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:

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?

FYI – I am the founder of a training and consulting firm that for thirty years has coached, trained and developed financial advice firms. I do not and have never held a financial advice license, have never delivered financial advice and have no affiliation with any advice or product provider. My services get paid based upon the value provided and nothing else – these views are my own.

No.
The Quality of Advice Review aims to make advice affordability and accessible.
But it does not address the most fundamental questions that will continue to confuse Australians – what is advice?
The systemic imbalance that has caused the majority of distrust, over-compliance, and costs and left the majority of Australians under-advised is a narrative, legislation and a worn-out debate, continued in this Interim Report, that financial advice and financial product advice is the same service when it is not.
I agree the compliance and cost of delivering advice have ridiculously affected both financial product providers and financial advice providers, and recommendations to reduce the paperwork/compliance have merit, however, the issue that this report has ignored is the legal separation in the Corps Act of Financial Advice and Financial Product Advice.
The second and equally erroneous assumption made in the Quality of Advice Review interim report is 'complex' is something defined by the provider of the advice rather than being properly defined by the requester of advice. Financial advice can be far more than a product purchase.

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. No – I believe the proposals will ensure more product advice providers will confuse their clients who believe they are receiving 'good' advice, when in fact, it was 'as good as we can do' advice considering the scope of services from specific 'good' providers of product advice
b. The removal of product-based compliance from non-product based advice proposal would cheapen the advice process, but the removal of product-based compliance from product-based suppliers calling their services 'advisory services' will continue the confusion consumers have suffered even since the introduction of compulsory superannuation 30 years ago – Consumers need to buying products 'clearly packaged' as either 'product advice' or 'non-product advice'
c. Inquiry after inquiry has shown the financial institutions have consistently helped themselves BEFORE helping their clients when delivering financial advice. These proposals will not change that. They will be able to deliver 'good' advice easily, but the confusion will remain in the minds of clients they are buying advice, when really they are buying 'product advice' as the institutions have no expertise, experience or desire to deliver 'non-product' advice

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?

Improving accessibility and affordability of services to consumers without addressing the packaging of advice will continue the confusion impeding Australians from accessing valuable advice. “General” Advice could be renamed “over-the-counter” advice. A range of ‘over-the-counter’ products and services should be designated by ASIC to be made available from product and service providers with clear packaging of being ‘product advice’ or ‘products’ but not financial advice.

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.

Advice is not a product similar to how the services of a pharmacist and doctors are remunerated.

The Quality of Advice Review’s fundamental assumption that financial advice and financial product advice are the same is flawed and will thus continue the status quo of distrust, lack of engagement by the majority of Australians and worse, ensure quality ‘good’ advice does not, in fact, reach those that most need it.

“Best Interests” arose from the industry’s mis-selling of products which will continue with a new definition of ‘good advice’.

Advice is only needed when a purchaser faces complexity that they can not resolve.

Some can find an affordable and accessible solution ‘over-the-counter’ while others find the range of options, the consequences of making wrong product decisions and often the emotions associated with making the right financial decision catering for multiple parties the decision might affect quite complex.

When consumers believe their ‘stakes are high’ and the ‘consequences’ of getting decisions wrong are significant, they need to understand when they are considering ‘financial product advice’ with implications, incentives and bias within the advice, and ‘financial advice’ which, like the medical practitioner, is without bias, incentive and is comprehensive.

b.
Of course, reducing the product-driven compliance paperwork of best interests will reduce the time and cost of producing product and non-product advice.

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)?

Over-the-counter advice is limited advice – Over-the-counter product advice is similar to many purchasers consumers make such as those at their local hardware store. This market should be allowed to develop PROVIDED pricing is articulated in dollar amount not percentage amounts. Providers of product advice have for too many years confused their clients with the clarity, extent and size of their annual fees for too long.
B Digital advice will only be cost-effective and supplied by huge financial institutions, and as such, any advice should be packaged as financial product advice which should equally be packaged as 'good product advice' as by the nature of the provider it can never be impartial or comprehensive as the solutions will be based similar to other distribution hubs like Coles and Apple, thus constrained not to serve the 'broad' interests of each consumer but the common interests of most consumers.

6. What else (if anything) is required to better facilitate the provision of: **a) limited advice?** **b) digital advice?**
Limited and Digital advice should be allowed to thrive. It must be packaged for what it is – "financial product advice" and cigarette-type packaging is required to notify the purchaser this is not 'financial advice' but 'financial product advice' – All 'over-the-counter' advice must be priced in clear annual dollars 'on the front page' of any engagement agreement and be refundable at any time with a clear understanding of the limit of choice and it not being comprehensive advice – warnings should be provided that all the complexities a client may face are not being addressed and there are alternative providers of 'financial advice' whose remuneration is not based upon products purchased by the quality of advice are available.
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?**
Expecting product or service providers to self-assess has not worked in the history of financial advice services. It has led to many inquiries that have forged these ridiculously tight product-based rules in the first place despite the millions spent on inquiries over the last 30 years.

By the end of this decade, superannuation fund balances will be reaching $7T, ensuring a flood of new product and non-product providing entities, particularly technologically driven providers, eager to 'clip' a growing $7T pool of funds.

Without tight and tougher protocols, assuming self-assessment in the future financial advice marketplace will be as effective as hoping society de-carbonises due 'good will' – it will not happen – standards and targets need to be set; otherwise, the self-interests of providers and their stakeholders will not only continue but prevail perpetuating consumer distrust and apparent policy ineffectiveness. The consequential social and political damage will be significant.

FASEA Code of Ethics provides the framework for professional standards and, unlike today, needs to be strongly enforced.

There must, however be changes.

To achieve greater accessibility, affordability, valuable advice, and build professional standards, the foundation of standards is not a product or service but what advice is intended to resolve – a complexity.

Advice solutions can either be complex or non-complex.

So too, with clients, their requirements can appear complex to them or simple, regardless of the technicality of advice.

In the real world, client and advice complexity are not connected but interconnected.

Refer attached grid of advice types and how best to apply existing professional standards:

Four Advice Sectors™

TYPES OF FINANCIAL ADVICE– INTERIM LEVY REPORT

™ The Four Advice Sectors is a trademark of Strategic Consulting & Training Pty Limited trading as Certainty Advice Group - www.certaintyadvicegroup.com

The horizontal axis dividing the sectors represents the complexity of the purchased financial product or service.
It ranges from simple financial products and services (e.g. transferring a small superannuation balance) to far more advanced financial products and services (e.g. handling complex family estates with multiple vested interests and beneficiaries).
The vertical axis dividing the sectors represents the complexity of the clients' issues seeking advice.
It ranges from simple problems, concerns and consequences (e.g. young couple seeking a savings plan) to much more severe and significant consequences (e.g. saving a marriage crumbling under excessive financial pressure).

OVER-THE-COUNTER ADVICE

The Over-The-Counter Advice sector desperately needs the promised red-tape cutting to create greater access and affordability for more Australians.
However, any new reform policy must also create a level marketplace that fosters competition, service differentiation and price transparency within all advice sectors, and particularly the Over-The-Counter Advice sector.
ASIC must work with the advice industry to define simple products and services (e.g. mortgages, shares, savings, insurance, loans, credit cards, tax, superannuation, and property transactions of agreed balance limits and features) for distribution 'over-the-counter' via Over-The-Counter Advisers.
Individual providers, not firms, must be licensed for specific simple product groups.
Over-The-Counter Advisers will require initial and ongoing accreditation and experience to hold and maintain a license, but they will not require a university degree.
Fees for Over-The-Counter Advice can be in whatever method the client and provider agree (hourly rates, brokerage, flat fees, or fees for service). However, every sale by every client must be approved, signed and consented to by each client, with all associated costs clearly expressed in dollar amounts for the purchased services and products.
There can be no ongoing advice fees for Over-The-Counter Advice or any of the four advice sectors.
Building upon the vital work of the yet-to-be-enforced FASEA Standards, the following Standards must be adhered to for Over-The-Counter Advisers and providers:

- #1 (obey the law);
- #2 (act with integrity and in the best interests of each client);
- #4 (act only with client consent);
- #7 (client gives informed consent of all adviser benefits);
- #8 (maintain client records);
- #9 (all advice is in good faith);
- #10 (maintain knowledge and skills);
- #11 (cooperate with the authorities); and
- #12 (uphold and promote ethical standards).

Over-The-Counter Advisers and providers may include accountants, financial advisers, mortgage brokers, insurance brokers, and fintech advisers, provided all adhere to accreditation, experience levels and noted FASEA Standards.
Governed by FASEA Standards #2, #9 and #12, Over-The-Counter Advisers (and all advice sectors) must refer to other advice sectors (i.e. Counselling, Specialist or Principal Advisers) when client issues or needed services and products are beyond their licensing authority.
Over-The-Counter advisers and provider firms will resemble many of today's accounting, mortgage brokering and financial planning and similar firms proudly serving their communities with quality financial products and services. These firms will become the first point of contact for many ordinary Australians currently excluded from the financial advice marketplace.

SPECIALIST ADVICE

After the tragic 1996 Port Arthur massacre, Prime Minister Howard was only a month into his role but managed to forge significant gun laws restricting access to advanced types of weapons.
The same logic should apply to advanced financial products and services.
Advanced and complex financial products should only be available to Australians from Specialist Advisers licensed for specific advanced products and services.
Due to the complexity of a particular product or service, financial product specialists perform a role similar to engineers and pharmacists when either the complexity of a development project or the need for certain drugs requires more than off-the-shelf solutions.
As well as the FASEA Standards being adhered to by Over-The-Counter providers, Specialist Advisers must also adhere to the additional Standards:

- #5 (Advice is appropriate for individual's circumstances); and
- #6 (Advice is consistent with the client's broader long term interests).

Specialists Advisers can also charge for their services in any agreed methodology (fees for service, brokerage, hours, flat fees or combination thereof) with all costs clearly expressed for every client for every transaction in dollar amounts.
Specialist Advisers may include investment specialists, underwriting experts, aged care specialists, tax experts, brokers, finance specialists, trust or estate lawyers, valuers and similar financial expertise.

PRINCIPAL ADVICE

Principal Advisers perform a similar role to medical physicians.
In Australia, medical physicians are considered the specialist general practitioner, providing a high-level specialist approach to comprehensive diagnosis, treatment and patient management.
So too, a Principal Adviser's speciality is comprehensive advice for clients simultaneously dealing with both complex life situations and complex financial services or products.
Principal Advisers will focus on specific niches of client and technical complexity.

For instance, the number and variety of client and technical complexities involved when sibling families conflict as complex estates are being distributed would probably require Principal Advice.
Principal Advisers can not have any perceived or real conflict associated with their advice when advising comprehensively and treating both personal and technical complexities. Therefore as well as the FASEA Standards being adhered to by Over-The-Counter and Specialist providers, these advisers adhere to the most controversial FASEA Standards:

- #3 (Not acting, referring or advising where there is a conflict of interest or duty.

Australians may only require a Principal Adviser if and when complex personal and technical situations arise during their financial lives.
Notably, the ultimate reason for access to any advice sector is primarily the agreed level of complexity to be resolved rather than the amount of wealth to be managed.
Once a client's technical complexities are resolved or reduced, those clients still confronted by non-technical, personal financial complexities may require the advice from a Counselling Adviser.

COUNSELLING ADVICE
The financial services industry lacks the equivalent of a 'nurse' role.
These roles provide the day-to-day essential health role that advises on a range of technical issues but, more importantly, manages the majority of the complex personal issues faced by those unfamiliar, vulnerable and unable to best progress without external support.
Counselling Advisers are another advice sector currently strangled by excessive red tape.
While Counselling Advisers deal with less technical financial products and services than Principal Advisers, any technical product or service will have less long-term benefit without their care and advice on a client's complex personal issues.
Similarly, technically accredited as Supplier Advisers, Counselling Advisers are additionally accredited and continuously skilled in client management, treatment and strategic helper competencies.
Being responsible for comprehensive personal advice, Counselling Advisers must adhere, like Principal Advisers, to all twelve FASEA Standards. Importantly, therefore, neither Counselling nor Principal Advisers can be affiliated or receive any benefits from firms providing Specialist or Supplier Advice.

The primary issue for Australians seeking advice is packaging.

Clearer packaging, delineation and remuneration of what is being purchased, advice on its own merits without provider incentives or advice aligned to provider incentives is central to any reform to make advice valuable, affordable while increasing accessibility.

The secondary issue for Australians is trusting the enforcement of agreed standards and delineations of advice types.

This was ASIC and is currently Treasury's responsibility. Is Treasury ready and able to provide this enforcement?

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?

No.
The Australian Professional and Ethical Standards Board (APESB) tried to introduce Standards (APES230) in 2021 for the provision of financial advice by any professional accountant being remunerated for financial advice. After multiple attempts, APES230 failed due primarily to the opposition by incumbent financial product providers to the status quo. Justice Hayne, in his interim report during the 2018/9 Banking Royal Commission, opined on the possible separation of remuneration of financial advice from financial product remuneration.
Once consumers can easily identify those providers that are paid because there is a financial product and those that are paid regardless of the financial product they will make better choices and decisions regarding obtaining financial product advice than obtaining financial advice.
Without a re-packaging of financial advice and financial product advice based upon remuneration, Australians will continue to distrust and be abused by today's financial advice industry who will remain aligned to the distribution of financial products at the cost of impartial financial advice being delivered to more Australians.
The provision of cheaper financial product advice is not a path to the provision of 'good advice' for more Australians, it is only the provision of 'cheap advice' for product-seeking Australians.

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?

a. Superannuation funds can represent the superannuation needs of their clients but are conflicted when recommending their members their 'best possible path' compared to their 'best possible product path provided the product is within the scope of the fund's approved list – this is easier for their members without complexity, but confuses their members who believe their circumstances are 'different' and require non-product advice
b. The definitions of product and non-product advice might make it easier for some members facing non-complex situations but not for those facing higher stakes when complexities are high and decisions harder.

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?**
a) There is no such thing as 'on-going' when it comes to advice. This concept is a 'product' term. Ongoing must be re-packaged 'annual' fee with no duty or need to renew if there is no value regardless if the relationship is of a 'financial product advice nature' or 'financial advice' nature.
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?**
SOAs are a direct result of past faulty attempts to regulate product distribution as 'advice'. Their removal is logical and should never have been considered of value to any client. Just like pilots do not share their flight plans with their passengers, the flight plan is still crucial but should remain in the cockpit under the care of each client's provider (either product or advice provider) Their introduction was doomed from day one. The only negative response could be the lack of consistency of advice documentation as to what is the scope, price and strategy of advice if/when clients 'shift' between providers.

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?**

The Financial Services Guide is fine print providing vital information about licensing, compliants and fees

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?**

Transition and enforcement

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

There should be a two-year period of change to allow financial advice and financial product advice providers to repackage their services and adjust their websites, and documentation.

General

15. Do you have any other comments or feedback?