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: Morgans Financial Limited ABN 49 010 669 726 AFSL 235410

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?
We agree advisers should be able to provide personal advice that is appropriate and relevant to the client's needs without undue complexity and duplication. The provision of advice, particularly 'simple advice', should be provided without having to comply with all the obligations that currently apply, particularly the provision of a written Statement of Advice (SOA). Whatever solution is implemented must demonstrate a reduction in the cost of providing advice while still giving clients appropriate protection. Product issuers are completely different businesses to advice businesses because a conflict exists. If the conflict cannot be removed, then additional safeguards must be in place to ensure any conflict is disclosed and client consent is obtained.
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) What 'good advice' means must clearly be defined in the first instance before we can determine whether a broader definition of 'personal advice' will reduce regulatory uncertainty. How will the reasonable person test apply and how can it be tested (that is, what framework will ASIC use)? If the four duty tests are linked to 'good advice' we are concerned this may defeat the point of simplifying the advice process and will add another layer of confusion. We would be concerned if providers are allowed to provide one-off 'good advice' without meeting the best interest duty.

It also must be made clear what it means if the provider holds information about "any aspect" of a client's financial situation. For example, what happens in a situation where an adviser provides a research note on a listed security to an existing client where the research note has an opinion of buy, sell or hold from the research analyst? The adviser is not making a recommendation but simply providing the information to the client (who may have requested it). What are the obligations of that adviser even though he/she may know personal information about the client? The client has not paid for the information to be provided. If this is seen as personal advice and not the supply of factual information it could result in unintended consequences that will mean clients may not be able to access research information. Will there be a clear delineation between providing personal advice vs providing information or education to the client?

b) We agree the proposals encourage the provision of personal advice as it will remove the obligation to provide documents that clients don't want, don't read nor understand. We recommend licensees are allowed to set the parameters of how personal advice can be provided and what the process should look like.

c) In principle, we agree that yes, the proposed changes may improve the ability for financial institutions to help clients as advice would become more accessible and less cumbersome compared with current regulatory obligations. However, we recommend that if institutions are allowed to provide more than 'simple' advice (what does this look like?), the same obligations in relation to education and ongoing training must apply. If not, it just creates an unfair playing field for advisers (relevant providers) which is not acceptable.

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 agree the overlaying professional standards & consumer law (misleading & deceptive conduct) provides a reasonable level of protection to consumers. However, we are concerned about what the unintended consequences of removing General Advice (GA) could be, particularly for those advisers who have different business models such as stockbroking or investment advisers. The provision of general information or advice enables the adviser to educate or provide research to clients who may express an interest in certain investments without making a recommendation. How will this work under the new regime? For example, what happens if an existing client expresses a desire to invest in ESG-type investments to the adviser. The adviser provides relevant ESG research articles

and analyst reports to the client so the client can become better educated about this type of investment. The adviser has not made a recommendation or statement of opinion, nor has he/she charged the client for the information as they are an existing client.

In terms of additional safeguards, we note consumers will still have access to the free Ombudsmen service, but we also note when it comes to complaints, it is the adviser/licensee who is left paying the costs. Additional education to the consumer on what is and is not perceived as advice will be important. Licensees, Associations and Regulators can all play a role in providing relevant education to consumers.

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) Potentially there may be no change. As noted in Question 2, if the four duty tests are linked to 'good advice' this may defeat the point of simplifying advice and could add another layer of complexity. The principle behind best interest duty still requires time spent by the adviser to ensure any advice is right for client. Is 'good advice' good enough and how does it equate to the quality of advice an adviser may be providing?

The regulators must provide transparency on how they see the objective test of 'good advice' linking with the Code of Ethics and Professional Standards. As noted in the Proposal Paper, the Code of Ethics does impose a duty to act in the best interests of clients so the removal of BID from the Corporations Act should not have an impact on an adviser's duty to act regardless. Advisers will still be required to keep a written record of the advice which must demonstrate best interest in some form. We believe Standards 2, 4 & 5 in the CoE are enough to hold advisers accountable to best interest.

b) One would hope to see a reduction in time and cost required to produce 'good advice' if overlapping and burdensome obligations were removed for relevant types of advice. Time will tell how much time and cost is saved as it will depend on how many of these proposals are accepted into regulation.

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) We see this point as ensuring licensees implement appropriate processes advisers must follow when providing 'good advice'. If it is determined the Code of Ethics and underlying best interest standards included within the Code will be enough, then providing limited advice to consumers will become much easier. The key is ensuring an acceptable framework is established. Licensees should have the ability to set the framework for their advisers to follow 'good advice' or 'simple advice'.

Financial institutions also have a responsibility to establish compliant processes, which we believe should not be more than the provision of simple advice. We do not agree providers employed by institutions should be providing advice that is not simple. If we are removing Safe Harbour obligations, all providers must be required to meet the Code of Ethics and professional standards when providing good advice, thus ensuring an unbiased structure for everyone. It again comes back to what 'good advice' will look like. This must be a consultation process with all professions involved to determine how 'good advice' will look like.

b) As in point a) as long as there are acceptable processes in place, regardless of how the advice is being provided – written, digital, etc – the removal of the current Safe Harbour obligations should make providing advice easier. We reiterate our earlier comments that ASIC would need to work collectively with all professions to define and agree on what 'good advice' will look like . We would be concerned, however, if those providing digital advice and/or institutions are not obliged to meet the same professional standards as relevant providers as this does not represent the best consumer outcome and may undermine consumer confidence in the industry. It will not represent a level playing field.

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

a) limited advice?

b) digital advice?

Review and amend Standard 6 in Code of Ethics because in its current form, an adviser would be unable to provide limited advice. Alternatively, remove Standard 6 altogether from the CoE.

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) There should be no change to the quality of financial advice given relevant providers must still comply with the professional standards where a fee is being charged for personal advice. An adviser must continue to display the knowledge, skills and experience to provide 'good advice'. Both advisers and licensees will continue to be responsible for professional development to ensure competencies and standards remain at a high level. Without question, advisers have worked hard to meet the new standards of professionalism, education and training.

b) We will need to see the construct of how 'good advice' and application of the professional standards under the proposals will work and how ASIC, as the key regulator, will monitor accessibility of financial advice. Again, this needs to be a collaborative approach between the regulators and all professions.

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?

The proposed framework recognises the benefits of professionalism, professional education, and the provision of affordable, accessible quality advice. Any provider of advice should acknowledge and adhere to this framework as part of their own practice. Licensees can and should monitor professional competencies for their representatives. Licensees will have a higher obligation to ensure relevant staff meet professional standards where they are not providing personal advice to retail clients.

a) The Law of Tort and Contract should be sufficient protection for consumers but that is not to say those who are not relevant providers should be allowed to provide personal advice unless they meet the same standards as relevant providers.

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?

We would be concerned if the obligations on superannuation trustees in providing advice are diminished where the advice is being paid for collectively by their members. Essentially is this akin to fee for no service? We request equal education standards as that required by relevant providers. It would be insensitive to expect advisers who have gone through the education and ethics process to be comfortable with the fact superannuation trustees are able to provide personal advice to members and not have to adhere to the same obligations. Will ASIC allow 'super only' advisers to provide 'super only' advice on the same basis and how would conflict be removed if the super fund is comparing their own product against others? Fees should be capped when being charged by superannuation trustees and only reflective of simple advice (see below, need to agree what 'simple advice' looks like.

It will be important for consumers to understand the type of advice they would be receiving from superannuation trustees (i.e. no more than 'simple' advice). How simple advice would look in this instance, again, must be clarified. The Proposal Paper mentions it would be acceptable for trustees to consider the member's personal circumstances, including social security entitlements. We would be very uncomfortable with this as social security (for example) is a complex area that requires appropriate skilled advice. It should never be considered 'simple' advice. Factual information may be appropriate but we do not agree they should be allowed to provide personal advice as the law of superannuation is complicated and it is easy for unintended consequence to arise in relation to the client's overall financial situation.

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 agree the proposed streamlined disclosure requirements will reduce the complexity of this process without having a detrimental effect on consumers. It will reduce the regulatory burden by removing unnecessary duplicated processes currently required, particularly where a client may be invested with multiple product providers. This will reduce the cost of providing advice as advisers will not be wasting time having to comply with different product provider forms of consent. The obligation should have always remained with the adviser, not the product provider.

A single, standard consent form that can be used is not only logical but will be far more efficient than what is currently in place. We don't believe the consumer will be negatively impacted by having a simple disclosure process. In fact, clients will likely be happier with this simplified approach as they are not being inundated with multiple consent requests. How fees should be disclosed (estimate, actual) needs further consultation as the current requirement to calculate 'future service fees' is unworkable. The timing requirement for clients to respond with their consent is also inappropriate and confusing for all parties.

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 are pleased the Proposal Paper addressed the need to change the existing Statement of Advice (SOA) obligations as the current process is unworkable for advisers and their clients. We agree that many SOAs are largely unread by clients as they are simply too cumbersome and confusing. However, we believe there is still a place for a written document that covers off the benefits, risks and costs of the advice, albeit in a simpler, more relevant format. We feel some elements of the quality of advice may suffer if the requirement to provide some type of written document to the client is removed completely. From a legal perspective it is helpful having a formal document in place which can be referred to at a point in time should a client complaint arise. This provides a level of protection for all parties in the advice process.

Statements of advice, in their current form, are costly to produce based on existing regulatory expectations of what must be included. Even simple advice currently requires an adviser to include content that can be superfluous to the actual advice, leading to an expensive, complicated document the client does not need. If there is flexibility in when a written document must be provided, what information must be included, and in what format it can be provided, we agree this will significantly reduce the cost and time for advisers with clients the ultimate beneficiaries. As a suggestion, the Government may consider enlisting an expert academic in logic and cognitive reasoning to work this one out (e.g. Professor John Slaney ANU).

Limited and additional advice documents should be allowed where recommendations are scaled based on what the client wants. Records of Advice (ROAs) will play an important role where it is not necessary to give the client a full SOA, or if it is follow-up advice or ongoing advice. Licensees should be allowed to set guidelines for what constitutes "complete records of advice" where an SOA may not be required. Such evidence of advice will be important should there be questions/complaints about whether the advice provided was 'good advice' and will provide a layer of protection for both the consumer and the adviser.

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?

Having flexibility in the way information is provided to clients is welcome. If providers can simply make the information in a financial services guide (FSG) available to clients on their website or other online facility, it will assist in saving time and reduce regulatory burden as it ensures an up-to-date version of the FSG is available any time a financial service is provided to a client.

Currently civil penalties apply as defined in the Corporations Act should an out-of-date FSG be provided to a client. An unintentional act of providing an out-of-date FSG by an adviser can be seen as a breach. We see this change as a commonsense approach to disclosure obligations.

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?

Removing the administrative obligations from the adviser is welcome as the design and distribution obligations (DDO)are based on product view. The obligations therefore should not rest with the adviser but with the product provider. In its current format, DDO is confusing as there appears to be obligations on both sides. It has also created another unnecessary layer of burden and responsibility for the adviser.

We acknowledge the concept of DDO and TMDs provides a layer of protection for consumers. By simplifying these obligations so that relevant providers are only required to report to the product issuer where an actual complaint has been received in relation to the product, it will remove the confusion and allow the rules to operate as they were no doubt intended. Currently there are some product providers who are imposing unnecessary and time-wasting reporting requirements that provide no benefit whatsoever to the client.

We also recommend a consistent policy is applied for TMDs in relation to what is included or excluded. There is a concerning degree of confusion on some listed products such as Exchange-Traded Funds (ETFs) in relation to TMD requirements.

Transition and enforcement

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

Appropriate time frames that allow licensees, regulators, consumers to get used to any changes. A suggestion could be to align the commencement of changes with the education framework date of 1 January 2026. This will allow an appropriate transitional time frame for new guidelines and processes to be set in place and deemed acceptable by the regulators. Whatever time line is implemented it should apply to all business models.

If relevant providers/licensees can opt in early, how would this look?

Time frame for FDS – before 1 July 2023 – changes should be in place by then if possible.

General

15. Do you have any other comments or feedback?

Advisers should have access to client information via a portal similar to the accountants ATO tax portal. A Centrelink portal should also be provided in some form as it will further enable the concept of providing 'good advice'.

Tax deductibility of upfront financial advice. This would potentially alleviate concerns on the need to cap fees, or whether fees should be allowed to be deducted from superannuation interests.

The DIY providers who deal out high risk products and services and promote a low fee basis to consumers should be restricted in what they can promote. They are representing a dangerous precedent as it allows consumers to invest into these products without any level of protection. This is an area that must be addressed by the regulators. Many of these providers give advisers and our industry a bad reputation. Refer to ASIC's Retail investor trading during COVID-19 volatility report 2020.