



INSTITUTE OF
**PUBLIC
ACCOUNTANTS®**

Submission to the
Treasury on the
Quality of Advice
Review Proposals Paper

September 2022

26 September 2022

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

By Email: AdviceReview@treasury.gov.au

Dear Michelle

Quality of Advice Review – Proposals Paper

The Institute of Public Accountants (IPA) welcomes the opportunity to provide further comments on the Quality of Advice (QoA) Review Proposals Paper. We have completed the Appendix 1: Consultation template which has been provided by the Secretariat.

Our comments should be read in conjunction with previous submissions which have been made as part of the Joint Associations Working Group, jointly with Chartered Accountants Australia and New Zealand and SMSF Association on the role of accountants, and by the IPA solely.

Please don't hesitate to contact Vicki Stylianou (vicki.stylianou@publicaccountants.org.au or mob. 0419 942 733) if you wish to discuss our comments or require further information.

Yours sincerely



Vicki Stylianou
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Appendix 1: Consultation template

Name/Organisation: Institute of Public Accountants

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, we agree – the current obligations have led to excessive regulation leading in turn to unaffordable advice for many consumers.

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?

Overall, we believe the changes will assist by removing the confusion caused by ‘general advice’. It will take time to assess whether regulatory uncertainty has been reduced or simply replaced. However, we support a principles based approach and reducing the need for prescriptive regulatory guidance from ASIC on the basis that those providing personal advice are appropriately qualified to do so and are treated as professionals.

Reducing the compliance burden and cost is part of the equation in facilitating more advice to consumers. It will also include attracting and retaining advisers. For this reason more flexibility is needed in terms of recognising the numerous advice needs of consumers – this would mean consideration of a framework such as that applied by the Tax Practitioners Board (TPB) and the recognition of intermediaries in the provision of tax agent services. The TPB Review (James Review) recommended (4.9) that intermediaries only had to be registered with the TPB if they didn’t hold another statutory registration. This could apply to intermediaries in the financial advice sector. We believe this would go a long way to increasing the pool of qualified and regulated advisers.

Please refer to the answer to question 15 below for further comments on the TPB model.

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 think the existing consumer protections should be sufficient, however, it is preferable to test this approach and if it becomes evident that consumers are being systemically harmed, then additional safeguards can be considered.

The issue is not so much the law and available safeguards, but more the enforcement by the regulators. Active supervision and enforcement are critical, otherwise, we will simply keep piling up the regulation with no benefit to consumers and only more costs for the regulated entities.

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?

Speaking for IPA members (accountants) in the advice space – they are under an existing best interests obligation as part of the professional and ethical standards which apply to qualified accountants (those who are members of one of the three professional accounting bodies). So, in practice, the changes might not make a huge difference.

For professionals, and to be treated accordingly, we submit that the obligation whether best interests, good advice or a fiduciary obligation – should mean that the advice to the consumer is the most appropriate advice for that consumer in the circumstances. Whilst the legal and regulatory position may differ, for the consumer there should be no difference.

IPA supports the removal of the safe harbour provisions. However, we anticipate that for a sector which is used to over-prescription and risk aversion (driven at least in part by licensees) that the good advice requirement will require some level of guidance. Unless this prescriptive and risk-averse approach can be overcome, then the intended benefits of moving to a good advice model may not be realised, at least not in the short or possibly medium term.

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)?

It should be easier to provide limited advice (or scaled advice) to consumers under a good advice model on the basis that it is allowed to operate as envisaged in the Proposals Paper. This may also apply to digital advice on the basis that the impediments are removed as intended by the good advice model.

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

a) limited advice?

b) digital advice?

As outlined in the submission of the Joint Associations Working Group, the provision of advice would benefit from: a consumer-centric model, advisers being treated like professionals, regulatory certainty, and open access to data.

Our previous IPA submission has considered these matters – we do not support the limited advice regime which has not proved effective and which has resulted in many accountants who obtained a limited licence leaving the sector. However, scaled advice is already possible. Impediments include the disclosure requirements and the risk averse approach of some licensees.

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?

We expect that the proposed changes will have a positive impact and will promote the affordability and accessibility of financial advice.

In this regard, we have requested access to the research report from ASIC Consultation Paper 332, which was referred to the Quality of Advice Review. Data, research and analysis from this work would be useful.

We refer to previous submissions.

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?

The IPA strongly supports a system of individual registration (or some form of registration or licensing) based on individual responsibility. Our view is that history has shown the inadequacy and inconsistency of relying on a model which relies on licensees to carry out or apply the licensing obligations. Licensees have a place in providing support services to advisers. In addition, a profession relies on professional standards, so we support professional and ethical standards being applied to individual advisers, just like most other professions.

In accordance with the model which was proposed as part of the Review of the TPB, those who are not required to be relevant providers should still be required to be operating under a statutory registration if they are providing personal advice. This model reduces duplication whilst ensuring consumer protection.

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 are supportive in principle of the changes to allow consumers to access their super funds to pay for intra-fund advice on related matters.

Our concern is that any changes to the sole purpose test should not be seen as an opening to allow consumers to use their super funds for non-super/retirement related purposes. In the past the IPA has strongly advocated for the purpose of super to be defined to prevent 'dipping' into super for non-related purposes.

We note that during the COVID-19 pandemic the former government allowed consumers to access their super funds to assist with living expenses – billions of dollars were withdrawn for a myriad of non-intended reasons. It will take decades for some consumers to return to their pre-COVID super fund position. The need for integrity provisions around these proposals is critical and we prefer to see the detail before offering more support.

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 proposed changes to disclosure document requirements should have a major impact on the regulatory burden and cost, without negatively impacting consumers. In fact, it should assist consumers in that more effective disclosure will be enabled.

One of the biggest complaints from IPA members giving financial advice is around the fee disclosure requirements. Reducing these will be very welcome and whilst we can't quantify by how much, we believe it will be significant. For example, one of our members with a large practice has described the need for additional administrative support just to deal with this requirement.

Again, we point to accountants who are obliged to provide clients with an engagement letter (which can take numerous forms) which sets out, inter alia, the fee arrangements, including ongoing fees. For instance, many IPA members operate on the basis of a flat monthly fee, which is ongoing but doesn't need regular confirmation in the way that is required in the financial advice sector. No systemic harm has been caused to consumers of accounting services because of these requirements.

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?**

Yes, we believe that removing the need for an SOA will reduce costs – the amount will depend on how complex they are and need to be, and what they are replaced with.

The main benefit will be in producing a meaningful document for consumers, so it should have a positive (not negative) impact.

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 relevant content should still be made available in a more meaningful format. Overall, IPA members have advised that removing the need for prescriptive documents such as the FSG, will reduce costs and benefit consumers.

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?

We are unable to comment on this.

Transition and enforcement

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

A lot will depend on how quickly ASIC and others such as licensees with legacy systems need to implement the changes. A transition period of no longer than three years could be considered, with early adoption for those who are able to move more quickly. Early adoption should be of all the changes being introduced at the time (in case there are tranches) with no selective 'cherry picking'.

General

15. Do you have any other comments or feedback?

Since the Proposals Paper is silent on Terms of Reference 3.1.7 relating to the role of accountants in financial advice, we would appreciate some indication of the Independent Reviewer's thinking on how this matter will be dealt with.

The IPA has made joint submissions with CA ANZ and SMSF Association on the role of accountants, in which we detail our proposal. Since then we have been involved in consultations, however, no indication has been made by the Review Secretariat or the Reviewer. If the Reviewer is not minded to accept our joint proposal then the IPA suggests that inspiration can be drawn from the TPB Review which recommended that any intermediaries who are not otherwise registered, should be captured under the TPB and the Tax Agent Services Act 2009. We refer to:

Recommendation 4.9 (page 51):

Only those tax intermediaries that are not regulated by any other Government body should require registration with the TPB, despite otherwise being required to be registered with the TPB.

The TPB should have the power, through the legislative instrument process, to exclude certain other services from having to register with the TPB.

This recommendation was supported by the former government in its response dated November 2020.

This recommendation should be read together with recommendation 7.2, which is specifically referenced in the QoA Review Terms of Reference 3.1.7.

Under this framework, accountants and others could be considered as intermediaries and be exempted from registration under the Corporations Act if they are already regulated by any other Government body. This would apply to accountants who are also Registered Tax Agents.

We submit that introducing 'categories' such as those contained under TASA and the TPB is not creating exemptions from regulation since these advisers are already regulated. It is simply removing duplication and also recognises that most regulation is not workable on a one-size-fits-all basis, but if undertaken under a principles-based approach, it can provide flexibility and certainty for all stakeholders.

We would be pleased to provide further information or to discuss this proposal further.