

23 September 2022

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

Via email: AdviceReview@treasury.gov.au

Dear Secretariat

Quality of Advice Review – Proposals for Reform

COBA appreciates the opportunity to contribute to this consultation.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions, and building societies). Collectively, our sector has \$155 billion in assets. Customer owned banking institutions account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.¹

The intended effect of these proposals aligns with the mutual model, and we believe that a clear regulatory framework that removes barriers to the provision of good financial advice is essential for delivering benefit to customers. The importance of good quality and accessible financial advice was highlighted by a recent study by University of Newcastle commissioned by Greater Bank that found there was still significant gaps in the financial literacy of the public.²

We support the intention of these proposals to shift the focus onto outcomes over process and to make it easier for ADIs to have natural and helpful conversations with their customers about low-risk products. However, the proposals need further clarification on how they will operate in practice. Care is needed to ensure that the proposals avoid removing an existing area of uncertainty and replacing it with another.

Reforms to the advice regime must improve, not risk worsening, the problem summed up in this extract from the proposals paper:

“...because many providers cannot or do not want to provide personal advice they try to shoehorn what would more naturally be personal advice conversations with customers into general advice. The result is often scripted conversations during which providers deliberately avoid asking questions or using information they have about their customers and speak in generalisations. And so the customer gets less helpful advice than they otherwise could (we have been told that customers often complain about not being able to get advice from financial

¹ [Customer-owned banks serve the most satisfied banking customers](#) (25 August 2022) COBA media release.

² University of Newcastle, [Financial Wellbeing and General Life Satisfaction in Australia](#) (Newcastle Business School, 2022).

institutions) because providers are not prepared to use information they have to tailor advice when they could. They are worried (rightly) that by doing so they will provide personal advice and attract the coincident obligations.”

Our submission focuses on the proposal to change the definition of personal advice, the proposed duty of good advice and the proposed changes to disclosure documents.

Changing the definition of personal advice

The Review proposes to no longer regulate “general advice” and to expand the definition of “personal advice” to apply “whenever a recommendation or opinion is provided to a client about a financial product ... and, at the time the advice is provided, the provider has or holds information about the client’s objectives, needs or any aspect of their financial situation”.³ This wide definition would cause many day-to-day interactions that our members have with their customers being captured as personal advice and trigger the associated obligations, including the duty to provide good advice.

The proposed definition is so wide that it would see the obligations on personal advice being triggered where a customer simply asks a teller about whether it is better to use a debit card over a mobile phone application. These kinds of conversations are currently treated as general advice which has lower obligations than personal advice. The impact of the proposal will be that our members will have to carefully consider how they engage with their customers to manage any regulatory risk, especially to ensure compliance with the duty to provide good advice.

COBA questions the appropriateness of including basic banking products in the financial product advice regime and being subject to these personal advice obligations. Basic banking products include products like transaction accounts, savings accounts, term deposits and debit cards. These are all very low risk products and are widely understood and used by most people. We do not think it is appropriate that the provision of information or advice on these products should be subject to the same regime that regulates the conduct of relevant providers and advice on more complicated financial products, such as investments or superannuation.

This could be achieved by exempting advice about basic banking products by bank staff where there is no fee charged to the customer for the advice.

If basic banking products were exempted from the financial product advice regime it would help encourage banks to provide simple advice to customers on day-to-day financial matters. While preserving the stronger accountability regime where it is needed for more complex products. If exempted, the basic banking products would still be subject to other consumer protections and to the design and distribution obligations. This would ensure that banking customers will still be protected from inappropriate conduct but would be able to have natural and helpful conversations with bank staff about basic banking products.

If recommendations about basic banking products are to be kept within the definition of personal advice, then COBA would seek further detail on how its members would be expected to comply with the personal advice obligations, especially the duty to provide good advice.

Removal of general advice from the regime would trigger the need for some Australian Financial Services Licensees to apply to amend their AFSL authorisations to cover personal advice.

The duty to provide good advice

The proposed test for the duty to provide good advice is “what is reasonably likely to benefit a customer, having regard to the information that is available to the provider at the time the advice is

³ Quality of Advice Review, *Consultation Paper – Proposals for Reform* (August 2022), p 8.

provided”.⁴ This would require our members to take a case-by-case approach in ensuring customers are receiving good advice rather than following a legislated process. This seems reasonable as a matter of principle, but clarity is needed on how our members would deal with this duty in practice. If complying with the duty creates a significant burden on our members, it could have the effect of leading banks to place more limitations on staff interactions with customers.

As many customer interactions could now be personal advice this creates a burden on tellers and call centre staff to ensure that any advice they provide is good advice. What needs to be made clear with this proposal is what would be practically necessary for our members to satisfy the duty.

For example, if a life-long customer asks a teller, or a call centre staff member, about a savings account product offered by the bank what would the staff member need to do to satisfy the duty?

The staff member may have immediate access to some of the customer’s information and their relatively recent interactions with the bank, but they may not necessarily have immediate access to all pertinent information. For example, older records of the customer’s banking history may be archived or stored on older electronic storage systems so are not readily available. These records could contain information that would make a meaningful impact in determining what the good advice is for that customer. An additional consideration is whether information on competitor products would need to be provided, especially if the competitor was offering a superior product.

The necessary research required to ensure good advice is provided in this example may not be reasonable considering the time constraints placed on customer service staff needing to serve as many of customers as quickly as possible. It might be suggested that perhaps tellers and call centre staff should not provide personal advice and that these conversations be triaged to specialist staff. However, this is not commercially practical. Such a process could be highly resource intensive and be too great a burden for banks already operating on stretched resources. This means that the tellers and call centre staff will continue to be the frontline for banks providing personal advice to customers. The duty needs to be workable so that these staff can do their work while also being compliant.

Disclosure documents

COBA supports the proposed changes to disclosure documents as sensible and will likely help to empower customers to choose how they would like to receive advice. COBA notes that an obligation for complete records of personal advice to be kept by the provider would pose major practical challenges for banks.

If many interactions between the bank and its customer will now be providing personal advice, then each interaction would need to be recorded. This could be challenging as tellers would be required to make written records for each of these conversations, which could potentially be hundreds each day. This would be laborious when compared to the current general advice regime where records of the advice provided are not required.

Thank you for the opportunity to respond to this consultation. If you wish to discuss any aspect of this submission, please contact Robert Thomas (rthomas@coba.asn.au).

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer

⁴ Quality of Advice Review, *Consultation Paper – Proposals for Reform* (August 2022), p 8.