



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: Deborah Latimer, Chief Risk Officer/ HUB24 Limited

### 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?

Yes.

We welcome the proposals and congratulate Michelle Levy on proposing a consumer-first regulatory framework that supports sustainable access by more consumers to affordable, quality advice, and that expands the consumer protection framework. The proposed reforms will simplify the delivery and experience of advice overall and reduce cost.

Key consumer benefits of the proposed regulatory framework include:

- The ability for more consumers to obtain good advice through a range of providers and mediums, including digital mediums.
- Focusing obligations on the content of the advice provided.
- Encouraging better use of data and other information held by providers of advice to improve consumer outcomes.
- Making it easier for consumers to understand the advice by allowing advisers to determine disclosure in accordance with the needs of consumers.

We agree with the proposals that allow advice providers to determine what steps they should take and processes they should follow to ensure good advice, in a wide range of circumstances and adapting to differing consumer needs for advice. A key benefit of the proposals is a more clearly defined and sustainable regulated professional activity of providing advice that can be delivered across different channels and is capable of adapting to dynamic changes in financial products and financial services over time.

More specifically, we note and agree with the intent of competitive neutrality which we strongly advocate for on the basis that it is not only good for the industry but also good for consumers. This includes the application of consistent conflicted remuneration bans.

## 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) Yes.

Greater regulatory certainty is likely to be the result of the clear separation between what is advice and what is information.

The assumption that personal advice is being provided when the provider is in possession of relevant personal information is consistent with the *Westpac* case and Hayne and reflects the expectations of consumers. Regulatory guidance should support understanding of clearly defined legislative terms. With the proposed removal of general advice as a regulated financial service, more detailed guidance will likely be required to address a range of advice scenarios where it may be unclear whether personal advice or information is provided. To achieve the clarity and certainty a clear definition in legislation is needed. ASIC will also need to issue more examples in its regulatory guidance, to ensure regulatory certainty and broader innovation in the sector can be achieved to improve consumer outcomes.

b) Yes.

We support the proposals to expand the definition of personal advice supported by appropriate record keeping requirements. The expanded definition of personal advice covers a broader range of activities, and more consumers will be protected under the proposed framework.

c) Yes.

Financial institutions will likely achieve greater efficiency and leveraging of data and information to support improved consumer outcomes. The proposals will create opportunities for institutions to meet advice needs of consumers under a strong Good Advice and Code of Ethics framework. It is important there is a strong overlay of this framework to the definition to prevent conflicts and poor consumer outcomes, supported by appropriate regulatory guidance where it is needed.

It will be important, also, that there is clarity on the “holding” of information on consumers by organisations (providers of personal advice). For instance, will it be the organisation or the individual advising who “holds” the information?

There is also a question whether certain interactions should be treated as personal advice:

- *Call centre discussions -*
- *Product filtering based on consumer inputs/choices.*
- *Communication to a member informing them of a trustee decision to close a particular investment option in which they are invested and move all holdings into a different (equivalent) investment option.*

### 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?

We welcome the proposed de-regulation of general advice. The current definition of general advice is problematic and provides little benefit to consumers.

The broadening of the personal advice definition will capture activities that, under the existing regime, may have been considered general advice. Safeguards will be needed to ensure that the nature of activities can be properly determined after the fact, there should be clarity as to:

- **Record keeping:** The level of record keeping required to demonstrate the information provided to consumers, and support providers in managing complaints and regulatory investigations (e.g., note taking, use of ROAs by non-relevant providers, training requirements).
- **Guidance:** Guidance for product issuers and superannuation trustees to ensure employees providing information on financial products are suitably trained and monitored.
- **Referral mechanisms:** Consider effective referral mechanisms for consumers with complex needs to ensure they access appropriate Advice.

The concept of 'General Advice' is key to the operation of provisions in the Corporations Act in relation to DDO, as well as Conflicted Remuneration, and it is recognised in the consultation paper that its removal will create a regulatory gap. Whereas the consultation clearly states the Conflicted Remuneration provisions will be applied in relation to the provision of information about a product, as well as the provision of Personal Advice (which incidentally would broaden the application of those provisions), it is not fully clear how DDO will apply. It is necessary to consider how these provisions apply not only to distributors of financial products (the consultation proposes changes be made in relation to the exemption for Personal Advice), but also to the Product Issuers themselves. Currently, Issuers take reasonable steps to identify the target market when providing General Advice, but it is not necessary to do so when providing information about a financial product only – nil advice. Product Issuers will require clarity as to the extent they should consider DDO obligations when they promote their funds; as they will no longer be able to consider those provisions on the basis of whether General Advice is being provided.

There is also a question about where certain activity could sit and should sit under the proposed framework:

- **Investment research:** Investment research makes a recommendation (buy, sell, hold, outperform, etc) and is currently defined as *general advice*. Under the proposed framework, if it was provided by an institution to a client where institution holds personal details about the client, would this be personal advice.
- **One-to-many interactions (e.g., seminars):** The Proposals Paper notes that for a one-to-many scenario such as an education seminar a General Advice Warning (**GAW**) would not need to be given, and an Australian Financial Services License (**AFSL**) authorisation would not be required. This implies the situation will not constitute advice. However, we note that product providers are aware of those attending and can obtain a certain amount of information on attendees if required. For example, if a seminar expresses an opinion about a product. It underlines the need for an exemption or careful drafting of the final definitions of personal advice to exclude one to many interactions regardless of the information held by the provider.

## 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.

Updating the Best Interests obligations would bring Australia into line with other markets such as the United Kingdom, where a new Consumer Duty was implemented in July this year which requires businesses and individuals to deliver 'good' outcomes for consumers. We support the change to a "good advice" duty.

The licensed advice sector has significantly professionalised in recent years. The existing framework does not support the professional judgement of advisers and instead closely prescribes a process for providing advice. The change will place professional judgement at the centre of advice which offers value for consumers as it will:

- Introduce a clear, single overriding obligation that acknowledges the professional judgement of advisers.
- Introduce a principles-based form of regulation and remove prescription.
- Enable consumer-focused advice not compliance-focussed advice.
- Reduce time taken to prepare advice and therefore cost (by removal of the safe harbour steps).

The proposal to provide good advice – advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provide at the time the advice is provided is significant. In applying a test for advice that is ‘likely to benefit the client’, guidance on how this is determined as an objective measurement will be important. Clarity of what “good advice” looks like should be provided through examples in ASIC regulatory guidance. There is also a need to ensure the quality of advice provided by relevant providers and other providers is the same and on a level regulatory playing field. “Good advice” (and the effort to arrive at giving good advice) should be determined by the context in which it is given. ‘

**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)?

Yes, the proposals will support limited advice and technological solutions.

- a) The obligation to provide Good Advice is a content-focused duty as opposed to the conduct-related duty in the form of Best Interests Duty. As such the channel of delivery will matter less than the overall quality of the advice which should be a priority of any consumer protection framework. The advice itself can be more effectively scoped and tailored to the consumer need.
- b) Clearly defining digital obligations in terms of providing good advice (and the ban on conflicted remuneration) will align Australia to markets such as the UK where limited and digital advice solutions feature (UK advisers, building societies, wealth managers and some banks readily use limited advice solutions).

There will, however, be a significant amount of detail to be worked through to ensure that the existing best interests' duty as well as other duties expected to continue to apply to relevant and other licensed advice providers under the proposed reforms are effectively streamlined (not duplicated or overlapping), and codified.

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

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

We welcome the review proposal for a singular definition of advice. The proposed definition of advice means a range of digitally formatted and scoped options can be provided to more consumers. To further support the provision of limited or digital advice to consumers, we agree with the FSC suggestions for -

- **Leveraging existing government and consumer data:** Initiatives like allowing advisers to access MyGov i.e. ATO and Centrelink as permitted for other professionals, such as accountants, will go a long way in making it more efficient for the advice sector to assist consumers. In addition, extending the Consumer Data Right (CDR), recently successfully deployed via open banking, to open finance so financial advisers can get access to superannuation and insurance information is also linked to making advice more affordable to consumers.
- **Redefining ASIC's model of engagement with industry:** ASIC should work with industry to proactively introduce advice-based innovations (non-digital and digital) into the market beyond the facilitative approach set out in the proposals paper. If defined clearly, this change should facilitate more organisations providing more personal advice to consumers. The FSC has proposed regulatory road-testing enabling market entrants and participants to seek indicative compliance from the Regulator before an idea is taken to market rather than after to incentivise innovation. A range of ways could be explored, for example, case managers assigned to businesses to consider regulatory fitness of proposed solutions before these are taken to market.
- **Retaining regulatory settings that are effective:** Retaining regulation currently guiding technology that is conducive to positive consumer outcomes: RG 255 Digital Advice establishes requirements in relation to calculators (e.g., obligations to test algorithms, ensure providers are competent to deliver such advice and that appropriate record keeping obligations are adhered to in a digital advice setting).
- **Consideration as to the placement of 'Robo advice':** It appears that the intention of the review is that Robo-Advice is excluded from advice given by a Relevant Provider. A Robo-Adviser may satisfy all the definitions of a relevant provider except the "provider is an individual" as above it will be important that the definitions align with the intention of the review. If Robo Advice is captured:
  - for whom might existing education requirements apply.
  - If the robo advice provider (by an AFSL licenced to provide advice) charges a fee, does this constitute being a Relevant provider.
  - For a Product Provider that utilised a digital advice tool in engaging with a client – would advice obligations sit with the digital advice issuer or the licensee of the Product provider.



- **Responsible manager oversight of digitally delivered advice:** Requirement for oversight of the advice delivered by a digital tool to be provided by a Responsible Manager framework would support the quality of advice and ensure broader consumer protection.

**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?**

We support these changes as appropriate. The introduction of a principles-based approach to advice delivery is welcomed.

- a) Application of the FASEA Code of Ethics with relevant amendments to sections three, five and six would support the provision of quality financial advice.
- b) Affordability will be a measure of how the good advice duty applies to relevant providers.

**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?**

Consistency of standards and education requirements has been a core objective of professionalisation in recent years and changes to the advice framework should retain this.

We agree with the FSC observations:

- The professional standards framework should continue to allow providers and advisers to move around the industry drawing from a common body of knowledge and qualifications. Representatives providing information on financial products should hold minimum qualifications and skills and be required to maintain these in changing regulatory and technical environment. These qualifications should form a subset of the qualifications met by “relevant providers”. This supports the provision of ‘good advice’ and forms the basis for career and skill progression into a “relevant provider”.
- Professional judgement will determine much of the advice process under the proposals the Review is considering.
- There is a question about what standards and qualifications apply across different channels of advice delivery (e.g. Robo versus financial advisers).
- To support the quality of education and consistent application, any courses or training be aligned with the requirements of registered training organisation or aligned with clear industry or regulatory standards.

- Training requirements to include the understanding of referral mechanisms for consumers with complex needs to ensure they access appropriate advice

### **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?**

Consistently with our Submission to the Review, we make no comment on proposed changes to superannuation trustee obligations other than to observe that personal advice provided through a superannuation fund (including personal advice about retirement) will be enabled by the proposed reforms.

### **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?**

We strongly support the proposed changes. The proposals for disclosure will alleviate much of the confusion relating to the interaction of consent and fee disclosure obligations, that make standardisation of these obligations difficult.

- a) Currently financial advisers are required to obtain their own fee consents and produce an FDS and most product providers will require their own consents. Removing this obligation will reduce duplication and cost.**
- b) Consumer confusion as to why they need to complete so many forms to have a fee deducted from their account will likely be reduced or eliminated.**

**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?**

We strongly support the removal of the Statement of Advice.

- a) The time and cost to prepare advice will significantly reduce as advisers are enabled to summarise the advice they give in a manner relevant to the consumer need (and that is compliant). We otherwise agree with the KPMG cost research included in the FSC Submission to the Review.
- b) The proposals switch the focus of the regulation from compliance to consumer. They place the determination of what disclosure goes where within the consumer experience in the hands of professionally, trained and qualified financial advisers. This appropriately reflects the professionalisation of advice and the emergence of regulatory technology and technology-based compliance solutions. The proposal to remove the SOA is likely to prevent a “one size fits all” approach to advice and facilitate more advice tailored to the consumer need and circumstance. The obligation to maintain complete records (which already exist under standard 8 of the code of ethics) of the advice they provide and to provide a written record of advice to a client on request (as well as the misleading or deceptive conduct obligations) will continue to provide consumer protections. This proposal is consumer centric as it enables the client to engage in the manner they choose.

Clarity will be needed as to what written records should be kept as the concept of ‘complete records of advice’, particularly in the circumstances of complaints or regulatory investigation will be important. The importance of ‘technology neutral’ guidance is also noted, to permit recording of advice verbally, digitally or written and the adoption of new and emerging technology capabilities.

**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?**

We support the proposals.

- a) The proposals still retain an obligation to make available an FSG but with greater discretion on how this is presented to consumers. Giving providers discretion will reduce the regulatory burden as advisers will not need to produce one each time as they can direct clients to the online version
- b) We do not consider that there would be any negative impact 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 and agree with the FSC's submissions.

### Transition and enforcement

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

We agree with the FSC's support for;

- **A 24-month lead-in time to future reform to support industry to prepare:** A key concern is ensuring adequate consultation on regulatory guidance and other instruments ahead of legislative implementation and to ensure regulatory certainty.
- **A regulatory co-design model between industry, government and regulators ahead of future reform:** The experience of licensees and advisers to date has seen variance in how licensees of different sizes have been treated when implementing significant regulatory change. This has resulted in patchy implementation in part. A codesign model of future regulatory implementation would resolve this.
- **An early opt in/adoption model by industry to reduce cost and complexity under the regulatory framework.**
- **Industry and Government collaboration on models for self-regulation or co-regulation of a revised advice framework.**

### General

15. Do you have any other comments or feedback?

1. The Proposals are silent on the provision of advice by providers such as the accounting profession. We note the recommendations of SMSFA, CA ANZ and IPA that qualified accountants with public practice certification/registered tax agents should be permitted to provide limited scope advice including with respect to the establishment, membership, contribution and pension strategies, and winding up of an SMSF. Accountants have stringent training and education requirements (CPD) including degree qualification and code

of ethics (APES110), as well as compulsory Professional Indemnity insurance and additional limited liability scheme protection for consumers.

2. The reform proposals are holistic and should be implemented as a whole package with a competitive neutral effect (not disadvantaging one type of advice provider over another. Unintended consequences should be carefully guarded against including through the comprehensive consultation and other transitional arrangements we have set out above.
3. Overseas models of regulatory engagement within principles-based regulatory frameworks should be considered (including the UK) to ensure that ASIC is enabled to play the right regulatory role.