR requirements. To ensure full coverage of complaints with no overlap, the FSC submits the DDO complaints reporting requirement be amended so that a complaint report to an issuer is not required if the distributor believes on reasonable grounds that the issuer already is aware of the complaint.

We note that the DDO legislation only requires distributors to report on the number of complaints received, and not on the nature of complaints. Under current TMDs, issuers are likely to require reports from distributors on the nature of complaints, but this is not mandated at law.

DDO exemption for implementation of personal advice
The FSC submits the simplified DDO approach should be available to distributors that are implementing personal advice from an adviser that is a relevant provider, including all types of dealing (currently the exemption only applies to 'arranging' dealings). The FSC also supports reducing the red tape that applies when distributor (eg an investment platform) is implementing personal advice from an unrelated adviser. See FSC submission to the Review at pages 25 and 31.

DDO and non-relevant providers
We note that the proposal paper states that non-relevant providers will still be subject to the full DDO requirements. This will mean for example that the DDO requirements would apply, for example, to digital advice. This will effectively mean that the advice from a non-relevant provider will be subject to the requirement to provide good advice, and to comply with the DDO requirements, including the requirement to take reasonable steps to ensure the advice is consistent with a TMD. We note that this makes it all the more important to ensure the definition of 'relevant provider' is set appropriately see responses to Questions 2 and 3.

DDO and general advice
The proposed removal of DDO from general advice is covered in our response to question 3.

Transition and enforcement

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

The timeframe for implementation of the reforms would depend on consultation and the final package and certainly these reforms should be implemented in full. The need for addressing the complexity and cost of advice as a result of the regulatory framework is urgent. At the same time, industry has been adapting to considerable regulatory change and further reform should not provide additional unintended disruption. To this end the FSC supports:

- **A 12 month lead-in time ahead of the implementation of the proposals:** A key concern is ensuring adequate consultation on regulatory guidance and other instruments ahead of legislative implementation and to ensure regulatory certainty. A way forward would be commencing this period from the completion of relevant regulatory guidance updates a rewrite of the Code of Ethics. As noted in previous submissions regarding fee consent obligations, consultation and timing of regulatory guidance made standardisation of compliance with these obligations difficult because of the restriction on ASIC's ability to pre-empt Parliament legislating new obligations. Future scenarios would need to be avoided when reforming the framework.
- **A regulatory co-design model between industry, government and regulators ahead of future reform:** The experience of licensees and advisers to date has seen variance in how licensees of different sizes have been treated when implementing significant regulatory change. This has resulted in patchy implementation in part. A codesign model of future regulatory implementation would resolve this.
- **An early opt in or adoption model by industry to reduce cost and complexity under the regulatory framework.**

- **Industry and Government collaboration on models for self-regulation or co-regulation of a revised advice framework.**

General

15. Do you have any other comments or feedback?

The effectiveness of this package of reforms proposed by the Review relies on their implementation in full which should be subject to consultation on legislative or regulatory proposals. If only some of the proposals were implemented this may result in unintended consequences or even increased costs.

The Review has proposed a substantial program of reform to shift advice regulation from one of prescription to a principles-based model, focusing on the ultimate content of the advice given. The FSC would seek that the Review consider:

- **A revised role for the Regulator and a greater role for industry bodies in supporting the regulation of a principles-based framework:** The capacity, scope of the Regulator's powers and the difference between how it interprets the law and the law itself give rise to the need to make moderate adjustments to the role of the Regulator under the new framework. This should extend to the introduction road-testing and measures to ensure compliance before solutions are taken to market and not after.
- **Getting the balance right between black letter law clarity and a principles-based regime:** Given the existing regulatory environment it is understandable that as the Review has progressed, the remain elements of the industry seeking clarity of how an ultimately principles-based framework will operate in focusing regulatory oversight more on the content of the advice provided. While clarity might be useful in some instances and ultimately hinge on the shape of final proposals (as noted in different parts of this submission) clarity will not be possible on every issue.
- **Industry and Government collaboration on leveraging consumer data to support consumer financial decisions:** The Proposals Paper's starting assumption is that organisations that hold data should be supported and not deterred by the regulatory framework to deliver advice. The FSC agrees. The Consumer Data Right, Births, Deaths and Marriages and Australian Tax Office data are all areas that could be better integrated with the advice process to drive efficiency and innovation in advice.

- **Overseas models of regulator-industry engagement:** This should include the Financial Conduct Authority[15] **(FCA)** in the United Kingdom and the Monetary Authority of Singapore[16] **(MAS)** and the role they play in supporting safe and compliant innovation across the industry balancing their role as conduct regulators.
- **Align with the civil penalties regime following implementation of the proposed reforms:** It would be beneficial for consideration to be given to any intended operation of a fair and proportionate civil penalty regime in relation to the proposals. This includes having regard to:
  - The nature and scale of the entities and persons providing the personal advice and the likely impact civil penalties will have on these entities and persons.
  - The current civil penalties regime including the existing civil penalty provisions that will continue to apply under the proposals such as the generally licensing obligations under s912A that are civil penalty provisions, calculation of penalties that can be imposed and how the penalties are typically brought against an entity eg ASIC's practice of bringing penalty proceedings to multiple contraventions by an entity.
  - How the civil penalty provisions compare to civil penalty regimes applicable to other similar professions ie that provide 'advice' to consumers.

[15] The Financial Conduct Authority **(FCA)** is the conduct regulator for around 51,000 financial services firms and financial markets in the UK. It has launched Innovation Pathways – designed to help financial services firms launch innovative products and services. The services it covers include guiding firms through regulation through **one-to-one discussions** with a dedicated **case manager** assigned to provide insight, clarity, and feedback on their business model.

[16] MAS works with the financial sector to accelerate technology adoption. The Monetary Authority of Singapore (MAS) has a mission to promote sustained non-inflationary economic growth, and a sound and progressive financial centre. It committed S$42m in 2021 to spur adoption of technology solutions for risk management and regulatory compliance. Its RegTech grant scheme provides funding to pilot Regtech solutions as well as to develop larger scale projects and its Digital Acceleration Grant (DAG) to help firms adopt digital solutions to better cope with the impact of COVID-19, and to position themselves for subsequent recovery and growth. Its stated purpose is to encourage the industry to adopt digital solutions that enhance productivity, cyber security, and operational efficiency. MAS first launched the Fintech Regulatory Sandbox in November 2016 to encourage and enable experimentation of technology innovation to deliver financial products and services, by relaxing specific legal and regulatory requirements to allow applicants to experiment on innovative products within a controlled environment for a limited period of time. Upon successful experimentation and exit of the sandbox, the applicant will then resume full compliance with the relevant legal and regulatory requirements.