ASPIRE
FINANCIAL CONSULTING

Submission to Quality of Advice Review

Background

I started Aspire Financial Consulting Pty Ltd in 2004 as a firm that provided independent financial advice. I had no clients to begin with, but I did have a strong desire to provide the best advice I could. I applied for and was granted an AFS Licence and was one of only a handful of firms at the time that could use the term "independent". Today, Aspire has around 400 client groups that receive comprehensive advice each year.

It saddens me to think that if I were to try and commence my business in the same way today, it would be almost impossible given the excessive costs that have been introduced in the past 18 years. These include significantly increased professional indemnity insurance costs, complaints scheme memberships, ASIC financial adviser levies and Tax Practitioner Board memberships. These are on top of the indirect costs that come from successive layers of regulation creating both a significant barrier to entry to the profession and distract from what should be our core focus and joy of giving good advice to our clients.

Proposal 3 – Remove Best Interest Duty & Safe Harbor

The Best Interest Duty is a perfect example of legislation which on the surface seems well intentioned but is a disaster to implement. While of course advisers and clients would want advice to be in the client's best interest, who decides what their best interest actually is? Acting in a client's best interest could mean getting the lowest fees, the best returns, the safest portfolio, the most diversified portfolio, the most tax effective portfolio, keeping flexibility in some cases, and locking the money away in others (eg drug addiction or chronic over spenders). Whichever aspect an adviser prioritizes, a lawyer could easily make the argument for another.

The increasing litigiousness of society means that stringent terms like "best interest" can be used as a weapon against advisers in court or complaints schemes and this has resulted in rising professional indemnity insurance premiums, additional emphasis on disclaimers and over-disclosure and a reluctance to provide advice in low value situations. The Safe Harbor Steps are actually not needed if the advice given is genuinely good and in the interest of the client because no reasonable client receiving good advice would want to sue. The purpose of the Safe Harbor Steps are therefore primarily to protect advisers and licensees from lawsuits in the event that the advice is not "best" which is an impossibly high bar.

I support removing the Best Interest Duty and Safe Harbor provisions and replacing them with a requirement to provide Good advice. Having a more realistic advice threshold to reach allows advisers to worry less about being sued or failing a compliance audit, and they can have more confidence giving advice in more situations and for a lower cost. This does not remove consumer protection safeguards available to clients from Poor advice which are still available through the internal and external complaints schemes, courts and professional indemnity insurance.

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Unfortunately, Proposal 3 would only remove the legislated Best Interest Duty for current financial advisers. Of course, there is concern that if we replace "Best Interest" with "Good Advice" in legislation but still require "Best Interest" in the Code of Ethics that all existing financial advisers (relevant providers) must abide by, the improvement may only benefits banks, super funds and insurers and not actual financial advisers. If existing financial advisers are still subjected to a Best Interest Duty under the Code of Ethics, it is very likely that risk adverse licensees would still require the best interest duty to be demonstrated using established precedents which effectively means still following the Safe Harbour Steps in practice if not in name. We should therefore ensure that the Code of Ethics is emphasized that it also is subject to a "reasonably likely" threshold for improving the client outcome to lessen this risk.

Proposal 4 & 5 – Requirement to be a Relevant Provider

An almost constant theme in the last 10-15 years was to make financial advisers into true professionals. There have been extreme changes for financial advisers and their businesses as a result and in the last few years particularly, nearly half of financial advisers have been driven from the industry. This obviously creates challenges on how fewer advisers can provide good advice to a growing population for an affordable price.

I have significant concerns however about the proposal for personal advice to be given by people who are not relevant providers but instead work as employees for banks, insurers or super funds. If most clients were to begin receiving their advice through these channels, it would mean people receive personal financial advice in regards to non-basic products such as superannuation and insurance from a class of people who:

- Do not need a Relevant Degree
- Do not need to comply with Code of Ethics and Best Interest Duty
- Do not need to register with Tax Practitioners Board
- Do not contribute to ASIC funding via Financial Adviser Levy
- Are conflicted by being employees of the fund/product they recommend
- Are not financial advisers

It was previously deemed essential that people giving advice were qualified and regulated. This proposal to allow advice to be given by non-qualified advisers will also encourage indirect collective charging of fees (to avoid the compliance requirements of relevant providers) over direct charging of fees. Indirect charging of fees does not increase transparency and makes it less likely a client would ever seek advice from a provider who might recommend a different product if appropriate.

Having said this, if we are to allow advice from non-relevant providers due to the need to make advice more accessible given declining adviser numbers, I would suggest the following:

- Ensure the non-qualifying providers are not held out as Financial Advisers. They should instead have some other term such as coach, counsellor or representative to avoid confusion.
- Require a AFS Licensee with non-qualifying representatives to offer simple but personal advice but with a need that the representative work under the supervision of a qualifying adviser (eg 2-3 representatives per qualifying adviser).
- Ensure that the remuneration of non-qualifying representatives is salary based and not commission or performance based.

Having a requirement for a qualifying provider to supervise every 2-3 representatives would firstly mean that we lessen the risk to consumers given it is very difficult to understand the interactions between superannuation, tax, estate planning, Centrelink, insurance etc that a single decision can impact without appropriate education, training and experience. Secondly, the requirement for qualifying advisers to supervise would also mean there is an incentive for those representatives to undertake the study to become a qualifying adviser themselves for their career progression which helps to rebuild the number of advisers in the profession.

If we were to allow advice to be given by non-qualified providers in order to increase accessibility and reduce costs, a level playing field would mean all licensees should be able to offer advice via this pathway, not just banks, super funds or insurers. There ideally should be some role for new entrants to the profession where they can be useful and provide simple advice regardless of who they work for, particularly if the need for paraplanners is reduced with the abolition of the compliance focused SOA and ROA which has traditionally operated as their learning ground.

This leads to the other issue that as the owner of a financial advice firm, I could hire a school leaver who aspires to become a financial adviser one day. However, before being allowed to give any advice to my clients, that person would need to complete a 3 year full time university degree and a professional year which means up to a 4 year process minimum. If they are working full time and studying part time, the process could be as much as 7 years before they can give advice. If that person was instead hired by a super fund without the need for being a relevant provider, they could be giving advice in the first year after some initial company training. It is unreasonable to think that a young person is capable of good advice working for a super fund but incapable of good advice working for a professional financial advice firm, particularly if they are paid as an employee and provided training and supervision in both situations.

It should also be noted, that if the requirements for a Statement of Advice are removed, existing financial advisers would likely be able to service a larger number of clients and cater more easily to simple advice needs. Furthermore, some ceased advisers may choose to return. This means there may not be a need for as many unqualified advisers as currently thought. Instead, we would just need to improve the pathway for new entrants and make sure financial advice is seen as a desirable profession.

Proposal 6 – Collective Charging of Fees

The Consultation Paper discusses amending the Sole Purpose Test to allow superannuation funds to collectively charge fees for the provision of personal advice to a member. In the past, super funds and investment products would collect a standard fee from all clients and pay part of this to advisers as a trailing commission so that advisers would provide personal advice to their members. This was considered a significant conflict of interest and as an independent adviser, I am happy for those days to be gone.

If super funds are allowed to provide personal financial advice to members but have the cost of that advice spread across multiple members including members who did not receive advice, it will create added cost or lower returns to the members not receiving the advice and also an uneven playing field for different advice types. A client seeking personal advice from an external adviser (Relevant Provider) is disadvantaged because they bear the full cost themselves whereas a client seeking personal advice in-house from their superannuation trustee has their cost of advice subsidized by other members. This is perceived by most members as "free" advice which indicates that there is very little transparency about the true cost and how it is funded.

After so much effort in recent years raising the bar on education standards, passing a competency test, removing conflicts of interest and increasing professionalism, the collective charging of fees so that members cannot see the cost, combined with the simultaneous removal of full disclosure advice documents and removal of the need for advice to be given by a qualified relevant provider is almost certain to lead to:

- Vertical integration
- Conflicted advice because in-house advisers would only ever be trained on or recommend in-house products
- Devaluing financial advice as many people will now think it is free
- The majority of people will end up getting advice from people who don't require the current standards of education, experience or code of ethics
- True financial advisers (relevant providers) will essentially be in competition once again with super funds offering in-house personal advice.

Whilst there may be a role for collective charging to cover extremely simple advice conversations via a call center on limited issues, if a superannuation fund provides scheduled appointments to provide personal advice to members, they could at the same time as the meeting obtain permission (written or verbal recording) to deduct a fee from the member's superannuation balance for the advice received to cover the cost without the need for collective charging.

Proposal 7 – Advice Fees in Superannuation

Currently, the Sole Purpose Test prevents the charging of fees from a superannuation account except for advice that specifically relates to that fund. Unfortunately, when advice that covers multiple areas, this creates ambiguity around what proportion of the advice and cost relates to the super fund versus other areas. It also might result in situations where an adviser feels unable to give advice that would benefit the client.

Some examples might include:

- A client gets a pay rise and wants advice whether to salary sacrifice the extra income to the super fund or pay it onto their mortgage. If we recommend salary sacrifice, the fee for the advice could be deducted from super but if we recommend pay to the mortgage it is less clear. However, paying the mortgage faster could in some situations lead to a better outcome for the client in retirement which is the same ultimate goal as superannuation.
- An ongoing client receives advice each year in regards to their superannuation and pays a fee from the super fund for this advice. They recently lost their job, have no spare cash and need help applying for Jobseeker payment and reviewing their budget. An adviser might be willing to do this for an existing client at no extra charge due to the existing relationship, but this means that part of the fee paid from the super fund could be argued to have paid for the advice received personally which violates the Sole Purpose Test.
- A married couple has a primary breadwinner with a $1 million superannuation balance and a stay at home spouse that has no income and a $1,000 superannuation balance. If an annual fee of $4,000 was apportioned between them, there might $3,900 to the first client and $100 to the spouse. It creates extra compliance to obtain a second consent from the spouse for such a small amount. Instead, it would be more efficient to charge the entire amount to the primary breadwinner and waive the fee for the spouse.

Clients receiving an allocated pension from their superannuation or over age 65 have already met a condition of release and have unrestricted access to their funds. They theoretically should be allowed to authorize a fee for personal advice from their balance in the fund even if the advice relates to assistance with the age pension, estate planning arrangements or aged care.

If the goal is to reduce duplication of compliance, make it easier for clients to know the total cost that they pay for advice and provide better outcomes for clients, it would be beneficial to amend the Sole Purpose Test to allow incidental advice (eg under $300). Otherwise, an adviser receiving a fee solely from a client's super fund may feel unable to offer advice on making a spouse contribution to the spouse's super fund since this would otherwise need to be charged separately and the extra compliance and costs might wipe out the $540 tax saving.

Proposal 8 – Fee Disclosure Statements (FDS)

Providing a Fee Disclosure Statement is a time consuming process if done correctly because it requires accounting for each service that was available to a client and whether they actually received it. ASIC Report 636 (November 2019) found that 80% of FDS that they reviewed "did not include accurate information about the services clients were entitled to receive." If advisers were genuinely attempting to comply (ie they prepared a FDS) but 80% failed to do so properly, this would indicate a problem with what is being asked of them. Unfortunately, rather than recognizing the problem, the government in 2021 went further and required an <u>Enhanced</u> Fee Disclosure Statement that is even more onerous.

In the context of clients who are consenting to the payment of fees each year, they should already have a good grasp on what service they received in the prior 12 months and whether they received sufficient value to continue the relationship. I agree that these documents serve no good purpose and should be removed. Most ongoing client relationships will have a similar service offering each year and a consent form that summarizes the fees for the coming 12 months and the services that are to be provided should be sufficient to focus client attention on the value of the advice they receive.

As is the case currently, if the consent form needs to be signed annually, there should still be a grace period of a few months around the anniversary date to allow the relationship to continue uninterrupted if a client review is early or late one year due to business or client circumstances like holidays, sickness etc.

Proposal 9 - Records of Advice (ROA) & Statements of Advice (SOA)

In the situations where it is allowed, a Record of Advice can be a very useful tool and doesn't need to be as onerous as many large licensees believe. Unfortunately, it has several major shortcomings. These include not being allowed when there is a significant change in circumstances or the basis for advice. Some examples might include:

- A husband and wife who are existing clients are in the middle of a divorce. A recommendation to hold (or change) investments while we wait for more clarity on what division of assets will occur or what the future goals of each partner might be is still considered advice, yet because there is a significant change in circumstances, a Record of Advice is not available but it also is premature to do a new SOA.
- Setting up a new super account for a retiree to receive employer contributions if they got bored in retirement and started some casual work.
- Setting up a new super account for a child of a client starting their first job.

Terminology such as whether the basis for advice or relevant circumstances are "significantly different" when determining whether an ROA can be used or an SOA is also arbitrary. Having a single set of rules or principals for all advice provided would result in consistency across all advice situations.

A requirement to keep complete records of advice provided means that for simpler advice situations, a file note or an email would theoretically be sufficient evidence of the advice. Many advisers like myself would still likely provide a comprehensive financial plan for new clients as they are useful for establishing the circumstances, key strategies, benefits, risks and costs but thereafter, most clients would likely get more value from a concise file note or email summary of discussions and recommendations than they would from a compliance focused SOA or ROA.

The risk is also low for ongoing clients if the majority of advisers have moved to fixed fees or a retainer fee structure so there should be minimal conflicts. Of course Standard 3 and Standard 5 of the Code of Ethics requiring advisers not to act if they have a conflict of interest, to act in the interests of clients and to ensure that clients understand the advice also still apply.

Other Items

If we are to provide the best possible advice in a cost efficient way, having easy and efficient access to accurate client information is essential for providing good advice and reducing costs. This would be greatly enhanced with the following changes:

- Have a dedicated support line that financial advisers can use to contact Centrelink and discuss client situations. Currently, financial advisers and their staff need to wait on hold for hours at a time to sort out Centrelink issues for their clients. If they ring on behalf of multiple clients, we sort out a single client issue and then get put back in the queue before dealing with the next client.

- Have dedicated support line or online access to the Australian Tax Office. Currently only accountants can access client information regarding tax but the ATO also holds much information about clients that financial advisers need such as contribution limits, catch up concessional contribution options, bring forward rule position, lost super funds, First Home Super Saver Schemes etc. Having the ATO build a portal that advisers can access upon client authorization would make collecting this data much more efficient and timely and improve client outcomes.

Conclusion

Whilst my initial impression of the proposals was favorable, particularly around the removal of Statements of Advice and streamlining the requirements for consent, I am concerned that the creation of a two-tiered advice system risks creating an unlevel playing field that is heavily weighted against the relevant providers. The aspiration however should be that clients receive the best advice available where possible and the focus should be on removing the shackles and enhancing the ability of the best advisers to give advice to as many people as possible rather than simply lowering the bar so that most people get advice from an unqualified source.

Yours faithfully,
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