



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: Burrell Stockbroking & Wealth Management

Burrell Stockbroking & Wealth Management (Burrell) is a longstanding Queensland company providing full stockbroking, wealth management, superannuation and advisory services to private clients, Not-for-Profit and other investment organisations. Established in 1937, Burrell has achieved over 80 years in the business. Burrell remains one of the last privately held broking firms in the country. Given Burrell provides full stockbroking and financial planning services it is well placed to comment.

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?

The simple answer is, yes. The current obligations for providing retail personal advice do impede access to financial advice. They need to be simplified to achieve access to affordable advice.

The much more difficult question is how to achieve simplification without causing harm to consumers who benefit from the modern stockbroking/financial advice model. The Burrell model is to segregate clients into 5 service levels, namely:

1. Wealth Management Advice (includes portfolio advice in most cases)
2. Superannuation Advice (includes portfolio advice in most cases)
3. Portfolio Advice
4. General Advice
5. Execution Only

Modern stockbroking, and advisory businesses, have moved away from transactional based models. The regulators need to fully understand the advice models, and that many full service advisory businesses deal with the broad range of all client types. To achieve affordable access to advice, advisory businesses need to be able to continue to tailor service offerings to the categories above.

The intent of the Quality of Advice Review proposals should allow for this, and enhance consumer offerings by reducing compliance. However, it is crucial that policy makers do not cherry pick proposals, especially in the case of general advice. A general advice offering is key to the modern advisory model. This offering can be moved into personal advice, however the current documentation requirements must be removed, and there must be an exemption for research reports and seminars (which must remain general advice).

General advice is currently much broader than research reports and seminars. It covers all situations where the client has provided insufficient relevant circumstances and the advisor provides a warning to that effect. A possible solution if general advice is transferred into the personal advice category is for the Corporations Law to recognise that an advisor can provide a personal advice incomplete relevant circumstances warning, and provide limited/scaled personal advice. Our concern is the current regulatory framework does not sufficiently allow for this, once general advice is incorporated into personal advice.

One only has to look at the regulatory debacle in the banking industry post Hayne to see the risks of which we are concerned. Rather than take a commercial approach, Hayne has been interpreted by the Banks such that every customer is now being requested to provide over the top amounts of detail, and Hayne even criticized the longstanding banking practice of using different expense estimates in broad bands for different levels of customers.

Thus our concerns is that if there is a current fiduciary duty applying to all personal advice and there is not a specific carve out for what is currently general advice, the proposal to fold general advice into personal advice will achieve the opposite result i.e. there will be more regulation and less advice.

What is also key is the legislative instruments covering the adviser code of ethics (previously FASEA code of ethics) need to be amended to reflect the Corporations Act requirements. Any obligations imposed by a fiduciary duty also need to be considered. All inconsistencies need to be removed, and the Corporations Act requirements need to be the source of truth. The industry cannot be left with a situation that complexities are removed from

the Corporations Act, but the obligations remain in the code of ethics, or in fiduciary duties. If the code of ethics is not rectified, the outcome will be no advice for consumers, or at best the current status quo of no advice for those who need it most.

The policy makers must also ensure that there is not an incentive for the market to move further into non-advisory or execution only models. If it becomes harder to give what is currently general advice, or it becomes harder to give personal advice, then consumers will be left with no advice.

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?**

Our main concern with the proposed changes to the definition of personal is advice is that a fiduciary duty would apply to current general advice clients who are moved into the personal advice category. We hold gave concerns that regulators and the courts will interpret this as meaning all advisory clients will require detailed fact finders, and advisers will have to provide holistic advice in order to satisfy fiduciary obligations. If the regulators and/or courts took this view, then the reforms would be a failure. The industry would be in a worse position, as the current general advice category allows the industry to provide affordable advice to this category of clients. The reforms must ensure this interpretation cannot occur, and that advisers have the flexibility to provide scaled advice.

It is paramount that the reforms deal with the situation where clients will not provide complete relevant circumstances. The regulations need to facilitate consumer instructions. Many clients don't want to provide their personal financial information for product advice. For example, the client has made a decision about the quantum of investment and is seeking advice on what to invest in only. The regulations should allow for the financial institution to rely on this instruction, and issue a warning, without having to go through additional steps or disclosure (other than specific product disclosure e.g. PDS and perhaps specific fee disclosure).

We agree that the current definition of general advice and personal advice can lead to uncertainty. The common example is a client that starts out as general advice, for example they have a low initial investment amount, and will not provide detailed personal information. This client is looking for recommendations on one or two core stocks, and critically the client won't, nor do they have the capacity to pay for the advice other than included brokerage or a very small upfront fixed fee. The initial conversation and transaction may be general advice. What is unclear is where there is an ongoing relationship at what point in the relationship the client falls into personal advice.

In this sense, we agree that the changes to the personal advice definition will reduce regulatory uncertainty. However, the answers to (b) and (c) depend on implementation.

The key to facilitating more personal advice to consumers is:

1. Entrenching the concept of scaled/limited advice; and
2. Reducing/removing the current documentation requirements for personal advice.

Taking the example above, under the proposed changes they would be a personal advice client. Under current rules, we would need to collect their relevant circumstances, conduct a risk profile, then complete and issue a statement of advice (SOA). For the changes to be effective all those requirements need to be removed (including any inconsistencies in the code of ethics, or fiduciary obligations). We understand that is the intention of the proposals, but this point is critical.

To facilitate the provision of more personal advice to consumers, we must have the ability to scale advice, and the corresponding disclosure requirements must also be scaled. The regulations must allow us to talk to a client over the phone about stocks and investment products, and not have to issue a statement of advice or equivalent. Where there is product advice, the PDS would be provided and explained.

Our experience over more than 85 years is most clients will read around two pages of any advice document, being the executive summary and the fee disclosure. To truly improve access to financial advice, the current complex advice document requirements must be removed.

We have had the benefit of reading the draft submission of SIAA and echo the concerns raised namely:

- Research reports – should not fall under personal advice;
- It is important that any proposals consider the following issues concerning the new definition of personal advice:

- What will constitute the boundary between the provision of information and education on the one hand and the new definition of personal advice?
- How much client information will an organisation need to hold for their interactions to fall within the new definition of personal advice? How will an organisation deal with the accumulation of client information over time as that client transitions from an execution only client to one receiving more services?
- Will personal advice clients be able to be provided with one-off, limited advice with a good advice outcome, or will all advice provided by a relevant provider be personal advice?
- How will an organisation determine if an opinion or recommendation has been provided?
- How much information will need to be collected to provide scoped advice?
- Under the DDO regime product distributors are required to collect a lot of information about their clients. How will that information be treated for the purposes of deciding whether personal advice has been provided?
- How does an organisation determine if they are charging for advice?
- Providers who give once-off personal advice with no ongoing relationship are only required to meet the good advice standard. One-off advice will be cheaper to provide than personal advice provided by full-service stockbrokers and investment advisers who will be required to meet the best interests duty. Organisations will therefore be incentivised to provide one-off advice. What will constitute one-off advice? What will determine the boundary between one-off advice and an advice relationship?
- Will there be impacts on the cost and availability of PI insurance for those firms whose general advice clients are considered to be personal advice clients under the proposals?

We submit many of the practical issues can be dealt with through a significant reduction in disclosure requirements for personal advice, entrenching scalable/limited personal advice, and ensuring there are no inconsistencies between the Corporations Act, Code of ethics and fiduciary duties.

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 believe the existing safeguards are sufficient where the person giving the advice is an authorised adviser. What is less clear, is if the safeguards are strong enough for those who are unlicensed, such as someone who sets up a financial website or financial blog. It is critical that the ban on conflicted remuneration apply to all. What should be considered is if other non-conflicted revenue also needs to be restricted for those who are unlicensed and issue financial content.

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?

The core issue is that full-service stockbrokers and wealth management advisors will remain subject to the obligation to provide advice that is in the best interest of clients in accordance with the Code of Ethics as licensees are required to take reasonable steps to ensure their representatives comply with the financial services laws. Therefore, the Code of Ethics requirements need to be amended to reflect the new Corporations Act requirements. Any inconsistency needs to be dealt with. Additionally, as mentioned any inconsistency with fiduciary duties also need to be dealt with.

In the current form, the issue of whether the replacement of the best interests obligation will have an impact on the time and cost required to produce advice will mostly turn on questions concerning proposed changes to the statement of advice obligations. As submitted, the intent of the reforms can be achieved where scaled advice is enshrined, and the statement of advice obligations are removed.

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)?

We agree with SIAA that in order to deliver cost-effective limited or scaled advice that meets the needs of clients:

- clarity will be needed that the information that is obtained from the client must relate to the scope of the advice to be given rather than a full needs analysis
- Standard 6 of the Code of Ethics will need to be removed;
- the scope of what is required to satisfy the best interest duty under the Code of Ethics will need to be clarified and refined; and

- any inconsistency with fiduciary duties need to be dealt with.

The proposals impact on the ability of licensees to provide general advice, so, as regards to general advice clients, the proposals may increase the costs of advice as those clients fall within the personal advice category. By way of example, a client who completes a new client form and who has only \$20,000 to invest would currently be set up as a general advice client. Under the proposals, the client would become a personal advice client. How will the licensee and adviser deal with this client in the future? Will they be transitioned to a personal advice service or will they no longer be provided with any advice?

Initially, there may not be significant savings as organisations will need to implement new systems and processes to comply with the new provisions. The approach taken by AFCA and ASIC will be important in this regard.

The common theme remains, the intent of these reforms is generally welcomed by industry. However, in order to be effective SOA requirements need to be removed, licensees need to be able to scale advice, and the Code of Ethics needs to be amended to reflect the Corporations Act requirements.

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

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

Limited or scaled advice is key.

Licences must have the ability to scale advice, we must be able to rely on client instructions to the scope of advice (with appropriate warnings), and the current corresponding documentation required to be presented to the client needs to be removed or drastically reduced.

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?**

Refer other answers and SIAA submission.

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?

We echo SIAA comments. We do not consider that requirements outside of the current licensing obligations should apply to providers of personal advice who are not required to be relevant providers. Licensing obligations are onerous.

That being said, we have concerns about bad faith operators who will attempt to push the boundaries of the proposals and engage in regulatory arbitrage. By way of example, operators may try to operate on a 'one-off advice' model which in actuality involves an ongoing advice relationship. The boundary between 'good advice' providers and relevant providers will need to be well-policed to ensure that 'good advice' providers are not straying into an advice service which should be limited to 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?

Outside of our expertise.

However, in general we have no concerns with superfunds being able to provide advice on their products to their members. If you go to a Toyota dealer, you should expect to be sold a Toyota, and you should expect the dealer to know about their product. The same logic applies to the large super funds, and also the banks. The larger institutions have the capital backing to service the largest portion of the population, and in general they will do a reasonable job. From a policy perspective, we should not be restricting these organisations, but they should have to play on the same field as everyone else.

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?

Yes. We fully support the streamlined disclosure requirements for ongoing fee arrangements.

The current state is terrible for industry and confusing for consumers. Each platform provider has their own consent form and process. There needs to be a standard approach. We echo comments that the requirements should not be perspective, especially around the timing of the consent. Licences should be able to pick the date of disclosure to suit business requirements. It should also be easy to change this date by issuing a subsequent form. The timing of the annual disclosure should not be set, and should be flexible. The current anniversary date system is not useful as each platform provider has their own start dates. Licences are best placed to manage the disclosure date e.g. 1 January, 1 July, 1 April depending on their business and resourcing.

We do not consider that the proposals negatively impact consumers. The current provisions provide little benefit to consumers as they are confusing and complex. A streamlined annual fee estimate and consent will be a much-needed improvement for this important consumer protection.

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?

The reforms cannot be achieved without the removal of the requirement to give a statement of advice. If general advice clients are moved up the service level to personal, the SOA requirement must be removed for the advice to be cost effective. We cannot provide an SOA to a client who has \$10,000 to invest for example. To the extent any document is currently provided it would be an automated template that offers the consumer little. We are pleased that, rather than tinker with the edges of the issue of SOAs, the review acknowledges that the length and complexity of the SOA is driven by the legislative framework, and that the SOA requirements should be completely removed.

We echo SIAAs comment that the proposed changes will not negatively impact consumers as currently many of them don't read and don't want to receive a SOA. As a result, we consider that the proposals will not result in any negative impacts on consumers. The SOA is currently a shield for the licensee and adviser against regulatory action rather than a document dealing with the advice sought by the client, that is, it is a compliance-driven document rather than one focused on client outcomes. The proposal to remove the requirement to provide an SOA aligns with the findings of behavioural finance research that shows that more information is not helpful to clients when making decisions. In that regard we refer to the findings of ASIC Report 632: Disclosure: Why it shouldn't be the default that ASIC developed with the Dutch Authority for Financial Markets.

We note that the proposals will require personal advice providers to maintain complete records of their advice and that a client will be able to request a written record of that advice. This will be an important consumer protection. It will also require a process that captures the advice and the reasoning behind it.

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 agree with the Quality of Advice Review that the FSG be displayed on the relevant website, with prospective clients directed to read the relevant documents.

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 agree with SIAA that some issuers have imposed unnecessary reporting requirements in their TMDs that have impacted our members. We consider that it is unhelpful for issuers to be required to step into the personal advice space.

Transition and enforcement

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

We would support a longer facilitative approach from regulators, rather than transitional arrangements.

General

15. Do you have any other comments or feedback?

No.