



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

<b>Email</b>	AdviceReview@TREASURY.GOV.AU
<b>Mail</b>	Secretariat, Quality of Advice Review Financial System Division The Treasury Langton Crescent PARKES ACT 2600
<b>Enquiries</b>	Enquiries can be initially directed to <a href="mailto:AdviceReview@TREASURY.GOV.AU">AdviceReview@TREASURY.GOV.AU</a>

## Appendix 1: Consultation template

### Name/Organisation:

Stockspot (<https://www.stockspot.com.au/>) is Australia's first and most experienced online investment adviser. We were founded in 2013 with a mission to help more Australians access expert investment advice and portfolio management.

We're the largest and fastest growing online investment advice (robo-advice) service in Australia. We help more than 13,000 clients and have more than \$600 million in funds under management.

Stockspot uses ETFs (exchange traded funds) as the basis of how we invest funds on behalf of clients. The funds are invested in a range of portfolios from most conservative to aggressive growth.

Thank you for providing this opportunity to contribute.

### 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?**

No.

The current obligations that apply to the provision of personal advice are sound and warranted. These obligations are a result of years of misconduct by advisers and product issuers (including the major banks) as found by the Hayne royal commission. The advice industry has since seen an increased level of trust and confidence, a step forward for the advice profession.

Separating the provision of advice from the product is critical to ensuring the best interests of the consumers continue to be met. A move to weaken regulation in this area would threaten fiduciary financial advice and would see a return to the advice market of the big financial institutions employing a product-led distribution strategy.

The changes to personal advice obligations have had the impact of reducing the ability of product issuers to influence distribution platforms and advisers. This has had an unequivocally positive impact on the industry as evidenced by the rapid flows into low fee products like index funds which are supported by academic and empirical research to be in the best interest of consumers.

The obligations that currently apply to the provision of personal advice have also had a positive impact on the industry by significantly improving consumer protections and trust in the advice industry as well as significantly reducing conflicted advice from vertically integrated product issuers.

Stockspot sees these trends through its more than 10 years of research into ETFs, super funds, managed funds and LICs.

## 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 changes to the definition of 'personal advice' are unlikely to have a significant impact on the provision of personal fiduciary-like advice. It will instead allow product issuers to be able to promote their products to consumers under the guise of advice. If the current obligations are reduced, product manufacturers are likely to use digital tools to promote their products under personal advice. This has happened in the United States and has been a disaster. Schwab recently received a USD \$187 million fine for not adequately managing conflicts in their digital advice product (See: <https://www.sec.gov/news/press-release/2022-104>).

- a) It will reduce regulatory uncertainty for large institutions. It will increase uncertainty for the client that these proposed changes are designed to assist.
- b) More consumers might receive personal advice, but most new advice would be product led sales rather than fiduciary advice.
- c) The result here would be a rise in vertical integration and the return of institutions issuing a product and providing advice, again leading to a conflict of interest and poor consumer outcomes as found by the Hayne royal commission.

**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?**

Under new Therapeutic Goods Administration rules, from July 1, 2022, there is a ban on social media influencers from promoting health products if that influencer is receiving payment or other incentives from the product manufacturer. Similar rules need to exist for financial products. If this doesn't occur, products with the highest fees (as paid to the promoter) and largest distribution budgets will inevitably find ways to distribute their products through unlicensed influencers providing general advice. Stockspot believes that a business or individual must be licensed to provide general advice about a financial product.

In addition to general consumer protections, the adviser has an overriding obligation to act in the best interests of the client.

### **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 term 'good advice' needs to be properly defined. It should not be open to multiple interpretations which could lead to poor consumer outcomes.

- a) The volume of advice will increase and at the same time the quality of that advice provided to consumers will deteriorate. Consumers will be recommended inferior in-house products or products that generate a higher revenue for the adviser or institution. A detailed analysis and consideration/benchmarking of other products in the market should be carried out to ensure 'good advice' is being delivered.

Advisers and financial institutions must have a professional obligation to act in their clients' best interests and be bound by a 'best interests duty' or fiduciary like duty. This is essential for maintaining good and proper conduct within the industry and raises the ethical standards that all members of the industry/profession should abide by.

- b) There will be no time and cost impact on producing advice. Product issuers will instead use digital tools to distribute their products to consumers under the guise of personal advice where it is in fact just product sales. They might also use advice as a loss leader to drive clients to their in-house (and inferior) products causing poor outcomes for consumers.

Since 2013 Stockspot, along with other digital advice providers, has proven it is possible to service clients under the best interest obligations whilst keeping costs low for consumers by utilising technology. Stockspot recognises that potential clients may be uncomfortable or unfamiliar with receiving digital advice so maintains a small team of financial advisers to explain the merits of the digital advice and respond to client questions.

**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)?**

The elimination of best interest obligations for advisers and institutions is a positive for advisers and institutions, at the expense of consumers.

The quality of advice offered will erode consumer trust and confidence in the sector. Personal circumstances will not be adequately considered nor whether better alternatives exist. The advice might be offered from a call centre by staff who are limited to providing advice on the merits of the product they are selling and do not have adequate education and are incentivised to recommend in-house products. This was evidenced by the Westpac case (See: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-013mr-asic-successful-against-westpac-subsiadiaries-appeal-to-high-court/>). Furthermore, the staff offering advice may lack the educational, technological, and behavioural understanding of a qualified financial adviser.

- a) It makes it easier for institutions to provide limited advice that doesn't currently meet the best interests duty.
- b) Technology effectively streamlines their conflict of interest.

As mentioned, since 2014 Stockspot has been offering digital advice via low-cost methods that meet best interest obligations.

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

a) **limited advice?**

b) **digital advice?**

- a) Based on our research of other markets, Stockspot believes that there are only a small number of applications for limited advice for which there is sufficient consumer demand. Customer demand is the ultimate driver of limited advice applications.
- b) Stockspot firmly believes that digital advice providers should have fiduciary like duties their clients. Any conflicts of interest and third-party arrangements must be disclosed to the consumer. Digital advice providers must also disclose whether and to what extent any remuneration received by the digital provider and/or its employees and contractors is dependent on sales to clients.

**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?**

- a) The quality of financial advice will deteriorate and once again allow bad actors to re-enter the advice market. Financial incentives, including commission-like bonuses masked as performance bonuses to providers of advice, may lead to increased conflicts of interest.
- b) The 'affordability' and accessibility of financial advice will depend on who is offering the advice – a large institutional provider or an independent adviser. These institutions may offer the advice service as a loss leader for their business to generate sales in other areas of the organisation. They may offer 'free' advice with the costs recovered via higher fees or products that are not in the best interests of their clients. Similar tactics are exercised in other areas of the asset/ wealth management industry, for example, some large asset managers may offer free indexed products (loss leaders) to users and distribute expensive active management capabilities or trading/portfolio management software to meet revenue targets.

**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.

The commercial attractions of conflicts of interest will always outweigh professional standards. Nonetheless there should be a mandatory requirement that those who provide financial advice to consumers are qualified. This should include an ongoing commitment to meet educational and professional standards.

**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?**

- a) Yes, it will make it easier for trustees to provide personal advice to members.

However, this raises a fundamental conflict of interest. A superfund as a product provider should not be providing personal financial advice to its members. Those members may have mortgages and other liabilities and assets as well as personal circumstances which are beyond the scope and mandate of a provider of a retirement investment product. This begs the questions: what is the advice the members need; and when do they need it? As far as retirement products are concerned the investment advice of the superfunds takes into account the remaining period of time the member is in the fund.

During the accumulation period what additional advice can, and should superfunds provide outside of these investment objectives? What if the superfund advises maximising personal super contributions instead of paying down a mortgage or personal debt?

The same conflicts arise during the pension period. How can a superfund objectively advise a member about the amount and timing of drawdowns when it is in the financial interest of the superfund to retain as many funds as possible.

**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?**

- a) Yes, it reduces the regulatory burden, however, this may not reduce the cost of providing advice. Stockspot recommends more transparency around fees so consumers better understand what fees they are paying and what services are being provided.
- b) Yes, this may have a negative impact on consumers if they are not aware of the fees being charged. Organisations will have a bias to their own in-house products and/or be working towards meeting their revenue targets. These might not be in the best interests of their consumers who may not be receiving advice that recommends the best products for their unique circumstances.

**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?**

- a) This will depend on who is offering the advice. Some traditional advisers will be able to service more clients. Advisers should focus on automating their statement of advice, taking advantage of developing technology, in order to address and service the needs of their clients.
- b) Yes, as a statement of advice traditionally details every aspect of the advice provided. If it is removed altogether, consumers might not even know that such a statement once existed or is available. Whilst simplifying advice - rather than abolishing it - negatively impacts on Stockspot's business we believe that it is a much better outcome 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?**

- a) Given the low material effort required to produce a financial services guide (FSG), there is unlikely to be a change in regulatory burden for advisers and licensees.
- b) Any changes to the FSG must be communicated to the consumer, for example, in how fees are charged, what conflicts of interest may exist, and remuneration provided. The FSG should also be made mandatory on the relevant 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 amendments will impact the a) the design and development of financial products and b) target market determinations.

As some consumers might not read the Target Market Determinations (TMD) this might create a time lag for reviewing these disclosures.

This Quality of Advice Review could undertake further research into what consumers might find useful when determining if the product is suitable for them and work with product providers to provide more consumer friendly and useful disclosure materials. From our experience, consumers prefer to read clear and concise documents such as fund fact sheets rather than the TMD.

**Transition and enforcement****14. What transitional arrangements are necessary to implement these reforms?**

This section has been intentionally left blank.

**General**

**15. Do you have any other comments or feedback?**

Stockspot is wary that that 'good advice' proposals will not address conflicts of interest of product issuers and thereby protection to consumers. As such, we require further details of what constitutes good advice and how this will be monitored and reviewed.

Stockspot is able and willing to share our 10 years of research into super funds, managed funds, LICs and ETFs as well as specific examples which show the billions of dollars lost by consumers that occurred as a direct result of financial product issuers directly controlling the distribution of their products via vertically integrated advice.

Without a clear separation of powers/responsibilities between financial product manufacturers and advice providers, Stockspot remains very concerned that consumer outcomes will take a big step backwards in the name of opening up access to advice.