



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

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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. I left the industry because it was so difficult to meet customer needs. Providing advice was such an onerous operation for both the advisor the licensee and the client that the client had very high expectations of advice that would transform their financial position. In many cases the changes to the client's situation only needed to be minimal. However, because of the cost, advisers feel obligated to make significant alterations to justify all of the work. Many clients do not need substantial advice - particularly if they are in a quality superannuation fund. The industry could assist so many more people with light touch advice if the obligations on the advisor were less onerous. Many clients had a reasonable financial understanding to start with and had made all the obvious changes in their financial situation. There would be so many other potential clients with much lower financial literacy who would not approach a planner because of the cost and complexity.

One the other hand, I have seen first-hand how many advisers are always balancing how much they can make out of the situation versus doing the best thing for a client. The industry is not full of kind advisers. The situation may be worse now because it is so much harder to make a decent income as an adviser. Therefore, unfortunately, the industry needs good safeguards to protect consumers.

Another issue is that in many cases advisors are trying to future proof the finances of their clients. Rather than executing transactions this strategic planning has a high likelihood of failure. It is very hard trying to predict which investments will be most successful in the future. This adds a layer of complexity that perhaps a lot of other professions do not have to deal with. It is after the fact, after implementation or after market falls that clients will judge whether this was the best advice.

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)** I have been involved in providing numerous training sessions on the difference between personal and general advice. It is very clear that the current situation is very confusing and understood by very few people least of all the client. It is extremely frustrating for members of super funds to ring up and be told that they can't be given any advice that recognises even the balance of their Superfund or their age because it would constitute personal advice for which the person they are speaking to is not qualified to provide any assistance. Anything that would improve this situation would be a big step forward. Since the royal Commission there have been a number of court cases which have been examining the border between general advice and personal advice eg the Westpac case. Even these extensive legal analysis have had difficulty establishing the true situation.
- b)** It is not clear that just by the mere change of definition that more personal advice could be provided to consumers. Nonetheless I agree with the Treasury paper on the concern that superannuation funds have for providing advice that may be construed as personal. Other recommendations in the quality of advice proposal do address this issue.
- c)** As above.

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?

My understanding is that there has been very little in the way of legal pursuit of advisers over the issue of general advice. I would agree with the proposals paper that the legal redress that clients would have in the case of inappropriate general advice should be just as effective as the current situation.

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?

a) Firstly the best interest obligation always seemed to be an indefensible legal term for financial planners. The very idea that of the thousands of products and infinite strategies that are available to clients, that the planner would be able to find the best option is ludicrous. At the same time this seem to put an unrealistic expectation and compliance burden on the planner. The best interest duty seemed to be more demanding standard than the expectations of advice from the legal profession or accountants.

The reality is that the planner was only ever going to provide reasonably good advice that was defensible in court. There have been very few cases where clients have been successful in arguing that the advice was not in their best interests. So already, in practice, planners were not acting in the best interests of the client but merely doing a good job. Therefore, the proposed changes are a better description of the real situation. The proposals paper also pointed out that there have been a large number of legislated changes which remove some of the more egregious wrongs in the financial planning industry such as conflicted remuneration. However all issues which have contributed the industry's poor reputation have not been addressed. I would use the example of SMAs which seem to be proliferating in the current environment. There must be a very tenuous justification for those high-cost, yet underperforming, financial products (SMAs) to be in the clients best interests.

b) Replacing the best interest obligations with a “good advice” requirement would have varying implications on the time and cost of producing advice. For many advisers, they may not see a significant reduction in effort because they are, in effect, doing that now. But there are certainly a number of advisers and compliance departments that are gaming the system to dress up product recommendations so that they appear to be in the client’s best interest. The advantages of moving to the new requirements would be twofold. Firstly, the focus would be on the advice and not a document that is compliant. The second, which would be relevant to people like myself, is that we would have more confidence and less stress about providing advice if we were not worried about this unrealistic best interests duty.

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)?**

- a)** The provision of limited advice to consumers is a very important area for the industry. Having seen the operations and the people involved in superannuation funds, I am confident that they could easily provide a level of service that clients want but cannot presently because it is too difficult. There is a great opportunity for competent experience, people under the supervision of the trustee to help their members with limited advice. There is obviously the risk of guiding or more importantly retaining members money into their own accounts. However, this would be hugely outweighed by the provision of very useful advice delivered from a trustworthy source on members current investments. I would also point out that the monitoring, coaching, supervision and training of front line staff in superfunds has improved dramatically over the last 5 years.
- b)** I am not overly familiar with the current environment for providing advice from technology. It is very obvious that the role that these sophisticated products could play is not eventuating. It seems the bulk of the digital advisers are merely guiding people to a mix of ETF for investment purposes. Solutions need to be a very substantial part of the future of financial advice in Australia. Overcoming the hurdles for their effective uptake is a very important goal.

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

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

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?

This part of the review is confusing. Cameo 2 illustrates a desirable situation. Yet the relevant section of the review (in bold and italics below) is difficult to understand. Should there be an “ and/or” in here somewhere?

a) Proposal 4 – requirement to be a relevant provider

A provider of personal advice should be a ‘relevant provider’ where the provider is an individual and the client pays a fee for the advice, the provider (or the provider’s authorising licensee) receives a commission in connection with the advice, there is an ongoing advice relationship between the adviser.....

I don’t believe mere qualifications will ensure good advice is delivered. Nonetheless there should be a differentiation of individuals who do meet the qualifications of being a relevant provider. Clients should be able to see this. They can now as part of the ASIC register.

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?

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. Cameo 2 on page 40 is a very desirable situation. The most common query to superannuation funds is “ what investment option is best for me?” Superannuation funds would easily be able to find competent, experienced people to answer these limited advice questions. This could be done simply and in real-time without the onerous obligations currently. The supervisory and compliance functions within super funds should be able to manage these conversations.
- b) see above.

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. The drawing up of the FDS as well as chasing clients for signatures on ongoing advice documents is very time consuming. Identifying exactly what has been charged to the client and for what is a very complex exercise. And in some cases, this seems to move the relationship between the advisor and the client to one of harassment. I think the industry is to blame for some of this. Firstly, ongoing advice has been seen to be rivers of gold for the industry where very little effort was required to earn significant revenue. In addition, advice fees which are linked to a percentage of a balance also create their own problems. There can be some justification for fees being a percentage of the balance to encourage the advisor to increase the balance and therefore align with the goals of the client. From a practical point of view, I think an absolute dollar amount for ongoing advice is a much more honest and simple approach compared to percentage of balance. Percentage of balance remuneration also does make the production of the FDS complex. In my experience, very few clients were particularly interested in ongoing advice. I know many clients and friends who were very happy to terminate the agreement. Getting the client to sign up for an ongoing advice agreement often turned into a hard sell which had very little substantial evidence of benefit to the client compared to an ad hoc arrangement.
- b) In a real sense there would not be any reduction in the protection of clients with the new proposed arrangements.

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 is one of the more controversial recommendations in this review. It is hard to imagine a world where a client has paid a significant amount of money for advice and walks away with nothing tangible. In addition, life is a little easier for financial planners if they are used to filling out an SOA template. Having said that, I found very, very few clients who read the SOA. While they may have been a useful document for reference, file notes may be just as good. There would seem to be a role for technology in streamlining the note process. Perhaps search functions could be improved so that relevant information could be quickly found from extensive notes. Personally I would like the opportunity to provide advice which was entirely dependent on the client and the circumstances and not having to fit the framework of an SOA. A significant part of the SOA diluted the advice message. Many planners are very skilled in communicating and this strong point is largely taken away by templated SOAs.

- b) From my experience there would seem to be very few consumers who would be negatively impacted if they did not receive an SOA. The main issue is probably the feel-good factor of walking away with an extensive document full of figures and details of their current financial situation and goals.

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) Yes. The FSG was generally written in a legal fashion with the main aim of protecting the licensee. I did not see any evidence of any clients reading the FSG. In addition there was a significant administrative burden in ensuring that the FSG was up to date and that each planner had ample personal FSGs available at all of the locations that they provided advice. The updating of FSGs and replacement of this hard copy with the newest version seemed a huge waste and was a complex exercise to undertake.
- b) See above.

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?**

Transition and enforcement

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

General

15. Do you have any other comments or feedback?

When I was trying to get into the industry in 2010, I was told by the state manager of advice in a major bank that I had most of the skills but he wasn't sure I could "sell". The advice industry was then a distribution channel, even a loss leader. There is a concern that we could return to those days but now with super funds as the distributors. The legislative landscape has moved on substantially since then and many of the old insurance salesmen have left. The industry is also in crisis. Only the wealthy can afford advice. We need another source of low-cost trusted advice for the masses especially with a retirement focus. Digital advice must be a key player here and so too should be super funds.