



Australian Government
The Treasury

TSY/AU

Quality of Advice Review

Template for response

August 2022



Consultation process

Request for feedback and comments

Interested parties are invited to provide feedback on the proposals for reform listed in the Quality of Advice Review Proposals Paper using the template in [Appendix 1](#). Consultation will close on Friday 23 September 2022.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses in a Word or RTF format via email. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All of the information (including the author's name and address) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

View our [submission guidelines](#) for further information.

Closing date for submissions: 23 September 2022

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Appendix 1: Consultation template

Name/Organisation: FYG Planners Pty Ltd

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?

In isolation this proposal raises a number of concerns, however, should other recommendations, i.e. the removal for the need to provide a formal Statement of Advice is also legislated, this would provide a sensible solution.

We remain also concerned about the proposal to allow non regulated persons to provide advice. We believe that the risk of inappropriate advice and poor outcomes for clients is too great a risk. The providing of personal advice is a professional privilege and should only be given by individuals who have meet the professional and educational standards expected of a professional.

It is hard to see how the community would be served well if “unlicensed sales people” could be hired (by property developers, agricultural scheme promoters, mezzanine finance providers, etc) and incentivised to promote high risk products to unwary (and often uneducated) consumers. These community protections were legislated and regulated more than 30 years ago; surely continuing to avoid such disastrous outcomes (as Timbercorp, Great Southern, Gunns Plantations, etc, etc) must be in the community’s best interests.

Reducing the compliance burden (SOAs & ROAs) for long standing client relationships, where there is genuinely intimate knowledge of the client, does seem a sensible direction to takeprovided satisfying a “good advice test” can be assured.

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?**

Typing personal advice to being related to product or class or product, ignores the reality that many clients seek strategic advice as their primary concern and in fact the greatest value for the client is in the strategic advice & planning rather than a specific product or class of product recommendation.

Get the strategy wrong and the product recommendation is often rather meaningless. And there are many studies that show, after asset allocation is considered, there is almost no value created by asset selection or market timing. So, two products, with similar costs and similar asset allocation are highly likely to deliver very similar outcomes over an adult life cycle.

- a)** Making it clear that any advice provided to client where you hold information on their objectives, needs of financial situation will remove any confusion or question around whether the advice is PERSONAL. We support this change. Although we note that we expect the provider of personal advice would be continue to meet the standards of a regulated person, as mentioned in Q1.
- b)** We believe this change, along with the proposal to remove SOA requirements would support the provision of more personal advice at affordable cost.
- c)** Assuming the provider of advice meet the qualifications, this would allow more broader advice by institutions. Although the risk of conflicted advice focused on recommending the institutions providers would be a major issue again.

Under a new regime, if financial product advice could be delivered by an unlicensed financial institution employee (e.g: a bank teller) then there needs to be a clear delineation in legislation (like exists in the UK and USA) where a financial adviser is licensed and must be a true fiduciary and financial product sales people can not be licensed and they would not be held to the fiduciary standard.

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?

We believe that providers of General Advice, should also have to meet the "good advice" test to ensure the advice remains in the client's interest not the person providing it.

There should also be a generally accepted set of principles for meeting the "good advice test" and those principles should align well with the financial advisers code of conduct standards.

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?**

a) The Code of Ethics already requires advisers to act in the best interest of clients, removing the legislative requirements should therefore have no impact. We don't believe it will have any material effect on quality or time and cost of producing advice.

Standard 6 requiring an adviser to consider broader impacts of their advice, also makes it difficult to provide scaled or limited advice. When the "broader impacts" can be judged later to be insufficient. We have always believed this Code of Ethics "look back and judge" interpretation of Standard 6 is unfair and contributes significantly to complexity of advice documents as advisers and licensees try to provide vast amounts of qualifying information and disclaimers in the hope of future protection from attack.

- b) The replacement of BID will not have a material impact on its own, on the time or cost of providing advice, given the requirements of the code of ethics remain in place for all licensed advisers.

For time and costs to reduce, the Code of Ethics Standards obligations must be made easier to comply with.

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

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

- a) As mentioned above Standard 6 of the Code of Ethics will continue to make limited advice hard. Currently we have no definitive direction of what "consider broader longer-term interests of acting on your advice" means.

This uncertainty leads to inclusion of a lot of general information and educational materials in SOA's & ROA's

- b) It may provide easier options for clients to engage with simple and limited advice through an automated process.

Although consideration needs to be given to the risks of automated advice being wrong because of insufficient data gathering or analysis of data provided.

Low-cost advice that proves to be wrong, due to inadequate investigation, will ultimately be much more expensive for the consumer.

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

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

- a) Clarification of Standard 6 and how to apply the broader implications of “how an adviser should consider broader impacts” when the advice is limited to a specific topic or area, e.g: insurance or superannuation.
- b) What are the protections for the client, for example if a super fund with an automated or call centre advice process that recommends roll over of another super fund into their own fund, without considering the impacts of insurance and the ability of the client to get replacement cover.

Or if the same digital call centre or a member portal accepts an investment switching instruction without appropriate advice about the likely long-term ramifications. There is significant evidence (from industry super funds) to show that many super fund members switched to cash after the covid related equity market falls of 2020 and many have still not re-entered the markets; the financial losses incurred by those members will impact their financial well being forever!

Digital advice tools can be very useful but they must address prevention of bad investor behaviour as well as low cost facilitation.

- c) 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?**

a) The quality of advice will drop for those that provide personal advice; but are no longer obligated to meet the Code of Ethics.

This would create a two tiered advice system which would result in some clients receiving inferior advice.

Whilst it may (and should) make the provision of simple advice cheaper, that does not necessarily mean that the advice is goodand poor advice costs consumers a lot more in the long run.

All providers of personal advice should be held to the same standards.

d) 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?

The current licencing regime adds an important layer of protection to clients, both by providing scale and also ensuring standards can be applied. Whilst there has been some deserved criticism that licences have added to the cost of advice, this has almost entirely been caused by the poor structure and design of the legislation.

The majority of, the proposed changes in this review address these concerns and ensure that licences can focus their energies on systems and process to support the delivery of good advice to clients.

We do not believe that providers of personal advice should be allowed to avoid being relevant providers, we believe such a course of action would be a mistake and will likely result in poor advice practices coming reappearing.

Personal advice is a fundamentally important component of assisting people with financial security, it must be provided by professionals who meet the same professional standards. You don't expect the receptionist at a law firm to provide you with legal advice, you expect that from a qualified and

professional lawyer, the same should apply for personal financial advice. And general practitioners, whilst very capable medical professionals, do not perform open heart surgery!

As we have noted above the providing of personal advice to clients is a privilege and should only be provided by those that meet and adhere to the same educational, and professional standards

As ASIC have said publicly on many an occasion, they view licensees as the first line of defence for protection of the public from bad adviser behaviour; removing the need for a licensee, removes the regulators first line of consumer protectionis that really what our legislators would want, less protection for consumers?

A legislative framework, as proposed in this review, that does reduce unnecessary complexity but still retains a licensees important role in protecting consumers would seem a very valuable community outcome.

Superannuation funds and intra-fund advice

e) 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?**

Yes it would make this easier; but at the risk of inappropriate advice, and the risk that the client is not provided with good advice, given the limited focus of products the providers would concentrate on. Consideration should be given to ensure that clients receiving this type of advice are notified that the advice is limited and the risks and consequences of that limitation.

Collective charging should not be pursued!

Members who do not seek advice will be subsidising those who doin effect they will be paying a fee for no service.

Surely, the Hayne Royal Commission placed an adequate spotlight on such behaviour being unacceptable. And surely, as a community we have arrived at a time where a fee for service model, by those who chose to use a service, is the correct path forward.

Anything less is a commission disguised inside an inflated fee

Disclosure documents

f) 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?**

- a. Yes, since its introduction in 2012 the Fee Disclosure Statement has become an administrative nightmare adding unnecessary cost to the provision of advice, for no client benefit

We estimate that the average fee charge to clients has increased by between 5 – 10 % in the last 12 months as a direct result of the changes to FDS, Consents and DDO requirements.

- b. The changes do not have any adverse effect on consumers, an industry wide consent form signed by the client to acknowledge the services and fee they will pay for the coming 12 months ensure appropriate disclosure and, we assume, still allows for both client and adviser to terminate inside that 12 months should they wish.

g) 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?**

- a. The devil will be in the detail, i.e. what does “maintaining complete” records actually mean?????

However, as a principle we fully support this.

Already most advisers generate 2 documents, a Statement of Advice and a separate presentation style document, that contains all the key information such as: what the advice covers, what the client goals, recommendations, fees, etc. In most cases the client is presented this and handed the paper SOA to take home and read.

Being able to just use the presentation style document would reduce the cost, it would also improve the client experience, for simple ongoing advice, it would also ensure this could be delivered quicker and easier than currently. Reducing the time related costs for advisers and therefore clients

- b. We do not believe this change would have any negative impact on clients.

In fact, we believe this change will be positive for clients, as they will more likely read and consume advice provided in more client friendly ways. Advisers can now focus on delivering that advice in ways they know the client will understand, rather than how the legislation and regulatory guides dictate.

h) 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?**

- a. Yes, the current laws around the providing of FSG’s are written without the consideration of a digital age.

The ability of adviser to have the required information on their website, a link to it in an email or even a link in the advice presentation makes much more sense in 2022.

- b. The only concerns that may negatively impact, are ensuring clients are aware of changes to the information the directly effect them; e.g: change of adviser, or change of dispute resolution contacts. There would need to be a provision to ensure clients are made aware of these types of changes.

Design and distribution obligations

i) 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?

The DDO requirements have added cost and not provided a single benefit to clients. Streamlining and removing some of these requirements will be very welcome

Transition and enforcement

j) What transitional arrangements are necessary to implement these reforms?

Key changes such as removal of the FDS, should happen ASAP and really would need no transition period as consent forms would still be generated. Once an industry wide acceptance of consent form is agreed this should be in place immediately.

The same can apply to the changes to DDO. We would support these being implemented as soon as possible.

The changes to SOA and ROA will need some transition and education, however again, this could be relatively short and allow personal advice to be provided as the adviser sees fit.

The changes to personal advice and general advice, as per our comments above, we believe need more discussion and consideration on the impacts of removing general advice from the requirement to act, honestly, efficiently, and fairly and also ousted the code of ethics.

Similarly, we believe the providing of personal advice by non-regulated persons to be a very unwise change. Vastly more consultation and discussion with impacted parties is required!

General

k) Do you have any other comments or feedback?

Since the 1980's, the legislative & regulatory burden pendulum has swung, from a point of almost no regulatory oversight and compliance (which left consumers at great "caveat emptor" risk that was inappropriate in a modern and fair society); to a point, where post the Hayne Royal Commission, oversight and compliance had gone far to far the other way, our profession had become a subset of a quasi-nanny state.

What is required is, taking the best of current oversight & compliance and blend that with a good dose of consumer focused common sense ;whilst keeping a keen eye on good community protection outcomes.