FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

30 June 2022

The Hon. Justice S C Derrington
President
Financial Services Legislation
Australian Law Reform Commission
PO Box 12953
George Street Post Shop
Queensland 4003

Email: financial.services@alrc.gov.au

Dear Justice Derrington,

Re: Australian Law Reform Commissions Review of the Legislative Framework for Corporations and Financial Services Regulation – Background Papers FSL5 and FSL6

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide this submission to the Australian Law Reform Commission's (ALRC) Review of the Legislative Framework for Corporations and Financial Services Regulation in response to the following Background Papers:

- Risk and Reform in Australian Financial Services Law (FSL5)
- Reflecting on Reforms – Submissions to Interim Report A (FSL6)

Risk and Reform in Australian Financial Services Law (FSL5)

The FPA supports the ALRC's findings about the architecture and historic regulatory philosophies of policymakers discussed in *Background Paper Risk and Reform in Australian Financial Services Law (FSL5)*. For example:

> *"The architecture of Chapter 7 of the Corporations Act has struggled to adapt to new policy positions rooted in shifting regulatory philosophies. …..policymakers have rarely been willing to undertake the difficult task of reviewing and revising earlier policies and regulatory philosophies. Instead, new law has been built upon the old. This has been a significant source of legislative complexity — and one which, under the current legislative architecture, drafters alone can do little to reduce."*[1]

As stated in the FPA's submission to the Quality of Advice Review:

[1] Australian Law Reform Commission, Risk and Reform in Australian Financial Services Law (FSL5), 21 March 2022, page 2

> *"This has led to the regulations of today being an excessive set of requirements that are expensive to meet, compliance-driven, and difficult to navigate..... There is significant duplication, complexity, and gaps that contribute to the accessibility and affordability issues for consumers."*[2]

Maintaining the status quo of the Corporations Act 2001 in addition to the professional standards for financial planners just adds to the regulatory complexity by building new law upon the old without reviewing or revising earlier policies and regulatory philosophies. This is the main driver of the affordability and accessibility issues consumers face when seeking quality financial advice.

Attachment 1: *FPA key themes and policy positions for Quality of Advice Review* contains clear updated recommendations on addressing the regulatory issues facing the financial planning profession under the following five key themes:

1. Recognising the professionalism of financial planners
2. The client
3. Regulatory certainty
4. Sustainability of profession and practices
5. Open data and innovation

The FPA has recommended priority policy positions to embed these key themes into the regulatory landscape and overcome the affordability and accessibility issues impacting quality financial advice for consumers.

Reflecting on Reforms – Submissions to Interim Report A (FSL6)

The FPA welcomes the release of *Background Paper FSL6: Reflecting on Reforms – Submissions to Interim Report A* and looks forward to continuing our participation in the Review consultation process including providing a formal response to the following pending consultation papers referred to in FSL6:

- Interim Report B on legislative hierarchy and design, including the ALRC's consideration of:
  - drafting issues relating to disclosure
  - structure of the Corporations Act including exclusions, exemptions and notional amendments - proposal: move to legislation and rules (updated)
  - the design of the replacement power to grant exemptions, as well as the role of individual relief powers
- Interim Repot C on the structure of Chapter 7 of the Corps Act, including the ALRC's consideration of the definitions:
  - 'financial product' and 'financial service'
  - 'credit', and the potential consolidation of relevant legislation

[2] See Attachment 1: FPA key themes and policy positions for Quality of Advice Review – excerpt from submission dated 10 June 2022

- ALRC's consideration of the retail client definition, and its alignment with other statutory concepts, in future Inquiry reports
- Additional ALRC background papers on the:
    - potential role and framing of an outcomes-based standard for disclosure
    - simplification of unconscionability and misleading and deceptive conduct and related provisions

The matters under examination by the ALRC's Review are key drivers of the affordability and accessibility issues impacting quality financial advice for consumers being considered by the Quality of Advice Review.

We urge the ALRC to consider the FPA's QOAR recommendations in Attachment 1 as part of its ongoing Review of the Legislative Framework for Corporations and Financial Services Regulation.

The FPA would welcome the opportunity to discuss with the Commission the issues raised in our submission, and our recommendations provided to the Quality of Advice Review.

If you have any questions, please contact me on [redacted] or [redacted]

Yours sincerely

[redacted]

Ben Marshan CFP® LRS®

Head of Policy, Strategy and Innovation
Financial Planning Association of Australia[3]

[3] The Financial Planning Association (FPA) is a professional body with almost 12,000 individual members and affiliates of whom around 10,500 are practising financial planners and nearly 5,000 are CFP professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first policy pillar is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of the Future of Financial Advice reforms.
- The FPA was the first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices.
- We have an independent Conduct Review Commission, chaired independently, dealing with investigations and complaints against our members for breaches of our professional rules.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC 'gifted' this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.

ATTACHMENT 1: FPA KEY THEMES AND POLICY POSITIONS FOR QUALITY OF ADVICE REVIEW

The FPA has participated in an ongoing working group of key industry associations regarding the Quality of Advice Review, including:

1. Association of Financial Advisers (AFA)
2. Chartered Accountants Australia and New Zealand (CAANZ)
3. CPA Australia
4. The Financial Planning Association of Australia (FPA)
5. Financial Services Council (FSC)
6. Financial Services Institute of Australia (FINSIA)
7. Institute of Public Accountants (IPA)
8. Self-Managed Super Fund Association (SMSFA)
9. Stockbrokers and Investment Advisers Association (SIAA)
10. The Advisers Association (TAA)
11. The Boutique Financial Planning Principals Association (BFP)
12. The Licensee Leaders Forum (LLF)

The FPA supports the following key themes this group agreed upon as priorities for improving the affordability and accessibility of quality financial advice for consumers:

1. Recognising the professionalism of financial planners
2. The client
3. Regulatory certainty
4. Sustainability of profession and practices
5. Open data and innovation

The FPA has recommended priority policy positions the Quality of Advice Review must focus on to embed these key themes into the regulatory landscape and overcome the affordability and accessibility issues impacting quality financial advice for consumers.

1. Recognising the professionalism of financial planners

Explanation - what the issue is:

As the history of regulatory reform shows (see Appendix 2), since the introduction of the *Financial Services Reform Act 2001* there have been constant and significant changes to the laws and regulations applicable to the provision of financial advice. This has led to the regulations of today being an excessive set of requirements that are expensive to meet, compliance-driven, and difficult to navigate. It is this regulatory burden that continues to drive up the cost of providing advice. There is significant duplication, complexity, and gaps that contribute to the accessibility and affordability issues for consumers.

The current financial advice regulatory, consumer protection and affordability issues cannot be fixed by more band aid solutions.

By transitioning to a simplified regulatory regime that recognises the professional status of financial advisers and planners – who now require relevant tertiary qualifications, externally administered examination, individual registration, and 40 hours per year of Continuing Professional Development – we have the opportunity to significantly reduce the cost of financial advice to consumers, while maintaining quality and high standards.

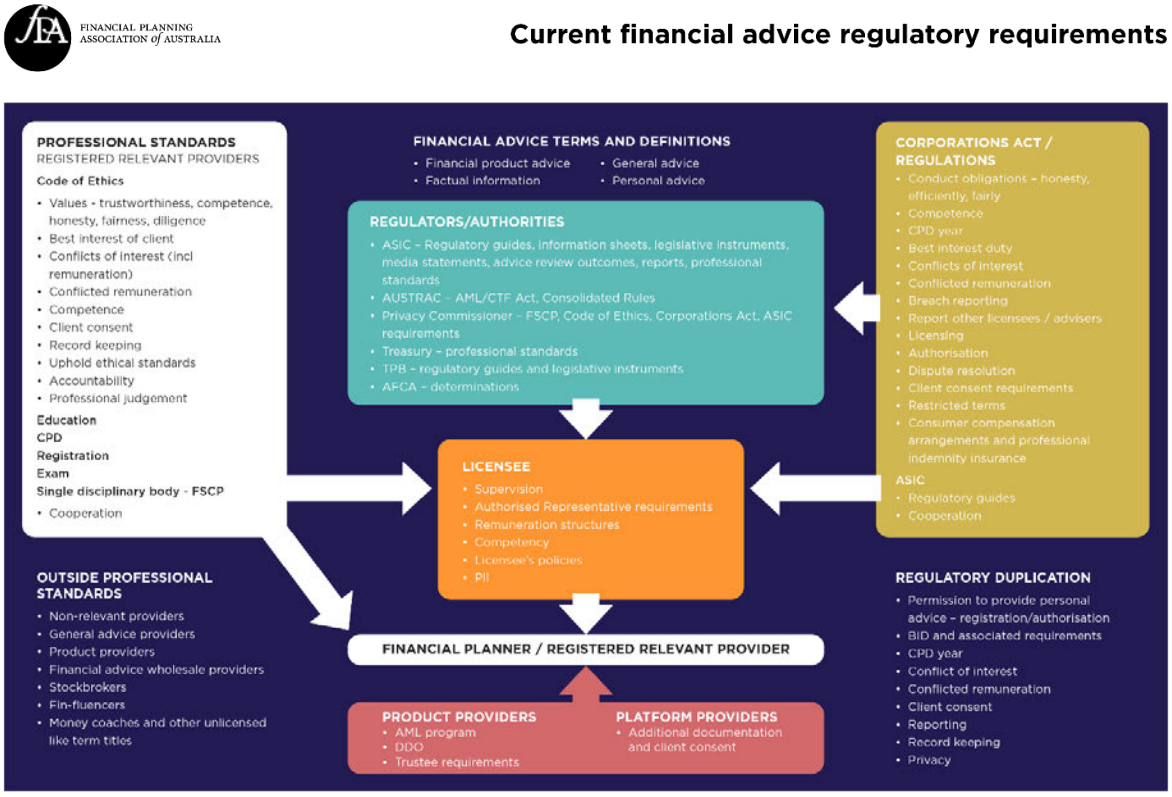
Why it is an issue:

History has shown that every regulatory reform has layered additional requirements on top of the existing obligations, without removing or simplifying how the obligations work together. This view is supported by the Australian Law Reform Commission (ALRC):

> *"The architecture of Chapter 7 of the Corporations Act has struggled to adapt to new policy positions rooted in shifting regulatory philosophies. …...policymakers have rarely been willing to undertake the difficult task of reviewing and revising earlier policies and regulatory philosophies. Instead, new law has been built upon the old. This has been a significant source of legislative complexity — and one which, under the current legislative architecture, drafters alone can do little to reduce.*
>
> *"For example, despite an increasing shift away from disclosure as the foundational regulatory tool, the vast majority of disclosure-related law remains unchanged. The continuing footprint of disclosure-related law in the Corporations Act, regulations, and ASIC legislative instruments, testifies to the reluctance of policymakers to review and simplify the fundamentals of existing legislation. This is despite disclosure having arguably been displaced or made less central by more interventionist policies, such as design and distribution obligations, bans on conflicted remuneration, and product intervention powers. The role of disclosure is ripe for simplification, both in terms of policy and legislative design. This Background Paper highlights the limits to legislative simplification that will exist unless there is a readiness to rationalise the policies and regulatory philosophies underlying the law and update the law and its architecture accordingly."*
>
> *"Overall, this Paper underlines the importance of: a clear and consistent legislative hierarchy that can facilitate reform with minimal complexity; regular review of existing provisions rooted in older regulatory philosophies; and a recognition that the policy positions of today may not be the policy positions of tomorrow. Designing a legal architecture that recognises these three elements would make for simpler and more adaptive financial services legislation."*[6]

The introduction of the Financial Planner and Financial Adviser professional standards that apply to the provision of financial advice as a professional service was a welcome change and long advocated for by the FPA and our members. However, it is extremely disappointing that these standards are tied to the historical definition of 'financial product advice' in the *Corporations Act 2001*, and that the existing obligations for financial advice in the Act were not reviewed when the professional standards were developed. This has resulted in duplicated requirements in the *Corporations Act 2001* applying to the individual planner, either directly or via obligations placed on the licensee. It has also resulted in the provision of advice by non-licensed entities that operate outside of 'financial product advice', which poses significant risks to consumers if unabated. As demonstrated in the following schematic, the obligations placed on financial planners under the *Corporations Act 2001* licensee obligations and the *Financial*

Planners and Advisers Code of Ethics 2019 are heavily influenced by the licensee and others who then apply additional requirements on planners.



This structure and duplication highlight a fundamental flaw of the regulatory framework and the disconnect between the professional advice service and the regulation of financial advice as a financial product. This impacts the quality and cost of advice; and consumer understanding, engagement, and accessibility of a financial plan and the benefit of working with a professional.

The duplication of regulatory requirements has added significant additional costs in providing advice which are borne by clients. The current licensing system also adds multiple tiers of corporate identities between the client and the entity legally responsible and licenced for providing the advice under the *Corporations Act 2001*, bringing into question the transparency of ownership, conflicts of interest and influence. While disclosure requirements were introduced to address this issue, the unique and complex structure and licensing of the financial advice industry is generally not understood by those who do not work within it.

As an example, this issue drives up the premium of the mandatory professional indemnity insurance which is a core cost issue for licensees and practices which is ultimately borne by consumers. As detailed in *Appendix 3: FPA submission to ASBEO insurance inquiry,* FPA member research on the availability and affordability of adequate PI cover, showed that for small financial advice licensees, PI insurance premiums cost approximately 2 to 3 per cent of business revenue on average (with set minimum dollar

amounts in place); and premiums were reviewed annually and in 99 per cent of cases, increased year on year regardless of the claims history of the business. As noted in the survey results:

- 44% of survey respondents reported premium increases of between 10% and 24%;
- 18% of respondents received increases between 25% and 50%; and
- 15% of respondents experienced an increase of 100% or more.[7]

Since this time, more insurers have withdrawn from providing PI cover for financial advice providers in the Australian market. Most recently AIG which currently accounts for around 20% of premium capacity in the market have announced they will leave the market from October 2022, stating a lack of appetite to continue providing solutions into such an uncertain market. This leaves little time to build capacity and reduces choice in an already difficult market.

The fundamental issues with the regulation of financial advice can only be overcome by starting with a 'blank canvas' and implementing a new regulatory regime that separates financial advice from financial products, based on a framework of professional standards for individuals requiring the use of professional judgement and registration as seen in other Australian (and global) professions.

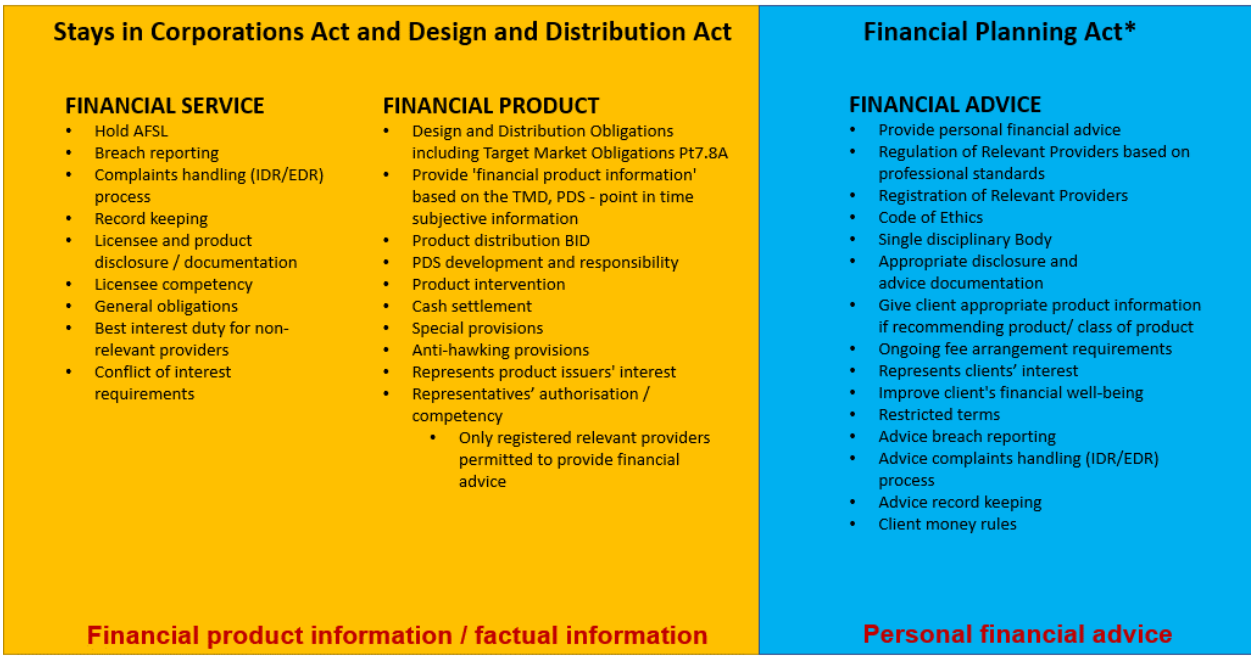
Severing the financial advice professional standards that provide a framework of individual oversight of professional practitioners, from the historic requirement to be authorised by a licensee, is in line with the regulatory structure for tax agents under the *Tax Agent Services Act 2009*.

Maintaining the status quo in addition to the professional standards just adds to the regulatory complexity (as identified by the ALRC) by building new law upon the old without reviewing or revising earlier policies and regulatory philosophies. This is the main driver of the affordability and accessibility issues consumers face when seeking quality financial advice.

Recommendations:

The FPA recommends Treasury, in conjunction with key stakeholders, investigate the potential benefits of the following changes to the financial advice definitions in the *Corporations Act 2001* and the structure of the financial services law, to improve protections and the quality, affordability and accessibility of advice for consumers:

a. Remove Chapter 7 from the *Corporations Act 2001* to be a standalone Act
b. Restructure the corporations and financial services law as set out in the following box.



*New standalone Act replacing financial advice provisions in Chapter 7 of the Corporations Act (with appropriate and effective financial advice regulation)

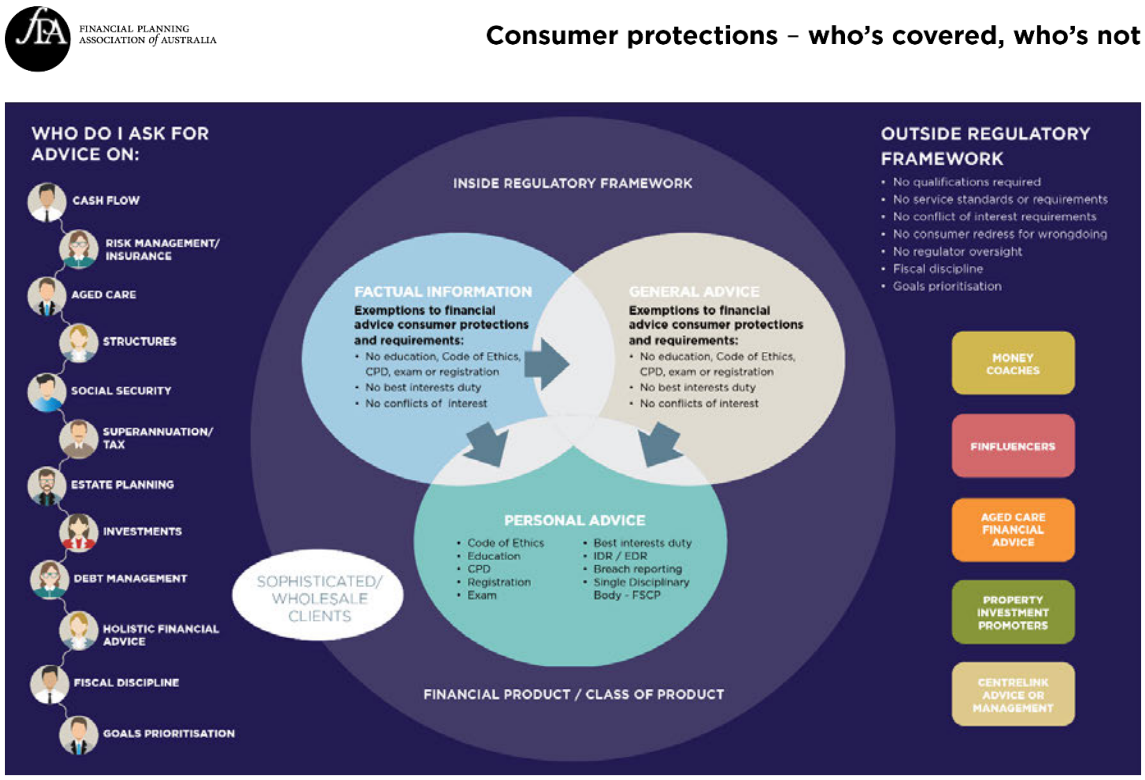
Summary of recommendations:

Quick wins	Medium term	Long term
• Best interest duty – 'Registered relevant providers' be exempt from all elements in the Best Interest Duty in the Corporations Act (as this is a duplication of the higher standard best interest requirements in the *Financial Planner and Advisers Code of Ethics 2019*.) • Design and Distribution Obligations Act (DDO) - 'Registered relevant providers' be exempt from the requirements of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* as it conflicts with the advice obligations in the *Corporations Act 2001* and the *Financial Planners and Advisers Code of Ethics 2019*. (See FPA's response to question 47 of the issues paper.)	• Remove Chapter 7 from the *Corporations Act 2001* to be a standalone Financial Planning Act • Remove the requirement for financial planners to be authorised by a licensee in order to provide financial advice to retail clients. This should be replaced by a professional registration and practice certificate. This should be conducted with appropriate transition arrangements. • Investigate solutions to professional indemnity insurance issues, taking into consideration professional standards and individual registration of professional financial planners. For example: o limited liability solution o discretional mutual solution.	• Complete transition for removal of requirement to be authorised by a licensee. • Recognition and operation as a profession. • Solutions to professional indemnity insurance issues successfully implemented.

2. The client

Explanation – what the issue is:

The current financial advice provisions in the *Corporations Act 2001* leave gaps in consumer protections that continue to facilitate the provision of financial advice by individuals offering services outside the definitions in the law with little or no protections for consumers. Consumers need to be confident that financial advice is provided by appropriately qualified people. Consumers also need flexibility in the advice services they can receive, with scalable advice regulation and disclosure obligations that allow the use of technology and client-led payment options.



Why it is an issue:

Consumers generally do not understand the difference between financial advice that is captured under the *Corporations Act 2001* and the associated consumer protections, and financial advice that falls outside this regulatory environment.

In practice, the primary service that 'registered relevant providers' give to clients is personal financial planning. This financial planning service includes: the identification of the clients' goals and objectives; the creation of a financial plan to assist the client with understanding the financial implications of what they

want to achieve in their lives; the recommendation of strategies relevant to the client's current circumstances; the recommendation of products to implement (or specifically financial product advice) those strategies where appropriate; and review services as the client's life, financial position and objectives change. This is in line with ASIC's list of the features of good quality advice in RG175.248 and through the *Financial Planner and Financial Adviser Code of Ethics 2019*.

Depending on the client's circumstances and based on what is in the best interest of the client, the financial advice may also recommend a class of financial product, or specific financial products and financial services to achieve the financial goals and objectives of the financial planning strategies. The professional financial planning service is captured under the *Corporations Act 2001* definition of financial product advice, because of this single relatively minor component and output of the advice – namely the consideration of financial products or class of product. It is not captured because of the financial planning advice, that is the primary service provided. In saying this, the FPA does acknowledge that there are some financial advice providers who only recommend financial products – for example stockbrokers and superannuation intra-fund advice providers.

In contrast, there are some individuals who provide financial advice to a retail client that does not include a recommendation about a financial product or class of product (as defined in the *Corporations Act 2001)*. Areas of advice covering behavioural finance such as fiscal discipline and goal prioritisation, as well as assistance with government financial services such as Centrelink, aged care or the NDIS fall outside the regulatory framework. As this service is not captured by the financial product advice definitions, such individuals do not have to meet the education and training requirements, the standards and values in the *Financial Planners and Advisers Code of Ethics 2019*, or the financial product advice obligations under the *Corporations Act 2001*. They are not required to act in the best interest of their clients, provide disclosure documents of any kind to their clients, or eliminate conflicts of interest. This would be akin to the law stating that the only part of a doctor's advice that requires qualifications and needs patient protection is the prescription of medication. Not the acts (or omissions) of taking of blood pressure, dietary recommendations and lifestyle coaching, referral (or not) to a surgeon, referral to diagnostics, for example.

As these providers do not have the expense of meeting the complex financial advice regulatory obligations, they are able to offer cheaper advice. This may appeal to consumers, but it puts those consumers at significant risk with no legal protections or access to redress for any wrongdoing. The current system has also led to compliance-focused disclosure outcomes, rather than consumer-focused advice documentation. Advice documentation that is focused on compliance and meeting legal obligations significantly diminishes the accessibility of the financial advice for the client. It has resulted in excessively long and complex documents that in many cases are not read by the client – defeating their ostensible purpose of disclosure. Our members are currently incurring significant costs in producing documents that are not read by their clients – driving up the cost of advice while producing no client benefit.

Under the current disclosure obligations for financial product advice, a provider of personal advice is required to give a retail client:

- a Financial Services Guide (FSG)

- a Statement of Advice (SOA)
- a Record of Advice (ROA) can be provided to an existing retail client in certain situations, and
- Product disclosure statement/s when a product is recommended.

Current disclosure and consent requirements include:

- Qualification/s to provide the service
- Authorisation and registration on ASIC FAR
- Statement of lack of independence
- Advice engagement arrangement (*Financial Planners and Advisers Code of Ethics 2019* Standards 4 and 7)
- Evidence of relevant circumstances, needs and objectives
- Conflicts of interest management
- Fee disclosure statement (FDS)
- Ongoing fee arrangements (OFAs) / opt-in – consent required
- Deducting fees from super / products – consent required
- Platform authority to deduct fees and pay to financial planner/Licensee - consent required
- Privacy – consent required
- AML/CTF ID Verification
- Incomplete or inaccurate information warning
- Time critical warning
- Product replacement disclosure
- General advice warning
- Complaints handling process
- Target market reporting

Additionally, there are a number of licensee-mandated documents such as:

- Authority to proceed
- Risk profile acceptance
- Mandatory minimum alternate strategy comparisons
- Mandatory minimum alternate product comparisons
- Advice pre-vet
- Advice post-vet
- File audit checklist

As highlighted earlier, the complexity created through the combination of laws, regulators, ombudsmen and disciplinary systems has led to SOAs which are significantly bloated by licensee-required additions which attempt to mitigate risk rather than comply with the law.

These obligations apply irrespective of the type, scale or complexity of the financial planning services being provided.

In comparison, the Financial Conduct Authority (FCA) (UK) has created two types of advisers - Financial Adviser and Restricted Advisers (including telephone sales) - with tiered Conduct of Business (COB) disclosure requirements in COB 6, which is similar in many ways to those required in the *Corporations Act 2001*.

In contrast, most professions simply require a client to understand and agree to the terms of the engagement (including costs or cost estimates) prior to a service being provided. The professional service (advice) is then set out in a separate document.

Recommendations:

1. *Financial advice definitions*

The introduction of the legislated financial advice professional standards and the new product regulations in the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* created additional consumer protection frameworks to allow a clear separation of financial advice from financial products.

As a next step, we recommend the terms 'financial product advice' and 'general advice' should be removed from the *Corporations Act 2001*.

In line with the Royal Commission and ALRC recommendations, the FPA recommends the term 'advice' only be used in association with 'personal financial advice', and 'general advice' be changed to 'financial product information.' This new term should be defined as the provision of information only - it should not permit the provision of an opinion, recommendation or opinion intended to influence the making of a decision about the product, and where information is provided about a product, it should be restricted to information on the providers own product, not other products in line with the anti-hawking and design and distribution obligations. A new strong and clear consumer warning must make it clear to a consumer when 'financial product information' is provided by a product provider's representative, the product provider's interests (not the consumer's) are being represented, to encourage the consumer to heed the warning regarding that information.

2. *Separate disclosure and advice documentation*

The financial advice disclosure and documentation framework should be updated to ensure it is designed with clients' best interests at the fore.

To achieve this, we recommend a separation of what is required to be disclosed to the client to meet regulatory and consumer protection requirements, and the documentation of the financial advice and implementation strategies and solutions. This will improve the readability of the documentation, and therefore the client's understanding of both the financial planner/client arrangement and the financial advice.

There must be sufficient flexibility in the requirements to allow for the variety of business models providing financial advice and to meet the needs of clients seeking limited scope advice.

It is also important to ensure that disclosure and advice documentation can be provided in a technologically neutral manner which best suits the outcome of ensuring that clients understand the services and recommendations being provided. This is not necessarily in a written document format.

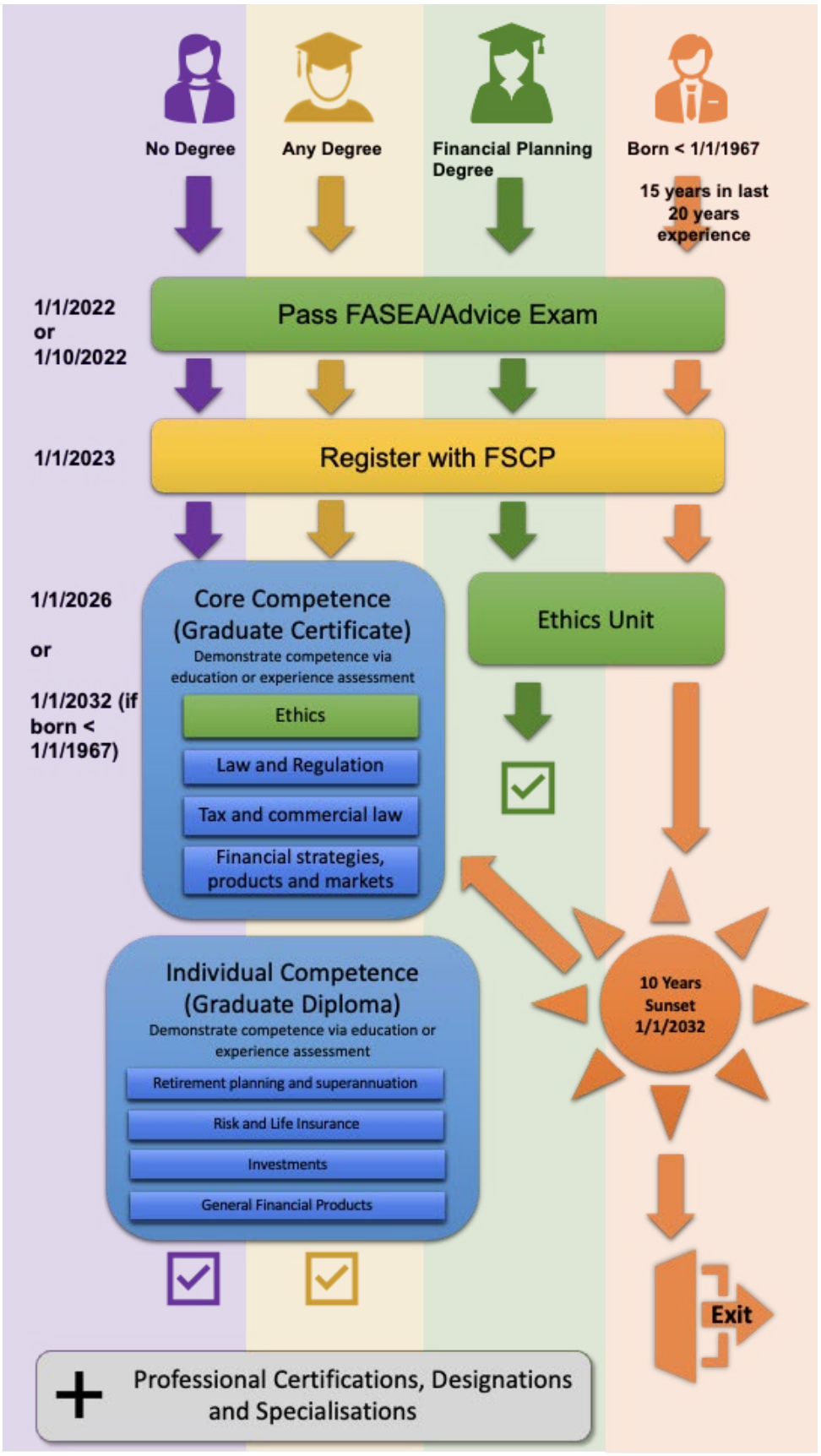
Additionally, the advice document should be outcomes-focused through the development of outcomes-based regulation, rather than inputs-based regulation which currently leads to the inclusion of information which is not relevant to ensure clients understand the recommendations being made. Simple advice should require simple advice documentation whereas complex advice will require as much or as little information as the client needs to understand the strategy and recommendations being made based on their level of financial literacy and the risks involved.

3. *Education competencies and specialisations*

The recommended change to the financial advice definitions in the *Corporations Act 2001* (above) will expand consumer protections to individuals receiving financial advice from individuals who are not currently required to meet the minimum education standards.

To ensure such services can continue to be provided for the benefit of consumers by appropriately qualified persons, education standards should be developed based on a framework of scalable competencies designed around core financial planning competencies and advice specialisations.

As depicted in the schematic below, the FPA recommends the Government adopt a competency framework for the financial planning profession that recognises both education and experience to demonstrate competence at AQF7+ level, replacing the existing education framework. This will provide pathways to demonstrate competence with flexibility of completing study or demonstrating competence, irrespective of the planner's years of experience. This will also benefit new entrants who will have more pathways through which to enter the profession from other careers or financial service education backgrounds, as well as provide migration competency demonstration pathways for foreign financial planners who are looking to move to the Australian profession.


No Degree
Any Degree
Financial Planning Degree
Born < 1/1/1967
15 years in last 20 years experience
1/1/2022 or 1/10/2022
Pass FASEA/Advice Exam
1/1/2023
Register with FSCP
1/1/2026 or 1/1/2032 (if born < 1/1/1967)
Core Competence (Graduate Certificate)
Demonstrate competence via education or experience assessment
Ethics
Law and Regulation
Tax and commercial law
Financial strategies, products and markets
Ethics Unit
Individual Competence (Graduate Diploma)
Demonstrate competence via education or experience assessment
Retirement planning and superannuation
Risk and Life Insurance
Investments
General Financial Products
10 Years Sunset 1/1/2032
Exit
Professional Certifications, Designations and Specialisations

This framework should be expanded to also consider appropriate specialist competencies (on top of core competencies) for providing personal financial advice on tier 1 and tier 2 products, and formal recognition of professional certifications, designations and specialisations which are not necessarily financial product linked.

It should be noted that the FPA does not support an experience exemption as consulted on by Treasury in late 2021[8], but the schematic does demonstrate an experience pathway with a sunset period of 10 years in the event this model is progressed. The framework would allow experienced financial planners to demonstrate they are competent to provide advice through a competency assessment framework similar to those used in the tertiary education sector already for postgraduate qualifications.

Quick wins	Medium term	Long term

Advice definitions
• Strengthen general advice warning - remove the term 'advice' and substitute with 'product information' or 'factual information' – interim step only
Disclosure
• Remove overlap of information in FSG, PDS, SOA, and ROA
• Permit greater use of incorporation by reference
  ○ PDS/SOA/Service agreement, etc.
  ○ Working documents
	Change financial advice definitions
	1. The removal of the following advice terms and definitions from the *Corporations Act 2001*:
	  a. Financial product advice
	  b. General advice
	  c. Personal advice
	2. The *Corporations Act 2001* to include three terms and definitions only:
	  a. *Financial product information*
	  i. Documents – PDF, TMDs
	  ii. Anti-hawking provisions
	  iii. Represents product issuers' interests
	  iv. Clear consumer warning – it is not advice; describes the financial product or class of product
	  b. *Personal financial planning - a client centric professional service (not a product or tied to product)*
	  i. Professional standards
	  ii. Individual registration obligations
	  iii. Represents client's interest – advice in the best interest of client
	  iv. Appropriate advice disclosure documentation
	  v. Can incorporate advice on financial product information if appropriate
	  c. Factual information
	  i. Clear consumer warning – it is not advice; factual information (e.g., how salary sacrificing works)
	Remove general advice from product promotion – use of the term general advice is misleading in this context and not appropriate
		• A single set of rules (consistent across regulators) which are easily understood that govern how to deliver financial advice in a clear, concise and engaging way for clients, and is affordable to provide.

	Separation of disclosure information and the actual advice must permit incorporation by reference: 1. Financial Services Guide (FSG) 2. Service/Engagement Agreement: • best practice, not compulsory; • does not repeat any information included in the FSG; • information scalable depending on scope of advice required; and, • to include client consent to cover all consents in one document and to be accepted by all product providers. 3. Financial Advice: • contains the advice only; • does not repeat any information included in the FSG or service/engagement agreement; • scalable depending on scope of advice required and professional judgement; ○ Including short, quick, appropriate, affordable advice for the benefit of the client; • consent that client understands / agrees to advice / that advice has been received; and, • use of technology-based delivery permitted. 4. Detailed advice considerations / working papers to be kept on file, available on request and use incorporation by reference in the financial plan if necessary. (See FPA's response to questions 44 to 51 for further detail) Adopt education standards based on a framework of scalable competencies with core competencies and advice specialisations to support change in advice definitions: • recognises both education and experience to demonstrate competence at AQF7+; • scalable competencies with core competencies and advice specialisations; • appropriate specialist competencies for providing personal financial advice on tier 1 and tier 2 products; and, • benefits new entrants and foreign migration.	

3. Regulatory certainty – what's achievable short term versus long term

Explanation - what the issue is:

There are many factors that impact regulatory certainty for financial advice providers:

- Regulatory build up – overlaying new laws on top of the existing, as discussed above.
- Duplication – significant duplication of requirements for financial planners required to meet the education and professional standards including the Code of Ethics, as well as the more prescriptive and duplicative financial advice requirements in the Corporations Act, as discussed above:
    - registration required on the Financial Adviser Register (FAR) as well as authorisation by a licensee
    - inconsistent education and training standards for 'registered relevant providers' and 'qualified tax relevant providers'
    - inconsistent CPD requirements for 'registered relevant providers' and 'qualified tax relevant providers,' as well as misalignment of registration CPD requirements and the licensee CPD year obligations in the law
    - applying professional judgement to meet the standards in the Code of Ethics, while still meeting the prescriptive best interest duty and associated requirements in the Corporations Act
    - confusing conflict of interest obligations in the Code of Ethics and the law
    - confusion as to whether the Code permits conflicted remuneration that is allowable under the Corporations Act
    - the conflict between whether advice is able to be scaled between the Code of Ethics (Standard 6) and s961B of the Corporations Act
    - disclosure of the same information to clients multiple times and in multiple documents
    - gaining client consent for client fees and services on numerous occasions (up to eight in the first year)
    - client consent forms for using third party suppliers
    - different forms and processes for lodging client consents for each product
    - requiring reporting of planners' own potential breaches, no matter how small, plus those of other planners and licensees under standard 12 and in s912DAB
    - record keeping obligations under both standard 8 and in the law
- Inconsistency of interpretation of the laws – there is a lack of consistency and certainty in how laws will be interpreted by those who have a significant influence on how financial advice must be provided, in order to be compliant. Regulators, licensees, the courts and AFCA all interpret the laws in a slightly different way, resulting in uncertainty over how the laws should be met:
    - AFCA and the courts - AFCA's interpretation of the law and the regulators' requirements often vary depending on the circumstances of the complaint being considered. The EDR scheme's decisions do not set precedent for future complaints, which results in inconsistency in the way AFCA may apply the regulatory requirements to a complaint. Licensees adapt processes, policies and the requirements they place on planners, to minimise the risk of any AFCA determination against them in the future. This creates another level of inconsistency in the regulatory environment that sits outside the

provisions in the primary legislation. PI insurers also respond to these AFCA/court findings.

- FSCP - The new single disciplinary body within ASIC creates further uncertainty as there is uncertainty as to the methodology and thinking of the FSCP, and level of ASIC influence over its interpretation of professional standards. Regulatory certainty is needed to ensure that if the FSCP sets a precedent, it will follow that precedent and not create different regulatory outcomes on the same issue. From a practical perspective, it is preferable to have peers sitting in judgement of peers.
- ASIC:
  - Regulator enforcement over-reach - there is a disconnect between ASIC's regulatory guidance and the Regulator's enforcement action. Licensees have often tightened their requirements and implemented changes to processes and systems for financial planners which are not required under the law or in regulatory guidance because of enforcement action taken by the Regulator. For example, as detailed in Report 515, ASIC audited and reviewed the financial advice files of the largest five licensees. As a result of the review, the Regulator mandated additional training standards that went beyond the requirements in the law and their own regulatory guidance. There are also examples of ASIC action taken for a breach of s961B against financial planners even though they had complied with the best interest duty safe harbour steps as set out in regulatory guidance. Whether it is within the Regulator's mandate to impose such conditions on licensees is not the issue. It is the uncertainty that this enforcement action creates that is concerning and is having a significant impact on the profession. Additionally, in many circumstances, ASIC does not publish detailed explanations of their regulatory enforcement unless it is specifically captured in a report.
  - Lack of Regulator support – from the perspective of the 'regulated population', ASIC's regulatory approach differs significantly to that of other regulators relevant to financial services in Australia. For example, in the 2019/2020 financial year only $1.324m, or 3 percent of ASIC's estimated total operating expenditure of $36.329m (without adjustments) for regulating licensees that provide personal advice to retail clients on relevant financial products, was spent on industry engagement, education, guidance and policy advice. Given the positive, preventative potential of such proactive activity and the importance of and need for guidance and policy advice particularly to assist smaller licensees, the FPA suggests the expenditure and activity in these areas appears very low. Feedback from FPA members also indicates that ASIC will frequently tell planners and licensees to seek legal advice in response to enquiries seeking clarity on regulatory guidance that has been issued by the Regulator. This contrasts with other regulators which frequently issue both public and private rulings on matters of regulatory interpretation.

- 'Scattered' legislative provisions – provisions related to financial advice are scattered throughout the *Corporations Act 2001* and Corporations Regulations, with changes, exemptions, clarifications, modifications and interpretations made through legislative instruments, regulatory guides, information sheets, and media statements. The resources required to keep up to date

with the current and correct obligations are expensive to maintain, and expensive to implement and given the complexity, can be prone to misinterpretation or transcription errors.

- Regulatory disconnect of new and existing clients - changes to the regulatory environment over the past decade primarily focus on new clients, often disregarding the unintended consequences for existing clients. Forcing new obligations designed for new clients onto existing clients has created significant expense and workload for financial planners with little benefit for the existing client.

These factors all create a significant amount of complexity and uncertainty for those providing financial planning services. The more uncertainty, the more the profession - and particularly licensees - feel they need to cater for all possible regulatory outcomes to ensure they are not subject to enforcement action or a future complaint.

These factors, and the industry's response, increase the investment needed in an advice business to ensure its systems and processes can meet the uncertain requirements, and the time it takes to provide and document the advice, which drives up the cost of advice for consumers.

Why it is an issue:

Regulatory uncertainty creates significant risk, leading to significant cost, inefficiency, and complexity in the system. Risk drives up the operational costs for businesses and the time required to provide the services to the client, such as:

- Licensees mitigate against such real and potential risk by increasing the stringent requirements and processes financial planners must follow.
- Licensees must also create advice processes and risk mitigation frameworks (I.e., increase compliance and process) for the lowest common denominator which reduces the efficiency of professional financial planners to operate in the best interests of clients.
- Increased compliance and process drives up the time and cost of providing services to clients.
- The variation of interpretation means even if one compliance / Regulator / EDR scheme / court / professional association review finds that the advice process complies with their legal, regulatory, and professional obligations, the licensee and planner can still be penalised by another limb of the system.
- It becomes increasingly difficult for financial planners to move between licensees due to the complexity of how the advice process is designed at a new licensee. This also increases risk for licensees authorising an experienced financial planner as it takes time and significant monitoring to ensure the planner complies with the new process. Planners must also write new SoAs for every client when changing licensee, which is a very significant impost of cost and time even when the planner, advice, strategies and products recommended, or the client's circumstances have not changed. Additionally, unlike other professions, it is nearly impossible where needed to appoint a locum, to the detriment of clients and the mental health and lives of the planner, when required due to these issues.
- The number of professional indemnity insurers has recently substantially reduced, tightening the cover available for financial advice providers and making it extremely difficult to obtain a policy that meets the mandatory requirements at an affordable price.

- All these risks also require licensees to increase head count or external supplier cost to ensure they are mitigating as much risk as possible, even though this is impossible due to the complexity and uncertainty.

Consumers are most impacted by regulatory uncertainty. The intent of the Parliament when it makes laws is to provide protection to Australians when they receive services from businesses. However, it creates confusion and frustration for consumers when they are uncertain of the protections that relate to the service they are seeking – when it is not clear as to the service they are receiving, why the documentation they are given is lengthy and complex, why they are being asked to sign another disclosure of repeated information, and whether they have access to redress if they need it. These are accessibility issues.

Regulatory uncertainty continues to drive up the cost of advice and impacts the accessibility of the services of a financial planner.

Recommendations:

Change is required to resolve the existing regulatory uncertainty. The multiple factors that contribute to the uncertainty must all be addressed if true regulatory certainty, accessibility and affordability is to be achieved for the provision of financial advice for consumers.

Quick wins	Medium term	Long term

• Align CPD year with FAR registration period / renewals or with the financial year (i.e., Not licensee CPD year)
• Make COVID-19 relief measures permanent:
  ○ Give planners longer to provide written advice to clients to act quickly when crisis occurs impacting large number of clients.
  ○ Make use of ROA instead of SOA irrespective of significance.
• Maximise the use of file notes and incorporation by reference.
• Increase 'small investment advice' no SOA threshold and extend to superannuation.
• Develop a list of simple strategies exempt from requirement to provide an SOA.
	• The medium-term recommendations detailed under Key Themes 1 and 2 above will also assist with improving regulatory certainty for the financial advice profession. Refer to these sections for details.
	• Remove the need for registered relevant providers to hold a credit license to provide debt management advice, Centrelink Pension Bonus Top Up advice (with confidence), and incidental credit advice.
	• Provide certainty and clarity around the Code of Ethics and safe harbour requirements to ensure they allow scalable, affordable advice to clients in a professional manner.
		• The long-term recommendations detailed under Key Themes 1 and 2 above will also assist with improving regulatory certainty for the financial advice profession. Refer to these sections for details.

• Align collection of advice fees from superannuation to all advice collection obligations. • Clear direction of law in relation to life insurance commissions to ensure certainty for profession. • Consolidated client consents: ○ Remove duplication between ongoing fee consent, renewal notices, fee disclosure statements and individual product fee authorisation forms which duplicate the same information and client acceptance. Allow the renewal notice / FDS sign off to be the master copy for all product providers.		

4. Sustainability of profession and practices

Explanation - what the issue is:

The key issues impacting the sustainability of the profession and financial planning practices are the 'investability' of financial planning practices, the ongoing substantial drop in financial planner numbers, and, influencing this, the inequity in the financial advice ecosystem.

The Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies states:

> *"Regulation is an essential part of running a well-functioning economy and society, but must be carefully designed so as not to have unintended or distortionary effects, such as imposing unnecessarily onerous costs on those affected by the regulations or restricting competition."*[9]

The direct and indirect impacts individuals and households experience from regulation include:

- *Higher input costs for goods and services - regulation can increase prices through a range of effects, such as through stipulations on product design, marketing or distribution.*
- *Market intervention - restrictions on competition, market entry or access can have implications for supply and demand with detrimental impact on prices, choice, quality and availability.*
- *Increased compliance effort – the behaviour of regulators, whether in day-to-day dealings with the public or the design and delivery of services, can impose a range of costs on people who deal with government."* [10]

While these Government guides are produced to assist with the development of regulation, they are relevant for examining the current regulatory environment for financial advice.

The regulatory environment is the main cost driver for providing financial advice.[11] The factors creating regulatory uncertainty (discussed above) have escalated over the past decade and now more than ever place significant pressure on the viability of some financial planning business models. Significant sustainability issues contributed to the regulatory environment include:

- Supply and demand inequity - The regulatory environment creates unique supply and demand issues for the financial planning profession, and consumer protection risks for Australians. The factors that contribute to regulatory uncertainty significantly hinder the ability of 'registered relevant providers' to assist their clients with the financial advice service they are seeking. If qualified and regulated professionals are not able to meet the demands of Australians, consumers (who may not understand the difference) look for financial advice from non-relevant providers and 'like' services from unregulated and unqualified individuals allowable due to the gap in the application of the financial advice regulatory obligations.

  As the definitions in the *Corporations Act 2001* are tied to the recommendation of financial products, the obligations in the law do not apply to all individuals offering financial advice to consumers. Equally, there are exemptions from some requirements afforded to certain types of financial advice providers. This creates inequity in the financial advice ecosystem, which diminishes the attractiveness of practicing in and investing in regulated financial planning businesses.

- Business investment - Regulatory uncertainty drives the need to continuously invest in the financial planning practice, not for competitive differentiation and improving service delivery, but to ensure the business and its representatives can meet the requirements in the law and ASIC guidance and minimise the risk of future enforcement action by the Regulator or a negative AFCA/court finding should a complaint arise. Those whose service offerings are not captured by these definitions, have a cost and therefore competitive advantage.

  There is much talk about the 'cost of the Statement of Advice (SOA)'. Anecdotal evidence shows the main cost impacting the preparation of the SOA is the prescriptive input requirements of the document.[12] The amount of background work, information investigation and consideration of the financial planner that is required to be included in the SOA drives the cost and also reduces the readability of the document for the client and clouds the actual advice for the client.

- Licensing system - Historically, the oversight of financial advice has been conducted by the Corporate Regulator leveraging the structure of the licensing regime. The Australian Financial Services Licensing (AFSL) regime has facilitated significant inequity in the advice market as it advantages certain business models to the detriment of competition and consumers.
  - ASIC Cost Recovery - This issue is very evident in the inequity of the ASIC Cost Recovery model for financial advice. The FPA supports the cost-recovery of some regulatory expenses. We believe it is important for the financial services sector to contribute to the cost of regulating the profession and the broader sector as well as provide adequate protections for

consumers. Industry and consumers benefit from a strong regulatory framework that promotes public confidence in the sector and encourages Australians to seek advice and raise their financial literacy.

The Australian Government Cost Recovery Guidelines provide that the Government should consider a number of factors in deciding how to implement cost-recovery, including the impact on competition, innovation or the financial viability of those who may need to pay the costs of regulation.

The FPA welcomed the freezing of ASIC levies charged for personal advice to retail clients at their 2018/19 level of $1,142 per adviser for two years, and the announcement that the Treasury will lead a review, in consultation with the Department of Finance and ASIC, on the ASIC Industry Funding Model to ensure it remains fit for purpose in the longer term. Ever-changing regulatory regimes and escalating regulatory costs contribute to the increasing cost of financial advice which in turn makes it less affordable and available for many Australians.

There has been a tendency to apply charges to financial planners for ASIC's enforcement activities against unlicensed individuals or entities who are not a member of the profession. Whilst these individuals have engaged in conduct which has rightfully triggered a significant response from the regulator and other authorities, it seems incongruous that financial planners are then required to foot the bill for these actions, given the subjects of the enforcement are not in fact peers. Whilst these enforcement actions are necessary and important to ensure wrongdoers are brought to justice and consumers are protected, it is not equitable for the financial planning profession to be relied on by the Regulator to recoup the costs for ASIC to pursue those who are not financial planners.

Similarly, the cost of ASIC's targeted enforcement action for wrongdoing by large licensees, including oversight of significant high profile and prolonged remediation programs, is also recovered from the members of the financial planning profession rather than directly from those entities involved.

As many practitioners are sole traders or work in small and medium-sized practices, their ability to absorb any additional regulatory costs is extremely limited. To provide certainty to the profession and provide adequate notice of any change, which may require planning for business models to adapt, a review should be completed prior to the expiration of the ASIC levy freeze.

- Penalty Regime - Consideration must also be given to the risk of running a financial advice business. The penalty regime introduced through the implementation of the Royal Commission recommendations has created an environment where there are catastrophic penalties applied for breaches of the law which might be appropriate for large vertically integrated financial services business, but punitive for the current makeup of the financial planning profession. These create a disincentive for, and significant risk for, licensees to consider efficiencies in their advice process. These are particularly concerning in areas of the new enhanced FDS regime, record keeping obligations and cybersecurity.

- Professional Indemnity Insurance (PI) – The lack of regulatory oversight of the PI market for financial planning licensees has had two detrimental impacts. There is a disconnect between the risks currently present in the profession and the risk assigned through premiums by insurers due to the lack of engagement by ASIC in the efficient operation of the market. Secondly, many licensees take out inappropriate policies to reduce cost which creates a significant consumer protection risk in the event of a complaint, specifically the deductible is at a level where the financial planning licensee has insufficient capital to compensate consumers in the event of a claim, whether the policy responds or not.

- Financial planner numbers - Historically, it has been relatively easy to bring new financial planners into the profession. Education, experience, authorisation and supervision of new entrants was inappropriately low. As noted in the earlier sections, the introduction of the Professional Standards Framework has over-corrected this situation, leading to many experienced financial planners leaving the profession. Additionally, the inflexibility in relation to education requirements for new entrants is severely limiting the pool of those who are looking to enter the profession, and the regulatory burdens highlighted make it very difficult for licensees to spend the time and resources required to undertake professional year supervision. This has led to the number of relevant providers dropping from over 29,000 in December 2019 to below 17,000 today, with very few new entrants entering the professional year. The changeover from FASEA to Treasury in administering these requirements has also led to a suspension in data collection and as a result, little information is currently available on those studying for relevant qualifications.
- Investibility of the financial planning profession – investment in financial planning is at an all-time low. Most large licensees who traditionally invested significant amounts of capital into the profession, compliance and technology have left. Additionally, licensees and practitioners who remain struggle to afford investments other than those required to meet minimum regulatory compliance. While Australia was once seen as an attractive market for new financial planning technology, very little innovation or investment is currently being made. A case in point is that the SOA is still primarily delivered in paper format despite the improvement and availability of digital delivery technology becoming commonplace in other professions and industries over the last 10-15 years. Further, very little academic research is conducted in relation to financial advice due to the lack of ability to fund research grants. The FPA worked with the academic community for many years through grants facilitated by larger licensees, however this investment has all but ceased due to a lack of funding options. This will widen the gap between consumer expectations and what the profession is able to deliver.
- The significant reduction in financial planners has led to a significant number of formerly advised clients who are now disconnected from a professional relationship because their financial planner no longer practices or because it was uneconomical to continue providing them with a service.

Regulation should allow for a range of business models and improve the ability for the profession to invest in new entrants and efficiencies through innovation, technology and research.

Why it is an issue:

The issues impacting sustainability of the financial planning profession and financial planning practices directly affect the affordability and accessibility of financial advice for consumers.

As described in the Government guide, regulatory market intervention that restricts competition can have a detrimental impact on *prices, choice, quality and availability* for consumers.[13]

Addressing the factors causing regulatory uncertainty is vital to make financial advice attractive to invest in professionally and as a business. Ensuring the sustainability of the financial planning profession and financial planning practices is in the best interests of consumers and over time, future Governments, whose need to support a costly social security system (especially the Age Pension) is reduced by effective savings and retirement advice provided to consumers.

The regulatory environment must be flexible to improve:

- Consumer choice - permit the financial planning profession to provide the advice services consumers need and want. The regulatory environment for financial advice should be scalable and allow all financial planners to use professional judgement to meet the advice needs of the client on a sliding scale/continuum model. It should facilitate the provision of very simple advice for simple client requests, to more detailed advice in response to complex client requests.
- Advice quality - there are some individuals who provide financial advice to retail clients that does not include a recommendation about a financial product or class of product as defined in the *Corporations Act 2001*. As this service is not captured by the financial product advice definitions, such individuals do not have to meet education and training requirements, the standards and values in the *Financial Planners and Advisers Code of Ethics 2019*, or the financial product advice obligations under the *Corporations Act 2001*. They are not required to act in the best interest of their clients, provide disclosure documents of any kind to their clients, or eliminate conflicts of interests. This puts consumers at risk of receiving advice that may not be suitable for their circumstances or prioritise their needs over those of the provider.
- Advice availability and prices - The cost associated with providing limited scope advice is excessive for the service provided to the client. While the cost of providing holistic advice is still very high, it is more in line with the level of service the client receives. These costs are driven in the main by the legal obligations for providing personal financial advice. The FPA's next step will be to commission a 'Cost of Advice' study, which will investigate the cost effectiveness of providing limited scope advice versus holistic advice.

The regulatory system must be flexible to stimulate competition and ensure all registered relevant providers have the ability to provide limited scope advice, regardless of the business model they operate under, for the benefit of consumers.

The Australian Government Guide to Regulatory Impact Analysis states:

> *Where your proposal leads to higher regulatory compliance burdens, you need to actively investigate opportunities to offset these burdens among the affected sector(s).*[14]

Tax deductibility of initial financial advice fees and additional certainty around the deductibility of ongoing advice fees would offset a proportion of the price differential between registered relevant providers and non-relevant providers and unregulated advice providers by reducing the cost of advice for consumers.

All financial advice should have tax deductible status to help make financial advice accessible and affordable for all Australians. This should be regardless of the stage in the financial advice process it is provided, and whether it directly relates to the creation of investment income.

Currently, tax treatments of financial advice occur in numerous ways, dependent on the nature of the advice sought and when it is provided. As an example, the Australian Taxation Office (ATO) has determined that a fee for service arrangement in the preparation of an initial financial plan, is not tax deductible. However, ongoing advice fees are treated as tax deductible as they are deemed to have been incurred in the course of gaining or producing assessable income. This determination is now over 25 years old and is not reflective of the current regulatory environment under which financial advice is provided.

Treating the creation of an initial financial plan in a different fashion to that of ongoing advice provides a disincentive for Australians to seek 'episodic' financial advice which will assist them to actively plan, save and secure their financial future. It also acts as a further barrier for Australians who have not previously sought or received financial advice.

Increasing the accessibility and affordability of financial advice for all Australians, particularly for those on lower incomes, will provide for a more financially competent community, with Australians becoming more financially literate and better able to support themselves, especially during retirement.

Recommendations:

Change is required to address the inequity in the financial advice ecosystem that is caused by the regulatory environment.

Quick wins	Medium term	Long term
• Tax deductibility of initial and ongoing financial advice fees. • Treasury-led review of the ASIC Industry Funding Model should commence as soon as possible and conclude prior to the expiration of the freeze on ASIC levies charged for personal advice to retail clients. Indexation of the 'small investment advice' no SOA threshold and extension to superannuation. • Review the professional year framework to ensure it is fit for purpose and	• The medium-term recommendations detailed under Key Themes 1, 2 and 3 above will also assist with improving the sustainability of the profession. Refer to these sections for details. • Improve clarity around the fintech sandbox to improve innovation in financial planning technology. • Any new levies or funding mechanisms must be sustainable and operate equally and fairly across the sector (e.g. Compensation Scheme of Last Resort).	• The long-term recommendations detailed under Key Themes 1, 2 and 3 above will also assist with improving the sustainability of the profession. Refer to these sections for details. • Consider ways to encourage investment in research and innovation of the financial planning profession.

encourages a broader cohort of new entrants to consider a career in financial planning.	• ASIC regulatory settings and enforcement should more closely align. • Regulatory impact statements must be completed for all new legislation in relation to financial advice.	

5. Open data and innovation

Explanation - what the issue is:

The significant waste in the system that leads to additional cost, time and resource requirements caused by the combination of laws, regulations, regulators, monitoring and supervision, and complaints handling is exacerbated by the waste in the system due to the lack of data and innovation in advice delivery. Much of this waste could be solved through allowing planners to access to up to date, reliable client data which is available within the financial services ecosystem already.

Financial planners currently must rely on clients to either provide such data on their financial affairs or give consent for planners to request it from product providers such as a superannuation trustee. This data is then entered into financial planners' advice systems, either manually or by data transfer. This creates an inefficient impost for both clients and financial planners, and a risk of data entry error or cybersecurity exposure, which impacts the accessibility and affordability of advice for clients. It also limits data collection to a point in time. The easier it is for clients to engage in the advice process, and with the data and documentation inputs and outputs, the more accessible financial advice will be for Australians.

Better access to data will allow financial planners to provide better, more efficient advice to clients, including the ability to proactively trigger services based on clients achieving or falling behind on goals, or achieving them ahead of time. The cost of accessing data will also go down significantly, allowing advice to be provided more cost effectively and quickly to the consumer. Access to data will also improve innovation and alternative advice delivery models focused on technology to better assist those Australians who are not able to access advice services delivered by an individual professional.

In most cases the data is already available in the system, and the focus should be on making it more available in a secure and confidential manner for the benefit of clients. This will improve efficiency and attract and enable clients across all generations to take up timely and cost-effective advice services and solutions.

Enabling financial planners to access accurate, timely data in a secure manner will significantly improve the accessibility and affordability of quality financial advice for consumers.

Consumer Data Right (CDR) – The consumer data right offers an excellent opportunity to make clients' data more freely available and accessible to financial planners providing services to their clients. There are a number of issues at this point however with the current CDR. Firstly the registration process for

professionals is not easy to find or undertake and there is little functional information on how data is obtained beyond having to engage third party tools (which increases cyber security risks). Secondly, there are many financial products which are not yet included within the CDR framework meaning it is only a part solution at this point. More assistance is required for the profession to implement CDR data feeds into financial planning technology. This will result in more efficiency, innovation and better service offers at an affordable price for clients.

ATO and Centrelink agent status - The regulation of government agency arrangements also creates inequity in the financial advice system and adds to the cost of providing financial advice to Australians. Clients often turn to their financial planner to help them interact with government agencies such as Centrelink and the Australian Taxation Office ('ATO'). Under current arrangements, financial planners can provide clients with advice on their rights and obligations with these agencies, however, engaging with the agencies directly on behalf of the client can be difficult or practically impossible.

The ATO allows tax agents to access its online services portal and act on behalf of their clients, but financial planners are excluded from this arrangement despite operating under the same regulatory framework with the Tax Practitioners Board. As only one tax agent is able to be registered per person and, as many people have both an accountant and a financial planner, the portal is not able to recognise a financial planner as a client's second tax agent.

Centrelink maintains a Provider Digital Access portal. However, the Centrelink portal has limited functionality and financial planners often have to conduct business with Centrelink on behalf of their clients over the phone or at Centrelink offices. This arrangement results in significant delays and additional costs to clients.

Centrelink and the ATO should develop their online services portals, and direct services centres (such as call centres) for professionals acting on behalf of consumers, to ensure financial planners, and other relevant professionals, have access to a full range of functions and can thus act effectively on behalf of their clients.

Improving online engagement with financial planners would reduce the administrative burden on Centrelink and the ATO, as consumers would require less assistance from agency staff in completing their requests and would be operating with professional advice on what they need to provide to, or request from, those agencies.

Data Standards – There is significant inefficiency in financial services resulting from the absence of consistent data standards. Not only in terms of usability for consumers, but also in terms of regulating the entire sector. We have recently seen the benefit of the creation of a data dictionary by ASIC for the purpose of internal dispute resolution complaints data reporting, and there would be significant efficiencies created by rolling this approach out more broadly. The lack of universal data standards makes it inefficient to complete applications, transfer assets and collect information from products to benefit consumers' understanding of their financial positions and engagement with the sector more broadly. Most importantly, benefits like "straight-through processing" become very difficult to implement.

As an example, the implementation of the fee consent authorisation requiring consumers to individually authorise the payment of financial advice fees from each of their products has been done in an ad hoc

and individual way by product providers. As a result, it has become extremely burdensome for planners to facilitate client consent as they must know and adhere to the different date, form and signatory requirements of every provider in the market. On the other hand, the universal acceptance of the FSC/FPA AML/CTF ID Verification forms has been an example of where consumer engagement with products has been able to be dealt with more efficiently due to a common standard. Regulated data standards have become common across many professions, from medical billing through the Medicare system, the ATO portal access data standards for tax agents, to the lodgment of documents through the courts in the legal profession. Other examples include single-touch payroll and superstream. These effective innovations have all required regulator support to help overcome the natural fragmentation that results from multiple providers (which otherwise facilitates effective competition).

Cyber Security – Another benefit of improving data standards and facilitating secure data transfer is an improvement in cyber security for consumers. At present there are significant risks that highly sensitive data is open to interception or hacking due to the ad hoc nature of data collection, storage and transfer through the financial services sector. However, more specific to financial planning, there are very few consolidated or useful tools or guidance provided by Government in relation to cyber security laws, regulations, risks or solutions. While recent ASIC cases have identified that even large and well-resourced licensees can still have issues with cybersecurity preparedness, there is significant risk with smaller licensees given the shift in licensing demographics which have occurred over the last 5 years (with the majority of planners now being licensed by micro and small licensees). Ultimately, good cyber security practices help to improve consumer trust engaging with the profession and the sector more broadly.

Why it is an issue:

Australians will benefit from having easy access to all of their financial data when and where they need it, aligning with the intent of the CDR. At present, lack of access to data creates a significant inefficiency in advice provision. Some licensees still require client data to be captured in paper-based fact finder documents, manually transferred into CRM/Modelling systems, transferred to SOA generation systems, copied to application forms and other systems largely because of the lack of a common data standard.

Solving the data issue will mean that data ceases to be the friction point it currently is in financial planning - for planners, consumers, and product and solution providers. This will also have the benefit of making the profession easier to deal with by clients and everyday Australians because standardisation will assist access to and affordability of advice. It achieves this by improving the quality (though innovative delivery and goal tracking technology), efficiency (automatic data syncing) and cost of providing advice, given data collection and use is one of the longer time costs associated with advice delivery. It will also allow scalability of advice services for the consumer, as scaled pieces of advice from one or multiple advice providers can be aggregated into a holistic financial plan and position tracking service for the benefit of the client. Additionally, “straight-through” implementation of all advice services aligns with consumer expectations of timeliness they should receive from all professional services providers they engage with today. Finally, a consistent and accessible data standard and easy, secure access to client data will drive innovation and investment in advice.

Recommendations:

Quick wins	Medium term	Long term
• Standardised data collection authorities. • CDR access for planners (professional authority and data feed into advice and product tech). • (limited) ATO portal/super data API. • The ATO and Centrelink to improve their online and phone access arrangements to enable financial planners to act on behalf of their clients with respect to their superannuation tax obligations and benefits administered by Centrelink. • Register of the provider of the advice to include digital advice providers. • Consolidated cyber security legal and regulatory obligations with clear obligations for small businesses (similar to ASIC financial advice hub but for cyber security).	• Creation of universal financial services data standard. • Roll out CDR to all financial products. • Legislative/Regulatory mandate to use data standards based on the CDR. • Centrelink/Aged Care data upload for financial planners. • Improve technology investment incentives for financial advice.	• Research access to data. • Universal straight-through implementation.