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Dear Mr Choi,

SMSF ASSOCIATION SUBMISSION ON CONSULTATION PAPER 332 – PROMOTING ACCESS TO AFFORDABLE ADVICE FOR CONSUMERS

The SMSF Association welcomes the opportunity to make a submission to the Australian Securities and Investments Commission (ASIC) on Consultation Paper 332 – Promoting access to affordable advice for consumers. We believe this is an important step to better enable advisers to deliver more affordable and accessible financial advice to as many Australians as possible.

The SMSF Association has long called for a more efficient regulatory framework for financial advisory services. This is because the current regulatory advice model prevents SMSF trustees from obtaining the limited SMSF advice they require. After years of continual regulatory change, we have a framework that is complex and convoluted and hard to unwind. However, we believe every effort should be made to implement ideas and changes, even where improvements may be difficult to fit into the existing framework.

We have encouraged our members to respond to ASIC through the online functionality provided and we are hopeful that the responses provide constructive examples on the costs, compliance and pain points that restrict advisers from providing the advice consumers demand. We look forward to ASIC taking these points on board and introducing regulatory improvements.

This submission outlines key themes from the SMSF Association's consultation with its members over the past few years. Additionally, in December we undertook specific roundtable consultation with our members on CP 332. We note areas for ASIC to consider and explore ways of improving the financial advice process particularly in relation to the delivery of limited advice.

The SMSF Association has found that the advice process is lengthy, costly and prioritises compliance and the needs of Australian Financial Service Licensees (AFSL) over consumers.

Our advocacy priority is for reform that reduces complexity, improves efficiency and drives harmonisation to better enable the provision of affordable, accessible and quality advice to small businesses and consumers. We believe that, through CP 332, ASIC can take initial steps towards this goal.

At an overarching level, this goal can be achieved through improving the quality of regulation and guidance that governs the provision of financial and tax advice, including minimising the burden of regulation on businesses and individuals.

We believe the existing limited licence framework forms a key part of this assessment.

Additionally, we believe the principles for enabling affordable, accessible and quality finance advice should be underpinned by:

- Appropriate education and experience
- A Code of Ethics
- Individual registration or licensing
- A single regulatory regime and regulator
- Appropriate consumer protection, including access to dispute resolution
- Commensurate compliance obligations and costs
- Ongoing CPD obligations, corresponding to the advisory services provided

The themes in this submission are based around ASIC's questions on what is stopping the provision of limited advice:

List of themes

1. *Compliance and cost*
2. *Licensees are creating a significant extra layer of compliance and cost*
3. *Lack of clarity on how to scope*
4. *Compliance advice documents need reconsideration*
5. *Guidance not widely read, referenced or understood*
6. *ASIC's image*
7. *Limited licence framework has failed*
8. *Strategic advice requires consideration*

Summary of recommendations

1. *ASIC should take a closer look at the objectives of complying with the existing regulatory requirements and what purpose they are meant to serve for the consumer, adviser, AFSL and ASIC.*
2. *ASIC should explore how the advice process can better utilise and leverage the current file note and recording systems advisers use.*
3. *ASIC should explore what lessons can be learnt from wholesale clients and the advice process relating to these consumers, where consumers generally have a higher level of financial sophistication and greater access to affordable financial advice.*
4. *Within the existing legislative framework, ASIC should introduce a cap on the annual levy for financial advisers (or limit percentage increases), or allow for a lower level of cost recovery in upcoming years*
5. *ASIC's guidance and explanation of how limited advice can be provided should take a more influential role to support financial advisers to provide limited advice where appropriate, despite current concerns of their AFSL.*
6. *ASIC should explore guidance that clearly explains the 'reasonable' factors that need to be addressed by financial advisers when providing consumer driven limited advice, particularly when providing limited superannuation advice.*
7. *ASIC should explore if any learnings can be taken from the Government's changes to the credit framework and responsible lending laws which reduce red tape, improve competition and enable a more efficient flow of credit while maintaining strong consumer protections.*
8. *ASIC should review the purpose and usefulness of Statements of Advice (SOA) and modernise the relevant regulatory requirements.*

9. ASIC should provide further guidance on how to produce an SOA or ROA for limited advice scenarios.
10. ASIC should use their 'information sheet' format for updated guidance on providing limited advice.
11. ASIC should continue to consult and engage with industry when appropriate on improving accessibility and affordability of financial advice as the marketplace for financial advice continues to evolve rapidly.
12. The limited licence framework has failed and should be removed and transitioned to a new consumer centric framework. This may be in the form of a 'strategic advice' offering.
13. SMSF and superannuation advice lends itself to 'strategic advice' and ASIC should explore how this may be implemented in the advice profession as part of the current consultation process.

“If you do not provide limited advice, but would like to, what is stopping you from providing limited advice?”

Compliance and cost

Feedback received from members during our consultation meetings listed compliance costs as the single most important barrier that prevents or restricts advisers from providing affordable and accessible advice to consumers.

In our view the current compliance framework has been developed from a previous era of financial advice and has not been modernised. **We believe ASIC should take a closer look at the objectives of complying with the existing regulatory requirements and what purposes they are meant to serve for the consumer, adviser, AFSL and ASIC.**

Our understanding is that the current advice process has become a 'tick and flick' exercise and there are examples of compliance for compliance sake, driven primarily to avoid litigation rather than to improve advice.

Fundamental to the modernisation of the current compliance framework is the need to recognise that financial advisers will need to be appropriately educated by 2026 at the latest, have passed a national examination by 2022, completed a professional year and are already subject to a code of ethics.

It is our opinion that the current compliance burden is not helping the consumer in accessing and understanding advice. During our consultation meetings, many of our members stated it can take up to 6 weeks to build a statement of advice (SOA) for a client, who is unlikely to read such a lengthy and complex document. The time taken to prepare such a detailed document, coupled with the other costs associated with taking on a new client, means the cost to the consumer can often be uneconomical. Yet, in other situations, consumers can seek advice from a professional accountant or lawyer and obtain advice quickly and efficiently on new structures and other legal and/or financial issues.

Additionally, the costs of the current framework are a significant barrier for entry, particular for small practices and sole traders. This will continually reduce the provision of advice to more Australians because the pool of advisers struggles to grow.

With regards to the costs of limited advice to established clients, we are aware when advisers wish to provide limited advice, such as the commencement of pension, the cost solely for the paraplanning

and compliance can comprise a large fraction of the fee that needs to be charged by the adviser. This undermines the economics of the financial advice process.

An improved consumer focussed financial advice framework should recognise that the highest value is in the professional and consumer interaction and the implementation of that advice, and not the compliance documents.

The SMSF Association believes there is merit in exploring how we can utilise the current file note and recording systems that advisers undertake. Are advisers already recording the information that would be substantially of value for AFSLs and ASIC and in essence doubling their work in creating a SOA for a consumer that will generally not be read by the consumer? Can a new high-level consumer document be created from these file notes which can be made available to consumers and also kept in house?

Additionally, ASIC should explore what lessons can be learnt from wholesale clients and the advice process for these consumers, where consumers generally have a higher level of financial sophistication and greater access to affordable financial advice. We believe it is important to simplify what is provided to clients. This could be done by redefining the statement of advice, disclosing headline fees and moving away from granular detail.

Amount of fees and levies

Advisers are also facing an ever-growing list of fees and levies in order to continue to provide financial advice. These fees are from areas such as their AFSL, the ASIC funding levy, the Australian Financial Complaints Authority (AFCA), the Tax Practitioners Board (TPB), professional associations, education and CPD providers. When these are coupled with the costs of technology, overheads and staff, it becomes increasingly uneconomic to provide financial advice, particularly to consumers who seek limited advice which does not generate high amounts of revenue.

With regards to the ASIC funding levy, which is specifically in ASIC's remit, we encourage ASIC to strive to ensure that their levies are being reduced over time through improved processes and increased efficiency, especially as the growing use of regulation technology reduces regulation and compliance costs in financial services. When ASIC improves its performance and efficiency in undertaking regulatory fee-for-service tasks, this should result in lower fees for the financial services industry.

The SMSF Association understands the fee methodology attributed to AFS licensees. However, we believe ASIC should be allowed more discretion to reduce fees, particularly in relation to the financial advice sector. **Within the existing legislative framework, ASIC should introduce a cap on the annual levy for financial advisers (or limit percentage increases), or allow for a lower level of cost recovery in upcoming years.** We are concerned that if this doesn't occur, the funding levy could result in further adviser exodus, stifled competition and less access to advice for consumers.

Licensees are creating a significant extra layer of compliance and cost

A key theme which SMSF Association members have indicated to us is the impact AFSLs have on the provision of advice.

It appears that some AFSLs impart a layer of compliance that prioritises their own self-interests rather than the provision of advice with a consumer focus. It can be argued that some AFSLs have a bias towards revenue generation and ensure that their compliance guidance attracts the least number of complaints.

AFSLs also seem to have a very risk averse attitude due to the potential consequences they face from ASIC from a breach of regulation. This has forced AFSLs to create an additional burdensome layer of compliance to mitigate their risk.

Additional feedback is that self-licensed advisers and advisers with links to small AFSLs had less friction with the role an AFSL plays. These advisers found they were able to provide the advice consumers requested in a more affordable and efficient fashion.

This was most prevalent with advisers who provide SMSF specific advice. These advisers found their licensee understood SMSFs and were comfortable with providing SMSF advice that did not have excess compliance.

We therefore think there is merit in exploring what roles specific SMSF licences, which require appropriate compliance on limited advice, could play.

In contrast, larger AFSLs were very restrictive in the provision of advice. Some members stated their AFSL did not have a great understanding of SMSF advice or did not focus on it at all. In these cases, ASIC guidance becomes 'law' and can make the provision of limited SMSF advice very restrictive.

Additionally, some members noted large AFSLs seem to influence the behaviour of smaller AFSLs.

Large AFLs were also reducing the offerings they provided with regards to SMSF and limited advice. This is because this type of advice may not be profitable when the required compliance and risk is taken into account. When this occurs, AFSLs can remove limited licence advisers from their books and advisers are then unable to provide advice and must begin looking for a new licensee. This is not conducive to affordable and efficient consumer advice.

Expanding the ability for advisers to be self-licensed or more responsible for the advice they provide should be a consideration for a future advice framework. This may lead AFSLs to become 'service' providers in line with other professions. With the regulation of financial advice requiring individual registration and oversight, AFSLs may only be maintained to provide regulatory oversight of financial products and provide conduct monitoring and IT services to advisers, with advisers being 'self-licensed'.

Another issue noted with AFLs is that they all have different interpretations of legislation, regulation and guidance. This can result in a consumer receiving varying advice on what is required and allowed to be provided by their adviser when they seek advice.

Responses received by the Association are that much of the feedback advisers receive from their AFSL on their SOA is that their advice and strategy is entirely appropriate but their SOA requires more granular detail and technical explanations.

Lack of clarity on how to scope

We believe that a key challenge for the advice sector is how to service clients' advice needs that may be limited to a single issue, for example superannuation. This is particularly pertinent for SMSF advisers and SMSF trustees.

The difficulty in supplying limited advice is built from the cumulative impact of the themes outlined in this submission regarding AFSL behaviour, a lack of understanding of ASIC guidance, the compliance requirements and a pure cost versus revenue equation.

The recently implemented Financial Adviser Standards and Ethics Authority's (FASEA) guidance and Code of Ethics has also impacted on the provision of limited advice. For example, there is potential contradictory guidance between Standard 6 and those examples of limited advice in regulatory guidance (RG) 244.

Specifically, members have raised concerns when they are engaged for SMSF advice but the Code requires consideration of broader requirements and therefore they cannot act in a limited advice scope.

An adviser can very rarely provide advice to individuals purely seeking limited advice once they consider broader long-term impacts, complete a broader fact find and then provide advice through the best interest lens with this information. Even though consumers often request piece by piece advice, an adviser ethically will continue to struggle to demonstrate that a consumer's request for single issue advice is in their broad best interests under the Code without providing more advice than requested.

Additionally, as we note below ASIC guidance is not widely used. **ASIC's guidance and explanation of how limited advice can be provided should take a more influential role to support financial advisers to provide limited advice where appropriate, despite current concerns of their AFSL.**

ASIC should explore guidance that clearly explains the 'reasonable' factors that need to be addressed by financial advisers when providing consumer driven limited advice, particularly when providing limited superannuation advice. A quasi 'safe harbour' or fact sheet that details the appropriate level of compliance may be worth considering. This can be developed in consultation with advisers. We believe this would hopefully give advisers more 'power' in assuring that the advice they are now ethically and qualified to provide is appropriate in their AFSL's eyes.

The topics of interest in paragraph 9 of CP 332 can form a good basis for the areas of advice which can be accompanied with clear guidance on what needs to be considered when providing limited advice on the request of a consumer. They are:

- (a) investments, such as shares and managed funds (45% of consumers);
- (b) retirement income planning (37% of consumers);
- (c) growing their superannuation (31% of consumers);
- (d) budget or cash flow management (22% of consumers); and
- (e) aged care planning (18% of consumers).

Notably though, the issues and inconsistency around consumers' access to affordable and efficient advice continue to occur with respect to retirement and superannuation advice.

A licensed financial adviser can advise in these areas (if authorised to do so), however they must consider a client's total circumstances, rather than just a single issue such as superannuation, and deliver new advice via a complex, long-winded Statement of Advice.

Advisers who can only provide intra-fund advice differ as they can only provide advice on the superannuation fund they're employed by and in which the client seeking the advice is a member of.

Limited licence advisers can only provide advice on certain aspects of superannuation, while professional accountants who are not licensed but have ATO tax and superannuation portal access for

their clients can provide certain taxation and exempted guidance on superannuation but cannot provide limited superannuation advice.

We believe a consumer who seeks limited superannuation and retirement advice for example, whether it be from an adviser, licensed accountant or superannuation trustee should receive the same consistent high quality and affordable advice with the same meaningful disclosure.

Therefore, we think ASIC should consider areas of limited advice or strategic advice that has clear boundaries on how it can be offered, particularly for superannuation.

Finally, we encourage ASIC to explore if any learnings can be taken from the Government's changes to the credit framework and responsible lending laws which reduce red tape, improve competition and enable a more efficient flow of credit while maintaining strong consumer protections. While ensuring that consumers are still protected, there may be merit in imparting some onus on the consumer when they are requesting limited advice on certain topics such as superannuation which ensures the consumer understands that an adviser is only providing advice on that basis and that fuller comprehensive advice is not required.

Compliance advice documents

Statement of Advice

Related to the increasing compliance burden is the requirement of an SOA when providing advice. The SOA was continually noted by members as impeding the provision of affordable and efficient advice.

The main reason was due to the number of considerations that are required in an SOA, resulting in an extremely lengthy and complex document.

It is also a common theme that consumers do not read such large documents and the SOA has become a compliance safety document.

We believe there is merit in exploring the purpose of the SOA. Are there other consumer focused documents that can be provided to a client, with the appropriate records and evidence kept in-house by advisers?

Record of Advice

Our members believe that allowing advisers in certain scenarios to provide a record of advice (ROA) rather than a SOA would be a step in the right direction. However, it should also be noted that ROAs are not a magical bullet that will solve the number of issues raised this submission.

As evidenced during ASIC's COVID-19 temporary relief measures, ROAs were used in place of SOAs for certain scenarios. Although the take up was low due to factors such as AFSL requirements, the intent was positively received. We believe this should build a foundation for more scenarios when an ROA can be used.

A key message received from our members is that ROAs produce a more understandable document for consumers. In this regard, advice becomes more of a 'service' rather than just pure compliance.

Other members noted that ROAs can take as long as an SOA to produce. This was partly due to the fact that AFSLs ignore the guidance relating to ROAs and prefer the risk averse nature of an SOA. Additionally, it was relayed that in scenarios when an ROA was too 'simple' but still effective that AFSLs

required more detail. This results in higher fees being charged to clients and ultimately consumers paying for advice and documentation that is not necessary.

We believe ASIC should provide further guidance on how ROAs can be used and what they should look like, particularly in its updated guidance. This guidance should be developed in consultation with advisers to ensure ROAs are consumer focused and not overtly lengthy or complex.

Guidance not widely read, referenced or understood

The SMSF Association's key finding with regards to guidance is that it is not widely read, referenced or understood by advisers. This is because it is expected that their AFSL is across the information ASIC supplies. However, as indicated above, AFSLs provide an extra layer of compliance that may not be necessary or may not agree with the guidance issued by ASIC.

We believe this is an unfortunate outcome as much of the guidance and many of the examples in RG 244 are quite useful and reasonable.

Nevertheless, the current ASIC guidance is quite lengthy. This makes it difficult to consume in an easily understandable manner. Additionally, the guidance is not located in a single depository or frequently referenced by ASIC which does not make it well known.

Therefore, we believe it is important that ASIC guidance 244 and 90 are reviewed and enhanced with more accessible, easily understood and practical real life limited advice examples. Some members noted that while the examples have great intent, they do not encompass product where it is essential.

Specifically, in addition to RG 90 *Example Statement of Advice: Scaled advice for a new client*, additional examples should be included in RG 90 which explains how to produce a complying SOA and ROA for single issue and scaled advice scenarios.

The SMSF Association believes that ASIC's information sheets are a good format for updated guidance on providing limited advice. For example, information sheet 216 is for accountants who provide services relating to SMSFs. This directory is commonly referenced and understood by SMSF accountants.

ASIC's image

We are aware ASIC will be receiving feedback that outlines that advisers and AFSLs are risk averse due to potential ASIC penalties. We also understand that ASIC seeks to encourage affordable and efficient advice and is concerned that their guidance is not being effectively implemented by industry.

The SMSF Association believes a step to resolving this tension is for ASIC to continue to consult and engage with industry when appropriate on improving accessibility and affordability of financial advice as the marketplace for financial advice continues to evolve rapidly. ASIC's role as the 'corporate cop' tends to intimidate the advice industry despite the fact both advisers and ASIC seek to achieve the same goal, to ensure consumers receive compliant and affordable advice.

The Australian Tax Office (ATO) ongoing consultative relationship with the SMSF and tax industry has in fact strengthened their compliance regime due to their willingness to consult openly with industry and this helps achieve improved compliance and efficiency for SMSF investors and professionals.

The Limited Licence Framework has failed

Introduction of the limited licence framework

Prior to the introduction of the AFSL's limited licence regime, an accountants' exemption existed which authorised a recognised accountant to provide advice in relation to the acquisition and disposal of an interest in an SMSF. A recognised accountant had to be a member of one of the major professional accounting bodies: CAANZ, CPA or IPA.

However, it was determined that all financial advice should be afforded the same level of regulatory protection, irrespective of who delivers the advice. Under the prior exemption, accountants were able to avoid regulation in dealing with SMSFs, which were not defined to be a financial product.

Therefore, the accountants' exemption, which was introduced as a temporary measure, was removed to align with the Future of Financial Advice (FOFA) intention to enable consumers to obtain access to more affordable and competent financial advice.

From 1 July 2016 advisers have had to be licensed or authorised with ASIC either through a full AFSL or limited AFSL to provide SMSF advice services. Accountants who intended to give SMSF financial advice spent considerable time and money reshaping their businesses to meet the new limited licensing regime. These accountants were required to comply with the then targeted education standards, under ASIC's RG146 standard in superannuation and SMSFs.

Limited licensing was intended to allow advisers to provide a broader range of advice which included 'class of product advice' about the following financial products:

- superannuation
- securities
- simple managed investment schemes
- general insurance products
- life risk insurance products
- bank deposit products

With regards to SMSFs, individuals must have a form of licensing if they recommend or provide a statement of opinion which could reasonably be regarded as having any influence on their client's interest in an SMSF.

This means that if an adviser holds a limited AFS licence, with all available authorisations, they can:

- recommend and establish an SMSF
- make a recommendation in relation to the client's existing superannuation funds (referred to as super switching advice), or when providing advice to clients on contributions or pensions
- advise on an SMSF investment strategy
- advise whether the client should hold insurance cover directly or through a superannuation fund
- advise which simple managed investment scheme (MIS) would be appropriate for and in the best interests of a client, (e.g. cash funds versus equity funds), and
- advise whether shares are an appropriate investment option given a client's relevant circumstances including their tolerance for risk and whether alternative classes of product might be more suitable.

We believe the intention of the limited licence framework is analogous to the CP 332 and industry discussion of limited advice and strategic advice.

However, as we highlight below the limited licence framework has failed to meet its objectives. **The first of these reasons is that the lack of ability to scope advice affordably, as outlined above, renders the framework ineffective.**

The exemptions and legal obligations from the licence are complex

Non-licensed advisers are able to provide certain advice regarding SMSFs if it falls under one of the below categories of advice ASIC have exempted:

- Factual information.
- Taxation advice.
- Traditional accounting services,
 - eg, preparing financial statements,
- Broad asset allocation advice.
- Advice which does not involve a financial service (often referred to as ‘execution only services’)

ASIC’s Information Sheet 216 aims to provide guidance on these categories. It is explained as,

Generally, the exemptions will apply if the financial service happens to be an integral part of or incidental to another type of service typically provided by an accountant – that is, you would reasonably need to provide the exempt SMSF financial service in order to carry out your normal accounting practice.

The exemptions operate concurrently, so you may rely on different exemptions for different aspects of your practice.

However, it is important to be aware of the limits of any exemption you rely on. Even if you rely on an exemption to provide one type of SMSF service, if you also provide financial product advice recommending an SMSF or particular investments through the SMSF at the same time, this advice will trigger the requirement to be covered by an AFS licence. Operating under an exemption does not remove the requirement to be covered by a licence for other types of financial service.

Interpreting where an exemption lies and where a licence is needed has been a complex task for the SMSF industry. For example, determining how advisers under a taxation exemption may provide advice on the taxation implications of financial products without being covered by an AFS licence is complex and difficult. This exemption allows accountants who are registered with the TPB to provide financial product advice on their client’s interest in an SMSF or a financial product they hold through their SMSF, as long as this advice is merely incidental to the tax advice they are providing and not a separate recommendation on the merits of the financial product itself.

Furthermore, advisers who are covered by an AFS licence, including a limited AFS licence, cannot rely on the exemptions. Advisers who are not covered by any AFS licence can provide advice under an exemption, such as broad asset allocation advice, with limited documentation. However, advisers who have become licensed to provide compliant advice cannot provide the exact same advice as an unlicensed adviser without having to undertake extensive fact finding, providing various disclosures and producing complex and costly statements and records of advice. This is another failure of the limited licence regime which treats advisers providing the same advice differently. Indeed, anecdotal evidence suggests that there are many advisers who obtained a limited AFS licence because they thought this might be a wise business decision are now cancelling their licence because of the complexity, cost and uncertainty of the current system.

FASEA ignored the limited licence

FASEA educational standards, which were recently finalised, failed to appropriately recognise or account for the limited licence advice regime, particularly for accountants with a licence providing SMSF advice.

The relevant experience and education needed for accountants giving advice under a limited licence was not adequately considered under the existing pathways framework. The adviser pathways force advisers who only provide SMSF advice to spend considerable time and money studying subjects that are not relevant to the advice they provide. This means that many advisers with a limited licence face costly and irrelevant study to continue providing specific and specialised SMSF advice, which is the only area of advice they are legally able to provide.

In essence, the limited licence regime was a legislated part of the regulatory framework that was ignored by FASEA. This has now made the limited licence regime much less relevant.

Whilst the accountants limited licence is imperfect, the exit of accountants from this space will see a further reduction in consumers ability to access limited advice. It is expected that a number of accountants will exit the advice space in 2021.

We believe the education that accountants and other advice providers with a limited licence must undertake should more directly reflect the work they conduct on a day-to-day basis.

Poor take up / Licensees removing limited licence advisers because they are not profitable

The limited licence regime has also not had anywhere near the expected take up in the accounting industry. In 2018-19, ASIC only approved 4 limited AFS licences, compared with 800 full AFS licences. Due to reporting changes, data on the number of limited AFS licenses approved since the 2019-20 financial year has not been released.

Going back to 2015-16 highlights a poor history of take up from the beginning when 228 limited AFS licences were approved, followed by 512 in 2016-17 and 23 in 2017-18.

The Government's intention at the time was for the limited AFSL framework to see 10,000 accountants¹ become licensed to provide a much broader range of financial advice than they were previously able to provide.

This means the remaining advisers either ceased providing SMSF advice, became an authorised representative of a licence holder, obtained a full AFS licence or operate without a licence.

We are anecdotally aware of many advisers currently leaving or choosing not to enter the limited licence regime going forward. Not only is this because they find the framework complex with scoping difficult to achieve, but those limited advisers who saw the benefits in the intent of the framework are now being forced out by AFSLs who do not see it as a profitable venture.

¹ <http://ministers.treasury.gov.au/ministers/bill-shorten-2010/media-releases/new-form-licence-expands-access-financial-advice>

Execution only advice occurring

The fallout from the poor take up of the complex and costly limited licence regime means that a portion of advisers are acting on the reliance of 'execution only' services. 'Execution only' services from an unlicensed accountant provides client documentation that simply states that they, the accountant, are merely executing their client's actions on the direction of the client.

However, an 'execution only' service can be easily manipulated when there is a trusting relationship between an unlicensed adviser and a client. An adviser can provide advice to set up an SMSF but direct the client to indicate that the decision to set up the SMSF was the client's own directive to the accountant and that accountant provided no advice. Encouraging their clients to seek execution only services could be used to avoid the documentation required under a licence.

This approach is generally much cheaper than being licensed and undertaking extensive due diligence, providing AFS related disclosures and creating costly and lengthy statements of advice documentation. This is the unintended consequence of a failed limited licence and advice framework.

Overarching regulatory problem – Not fit for purpose

The overarching problem of the limited licence regime is that it prevents SMSF trustees from obtaining basic SMSF advice they require in a convenient and affordable manner.

SMSF trustees who wish to seek basic SMSF advice are either required to spend significant money seeking financial advice from a licensed adviser or must act without advice. This means there are important unmet SMSF advice needs in the market.

For example, if an SMSF trustee wanted to seek advice regarding the establishment of a pension from their accountant, unlicensed accountants are unable to provide this simple advice. Licensed advisers are able to provide this simple advice but it involves costly documentation disproportionate to the advice the trustee seeks. The cost of implementing such advice is also considerably higher than most clients are prepared to pay. Therefore, trustees either are not able to access the advice or often do not see the value of the advice given the cost involved.

As we highlighted previously and our members indicate, once an adviser chooses to be licensed they are then restricted from wearing their traditional accountant 'hat' when trying to provide services they ordinarily provide without being licensed. The framework has restricted individuals from providing simple SMSF services and added unnecessary complexity to simple tasks.

There are also unwarranted restrictions on winding up SMSFs that reduce consumer protection. If an individual seeks advice from an unlicensed accountant regarding their SMSF, and they clearly have an inappropriate balance, such as below \$40,000 without the capability to increase the balance, the accountant is unable to advise the client that an SMSF is not likely to be in their best interests.

In addition, advisers find it too expensive to be licensed to provide simple SMSF services, which is the main need of SMSF trustees.

Scenarios such as this have prompted the Australian Tax Office² to acknowledge there is a need in the market to service the gap between full financial advice and smaller matters which has been caused by the licensing regime since the removal of the accountants' exemption.

² [ATO Assistant Commissioner Dana Fleming at the Accounting Business Expo in Sydney – March 2019.](#)

It is important to recognise the majority of accountants and SMSF advisers do not want to provide financial product advice but they do want to help their clients set up pensions, advise on making contributions to their SMSF (beyond mere tax advice), wind up an SMSF when an SMSF is no longer appropriate for the client and refer their clients to a fully licensed adviser for investment and financial product advice when needed.

It is clear that the current framework is restricting the SMSF industry and the professionals who dedicate their time to provide advice.

Therefore, we believe the limited licence has failed and hence should be removed and transitioned to a new consumer-centric framework. This may be in the form of a 'strategic advice' offering.

We believe SMSF and superannuation advice lends itself to 'strategic' advice. In fact, the limited licence framework was built upon this premise. That is, advice is usually centred around making contribution or starting a pension in 'superannuation'.

We hope ASIC includes these issues in the CP 332 discussions and explores these opportunities and how they could be implemented in the advice profession.

Strategic Advice

Currently, there is increasing interest in the SMSF sector and more broadly about 'strategic advice'. This is because many consumers demand strategic advice rather than advice on specific financial products. Additionally, with comprehensive advice out of reach for many Australians due to the costs, it is clear more are seeking piece by piece strategic guidance.

However, the current framework is built on provision of financial product advice, which not all advisers seek to provide.

With improvements to the way limited advice is offered out of CP 332, strategic advice could be the foundation for which a consumer focussed framework is built. **This could ultimately allow appropriately educated advisers registered with the single disciplinary body to provide strategic advice on areas such as superannuation, retirement and cashflow without specific reference to financial products.**

A strategic advice model allowing suitably qualified professionals to practise under a 'no product recommendation' environment would see advisers given increased ability to provide strategic advice without conflicts of interest. It would also address the false perception that financial advice is simply 'selling products' and in time would help to address the issue of trust in the sector.

The deconstruction of product and strategic advice could also include a clarification of what personal advice really means. For example, clarifying the definitions relating to advice which considers personal circumstances and general advice/information which does not.

Specific consumer focussed documentation could be implemented on the back of strategic advice. When products are required, there would be additional education requirements, compliance obligations and documentation provided to ensure consumers are protected.

It is important to note, that strategic advice should not be seen as a 'lesser' form of advice, as strategy can be complex and valuable and therefore should be viewed as a valuable service.

Examples provided to us recently included, a consumer seeking advice on whether their superannuation was invested in appropriate asset classes. The current framework requires an adviser to understand their wage, cash flow and other tangential information which increases the cost to the consumer. However, under a strategic advice framework that has clear boundaries on how to scope advice, an adviser would be able to look at the reasonable considerations such as age and risk, the client's current asset allocation and provide a strategic opinion for their current superannuation product asset allocation.

Another example is a consumer who wanted to withdraw \$50,000 out of their \$4 million superannuation balance. The adviser wanted to provide a simple short strategic advice document which validated the consumer's rationale but the current framework restricted this advice.

A verbatim consumer example is shown below:

The current Financial Advice system is not "Fit For Purpose". When we need it most, the rules aimed at protecting us are a barrier to affordable access!

My husband and I are both retired (74 & 64) with \$1m in a Self-Managed Super Fund setup in 1997.

As interest rates have declined, we have increasingly craved access to good personal investment advice to help us maintain income without too much risk of capital loss. But just when we needed it most, the ability to have discussions about investment options disappeared.

Government action to reduce the risk of bad advice for people like us means we now can't access any personalised advice without spending \$2000 - \$5000 for a Statement Of Financial Advice (SOFA). Even with detailed phone calls, good portfolio information, a free initial meeting and a restricted brief (we wanted some fresh ideas about where we could place \$120k other than TDs, Bonds & Equities) we could not get any information until a SOFA was produced. In effect, we paid for someone to enter our Excel information into another standard format document. All we really wanted was to pay for an expert's time to talk about options and ideas! We are willing and able to make and own decisions on information available. These paid discussions provide opportunity to build relationships and trust that could lead to a portfolio management arrangement. Rather than protect us, the current system has raised a barrier to gaining affordable access to Financial Advice.

We can't afford to do that. The outcomes are not only negative for us they are negative for the Australian economy and for taxpayers.

With less income and more fear of running out of money, retirees like us will:

- consume less – less cafes, movies, travel, presents buying, clothing, household goods etc;
- risk capital erosion from taking on more risk and generating less income, which will lead to more retirees relying on the pension;
- need to rely on government funded aged care places;
- experience financial stress which impacts physical and mental health and increases the health care costs of an already high-cost demographic.

This is part of the broader topic of retirement income management, something else we would happily pay a Financial Advisor to discuss. But not, if we have to spend thousands of dollars for them to enter data into a SOFA before we can gain any input to our personal circumstances.

The current rules prevent people who know us extremely well (e.g. Super Accountant) from openly discussing any ideas or options with us AND to date we haven't been able to find anyone who was prepared to be engaged on an hourly rate and reveal any thoughts/ideas without a SOFA. I guess, why

would they when the rules require a SOFA, they get paid for the data capture and there is a risk of litigation without a SOFA.

If retirees can earn better returns, that money goes straight back into the economy – we travel, eat in cafes, go to movies, buy wine, clothes, appliances and presents for our friends and family. We can also afford to donate to charities which must be shrinking and will only continue.

On current returns, retirees are more likely to reduce spending, lead more isolated and potentially less healthy and happy lives. That's not good for anyone or Australia.

Improving the ability to provide limited advice and the provision of strategic advice must ensure consumers, like those above, can have discussions with their adviser.

ASIC's recent report on insurance into superannuation went to this very point. They stated, *"On this point, the process of gaining access to advice could be more transparent. These members did not seem to know what or who to ask for or what the financial or other implications might be. There is a sense that the call-centre service seems an 'all or nothing' exercise so that members seem to think that if the call centre can't answer their question, then there is no one else to ask. The onus seems to be on the member to 'do more research'. Members may perceive their question to be too specific or too small for a financial planner or have other reservations about using a financial planner."*

As highlighted earlier, the topics listed in paragraph 9 form a good basis for strategic and limited advice. **Consideration should be given to how strategic advice can be supplied for these topics when a financial product is not recommended, and the resultant relevant documentation and disclosure.**

This may take the form of a sliding scale of authorisation for advisers. The removal of the limited licensing framework for an enhanced version of the current framework which allows for limited authorisations should be considered. This will ensure that all advisers or licensed accountants can obtain the proper authority for the advice services they wish to provide.

The SMSF Association also believes that advisers who provide advice to individuals about SMSFs should have specific SMSF education and qualifications that underpin their advice. The Productivity Commission in their final report (Superannuation: Assessing Efficiency and Competitiveness) recommended that SMSF advisers should have a form of specialised qualification to provide SMSF advice.

This was also supported in ASIC's Report 575 where ASIC has suggested that SMSF advice would be improved by raising education standards with a specific SMSF qualification for advice providers wishing to provide SMSF advice.

Not only does raising the education standards of SMSF advisers increase their knowledge relating to specific and complex legislation, it also promotes higher standards for new advisers who wish to give SMSF advice. Therefore, strategic specialisations, such as SMSFs, should also be explored with regards to adviser authorisations.

Conclusion

A reimagined advice framework has the opportunity to be beneficial for all Australians. It will include more advisers in the profession, less regulatory impost, greater strategic advice and more accessible advice at a cheaper cost to consumers.

These key benefits include:

- Increased consumer protection through individual accountability for compliance with legislative and ethical obligations
- Separation of the advice and product sectors to address inherent conflicts of interest, improving trust and confidence in advice
- Sustainability and stability of the financial advice sector, while lifting standards to move towards a true profession
- Increased access to advice through better and efficient regulation, by removing current complexity and costs of the AFS licensing system for individual advisers
- Cost neutral to the Government, with potential to attract more professionals to the sector which will increase revenue (and hence access to advice)

There is an advice gap in the marketplace that has been exacerbated by the COVID crisis. Many Australians and small businesses need financial advice yet feel unable to access it due to cost constraints. That is, the high cost of financial advice that has resulted from the complexity of regulation required to provide that advice.

We believe single issue advice should be built on the framework and examples in ASIC Regulatory Guide 244 and further clarified via the updated SOA outlined in the revised RG90.

We also think it is highly desirable to include FASEA, Treasury (as the new standard setter), and the Financial Services and Credit Panel in discussions and have the Code of Ethics Guidance updated to reflect the need for single issue advice.

The SMSF Association would welcome the ability to contribute to roundtable discussions in early 2021.

If you have any questions about our submission, please do not hesitate in contacting us.

Yours sincerely,

A handwritten signature in black ink that reads 'John L. Maroney'.

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing the SMSF sector which is comprised of over 1.1 million SMSF members who have \$700 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.