



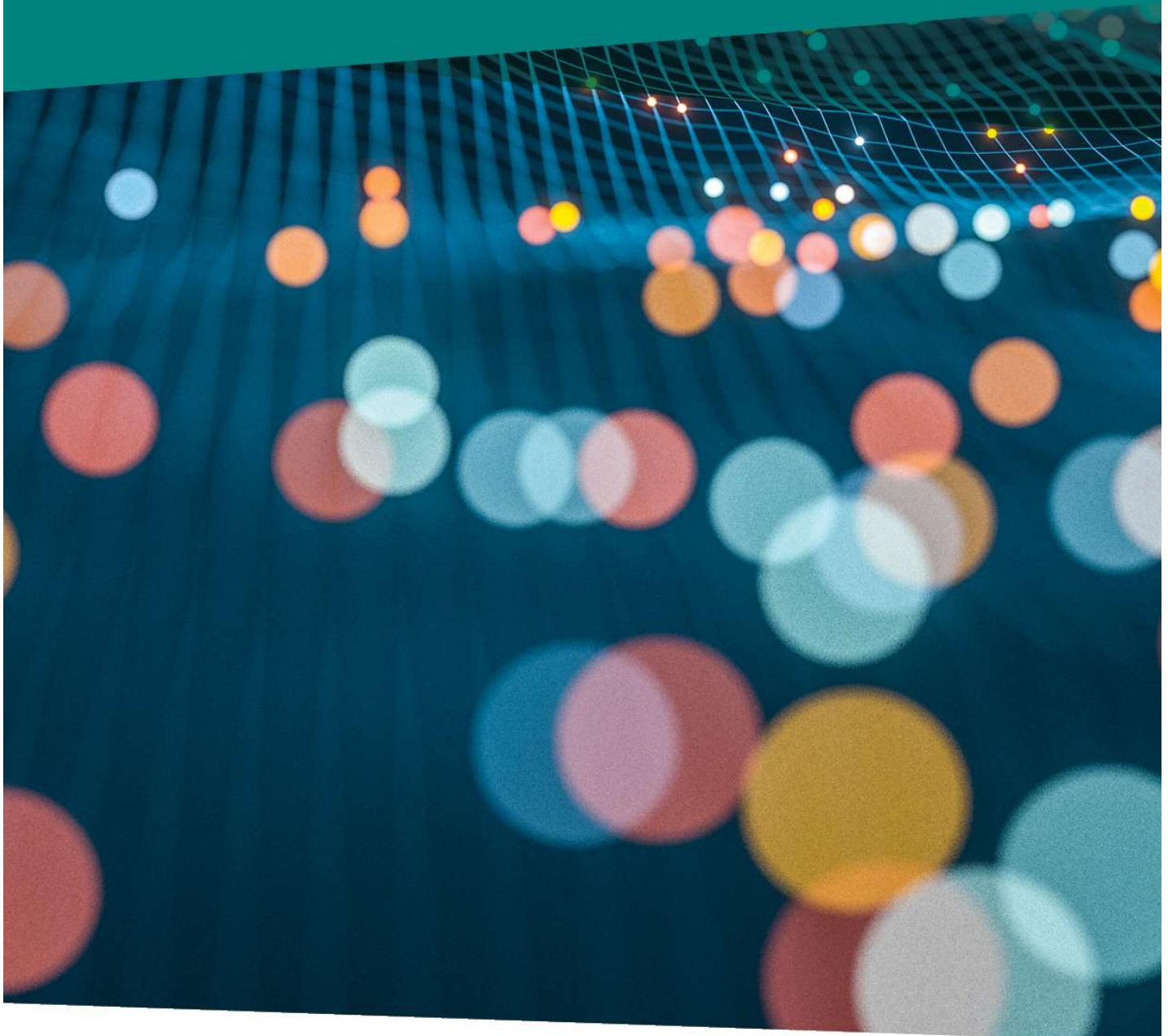
Australian Government
The Treasury

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: Australian Timeshare and Holiday Ownership Council (ATHOC)

ATHOC is the industry body for the timeshare industry. ATHOC is a not-for-profit industry body established in 1994 to represent all interests involved in the Australian timeshare industry, and to work toward national industry best practice. ATHOC operates nationally with an elected board representing a range of membership categories covering resorts, timeshare owners, developers and promoters, marketers, exchange companies and organisations providing professional advice to the timeshare industry. ATHOC aims to foster a high standard of ethics and adherence to industry best practice amongst its members and to maintain good standing with all stakeholders (by requiring its members to abide by a code of ethics and a code of practice), to continually promote the benefits of the industry and to protect the goodwill of both members and consumers, and to assist members to achieve growth and profitability. ATHOC's members include several AFS licensees, in particular responsible entities of timeshare schemes and sellers of timeshare.

In Australia, timeshare schemes are regulated as managed investment schemes and interests in timeshare schemes are financial products, though timeshare is sold (and marketed) as a lifestyle product, rather than an investment product (and is not represented as offering a financial return) and timeshare consultants cannot call themselves a 'financial adviser' or 'financial planner'.

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?

ATHOC supports the proposal to reduce the obligations applying to advisers and product issuers who provide personal advice to customers, as set out in proposals 1, 3 and 8 to 11.

ATHOC notes that, under the proposed changes, 'relevant providers' will continue to be subject to similar obligations as those which currently apply as they will be required to comply with the Code of Ethics and, among other obligations, the Code of Ethics requires relevant providers to act in the

best interests of clients. The consultation paper suggests that it remains appropriate for a professional financial adviser who provides ongoing financial advice to a client to continue to be subject to an obligation to act in the best interests of the client.

While ATHOC supports this approach, ATHOC is concerned that without modification to the definition of 'relevant provider' that such obligations will continue to apply to persons who sell timeshare products even though they do not have an ongoing relationship with a client and would not, as the term is commonly understood, be considered as 'professional financial advisers' (and, indeed, are prohibited from referring to themselves as 'financial advisers' or 'financial planners').

The sale of timeshare products by responsible entities and other timeshare sellers who hold AFSLs is undertaken by timeshare sales personnel (**timeshare consultants**) who are representatives of an AFSL holder. The sale of timeshare products by timeshare consultants can involve the provision of personal financial product advice as currently drafted, although such advice is limited to recommending the number and type of interests a particular consumer should acquire in a particular timeshare scheme (if any), based on their holiday needs, holiday preferences (such as preferred holiday location, standard and type of accommodation, facilities available, holiday duration and time of holiday) and anticipated spend.

However, unlike financial advisers who provide financial advice to clients on investments, superannuation and insurance, there is not an ongoing relationship between the particular timeshare consultant and the timeshare purchaser, rather simply the sale of a single lifestyle product. The timeshare consultant recommends the consumer acquire an interest in a particular timeshare scheme (if appropriate for the consumer based on their holiday needs, holiday preferences and holiday spend) and the consumer decides whether to proceed with the recommendation, purchase timeshare interests and become a member of the timeshare scheme. That is, the nature of the relationship between a timeshare consultant and consumer is fundamentally different to the nature of the relationship between a financial adviser and client and more closely aligned to a sales consultant of a lifestyle product. It would be highly unlikely that any consumer would assume or expect that a timeshare consultant was providing investment or planning advice.

ATHOC is concerned that, under the revised definition of personal advice as currently proposed, timeshare consultants will still be taken to provide personal advice as they obtain information about a client's holiday needs and preferences. Consequently, as natural persons who provide personal advice, under the proposed changes timeshare consultants will still be characterised as 'relevant providers' though possessing none of the

characteristics of a ‘professional financial adviser’ and not expected by consumers as owing the same obligations, or having the same level of skills and expertise, as financial advisers and financial planners.

Consequently, ATHOC submits that the provision of advice by timeshare consultants on timeshare products should be excluded from the definition of personal advice (and therefore constitute ‘general advice’). This would have the effect, if the proposed changes are implemented, of advice on timeshare products being ‘deregulated’ and subject to the general consumer protections, as is proposed for general advice. ATHOC considers that the general consumer protections appropriately protect the interests of consumers who purchase timeshare product and better reflect the nature of the relationship between a timeshare consultant and consumer.

Alternatively, if ATHOC’s proposal to exclude advice on timeshare products from constituting personal advice is not accepted, ATHOC recommends that the definition of ‘relevant provider’ be revised to exclude a natural person who provides advice on timeshare products. ATHOC considers such approach is consistent with the intention of the proposed changes, including that the additional obligations for ‘relevant providers’ apply to professional financial advisers who have an ongoing relationship with the client. Under this scenario, natural persons who provide personal advice on timeshare products would be subject to the proposed obligation to provide ‘good advice’ which will apply to providers of personal advice who are not relevant providers.

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?**

ATHOC believes the proposed changes to the definition of ‘personal advice’ will reduce uncertainty as to what constitutes personal advice. Further, though the proposed changes will broaden the scope of advice which constitutes personal advice, the potential increased regulatory and compliance

burden of expanded application will be offset by the proposed reduction in obligations applying to providers of personal advice (other than relevant providers) and encourage financial institutions and product issuers to provide such advice.

However, ATHOC is concerned the revised definition will continue to result in the sale of timeshare products being characterised as personal advice given timeshare consultants obtain limited information about the consumer, primarily relating to their holiday needs and preferences. Accordingly, for the reasons outlined in ATHOC's response to question 1, ATHOC submits that the proposed amended definition of personal advice should exclude advice on timeshare products.

A further concern is that the issue or sale of financial products by a product issuer to an existing client may constitute personal advice, even if only 'general advice' was provided for the issue or sale. That is, it may not be possible for a product issuer or seller to issue or sell further financial products to an existing customer without providing personal advice under the proposed definition, and such circumstance which may reduce the efficacy and benefits of deregulating general advice.

In the context of timeshare products, if a timeshare consultant sells a timeshare product to a consumer without providing personal advice, and the consumer then obtains consumer credit from the timeshare provider to assist funding the purchase of the timeshare product and uses their timeshare product to holiday at a resort, the timeshare provider will have some information about the consumer. Specifically, the timeshare provider will have some information about the client's financial circumstances (to the extent relevant to assess whether the loan is affordable for the consumer) and holiday preferences.

Accordingly, under the proposed definition of personal advice, the sale of further timeshare products to the consumer (that is, additional interests in the timeshare scheme to enable the consumer to book additional holiday accommodation) may constitute personal advice as the timeshare provider has information about the consumer. This will be the case even though the timeshare consultant who assists the consumer to purchase additional interests (being a representative of the timeshare provider and who may be a different person to the timeshare consultant who the consumer previously dealt with) does not have this information, and provides the same type of advice to the consumer as was provided for their initial purchase.

ATHOC recommends the proposed definition be reviewed to enable a product issuer to issue further products to a consumer without any 'general' advice given to the consumer being characterised as personal advice. For example, if this could be achieved by the product issuer or representative informing the consumer that they have not taken into account any needs, objectives or aspect of the client's information in providing the advice and, as an anti-avoidance measure, the product issuer or representative to not actually take such information into account.

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?

ATHOC submits that the general consumer protection provisions provide a sufficient safeguard to consumers who are given 'general advice' and, as proposed in ATHOC's response to question 1, for the provision of advice on timeshare products.

However, the consultation paper states that licensees who provide general advice only would, under the proposal to de-regulate general advice, cease to require an AFSL (and be subject to the obligations of a licensee) but will have obligations under the Competition and Consumer Act. ATHOC disagrees that providers of general advice should be subject to the Competition and Consumer Act. Rather, changes to de-regulate general advice should result in such providers being subject to the consumer protections of the ASIC Act. ATHOC notes that the ASIC Act already contains broader 'financial product' and 'financial service' definitions than those contained in the Corporations Act and consumer protection provisions of the ASIC Act apply to providers of certain 'financial services' who are not otherwise subject to the consumer protection provisions of the Corporations Act which apply to financial services.

Further, ATHOC submits that a large number of existing providers of general advice are also licensed or authorised to provide other financial services and the consumer protection provisions of the ASIC Act and, as providers of financial services, the Corporations Act apply to such activities. If 'general advice' is subject to the Competition and Consumer Act and other financial services are subject to the Corporations Act and ASIC Act, it will result in providers of both general advice and other financial services being subject to two regulatory regimes (potentially in relation to the same activity or conduct). ATHOC considers this will be a poor, uncertain and burdensome regulatory outcome which is unnecessary given the ASIC Act already has appropriate consumer protection provisions which could apply to 'general advice'.

Further, in modifying the conflicted remuneration provisions to continue to apply to general advice (if deregulated), ATHOC recommends the conflicted remuneration exemption which currently applies for the provision of advice on timeshare products continue to apply. The circumstances which justified the grant of the exemption (including that timeshare products are lifestyle products and not intended to generate a financial return, timeshare products are inherently different to other financial products on which financial advisers provide advice, and that timeshare products are an in-house product and a timeshare consultant only recommends a single product) continue to apply and support the continuation of the exemption.

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?**

In ATHOC's view, if the best interest obligation is replaced with a 'good advice' obligation and timeshare consultants are excluded from being 'relevant providers' (if ATHOC's preferred proposal of excluding advice on timeshare products from being personal advice is not adopted), ATHOC considers the key impact for the timeshare industry will be to enable clearer and more concise recommendations to be provided by timeshare consultants to consumers (as timeshare consultants will not need to demonstrate satisfaction of the safe harbour requirements), potentially reduce insurance premiums on professional indemnity insurance policies (given the best interests duty imposes an onerous standard on, and high level of risk for, timeshare consultants and is priced accordingly by insurers), and remove the costs of preparing and issuing the extensive disclosure documentation currently necessary to demonstrate compliance with the best interest duty – specifically the statement of advice. This document adds significant costs and requires additional resources while providing little to no benefit to the consumer other than showing how the timeshare consultant has complied with their obligations.

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)?**

In the context of the sale of timeshare products (and assuming timeshare consultants are not relevant providers), ATHOC considers replacing the best interests obligation with a 'good advice' obligation will enable timeshare consultants to provide clearer and more concise recommendations to consumers that focuses on the consumer's holiday objectives and how the timeshare product can achieve those objectives.

It will also enable timeshare companies to consider implementing technological solutions, particular to existing timeshare consumers, as providers will have added comfort that they will be able to meet legal requirements – whereas those providers would never previously have considered digital advice given the obligations to meet the best interest duty and safe harbour provisions (which would be almost impossible to satisfy via digital advice given ASIC's current guidance on these obligations).

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

- a) limited advice?**
- b) digital advice?**

If the 'good advice' proposal is implemented, the guidance provided by ASIC will need to reflect the intention and purpose of the 'good advice' obligation replacing a 'best interest duty', including the ability for the consumer to determine the scope of advice they require and the information they wish to provide to obtain such advice and for a consumer to agree with the scope of advice proposed by the provider.

- 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?**

As outlined in the response to question 1, ATHOC submits that timeshare consultants should be excluded from being 'relevant providers' as they are not 'professional financial advisers', do not have an ongoing relationship with clients, and are exempt from the education and training standards applying to 'relevant providers'. Further, the high level of trust, confidence and reliance which characterises the relationship between a financial adviser and consumer does not reflect the dealings between a consumer and a timeshare consultant and a consumer would not expect a timeshare consultant to be held to the same standard as a financial adviser.

Accordingly, if ATHOC's preferred proposal of excluding advice on timeshare products from personal advice is not endorsed, ATHOC recommends that the definition of 'relevant provider' be revised to exclude a person who only provides advice on timeshare products.

If this proposal is adopted, ATHOC believes the advice provided by timeshare consultants to consumers will be clearer, more concise and focus on how the recommendation (to purchase the timeshare product or not) will meet the consumer's holiday objectives, without needing to contain the various regulatory disclosures and best interests duty justifications which are currently provided and impacts the usefulness and relevance of the advice for the consumer.

Existing consumer protections provide adequate protection that would apply to timeshare consultants.

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?

Timeshare consultants are exempt from the education and training standards applying to relevant providers. Rather, in compliance with the obligation to be adequately trained and competent, timeshare consultants remain subject to the training standards of Regulatory Guide 146, which, at a high level, require timeshare consultants to possess, at a tier 1 education level (i.e. 'Diploma' level equivalent), generic knowledge regarding financial products and the regulatory regime for financial services and specialist knowledge regarding timeshare, along with appropriate interpersonal skills.

ATHOC contends that these training standards remain relevant and appropriate for timeshare consultants and would be appropriate for representatives (other than relevant providers) who provide personal advice on other financial products. However, as Regulatory Guide 146 has been under review for several years, ASIC would need to update Regulatory Guide 146 to provide current guidance on what are appropriate courses in order to implement such proposal.

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?

Not applicable to the timeshare industry.

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?**

Not applicable to the timeshare industry and timeshare consultants and licensees do not have ongoing fee arrangements with consumers.

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?**

ATHOC supports removing the requirement to give clients a statement of advice (SOA). ATHOC believes doing so will be beneficial to consumers as SOAs currently contain a significant amount of information to address the disclosure requirements of the Corporations Act and to demonstrate compliance with regulatory obligations (such as best interests duty) which reduces the effectiveness of how advice is delivered to, and understood by, clients.

ATHOC agrees that enabling providers to give consumers advice in a way which is useful for the consumer will improve a consumer's understanding and comprehension, and the relevance, of the advice provided. Further, imposing a requirement on providers to maintain a complete record of the advice provided and to provide a copy to the consumer on request will adequately protect the interests to consumers in the event of a dispute or complaint about whether the advice was 'good advice' or, for relevant providers, in the best interests of the client.

ATHOC does not believe that there will be any negative impacts if the requirement to give a statement of advice by a timeshare consultant is 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?**

ATHOC believes the obligation to provide consumers with a financial services guide (**FSG**) does not impose a significant regulatory burden or cost on licensees or advisers given an FSG is not tailored for a client and is generally a short document. However, ATHOC contends that consumers rarely read an FSG and find it of limited value, though there remains a regulatory risk for licensees and advisers if they fail to give a particular client an FSG. Accordingly, ATHOC supports the proposal to give licensees and advisers the option to provide an FSG or make certain information available on the website and does not believe doing so will negatively impact consumers, given consumers generally do not read an FSG.

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?

ATHOC supports simplifying the reporting obligation on relevant providers to informing product issuers only of complaints about the product, rather than such information as may be determined by a product issuer from time to time. ATHOC believes such amendments will reduce the compliance burden on relevant providers without adversely impacting consumers or the efficacy of the design and distribution obligations, given relevant providers will continue to be subject, via the Code of Ethics, to act in the best interests of consumers.

Transition and enforcement

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

ATHOC supports a transition period of 12 months with the ability to opt-in prior to then.

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