



**Submission in response to ALRC's
*Financial Services Legislation:
Interim Report A (ALRC Report 137)***

Background

OpenInvest is a Melbourne-based fintech investment platform that enables its partners to offer managed portfolios to investors, either via the OpenInvest marketplace or via their own online solution, alongside informative and engaging content. This enables retail consumers to choose a professionally-managed portfolio, via a general advice solution.

Through OpenInvest's innovative technology, investors at all levels are able to obtain professional assistance in a low-cost, digital environment.

Submission

We appreciate the ALRC's interest in the legislative structure which regulates the Australian financial services sector. We are particularly aligned with the ALRC's proposal to promote clarity in the regulatory position as it relates to financial product advice.

Set out below are a few points of discussion where we felt particularly aligned with your Report, and we offer some of our own perspective on these areas. I'd be very happy to engage with ALRC to discuss further, present additional details and demonstrate how OpenInvest technology is today providing retail investors with access to professionally-managed investment portfolios.

1. Though it is not specifically addressed in the Report, we note that the ALRC has recognised the policy reform afoot which is geared towards making advice more affordable for end consumers. We would regard any such proposal as inexorably linked to your review of defined terms such as 'financial product advice', 'personal advice' and 'general advice'. One comment we would make here is that policy reviews have been looking at the issue through the wrong lens: making advice cheaper/easier, rather than the broader: how do enable more consumers to access professional assistance in the areas they need it. "Making advice cheaper/easier" is a worthwhile objective, but it is only one part of the range of solutions; stating it is the primary goal presupposes that consumers can only obtain professional and relevant assistance via personal advice.
2. We concur with the Report's *Proposal A4* to consolidate exclusions and exemptions from the definition of 'financial service'. We suggest that a better defined and designed framework of exclusion from the regulatory burden which currently applies to the sector, would create an environment which would enable those who want help and assistance to find it readily from competent, qualified professionals.
3. Accordingly, we support the Report's call at 11.91 for Australian legislators to draw instruction from the *FMC Act (NZ)* and in particular, the exclusion that legislation holds out to duly qualified accountants. Our firm belief is that retail consumers would (and should) benefit from their accountants being able to speak more freely about where they might be able to find suitable assistance with their investments. We contend that in providing accountants with such freedom and autonomy to talk to their clients, those end-consumers stand to enjoy far better outcomes than what so many self-directed SMSFs are currently achieving.
4. We can explain our recommended approach in more detail, and we also note that it is currently possible for unlicensed accountants to set out various possible options in the form of "Factual Information", yet many accountants understandably remain apprehensive about entering into such conversations for fear they may inadvertently stray into what is subsequently determined as constituting financial advice.

We have created just such a Fact Sheet, designed for accountants to share with their SMSF clients. See the <i>Accountants</i> section of our website, here , which explains how accountants can use such a document to inform clients of possible investing options.
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5. We applaud the ALRC for including in the Report, considerations regarding technology and the inclusion of appropriately supportive language in regulatory reform. The position raised at 6.60 is central to our position and we would argue that part of the problem in the shortcomings seen in legislative drafting is that digital solutions are not seen as

mainstream enough as yet (although there is a ‘chicken-and-egg’ element to this). We contend that ‘technology-neutral’ language may not be sufficient in the modern era and that a higher regard for the impact of emerging technology and digital solutions in the financial services sector will be essential for Australia’s regulatory framework to be effective. Effort from bodies such as the ALRC to champion progress in the area will be central to achieving meaningful change in this area.

6. An example of this clash between the language used in the legislation and how a retail consumer might see a digital solution such as OpenInvest is this: we offer our solution using the legislative term “general advice”, and yet no consumer would understand that is what they are getting. That is, we don’t “advise” them of anything: we offer *access* to various investment portfolios, and allow them to select what they feel is right for them. If they do so, they obtain a professionally-managed portfolio. We would argue further that in terms of common usage of language, their portfolio manager is not “advising” them either.
7. As per the above point, we currently don’t provide any tools or guidance to assist someone in choosing the portfolio category they feel might be right for them. We have taken this position deliberately so that we are not delivering personal advice, given doing so would impose significant regulatory burdens and risks. However, were the law changed to enable technology to provide an allowed “guidance” (short of personal advice), then we would certainly do so.
8. We believe that with the right legislative changes, technology can enable the provision of credible and expert professional portfolio management to a much higher percentage of Australia’s retail consumers (we have designed and built OpenInvest for this very scenario). We have made similar remarks in other submissions (to ASIC and to the FSC). If ALRC is interested in understanding our views and seeing how our technology platform delivers managed portfolios to retail investors, I’d be very happy to meet to discuss in greater detail.

Regards,
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