

22 September 2022

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

Email: [advicereview@treasury.gov.au](mailto:advicereview@treasury.gov.au)

Dear Director,

**Re: Quality of Advice Review Proposals Paper**

Industry Fund Services (IFS) welcomes the opportunity to provide feedback to Treasury on the Quality of Advice Review Consultation – Proposals for Reform Paper August 2022.

We structure our submission in two parts. First, in completion of the response template as requested. Second, as additional comments and alternative proposals for fuller context and constructive feedback.

We welcome the opportunity to discuss with Treasury any matters raised in our submission. If you have any questions, please contact me at [cbaranyai@ifs.net.au](mailto:cbaranyai@ifs.net.au).

Yours sincerely,



Csaba Baranyai

**Chief Executive**

## Brief

IFS supports reform to reduce the cost of, and increase access to financial advice by Australian consumers. IFS also supports the maintenance of important consumer protections where appropriate, and the professionalization of the financial advice industry.

We appreciate the boldness of the proposals contained within the Quality of Advice Review Proposals Paper and support a number of them. However, we also have serious concerns about a number of the proposals as they would result in the unacceptable winding back of important consumer protections, and the undermining of the work done, and ongoing, to transform the financial advice industry into a cohesive, recognized and trusted profession.

In summary, IFS supports:

- The simplification of disclosure in Proposals 9, 10 and 11;
- The legislative clarity of Proposals 5, 6 and 7 (noting our concerns in Part 2 Section 3 below);
- The expansion of personal advice to meet consumer expectations in Proposal 1; and
- The introduction of a 'good advice' duty in Proposal 3 if implemented and enforced well.

However, IFS does not support:

- The deregulation of General Advice in Proposal 2, removing consumer protection and enabling conflicted, financially incentivized advice to be provided; and
- The ability for persons who are not financial advisers, not required to meet education standards, not subject to a code of ethics and not required to act in the best interests of clients – to provide personal advice to consumers in Proposal 4.

We also note that there are currently two other reviews underway - the Financial Adviser Professional Standards review by Treasury, and the Financial Services Regulation review by the Australian Law Reform Commission. Both of these reviews look at directly overlapping or relevant regulation to the Quality of Advice Review.

We urge Treasury and the Government to take a single, integrated view of all three reviews once completed to deliver a cohesive reform package, rather than continue in a piecemeal fashion that has led to the current fragmentation of the regulatory framework.

## PART 1 – CONSULTATION TEMPLATE

### 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?

The obligations that should apply to advisers should be appropriate to the complexity of the advice they provide, without winding back consumer protections, nor undermining the financial advice profession - (Refer Section 2 of attached submission).

#### 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?

The proposed definition of personal advice would better-align to consumer expectations that their financial service providers consider their personal circumstances. Simply as a result of the expansion of interactions that would suddenly be classed as 'personal advice', there would be more personal advice being provided. However it's unlikely that the change in definition would result in the total number of consumers being helped increasing.

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?

The regulation of General Advice as a financial service wraps it in the consumer protections of the financial service regime. Deregulating it – removes all of those protections and exposes consumers to significant and unacceptable risk.

Persons that are not AFS licensees such as self-professed 'financial gurus', 'coaches', 'influencers' etc, have significant reach and influence over their audiences of consumers. Under the proposal, such persons could say almost anything they liked, motivated for a myriad of reasons – including being financially incentivised by financial product manufacturers to recommend their products as the prohibitions against conflicted and banned remuneration vanish.

The sole consumer protections offered would be the those under Part 2 Div 2 of the ASIC Act such as that against making misleading and deceptive statements or unconscionable conduct. In practical terms, these provisions offer little real protection, with the bar to meet them high, and the difficulty of successful enforcement action even higher - and rare.

So far as practical consumer protections in such circumstances, under the proposal – there are none. Not only are the existing protections removed, but avenues for consumers to take action against poor or harmful general advice – virtually don't exist. Complaint processes are removed. Compensation arrangements are removed. The sole avenue would be litigation – which is neither practical nor affordable for consumers.

(Please refer to Section 1 of attached submission for further context).

## 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?

We do not believe that a duty to provide 'good advice' will of itself increase the quality of advice, nor the time and cost to produce that advice. Those currently providing poor advice would likely be able to do so under the new duty irrespective.

Overall, we support the introduction of the duty as we do not feel it will be harmful. However we caution that the utility of such a duty, is entirely contingent on its clear definition, industry understanding and ability to be enforced. Any such duty must also in no way water down the existing expectations of advice quality under the current regime, and should in all cases be a supplement to, not a replacement of, the adviser code of ethics.

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)?

No – it will have no impact on ability to provide advice. However this is also the wrong question to ask – the correct question is "Will it increase the quality of advice provided to consumers?".

It is not currently difficult to provide limited advice to consumers – either through an adviser or digitally. The uncertainty around the provision of limited financial advice in some selected corners of the industry is driven by the poorly drafted nature of the FASEA Code of Ethics Standard 6. While ASIC, APRA, Government and FASEA prior to its demise have all come out in universal support of the provision of simple, limited financial advice to consumers, clarifying the application of Standard 6 in the code would provide more certainty to the industry as a whole.

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

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

Removing the prescribed obligations to provide a Statement of Advice as proposed will provide the industry with increased flexibility to tailor consumer communications to best suit the nature of the person, the engagement and the advice. It will also deliver significantly increased flexibility to provide better user experiences in digital advice tools.

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?

The proposal to allow person who are not financial advisers (Relevant Providers) to give personal advice undermines the turning of the industry into a profession, poses unacceptable risk to consumers and is counterintuitive.

Consumers have a right to expect that when a person provides them with personal financial advice, regardless of how they pay for it, that person is a Financial Adviser. A professional, who is registered, qualified, experienced and subject to a professional code of ethics requiring them to act in their best interest. The proposed model does away with that where personal advice is either not paid for, or paid for indirectly (i.e. intrafund). Even the simplest of free financial advice today provided by Financial Counsellors is done so through a framework, where those counsellors must be accredited members of their industry bodies, qualified and subject to a code of ethics.

Removing the vetting the framework applies, the conflict-of-interest provisions and in particular removing entirely the code of ethics and obligation to act in the best interests of their client, is an unacceptable winding back of consumer protections, in a time where the industry continues to see millions in consumer compensation paid, and its bad apples weeded out by ASIC on a weekly basis.

To draw an analogy, the proposal is akin to proposing that legal advice or tax advice be provided by persons who are not legal practitioners, or tax agents, as long as that legal or tax advice is 'good'.

It also introduces the prospect of poorly intentioned AFS licensees assembling teams of 'non advisers' to provide personal financial advice to clients for the purpose of product sales and retention. An example of conduct, which has been universally condemned, but would under the proposal, very likely be considered legal – is the super consolidation campaign conducted by BT/Westpac later prosecuted by ASIC and ruled on by the High Court. To think that such activity would not then become commonplace is optimistic.

(Refer to Section 2 of attached submission for more information and a proposed alternate model)

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?

No – Refer to response to Question 7 above and to Section 2 of attached submission for more context and alternate proposal.

## Superannuation funds and intra-fund advice

9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):
- make it easier for superannuation trustees to provide personal advice to their members?
  - make it easier for members to access the advice they need at the time they need it?

While the proposals do not extend the scope of the advice provided by and through superannuation funds, nor them to provide new services – they do provide legislative clarity.

However, it is critical that the proposed amendment to the Sole Purpose Test inserting the provision of financial advice as a purpose, be clearly worded to ensure that a trustee's ability to provide financial advice that extends beyond the confines of a member's interest in the fund (i.e. "intrafund") – is not removed.

While it is appropriate from a member equity perspective that financial advice paid for collectively ("intrafund") is restricted to advice about a member's super and retirement (although an expansion of this to take into account the family unit would improve the utility of such advice), trustees currently do, and should continue to be able to, provide much broader retirement advice so long as it is paid for directly by the member and not collectively. Such advice must continue to be able to be provided by trustees themselves, or by trustees engaging outsourced service providers to do so.

## Disclosure documents

10. Do the streamlined disclosure requirements for ongoing fee arrangements:
- reduce regulatory burden and the cost of providing advice, and if so, to what extent?
  - negatively impact consumers, and if so, how and to what extent?

The proposed changes will have minimal if any cost impact, but will have significant detrimental impact on consumers and their protections.

The annual Fee Disclosure Statement, which outlines the fees a person paid, the service they paid them for and the services actually delivered - is a critical part of keeping consumers informed, and increasing transparency of ongoing fee arrangements. Removing this key piece of disclosure simply reduces how informed consumers are, creates an information imbalance between consumer/provider, and harks back to the fee-for-no-service issues experienced over the past decade and at the very heart of the Royal Commission in 2018.

It is also unlikely to achieve the stated goal. We agree that the current administrative requirements of ongoing fee arrangements pose an unnecessary burden – however the majority of that burden is contributed by the annual opt-in process which the proposal intends to retain. This regime forces advice providers to annual seek out every one of their ongoing clients, have them opt-in for another year, sign a form and retain the record. This causes not only cost and complexity for providers, but annoyance and little value for consumers.

(Refer to Section 4 of attached submission for more context and an alternative proposal)

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?

It's unlikely that the removal of the SOA obligations will have any significant impact on the cost of advice, however it does provide more flexibility to tailor consumer communications to best suit the nature of the person, the engagement and the advice. It is unlikely to negatively impact consumers as long as they have the option to request a written record of their advice and associated information.

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?

The proposed change to giving a Financial Services Guide (FSG) will likely produce a small reduction in regulatory burden.

### 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?

IFS believes that the proposed changes to the DDO regime for advisers are appropriate and strike the right balance between reducing burden and feeding relevant consumer feedback through to product manufacturers.

### Transition and enforcement

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

Appropriate time needs to be provided for the industry to implement any changes arising from the review.

More generally, it is imperative that the drafting of any reform package be carefully thought through, consulted on via draft exposures and only tabled in parliament once all relevant interactions, consequences, downstream impacts and ability for industry to actually practically implement is considered. The industry does not need more piecemeal reforms that rapidly get changed, supplemented or removed in the proceeding few years.

### General

15. Do you have any other comments or feedback?

Please refer to our attached submission for further comments, and alternative proposals.

## PART 2 – SUBMISSION

### 1. General advice (Proposal 2)

The General Advice framework as it stands today, is a useful and under-utilised way of providing help to consumers. It also poses a risk to those consumers in the wrong hands. It is for this reason, that General Advice is regulated as a financial service and wrapped in all of the consumer safeguards that the financial service regime provides.

The proposal to deregulate General Advice, removes those safeguards and poses a significant and unacceptable risk to consumers.

Persons that are not AFS licensees such as self-professed ‘financial gurus’, ‘coaches’, ‘influencers’ etc, have significant reach and influence over their audiences. This in turn leads their audiences to act on that advice under the assumption it is correct and well-motivated. At present, a high-profile ‘influencer’ would be reluctant to recommend a financial product or make statements of their opinion to influence their audience, as doing so would amount to providing unlicensed financial advice with serious repercussions. This is a real and present issue raised only this year by ASIC.

Under the proposal, such persons could say almost anything they liked, motivated for a myriad of reasons – including being financially incentivised by financial product manufacturers to recommend their products, as the prohibitions against conflicted and banned remuneration vanish. The sole consumer protections offered would be those under Part 2 Div 2 of the ASIC Act such as that against making misleading and deceptive statements or unconscionable conduct. In practical terms, these provisions offer little real protection, with the bar to meet them high, and the difficulty of successful enforcement action even higher - and rare.

It would also leave the door open for poorly motivated AFS licensees to utilise subsidiaries or related entities who do not have an AFS licence to provide unregulated general advice.

So far as practical consumer protections in such circumstances, under the proposal – there are none. Not only are the existing protections removed, but avenues for consumers to take action against poor or harmful general advice – virtually don’t exist. Complaint processes are removed. Compensation arrangements are removed. The sole avenue would be litigation – which is neither practical nor affordable for consumers.

Overall, the proposed deregulation of General Advice is a definitively regressive and harmful winding back of consumer protections and responsibility of those influencing consumers en masse about their financial arrangements.

### 2. Personal advice (Proposals 1, 3 and 4)

Good personal financial advice is well proven to improve financial outcomes for recipients, and IFS supports efforts to reduce its cost and increase the number of Australians able to access it. It can also be complex, impactful and, in the wrong hands – incredibly harmful to consumers.

The primary issue impacting the ability to provide more personal advice is supply of qualified financial advisers. While nationally there are over 85,000 lawyers in Australia – there are only 16,500 financial advisers. This constrains supply, drives adviser salaries up and ultimately increases the end cost to consumers.

Whilst the number of persons providing personal financial advice needs to increase – this cannot be through a proposal which would allow persons who are not financial advisers (Relevant Providers) to provide that personal financial advice.



The past 20, and in particular 9 years has seen a strong push by Government, industry and community expectations to transform financial planning into a cohesive, recognised and trusted profession. We have made much progress – but much remains to be done.

The proposal to allow persons, who are not financial advisers, to provide personal advice – entirely undermines that progress, poses unacceptable risk to consumers and, is in itself counterintuitive.

Consumers have a right to expect that when a person provides them with personal financial advice, regardless of how they pay for it, that person is a Financial Adviser. A professional, who is registered, qualified, experienced and subject to a professional code of ethics requiring them to act in their best interest. The proposed model does away with that where personal advice is either not paid for, or paid for indirectly (i.e. intrafund). Even the simplest of free financial advice today provided by Financial Counsellors is done so through a framework, where those counsellors must be accredited members of their industry bodies, qualified and subject to a code of ethics.

While the proposal to introduce a ‘good advice’ duty is well intentioned – it does not replace a qualified financial adviser. Its utility is also entirely dependent on how it is defined, understood and enforced. Importantly, it cannot be a watering down of the existing quality expected of financial advisers.

Removing the vetting the framework applies, the conflict of interest provisions and in particular removing entirely the code of ethics and obligation to act in the best interests of their client, is an unacceptable winding back of consumer protections, in a time where the industry continues to see millions in consumer compensation paid, and its bad apples weeded out by ASIC on a weekly basis.

To draw an analogy, the proposal is akin to proposing that legal advice or tax advice be provided by persons who are not legal practitioners, or tax agents, as long as that legal or tax advice is ‘good’.

It is the hallmark of all professions, that they are restricted and the services they provide can only be provided by members of that profession, suitably trained, experienced and registered. Why is financial planning thought of differently? If we are to successfully turn financial planning into a profession – we must stop treating it differently to other, existing professions.

It also introduces the prospect of poorly intentioned AFS licensees assembling teams of ‘non advisers’ to provide personal financial advice to clients for the purpose of product sales and retention. An example of conduct, which has been universally condemned, but would under the proposal, very likely be considered legal – is the super consolidation campaign conducted by BT/Westpac, later prosecuted by ASIC and ruled on by the High Court. To think that such activity would not then become commonplace is folly.

### **How to solve the supply issue?**

Whilst we do not support the proposed changes to providers of personal financial advice – we very much support the goal of increasing supply in the profession.

To that end, we would propose an alternative. The introduction of a two-tier Relevant Provider model tied to the complexity of the personal financial advice being provided. Relevant Providers would be divided into ‘Simple’ and ‘Complex’, appropriately trained, experienced and accredited to provide simple or complex personal financial advice respectively.

This model recognises that the current ‘one size fits all’ approach to the adviser education and experience requirements does not reflect that some advisers provide very complex and high-risk advice, while others (i.e. ‘intrafund advisers’ within super funds) provide simple, episodic advice which doesn’t require the same level of training and experience.

Critically, it does however maintain the vetting framework, conflict of interest framework and the professional code of ethics to both tiers of financial advisers, requiring them to give priority to their clients and act in their best interest.

This alternative model, would interplay with the expansion of personal advice by allowing an increase in the number of Relevant Providers (both by simple upskilling of general advice providers and easier entry into the profession) to better help consumers, reducing costs but maintaining consumer protections and integrity of the profession.

### 3. Advice through superannuation (Proposals 5, 6 and 7)

Advice provided by and through superannuation funds is the single greatest equity tool currently in place for the financial planning industry. It allows consumers, who cannot afford financial advice elsewhere, to receive simple, retirement-focused financial advice to give them security, improve their retirement outcomes and allow them to retire with dignity.

While the proposals do not extend the scope of the advice provided by and through superannuation funds, nor enable them to provide new services – they do provide legislative clarity.

However, it is critical that the proposed amendment to the Sole Purpose Test inserting the provision of financial advice as a purpose, be clearly worded to ensure that a trustee's ability to provide financial advice that extends beyond the confines of a member's interest in the fund (i.e. "intrafund") – is not removed.

While it is appropriate from a member equity perspective that financial advice paid for collectively ("intrafund") is restricted to advice about a member's super and retirement (although an expansion of this to take into account the family unit would improve the utility of such advice), trustees currently do, and should continue to be able to, provide much broader retirement advice so long as it is paid for directly by the member and not collectively. Such advice must continue to be able to be provided by trustees themselves, or by trustees engaging outsourced service providers to do so.

### 4. Disclosure and other matters (Proposals 8 – 12)

IFS supports the consolidation and simplification of disclosure documents where they don't currently provide protection or value to consumers. This includes the proposals relating to the Statement of Advice and the Financial Services Guide. We also support the simplification of how the Design and Distribution Obligations apply to financial advisers.

However, we do not support the proposal to remove the annual Fee Disclosure Statement for ongoing fee arrangements. The annual statement, which outlines the fees a person has paid, the services they have paid for, and which of those services were actually provided to them – is a critical part of keeping consumers informed, and increasing transparency of ongoing fee arrangements.

Ongoing fees and resulting fee for no service issues were at the very heart of the problems faced by the financial planning industry over the past decade and the resulting Royal Commission in 2018. The proposal to wind back key consumer protections by removing the annual Fee Disclosure Statement, reduces how informed consumers are about the arrangements they've entered, and reintroduces significant information imbalance in the consumer/provider relationship. In light of the issues faced over the past decade, this proposal is perplexing.

It is also unlikely to achieve the stated goal. We agree that the current administrative requirements of ongoing fee arrangements pose an unnecessary burden – however the majority of that burden is contributed by the annual opt-in process which the proposal intends to retain. This regime forces advice providers to annually seek

out every one of their ongoing clients, have them opt-in for another year, sign a form and retain the record. This causes not only cost and complexity for providers, but annoyance and little value for consumers.

### **Simplifying Ongoing Fee Arrangements**

Whilst we do not support the removal of the annual Fee Disclosure Statement as it represents an unnecessary, unhelpful and inappropriate winding back of consumer protection – we do support the simplification of administering ongoing fee arrangements.

As stated above, the majority of the administrative burden is contributed by the annual opt-in process. We would propose that once consumers choose to sign up to an ongoing fee arrangement, they are only required to do so once, after which it continues until cancelled by the consumer at any time, or defaulted on by the advice provider.

This arrangement would mirror almost every other ongoing service arrangement or subscription service that consumers have in their lives. For example, if a consumer signs on for a phone or internet service, or a utility such as gas or electricity, they are not required to 'opt in' annually to keep their internet or electricity connected. They do however receive regular disclosure of fees paid and services rendered through periodic statements.

Our proposed alternative would meet consumer expectations, keep consumer protections in place – and simplify and reduce the cost of administering ongoing fee arrangements.