GUIDEWAY

Advice Review Response 2022

We thank you for the opportunity to respond to the Quality of Advice Review Proposal Paper 2022.

On the following pages we have provided our feedback by completing the requested consultation template. We hope you find our response informative and constructive. We look forward to your final report in December 2022.

Who is Guideway?

Guideway Financial Services is an Australian Financial Services Licensee and Australian Credit Licensee (licence number #420367). Our mission is to bring affordable and accessible advice to all Australians. Guideway is Australia's only non-product owned dealer group that is focused on industry, government and corporate superfunds.

Our team of in-house and external financial advisers provide high-quality advice to clients using a pure invoice-only, true to label fee-for-service model. We also work closely with some of Australia's largest industry, government, and defined benefit funds to provide affordable, quality advice to their members through the provision of AFS licensing and other licensee services.

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Appendix 1: Consultation template

Name/Organisation: Guideway Financial Services Pty Ltd AFSL and ACL 420367

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?
Yes, however, we equally believe that the reduction of advice standards to 'good advice' and removal of the requirement to provide written disclosure (SOAs/ROAs) will place consumers at greater risk of financial harm. We believe the minimum standard which all personal advice should meet are: 1. Is the advice likely to leave the client in an improved financial position (captured under the 'good advice' requirement). 2. Is the advice likely to achieve the client's goals and objectives (**not captured** under the 'good advice' requirement). 3. Be provided in a written form to the consumer, at the time or shortly after the advice is provided: **a)** Includes fees and costs; fees payable for the advice, fees payable for investments (existing vs proposed), insurance commissions (if any). **b)** Explains how the advice will meet requirements (1) and (2) above. **c)** Explain the risks of the advice. **d)** Discloses any conflicts of interests that have the potential to influence the advice the client receives. Please refer to our original submission should further information be required.
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?**

Yes, we believe the proposed changes to the personal advice definition will work towards achieving these objectives. We would encourage you to consider this response in the context of our response to questions 4, 5 and 6.

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?

No, we believe the following safeguards are required:

- A requirement to disclose any conflicts of interests at the time the advice is provided including where the provider of the general advice can or will derive financial or non-financial benefits as a result of the advice.
- Access to an external dispute resolution body – such as the Australian Financial Complaints Authority.
- Be adequately trained and have sufficient competency to provide the general advice with due care and skill.
- Be a representative of an Australian Financial Services Licensee for ongoing supervision and competency maintenance.
- Be overseen and regulated by the Australian Securities and Investment Commission.

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?

5. 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?

6. 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)?

Given the scope of the proposals we do not believe it is appropriate to consider them in isolation given their interaction with the other proposals. For this reason, we have consolidated our response to the above questions in this section.

Replacement of best interest obligations with the good advice obligation

For relevant providers who will still be subject to a higher standard (the financial adviser code of ethics), the removal of the Corporations Act best interests' obligation should not ultimately impact the quality of advice they provide to consumers.

We do note however that many advisers focus on safe harbour at present when the code of ethics is a higher standard. This leads us to believe that some advisers are not properly recognising, following, and applying the code of ethics to their advice practices. This also would not be the first time we have seen this occur in the industry (i.e. looking back at the implementation of FoFA to where we are now with some advisers still struggling to follow the safe harbour steps). So, we believe there is a risk that some relevant providers will focus on the minimum standard of 'good advice', and overlook the code of ethics, when in fact if they meet the code of ethics, then they should have exceeded the new 'good advice' standard.

In regard to the time required to prepare advice, we do not believe it is appropriate to consider this change in isolation as consideration needs to be given to the proposal to remove written disclosure (SOAs/ROAs) and also the proposal to maintain 'complete records'.

To us, the requirement to keep 'complete records' is a simple one – that is, the record is complete. A case could be made that a 'complete record' has higher record keeping obligations than that required by the Corporations Act Best Interests Duty and safe harbour steps. The reason for this is, if you follow the safe harbour steps and meet the requirements of each one, you are then deemed to have met the best interest's duty defence. Thorough guidance on how to meet the safe harbour steps is available in ASIC's Report 515. In this report, ASIC's guidance does not require a complete record, but rather, certain records be kept demonstrating how each step has been met. Depending on the complexity of advice, we believe that following Report 515's guidance to meet the safe harbour steps could have lower record keeping requirements than the requirement to maintain a 'complete record'. If we put aside the safe harbour steps, and focus on the Corporations Act Best Interests Duty requirement, if you maintain 'complete records' there should be sufficient information within the file to determine that you have acted in the best interests of the client. As strong advocates for robust and sound consumer protections, we question the value in diluting the Corporation Act ‘best interests obligation’ and the duty to ‘prioritise the client’s interests’ down to ‘good advice’ given the ‘complete record’ requirement would allow the file to be tested against the ‘good advice’ requirement and the best interests duty. We are concerned this proposed change will lessen protections for those most vulnerable, i.e. those who cannot afford to pay for a financial advice whose only avenue will be vertically integrated advice.

In the proposal paper, it is suggested that the standard of advice you will receive and consumer protections available to you will be positively correlated with your net worth. For example, if you can afford to pay a financial adviser, then the financial adviser needs to meet the code of ethics. If you can’t afford an adviser, then you are forced to seek advice from an adviser employed by a financial institution who is vertically integrated. We believe all consumers should receive the same quality of advice and consumer protections regardless of their net worth.

Under the new proposed regime, we would expect that most personal advice will be delivered by vertically integrated financial institutions. In recognition of this, we do not believe the requirement of ‘good advice’ will provide sufficient protection to consumers. As noted above, the advice provider is required to maintain ‘complete records’ and as such, these records should be capable of being tested against a higher requirement than ‘good advice’ without impacting the time or cost required on the part of the advice provider. We also note that the standard of ‘good advice’ is likely only to benefit for profit institutions, such as banks and insurers. The reason for this is, superfunds are operated under a trust structure and therefore have a fiduciary duty, and other obligations such as the requirement to act in the best financial interests of their members. For this reason, the trustee of the fund has an obligation to ensure that the personal advice they provide to their members is more than merely ‘good advice’.

For these reasons, we recommend that if advice standards and consumer protections are to be lowered, then the changes need to strike the appropriate balance against previous industry learnings, such as those outlined by the Hayne Royal Commission. We believe this is of high importance given ‘for profit’ vertically integrated institutions have paid $3.3bn[1] in compensation and stand to materially benefit from the proposals. Please refer to our original submission on how we believe quality of advice standards should be governed.

<u>**Removal of written disclosure**</u>

Furthermore, we also believe it is important to consider the quality of advice metric in conjunction with the proposal to remove written disclosure (Statement of Advice and Record of Advice documents) from the advice process. While we agree that some consumers do not read these documents at present, we believe this is due to the form that they are provided in (i.e. in the industry we still observe some advisers and licensees using 80+ page proforma documents). This leads us to

[1] **https://www.ifa.com.au/news/31670-over-3bn-compensation-paid-or-offered-for-financial-advice-related-misconduct) .**

believe that the written disclosure requirements need reform to promote change, rather than being removed completely. Removing written disclosure strips away an important and vital layer of consumer protection.

We note that the removal of written disclosure was rationalised in the proposal paper considering AFCA's and ASIC's response:

> *As to consumer harm, I am not persuaded SOAs provide any real protection to consumers. AFCA and ASIC both say they look at file notes as much as SOAs. In my own experience,* ***SOAs are not necessarily even reliable records*** *of the recommendations and opinions provided by advisers* ***given the heavy emphasis on templated content****. Proposal Paper, page 32*

We agree with this statement considering it is made in reference to advisers who provide 80+ page proforma documents that are not sufficiently tailored to their client. While we agree regulatory change is required to improve these practices, we do not believe the proposed change is well rationalised considering it is made based on a limited cohort of the industry (i.e. those receiving AFCA complaints, and those not complying with existing requirements to ensure SOAs are clear, concise and effective). We also fear for the consumers who have and will receive advice in this cohort. With the removal of the requirement to provide written disclosure, there will inevitably be an increase in cases where it is a 'he said, she said' scenario, making it more difficult for the consumer to establish wrongdoing on the adviser's part.

We also believe that those most likely to benefit from the removal of written disclosure will be banks, insurers and other financial institutions. The reason for this is – relevant providers have an obligation under the code of ethics to have reasonable grounds that the client understands their advice, fees and risks (standard 5). In our view, it is very difficult to demonstrate adherence to this standard without providing some form of written disclosure. As non-relevant providers employed by banks and insurers will not be required to meet the code of ethics, they will not have this obligation.

We would also like to raise the interaction between providing written disclosure and back-office record keeping under the new regime. For example – if you are an advice provider who provides verbal advice and does not provide written disclosure, presumably your complete record requirement means that your file notes will need to contain:

- Information collected from the client
- A very detailed account of your advice and recommendations
- Your reasonings behind each of your recommendations
- The risks and considerations of each recommendation
- The fees and charges payable for the advice, investments and insurance (in $ terms, applied to the specific client's situation)

If you are required to keep this information on file, why not make it mandatory to also provide it to the consumer in written form? With the right technology solution, this could be provided at very little incremental increased cost in the advice process. Effective written disclosure offers protection to the consumer and the advice provider.

If you are a complex advice provider, or someone operating at scale providing limited advice, then reasonably you want to introduce into your advice process lower cost resources to ensure you can maximise the amount of time you are personally spending on high-value activities (e,g. sitting in front of clients). It is therefore logical that a paraplanner is used to assist with back-office tasks. Using this lower cost back-office resource allows you to spend your time more wisely, and also provides an additional layer of protection; it is not just a 1 layer of defence process, i.e. the adviser checking the advice is sound, but also another individual (the paraplanner) who is looking at the facts on file to ascertain this. Considering this, we believe that a requirement to provide written disclosure should remain in most instances, noting a carve could be created where downside risks are low (i.e. similar to how the Record of Advice small investment rules work in the Corporations Act at present).

For the reasons outlined above, we believe the interests of consumers are best served by retaining a written disclosure obligation on all personal advice providers and reforming standards around this. Please refer to our original submission for further information.

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

a) limited advice?

b) digital advice?

8. 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?

Financial coaching

We believe one important channel overlooked by the proposal paper is general financial product advice provided by financial coaches for a fee. These individuals hold information about their clients, and use this to provide targeted general advice to their clients. This general advice is typically at class of financial product level, as opposed to providing general advice on specific products.

Under the proposed regime many financial coaching roles would cease to exist as it would no longer be a viable industry for many to operate in. This will in turn force many consumers of financial coaching services into receiving advice from a vertically integrated institution (with conflicts). We also believe this is not the right outcome for these consumers as:

- Financial coaches are an important mechanism in the industry to deliver affordable and readily accessible general advice that is conflict free.
- Many consumers of this service require ongoing coaching on matters such as budgeting, spending habits, taking control of their finances, etc.
- Consumers in this space are best served by receiving advice from someone who they can build a relationship of trust and understanding with.
- Advice received by vertically integrated institutions will be subsidised by product, and have lower advice standards (i.e. only 'good advice').

If the proposals are implemented as they stand today, financial coaches who choose to remain in the industry would be forced to significantly upskill to provide the same services they are now. Ultimately, this will end up driving up costs to consumers who need their service as the cost of their education ultimately needs to be passed on.

In recognition of this, we believe it is vital that financial coaches continue to be able to provide these services, without the upskilling required to be a relevant provider. We believe this is best accomplished by allowing non-relevant providers to charge a fee where their relationship is free from conflict with a financial product (i.e. the financial coach cannot be employed by or receive benefits from product issuers).

Bionic advice

Bionic advice is digital advice with human intervention or involvement. Bionic advice is an important advice channel as many consumers do not have the technological literacy to drive digital advice tools correctly, or do not trust the digital advice tool (or trust that they are using the tool correctly) without the reassurance of a human. In recognition of this, we strongly believe it is important that the humans assisting consumers with utilising digital advice tools not be required to meet the relevant provider requirements as the digital tool would ultimately be the advice provider. We believe this is possible under the proposed new regime if the digital advice tool is provided at no cost, however, it is unclear in the proposal paper if access to the digital advice tool is provided for a fee, and whether the human involved in the process with coaching and assisting the individual through the process is required to be a relevant provider.

The human involved in the process would have knowledge of the consumer's circumstance as they would be assisting them with populating the tool, responding to questions and selecting advice modules to complete. Once the digital advice tool has prepared the advice, they would assist the consumer with ensuring they understand it. This may involve explaining the recommendations to the consumer, the fees, costs and risks, and providing reassurance as to the quality of the advice. The human cannot influence the decision the digital advice tool makes, nor can they change the advice or recommendations. Given there is a possible area of regulatory uncertainty here, we feel it is important that a clear regulation is created for these individuals to make sure they are not deemed to be the advice provider. We believe this is paramount to ensure the success of digital advice tools as we have observed that the most successful digital solutions in the industry are bionic advice tools, and not pure digital solutions.

9. 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?

Non-relevant providers should be required to hold at a minimum:

- RG146 standard in relevant financial product authority areas

Superannuation funds and intra-fund advice

10. 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?

We believe the proposed changes will improve the wording of current legislation, and therefore assist some trustees with understanding the factors relevant to deciding what can be collectively charged to members. However, as we understand from the proposal paper, the factors the trustees should have always been considering remain the same (i.e. sole purpose test, best financial interests of members, ensuring costs are apportioned fairly and reasonably across all members, fiduciary obligation (as trustee), etc).

Disclosure documents

11. 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?
We are very supportive of disclosure changes that will make things 'clear, concise and effective' for consumers. When it comes to ongoing fee disclosures, we agree that this needs to be provided to the client in a form that is consolidated and also sets out what the client expects to receive for the fees they will pay. Considering the proposal paper, we believe the proposed approach will provide some time savings, however, we note that advisers will have an obligation to maintain complete records. While we do not operate under ongoing fee arrangements within our licensee, we provide licensee services to several licensees who do. Through this, we have observed that on most occasions it is not the preparation of the ongoing fee disclosure document that takes the most time as this can be automated with structured back-office procedures and timely record keeping. We believe the advisers who spend significant time preparing these disclosure statements at present are those who are not keeping timely and orderly records of the services they are providing throughout the year, as if they had been, they could have automated the generation of the disclosure statement. We believe it is important that records are kept by the adviser to demonstrate they are delivering on their promises to their clients; both to protect the consumer and the adviser. In our view, this proposed change doesn't encourage the advisers who have not adopted structured record keeping practices to do so as there will be less visibility over this going-forward (i.e. the information will no longer be provided to the client, and it may make it more difficult for licensees to supervise and monitor). In our original proposal, we suggested that ongoing fee arrangement disclosures be handled via an advice document (e.g. the SOA/ROA would outline the services the client needs for the next 12 months, as well as the fees the adviser will charge to deliver those services). If the ongoing fee disclosures are issued via an advice document, a financial adviser must provide advice to issue the document. We believe this materially reduces the risk of 'fee for no service', and also assists with demonstrating the adviser is continuing to deliver the promised services (as the SOA/ROA will review the advice previously given and make adjustments as appropriate). We stand by this view as we believe it better balances the learnings from the Hayne Royal Commission, brings more structure to the process and offers stronger protections for consumers.
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?**

While we recognise that many consumers claim to read the Financial Services Guide, we note that when tested, they either do not fully understand the contents or did not read the document in its entirety. We believe that this signifies the need to reform this document, with the view to making it more understandable for consumers. We note that the proposal paper focuses on making this easier to provide to consumers (i.e. merely making it available by your website). However, we feel this change will negatively impact consumers as they should be given the opportunity to read the Financial Services Guide before deciding whether to use a financial service (to understand fees and conflicts). For this reason, we believe the requirement to provide this to each consumer remain, and that the contents and structure of Financial Services Guides should be reformed to improve understanding and likelihood of consumers reading this document. This is of particular importance when considered in conjunction of the removal of written disclosure (i.e. how will the client know about the conflicts of interests unless they seek out the FSG on the provider's website?).

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?

The proposed changes will facilitate relevant providers to provide advice to more consumers (for those relevant providers who were consulting Target Market Determinations and complying with DDO reporting requirements as they stand today).

Transition and enforcement

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

A no-action position from ASIC where a licensee or advice provider can demonstrate they have made reasonable attempts to comply with the new obligations, and fallen short. Noting that the licensee and advice provider would still be required to pay compensation and/or refund advice fees as appropriate.

General

15. Do you have any other comments or feedback?
In the proposal paper non-relevant providers are referred to as being employed by or representatives of financial institutions. However, we believe there will also be others in the industry who seek to take advantage of this new personal advice licence category, such as accountants, lawyers, real estate agents, mortgage brokers and other professionals. If non-relevant providers can be anyone, then we believe this has the potential to place consumers at risk. For example, an accountant could be licensed as a non-relevant provider, not charge for the personal advice (so they only need to meet the good advice standard), and then use other avenues to cross subsidise the advice (i.e. recommend their client start an SMSF, and then make their money on the accountancy fees). While we welcome accountants and other professionals into the advice industry, we are strong believers that they should have the same professional and ethical standards as financial advisers (i.e. code of ethics adherence). We believe this is an arbitrage opportunity that places some consumers in harm's way; i.e. if you can cross subsidise the advice, it removes a strong incentive for the individual to be licensed as a relevant provider given the higher advice standards associated with this (i.e code of ethics vs the lower 'good advice' duty). We believe this further highlights the need to ensure consistent advice standards across the industry, regardless of who the advice is sought from.