Quality of Advice Review – Response to the Proposals Paper

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About the author.

Paul is a Certified Financial Planner (CFP) and SMSF Specialist Advisor (SSA) with Financial Planning experience dating back to 1995.

In 2001, Paul commenced an independently owned practice in North Carlton, now operating as Moran Partners Financial Planning under its own AFSL.

Paul has been involved in the financial planning profession as both a lecturer and practitioner. He has been involved in the Financial Planning Education Committee as well as the Professional Designations Committee of the FPA (2010 – present). He is a current member of the Academic Advisory Panel of the International Financial Planning Standard Board and involved in authoring texts.

He holds a Bachelor of Applied Science, Associate Diploma of Health Science, Diploma of Financial Planning, Master of Business Administration and Master of Taxation and Financial Planning. Paul recently completed a Doctorate at Victoria University in the area of financial decision making.

He was both the IFA Victorian and Australian 'Financial Planner of the Year' for 2004, FINSIA Practitioner Award Winner 2003, and a member of the AFR Smart Investor Top 50 Financial Planning Master Class in 2004, 2006 and 2012.

This response is the authors alone.

Let me start by stating clearly that I fully support the concept of quality advice and the simplification of the process for qualified advisers to be able to provide advice more affordably.

However, even though this review is nominally called the *Quality of Advice* review, its goals are specifically identified as improving *accessibility* and *affordability* of financial advice.

It seems that the concept of quality may have been superseded by accessibility and affordability.

Ms Levy identifies early that “some stakeholders might be concerned that the proposals would retract hard fought changes”, but that she does not hold that view. I certainly DO hold that view as allowing product issuers to ‘advise’ clients takes us back to the 1990’s where financial advisers were used as a part of a product distribution strategy. Suggesting that product issuers would altruistically provide advice without an expectation of increasing fund flows is, in my opinion, naïve.

There is now very substantive evidence of the benefits of good advice including, but not limited to Vanguard’s ‘Adviser Alpha’ studies. The bad advice narrative continues to recount the Opes Prime and Storm Financial catastrophes even though Opes Prime was hardly a financial advice issue and the Storm damage, while enormous, was created by a very small number of advisers. In fact, Storm Financial employed 34 financial advisers out of a pool of (at the time) more than 25,000 – or less than 0.14% of the adviser population. The combination of commissions and gearing were the culprits in the Storm debacle, and these have been outlawed since 2015.

Advisers do not charge commissions or fees on geared investments anymore and haven’t since 2015.

There is little doubt that the compliance burden has become almost unbearable, and this has been partly to blame for the loss of experienced advisers from the field. But the compliance burden has not made comprehensive advice less affordable, it has made simple advice unaffordable. This is evident in many advisers’ unwillingness to provide advice to ‘low-value’ clients. I use the term ‘low-value’ with some caution because I do not mean to imply that they are of a lower value as people, but rather that that do not have the means or inclination to pay a regular fee that is justified under the current regulatory regime. Setting a standard for what is expected to justify an on-going relationship with a client now includes up to four forms of fee consent (depending on the number of products or entities the clients have), a formal annual review which is documented in a detailed Statement of Advice (depending on the licensee), evidence of all recommendations made (even if they are not material). ASIC’s demand that advisers and licensees refund fees because of a lack of evidence of above retrospectively for ten years is evidence of this and has led to advisers being unwilling to service these clients.

Specifically, to be able to properly scope the advice needs of a client you need to understand enough about them. This used to be known as the ‘know your client’ rule. I agree with Ms Levy that the specific documents required have added little to consumer protection – in particular the PDS and FSG requirements as these documents can be long (in the case of PDS’s) and typically all say the same thing.

I do not believe that the Statement of Advice – or Financial Plan as it used to be more appropriately called – offers no benefits to consumers. I want to make it clear that this is primarily because we have progressively moved towards lawyer drafted documents full of disclaimers and disclosures and meaningless information. Clients need to know that their adviser knows enough about them to make recommendations, what the recommendations are and how the recommendations will help them, along with the fees applicable and anything else important to the client. A well-written financial plan is gold to clients who can refer to it from time to time.

Now we move onto the concept of 'Good Advice'.

I applaud Ms Levy for recognising that the content of the advice provided to a client is more important than the documentation or process, but I dispute her contention that advice can be 'easily measured and assessed'. Being objectively able to measure good advice is currently impossible as we have no basis on which to determine what exactly *is* good advice. Until we establish a practitioner/adviser led program of determining financial planning standards or protocols, we will have no basis other than temporally challenged outcomes after the fact.

I suggest that these protocols establish, as examples, what asset allocation is reflected in the different standard risk profiles; how to determine if a risk profile tool is appropriate; how to determine an appropriate life insurance needs analysis format and others. The we will have a benchmark against which we can determine 'good' advice.

Part of the issue I have with Ms Levy's view is that it remains wedded to the concept of advice as a recommendation for a regulated financial product. I would estimate that between 50% and 70% of holistic advice does not involve regulated financial products but instead considers our client's estate planning, cash flow, tax structuring, lifestyle needs, life coaching, social security benefits, debt management and others. Again, product issuers and digital advice channels specifically and exclusively operate within their own sphere of financial product.

Personal Advice

I fail to see why an advice provider who holds information about a client would not consider that information to assist in determining the suitability of a strategy or financial product (although it is clear that this specifically applies to financial products). It seems perverse in a quality of advice review that advice providers could make recommendations and ignore information they hold or even, refuse to collect.

The proposed re-alignment of 'general advice' might be better termed product advertising given the emphasis on consumer protections aligned with the ACCC regulator.

Good advice in the context of the proposals would be 'reasonably likely to benefit the client', which is a fine definition, however, the suggestion is that this should take account of available information at the time even if this is incomplete or inaccurate. There seems to be no requirement to actively identify information that might be relevant – the opposite of holistically considered advice.

The uncertainty surrounding the difference between personal and general advice, discussed in the proposal body, seems to relate to financial product issuers having difficulty meeting their client's needs for personal advice. It appears that they are unwilling to provide personal advice and therefore confuse it (deliberately?) with general advice as a risk mitigation approach. The confusion does not exist amongst current financial advisers and planners, but exclusively with those product issuers who promote 'free advice'. It is clear that the demand for personal advice within these institutions has been compromised by their inability, or unwillingness, to charge a reasonable fee for personal advice.

I have no issue whatsoever with financial product issuers and digital advice platforms offering personal advice provided that the delivery of that advice is by a 'relevant provider'. On the contrary, I most strongly disagree with any proposal to allow individuals and bodies corporate to offer personal advice that exists outside the same codes and regulation for relevant providers as this would be clearly discriminatory.

Professional Standards

The proposal seems to be suggesting that anyone who charges a fee for any form of financial advice (remembering that there is still no differentiation for non-financial product advice (strategic) and financial product advice, is subject to the current regulatory regime for professional standards irrespective of the level of fee charged. This class of person (and not a body corporate such as a product issuer or digital advice platform) will be known as a 'relevant provider'.

Over many years of professional practice, I have experienced many people who have met with me once or twice but who we have not engaged with or charged fees to. Without fail, when these people contact our practice often years later, they will always state that they are 'clients of X adviser'. A single contact creates a sense that there is a professional relationship even if the adviser does not. The concept of the 'client having a reasonable expectation that a relationship exists' means that every contact will need to be treated as if a relationship exists and therefore is subject to the full regulatory and codes applicable.

More concerning is the follow-up definition of who is not – which is everyone else. This might include 'finfluencers', bloggers, media personalities, financial product issuers and others.

Intra-fund advice

Superannuation fund trustees are already able to provide personal advice to their members, can charge for that advice, and allow a fee to be paid from the members account for that advice. By explicitly discussing this, I am concerned that Ms Levy is suggesting that this may be offered outside the 'relevant provider' regime – otherwise why separate specifically intra-fund advice. If the requirement is for this advice to be delivered by a 'relevant provider', will these advisers need to be qualified under the old FASEA (now Treasury) education regime and be subject to the applicable codes? This is unclear.

Disclosure documents

A single, adviser generated annual fee consent form is, of course, a no-brain solution to the current inefficient and muddled situation. This should not have needed a review to identify the problem, but I am very glad that it has and offer a sensible solution.

There is little benefit from providing a client with a templated disclosure document such as a Financial Services Guide (FSG), when it can be made available on a website, and certainly Product Disclosure Statements (PDS) are 80% marketing, 15% compliance and 5% informational. Product fact sheets produced by research houses are much more relevant in identifying the key characteristics of a financial product than a PDS ever did.

As discussed earlier, I believe that the Statement of Advice should be considered as a 'foundation' document and as such, should remain for new clients or where there is a material change in the client circumstances. It should outline the client situation, scope covered, client goals as the basis of the advice and the core strategic recommendations. Once established, 'immaterial' changes such as a change of underlying investment, contributions and withdrawals, etc, should not require additional formal documents.

I am concerned about the requirement to provide clients with a written record of advice provided on request. Surely this means that a record of all advice still needs to be generated and recorded in case the client requested the record after the event. Specifically providing a written record seems at odds with the suggested flexibility in the provider determining 'what form of advice best suits the client'. Perhaps a voice recording, or video recording might be able to be used instead or otherwise, we will still need to prepare documents in every case – just in case.

Design and distribution

I see no issue with this as it has already functionally been implemented by ASIC.

Transition period and enforcement

This is a natural and expected clause. If recommendations are made than there would be little time required for transition. However, given my recommendations that 'other than relevant providers' should have specific, relevant training such as a diploma, it would take some time to facilitate this.

Fees from superannuation

Allowing the wholesale fee capture from superannuation funds may be problematic as we have recently gone through a massive compensation and restitution program costing billions of dollars for the concept of 'fees for no service'. It seems ironic that this should, therefore, be a core recommendation.

Having said that, I support the ability, on a client directed basis, to pay for advice from their superannuation balance. The sole purpose test is extremely strictly interpreted, and it seems purely administrative to restrict the use of fees in such a way. This is especially the case as it is a recommendation that super fund employees ('other than relevant providers') will be able to discuss issues of age pension, estate planning and other issues as a part of their personal advice regime.