

2nd June 2022

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

Via email: advicereview@treasury.gov.au

RE: Quality of Advice Review Issues Paper March 2022

1.0 Introduction

Grain Trade Australia (GTA) welcomes the opportunity offered by the Australian Treasury to provide comment on the issues raised in the *Quality of Advice Review Issues Paper March 2022* and especially the opportunity to enhance the regulatory framework to ensure financial advice continues to be available and is affordable for grain producers.

GTA has also recently provided feedback on:

1. The draft Terms of Reference for the Government's *Review of the Quality of Financial Advice to consider how the regulatory framework could better enable the provision of high quality, accessible and affordable financial advice for retail investors*; ([Link: here](#)) and
2. The Government's Policy Paper "*Education Standards for Financial Advisors*" published in December 2021 ([Link: here](#)).

2.0 About GTA

Grain Trade Australia (GTA) is a national member association and is the focal point for the commercial grain industry within Australia.

GTA has over 270 organisations as members. Their businesses range from regional family businesses to large national and international trading/storage and handling companies who are involved in grain trading activities, grain storage, grain marketing advisory services, processing grain for human consumption and stock feed milling. GTA Members are substantial employers, from the farm gate through to end point consumption, and notably in rural and regional Australia. A full list of GTA Members can be found [here](#).

GTA's core focus is to 'facilitate trade' in the Australian grain industry. Its products and services, including the Australia Grain Industry Code of Practice, provides a self-regulatory framework across the grain industry to facilitate and promote the trade of grain within the Australian grain value chain.

A key segment within this industry framework is GTA members who provide commodity marketing & price risk management services (advisory services) to Australian grain producers.

3.0 GTA Comments – Objective of the Review

GTA welcomes this holistic Review of the regulatory framework and how this framework can better enable the provision of high quality, accessible and affordable financial advice.

GTA support the Treasury review of the regulatory framework for financial advice as the GTA members that provide advisory services to Australian grain producers are acutely aware of the impact of the current regulatory framework on the ability to maintain advisory services for the grain industry.

As noted in our prior Submissions GTA members operating as grain marketing advisors with an AFSL provide advice specifically to help grain producers manage their price risk in relation to the particular commodity using financial products. The advisor in this case is not providing holistic plans in relation to a producers' broader investment needs (superannuation, insurance etc) but scoped, focussed advice related to commodity price risk – which is usually a condition or limitation under their AFSL.

GTA again strongly suggests this review also consider how best to align and contextualise the AFSL framework to the specific forms of advice that is provided, and the particular conditions imposed by the conditions of a grain advisory services AFSL.

The Issues Paper notes that “*many of the reforms implemented by governments over the last decade were aimed at protecting consumers by enhancing the quality of financial advice, there are concerns that they have had the unintended consequence of making financial advice less affordable and accessible*”. GTA and its members who provide grain marketing advice broadly agree with this statement as many areas of the current framework are not “fit for purpose”, disproportionate and results in excessive regulation and cost burden for advisors providing focussed advice on specific commodity and foreign exchange derivatives to grain growers.

As stated in our prior Submissions, GTA is of the view the impact of the current ‘one size fits all’ regulatory and policy approach (especially towards education standards and Continuing Professional Development ((CPD) but in effect the total legislative/regulatory approach) will lead to a lack of knowledgeable, specialist advisors available (or willing) to advise grain growers. This will be detrimental for growers and likely, and ironically, lead to an increase in the incidence of growers receiving poor and inappropriate advice on commodity price risk management for grain.

The proposal articulated in the Issues Paper to review whether simpler **principles-based regulation** can replace any of the current detailed requirements to allow the law to better address fundamental harms and reduce the cost of compliance may be beneficial to grain marketing advisors and should be progressed. GTA support and expect principle-based regulation will provide greater opportunity to adapt regulations to contextualised scenarios and situations on a practical needs-based approach.

4.0 GTA Comments – Scope and Framework of the Review

GTA supports the Terms of Reference of the Review and agree to the focus on how the regulatory framework can better enable the provision of:

1. High quality,
2. Accessible, and
3. Affordable financial advice.

4.1 Quality Financial Advice

Quality financial advice in the terms of grain marketing advice is difficult to define. GTA members who provide grain marketing advisory services provide grain producers with the information and advice needed to make informed decisions on their commodity marketing and price risk management. They do not provide investment advice. The advice they provide includes:

1. Commodity (grain) market analysis and price discovery,
2. Brokerage of physical grain (not a financial product),
3. Use of price risk management tools (derivatives like Swaps, Futures, Options),
4. Hedging foreign exchange (either a part of a derivative or for cash flow purposes), and
5. Grain sale and contract optimisation (not a financial product).

Only some of these aspects of advice (e.g., derivatives) require an AFSL, however GTA and its members support the principles of providing quality advice.

Grain producers may choose to seek this advice to improve their relative position relating to grain sales.

Questions for stakeholders:

1. *What are the characteristics of quality advice for providers of advice?*
 - The advice should be provided based on a level of current knowledge of grain market characteristics and should be fit for purpose, targeted to the specific issue (advice is usually limited in scope – i.e., hedging commodities), independent/lack of conflict, given with appropriate knowledge and with the best interest of the client as the key focus.
2. *What are the characteristics of quality advice for consumers?*
 - The characteristics of quality advice for consumers is directly aligned to the above points for the providers of advice.
3. *Have previous regulatory changes improved the quality of advice?*
 - GTA supports regulatory change where it creates value. Previous and recent legislation and regulation in relation to financial advice, in particular the Corporations Amendment (Professional Standards of Financial Advisors) Act 2017 and the ASIC Supervisory Cost Recovery Levy Act 2017 are placing an increasing compliance burden and financial cost on our relevant members. This is especially the case regarding the AFSL Education Standards.
 - There is an opportunity for Government to better align, or contextualise the education standards to **categories of financial advisors**, other than more broadly to financial planners, as a more relevant approach. The current standards include content that is to a large degree irrelevant to the day-to-day business and role of grain marketing advisors. These impositions are costly and restrict the time available for grain marketing advisors to service their clients and may eventuate in grain marketing advisors leaving the industry.
4. *What are the factors the Review should consider in deciding whether a measure has increased the quality of advice?*
 - This is difficult to define as the Review is asking responders to contextualise how any one measure may impact the various forms of financial advice provided in the market. The grain industry and its grain market advisors have long suffered from the ‘one size fits all’ regulatory approach and would prefer a focus more on the process advisors in each particular market segment apply to provide quality advice. This may be best served through a simpler principles-based regulation as compared to the current detailed requirements to allow the law to better function and to reduce the cost of compliance.

4.2 Affordable Financial Advice

GTA members that provide grain marketing advice agree the increases in cost to provide services do relate to the increased compliance burden, more comprehensive due diligence process, and more time required to meet the *best interests* duty. Of note also is the provision for professional indemnity insurance as this is a difficult burden for a small business with a retail AFSL to procure.

Questions for stakeholders:

1. *What is the average cost of providing comprehensive advice to a new client?*
 - GTA members that provide grain marketing advice state it is difficult to define the average cost of the provision of grain marketing cost as it relates to the AFSL. The services and information provided are broad and establishing separate cost for the derivative component of advice is difficult.
 - In some cases, the cost of providing advice can be greater than the potential or expected revenue, however GTA members tend to continue to provide the advice for the benefit of the client and to maintain their brand and reputation with the client and the local (usually regional) community.
 - It should be recognised grain production can fluctuate with seasonal conditions. Income earned from providing advice is usually significantly linked to production volume (ie per tonne).
2. *What are the cost drivers of providing financial advice?*

- The cost drivers include the establishment and maintenance cost of systems and processes to support clients and the significant increases in compliance cost, training and professional indemnity. Smaller advisers with low levels of staff are more severely impacted by training cost as time away from work has greater impact.
3. *How are these costs apportioned across meeting regulatory requirements, time spent with clients, staffing costs (including training), fixed costs (e.g., rent), professional indemnity insurance, software/technology?*
 - In general, GTA members do not apportion the cost into these specific categories.
 4. *How much is the cost of meeting the regulatory requirements a result of what the law requires and how much is a result of the processes and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?*
 - In general, GTA members do not apportion the cost into these specific categories.
 5. *Which elements of meeting the regulatory requirements contribute most to costs are the cost drivers of providing financial advice?*
 - As discussed, the drivers include the increased compliance burden, more comprehensive due diligence process, time required to meet the *best interests* duty and the cost of professional indemnity.
 - Insurance (i.e., Professional indemnity) and training (including Professional Development requirements) are significant costs as are salaries for advisors and administration staff.

The remaining questions under *Affordable Financial Advice* are not responded to as they are not considered relevant to GTA members that provide grain marketing advisory services.

4.3 Accessible Financial Advice

GTA and its members who provide grain marketing advice consider many areas of the current framework are not 'fit for purpose', disproportionate and result in excessive regulation and cost burden for advisors providing focussed advice on specific commodity and foreign exchange derivatives to grain growers. Grain marketing advice is a specialist area and is provided through small and mainly rural based companies that are skilled in dealing with grain producers and their market advice needs.

Due to the nature of the grain market, grain producers' preferences are not noticeably changing in relation to grain marketing advice. Similarly, grain producers are not seeking technology to the detriment of interaction with grain marketing advisors.

Questions for stakeholders: (Answered those questions considered most relevant)

1. *In what circumstances do people need financial advice but might not be seeking it?*
 - GTA members that provide grain marketing advice state that grain producers who do not seek grain marketing advisory services may not be aware of the value that can be generated through a proactive approach to commodity risk management including the timing of sales and products that are available. Some industry participants do not take a sophisticated view to selling grain.
2. *What are the barriers to people who need or want financial advice accessing it?*
 - In relation to grain marketing advice there is a hesitancy to pay for this advice by some participants. This may be a hangover from the prior government regulated market when grain producers were not provided choice.
 - Aspects and information around commodity markets may also be available from other (often free) sources (e.g., internet, grain trading companies), also recognising physical grain contracts are not financial products and therefore not subject to the same regulations as financial advice and AFSL provisions.

5.0 GTA Comments – Regulatory Framework

5.1 Types of Advice

The nature of advice and where the line is drawn between personal advice is complex and requires an understanding of the legal arrangements that govern financial advice. This makes it somewhat difficult to comment on the proposed changes including the proposal to replace the term ‘general advice’ to the provision of ‘general information’.

As a general comment and as noted in our prior Submissions, GTA members operating as grain marketing advisors with an AFSL provide advice specifically to help a grain producer manage their price risk in relation to the particular commodity using financial products. The advisor in this case is not providing holistic plans in relation to a grain producers’ broader investment needs (superannuation, insurance etc) but scoped, focussed advice related to commodity price risk – which is a condition or limitation under their AFSL. Currently GTA would argue that the regulatory framework is not a good fit for grain marketing services and any change that addresses this would be of value to GTA’s members who provide these services.

Questions for stakeholders: (Answered those questions considered most relevant)

1. *What types of financial advice should be regulated and to what extent?*
 - Grain producers seek advice on when to sell their grain (and products to use as a function of the sale process). This is a limited service, scaled to the client’s needs and does not need comprehensive financial advice. Regulation for limited advice should not be as onerous or comprehensive as required for an advisor that is preparing financial plans and investment advice.
2. *Should there be different categories of financial advice and financial product advice and if so for what purpose?*
 - The current financial planning category the regulatory framework, in our view, disadvantages grain marketing advisors and their clients. Grain producers are seeking specific limited advice and the regulatory framework needs to accommodate these preferences and not apply a “one size fits all” approach.

5.1.1 Intra-Fund Advice/**Limited Scope Advice**

GTA has no comment to make in relation to Intra-Fund Advice.

Grain marketing advice fits into the definition of the provision of **Limited Scope Advice**. The comment in the Issues Paper “*However, there remains uncertainty within industry about how to provide such advice within the legislative framework*” is noted and is of concern to GTA. Grain marketing services are sought by grain producers specifically to help manage their price risk in relation to the particular commodity.

The current “one size fits all” approach creates additional cost and is placing the service of grain marketing advisory services at risk as advisors may leave the industry. GTA supports the facilitation of limited scope advice and we support this is as a key area for this Review to consider.

Questions for stakeholders: (Answered those questions considered most relevant)

1. *Do you think that limited scope advice can be valuable for consumers?*
 - As discussed, grain producers seek advice on when to sell (and through what product) grain. This is a limited service, scaled to the client’s needs and does not need comprehensive financial advice. The client has a specific need relating to the sale of grain.
2. *Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?*
 - Grain producers utilise the services of grain marketing advisors due to their specific knowledge. Similarly the advisors have chosen to operate in this specific market area as they have an interest and the required skills to provide these services. The service is scaled and fit for the consumer’s needs.

5.1.2 Digital Advice

GTA has no comment to make in relation to Digital Advice.

5.2 Best Interests & Related Obligations

As previously discussed, the cost of providing advice is leading to grain marketing advisors questioning the viability of their business. As noted in the Review the LPMG modelling undertaken for the FSC indicates removing the safe harbour would result in a nine to eleven per cent reduction in the cost of providing advice. Given the existing high cost base the removal of the safe harbour steps whilst retaining the *best interests* duty is supported by GTA and its members.

Questions for stakeholders: (Answered those questions considered most relevant)

1. *Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?*
 - Financial advisers should consider numerous matters including the target market determination prior to providing personal advice.

5.3 Conflicted Advice/Charging Arrangements

GTA members operating as grain marketing advisors with an AFSL provide advice specifically to help a grain producers manage their price risk in relation to the particular commodity using financial products. The advisor in this case is not providing holistic plans in relation to a producers' broader investment needs (superannuation, insurance etc) but scoped, focussed advice related to commodity price risk – which is a condition or limitation under their AFSL. Due to the limited scope of the advice provided the issue of Conflicted Advice and Charging Arrangements is not relevant to grain marketing advisors.

It is not custom in the grain market advisory sector for advisors to be paid a fee or commission by the product providers or grain marketers. Fees are paid by the grain producers for the advisory services.

5.4 Disclosure Documents

It is noted the current financial advice disclosure obligations are intended to ensure retail clients receive appropriate information to make an informed decision. Given the 'one size fits all' approach to the provision of financial advice across multiple markets the requirement to provide a record of advice and a statement of advice can lead to excess cost and somewhat unnecessary administration for grain marketing advisors providing advice to grain producers to assist with the sale of grain.

Questions for stakeholders: (Answered those questions considered most relevant)

1. *How much does the requirement to prepare a SOA contribute to the cost of advice?*
 - Considerable cost is involved for grain marketing advisors to prepare SOAs. The process is time consuming and somewhat repetitive. It creates a requirement to have supporting information technology systems, staff training and does increase the compliance cost.
2. *To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information, they need to make an informed decision?*
 - Given the considerable cost there is an opportunity to simplify the record requirements. This may be best achieved through the application of principles-based methodology as this will provide options that are matched to the particular advice and service that is being applied by the financial advisor.
3. *To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?*
 - GTA members who offer grain marketing services view is the length of the disclosure document is largely driven by regulatory requirements.
4. *Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?*

- GTA members operating as grain marketing advisors with an AFSL provide advice specifically to help a grain producer manage their price risk in relation to the particular commodity using financial products. The advisor in this case is not providing holistic plans in relation to a producers' broader investment needs (superannuation, insurance etc) but scoped, focussed advice related to commodity price risk.
- This scoped and focussed advice are suited to a reduced disclosure document as this will reduce the time and cost for grain marketing advisors whilst still meeting the specific needs of the grain producers.

5.5 Accountants Providing Financial Advice

GTA has no comment to make in relation to accountants providing financial advice.

5.6 Consent Arrangements for Wholesale Client and Sophisticated Investor Classification

The definitions of wholesale and retail clients can be confusing across the different areas of advice and the financial products. Grain marketing advisors could argue that most grain producers are wholesale clients as grain farming requires extensive net assets of more than the minimum requirement of \$2.5 million and in normal seasons gross income may exceed \$250,000.

Questions for stakeholders: (Answered those questions considered most relevant)

1. *Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?*
 - It is considered a good compliance step to have a client agree in writing to being classified as a wholesale client as the wholesale versus retail classification is very grey. GTA believes improved clarity can be provided by government and regulators.
2. *Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?*
 - GTA members who are grain marketing advisors support any change that ensures clarity for their clients regarding the consequences of being a sophisticated investor or wholesale client. As noted, grain producers' level of financial sophistication may be less than in other business sectors, therefore any assistance to ensure clarity would be welcomed.
3. *Should there be a requirement for a client to be informed by the adviser if they are being classified as a wholesale client and be given an explanation that this means the protections for retail clients will not apply?*
 - This suggested change is supported.

6.0 Other measures to improve the quality, affordability and accessibility of advice

6.1 Advice Licensees

The grain industry and its grain marketing advisors offer a scoped service to grain producers and are mainly small rural based firms with less than 5 employees. As such the licensee has direct oversight of the conduct of their representatives.

6.2 Professional industry associations

GTA is privileged to work on behalf of its members and industry to facilitate trade, and through its product and services provides an industry driven self-regulatory framework under the Australian Grain Industry Code of Practice ([Link: here](#)). The Code is recognised by the Australian Government and by governments in our destination markets increasing surety and confidence, to support trade and market access arrangements for Australian grains, pulses and oilseeds.

The self-regulatory framework is further supported through GTA's provision of products and services including industry trade rules and contracts, an arbitration service, and a formal complaints handling process.

Questions for stakeholders: (Answered those questions considered most relevant)

1. *What steps have professional associations taken to improve the quality, accessibility and affordability of advice? How have these steps affected the quality, accessibility and affordability of advice?*
 - Adherence to the Australian Grain Industry Code of Practice is mandatory for all GTA members.

7.0 Conclusion

GTA welcomes the opportunity offered by the Australian Treasury to provide comment on the issues raised in the *Quality of Advice Review Issues Paper March 2022*. The holistic Review of the regulatory framework and how this framework can better enable the provision of high quality, accessible and affordable financial advice is also welcomed.

This is important to GTA and its members that provide advisory services to Australian grain producers who are acutely aware of the impact of the current regulatory framework on the ability to maintain advisory services for the grain industry. The advice provided is scoped and focussed and is provided by advisors with experience in grain markets with an ability to relate and communicate with their grain producer clients. The following three points summarise the priorities of this submission:

1. GTA strongly suggests this review consider how best to align and contextualise the AFSL framework to the specific forms of advice that is provided, and the particular conditions imposed by the conditions of a grain advisory services AFSL.
2. GTA and its members who provide grain marketing advice broadly agree many areas of the current framework are not “fit for purpose”, disproportionate and results in excessive regulation and cost burden for advisors providing focussed advice on specific commodity and foreign exchange derivatives to grain growers.
3. GTA is of the view the impact of the current ‘one size fits all’ regulatory and policy approach (especially towards education standards and Continuing Professional Development (CPD)) will lead to a lack of knowledgeable, specialist advisors available (or willing) to advise grain growers. This will be detrimental for grain producers and likely, and ironically, lead to an increase in the incidence of growers **receiving poor and inappropriate advice** on commodity price risk management for grain.

GTA’s grain marketing advisor members are burdened with the unintended consequences of the recent legislation changes. This Review should consider how to better support limited scope advisory services such as grain marketing advisory services through either utilising principles-based regulation or through a potential carve-out arrangement within the legislation.

I look forward to the progress of this review and further opportunities to engage and provide input.

Yours faithfully,



Pat O'Shannassy
CEO, Grain Trade Australia