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Andrew Choi, Lawyer
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Australian Securities and Investments Commission (ASIC)
GPO Box 9827
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By email: acesstoadviceconsultation@asic.gov.au

Dear Mr Choi,

AFA Submission – CP 332: Promoting access to affordable advice for consumers

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are currently practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting their wealth.

Introduction

The AFA warmly welcomes ASIC's initiative with the Unmet Advice Needs project and this consultation exercise on 'Promoting access to affordable advice for consumers'. We are particularly concerned about the significant decline in access and affordability of financial advice for everyday Australians that has been occurring over recent times. It is our view that this decline in access and affordability is ongoing, as more financial advisers leave the profession, and those who remain, are focussing increasingly on more affluent clients. This is a phenomenon that is occurring equally in the investment, superannuation and risk spaces.

It is evident that the Government and a number of politicians involved in Parliamentary committees are also concerned about the impact of recent reforms on access and affordability of financial advice.

In our view, taking action on this matter is time critical. We recognise that much of the challenge is of a legislative nature, however, we also believe that there is significant opportunity in the regulator space and with regulatory guidance, which ASIC is directly responsible for. ASIC can also be an important adviser to the Government on where regulatory change is required.

At present, the financial advice space is unnecessarily complex and confusing, with numerous stakeholders and conflicting requirements. Financial advice currently has three separate main (there are others) regulatory bodies, being ASIC, the TPB and FASEA. In some cases, the obligations are duplicated and are conflicting. This has been recognised by the Government in their recent response to the 2019 Review of the TPB and the TASA and in the 9 December 2020 announcement with respect to the establishment of a Single Disciplinary Body for financial advisers. Achieving the right outcome is a very difficult exercise, however, it is critical that the debate commences and that the thinking is both broad and imaginative. Every step in this process needs to consider the full value chain involved in the provision of financial advice and the running of a financial advice business. There is significant opportunity for improvement and this consultation is a very important part of the process.

In the event that this consultation process does not generate the answers required to resolve the increasing problems with access and affordability of financial advice, then we would encourage the Government to consider a broader independent review of financial advice, to ensure that a suitable and appropriate package of reforms can be developed and implemented in a timely manner.

It is our view that the regulatory regime is a key driver of increased costs and complexity in the financial advice sector, which is in large part responsible for the decline in accessibility and affordability. This is not to discount other contributory factors, but instead, to highlight that the regulatory regime is probably the most important factor. The regulatory regime has been subject to fundamental change on an ongoing basis and has been the subject of criticism by the Banking Royal Commission. Additional regulation has added further cost and complexity to the model. Whilst we accept the need for a rigorous regulatory regime, we also believe that there needs to be a sensible debate about finding the right balance. It does not make sense to continue to increase the regulatory obligations for all financial advisers whenever there is evidence of wrongdoing. The interim report by the Banking Royal Commission recognised the excessive level of complexity in the financial services system, however, rather than providing solutions to simplify the regulatory regime, instead made recommendations that will add to the level of complexity. There is a need for a more sensible balance that provides necessary protections, but also takes into account the interests of clients and the risk that additional controls will make financial advice unaffordable for everyday Australians. We call for this debate to take place.

This is not a simple issue to overcome and it will not be solved overnight. In our view, there needs to be ongoing mechanisms and forums for the exchange of information on what is not working and what changes need to be made to better achieve the overall objective of improved access to affordable advice for everyday Australians. This should be a shared objective for both the financial advice profession and ASIC. It will also inevitably require action by the Government.

There has been some recent public commentary about how licensees are being overly risk averse and unnecessarily conservative in the rules that they set for their advisers. We understand why licensees have been risk averse in the current context and in the aftermath of the Banking Royal Commission. Whilst ASIC may be one of the contributing factors, AFCA and PI Insurance are also important drivers of this more conservative approach. It is clearly the case that this is a sub-optimal position that is counterproductive when it comes to the client experience and outcome. This is an issue that requires further analysis as it is important that it is solved. We will talk more about this below.

Summary of AFA Recommendations

We have addressed a number of issues below and have put forward a set of recommendations, including the following key recommendations:

- The establishment of an ASIC/Treasury/Industry working group on financial advice regulatory and process improvement.
- The creation of an initiative to deliver improved regulatory certainty.
- An appreciation of the importance of seeing the financial advice community as predominantly small business operators who are each trying to do the best that they can for their clients.
- An increased focus by the regulator upon the prevention of compliance failures, rather than regulatory intervention and remediation.
- It is essential to get the balance right in designing and enforcing the regulatory regime. It needs to be designed in order to ensure that the greatest good can be provided to the majority of clients, rather than to focus excessively on the avoidance of misconduct by a small minority.

Understanding the Ideal Future State

In responding to this consultation paper, we have taken the view that it would be beneficial to consider what the ideal future state is for the operation of the regulatory regime for financial advice in order to make advice more accessible and affordable. It is the AFA's view that it would include the following:

- A high level of regulatory certainty.
- Easy access to guidance on regulatory requirements.
- An efficient advice process, with each step adding value to the client experience and outcome.
- The avoidance of duplication in requirements, oversight models and fees.
- An environment where licensees can make sensible informed decisions with respect to the compliance regime they operate. This means that they have confidence in terms of what the law requires and what the regulator expects, rather than being overly fearful of regulatory intervention. This confidence needs to be long term, meaning that they can continue to have confidence in the future, that what they did today will comply with the expectations in the future.

It is our view that consideration of this ideal future state would be a valuable exercise within the broader deliberation that is being undertaken as part of this consultation.

Assessing the Current State

In our assessment of the current state, we are not seeking to be critical or attribute blame, as we are conscious that there are issues with the law, with the guidance and with respect to how the financial advice sector interprets the law and the guidance. Nonetheless, a clear assessment of the current state will assist with the identification of where the greatest opportunities exist.

Regulatory Certainty

There is no question that the financial advice sector is highly complex and complicated. This is demonstrated by the fact that no two clients are the same and no two pieces of advice should be identical. Financial advice is not conducive to the operation of tightly defined identical processes. The art of financial advice is in fact to deeply understand those different circumstances and needs of each client. It is therefore not surprising that there are major challenges with achieving a high level of regulatory certainty.

There are numerous examples of where this understanding of the requirements is uncertain, and we have included some examples below:

- In terms of using a Record of Advice, in what circumstances might it be reasonable to conclude that the client's personal circumstances, or the basis of the advice, have not changed significantly.
- How old can a Statement of Advice be for a financial adviser to continue to rely upon it for the purposes of providing a Record of Advice?
- How should a financial adviser approach the exercise of agreeing to the scope of advice with a client?
- How much information needs to be collected in the case of limited advice? Are the expectations of ASIC the same as FASEA?
- What should an adviser do where the relationship with the client is ongoing, and regular contact is maintained, however the client has declined to undertake an annual review?
- When must services detailed in an ongoing fee arrangement be provided?
- What weighting should an adviser place on a lower cost or premium versus better features or level of service, when selecting a financial product?
- What level of detail on services agreed and provided needs to be included in a Fee Disclosure Statement (FDS)?
- More recently, with the APRA intervention into the Income Protection market, we envisage the need for more guidance and certainty for financial advisers dealing with a client who has received notice of a substantial premium increase for their existing Income Protection product and are seeking advice on whether they should consider moving to a new product, when the terms and conditions will be less favourable and there is uncertainty at the five-year mark.

These are just some of the many questions where the financial advice sector remains uncertain as to what the requirements are. This is not to suggest that ASIC has not tried to address all of these questions, but instead to point out that there is a problem with high levels of regulatory uncertainty.

We have recently observed situations where financial advice compliance consultants were providing incorrect guidance on the application of the conflicted remuneration provisions. This is due to the complex nature of these arrangements and multiple different ways that business models can be designed. It may be appropriate for ASIC to think about compliance consultants as a specific group of people that they should focus on, as a vehicle to ensure greater understanding and certainty.

It is also evident that different licensees are taking very different approaches to setting the requirements for their advisers, depending upon what experiences they have had with ASIC intervention and who is advising them.

It is important that all parts of ASIC are taking the same approach, and that what the enforcement side of the operation are doing is consistent with the policy side.

It is also critical that regulatory certainty is longer term. If financial advisers do not have confidence that the current standards will comply in the long term, in that the requirements will not change over time with retrospective impact, then this does not meet the definition of regulatory certainty. There is a lot of second guessing that goes on, as licensees seek to ensure that they will be compliant into the future and not subject to some fundamental change at a later point.

To achieve this goal, we recommend the establishment of a cross Government and Industry forum to address the many areas of uncertainty and to deliver solutions.

An Example of Regulatory Uncertainty - FDS Timing Differences

As a classic example of the consequences of a lack of regulatory certainty, the entire Fee Disclosure Statement system was built between 2012 and 2014, on the basis of a licensee’s remuneration systems, which is based upon the amount that is paid to the financial adviser and when it was paid, not what was taken out of the client’s account and when. It has emerged more recently, and highlighted in ASIC Report 636 (November 2019) on FDSs and Opt-In compliance, that ASIC expects FDSs to be prepared on the basis of when the money comes out of the client’s account, noting that this may be at a different time, and in a different FDS period. A similar issue applies to the difference between GST and RITC, and it is also noted that there is no discretion for minor errors. In Report 636, ASIC have suggested that financial advisers would need to log into product systems to confirm that the correct amounts have been included in the FDSs. This would be a highly manual exercise and add significantly to the cost of the production of FDSs.

To compound this issue, and to highlight the problems with regulatory complexity, the recently tabled legislation (Financial Sector Reform (Hayne Royal Commission Response No. 2) Bill 2020) to implement the Royal Commission recommendation on Annual Renewal, does absolutely nothing to address this important problem. This is despite the fact that it was highlighted through the consultation process and something that the AFA has been calling for regulatory relief on. It is probably too early to speculate on the reasons for this, however, it might highlight that there is a lack of focus on regulatory certainty and process efficiency and a lack of coordination between the different layers of Government. It might also be fair to say that it highlights the need for improved processes to enable the removal of red tape and inefficiencies in financial advice.

Access to Regulatory Guidance

Whilst there is no doubt that improvements to the delivery of regulatory guidance would be beneficial, it should also be understood that in the larger end of the advice market, financial advisers operate on the basis of licensee standards and it is typically the job of the licensee to analyse and understand both the law and the regulatory guidance. In the self-licenced space, it is more likely that financial advisers will go directly to the regulatory guidance. As small business operators, and most of financial advice is small business, they are time poor and have numerous other competing objectives and obligations. It is important for ASIC to be cognisant of the fact that they are predominantly working with small businesses, and accordingly design their communication mechanisms in this context.

ASIC has generally done a good job in the past in providing regulatory guidance, although noting the problem with a lack of regulatory certainty. ASIC has also acknowledged in CP 332 that they are considering changing the way that they deliver regulatory guidance, which we welcome. The reality is that the current regulatory guides are largely text-based documents that do not leverage the advantages of modern technology or use multi-media options.

It is also very challenging to find exactly what an adviser is looking for, which for small business operators can be very frustrating. As an example, RG 244 on ‘Giving information, general advice and scaled advice’ is 139 pages long and contains information that is relevant to financial advice along with broader information. It is not just focussed upon financial advisers as the target audience. RG 175 on ‘Licensing: Financial product advisers—Conduct and disclosure’ is 121 pages long. There is no quick reference guide for financial advisers, and to find the regulatory guides is not without challenge for someone who does not know where to look. There is no doubt that a lot of work has gone into preparing the regulatory guides, however it is unlikely that they are used in any extensive way by most financial advisers. There is clearly room for improvement. This is an area where we feel that it is essential that ASIC work closely with the financial advice profession to understand the needs and to assist in the design of solutions. It might be that ASIC staff need to sit alongside compliance people and financial advisers to understand how they use ASIC’s guidance. This would need to be done in a

non-threatening way where the staff member/adviser did not feel that they were exposing themselves to regulatory scrutiny if they were to demonstrate a lack of knowledge in a certain area.

An Efficient Advice Process

This is at the core of the problem with financial advice at present. The process is inefficient and there is room for significant improvements with many of the steps in the process. Whilst some of the issues with the advice process relate to factors that are outside the regulatory regime, there is no question that regulatory requirements are a very material driver of complexity and cost. In terms of the overall objective of being able to provide financial advice services to clients at a cost that is affordable for everyday Australians, we need to look at the efficiency of every stage of the advice process, including the ongoing servicing and renewal model. The key stages that we think are important to consider include:

- Client needs and objectives assessment
- Client data collection
- Client situational analysis
- Strategy formulation
- Advice document preparation
- Advice presentation
- Advice implementation
- Ongoing servicing and renewal

We welcome the work that ASIC is separately doing on the cost of financial advice and we trust that this work will consider the steps in the advice process and will consider where the costs are greater than is necessary and what the opportunities are for reengineering and the removal of non-value adding activity. We discuss this further below.

Duplication and Simplicity

There is little doubt that at the moment financial advisers are over-regulated and a sensible rationalisation is required. With ASIC, the TPB and FASEA all playing key roles in either standard setting, oversight or disciplinary arrangements, there is unnecessary duplication and a lot of opportunity for inconsistency and confusion. This has certainly become an important factor with the introduction of the FASEA Code of Ethics, where the requirements might be inconsistent with the expectations in ASIC's Regulatory Guides and also different to the TPB Code of Professional Conduct.

Licensees and financial advisers expect each of the regulators to carefully and closely work together to remove any conflict or lack of certainty, however, each regulator has a different mandate and set of objectives, so this has not always been possible. They are also hesitant to step into the realm of another regulator or seek to contradict them.

We welcome the Government's recent recognition of this regulatory duplication problem and apparent commitment to address it. In our view, this is a significant opportunity for sensible rationalisation, and we would like to see this exercise fully leverage all options for rationalisation.

Conducive Compliance Culture

It is important that all participants in the financial advice sector have the confidence to operate with certainty and to focus on delivering to their objectives and meeting the needs of their clients.

Within the financial advice sector, there has never been any doubt that ASIC was a vigorous regulator and that they were assertive in responding to any known misconduct. The fact that ASIC spent \$56.2m in the oversight of financial advisers who provide personal advice to retail clients in the

2019/20 year is proof of this. It is further confirmed by the fact that this is the highest spend on any of the supervised communities. Whilst we only have a high-level breakdown of the total costs by type of activity from the June 2020 Cost Recovery Implementation Statement, that was based upon a total spend of \$40.1m, it is important to note that \$19.9m related to surveillance and enforcement. We are not aware of the reason for the very late increase in costs from \$40.1m to \$56.2m, however we would assume that this could be attributable to enforcement expenses. This highlights the level of focus that ASIC has on misconduct in the financial advice sector. In reviewing this expenditure by ASIC, what is disappointing is that only \$0.8m of the original forecast of \$40.1m was being spent on education and guidance. We believe that ASIC should consider a mantra based upon 'prevention is better than a cure', and significantly increase their focus on education and guidance.

Assertions at the time of the Royal Commission, that ASIC was a light touch regulator did not reconcile with the experience that the financial advice sector were familiar with. Much of what was focused on by the Royal Commission, in the advice space, was already being addressed by ASIC. The Fee for No Service issue was first brought to the attention of the public in April 2015, and ASIC Report 499 expanded on this in detail, which was issued in October 2016. Fee for No Service was not a discovery of the Royal Commission, as might have been suggested. Significant compensation (\$178m) was estimated back in October 2016, at the time of the release of Report 499. ASIC had been running what was called their Wealth Management project that was focused upon the large institutional licensees. As a result of this project, more than 50 financial advisers were banned. This is not reflective of a light touch regulator. It is true that ASIC extensively used enforceable undertakings, which were the subject of some criticism during the Royal Commission. In our view, this was a sensible form of regulatory intervention that resulted in scalable outcomes being achieved in a quick timeframe and compensation being delivered to consumers. It is unclear why this should be a reason for criticism and should have led to the current 'Why not Litigate' mantra.

Criticism of the inadequacy of banning actions against financial advisers, does not take into account the fact that even a short banning will make it very difficult for anyone to get back into the financial advice profession in the future. Any financial adviser who was named in a case study by the Royal Commission will most likely never work again in financial advice. The consequences for these individuals have been substantial.

The Royal Commission resulted in demands for ASIC to be more assertive and to litigate in preference to pursuing enforceable undertakings. In the financial advice context, this seemed to result in a regulator who was already very vigorous and assertive becoming even more so and seeking to litigate before consideration of other option. This change of mind-set and approach has impacted the culture of the financial advice sector. Whilst large institutions might be able to fund a litigation matter with ASIC, it is unlikely that this would be feasible for smaller licensees. It is important to appreciate the fear that this mantra has created, on top of what was already a very apprehensive advice community.

Licensees do not feel comfortable to challenge ASIC or to discuss with them any concerns that they have about the way they have been treated by ASIC, on the basis that a complaint could lead to a more aggressive approach. Whilst this might, to some extent, be based upon a perception of ASIC, the existence of this perception is a reality and a matter that is important to address.

Whilst we have no issue with ASIC vigorously pursuing a licensee or a financial adviser who deliberately and knowingly committed misconduct, we feel that it is necessary to take a more balanced approach when the misconduct was the result of a lack of understanding of what might be a poorly articulated obligation. Working on regulatory certainty should assist licensees to be less risk averse and to have more confidence in their relations with ASIC.

It is one thing for someone to be fined for driving down a street that is marked as 60 kms per hour,

when they are driving at 80 kms, however, as discussed above, the speed limits are not always obvious to financial advisers, and licensees do not always fully understand how fast each of their advisers are driving. In terms of the Fee for No Service issue, one of the key objections that has been raised is that advisers have been ‘fined’ for the rules that apply now and not what applied when they provided the services.

We appreciate that ASIC has an important job to do, and it is difficult to find the right balance. We also recognise that there have been some positive changes in recent times. We seek an environment where a more constructive dialogue can be achieved and where the regulator can have more faith in the intent of the financial advice profession to work in the best interests of their clients.

The Emergence of Recent Additional Complications for Financial Advice

Whilst it is seemingly accepted that more needs to be done to reduce the level of red tape in the financial advice sector, either through actions by ASIC, or through new legislation, the requirements for financial advice licensees and their advisers have increased substantially in recent times. Some of these examples include the following:

- ASIC Report 515, and additional requirements with respect to proving compliance with the Best Interests Duty safe harbour steps.
- Fee for No Service Remediation, Lookback projects and retrospectively changing the requirements for the proof of provision of services through Info Sheet 232.
- The Treasurer’s directive to ASIC (Australian Securities and Investments Commission (Investigation into Grandfathered Conflicted Remuneration for Financial Advice) Direction 2019) to monitor the removal of grandfathered commissions before the deadline for removal and to require ASIC to investigate progress.
- The joint APRA/ASIC April 2019 letter to Superannuation Fund Trustees and the emergence of new requirements by large institutionally owned super funds for clients to provide copies of consent for fees on an annual basis, even before the tabling of the Annual Renewal legislation.
- A reduction in the maximum timeframe for complaints handling from 45 days to 30 days, which does not take into account the additional challenge that this will cause for financial advice complaints, which are often complex and where the licensee needs to work with their Authorised Representatives to respond.
- New data record keeping obligations for ‘distributors’ under the DDO legislation.
- A substantial increase in breach reporting requirements that will eventuate under the recently passed Financial Sector Reform (Hayne Royal Commission Response) Bill 2020, along with new remediation and reference checking requirements.
- The new Annual Renewal requirements as part of the recently tabled Financial Sector Reform (Hayne Royal Commission Response No. 2) Bill 2020.

This is only some of the recent developments, which have all been happening at the same time that licensees and financial advisers have been coming to terms with the requirements of the 2017 Professional Standards legislation and Life Insurance Framework reforms. We are also very conscious of other pressures on licensees at present, including the removal of volume bonuses and increases in PI Insurance, that are impacting the cost of operations and have resulted in widespread and significant increases in licensee fees for advisers.

Financial advice is a sector under intense pressure at present, as is reflected by the points above and the significant decline in adviser numbers over the last 2 years. There is no indication that the impact of these changes has stabilised, and further substantial declines are expected.

It is essential that these issues are addressed. This consultation process is an important part of the process, although we think that it will need to be expanded. We have also recommended a cross Government and industry panel to work through the myriad of issues at present.

AFA Response to CP 332 Questions

Promoting the Delivery of Limited Advice

Whilst we recognise the importance of Limited Advice, we believe that improvements need to be made across all forms of personal advice. The cost of providing personal advice is too high across the board and we believe that it is critical that more is done to address all opportunities for improvement. Consumers need confidence that advice will be accessible and affordable and when they start to consider accessing advice, they are often not thinking about the form that that advice will take. What is critically important is that they understand the value of financial advice and that they are incentivised to seek financial advice, whether that is comprehensive or limited advice.

We note that much of this section is seemingly devoted to the provision of Statements of Advice in limited advice scenarios. It is also important to consider circumstances where Records of Advice can be used for both existing and in certain circumstances, new clients. We support broader use of the Record of Advice option, however we also think that work needs to be done to ensure that the provision of a Record of Advice is not over complicated, which is a situation that seems to have emerged across some larger licensees, as a result of ASIC Report 515.

Challenges and Practical Issues Faced When Providing Limited Advice

B1Q5 (a). Please tell us about yourself and your interest in the issue of promoting access to good-quality limited advice.

The Association of Financial Advisers is a professional association representing financial advisers who operate across the financial advice spectrum. We are strong advocates for increased access to affordable financial advice for all Australians, including everyday Australians, who are at present at risk of being excluded from having access to advice. We believe in the value of financial advice and the ability of financial advice to positively transform lives.

B1Q5 (b). What do you think are the impediments to the advice industry providing good-quality limited advice?

We have provided significant context above with respect to our views on the impediments to a professional environment that enables broad access to good quality limited advice. In expanding on that a bit further, the key impediments that we see are as follows:

- There are difficulties in resolving the scope of advice with the client, that would enable the adviser to have total confidence that they will not be challenged for narrowing the scope inappropriately. Often new and even existing clients do not have a clear understanding of the scope of the advice that they are seeking.
- The FASEA Code of Ethics and some licensee standards make the determination of the scope of the required data collection exercise more complicated than it needs to be for limited advice, often resulting in the decision to seek more information than is relevant or necessary for the advice that has been agreed.
- The requirements in the FASEA Code of Ethics to consider the clients broader circumstances and likely future circumstances places constraints on how straight forward the provision of limited advice can be.
- The cost and complexity of providing limited advice is only marginally less than that involved in providing more comprehensive advice, reducing the incentive for doing this.
- It is also acknowledged that some licensees make it difficult to provide limited advice.

B1Q5 (c). How do you think industry and ASIC should address these impediments?

We believe that there are options that are available to address the issues raised above. We think that it is important to address these issues and accordingly, we make the following recommendations:

- Licensees and financial advisers require increased regulatory certainty in order to have confidence to fully trust the usage of limited advice. This needs to be confidence in terms of agreeing to the scope of the advice, knowing what client information they need to collect and knowing how broadly their consideration of the client’s circumstances needs to be. Certainty of your actions needs to be ongoing and not subject to retrospective change in the future. Regulatory certainty is critical.
- Once developed, we envisage that this could be better delivered through more specific guidance and even illustrations that could be video based, or interactive in some other form. We envisage that some form of interactive decision tree dynamic model would be a useful tool.
- Licensees need to have confidence that they can encourage their advisers to provide limited advice, without fear that they will subsequently be called out for a breach of the obligations.
- Collectively the broader financial services industry needs to do more to streamline the collection of client information. This includes easy access to information on a client’s existing holdings, obviously subject to careful privacy protections. This is a known problem, particularly with respect to some superannuation funds.
- We would also like to see greater access to Government (i.e. ATO Portal/My Gov) held client data, including information on previous super contributions, total super balances and transfer balances.
- It is also important that there is alignment between the requirements of the FASEA Code of Ethics and ASIC Regulatory Guidance (i.e. RG 175 and RG 244).

Our Guidance on and Examples of Limited Advice

We appreciate the point made in paragraph 29 that ‘financial advisers can use their *judgement* to decide on the scope of the advice in a way that is consistent with a client’s relevant circumstances and the subject matter of the advice the client is seeking’. Financial advisers want to be empowered to use their professional judgement, and we believe that they should be. Many of them are highly educated and well qualified. Many have years of experience. It seems to us that for too long they have not been trusted to demonstrate professional judgement. We strongly favour moving in a sensible transition towards increase reliance on professional judgement, as is permitted by other professions. Reliance on professional judgement does require greater certainty and consistency.

B2Q1 (a). We are considering new formats for our guidance. What form of guidance would you find most useful for future ASIC guidance on limited advice?

It is important to appreciate that different people have different learning preferences. It is not sensible to rely upon just one method for the delivery of education and training. It is also appropriate to take into account the common personality types of different professions. Financial advisers are relationship people. That is what they are good at and how they deliver the greatest value. They are therefore more likely to favour interactive and multi-media content and delivery formats.

As discussed above, we would like to see ASIC place a greater focus on prevention rather than cure, and to significantly increase the expenditure on education and guidance. We recognise the work that has gone into preparing the ASIC Regulatory Guides and Information Sheets, however we also believe that the time has come to upgrade the form that this information is maintained in and the way that it is delivered.

We would favour the increased use of video style communication. We would also like to see a financial adviser dedicated webpage and a quick reference guide specifically for financial advisers. It would also be beneficial for ASIC to experiment with mind map concepts and decision tree models as mentioned above.

We are aware that ASIC has already commenced work on this exercise, and we encourage this to continue. We believe that work in this area could generate very positive returns, as advisers would be much more likely to place greater focus on ASIC guidance.

ASIC content could also be CPD assessed to provide further encouragement.

B2Q1 (g). What do you see as the future challenges to providing good-quality limited advice? How do you think industry can best respond to and work through these challenges?

We have addressed what we see as the impediments and the solutions above. Principally, what is most important is for licensees and advisers to have confidence in their ability to use limited advice, and not to feel at risk that in doing so, they will be breaching their obligations.

B2Q2 (a). Are the examples of providing good-quality limited advice in the appendix to RG 244 helpful? If not, why not?

The examples in RG 244 are helpful, although they tend to be more simple matters with very limited fact-finding exercises, the absence of any conflicts of interest and limited focus upon charging fees. There is therefore an obvious question as to how well they reflect the real-world situation for financial advisers, including those who are authorised representatives.

RG 244 covers factual information and general advice, in addition to personal advice. It also covers basic banking products and general insurance. In that sense, it is broad in its scope and not all of it is relevant to financial advisers. It is a long document, at 139 pages, so consideration should probably be given to different versions that might better suit different business models.

In the context of the examples being more simple, there is an obvious concern that arises as to whether financial advisers can place much reliance upon this, where their real-world cases are often more complex. Importantly RG 244 was released prior to the issue of the FASEA Code of Ethics, and therefore there are questions as to whether these examples would comply with the standards in the FASEA Code of Ethics.

B2Q2 (b). Should the examples in the appendix to RG 244 be expanded to include other topics? If so, which additional topics would you find helpful?

There is only one life insurance example, which is related to a call centre superannuation business model. There is an example of factual information and general advice, along with a personal advice case, where there is no charge for the financial advice (presumably an intra-fund advice model). There is no consideration of any insurance held by the member's husband and the conversation appears to be very much driven by what the client wants. We would like to see at least one example of life insurance advice, that reflects what a financial adviser would be expected to do and that is broader than this example.

We would also like to see an example that addressed more recent issues that have emerged as a result of the APRA intervention in the Income Protection market and how a financial adviser should take into account the trade-off between large premium increases in an existing product and the loss

of features and increased uncertainty in the new products.

There is a long list of examples in RG 244, however we think that it should be supplemented by an example of superannuation consolidation. Limited or scaled advice does apply in the case of more complex matters such as superannuation consolidation.

Terminology – How we Talk About Limited Advice

B3Q1 (a). We would like your feedback on how we refer to the advice that we currently refer to as ‘scaled advice’ in RG 244.

The AFA has no objection to the use of the term ‘limited advice’. This is as good a term as ‘scaled advice’. ‘Narrow-scope advice’ is also a good description of the type of advice, but not as straight forward as ‘limited advice’. Terms like ‘piece-by-piece advice’ and ‘episodic advice’ assume that further advice will be provided in the future, and this cannot be guaranteed. ‘Transactional advice’ conveys a different meaning and might be confused with transaction only services, where no advice is provided.

Our Guidance on and Examples of Statements of Advice

The length of Statements of Advice has been a known problem for a long time. Despite the fact that both ASIC and the profession have agreed that it is a problem, seemingly little progress has been made over this time. This is a material problem, as Statements of Advice are too long, and all the evidence suggests that they are not read by the majority of clients. This suggests that the current requirements or at least the understanding of these requirements is defeating the purpose of the SoA. Some caution needs to be applied here, as obviously some clients are reading SoAs, and some people would probably never read an SoA, no matter whether it was less than 10 pages or more than 100 pages.

We support increased guidance on Statements of Advice. Financial advice licensees place a significant investment in their technology that produces Statements of Advice and it is critical that they can have confidence that what they have designed will firstly be compliant, however, equally importantly it will meet the needs of their clients. Given the level of investment in these templates and systems, it is unsurprising that there is a high level of caution about making material changes. They need greater confidence before making a further investment.

Depending upon the scale of the licensee, the licensee may rely upon their inhouse advice documents team or for smaller licensee, they may use a model office service provider. In each case getting the SoA design right, is very important. It may be appropriate for ASIC to identify these parties and to proactively work with them to understand the impediments and to see how these issues can be fixed.

We would also like to see examples of Records of Advice published by ASIC in guidance documents. We are aware that some larger licensees have significantly increased the amount of content that is contained within their Records of Advice, so it would be very beneficial to see what ASIC thinks is necessary.

B4Q1 (a). Are the model example SOAs in RG 90 and the appendix to RG 244 helpful? If not, why?

The example that RG 90 has been built around is a useful scenario to consider risk advice for a family, and takes into account their existing insurance arrangements and how they can be built upon to ensure that the clients have the level and type of insurance that they need.

We have briefly spoken to the examples in RG 244 above.

B4Q1 (b). We are planning to review and revise our guidance in RG 90. What changes to RG 90 would make it more useful?

The AFA was involved in the consultation when RG 90 was updated in 2017 and we provided feedback on a couple of occasions as part of this process. At that time, we expressed a view that we thought that the example SoA was too repetitive and that there was an excessive focus on justification of why the advice was in the best interests of the client. It was our view that the amount of work that was required to comply with this extent of duplication and detailed tailoring to the specific client, would unnecessarily push up the cost of providing limited advice in the life insurance advice sector.

It is our view that the example SoA in RG 90 is a challenging document for a client to read. We will be happy to provide additional feedback as part of any further consultation process on the example SoA in RG 90.

This example SoA was released in late 2017, which was immediately before the Life Insurance Framework commission caps kicked in. The number of financial advisers who operate in the life insurance space has declined materially since the commencement of the LIF, so this is going to be beneficial to a reduced audience now. Ideally RG 90 would also include a superannuation example.

B4Q1 (c). Is there any other guidance you would like on SOAs for limited advice?

One of the over-riding important issues with SoAs for limited advice, is to keep them as simple and short as possible. All the evidence suggests that few clients will actually read an SoA in full and the longer the document, the less likely that they will genuinely seek to read and understand the document. The flow and the ease of reading is also an important consideration. It needs to be designed in a way where the story builds in a sensible way and that the key messages are delivered in a manner that makes sense to the reader. Too much repetition is likely to turn the reader off and confuse them. We do not believe that an approach, based upon the intent to reinforce messages, is the right way to go.

Promoting Access to Affordable Personal Advice

As previously stated, we are very supportive of this goal of promoting access and affordability of personal financial advice, which we believe can make a big difference in the lives of many Australians.

Improved uptake of financial advice also depends upon an appreciation of the value of financial advice. For too long there have been too many commentators talking down financial advice and this has obviously impacted the reputation of the financial advice sector and the level of consumer trust. We are conscious of the important role that ASIC plays as the regulator of financial advice, however, we believe that there is an opportunity for ASIC to also talk more publicly about the value of financial advice. ASIC is a trusted source of information for consumers, and can put better balance into the debate in this area.

Affordability of Personal Advice

We note the discussion in paragraph 39 about the cost of providing financial advice and the lack of willingness of Australians to pay for fees consistent with the cost. It is important to put this into some context. Obviously, there are hundreds of thousands of Australians, who are currently financial advice clients, who are willing to pay the level of fees that are required to obtain financial advice and to maintain a financial advice relationship. This is not in dispute. The issue is that few unadvised Australians see the value of financial advice and are prepared to pay what it costs. This is a critically

important issue. There are two actions that are necessary to address this. Firstly, more needs to be done to help the community understand the value of financial advice (and as an extension it is important that the activity that undermines the value of financial advice ceases), and secondly more needs to be done to reduce the cost of financial advice, to make it more affordable for everyday Australians.

There needs to be a greater public understanding of the benefits of financial advice, which includes the financial benefits, the emotional benefits and the behavioural benefits. Everyday Australians can benefit greatly from behavioural change that flows from financial advice, and this can in turn deliver significant financial and emotional benefits. It is wrong to assume that the greatest benefits flow to the most affluent. Understanding this is important, although the ability to pay for the cost of financial advice will inevitably limit access to it for everyday Australians.

An increased appreciation of the value of financial advice will assist over time in influencing the willingness to pay the fees that are required to obtain professional quality financial advice. Ultimately, we would hope that clients are willing to pay these fees as they currently pay for other professionals, whether they are doctors, lawyers or accountants.

C1Q2 (b). Do you think technology could be better used to reduce the cost of advice? Please explain your response.

Technology plays an important part in the financial advice process and it can also play a greater role in keeping costs under control. Technology is critically important in the preparation of Statements of Advice, in the management and retention of client records, and in the production of key documents like Records of Advice and Fee Disclosure Statements.

Financial advisers have come to rely upon their technology and the providers of that technology. As discussed above, one example is in the production of Fee Disclosure Statements. Where fees are taken out of client accounts and then paid to the adviser's licensee and then further passed down to the adviser, this is captured in the licensee's remuneration system. This same system is critical in the production of Fee Disclosure Statements. It is perfectly reasonable that financial advisers should be able to rely upon their systems, however, for many it came as a huge surprise when ASIC Report 636 was released in November 2019, and included the view of ASIC that Fee Disclosure Statements needed to be prepared on the basis of the exact amount and the exact timing of when the fees came out of the client's account. The potential for timing differences has led ASIC to recommend that financial advisers check the amounts and timing in product systems. Licensees and advisers do not have control of product systems or the ability to extract data in the required way. It is concerning that a fundamental issue of this nature did not emerge until such a long time after the legislation came into force, and without any mechanism for a solution. Technology needs to work for the benefit of the financial advice profession and their clients, not to work against it. The law needs to align with the way that businesses operate and the way that the technology has been designed. The reference to this issue is only to highlight that technology is important, however it is complicated to ensure that it delivers the expected outcome.

The COVID 19 crisis has challenged the way that all businesses operate. It has become apparent during this crisis that the financial services industry is not as well prepared as it should be to rely upon an online world, where electronic signatures are universally accepted. Product providers also need to ensure that their systems and processes are as efficient and user friendly as possible. New business and renewal processes need to be simple, with a minimalist requirement for signatures and the transition away from the current reliance upon wet signatures by some product providers.

We believe that technology can play a bigger role in financial advice in the following ways:

- The automated collection of client data, either through Government systems (ATO Portal /

My Gov) or through regulatory change such as open banking.

- Client portals, to better enable the transfer of information between clients and advisers.
- Improved delivery of guidance to financial advisers including using artificial intelligence to simulate different scenarios.
- Better presentation of advice to clients. This does not need to be a text based (SoA) delivery method, as there are better ways to educate and communicate with clients.
- Improved client communication through video means, either live or pre-recorded.
- Enhanced and automated mechanisms for the provision of client approval/consent.
- Ideally an automated solution will be developed for the delivery of client consent forms through to product providers.

C1Q2 (e). What changes do you suggest to reduce the cost of personal advice for consumers?

Further to all the points and discussion above, we would suggest that the greatest opportunities are in the following areas:

- Red tape reduction by the Government and ASIC to simplify the advice process.
- Increased usage of simplified advice documents (i.e. Record of Advice), including potentially with respect to the extension of the COVID 19 relief measures and the ability to use an RoA in the event of strategic advice.
- Increased regulatory certainty.
- Increased opportunity for the utilisation of professional judgement.
- Increased use of technology, as discussed above.

C1Q2 (f). Apart from the issue of cost, what changes do you think would improve the availability of personal advice to consumers?

Availability of personal advice comes down in large part to the number of financial advisers operating in Australia. We have seen this number decline by over 7,000 in the last two years and we expect it to continue to decline over the next few years. It is important to hold onto as many of the existing experienced advisers as possible over the next few years as the number of new advisers coming in to replace those who are leaving is inadequate. More should and could be done to increase the number of new financial advisers coming into the market. We would like to see the Government introduce a funding support model for new entrants, to better enable established practices to appoint professional year candidates.

Financial advice is a business and advice practices need to make a profit to justify staying in business. Many advisers do provide pro-bono advice in certain circumstances for people in difficult situations. In order to afford this, the practice needs to make sufficient money to have the opportunity to provide pro-bono services. In recent years, financial advice practices have been under pressure in terms of both income and expenses. The opportunity to cross-subsidise clients has reduced.

One very good source of advice in the past, that has been severely scaled back, is advice from corporate super advisers. The combination of FoFA, MySuper and the banning of grandfathered commissions has significantly impacted the revenue line for these businesses. Nonetheless, there are still a number of these businesses who, with the right regulatory settings, could play a more significant role in providing financial advice to the members of these corporate super funds.

One area of particular concern that we have is with respect to continuing access to advice for clients who are everyday Australians and only have limited means. In the past, clients of this nature might have been able to continue to access financial advice through a trail commission arrangement. The cost to maintain these arrangements was much less. This is no longer possible, and these clients will need to pay fees if they wish to continue to have access to advice. We believe that there is a need

for thought to be given to how these clients can continue to have access to advice in a way that will generate sufficient income for financial advice practices to make this worthwhile. At present this seems to be a difficult problem to solve.

There will be some who argue that more advice should be provided through call centres and through intra-fund advice. In our view some advice is better than none, although due regard needs to be given to the limitations of these options. Digital advice is also an option, and this might be a good way to introduce people to financial advice, however it is also subject to important limitations.

C1Q2 (g). As an advice licensee, what has been the experience of your advice business using ROAs? Have you found the COVID-19 relief helpful? Do you think we should provide relief to make ROAs more readily available for financial advisers to use as an alternative to an SOA?

We are answering this question as an association, and not as a licensee, however we were advocates for the COVID 19 relief and supportive of the relief that was provided. It was disappointing to hear that the relief was not leveraged as much as we might have expected, and we understand that this might be related to the point that we have raised above about a lack of confidence as a result of high levels of regulatory uncertainty. Licensees were fearful that in the context of surveillance activity in the future, their support of these measures may come back to bite them. We have heard some feedback about the nature of the recent surveillance activity backing up the point about reluctance to do this.

We would like to see these RoA relief measures expanded and continued beyond COVID 19. One area where we see the opportunity for an extension is where the client has remained with the advice practice, however the practice has changed licensee and the original provider of the advice is no longer working with that client. It would be good if, in these circumstances, the client was still eligible to receive an RoA.

We would also like to see ASIC provide more guidance on Records of Advice.

C1Q2 (I). What do you see as the future challenges to providing good-quality affordable personal advice to clients? How do you think industry can best respond to and work through these challenges? For example, are there technological solutions to reduce the cost of providing advice while maintaining (or improving) the quality of advice provided to clients?

We have, to a large extent, already addressed this question above, including through our response to question C1Q2 (e). To summarise our key points, we believe that with the benefit of regulatory reform and increased regulatory certainty, advice processes can be streamlined and non-value adding activity can be removed. We also see an important role for technology in various parts of the process, including with improved data gathering and streamlined administrative processes (i.e. FDS production).

Strategic Advice

Paragraph 44 pinpoints the fundamental problem with the provision of strategic advice that includes a recommendation with respect to a class of product, which is that it is considered personal advice and will require a full Statement of Advice. This type of advice could include, as has been stated, advice with respect to commencing a salary sacrifice contribution. It might also include advice to consolidate superannuation or to commence an investment plan, where no specific product is mentioned. Whilst there needs to be some protections with this type of advice, we certainly do not believe that it should require a full Statement of Advice, and the cost of providing a full SoA will reduce the value in providing stand-alone strategic advice.

C2Q1 Questions About Strategic Advice

We would like to see the requirements related to the provision of strategic advice reduced. It should not be necessary to provide a full Statement of Advice for strategic advice that refers to a class of product, but not a specific financial product. It certainly makes sense to have strategic advice more readily available. It might be that regulatory changes should be made to enable the provision of strategic advice through a Record of Advice. In this way, strategic advice could be provided in a letter form, and the cost to prepare would reduce significantly, and make it more practical to increasingly use strategic advice.

We do not see the provision of strategic advice through a Statement of Advice as a sensible outcome and would therefore suggest that the focus should be on finding an alternative way to provide this type of advice, rather than providing guidance on how to provide it.

Digital Personal Advice

We believe that digital advice has a role to play in the financial advice landscape, however it is unlikely to deliver the full benefits of human based financial advice, such as behavioural change and will also not deliver the same emotional benefits.

Access to digital personal advice may be a good way to introduce Australians to financial advice and lead to them seeking a full financial adviser relationship. We will await the feedback from financial advisers on their experience in digital personal advice.

Other Issues Relating to Access to Affordable Personal Advice

When it comes to the provision of life insurance advice to everyday Australians, the retention of commissions is critical. As discussed in paragraph 39, there is a high level of reluctance to pay fees for financial advice and the research specific to the life insurance space highlights that this a very important issue. Zurich completed research in 2019 that suggested only 8% of clients were prepared to pay more than \$1,000 for life insurance advice. Despite many practices seeking to introduce fees for life insurance advice in recent times, this still only makes a marginal contribution to the cost of providing advice. One important difference with life insurance advice is that not every client ends up being offered insurance, due to health issues. These health issues might not be obvious at the commencement of the advice process, however with stricter underwriting standards, declines or significant premium loadings are not uncommon. Clients do not like to pay fees for advice, but then end out getting nothing in return.

We are concerned that the demands of complying with the Best Interests Duty Safe Harbour steps have become excessive as a result of ASIC Report 515, and the regulatory intervention with the large licensees, that followed the release of that report. Seemingly the complexity of complying with each of these requirements and documenting compliance has resulted in significant issues emerging and the introduction of lengthy checklists and other additional monitoring and supervision steps. As discussed above, we would like to see greater room for reliance on professional judgement. We are conscious that the Hayne Royal Commission has express a preference for the removal of the Safe Harbour, and seemingly if regulatory uncertainty can be addressed, then this might be a preferable option, in the context of the changes that seem to have emerged as a result of ASIC Report 515.

Financial advice licensees and advice practices have been under a lot of cost pressures in recent times. Key to this has been increasing levies for regulators and the cost of professional indemnity insurance. Financial advisers have been required to pay significantly higher fees to their licensees as a result of reductions in grandfathered remuneration for licensees and increasing costs that are

driven in large part by increased compliance requirements. All these additional costs ultimately need to be passed on to clients, making financial advice less affordable. Any measures that will assist in the reduction in the costs of advice practices, will be beneficial in making financial advice more affordable.

One obvious area of rising costs is the ASIC Funding Levy, that has increased so significantly over recent years. It was less than \$1,000 per adviser in 2017/18, however, has increased to \$2,426 per adviser for 2019/20. Seemingly this increase is to a large extent due to the Royal Commission enforcement activity, which is predominantly being taken against large institutions, many of whom have since chosen to exit financial advice. We do not believe that it is appropriate that continuing advisers should pay these costs that relate to the large institutions, and we call on the Government to both provide relief to financial advisers with respect to this increase in the 2019/20 ASIC Funding Levy, and also to fix the inequity in the current model. We would also like to see greater transparency in terms of the costs that are included in the financial adviser ASIC Funding Levy.

Concluding Comments

We would like to once again recognise the importance of this project as it not only acknowledges the challenges of the financial advice profession in being able to provide accessible and affordable financial advice to everyday Australians, but also signals a commitment to take steps to fix it.

We hope that our contribution, along with the input of many licensees and financial advisers, will deliver a sound foundation for further activity and action. Should that not eventuate, then we believe that the Government should consider an independent review to achieve this objective.

We look forward to the path towards the ideal state as we have articulated above.

The AFA welcomes further consultation with ASIC should clarification of anything in this submission be required. Please contact us on 02 9267 4003.

Yours sincerely,



Philip Kewin
Chief Executive Officer
Association of Financial Advisers Ltd