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: National Insurance Brokers Association (NIBA)

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?
NIBA agrees with this statement in principle, provided that advisers and product issuers are subject to the same legislative obligations. To do otherwise would result in inconsistent standards of advice being provided across financial services industries and increase the risk of consumer harm. As stated in previous submissions, general risk advice is more complex than simply recommending an insurance product with general insurance brokers taking a holistic approach to risk management and mitigation. NIBA notes that it may be more difficult for those who can only provide personal advice on a limited range of products to replicate this type of personal advice. As such, it is NIBA's view that truly personal, tailored risk advice is only available from a general insurance broker.
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) In NIBA's view, the proposed changes to the definition of 'personal advice' would reduce the regulatory uncertainty around whether or not the advice provided is personal advice or general advice.

b) In NIBA's view, the proposed changes to the definition of 'personal advice' are likely to facilitate the provision of more personal advice by general insurance brokers. NIBA believes that these changes may also encourage the provision of limited personal advice by product issuers although this advice will not have the same positive client outcomes as the holistic personal advice usually provided by brokers.

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?

In NIBA's view, existing consumer protections are a sufficient consumer safeguard in the absence of financial services regulation under Chapter 7 of the Corporations Act and the ASIC Act.

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) The replacement of the best interest obligations with an obligation to provide 'good advice' will allow advisers greater flexibility in how they form a recommendation and communicate their advice to clients. NIBA notes that the current obligation is very broadly drafted and will require clarification in order to prevent consumers from inadvertently receiving poor-quality advice. While NIBA recognises that an overly prescriptive approach to the 'good advice' obligation would likely replicate the current issues with the best interest duty provisions general clarification is likely to assist both providers of advice and consumers in understanding exactly what is meant by this subjective term.

b) In particular, NIBA seeks further clarity around how advice will be judged to be reasonably likely to *benefit* the client. Where an adviser limits their advice to a particular aspect of a product the answer is likely to be easier to identify a clear benefit to the consumer. However, if personal advice. However, if the personal advice provided is regarding the broader appropriateness of the product for the client (without a market comparison) there will be aspects of the product that will benefit the client (ie areas covered by the policy) and those that might not (e.g. exclusions). Buying the product where it provides the cover will clearly benefit the client in those circumstances. However, to the extent there are exclusions it will not. It is at this point that confusion and disputes are likely to arise, and guidance will be required to assist in making the intent clearer. We note the United Kingdom obligation "to act to deliver good outcomes for retail customers" required clarification for similar reasons.

For example, how the obligation to provide 'good advice' is expected to operate in a scenario where the advice relates to the cancellation of a general insurance product in favour of another. For example, a small business owner contacts insurer A for advice on whether they should cancel their existing policy with insurer B and take out a new policy with insurer A. Insurer A's product contains several exclusions that are not present in insurer B's. Insurer A recommends changing to their product as insurer A's product is cheaper although as Insurer A is only able to provide advice on their own products, they have not compared their product to that of Insurer B. A claim is later made by the small business owner against the policy with insurer A relying on an exclusion that was not present in the policy with insurer B.

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) The replacement of the best interest obligations with an obligation to provide 'good advice' will facilitate the provision of limited advice to retail clients. However, in order for consumers to make an informed decision about whether or not to act on this advice they must first be made aware that they have received limited advice. This is especially important where the advice provider has considered some but not all of the client's needs and objectives or where the advice provider can only provide advice on a single product.

Where advisers provide limited forms of personal advice to consumers, they should be required to advise the consumer;

1) That the advice they are providing is limited; and
2) The limitations of the advice being provided (i.e., the advice only relates to the product issuer's product, or the advice only takes into consideration some of the consumers' needs, objectives and or financial situation) and the implications of this.

As stated in previous submissions, NIBA believes that the steps and processes a broker would normally undertake when providing personal advice to their client are too complex to be recreated by a digital advice platform. While NIBA supports the role of digital technology in facilitating access to affordable personal advice, ultimately any information produced by a digital advice platform would still need to be assessed by a qualified, licensed general insurance broker before a recommendation is made to the client.

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

a) limited advice?

b) digital advice?

No response

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?

This proposal is not applicable to general insurance brokers as general insurance products are not considered '*relevant financial products*' as defined by section 910A of the *Corporations Act*.

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?

In the absence of the professional standards, NIBA believes that the licensing obligations which require AFSL holders to ensure that their representatives are adequately trained and competent to provide financial services are sufficient to ensure the quality of advice provided to consumers. Additionally, the 2022 Insurance Brokers Code of Practice requires brokers to further develop their competency through relevant qualifications, continued education and training.

NIBA notes that the ASIC training obligations under RG 146 in relation to retail clients will need to be reconsidered as they relate to non-relevant providers in both the life insurance and general insurance contexts as they make distinctions between obligations related to general and personal advice. The exceptions under RG 146 for trainee advisers should continue.

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?

Not applicable to general insurance brokers.

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?

Not applicable to general insurance brokers.

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) Removing the requirement to provide clients with a Statement of Advice (SoA) would reduce the cost of providing advice to clients. While most general insurance products are exempt from SoA requirements, brokers must still provide an SoA when advising on Sickness and Accident and Consumer Credit Insurance. The time spent preparing these documents is reflected in higher fees charged to clients.

b) In NIBA's view, removing the requirement to provide a Statement of Advice is unlikely to negatively impact clients. Statements of Advice provide little value to clients and are primarily used as compliance documents. Brokers will still be required to maintain detailed file notes about the advice they provide which will provide protection to clients in the event a claim is denied. Additionally, the 2022 Insurance Brokers Code of Practice includes provisions requiring brokers to take steps to help clients understand the advice being provided to them which will provide additional protections to clients.

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) Allowing advisers to make information about their remuneration, internal dispute resolution procedures and the client's ability to access the services of the Australian Financial Complaints Authority available on their website rather than provide an FSG will reduce the regulatory burden on advisers. NIBA notes that general insurance brokers are required to provide an FSG when dealing in a financial product and providing other financial services. In NIBA's view, this proposal should be extended to cover these scenarios to provide a uniform experience for clients and further reduce the regulatory burden on financial services providers.

b) In NIBA's view allowing advisers to make information about their remuneration and other benefits they receive, their internal dispute resolution procedures and AFCA available on their website rather than provide an FSG is unlikely to negatively impact consumers. In theory, Financial Services Guides provide clients with important information about conflicts of interest, and remuneration to enable them to make an informed decision about whether to obtain advice. In practice, they are primarily used by advisers to discharge their disclosure obligations. As such they are often difficult to understand and rarely read by consumers. NIBA notes that the 2022 Insurance Brokers Code of Practice requires brokers to disclose important information such as conflicts of interest, how the broker will be remunerated, and the scope of services the broker will provide in a 'terms of engagement' document which is more accessible to clients.

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?

In NIBA's view, the proposed amendments to the reporting requirements under the design and distribution obligations are unlikely to have a negative impact on the design and development of financial products. NIBA believes the proposed amendments should be expanded to include general insurance brokers when acting on behalf of the client.

The exemption for relevant providers from the obligation to take reasonable steps to ensure financial products are issued to consumers in the relevant target markets should also be extended to brokers on the basis that in the absence of a best interest duty brokers will still have a duty of care to their clients.

Transition and enforcement

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

The proposed changes would significantly impact the way advice is provided across all areas of the financial services market. These changes would also require providers who currently provide advice under a general advice model and hold information relevant to their client's objectives, financial situation and needs to make a decision on the future direction of the businesses. As well as significant updates to training and placement systems.

NIBA notes that a number of the proposed changes would require a shorter implementation period would require fewer changes to existing systems and could be implemented sooner. For these changes, NIBA would support a phased rollout of the proposed changes with a total transition period of 24 months.

To enable consistent implementation of these reforms across different areas of financial advice NIBA encourages Treasury, regulators, and AFCA to engage with industry groups to develop appropriate guidance documents to clarify the areas raised in this submission. The United Kingdom has recently undertaken a similar move, to replace the best interest duty with a duty to act to deliver good consumer outcomes. The accompanying guidance from the Financial Conduct Authority clearly sets out practical guidance on what it considers to be 'good consumer outcomes'. NIBA encourages the review to consider a similar approach when determining the transition arrangements necessary to implement these reforms.

The general advice and personal advice specific obligations and exemptions in the Act will also need to be identified and reconsidered in light of the proposed changes. In addition to the General Advice Warning, conflicted remuneration provisions and Design and Distribution obligations noted in the proposals paper:

a) carve-outs from Authorised Representative notification to ASIC for certain representatives currently only providing general advice need to be reconsidered as the new personal advice definition will catch many persons currently acting under those exemptions e.g 916F(1AA);

b) the ASIC training obligations under RG 146 in relation to retail clients need to be reconsidered as they relate to non-relevant providers in both the life insurance and general insurance contexts as they make distinctions between obligations related to general and personal advice;

- ASIC instruments containing references or conditions relating to general advice e.g ASIC Corporations (Group Purchasing Bodies) Instrument 2018/751 or other relief provided to specified AFSL holders e.g regarding s911D

c)

General

15. Do you have any other comments or feedback?

No response.