



26 September 2022

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

**By email: [AdviceReview@treasury.gov.au](mailto:AdviceReview@treasury.gov.au)**

Dear Ms Levy

We attach our response to the Quality of Advice Review Proposals Paper.

Should you have any queries, or wish to discuss further, please contact me on 0411 153 388.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Matt Lawler', written in a cursive style.

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## Appendix 1: Consultation template

Name/Organisation: AMP Advice

### Questions

#### Intended outcomes

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

As a first principle AMP is supportive of proposals that make quality financial advice more accessible and affordable to more Australians. Regulations currently make it difficult for Australians to request and receive financial advice, particularly where the requests for financial advice are simple and limited in scope. The proposed amendments to the regulatory framework will provide more Australians access to good financial advice and with further discussion on implementation we believe they can be made while also maintaining a high level of consumer protection.

#### For consideration:

AMP would like the Quality of Advice Review to consider the following **Three Tier** approach:

#### Tier 1 - Personal Advice ('relevant provider' i.e. fully qualified)

- Enshrine the term Financial Adviser with this Tier only.
- Highest education standards as prescribed (note subject to separate review by Treasury) should apply to this tier.
- Retain FASEA professional standards with amendments around Standard 3, Standard 6 and Standard 7 to align with the intent of the standards and to remove inconsistencies between the standards and the legislation.
- Support the move to Good Advice (as defined) reflecting an outcomes-based principle.
- Financial Services Guide (FSG) retained as a simple method of communicating the financial advisers' 'capacity to advise'.

- Support the removal of the 'Safe Harbour' from the Corporations Act but recommend that the content be embedded as a Regulatory Guide to reinforce the professional expectations of financial advisers and create consistency with those assessing financial advisers after the fact (predominantly ASIC and AFCA). As a Regulatory Guide there is greater flexibility to adapt and evolve over time. This is also consistent with the introduction of Best Interest Duty for Mortgage Brokers (refer ASIC RG 273).

**Tier 2 - Personal Advice (from product providers but also available to exist in a 'relevant providers' business/practice)** - we support the proposals outlined to allow product providers to deliver personal advice that relates to the products issued by the provider, using the information they hold on the client. In our view this tier should comprise the following principles:

- Individuals providing this service should not be identified as Financial Advisers but by some other standard title.
- Minimum prescribed education standards should apply, preferably become a subset of the broader education required for Tier 1 (i.e. a pathway to the Tier 1 educational standards).
- Professional standards set appropriately for the type and nature of advice provided, also preferably reflecting broader professional standards or a strong subset of Professional Standards required by Tier 1.
- The advice provided in this Tier should be limited to prescribed areas of authority in providing financial advice; i.e. advice related to the product (e.g. superannuation where advice is around investment options, contributions, insurance etc). There should be restrictions on advice outside of this, particularly transition to retirement, retirement advice and aged care advice, which should only be provided by a qualified 'Financial Adviser' due to the skill and experience required.
- A Financial Services Guide retained which outlines the 'capacity to advise', with appropriate warnings around limitations of scope.
- Importantly this category of advice could exist within a relevant provider's business as well (i.e. to do simple advice for existing customers) enabling them to deliver advice to a larger audience than currently allowed.

**Tier 3 - Personal Advice -Digital Advice (i.e. not delivered via an individual)** – we are supportive of the proposals outlined in the consultation paper allowing Australians to access personal advice through digital tools.

- The Responsible Manager framework should ensure the provider has suitably qualified and experienced individuals in building the application and associated algorithms as well as close monitoring and supervision of the output.
- Statutory capital requirements that are appropriate to the volume of clients being advised via the tool should be introduced.

- Financial Services Guide equivalent should be provided at the beginning of the user experience to outline capacity to advise with appropriate warnings around limitations of scope.

## What should be regulated?

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

- a) reduce regulatory uncertainty?
- b) facilitate the provision of more personal advice to consumers?
- c) improve the ability of financial institutions to help their clients?

We support changes that facilitate the provision of quality financial advice that is accessible and affordable to more Australians. It is our view that the changes, when taken as a whole package, are most likely to improve accessibility and affordability of financial advice. This is particularly the case in relation to the proposals that relate to the removal of the BID from the Corporations Act and the removal of the requirement to provide a Statement of Advice (SOA) in its current form.

#### Will the proposed changes reduce regulatory uncertainty?

The unwinding of current regulations which make it difficult to confidently serve clients will be welcomed. The changes in themselves will create some uncertainty in the short term like any change does. Implementation of change across a large and diverse population of small, medium and large businesses has historically proven to be the most critical component of any successful regulatory reform. Engagement and guidance is critical to facilitating implementation and reducing uncertainty. As such, AMP is open to working with other AFSLs, professional associations, Treasury and regulators to support an implementation plan and appropriate guidance that sets the industry up for success.

There are some areas where we believe that further guidance is required in order to ensure that the proposed changes attain their goal of reducing uncertainty. These areas include the following, which are considered further in the questions below:

- The level of record keeping required to demonstrate the information provided to consumers, and support providers in managing complaints and regulatory investigation. This is also important because the adviser may have misunderstood aspects of what the client has told them and similarly clients

may misunderstand or not recall all elements of the advice provided. A clear pathway to ensure that this does not become a common scenario in the industry should be considered.

- Guidance for product issuers and superannuation trustees to ensure employees providing information on financial products are suitably trained and monitored.
- Effective referral mechanisms for consumers with complex needs to ensure, where these needs are identified, customers are informed and/or referred for appropriate advice
- What is required in order to provide 'good advice'. Without guidance, the industry may use a spectrum of approaches that results in inconsistent consumer outcomes.
- Clarity what is meant by 'having regard to the information that is available to the provider at the time the advice is provided' in the definition of 'good advice'. For instance, the definition is currently so broad that it would be difficult to practically implement, especially where the information was held by another company within a corporate group or is held at a licensee level and is not in the possession of the adviser. The information might also be out of date or incomplete.

#### **Will the proposed changes facilitate the provision of more personal advice to consumers?**

AMP's view is that the proposed changes have the right intent and will definitely result in the provision of more personal advice to more Australians.

By removing regulation which confuses the customer and makes financial advice less affordable and accessible we allow Australians to receive financial advice at a time and in a form of their choosing.

#### **Will the proposed changes improve the ability of financial institutions to help their clients?**

From a consumer's perspective a financial institution which has issued a product that they hold is their first 'port of call' for information, however simple or complex that product might be. The proposed changes will allow the financial institution to provide this personal advice quickly and effectively, which under the current regime is not available, and consequently millions of Australians are being underserved at a critical time for their financial wellbeing.

Our recommendation around a three tier framework is to ensure there are appropriate ‘belts and braces’ to promote consistency of standards and quality across the broad professional advice community. This is important as we build and evolve the profession as we have too often seen ‘one bad apple tarnish the rest’. In our view the three tier approach achieves the same goal as the proposed changes but with greater confidence about the standards of quality.

A by-product of the proposed changes is that they create a career pathway for future financial advisers, which is something that has been missing since the banks’ recent exit from the market. This pathway is important to existing financial advice practices as they seek to recruit for their businesses both now and into the future.

**3. In relation to the proposed de-regulation of ‘general advice’ - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?**

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

A warning that information (previously general advice) is not personal advice would be beneficial for customers and would go some way to allowing those communicating with clients to make it clear what they are or are not receiving.

Clarity on the following would also support the provision of information and inform consumer outcomes:

- The level of record keeping required to demonstrate the information provided to consumers, and support providers in managing complaints and regulatory investigation.
- Guidance for product issuers and superannuation trustees to ensure employees providing information on financial products are suitably trained and monitored.
- Consider effective referral mechanisms for consumers with complex needs to ensure, where these needs are identified, customers are informed and/or referred for appropriate advice.

**How should personal advice be regulated?**

**4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide 'good advice' have on:**

- a) the quality of financial advice provided to consumers?
- b) the time and cost required to produce advice?

**What impact does the replacement of the best interest obligations with the obligations to provide 'good advice' have on the quality advice to consumers?**

The quality of advice provided to consumers by qualified professional advisers should not be impacted by the removal of the BID in the Corporations Act and the addition of the obligation to provide 'good advice'. This is because the Code of Ethics also contains a best interests duty (BID) obligation (Standard 2), so a BID will continue to apply to many advisers in large to medium sized licensees. Given that many of these financial advisers will also be 'relevant providers' they will also need to comply with the 'good advice' obligation.

The 'good advice' principle as an 'outcomes-based' principle focussed on the content of the advice is a positive step as in our view it is the content of the advice that is most important in ensuring that consumers receive appropriate advice. There is a perception that 'Best Interests' is often confused with 'the best' product or 'the best' advice which is a high bar when assessed in hindsight. Good advice as defined by the proposals has the right intent ie with the information known at the time of the advice the recommendations can reasonably be expected to put the client in a better position.

A good outcomes obligation sitting alongside professional standards (BID contained in Standard 2) PLUS our recommendation that proposed removal of the safe harbour steps be adjusted to embed it into a Regulatory Guide (other than section 961B(2)(g) which we consider should be deleted) provides the framework for the professional financial adviser to know what is expected in terms of the quality, client outcomes and the consequences if this standard is not met.

**What impact does the replacement of the best interest obligations with the obligations to provide 'good advice' have on the time and cost required to produce advice?**

This change by itself is not likely to have a significant impact on the time and cost required to produce advice, however with amendments to Standard 6 of the Code of Ethics to make it clear that 'limited scope' advice requested by the consumer is acceptable, financial advisers can tailor their advice to support simple requests from the client. Coupled with the removal of large and prescriptive SOA requirements, financial advisers can tailor their recommendations to the nature of the client's situation i.e. simple requests may be handled in 1 to 2 pages. Such requests would have been politely rejected in the past due to uncertainty around

providing limited scoped advice and where the advice was required to be provided via an SOA that makes it difficult to produce limited scope advice for an amount the consumer is prepared to pay.

There is a risk that removal of the BID for non 'relevant providers' may create an unlevel playing field and reduce the quality of advice provided to consumers by those not subject to the BID.

For example, if a bank were to re-establish their advice arm then under the proposals bank branch or call centre staff could provide the same information as a Financial Adviser without needing to be a 'relevant provider'. They would therefore not be subject to the same level of obligations as a Financial Adviser who is a 'relevant provider'.

Another example is where a customer of a bank seeks assistance with 'transition to retirement' or 'retirement' advice. The customer, seeking advice of this nature with its accompanying complexities could receive advice provided by a Financial Adviser who is a 'relevant provider' and bound by the Code of Ethics including a BID, or, in contrast receive advice provided by a bank employee where none of these requirements or obligations are expressly placed on the employee providing the advice.

While we recognise that the obligation to provide 'good advice' would apply in both scenarios, we consider that this risk of creating an unlevel playing field which places consumers at increased risk of harm should be reconsidered.

We also note that the 'good advice' obligation as currently drafted places a burden on the licensee to interpret what is 'good advice'. Without guidance, the industry may use a spectrum of approaches that results in inconsistent consumer outcomes. In applying a test for advice that is 'likely to benefit the client', guidance on how this is determined as an objective measurement would support the consistent provision of 'good advice'.

We also consider that the definition of 'good advice' should clarify what is meant by 'having regard to the information that is available to the provider at the time the advice is provided.' For instance, the definition is currently so broad that it would be difficult to practically implement, especially where the information was held by another company within a corporate group or is held at a licensee level and is not in the possession of the adviser. An issue also arises if the information that the Financial Adviser holds is out of date or incomplete.

While AMP advisers, as the 'relevant provider', will need to adhere to the BID obligation in the Code of Ethics, the reduction in documentation to demonstrate compliance is likely to reduce the time and cost of providing advice.

Licensees and 'relevant providers' will be required to determine the record keeping considered adequate to support advice providers in;

- demonstrating clear provision of 'good advice',



- supporting client understanding of complex strategy, key risks and costs,
- managing client complaints and regulatory investigations.

Further supporting amendments to the Code of Ethics, in our view, it appears that for many situations where complex advice is given the time and cost of preparing advice will be similar to the current position if advisers continue to follow safe harbour steps (even though they provide the adviser with no statutory protection if they are removed from the legislation) as a way of evidencing what they have done to satisfy the Code of Ethics BID requirement.

**5. Does the replacement of the best interest obligations with the obligation to provide ‘good advice’ make it easier for advisers and institutions to:**

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

**Does the move to a ‘good advice’ obligation make it easier for advisers and institutions to provide limited advice to consumers?**

Definitely. This is significant and positive step.

Some changes will be required to align Code of Ethics Professional Standards (i.e. Standard 6 will need to allow for this).

The removal of safe harbour ‘catch all’ requirement in section 961B(2)(g) will be helpful in making advisers comfortable in providing limited advice to consumers, as advice can be more easily tailored to the consumer requirements without the obligation to consider their wider circumstances in all cases.

As previously mentioned we recommend that the current safe harbour steps be included as a Regulatory Guidance note (excluding section 961B(2)(g)) to ensure there is thorough guidance on process expectations and also to ensure that advisers are able to feel comfortable in providing limited advice under the new proposals, supported by appropriate amendments to the Code of Ethics Professional Standard 6 as previously highlighted. Appropriate guidance should be prepared jointly by Treasury and ASIC in consultation with industry, to ensure practical and effective guidance aligned with the purpose of the regulation.

Guidance for both digital and limited advice should consider effective referral mechanisms for consumers with complex needs to ensure, where these needs are identified, customers are informed and/or referred for appropriate advice.

As set out above, we would also like to see guidance on:

- What is required in order to provide 'good advice'. Without guidance, the industry may use a spectrum of approaches that results in inconsistent consumer outcomes.
- Clarity what is meant by 'having regard to the information that is available to the provider at the time the advice is provided' in the definition of 'good advice'. For instance, the definition is currently so broad that it would be difficult to practically implement, especially where the information was held by another company within a corporate group or is held at a licensee level and is not in the possession of the adviser. The information might also be out of date or incomplete.

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

- a) limited advice?**
- b) digital advice?**

In order to support the provision of limited advice, clarity is needed in relation to the record keeping considered adequate to support advice providers in:

- capturing the information used in the provision of advice,
- demonstrating clear provision of 'good advice',
- supporting client understanding of the limitation of the advice including the information relied on to prepare the advice, and
- managing client complaints and regulatory investigations.

A requirement for the advice delivered by a digital tool to be captured in the Responsible Manager framework, with the accompanying oversight of suitably qualified and experienced individuals, is critical to ensuring quality advice outcomes.

- 7. In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:**
- a) the quality of financial advice?**
  - b) the affordability and accessibility of financial advice?**

**What impact will the proposed changes to the application of the professional standards have on the quality of financial advice?**

As previously mentioned, it is our recommendation that the proposed framework (which includes a 'good advice' obligation, plus Professional Standards (including a BID), plus the removal of the safe harbour steps) be embedded into a Regulatory Guide (excluding section 961B(2)(g)) as a package that can work together successfully to ensure the delivery of advice at a quality standard. Remembering that other elements of the broader framework also work to strengthen this and contribute towards a higher quality standard, including monitoring and supervision, Internal Dispute Resolution, External Dispute Resolution, a Single Disciplinary Body and higher education standards.

We consider that all individuals who provide personal advice should be required to comply with the standards (or an appropriate sub-set). Failure to follow this approach could have a negative impact on the professionalism of the industry and the quality of financial advice provided (even though a 'good advice' obligation will still apply). In this regard, please see out comments on our suggested 'Tiers' above.

**What impact will the proposed changes to the application of the professional standards have on the affordability and accessibility of quality of financial advice?**

In our view, as set out above, we consider that standards 3, 5 and 6 of the FASEA Code of Ethics and Professional Standards require amendment to align them with the original intent of these Standards. It appears that for many situations where complex advice is given the time and cost of preparing advice will be similar to the current position. This is because advisers may want to continue to follow safe harbour steps (even though they provide the adviser with no statutory protection if they are removed from the legislation) as a way of evidencing what they have done to satisfy the Code of Ethics BID requirement.

However, the changes do open the opportunity for financial advisers to provide financial advice in more situations than they can under the current requirements, particularly for less complex situations and more episodic advice which can be delivered more affordably.

Our recommendation is that Tier 2 providers can also operate within financial advice practices as well as within financial institutions.

**8. In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?**

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

Representatives providing information on financial products should hold adequate qualifications and skills and be required to maintain these in a changing regulatory and technical environment. These qualifications should form a subset of the qualifications met by 'relevant providers' (refer Question 1 and the description of Tier 2 providers). This supports the provision of 'good advice' and forms the basis for career and skill progression into a 'relevant provider'.

To support the quality of education and consistent application, any courses or training should be aligned with the requirements of registered training organisations or aligned with clear industry or regulatory standards.

We also consider that training requirements should include the understanding of referral mechanisms, where consumers with identified complex needs are informed or referred to ensure they seek appropriate advice.

### Superannuation funds and intra-fund advice

**9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):**

**a) make it easier for superannuation trustees to provide personal advice to their members?**

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

AMP is supportive of these changes as they make it more affordable and accessible for Australians to receive financial advice, particularly simple product related advice that is delivered quickly and at low or no cost. In line with our recommendations around a three tier system referred to in detail in Question 1 we suggest some clear 'belts and braces' be in place to ensure a standard of quality is consistent across providers.

We acknowledge that superannuation funds will need to balance the costs of providing a financial advice service under a 'collective charging' arrangement with other responsibilities including Annual Performance Tests (APT) which has them carefully managing their cost base.

## Disclosure documents

### 10. Do the streamlined disclosure requirements for ongoing fee arrangements:

- a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, how and to what extent?

The proposed changes to documenting ongoing fee arrangements will provide a clear and effective benefit to all industry participants by reducing costs and complexity. We support implementation of the proposal as a priority and, if possible, implemented ahead of other changes or supported by the option to opt-in.

### 11. Will removing the requirement to give clients a statement of advice:

- a) reduce the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, to what extent?

We support the removal of the prescriptive Statement of Advice requirement and believe this will improve communication to consumers rather than be detrimental. It is also likely to decrease costs in production meaning that financial advice will be more affordable and accessible.

The reduction of costs is likely, although complex advice may require more detailed documentation to enhance client understanding of complex strategies and the accompanying risks and to record their clear and effective consent to implement. As communicated above, clarity is required on what written records should be kept as the concept of 'complete records of advice', particularly in the circumstances of complaints or regulatory investigation.

At the very least AMP would see that financial advice should be delivered to the consumer in some form (written, digital, video etc) to evidence the delivery with potentially an acknowledgement from the consumer that they accept the recommendations and provide an authority to proceed. This has proven important to protect the financial adviser against unfair claims or complaints several years after the fact (i.e. complaints and disputes).

Some guidance, again Regulatory Guidance notes are a good tool here, that sets expectations around the content of advice delivery would be beneficial but it doesn't necessarily need to be over prescriptive as is currently the case.

There is an argument that the proposal will provide Licensees flexibility in terms of the business model and interpretation of SOA requirements, however it will transfer the obligation to determine the adequate level of documentation, formerly enshrined in legislation, to the licensee.

The importance of 'technology neutral' guidance is noted, to permit recording of advice verbally, digitally or written and the adoption of new and emerging technology capabilities.

#### **12. In your view, will the proposed change for giving a financial services guide:**

- a) reduce regulatory burden for advisers and licensees, and if so, to what extent?**
- b) negatively impact consumers, and if so, to what extent?**

There is no identifiable negative impacts of the proposals regarding the change in providing a Financial Services Guide (FSG), the proposals still retain an obligation to provide access to an FSG but with discretion on how this is presented to consumers. Maintaining an up-to-date online version ensures currency and continuing availability.

#### **Design and distribution obligations**

#### **13. What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:**

- a) the design and development of financial products?**
- b) target market determinations?**

We support the proposed continuation of the DDO regime for ‘non-relevant providers’ and the removal of the requirement for ‘relevant providers’ to report significant dealings.

We agree that ‘relevant providers’ should retain an obligation to communicate complaints to product issuers and support the FSCs view that the requirement be amended to reflect that a report is not required if the ‘relevant provider’ has reasonable grounds to believe the product issuer is aware of the complaint.

## Transition and enforcement

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

A 24-month timeframe for overall implementation could see proposals bought forward to grant the industry relief on elements such as fee consents, provision of Statements of Advice and changes to the DDO obligations. An alternative option is to commence elements on an opt-in basis.

Appropriate guidance should be prepared jointly by Treasury and ASIC in consultation with industry to ensure practical and effective guidance aligned with the purpose of the regulation.

## General

### 15. Do you have any other comments or feedback?

Aligned with our original submission we would encourage continued focus on the following:

- Allowing Financial Advisers to access information quickly and without bureaucracy is critical to providing access to financial advice to more Australians. Extending the Consumer Data Right, recently successfully deployed via Open Banking, to Open Finance so financial advisers can get access to superannuation and insurance information is directly linked to making advice more affordable to all Australians. Initiatives like allowing advisers to access MyGov (i.e ATO and Centrelink) as permitted for other professionals such as accountants, will go a long way in making it more efficient for financial advisers to assist consumers.

- Finalisation of the Life Insurance Framework: we encourage that the current commission caps system be retained with a review on the level of upfront commissions to more appropriately reflect the work required. Increased commissions lower the initial cost of advice, thereby rendering it more affordable, and increase access to advice in relation to life insurance, which is a critical advice need given the current levels of underinsurance in Australia.