

21 September 2022

Quality of Advice Review Secretariat  
Financial System Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

### **Response to Quality of Advice Review Consultation Paper**

In providing this response to the Quality of Advice Review consultation paper (“consultation paper”) we do so in the context of our membership consisting of a mixture of tax practitioners in both commerce and public practice, as well as authorised representatives and financial advisers under an Australian Financial Services Licence (“AFSLs”).

We note that this consultation paper does not include discussion of what was a separate point in the original call for submissions – that of tax practitioners and similar professionals giving financial advice.

While the consultation paper does note the requirement for advice to be given by a “relevant provider” we believe that the discussion of what constitutes a relevant provider should be given careful consideration based on the following:

- 1) the qualifications and expertise offered by those who are currently not “relevant providers”;
- 2) the general inability of the Australian public to differentiate between what is “financial advice” and what is “taxation advice”; and
- 3) how the inclusion of taxation advisers with a financial/commerce degree will provide a greater opportunity to meet the financial advice needs of the Australian public at a reasonable cost.

Having regard for the broader context of the recommendations in the consultation paper, that is, for the provision of “good advice”, in addition to the need for reduced disclosure documentation, the discussion with regards to the provision of advice by tax practitioners and similar professionals is a critical element of any response.

We are also discussing a group whose membership is regarded as being ‘professionals’ and who already hold the trust of the majority of the Australian public.

In terms of the recommendations in the consultation paper, we offer the following:

## **1. Categories of “Advice”**

We support the reduction of categories of “advice” as suggested by the consultation paper. The current different ‘advice types’ tend to be confusing both to the public whose level of financial literacy does not allow the distinction between ‘advice types’ to be understood, as well as with industry participants who tend to blur the lines of the type of advice being given.

To simply provide “financial advice” would be a welcome amendment.

We believe that having a single type of advice would encourage the consideration of personal circumstances, rather than create a situation whereby a relevant provider might consider whether to seek a client’s personal position or not.

### *Treatment by Regulators*

As with many of the issues covered in the consultation paper, we believe a key aspect in the effectiveness of the recommendations will be the way the recommendations and financial advisers are assessed and treated by regulators.

We suggest serious consideration needs to be given to this ‘other side’ of the financial advice industry – how regulators and the ombudsman will treat the manner in which advice has been given should the recommended changes take place.

Unless the way monitoring and supervision of the industry by these bodies is attended to, the current burden experienced by those providing advice will return. This is likely to be to the detriment of the consumer as it is due to the judgements of regulators and the ombudsman that much of the acknowledged compliance burden can be attributed.

Further, it is this aspect that is the major obstacle to having a ‘principles based’ system of regulation being adopted effectively, as the current methodology for reviewing advice would appear to be focussed on black-letter law.

The review of advice provided should instead, we suggest, be based on the ethical principles that guided a relevant provider’s advice process to arrive at what is actually “good advice”.

## **2. Regulation of Personal Advice – Application of ‘Good’ Advice**

While we are comfortable with the proposed change in requirements to provide “good advice”, our concern is the subjective nature of what “good” means and how this will be overseen by industry.

As we noted in the section above, principles-based regulation has its merits, however, any such move must be supported by a regulatory or adjudicating body demonstrating their ability to supervise in this manner. They will not simply be able to apply their own interpretation of

events but instead will need to demonstrate that they have attempted to understand the position from which recommendations have been formed and the basis on which they have been delivered.

We note that you have alluded to the fact that the need for “good advice” has been prevalent since the introduction of Financial Services Reform, and in fact has been a part of providing financial advice since before then with the “know your client, know your product” rules (of the prior version of the Corporations Law – sections 849 and 851).

We would ask that you also bear in mind that to act in a client’s best interest is an inherent part of acting in an ethical manner. While changes may be made to the Code of Ethics for relevant providers, the requirement to act in the client’s best interests exists with other ethical codes, most notably the Tax Practitioners Board’s Code of Conduct (Code item 4 – Act lawfully in your client’s best interest).

When proposing this change we believe it necessary to keep this aspect in mind, to ensure that separate obligations are not created for the management and compliance of meeting an obligation for “good advice” as well as continuing to meet a client’s “best interests”.

If putting this into effect was to create duplication, we believe it better to continue with the current “best interests duty”, and the current compliance burden relating to this to be better managed by licensees. It is our opinion that licensees have created this burden and that the legislation does not require the ‘overkill’ that currently exists and is being unfairly blamed for this situation.

This move to ‘good advice’ also supports our position of opening up the ability for professional advisers of other types to be able to be seen as “relevant providers”.

As we have stated earlier, tax practitioners are regarded as professionals, not just by their clients but are generally acknowledged as such by the public at large. They are degree qualified and often have post graduate qualifications, and provide advice directly to clients on a daily basis that is based on an understanding of that client’s personal financial situation.

With these points in mind, we believe that tax practitioners should be able to extend their advice offering to provide financial advice to consumers with the following criteria:

- That they have completed a short course on any class of product they recommend that supplements their existing degree qualification; and
- They are subject to licensing and the monitoring and supervision of their advice through a regular audit.

### **3 & 4 Fees in Superannuation**

Current superannuation legislation provides for the elements of 'what can be paid' from a superannuation fund. In terms of whether intra-fund advice or other superannuation advice is paid for by a superannuation fund, we believe consideration should be given to expanding the SIS Act to allow for payment from a superannuation fund for 'retirement planning' advice.

Such a change we believe would be commensurate with "Sole Purpose Test" for superannuation funds. This is because when planning for retirement a client does not necessarily rely solely on superannuation but may be considering investments outside their superannuation accounts (property, share investments) to help provide assets and income for their retirement.

Where we have a situation under which we are considering enabling people to fund a deposit on their home by withdrawal from their superannuation fund, the cost of providing guidance and advice to help meet their retirement goals should be a priority and would be less of a cost impost on a person's superannuation balance.

It is on this basis we recommend that any amendment to the SIS Act to provide for payment of an advice fee be given consideration.

### **5. Advice fees**

We note the identification of fee duplication under the current regime.

The duplication at several stages only serves to increase the cost of providing advice to the consumer. This is due to the time taken to review and advise on the multiplicity of documents. It also serves to confuse the consumer with the number of times they are being advised of the fees being paid.

The recommendation for this to occur in a single instance with the use of a standardised 'fee consent form' is supported by TSA for the purposes of clarity and conciseness. We believe this recommendation to be in the best interests of the client.

### **6. Disclosure Obligations**

While we understand the sentiment behind recommending the removal of Statements of Advice ("SOAs") and Financial Services Guides ("FSGs") on the basis that the preparation of such is excessive and not totally in the consumer's or, for that matter, the relevant provider's interests we believe that there is a need for these disclosure documents to remain a requirement.

We note that the legislation regarding them has not changed. The additional requirements demanded by compliance departments over the twenty years since Financial Services Reform

("FSR") have now created the substantial documentation (in both size and number) being presented to clients in the name of best practice.

In fact, it should be remembered that upon the introduction to FSR, ASIC released Consultation Paper 32 which stated their belief that a long SOA would be regarded as "misleading and deceptive".

We believe that a return to the requirement still stated in Corporations Act section 947C(6) that:

*"The statements and information included in the Statement of Advice must be worded and presented in a clear, concise and effective manner"*

should be encouraged.

The client file should include all due diligence supporting the statements made about the advice given. Where a client wishes to examine the due diligence it should be made available; relevant providers and regulators must remember that not all clients wish to see the workings behind the recommendations, nor would many clients understand them if they were to be included in an SOA.

As for long FSGs, like SOAs, we recommend that this continue to be issued but as a 'short document' to enable consumers to read and understand the important aspects of the information.

While we note the recommendation to supply a consumer with a Record of Advice ("ROA") if requested, we suggest that consumers are provided with such a record whenever they have had recommendations made. This also should meet the "clear, concise and effective" guidelines from the Corporations Act noted above.

The rationale for maintaining all these documents is twofold:

1. To ensure consumers have a point of reference to consider when away from the relevant provider; and
2. To provide a means of support should a time ever eventuate when a relevant provider is faced with a claim of not providing "good advice" or advice that was not in the consumer's best interests.

## **7. Design and Distribution Obligations**

We agree with what has been stated as "Proposal 11" of the consultation paper.

## **8. Enforcement**

Earlier in our response we have noted our concern for how the regulator will enforce standards in the future. This is particularly true when seeking to operate the industry on a 'principles-based' framework.

To this end, attention will need to be paid to the operation of the regulator in the future to ensure that any review of a situation considers the principles applied by the relevant provider, and not subjectively apply the principles of the person performing the review. Regulators should also ensure that any judgement only takes into account the situation surrounding the advice at the time it was given, rather than applying factors that arose after the advice had been given and could not have been considered at that time.

Many thanks for taking our comments into consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Pippa McKee', with a stylized flourish at the end.

**Pippa McKee**  
Chief Executive Officer