



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:

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, the current requirements are onerous and result in extensive duplication of disclosure, particularly of fees in a way which is confusing to clients.

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?

No, the definition would not be an improvement since, as defined in paragraph 4, it involves a number of tests, which if any were missing, would take the provision of service outside the definition of "personal advice". As defined in para 4 those tests are:

- Relevant provider is an individual
- The service involves a fee
- The provider or licensee receive a commission, or presumably some other compensation, presumably from some 3rd party

- There is an ongoing relationship or the presumption that there will be an ongoing relationship.

Paragraph 4 specifically excludes bodies corporate from being subject to the provisions of a requirement to comply with professional standards.

Therefore, in the situation where:

- The service is provided by an organisation rather than an individual; or
- No fee is charged; or
- No revenue is received from any 3rd party; or
- The service is provided on a one off or ad hoc basis with a specific disclaimer of any ongoing service; then

This type of service would fall outside the definition of personal advice. Retail investors would therefore be left without the protections afforded by:

- Code of Ethics; or
- A requirement for “good advice”

This definition would lead rapidly to the provision of more product centric advice to investors by institutions and would be a step so retrograde as to return the financial services industry to the condition which pertained before the FoFA reforms. It would be wholly contrary to the intentions of the reforms of the past decade.

In particular we believe the removal from an AFSL of primary responsibility for the provision of personal advice with the accompanying requirements for authorisation and the expertise standards that accompany that authorisation would be a significant reduction in protections for retail investors.

For reasons we refer to in our reply to Q4 below, we believe this change would increase regulatory uncertainty until ASIC or Treasury, in an attempt to control the inevitable poor behaviour from organisations, introduce a set of steps similar to the current Safe harbour steps.

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?

All financial services should continue to be regulated. By removing this requirement a loop hole will be opened which can be exploited.

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?**

The recommendation to give "good advice" instead of "act in the Best Interest of the Client" would replace a well understood duty which imposes clear obligations on both the person and organisation providing the advice with a far less rigorous standard. At its strongest "good advice" would be no more likely to result in any better outcomes than the previous standard of "likely to leave the client better off" which at least creates an explicit reference point i.e. the client's present position which is missing from "good advice"

S961B of the Corporations Act sets out the steps required to comply with the Best Interest Duty. In order for a "good advice" standard to be in any way enforceable new legislation or ASIC regulation would need to establish an equivalent set of steps.

An amorphous "good advice" obligation would be unlikely to result in any time saving for advisers, other than for those organisations which, as we referred to above provided product specific advice in the guise of personal advice.

By setting a subjective test the question will then be 'What is Good Advice?' raising further debate rather than putting the client in a better position.

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)?**

We do not believe that the replacement of Best Interest Duty with “good advice” is necessary in order to make some improvements to the opacity of the boundaries for scaled or limited advice.

Nor do we believe that removing this obligation is all that stands between organisations and the provision of digital advice solutions and a number of online services now provide compliant, low cost solutions. It is presumably available to other organisations to also do this if they believe that their commercial interests would be served by doing so.

Further, if organisation are not responsible for personal advice, presumably the requirement to produce an SoA or other replacement appropriate documentation will not apply to them.

In order to make the limited advice and digital solutions easier to deliver the removal for the requirement for ‘Any other step’ would go some way to resolving the hurdles to these types of service.

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

a) limited advice?

b) digital advice?

As above in Q5. Removal of the ‘Any other step’ provision will assist.

In addition, a simpler advice delivery for one of product advice requests from clients.

Where clients request simple one off advice on a specific product, advisers should be able to contain the advice to that one product and set out whether or not it is suitable without diving into a range of alternatives unless the client requested that option.

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?**

By retaining the professional standards for individuals and removing them for organisations, this proposal would substantially reduce the genuinely professional advice provided by suitably authorised advisers at present and would replace it with advice provided for free – funded by cross subsidisation – by product issuers. This would be very similar to the situation which we experienced in corporate superannuation prior to the FOFA reforms which lead directly to the “Fee for No Service” remediation requirements currently winding down.

Advice would be apparently available from product issuers but would inevitably be focused on the way in which the issuer’s products could be sold to or retained by the investor.

An adviser’s licensee could potentially look to reduce their liability for the actions of individuals employed by them and consequently reducing protections for investors.

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?**

We do not believe that this proposal of permitting organisations and some people to be exempt from professional standards would be in the interest of retail investors.

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?**

We do not believe that charging all members of a superannuation fund for a service that they are unlikely to avail themselves of is equitable and is in fact identical to the policies adopted by corporate superannuation funds up to 2012. A levy of 0.02% on the members of Australian Super¹ would generate a pool of funds of ~\$50m to provide advice. Australian Super quotes a membership of 2.88m members¹ so a pool of \$18 per member is grossly inadequate to provide even “good advice” let alone adequate advice to all members. It is however large enough to fund substantial advertising promoting “free” advice.

It would however be reasonable for superannuation members to be able to pay for advice out of their superannuation balance with some limits and restrictions. Such as ensuring the advice fee does not erode the superannuation balance and the fees being charged for advice are within an industry range.

1. <https://www.australiansuper.com/compare-us/best>

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 proposals to reduce the documentary burden are welcome, however, a significant element of burden is the way in which ASIC has required multiple annual reporting of fees by MDA Providers, platforms and Advisers to clients where the same fees, largely those for which they are not responsible, are reported in different formats by each provider. Documentation needs to be viewed in a “system wide” context

ASIC has shown little interest in addressing duplication and repetition to avoid confusion despite requests to do so.

There needs to be direction to the industry that if an investor has provided consent to fees being deducted from their investment that this must be accepted and that clients should not be made to provide consent multiple times to avail the bureaucratic requirements of large organisations. Consumers are generally confused with the multiple consent requirements and are concerned it will allow the fees to be deducted more than once.

We support the proposal to have the FSG and information such as complaints procedures available in electronic form.

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 do not believe it would be appropriate for a retail investor not to be provided with written documentation articulating and supporting the recommendations made to them and for it to be incumbent on the investor to request this document.

The cost of producing an appropriate SoA will not vary depending on whether it is actually provided to the client or merely retained on file but a removal of the obligation to provide a clear document will tend to some providers producing substandard documents and, as noted in Q5 above, removing organisations from the personal advice framework will lead to further disparity in the obligations falling on individual advisers as compared to organisations which are also product issuers.

The likely outcome of removing the statement of advice requirement will be that many consumers will be unclear on what the recommendation was and how that has been implemented. Use of different language by individuals will remove clarity and likely end in an increase in complaints.

Licensee will still need to retain copious records of what advice was provided and how to be able to protect themselves in the event of the complaint.

The current statement of advice requirements needs to be revised but not removed.

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?**

As noted above, we believe electronic distribution is adequate.

Further simplification of the FSG would be a better outcome. The only fees required to be disclosed in the FSG should be for services outside of personal advice – this would include transaction or brokerage and any fees relating to general advice.

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?**

DDO as it applies to the provision of personal advice is almost certainly, even by the standards of Australian financial services regulation, a standout example of wasteful and unproductive make work.

We support the removal of DDO in its entirety in so far as it applies to providers of personal advice.

This would include where a product can only be issued when personal advice is provided then there is no requirement for a Target Market Determination. This would include Managed Discretionary Accounts and some Separately Managed Accounts and complex products.

Transition and enforcement

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

A minimum 18-month transition requirement is needed for any major regulation change

General

15. Do you have any other comments or feedback?

The statement of advice should be restricted to the advice or recommendations being provided. Workings and analysis should be maintained separately to the advice unless it provides relevance to the client in their ability to make a decision.

Ancillary warnings and disclaimers should be considered as standard with general consumer warnings.

Where fees and costs are clearly set out in other documentation such as Managed Discretionary Accounts contracts the advice should be able to incorporate by reference.