

Quality of Advice Review - Consultation questions

Responses from Steve Melling – Managing Director, Paul Melling & Associates Pty Limited. Submission made 6th September 2022.

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? What should be regulated?

Yes. Personal advice should be regulated in line with your proposals.

2. In your view, are the proposed changes to the definition of ‘personal advice’ likely to:

- a) reduce regulatory uncertainty? Yes
- b) facilitate the provision of more personal advice to consumers? Yes
- c) improve the ability of financial institutions to help their clients? Yes

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? Yes

a) If not, what additional safeguards do you think would be required?

How should personal advice be regulated?

Personal advice should be regulated in line with your proposals.

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? This should improve advice – largely based on the advice being able to be understood by clients.
- b) the time and cost required to produce advice?

Time and cost to produce advice should be significantly reduced.

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? **Yes**

b) provide advice to consumers using technological solutions (e.g. digital advice)?

Yes

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

a) limited advice? **No further comment – your proposals are very helpful.**

b) digital advice? **No further comment – your proposals are very helpful.**

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? **No impact**

b) the affordability and accessibility of financial advice? **No impact**

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?

I think so – it is in the licensee's interest to ensure that their advisers are adequately trained and competent. However, in relation to the professional standards which do apply, I think Standard 3 needs to be improved and clarified – in my view it should read:

"You must not advise, refer or act in any other manner that is not in the interest of the client where you have a conflict of interest or duty".

My comments on this are available at:

<https://www.melling.com.au/hubfs/Paul%20Melling%20Retirement%20Planning/Regulatory/FASEA%20Standard%203%20Consultation%20Response%20-%20Steve%20Melling.pdf>

a) If not, what additional requirements should apply to persons who are not required to be relevant providers?

I don't have a view on this – your proposals to provide Good Advice are quite clear, and the obligation and responsibility for this advice ultimately rests with the licensee.

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? **Yes**

b) make it easier for members to access the advice they need at the time they need it? **Yes**

Disclosure documents

10. Do the streamlined requirements for ongoing fee arrangements:

a) reduce regulatory burden and the cost of providing advice, and if so, to what extent? **Yes – but not enough. See my submission to the QAR and my comments in question 15 below.**

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

No – consumers will retain the right to terminate fees at any time (as they have always been able to do – before and after the Hayne royal commission). Full fee transparency is retained – all fees are disclosed at least annually by the platform provider/trustee – as they were both before and after the Hayne royal commission.

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?

Yes. The exact amount would depend on the client, adviser, licensee and the complexity of each case.

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

No. A negative impact might be felt by compliance consultants – but not by end consumers.

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?

Yes. The removal of potential 5-year jail-terms (for failing to keep a record of when an FSG was given to a client) would be a sensible and welcome change.

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

No.

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?

It should reduce the compliance burden of producing and complying with TMDs – which is very welcome.

b) target market determinations?

The proposals should make TMD's simpler and easier to both apply and understand.

It is still not clear to me what practical purpose TMDs are intended to serve, but your proposals on DDO are welcome.

Transition and enforcement

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

Allow opt-in to new regulations as soon as they are published/legislated!

General

15. Do you have any other comments or feedback

There is one glaring inconsistency in the proposals.

The intention to allow collective charging by super funds (presumably without either explicit upfront consent or ongoing explicit consent by members) stands in stark contrast with the requirement by financial advisers who are NOT employed by a superannuation fund to constantly need to obtain ongoing fee consents.

If the intention is to create an uneven playing field by favouring financial advisers who are employed by superannuation funds, then this intention should be made clear.

A likely result of this uneven playing field would be that financial advisers would be incentivised, through a lighter compliance burden as well as a significantly lower personal financial risk, to obtain their authorisation through a superannuation fund rather than retain their own licence. If this result is intended, then this intention should be stated clearly up front.

Given the bold and sensible suggestions made throughout the rest of the proposal paper, it is hard to believe that the proposal to create an uneven playing field in favour of super-fund-employed financial advisers has been made by the same author as the rest of the sensible proposals made in this document.