



FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

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Dear Mr Choi

**Consultation Paper 332: Promoting access to affordable advice for consumers**

Thank you for the opportunity to comment on ASIC's Consultation Paper 332. The affordability of financial advice, and the resultant impact this has on the sustainability of the financial planning profession, are critical issues for the Financial Planning Association.

We are encouraged that ASIC is engaging directly with the financial planning profession on the issue of affordability and we have encouraged our members to provide their views directly to ASIC. I note that this consultation has been conducted over the Christmas holiday period and this may have had an affect on the number of responses that ASIC will receive. I understand that ASIC will conduct further consultation through direct engagement and roundtables and the FPA will happily support this work to ensure ASIC gets the feedback it is seeking.

The issue of affordability of financial advice is central to the FPA's new policy platform released in 2020 – *Affordable Advice, Sustainable Future*. The FPA provided ASIC with a copy of the platform on its release and I have also attached a copy to this letter. Many of the issues raised in our submission refer to recommendations the FPA has made in its policy platform.

Please let me know if you have any questions.

Yours sincerely

**Ben Marshan**  
Head of Policy, Strategy and Innovation  
Financial Planning Association of Australia



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# ASIC CONSULTATION PAPER 332 PROMOTING ACCESS TO AFFORDABLE ADVICE FOR CONSUMERS

FPA Submission  
18 January 2021

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## Table of Contents

<b>Introduction</b>	<b>2</b>
<b>Regulators and the regulatory framework</b>	<b>3</b>
FPA members' feedback	3
FPA recommendation	3
<b>Streamlining financial advice through access to data and electronic transactions</b>	<b>5</b>
FPA members' feedback	5
FPA recommendation	5
<b>Regulation of financial advice</b>	<b>6</b>
FPA members' feedback	6
FPA recommendation	8
<b>Changing context for regulation</b>	<b>9</b>
FPA members' feedback	9
FPA recommendation	9
<b>Structure of the financial planning profession</b>	<b>10</b>
FPA members' feedback	10
FPA recommendation	10
<b>Tax deductibility</b>	<b>11</b>
FPA members' feedback	11
FPA recommendation	11

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## Introduction

The FPA welcomes ASIC's interest in the issue of the affordability of financial advice and its efforts to collect feedback directly from financial planners and licensees on this issue. The FPA is focused on addressing the issue of affordability and the impact it has on the sustainability of the financial planning profession.

Affordability has become an increasingly significant problem for financial advice in Australia. This is evident in the steady increase in the cost of providing a statement of advice to a client. FPA members indicate that the cost is now around \$2,671, having risen from \$2,435 (9%) in the year to 2019-20.

As with many complex problems, there is no single factor responsible for the increase in cost of providing financial advice. The cost of complying with regulation is often cited as a major driver in the affordability of financial advice. It is undoubtedly true that the direct and indirect costs of complying with financial services regulations have increased dramatically over the past five years. This includes the amount of regulation that applies to financial advice plus the cost of industry funding, fees and charges for maintaining the regulatory framework.

However, the increase in cost is also tied to the manner in which the financial services industry has responded to regulation and the structure of the financial planning profession itself.

Identifying sensible reform options, which both address the issue of affordability while reinforcing higher standards and consumer protections in financial advice, is challenging. Over the last 15 months, the FPA has led a discussion among our members, industry stakeholders and Government agencies on the issue of affordability. These discussions have recently focused on the release by ASIC of its Consultation Paper 332: Promoting access to affordable advice for consumers.

This submission provides a brief summary of the feedback that the FPA has received over the last 15 months. It also highlights the recommendations the FPA has made through its 2020 policy platform - Affordable Advice, Sustainable Profession - a copy of which is attached.

Feedback has been collected into four groups on the following topics:

- Regulators and the regulatory framework
- Streamlining financial advice through access to data and electronic transactions
- Regulation of financial advice
- Structure of the financial planning profession
- Tax deductibility

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## Regulators and the regulatory framework

### **FPA members' feedback**

FPA members often commented on the complexity of the regulatory framework and the perception that regulations were not clear and easy to apply. Financial planners have multiple regulators to satisfy, including the major regulators of ASIC and the Tax Practitioners' Board (TPB). The cost of this complexity includes the resources required to satisfy multiple regulators, plus the fees, charges and levies that are used to fund such a complex framework.

Many FPA members noted the rapid increases to the ASIC industry levy since its introduction in 2017-18, with the current year per-adviser levy having increased approximately 68 per cent in just two years. The pressure on the ASIC industry levy is heightened due to ASIC not being able to offset the cost of its enforcement action with any proceeds from fines or cost orders, but rather remitting this funding to consolidated revenue.

FPA members also expressed concern about the prospect of the TPB moving to a full cost-recovery model which is expected to result in similar, large increases to its membership fee. The FPA notes that the future of financial planners with the TPB remains undecided after the Government released its response to the TPB review in late 2020. One consideration in this question is the need for financial planners to access the ATO portal to properly and efficiently serve their clients.

The Government's announcement in December 2020 that it would abolish the Financial Adviser Standards and Ethics Authority (FASEA) and move its functions into ASIC and the Treasury is a step in the right direction, as it will allow a more cost-effective method of delivering the functions currently held by FASEA. However, splitting standard-setting and enforcement activities is not ideal and will require close cooperation between those two agencies.

A common complaint from FPA members is the perceived lack of engagement between some regulators and the financial planning profession. While some of this response can be attributed to historical difficulties, it is worth considering how engagement can be improved and models for future success. For example, some members cited the ATO's Tax Liaison Group as an example of effective engagement. Similarly, FPA members often said they would welcome more detail from regulators about their work priorities and reasons for taking a particular approach with regulation.

### **FPA recommendation**

The FPA believes that efforts to improve the affordability of financial advice must start with a streamlining of the regulatory framework for financial advice. The current framework, in which up to eight different government agencies have some responsibility for financial advice, does not provide a solid foundation for clear and effective regulation.

The FPA has recommended that the Government pursue a single disciplinary body that has overarching responsibility for financial advice and can provide an effective single point of contact between the Government, the other regulators and the financial planning profession. This would allow a consolidated approach to regulating financial advice and a single

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approach to providing regulatory guidance which would simplify the regulatory environment for financial planners.

### *1.1 Single disciplinary body*

*A single government body should be responsible for overseeing financial planners, including setting mandatory entry, professional standards, investigating breaches of mandatory professional standards and other legal requirements, and conducting disciplinary proceedings.*

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## Streamlining financial advice through access to data and electronic transactions

### FPA members' feedback

FPA members have consistently highlighted the need to streamline the administration that is necessary to operate as a financial planner as this has the potential to significantly affect the cost of delivering financial advice to a client. Some areas that are often cited as potential improvements include better access for financial planners to ATO and Centrelink online portals; access to reliable and standardised financial data through the Consumer Data Right (CDR); and standardisation of the requirements of product manufacturers in dealing with their products on behalf of clients.

On the latter of these issues, there is a significant concern among members that we reduce the administrative burden on financial planners so they can spend more of their time focused on assisting their clients. This could be achieved with improved consistency in the forms and processes needed to verify identification, transactions and the payment of fees from financial products. This is particularly a concern with superannuation trustees implementing new and more onerous requirements to allow advice fees to be paid from superannuation accounts. FPA members often complain about the divergent processes in place across the financial services sector and the lack of modern, electronic options for interaction.

### FPA recommendation

The FPA recognises the importance of streamlining the administration of financial advice and has made several recommendations in its policy platform to achieve this.

#### *3.4 Tax and Centrelink agent status*

*The Australian Taxation Office and Centrelink should improve their online access arrangements to ensure financial planners are able to act on behalf of their clients with respect to their tax obligations and benefits administered by Centrelink.*

#### *4.1 Access to data*

*The consumer data right should be extended to superannuation products and be designed to allow financial planners who have been authorised by clients to act on their behalf by accessing their financial data.*

#### *4.2 Electronic disclosures and transactions*

*The government should work with industry stakeholders to improve the takeup and effectiveness of electronic methods of disclosure, consent and transactions, including through standardised processes and forms and, where appropriate, by requiring industry participants to provide electronic options.*

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## Regulation of financial advice

### **FPA members' feedback**

The complexity of financial advice regulation is one of the top concerns among FPA members. There is a perception that some regulation is overly complex and restrictive, which has the effect of increasing costs for consumers without providing substantially better consumer outcomes. In particular, FPA members often note that they are required to prepare time-consuming and costly Statements of Advice (SOA) for all advice even where it is relatively simple and low-risk.

### *Statements of Advice*

The requirements for SOA is often given as an example of a regulatory requirement that substantially increases the cost of delivering financial advice, but which does not benefit the consumer. SOA routinely exceeds 80-100 pages of dense text and the preparation of an SOA takes many hours and is a substantial cost driver for financial advice. However, few consumers benefit from this type of document and there is broad agreement that a shorter, more consumer-friendly document would benefit both financial planners and their clients.

There is little in the current regulation that would prevent a financial planner from using a shorter SOA document, yet few do so due to the perception that the regulations do not allow it and the extremely conservative approach to compliance taken by most licensees to ensure they are able to defend consumer complaints through the Australian Financial Complaints Authority (AFCA). As a result, lengthy SOAs persist and remain a source of concern for FPA members.

The disconnect between the requirements of the regulation and the actions of financial planners is a major challenge in addressing the complexity of SOAs and the affordability of financial advice more broadly. This could be addressed through better regulatory guidance. In particular, the FPA has encouraged ASIC to more strongly support a move to digital SOA delivery and more variety in SOA style as highlighted in the FPA's "Future of the SOA" Report.

### *Better guidance on regulation*

One recommendation from FPA members on addressing this challenge is better guidance from regulators on the application of regulations. Better guidance would assist members in understanding what is and isn't required by the regulations and would also promote a more consistent application of standards between regulators, licensees and EDR schemes such as AFCA.

Recent updates, such as RG274, have demonstrated a more user-friendly approach to regulatory guidance compared to past publications such as RG175. The FPA would welcome ongoing efforts by ASIC to update and maintain its guidance documentation with the goal of providing a style and format that is more effective and contents that are responsive to the feedback of financial planners. Additionally, the use of PDF documents format to deliver regulatory guidance can make it difficult to engage with ASIC's regulatory guidance and other regulatory material.

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As part of improved guidance, some FPA members noted that definitions and terminology were often used inconsistently by both financial planners and regulators. Consistency in terminology would benefit a clear understanding of regulation and discussion of future reform options. Examples given include the various descriptions used for financial advice, including scaled, holistic, single-issue, intra-fund, general, personal, strategic, complex and simple. Some of these terms are defined in legislation, but most are not and rely on a common usage within the financial planning profession.

#### *Best interest duty*

Members also commented on the practical application of some standards by regulators and licensees and the impact this has on the way financial advice is delivered. For example, some FPA members were concerned that the safe harbour provision that applies to the best interest duty in section 961B of the Corporations Act 2001 was being used as a mandatory requirement rather than an optional manner of satisfying the duty.

As a result, members cited examples of where they were asked to meet each of the components of the safe harbour, even where a simpler consideration of the matter would demonstrate that the financial advice satisfied the best interests duty. Requiring this more extensive demonstration of best interests adds to the cost of delivering financial advice, especially for scaled advice that covers simple issues. Many FPA members would prefer the flexibility to demonstrate the best interests of their clients had been met without referring to the safe harbour provisions.

#### *Strategic advice*

FPA members often commented that the regulatory requirements are as onerous for simple and low-risk financial advice as they are for more complex and higher risk advice. For example, strategic advice is often defined as advice given to a client on financial strategy and may include setting financial goals, budgeting and cash-flow management. Strategic advice may include a discussion about a class of financial product (i.e. contributing more to superannuation), but will not include a financial product recommendation. In this context, strategic advice should be seen as a form of scaled advice.

Although strategic advice is generally less complex and lower risk than financial product advice, it triggers the same regulatory compliance obligations and cannot be delivered for a more affordable price. In a similar vein, limited licence arrangements also trigger the same level of regulatory obligations despite restrictions on the scope and type of advice that can be provided. The failure of limited licence arrangements to achieve widespread use in financial planning demonstrates the difficulty of providing scaled advice at a reasonable cost without any reduction in compliance obligations.

FPA members considered that reforms to allow strategic advice to be delivered in a simpler and more cost-effective manner would boost affordability and make financial advice accessible to more consumers. This objective could be met, in part, through simplifying the requirements for SOA and promoting more streamlined documentation for strategic advice.

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## **FPA recommendation**

The FPA supports the creation of additional regulatory guidance that gives confidence to financial planners and licensees about how they can satisfy all of their regulatory obligations in the most cost-effective manner.

### *5.1 Ability to buy the advice you want*

*Regulatory guidance, including model [digital] Statements of Advice, should be provided to clearly articulate the circumstances in which a financial planner can provide advice on a limited scope engagement, with the aim of providing consumers with more options for how they receive affordable financial advice.*

The FPA supports the repeal of the best interests duty safe harbour as a means of simplifying compliance and promoting a principles-based approach to regulation. This reform is consistent with recommendation 2.3 of the Financial Services Royal Commission.

Repealing the safe harbour should be combined with other efforts to reduce duplication and overlap in financial advice regulation. For example, financial planners are currently expected to comply with three distinct ‘best interest’ duties which are each expressed slightly differently and only one of which has a safe harbour provision. The FPA has called for a single set of standards to apply to financial planners and as an interim step supports better alignment of the existing standards.

### *1.4 Single set of professional standards*

*A single set of mandatory professional standards should apply to financial planners and these standards should be maintained and enforced by the single disciplinary body.*

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## Changing context for regulation

### **FPA members' feedback**

Finally, some FPA members noted that current regulation was created at a time when conflicted revenue and other conflicts of interest were common in financial planning and the purpose of regulation was to mandate the disclosure and management of these conflicts.

Many of these conflicts of interest have been or are being removed from the profession and conflicted revenue is far less common. As we progress towards a conflict-free financial planning profession, it would be appropriate to revisit how the profession is regulated and whether some of the onerous disclosure obligations remain the best approach.

### **FPA recommendation**

The FPA recognises that financial advice regulation was designed at a time in which the recommendation of a financial product was central to most financial advice. This is no longer the case - the recommendation of a financial product is often the final step of a much larger piece of advice and some financial planners are choosing to provide advice that does not include a product recommendation. As a result, the FPA has recommended that the Government progressively reform financial advice regulation to focus on the act of giving advice and to maintain the regulation of financial products separately.

### *3.2 Separation of product and advice*

*The law should be changed to separate the regulation of financial products from the regulation of financial advice.*

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## Structure of the financial planning profession

### **FPA members' feedback**

Many FPA members complained that the prescriptive approach to compliance taken by their licensee limited their ability to exercise their professional judgement and deliver financial advice in a manner that was more affordable for their clients.

Licensees are responsible for the delivery of advice by their authorised representatives and so have a legitimate interest in setting standards and checking compliance. As discussed above, the litigious environment over the past five years has led many licensees to taking an extremely conservative approach to compliance. FPA members noted that this conservative approach was not to the benefit of the clients as it resulted in significant delays in them being able to provide an SOA to their client as well as restricting their ability to provide their advice in a more consumer-focused manner.

Finding a method of serving clients that addresses their needs while still complying with relevant regulation is critical to the future of financial planning. This would best be achieved by giving financial planners more control over how they deliver their advice and allowing them to be more responsive to both clients and regulators.

### **FPA recommendation**

The FPA has argued that the ultimate goal of reforming financial advice regulation should be to enable financial planners to exercise their professional judgement in complying with professional standards and for them to have a direct and singular relationship with the appropriate regulator, rather than an indirect relationship through their licensee.

This approach would ensure that financial planners were able to maintain a degree of flexibility in how they service their clients and for licensees to focus on the delivery of support services to financial planners.

### *3.3 Future of licensees*

*The law should be changed to focus the AFSL system on the regulation of financial products and remove the requirement for an AFSL to cover the provision of financial advice.*

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## Tax deductibility

### **FPA members' feedback**

FPA members have consistently called for reform to the tax treatment for financial advice and for an outcome in which an initial financial plan contained in an SOA is fully tax deductible. This would have a significant positive effect on the number of Australians who are able to afford financial advice and would be a more equitable outcome than the current tax ruling, which allows for a deduction for ongoing advice that directly relates to gaining or producing an assessable outcome, but not for an initial financial plan.

### **FPA recommendation**

Although the FPA recognises that the tax status of financial advice is not within the remit of ASIC, the importance of this issue to the affordability of financial advice warrants its inclusion in the FPA's response to CP 332. While the FPA believes that significant progress in improving the affordability of financial advice can be made through the recommendations above, the tax status of financial advice is an important part of the solution to its affordability.

### *5.3 Tax deductibility of advice*

*All financial advice should have tax deductible status, regardless of what stage of the financial advice process it is provided and whether it directly relates to the creation of investment income.*