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

Email	AdviceReview@TREASURY.GOV.AU
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Enquiries	Enquiries can be initially directed to AdviceReview@TREASURY.GOV.AU

Appendix 1: Consultation template

Name/Organisation: Brendon Read/Profusion Planning

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, the current obligations, not just with respect to disclosure but also the punitive penalties for almost every breach regardless of intent are horrific.

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) No
b) Yes, by unlicensed and unqualified individuals that are incentivised to sell products.
c) Yes, but this isn't necessarily a good thing.

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?

a) I fundamentally believe that there is no such thing as general advice. It should be reclassified as product information and contain appropriate warnings.

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) No – the best interest duty will still apply to qualified advisers (under the code of ethics) but not to unqualified institutional staff. This is, in my opinion, a return to the bad old days.
b) It will reduce time and cost at the expense of quality and elimination of conflicts of interest. The proposals paper seems to misunderstand the reasoning behind decades of reform. Vertical integration has resulted in a large number of the worst outcomes for clients. It cannot simply be

about reducing cost in the absence of ensuring advice quality. I understand the 'good advice' definition is designed to do this, but what I can't understand is allowing unqualified and uneducated institutional representatives to operate under a less extensive compliance regime than educated professionals without a conflict of interest. It is staggering to me.

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) Only for unqualified and uneducated individuals.
b) Yes, but only as a way to sell products.

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

a) limited advice?

b) digital advice?

a) Allowing professional advisers to use their judgement (and allowing them the benefit of the doubt like doctors) when it comes to providing information in an acceptable and understandable manner.

b) I don’t have expertise in this area so can’t comment.

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 advice has to go down. It simply must. The changes are simply a return to pre FSR rules (excluding professional advisers) with a vague ‘good advice’ overlay. Institutions will quickly realise that the best way to make money will be to give advice for free and build it into a product their unqualified advisers sell.

b) See above. Affordability will be great – advice won’t cost anything. But the products sold will. And advice costs will be built into a one size fits all solution.

The best way to describe my reaction to this aspect of the proposals is that it is akin to the Pharmaceutical industry taking charge in reforming patient care. Effectively that’s what is happening.

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?

a) All providers of personal advice should be relevant providers and held to 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) Of course, but that won’t be quality advice provided by educated professionals.
b) It will make it easier to access the advice they need assuming that advice is to consolidate all accounts into their current super fund. Which is a staggering assumption to make.

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) Absolutely. It will reduce a significant cost (but also prospective liability) burden.

b) No, consumers are already protected under the disclosure of fees, the annual renewal and contract law stating that the promised services must be provided.

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) Yes, although it remains to be seen whether this will work in practice. Again, the QAR didn't address the fact that PI insurers, Licensees and AFCA all have the final say on this.

b) Personally I think that consumers do need something in writing, but that it should be fit for purpose for the client and situation. This means that the prescriptive SoA/RoA requirements in the Corps act are overkill, but also that all advisers should operate under the code of ethics which requires the adviser to be reasonably satisfied that the client understands the 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) Yes, but this is hardly the biggest issue. It does reduce the prospect of punitive penalties which is good.
b) No, as most information will be in the standard agreements advisers sign with their clients.

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?

Professional advisers should not be bound by the TDM/DDO regulations as they have best interest duty to abide by. Unqualified and uneducated advisers absolutely should if the QAR deems fit to allow these people to provide advice.

Transition and enforcement

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

a) I don’t know.

General

15. Do you have any other comments or feedback?

The major concern I have with the proposals is that it creates a two tiered system which advantages vertically aligned, uneducated and unqualified advisers over unaligned, qualified and educated advisers. We need a single, level playing field across all people providing financial advice.