Australian Government
The Treasury

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: Julie Matheson, Certified Financial Planner CFP® LRS®

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 ☑ There are too many laws and regulations to consider when providing financial planning advice in Australia and 8 regulators to abide by. To provide just one piece of financial planning advice to consumers in Australia without breaking the law, a registered financial planner/adviser must take 59 steps to deliver the service which costs $5,300 per advice according to KPMG:[1] Chapter 7 does not live up to community standards and expectations in modern Australia and should be replaced. A **reasonable person** can't explain how they benefit from a single licensing system which doesn't pass the **"Pub Test".**[2] The most relevant regulatory framework and fiduciary duty which provides guidance and laws for financial planners to assist and protect the consumer are: 1. ASIC's Financial Adviser Register 2. Education standards which allows for the 10 year experience pathway.

[1] Cecilia Storniolo, Reducing the $5,300 upfront cost of financial advice, Firstlinks, 20 October 2021. Access: Reducing the $5,300 upfront cost of financial advice (firstlinks.com.au)

[2] Treasury, 7. Foreseeability, Standard of Care, Causation and Remoteness of Damaged, what the reasonable person would have known, March 2019, p.104. Access: Microsoft Word - 13 Foreseeability.doc (treasury.gov.au)

3. Anti-Money Laundering and CTF Act 2006
4. Code of Ethics 2019
5. Seven safe harbour steps and Best Interest Duty (with the exception of s. 961B (2) (g) taken any other step… which causes unnecessary legal red tape and increased costs to the consumer).[3]
6. The Privacy Act 1988
7. Internal Dispute Resolution, Professional Indemnity Insurance and AFCA Registration to provide consumer confidence that if things go wrong, they have safeguards in place
8. ASIC approved Code Monitoring Body

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?

(a) Improve accessibility ✖
(b) Improve affordability ✖
(c) Make it easier for consumers to get personal advice ✖

In my view with more than 30 years' experience as a Certified Financial Planner CFP® the definition of 'Personal advice' should change so that it is NOT about products, it's about financial planning related to a consumer's relevant current circumstance, needs and objectives (Section 961B).

[3] CORPORATIONS ACT 2001 - SECT 961B Provider must act in the best interests of the client (austlii.edu.au)

Financial planning discusses whether or not the consumer can achieve their needs and objectives base on their relevant circumstances. For example their relevant circumstances might be saving money so they can retire at age 60 (objective).

Financial planners discuss how much the consumer needs, and how often, and what are the risks are involved to meet that objective.

We also discuss the trade-offs between competing objectives like saving for retirement verses paying off the mortgage by age 50. The discussion about products is raised when the consumer asks, “Am I in the right product?”. The consumer can ask this question of the product provider or seek an opinion from a qualified financial planner based on section 961B of the Corporations Act 2001.

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?

In my view ‘general advice’ should be renamed ‘Product Advice’ because this term is widely used to discuss products. Consumers can refer to the Competition and Consumer Act for their protection and a warranty provided by the product provider against flaws and product failure.

Consumers should be able to ask for Product Advice from a product provider to find out the features, costs and benefits.

If consumers think they can only receive ‘personal advice’ which includes ‘product advice’ from a registered financial planner/adviser, they may be dissuaded by the cost and not ask questions or seek information from the product provider. If consumers cannot afford financial planning advice or are persuaded that financial planning advice isn’t worth it, they become easy targets for promoters of ponzi and unregistered investment schemes which are not subject to a compensation scheme or AFCA scrutiny.

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?

I don't like the proposed definition of "good advice" especially when best interest duty and fiduciary duty are watered down or removed as these proposals suggests. Good advice suggests the consumer will benefit. However, there are many examples where "good advice" was received, only to see the government change the rules making the advice "poor advice" like Transition to Retirement strategies[4], increasing interest rates before 2024[5], and introducing a guarantee on deposits up to $250,000 in banks but not for other deposit taking investments causing many to fail from withdrawal demand after the GFC[6].

Financial planners are already free scale their advice because they have a fiduciary duty which comes from the Latin word meaning confidence.

Removal of the SOA obligation is a great start to improve affordability. It costs about $500 to produce a SOA report but that's just 3 steps of the approx. 60 steps to give advice in Australia without breaking the law.

Removal of Best Interest Duty s961B is not a good outcome for consumers. If the government and consumer groups spent some time promoting the benefits of BID, more consumers would stop giving their money to Ponzi and dodgy "get rich quick" schemes and see a registered financial planner for financial planning advice.

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 best interest duty (BID) and the 'seven safe harbour steps' (exclude (g)) should remain as part of the regulatory framework.

Why?

Because BID causes advisers and institutions ask the question: *Will the consumer achieve their needs and objectives using their current circumstances*? This is a great question to discover before recommending any changes to the consumer's strategy, financial position, and any products they might own.

[4] Burns Sieber, Retirees and those Transitioning to Retirement, 2017. Access: Retirees and those Transitioning to Retirement - Burns Sieber

[5] Reserve Bank of Australia, Statement by Philip Lowe, Governor: Monetary Policy Decision, 2 November 2021. Access: Statement by Philip Lowe, Governor: Monetary Policy Decision | Media Releases | RBA

[6] ABC news, Govt introduces bill to guarantee bank deposits, 15 October 2008. Access: Govt introduces bill to guarantee bank deposits - ABC News

6. What else (if anything) is required to better facilitate the provision of: **a) limited advice?** **b) digital advice?**
Under the Standard 8 of the Code of Ethics, record keeping has an important role to play in the provision of quality financial planning advice. If limited advice or digital advice is provided, file notes and records can assist in discovery and look back to check the quality of the advice at the time.
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?**
Can we please stop using the term 'relevant provider'? Does any reasonable person (consumer) know what a relevant provider is? I doubt it. The FPA fought hard to have the terms 'financial planner' and 'financial adviser' enshrined in legislation section 923C (2016)[7] yet Government authorities keep referring to professional financial planners as relevant providers. My preference is for anybody providing Product Advice to be called an Agent or sales representative of the product they are employed to promote.
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?

[7] Parliament of Australia, Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016: Access: Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 – Parliament of Australia (aph.gov.au)

a) If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?
The term relevant provider should be abandoned and replaced with Financial Planner/Adviser and Sales Agent/Product Representative. Financial Planners should be responsible for providing financial planning advice and this may include product advice depending on the Terms of Engagement with the consumer. Sales Agents/Product Representative can provide product advice related to the product of which they are employed by.
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?**
I agree, with the following reservations: Super funds must adopt technology from the 21st century and make financial planning advice cheaper to access. One of the significant costs to consumers is time taken to access industry fund data by phone and mail. Super funds don't understand why financial planners need certain information in a timely manner, including some real time information to avoid unnecessary tax penalties, unpaid insurance premiums, contribution limits, investment analysis and comparisons. In particular, Industry Super funds must allow 21st century data feeds to registered financial planners via reputable secure financial planning software like Xplan and Plutosoft. Some industry funds don't permit members to pay for superannuation advice from their superannuation funds. This creates unnecessary red tape and costs to consumers. Super funds that do not provide 21st century technology data feeds to a registered financial planner with access approved by a member <u>should not</u> be able to provide personal advice to their members because it could be seen as creating a monopoly and/or avoiding independent scrutiny of the management of member's funds.

According to ASIC personal financial planning advice is a recommendation or opinion tailored to the consumer's personal circumstances[8]. ASIC explains that Personal advice can include:

- Simple, single-issue advice — Help with one financial issue. For example, how much to contribute to your super, or what to do if you inherit shares.
- Comprehensive financial advice — Help to develop a financial plan to reach your financial goals. This covers things like savings, investments, insurance, superannuation and retirement planning.
- Ongoing advice — Regular monitoring and review of your financial plan and personal circumstances.

Therefore if a member seeks personal advice from a superannuation fund, the cost should be paid from the member's personal superannuation account and not added to the costs of running the superannuation fund.

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?

Fee disclosure statements should not be required. One single consent form should be required across each product issued by a product provider.

This proposal:

(a) Improves accessibility ☑
(b) Improves affordability ☑
(c) Makes it easier for consumers to get personal advice ☑

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?

[8] ASIC Moneysmart, General and personal advice, September 2022. Access: Glossary - Moneysmart.gov.au

b) negatively impact consumers, and if so, to what extent?

According to the Corps Act 2001 the Object of the AFSL system is to "promote confident and informed decision making by consumers of financial products and services...". To deliver these financial products and services, registered financial planners/advisers must give the consumer a legal document and this document must be called "Statement of Advice" with prescriptive contents and in a format designed in 2001.

Statement of Advice reports have evolved to be a cumbersome document with repetitive language, confusing disclosure messages, and can include up to 90 pages of information. I agree with this proposal to remove SOAs from the Corps Act.

There are much better technologies available to record advice and improve accessibility, affordability and make it easier for consumers to get personal advice.

This proposal:

(d) Improves accessibility ☑
(e) Improves affordability ☑
(f) Makes it easier for consumers to get personal advice ☑

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 Financial Services Guide (FSG) is useful for consumers to understand the complexities in financial services. If Chapter 7 was replaced with an easier regulatory framework, the FSG wouldn't be required.

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?

I agree with this proposal that the reporting requirements under the design and distribution obligations regime should be simplified by requiring relevant providers to only report to the product issuer where they have received a complaint in relation to a product.

Transition and enforcement

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

Implement the changes as soon as possible.

General

15. Do you have any other comments or feedback?

None of the Cameo's in Attachment A discussed the cost savings from the proposals and how much it costs to deliver quality advice under the current regulatory framework. KPMG says it's around $5,300 to provide advice in Australia without breaking the law.

What are the cost savings of the proposals? If consumer groups reject these proposals, they should explain why they wish costs to remain so high and why Australia's welfare system is under duress due to more and more Australian consumers seeking financial assistance due to **financial ruin** caused from natural disasters, aggressive lending practices, unregistered investment schemes, fraud, COVID19 restrictions and the lack of access to quality personal advice from a registered financial planner/adviser.

Financial planning advice from a qualified financial planner is the mark of excellence and quality.

If the regulatory framework is not reduced, the government should introduce the following assistance for consumers to be able to afford quality advice:

1. **Add personal advice to Bulk Billing with Centrelink**

    a. Introduce a **Means Test** for a Centrelink "Bulk Billing" system to pay registered financial planner/advisers to provide financial planning advice necessary for the mental health and wellbeing of consumers who can least afford it.

    b. Research shows that **financial stress** is one of the leading causes of depression and PTSD and can be linked to low self-esteem and domestic violence. Cost should not prohibit Australian consumers from seeking financial planning advice from a registered, qualified, experienced, ethical and professional financial planner/adviser, just like a medical practitioner.[9]

    c. Registered Financial Planners/Advisers have a **fiduciary duty**, just like medical practitioners, to put the Australian consumers' interests ahead of their own in law and the Code of Ethics and therefore deserve proper recognition in government legislation and laws.

    d. Australia's welfare system is under duress due to more and more Australian consumers seeking financial assistance due to **financial ruin** caused from natural disasters, aggressive lending practices, unregistered investment schemes, fraud, COVID19 and the lack of access to quality personal advice from a registered financial planner/adviser.

    e. **Bulk Billing** is the most affordable and cost-effective way for Australian consumers to pay for financial planning advice under a schedule regime similar to Medicare Benefits Schedule (MBS), except the payments will come from Centrelink.

2. **Make quality personal advice affordable and tax deductible**

    a. The Financial Planning Association has made many requests to the government, via submissions, to make personal financial planning advice in a **Financial Plan** tax deductible since **1994**.[10]

    b. A tax deduction on average would make advice **30% more affordable**

[9] Health direct, financial stress and your health, December 2020. Access: Financial stress and your health | healthdirect

[10] Mark Rantall FPA CEO, Australian Government, Tax Forum, Statement of Reform Priorities, 4-5 October 2011. Access: Financial Planning Association of Australia - FutureTax - Statements from Participants (treasury.gov.au)

c. The upfront cost of financial planning advice is NOT tax deductible, only ongoing service fees if related to a product that pays income under the Income Tax Assessment Act 1997. This piece of legislation is outdated and does not recognise the requirement under the Corporation Act 2001 to consider the tax consequences of personal advice.