

23 September 2023

Quality of Advice Review Secretariat  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

## RE: QUALITY OF ADVICE REVIEW CONSULTATION PAPER - SUBMISSION

I am the principal, owner, and Responsible Manager of Richmond Private Wealth, AFSL 461605. Richmond is a small Financial Advice practise with about 150 active clients and 9 staff. We have 5 advisers, and all clients are charges according to the services rendered on a forward 12-month engagement basis.

### Intended outcomes

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

No, I don't. However, some regulatory change is required to remove or modify some obligations. Regulatory change should be focused on obligations which are increasing the cost to provide advice, and which add little to the quality of advice and protection of consumers.

There are two headline proposals which I see being hugely significant and which will greatly impact the provision of personal financial advice if implemented:

- Replace the best interests obligation in the Corporations Act with a good advice obligation.
- Remove the obligation to meet professional standards (Code of Ethics, higher education and training standard) for some advice provided by banks, fund managers and superannuation funds.

I have read the commentary in the consultation paper and have given the two proposals a lot of thought. I recognise the need to reduce the cost of providing advice and to make it more accessible. There is no doubt these two proposals will achieve this however in my view, they come with too greater risk of poor consumer outcomes. Importantly, I also see them being contentious and difficult to achieve in the short term.

My preference is the retention of the best interests obligation with modification. It should focus on consumer outcomes as a principles-based obligation rather than the current process and conduct driven approach. This can be achieved by removing the safe harbour steps as was suggested by the Royal Commission. I would also improve the wording of the core best interests obligation and remove the three associated obligations (appropriate advice, warning for incomplete or inaccurate information and prioritise the interests of the client) to leave a simple best interests obligation.

I believe this will reduce regulatory uncertainty and the cost to provide advice. It will also improve the quality of advice and consumer protection.

The consultation paper includes a number of proposals which are less contentious but still important and worthwhile to reduce the cost of advice and make it more accessible. They include the proposals for Fee Disclosure Statements, the Financial Services Guide and Target Market Determinations. I support these and they little increased risk of poor outcomes for consumers. I also expect they can achieve broad support and be implemented relatively quickly.

The other significant proposal is the removal of the obligation to provide a Statement of Advice for personal financial advice. I accept that SoAs are too often overly long, poorly written and of limited relevance to clients. They are often not read or understood by clients and are of little direct benefit to them. Nevertheless, I believe these issues should be addressed rather than simply remove the obligation to provide a SoA. I still have belief that SoAs can and should be useful documents for consumers and protect them from poor outcomes.

The SoA improvements can be achieved with a better understanding of the existing regulatory requirements and greater investment by advice providers in the development of smart solutions. Service providers such as legal advisers, compliance consultants, licensees, professional bodies, and financial planning software need to do more to reduce the cost of advice and to improve the delivery of advice. ASIC also has an important role to play. The recent initiative of the Financial Planning Association to develop a video SoA is an example of what can be done.

I have set out in this submission what I would like to see changed. My proposals will not achieve the significant reduction in the cost of providing advice that the 11 proposals in the consultation paper will achieve. I do however believe that they strike a better balance between improving access to financial advice and consumer protection. They are also less contentious and could be implemented relatively quickly.

I am concerned that the opportunity to make valuable and worthwhile change for professional financial advice practices and consumers will be lost if the focus remains on the two headline proposals. I would like to see priority over the next 3 months given to the proposals which are likely to proceed. The two headline proposals should be separated out with more appropriate timeframes (ie significantly longer) for consultation and final recommendations.

#### **What should be regulated?**

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

**a) reduce regulatory uncertainty?**

Yes, however I do not support the proposal as I believe the current definition is a more appropriate definition of personal advice and the proposed change would not provide sufficient improvement to reduce regulatory uncertainty.

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

I do not believe the proposed change would by itself facilitate the provision of more personal advice to consumers. This outcome would only be achieved if the other proposals relating to good advice, relevant providers and SoAs were to proceed. I do not agree with these other proposals.

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

As above.

**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?**

I am not familiar with general consumer protections however my basic understanding is that they provide significantly less consumer protection than the general licence obligations per s912 of the Corporations Act. I do not support the proposal as the existing regulatory settings for general advice are reasonable and appropriate.

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

The existing regulatory settings should be maintained.

**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?**

I believe the replacement of the best interest obligations with the obligation to provide 'good advice' will significantly reduce the quality of advice provided to consumers. I have provided further commentary on this below.

**b) the time and cost required to produce advice?**

The time and cost to provide advice would be reduced however the increased risk of poor consumer outcomes outweighs this benefit.

**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?**

Yes, this would be the case however the increased risk of poor consumer outcomes outweighs this benefit.

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

Yes, this would be the case however the increased risk of poor consumer outcomes outweighs this benefit.

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

**a) limited advice?**

Not just for limited advice but for all advice, I believe there needs to be a better understanding of the existing regulatory requirements and greater investment by advice providers in the development of smarter solutions. Service providers such as legal advisers, compliance consultants, licensees, professional bodies and financial planning software need to do more to reduce the cost of delivering limited advice. ASIC also has an important role to play.

**b) digital advice?**

As above

**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?**

I believe narrowing of the application of the professional standards will significantly reduce the quality of advice provided to consumers.

**b) the affordability and accessibility of financial advice?**

The affordability and accessibility of financial advice would be improved however the increased risk of poor consumer outcomes outweighs this benefit.

**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?**

I do not believe the general licence obligations are sufficient to ensure the quality of advice provided to consumers is maintained at an appropriate standard.

**a) If not, what additional requirements should apply to persons who are not required to be relevant providers?**

The application of the professional standards should not be reduced.

**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?**

I do not have sufficient knowledge or experience in this area to comment.

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

As above.

#### **Disclosure documents**

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

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

The regulatory burden will be reduced for those advice practices operating under an ongoing fee model. It should however be recognised that the existing regulations already facilitate the annual engagement model being proposed and that many advice providers already operate under this model.

A significant cost for professional financial advisers has been the double up of client fee consent obligations for the advice provider and product provider. Clients sign an annual engagement with their advice provider which sets out services and fees they pay. They must also sign a fee consent with the product provider for those same fees to be deducted from their account. It is not clear to me whether the proposal will address this duplication. I have addressed this in my proposals further below.

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

The retention of an annual consent obligation provides a high and appropriate standard to protect consumers.

**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?**

The time and cost to provide advice would be significantly reduced however I believe the increased risk of poor consumer outcomes outweighs this benefit. I see better options as per my proposals below.

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

Statements of Advice should be clear and concise and provide consumers with an understanding of the advice being provided. They should also provide other readers (ASIC, AFCA and licensees) with the same understanding. This would reduce the risk of poor consumer outcomes. I believe the existing laws allow sufficient flexibility in the delivery and content of the SoA.

I accept that SoAs are too often overly long, poorly written and of limited relevance to clients. They are often not read or understood by clients and are of little direct benefit to them. Nevertheless, I believe these issues should be addressed rather than simply remove the obligation to provide a SoA.

**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?**

This will reduce the regulatory burden and the cost of providing advice and will be helpful. It will not deliver a significant cost saving and will have little impact on the accessibility of advice provided by professional financial advisers.

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

For professional financial advisers, the information in the Financial Services Guide is now largely covered in the initial client engagement (eg services and fees) and on the practice website (eg complaints handling). I do not see any risk of increased consumer harm in adopting this proposal.

Advice providers other than professional financial advisers should still be required to provide a Financial Services Guide. It contains important information, and it is unlikely that consumers would access a website at the time the advice is provided.

**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?**

I don't believe they will have any impact. A professional financial adviser must provide advice in the best interests of their client and it is extremely unlikely they would recommend a financial product where a client is outside the target market. In the rare cases where they report a significant dealing, it is then highly unlikely there would be any impact on the design and development of the financial product.

**b) target market determinations?**

As above

## **Transition and enforcement**

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

The two headline proposals are a substantial change from the current laws. I would be surprised if they can achieve the support they require to proceed and if this support is achieved, I don't see that they could be implemented in a short time period. I see them being overly ambitious for this review.

I am concerned that the opportunity to make valuable and worthwhile change for professional financial advice practices and consumers will be lost if the focus remains on the two headline proposals. I would like to see priority over the next 3 months given to the proposals which address the recommendation of the Royal Commission and are likely to proceed. The two headline proposals should be separated out with more appropriate timeframes (ie significantly longer) for consultation and final recommendations.

### **My Proposals**

I have set out below what I'd like to see changed. They will not achieve the significant reduction in the cost of providing advice that the 11 proposals in the consultation paper will achieve. I do however believe that they strike a better balance between improving access to financial advice and consumer protection. Importantly, I suggest they also have much more likelihood of achieving consensus and being implemented relatively quickly.

1. Retain the core best interests obligation s961B(1) with improved wording: provide advice which is in the best interests of the client. This is a principles-based standard which continues to be appropriate for personal financial advice.
2. Remove the safe harbour steps s961B(2). Their removal was suggested by the Royal Commission. These are prescriptive process-based rules which reduce the effectiveness of the core best interests obligation. Their removal would increase consumer protection, reduce the cost of providing advice and make advice more accessible.
3. Remove the three obligations which are associated with the core best interests obligation ie provide appropriate advice s961G, provide a warning for advice based on incomplete or inaccurate information s961H and prioritise the interests of the client s961J. These provide little consumer protection over and above the core best interests obligation.
4. Retain the obligation to provide a Statement of Advice for personal financial advice. I accept that SoAs are too often overly long, poorly written and of limited relevance to clients. They are often not read or understood by clients and are of little direct benefit to them. Nevertheless I believe these issues should be addressed rather than simply remove the obligation to provide a SoA. I still have belief that SoAs can and should be useful documents for consumers and should protect them from poor outcomes. The existing laws are not an impediment to achieve this outcome.

The SoA improvements can be achieved with a better understanding of the existing regulatory requirements and greater investment by advice providers in the development of smart solutions. Service providers such as legal advisers, compliance consultants, licensees, professional bodies and financial planning software need to do much more to reduce the cost of advice and to improve the delivery of advice. ASIC also has an important role to play. The recent initiative of the Financial Planning Association to develop a video SoA is an example of what can be done.

5. As proposed in the consultation paper, remove the Design & Distribution Obligation for professional financial advisers to identify and report significant dealings for Target Market Determinations. This obligation does not provide added consumer protection and is unnecessary. The removal would reduce the cost of providing advice and make advice more accessible.

6. As proposed in the consultation paper, mandate an annual engagement for advice providers that charge recurring fees and remove the Fee Disclosure Statement obligation. Annual engagement provides a high and appropriate level of consumer protection. The removal would reduce the cost of providing advice and make advice more accessible.

7. Remove the obligation for product providers to obtain annual fee consent from clients. This is a double up of the advice provider obligation. If necessary, replace it with an obligation for product providers to check a sample of annual engagements established by the advice provider.

8. As proposed in the consultation paper, remove the obligation for professional financial advisers to provide a Financial Services Guide. The information required by clients is covered in the initial client engagement (eg services and fees) or on the practice website (eg complaints handling). Advice providers other than professional financial advisers should still be required to provide an FSG as it seems highly unlikely that a client would refer to a website at the time of advice being provided.

9. Retain the existing personal advice definition which is an appropriate definition of personal advice and retain the existing regulatory settings for general advice which are reasonable and appropriate.

#### **Other Comment**

□ The recommendation from the Royal Commission (2.3) was very clearly to review the quality of financial advice: In three years' time, there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. Among other things, that review should consider whether it is necessary to retain the 'safe harbour' provision in section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed.

The previous government initiated the review and announced that it would: consider whether measures that have been implemented by government, regulators and financial services entities have improved the quality of financial advice, whether further reforms or other changes are needed, and whether any measures or obligations are redundant or can be streamlined. All entirely consistent with the Royal Commission recommendation. They then added: The review will also consider how to ensure the regulatory settings support Australians getting access to affordable financial advice.

Now we have a consultation paper which has the title of 'Quality of Advice Review' but as per the first two sentences: The objective of the Quality of Advice review was to make advice more affordable and therefore accessible to more Australians. That doesn't look like the objective of the review recommended by the Royal Commission.

□ The Code of Ethics and higher education/training standards will still apply to professional financial advisers. Significantly, this means that professional financial advisers will still need to meet a best interests obligation.

The consultation paper does however propose that the Code of Ethics and higher education/training standards would not apply where financial advice is provided by a corporate entity and there is no fee paid by the client for the advice or commission received by the advice provider. There can also be no ongoing advice relationship with the client.

Greater obligations would therefore apply to professional financial advisers compared to some advice provided banks, fund managers and superannuation funds:

- o Professional financial adviser: advice in the best interests of the client, high education/training standards, less conflicts of interest, formal client engagement, advice document.
- o Other advice providers: good advice, lower education/training standards, conflicts of interest, no client engagement, no advice documentation.

The consultation paper argues that the reduced obligations will not reduce the quality of advice or increase the risk of poor consumer outcomes. I do not accept this position.

- If reduced obligations are introduced for some personal financial advice, then it should not be based on whether the advice provider is an individual or corporate or whether the advice provider charges a fee /receives a commission for the advice.

I see very little basis for the view that advice without a fee is being provided with less risk of poor consumer outcomes. The product provider will often realise a benefit from the advice even though there is no direct fee. That may be additional fees as new clients/funds enter their product or the retention of existing fees.

The outcome is that some providers with a beneficial interest in a financial product will have lesser obligations (Code of Ethics and higher education/training standards do not apply) compared to a professional financial adviser with no interest in the financial product being recommended. I suggest the exact opposite is the preferred outcome.

I also see no basis for the argument that there is less risk of poor consumer outcomes where financial advice is provided by a corporate entity or robo-advice provider rather than a professional financial adviser. Again, I can see an argument for the contrary position given the close, ongoing and trusted relationship between a client and their professional financial adviser.

- There is much commentary in the consultation paper that the existing best interests obligation takes a process and conduct based approach whereas a principles-based approach is required. According to the paper, there needs to be a greater focus on the quality of advice and the outcomes of the advice as opposed to process and conduct. I agree.

The consultation paper proposes that the existing best interests obligation should be replaced with a good advice obligation. My view is that it would be better to retain the existing best interests obligation with adjustment as per my proposals above.

With best interests becoming a principles-based obligation, I don't see the need to move to a good advice obligation.

The consultation paper defines good advice as advice that would be reasonably likely to benefit the client. I would define best interests advice as advice that is in the best interests of the client.

I maintain a view that advice in the best interests of the client is the appropriate standard to be achieved. I also take a view that a best interests obligation can be as measured just as objectively as a good advice obligation provided the process and conduct based rules are stripped away.



□ Improving access for consumers to simple and one-off personal advice is a key driver for the proposals set out above. I disagree with the two headline proposals however I do recognise there is a clear need to improve the affordability and accessibility of simple and one-off advice.

I am not convinced that it is particularly difficult under the current laws to meet the best interests obligation and provide an SoA for simple and one-off personal advice. This is particularly the case where an advice provider such as a superannuation fund or bank frequently provides this type of advice and has the resources to build processes and systems to efficiently deliver the advice.

As above, I see these outcomes being achieved through a better understanding of the existing regulatory requirements and greater investment in the development of smart solutions.

□ If the two headline proposals are adopted, I can see it leading to a two-tier advice system with professional financial advice and other financial advice.

If there is to be a two-tier system, then the term professional financial advice should become a restricted term only available to advice subject to the higher professional standards (Code of Ethics and higher education/training standards). Consumers should also be informed when they receive anything less than professional financial advice:

o We have not provided you with professional or independent financial advice. We have only considered our in-house financial products. This means we may not have recommended the best strategies or products for your circumstances.

□ Demand for the services provided by professional financial advisers has never been greater and it continues to grow. This is a consequence of the improvements they have made over the last decade to improve the quality of their advice and to deliver greater value to their clients. It is also a consequence of poor-quality advice and bad practices leaving the industry.

There are now many more positive experiences and fewer bad experiences for clients to share with their friends and family. Professional financial advisers are doing well due to increased trust and confidence in financial advice. New clients are overwhelmingly coming from referrals provided by very satisfied clients.

These hard-fought gains will be lost if the quality of advice is compromised. If trust is lost, fewer Australians will seek out and get the value from personal financial advice. The quality of advice and not just the cost of advice is important in ensuring more Australians receive financial advice. I don't feel that this has been given sufficient consideration in the proposals that have been made.

Yours Sincerely



**Scott Stanley**

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