



23 September 2022

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

Email: [AdviceReview@treasury.gov.au](mailto:AdviceReview@treasury.gov.au)

Dear Ms Levy,

**SMSF ASSOCIATION SUBMISSION – QUALITY OF ADVICE REVIEW: PROPOSALS FOR REFORM**

The SMSF Association welcomes the opportunity to provide this submission in response to the Quality of Advice Review’s consultation paper – Proposals for Reform. The paper considers opportunities for bold reform, the tenor of which are needed to address current regulatory issues impacting the financial advice sector adversely. At the same time, the paper aims to balance the proposed reforms alongside increased consumer demand for advice, how consumers wish to receive that advice and maintaining adequate consumer protection.

We thank you and the Treasury Secretariat for your ongoing engagement with stakeholders, and for the various opportunities to meet and speak with you on a range of matters.

Please refer to Appendix A for our responses to the consultation questions.

If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

A handwritten signature in blue ink that reads 'John L. Maroney'.

John Maroney  
CEO  
SMSF Association



## **ABOUT THE SMSF ASSOCIATION**

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.



## Appendix A – Consultation Questions

### Intended outcomes

**1. Do you agree that advisers and product issuers should be able to provide personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?**

Personal advice should be provided by a qualified relevant provider who is required to adhere to the *Financial Planners and Advisers Code of Ethics 2019*.

We have concerns that creating a secondary regime will result in a tiered system with disproportionate impacts on different industry participants.

We do not support an environment in which a financial institution can self-regulate and self-determine the education requirements for staff providing personal advice. Clear guidelines and requirements would be required to prescribe the minimum requirements, which should include supervision of all staff who deliver personal advice by a 'relevant provider'.

The concerns expressed around the provision of general advice in the current environment should act as a warning as to the potential impacts if the definition of personal advice is to be revised. The risk of scripted conversations and avoidance of certain questions equally apply here.

We acknowledge the intent with what has been proposed, but we do have ongoing concerns, despite the inclusions of measures such as the provision of 'good advice'.

The 'good advice' principle, coupled with an ability for an adviser to provide advice in a way that is appropriate to the client and their circumstances, creates an opportunity for simpler advice to be provided by a suitably qualified professional.

### 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)** We support a widening of the definition of what constitutes 'personal advice'. Advice should be advice. A broader definition, and the removal of the general advice definition, ensures that the right conversations and levels of engagement occur between the advice provider and the client.

The provision of personal advice by a non-relevant provider should be strictly limited to advice about products that are non 'relevant financial products' noting the examples in the consultation paper of basic banking products, general and consumer credit insurance.

The current definition of advice is based on the premise that all advice involves financial product advice. There needs to be a separation on the provision of 'personal advice' and advice that involved the sale of a financial product. The financial advice sector has evolved and changed significantly over time since the definition of advice and the related legislative framework were first struck.

- b)** The ability for advice to be provided by a non-relevant provider on a broader set of financial products would enable an unqualified person to provide advice on matters that may involve more complex issues. To illustrate this point, let's consider several examples.

Superannuation consolidation advice may appear on the surface to be simple and in the client's best interests. The consolidation of multiple accounts can save on fees and duplicated insurance costs. However, there are scenarios where more than one superannuation account is appropriate and in the client's best interests.

The level and terms of insurance cover of the funds, the member's insurance needs and access to cover, specific estate planning requirements, and segregation strategies that may have been put in place to separate tax free contributions from taxable contributions are just some examples of what may need to be considered.

Another example is the making of additional deductible superannuation contributions as either salary sacrificed amounts or personal contributions. A friend may have suggested that they could save money this way and while the tax savings and growth of their superannuation balance for the future may appear to be in the client's best interests, the individual may have multiple credit cards, or other lines of consumer credit which should be addressed. This may require some broader cash management, budgeting, and debt consolidation advice.

A greater level of training and experience is needed to ensure that the right questions are being asked. There is increased risk to the consumer, when advice services are provided by a person where they 'don't know what they don't know'. Whilst well intentioned, the risk of consumer harm remains. The quantum of the harm must be considered in the context of the impact it has on the individual client. This is necessary to ensure that 'good advice' is being provided.

- c)** There is a distinct difference between the provision of an information service that is factual information, to the provision of personal financial advice. The provision of financial advice should be provided by a relevant provider with the appropriate qualifications and experience. Financial institutions should be encouraged to provide good quality information.

If financial institutions are permitted to provide personal advice, clear guidelines and requirements

would be required to prescribe the minimum requirements, which should include supervision of all staff who deliver personal advice by a ‘relevant provider’.

**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?**

The proposed removal of general advice and expansion of the personal advice definition is a practical one. Advice should be advice. Advice should be scalable and provided in a way that is appropriate in the circumstances, taking into account the client’s needs, service provided, and the simplicity or complexity of the matter at hand.

We do have concerns that what has been proposed provides an opportunity for non-regulated advice, spruikers and other unscrupulous operators.

**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)** We support the removal of the duplication of best interest obligations and the move to a principles-based approach. A shift away from an administrative process to one that better considers the needs of, and what is appropriate for, a consumer is welcomed.

What is considered to be ‘good advice’ is subjective and risks being applied differently in retrospect. The policy intent will need to be clearly defined. It should align with the *Financial Planners and Advisers Code of Ethics 2019* and conflicts with the code should be avoided. Otherwise, there is a real risk that over time, the administrative burden that has manifested around the application of the current best interests duty may arise.

There may also be challenges for advisers, licensees, and the regulator in applying these new principles in practice, given the current environment. Timely, practical guidance on its application will be crucial.

We support advisers being personally responsible for the advice that they give and how that advice is provided. This aligns with the good advice principles and Proposal 9 regarding statements of advice.

- b) When considered alongside Proposal 9 regarding statements of advice, the good advice principle assists in alleviating some of the friction that exists in the current regulatory framework. Both are scalable in accordance with the type of advice provided.

**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) What is proposed would provide the opportunity to alleviate the regulatory burden that applies to the provision of limited advice to clients.

The success of a ‘good advice’ principle in alleviating regulatory burden will however depend upon the compliance approaches that will be taken by an adviser’s licensee and ultimately the regulator.

As noted above, this aligns with a shift towards making advisers personally responsible for the advice that they give and how that advice is provided.

- b) No comment

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

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

- a) Consideration should be given to the role that accountants play in providing limited advice. The current education standards will result in very few accountants seeking to become licensed. The limited licensing regime in its current format is an obsolete model and will disappear in time as accountants continue to exit.

Most accountants do not seek to provide financial product advice. Rather, they wish to provide advice that is within the realms of what many clients expect to be in the ordinary course of a tax agent service.

With the declining number of financial advisers and the unmet advice needs in the community, accountants have a valuable role to play. Suitably qualified accountants should be able to provide certain limited advice, that does not involve a specific recommendation to acquire a financial product.

For example, accountants should be able to provide simple advice on superannuation contributions that extends beyond the provision of factual information and how a type of contribution is treated

for income tax purposes from the perspective of the party making the contribution and/or the super fund receiving it.

b) No 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) Accountability and the upholding of core standards are essential and must apply across all parts of the sector. Professional standards should not apply solely to individuals. They should also apply to the entity providing those services.

We have concerns with the nexus to the payment of a fee and the requirement that the provider of financial advice be a 'relevant provider'. There is a risk of consumer harm where personal financial advice is provided to an individual, but for the sole fact that no fee was charged, it may be considered to be outside the relevant provider regime.

b) Whilst we support measures that seek to improve the accessibility and affordability of advice, these need to be carefully balanced with the quality of advice and consumer protection. Accessibility to advice should not come at the detriment of the client or consumer. Low cost provision of advice does not mean that the impact of that advice is low risk or without consequences to the consumer.

**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?

Providers of personal advice should be required to meet the education requirements to become a relevant provider. This is essential in ensuring that adviser and advice standards are upheld, and consumers have confidence in the advice they receive.

Introducing a different regime for product providers creates different tiers with differing standards. This creates a distortion in the market and prevents adviser career progression or movement across the sector. Any dilution of standards risks derailing of the professionalisation of the sector.

During the Hayne Royal Commission, the media and the general public viewed institutional breaches of standards as being perpetrated by the wider financial advice sector. What is proposed therefore carries a great risk of harm to other industry participants and to consumers.

Where staff are providing factual information, the licensee has an obligation to ensure that staff have the appropriate training and experience required, and the requisite competencies to provide the services they are employed to provide.

If the recommendation to allow financial institutions to engage non-relevant providers to provide personal advice to their clients proceeds, the legislation should prescribe minimum education standards, pathways and supervisory requirements by qualified relevant providers to ensure the advice provided is appropriate and that clients needing advice from a relevant provider are appropriately referred on.

The financial institution, trustee or product provider should not be allowed to self-regulate and self-determine the minimum education standards to be applied. If financial institutions are permitted to provide personal advice, clear guidelines and requirements would be required to prescribe the minimum requirements, which should include supervision of all staff who deliver personal advice by a 'relevant provider'.

### 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) Caution is required with any recommendation that requires amendments to the sole purpose test in section 62 of the *Superannuation Industry (Supervision) Act 1993*. We acknowledge that superannuation fund trustees now have an obligation to provide information to certain members under the retirement income covenant and the issues this has created.

The superannuation legislation has existing mechanisms to address the allocation of costs and charging of fees to members. *Superannuation Industry (Supervision) Regulation 1994* 5.02(3) requires that costs are to be distributed in a fair and reasonable basis.

Collective charging should apply only where it is in relation to the trustee discharging their duties under the retirement income covenant and for the provision of factual information to members.

Where specific advice is provided to a member, no matter how simple or complex, the fee for the service provided should be deducted from the member's interest in the fund, or nominated interest where they have more than one superannuation interest with that trustee (e.g. a pension account and an accumulation account).

Expanding the collective charging of fees for the provision of personal financial advice allows for the cross subsidisation of advice services accessed by some but not all members of the fund. This is not equitable and is not fair or reasonable.



Where the personal advice provided relates to the member’s superannuation interest, a future interest (such as a retirement pension), or their retirement, the associated fees should be charged to the member or their member interest in the fund.

- b)** Outside the family home, superannuation is the largest asset held by many Australians. With the compulsory superannuation guarantee and increasing contribution rates and incomes, younger Australians are growing their superannuation balances more quickly.

The preservation rules mean that the proceeds in superannuation can not be accessed unless a condition of release has been met. For most, this will be on retirement.

There is a growing level of interest in superannuation and with that an increased need for advice. This level of engagement should be encouraged and supported with quality information and advice. We welcome measures that encourage Australians to engage with their superannuation earlier. Advice needs to be accessible as and when members need it during their working life, not just in retirement.

Allowing superannuation advice to be funded by their superannuation savings, ensures a greater level of accessibility to financial advice for many ordinary Australians.

Members who have their own financial adviser should be afforded the same opportunity to have superannuation advice fees deducted from their superannuation interest. Currently there are inconsistencies on how this is treated across the market. Measures are needed to ensure an equitable treatment for all superannuation account holders.

## 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)** The proposed simplification ongoing fee disclosure arrangements are welcomed. Fees are disclosed to and agreed by clients at multiple points. This would be a welcomed, practical change.

**b)** We do not expect there would be any material negative impacts for 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?**

**a)** We welcome the proposal to remove the current requirement for advisers to provide clients a statement of advice.

Advisers should have the freedom to provide advice in a manner that is appropriate to the client, their circumstances and advice requirements. This would allow advisers to apply their professional judgement. In line with the professional judgement principles, advisers should be responsible for the advice that they provide and how they provide it.

Over the course of a client/adviser relationship, this proposal will likely have the effect of reducing the cost of ongoing advice.

The proposal will have a positive impact on an adviser's ability to provide what could be categorised as simple, single-issue advice.

- b) Given the heavy compliance focus and existing systems and processes, we are concerned that an adviser will be required by their licensee to effectively prepare a statement of advice for a client as part of the advice record keeping process. That SOA is then retained on file in the event a client later requests a further advice document.

Care is needed to ensure that right policy settings are put in place around what are considered to appropriate records, and the extent or degree of research required versus the application of professional judgement based on an adviser's knowledge and experience.

There is uncertainty on how regulatory matters and complaints would be handled by ASIC and AFCA and how licensees would respond to outcomes of those matters.

Issues also arise with professional indemnity insurer requirements and access to cover. It is paramount that the industry has confidence it can obtain appropriate cover and that certainty exists prior to the roll out of reforms emanating from this Review. We already have an environment where access to cover is very difficult and expensive due to the limited number of insurers, increasing premiums and excesses, and creeping exclusions. The sector needs certainty that appropriate cover can be readily obtained, is affordable and that it provides the appropriate level of cover both from a monetary level of cover and policy terms.

**12. In your view, will the proposed change for giving a financial services guide:**

- a) **reduce the regulatory burden for advisers and licensees, and if so, to what extent?**  
b) **negatively impact consumers, and if so, to what extent?**

- a) The content requirements of financial services guides need review.

Advisers should be able to provide key information within a client engagement letter. The use of engagement letters in other professions such as accounting and law provide good examples.

Fees and remuneration, for example, are currently disclosed multiple times in various documents. This can be simplified and contained in the engagement letter. The information should be

customised to the client and proposed services to be provided. It will therefore be more relevant to the specific client and client engagement.

The focus of the FSG is skewed towards negative events or poor client experiences, including client dissatisfaction, professional indemnity insurance, complaints handling and AFCA.

Information regarding complaints resolution processes can be made available via the firm and/or licensees' website and referenced within the engagement letter.

- b) We do not expect there would be any material negative impacts for consumers.

### 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?

We support the proposals that reporting should be limited to complaints received.

### Transition and enforcement

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

Reforms will need to be introduced in well considered, and appropriately structured tranches. Each tranche should have its own transitional period with clearly defined commencement dates. Importantly, those electing to adopt reforms early, should do so wholly. Cherry picking the application across a client base, or a tranche of reforms should not be permitted.

We have had examples of Bills where the commencement date is a date prior to the Bill's passage through both Houses of Parliament and gaining Royal Assent. Transitional periods and commencement dates therefore need to be prescribed as a period of time after Royal Assent as opposed to fixed dates within the legislation. This will be important to provide the profession, broader financial services sector, ASIC and AFCA time to prepare and implement the new measures.

Guidance from the regulator needs to be meaningful, practical and provided in a timely manner to assist financial advice professionals and financial services businesses.

Significant reforms will be a cost to business. In an environment of increasing costs and specifically increasing costs to the sector, consideration must be given to how ASIC's costs in preparing for and implementing legislated reforms, are to be funded. Issues already exist with regards to the operation of the ASIC industry funding model. In recent times, the allocation of ASIC funding costs across a diminishing population of financial advisers has exponentially increased financial adviser levies.



A significant portion of the financial advice population are small businesses. They have a limited capacity to provide further funding to ASIC as the regulator.

### General

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