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

Name/Organisation: UniSuper Management Pty Ltd

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. In our earlier submission, we recommended: - Trustees must continue to be able to provide advice on their own products - Trustees must be able to provide general advice to their own members instead of just personal advice - There needs to be a crystal-clear distinction between 'advice' and information - Targeted advertising and case studies should not be regulated as advice - Sole purpose test should be revisited in light of the retirement income covenant The Proposals Paper includes recommendations, when taken as a whole, that largely addresses our underlying concerns with the current regulation of advice. While we argued that general advice is the area of advice where a trustee can do the most amount of good for members for the lowest cost to members, its replacement with 'good advice' is likely to address our concerns which were influenced by the High Court's decision in the Westpac case and the ongoing conjecture that a trustee can never give general advice to its own members and can only ever give personal advice (or such generic information that falls short of even being advice). Our comments in support are based on the reform package being implemented in totality along with a crystal-clear definition in law of what good advice is.

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) Potentially depending on final form of any legislation
b) Yes, members have differing advice needs at different life stages and this requires a comprehensive advice offering. Access to high quality and affordable advice and assistance, therefore, remains a key part of how superannuation funds will support their members into and during retirement
c) Yes, not everyone will need comprehensive financial advice, and we expect many super funds to develop tools to assist those members with simpler needs or those who wish to be empowered to make their own decisions, with digital tools, such as decision support tools, being increasingly important

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?

Yes. The conduct of superannuation funds and their employees is already extensively regulated and provide safeguards for members.

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) This will depend on how 'good advice' is defined in law but from our perspective we do not believe that this will reduce the quality of financial advice we provide to our members

b) In our earlier submission, we argued that technology is particularly helpful when delivering advice and that for efficiency and cost reduction purposes, the production advice can be achieved through harnessing technology using a system designed to produce the written advice with tailored processes and templates. To the extent that the proposals enable further simplification and digital enablement, both the time and cost to produce advice should be 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?

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

a) Yes, provided there is a crystal-clear distinction between 'advice' and information and that 'good advice' is clearly defined in law.

b) Yes. We see these Proposals, taken together as a package, to further facilitate digital advice.

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

a) limited advice?

b) digital advice?

a) A crystal-clear distinction between 'advice' and information and that 'good advice' is clearly defined in law
b) We know that digital advice has the potential to improve access to cost effective advice for many; however, the term digital advice is not always clearly defined but we mean it to be a range of digital tools that assist in both the production and delivery of advice. Digital tools can assist in the currently cumbersome data collection and fact find process. We anticipate substantial efficiencies over time, particularly once the Consumer Data Right is rolled out more broadly across the economy. Digital tools that assist members check if they are on track for retirement or assist members to make their own decisions will also be important.

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) This will depend on how 'good advice' is defined in law but from our perspective we do not believe that this will reduce the quality of financial advice we provide to our members

b) The Proposals taken together as a package should improve access to advice through superannuation funds. No organisation is better positioned to provide low-cost or no direct cost advice on a superannuation product than the organisation that operates the product. An organisation has an inherent and intrinsic familiarity with its own product range which can be economically and efficiently utilised to provide assistance to the holders of those products. In a fund like UniSuper, where most members have joined as default members, it is very much the reality that most people seeking advice are already holders of the product, and it would be a complete inversion of fact to think that most people acquire the product because of any advice that they obtained from the trustee before joining. This is most pronounced in the context of defined benefit funds, which are often not widely understood even amongst advisers who tend to be most acquainted with accumulation funds. If trustees of defined benefit funds cannot advise on their own defined benefit funds, this would likely lead to a gap in the market such that members might not have access to any competent advice on a defined benefit product at all (or perhaps only at high cost since an adviser may need to educate themselves about a particular defined benefit fund on an ad hoc basis).

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?

Yes, superannuation fund staff are highly trained and appropriately supervised whether providing advice or other services to members, such as seminars. Our staff are trained to provide quality advice and UniSuper proudly has been recognised with the Chant West Best Fund: Advice Services in 2022, 2020, 2019 and 2017. As a fund that prioritises the retirement outcomes of its members, UniSuper is dedicated to providing quality advice and assistance to members which is an important driver of greater retirement outcomes.

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) Giving trustees more flexibility on how to charge for advice is welcome. While most funds do not charge a fee for intra fund advice, we have made a decision to charge our members a fee for that service. While there is no legal obligation to charge members for intra-fund advice, we believe it is important that those who receive the benefit of the service pay for the advice they receive. We also believe that charging a fee helps put a value on the service and makes the advice more likely to be implemented. Around 75% of our Select Advice gets implemented with members who use a self-implementation guide as part of the service.

b) Potentially. On the one hand, charging low or nominal fees would ensure broader access to a valuable piece of advice, however, this, in our experience, leads to the service being overused by a small cohort of members. Charging an appropriate fee, on the other hand, ensures that those who receive the service will put a value on the advice they receive and are more likely to act on it.

It is unfortunate, therefore, that the proposed regulatory relaxation around the best interests duty would be conditional upon not charging for the advice. While we agree that clients who pay a significant amount for financial advice are more likely to assume that the provider is acting in their best interests, we also believe that clients understand that the payment of a fairly token amount for assistance falls in a different category from paying for fully-charged comprehensive advice. We would advocate for the new ‘good advice’ standard to (also) be the only requirement for advice where there is a nominal amount charged. This will actually foster access to affordable advice. A nominal fee regulates demand for assistance by filtering those who seek appointments and prioritising those who are committed enough to pay the nominal fee. If the regulations are only relaxed for free advice, there may be an increase in free advice given, but we may find that (in percentage terms) there is no increase in the amount of advice which is acted upon and an increase in wait times (or a loss of access) for other potential clients who are highly committed to obtaining and acting upon the advice.

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, depending on final form of any legislation
b) Taken as a whole, this package will allow us to better serve our members.

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 to be welcomed but it is too early to say on what cost reduction can be expected. This is partly because production of SOAs is produced reasonably efficiently through harnessing technology and some form of advice documentation, financial plan or implementation plan are still likely to be offered to members.
b) We see this as likely benefitting more members, particularly at the simpler end of the spectrum provided that what takes the place of an SOA facilitates implementation of the advice and that appropriate records are kept.

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 depending on the final form of any legislation **b)** No, we see this as likely benefitting more members
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?**
a) Likely to be positive b) Likely to be positive
Transition and enforcement

14. What transitional arrangements are necessary to implement these reforms?
We support the Proposals Paper comments that there should be adequate transition period (we suggest 12 months) for implementing these changes. We are also open to the Proposal to allow providers to 'opt in' early. Transitional arrangements may be required to the extent that personal advice is expanded into areas that were previously considered to be general advice. This would likely necessitate the training of staff, new processes to ensure that good advice will be delivered and appropriate records are kept.

General
15. Do you have any other comments or feedback?
Our support for the proposals depends very much on how 'good advice' is defined. The introduction of the 'good advice' standard is clearly intended to replace the statutory 'safe harbour' steps for the current best interests duty in cases where there is no charge for the advice. It follows that 'good advice' must be judged (and should be defined) within a context where the provider has <u>not</u> fully obtained details of the client's circumstances or needs and has <u>not</u> investigated all the financial products in the market <u>nor</u> any of the other safe harbour steps. If 'good advice' is defined in such a way that 'good advice' can only be provided if the safe harbour steps have been taken, then the reforms will not in substance have effected any practical change. The proposals paper refers to good advice being advice which is reasonably likely to benefit the client. The concept of 'reasonably likely to benefit' is potentially problematic in the context of financial products. There is a danger (and we have a concern) that this phraseology could be interpreted as suggesting that a provider (bearing in mind this is a context where there is no payment for the advice) is supposed to somehow predict the future investment performance of a product. For example, two superannuation products might have the same investment return objective; but we know that different issuers set their objectives based on different degrees of confidence in the objective being achieved. The return target for a MySuper product (by law) is the rate of return which the issuer has a 50/50 chance of achieving. Other issuers set return objectives where there is a 70% confidence in achieving the objective. If 'good advice' is defined by

reference to the likelihood of the recommendation being beneficial, there is a danger that the definition creates fresh uncertainty (this time around forecasting future returns) which is an inhibitor to the assistance being provided