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

Email	AdviceReview@TREASURY.GOV.AU
Mail	Secretariat, Quality of Advice Review Financial System Division The Treasury Langton Crescent PARKES ACT 2600
Enquiries	Enquiries can be initially directed to AdviceReview@TREASURY.GOV.AU

Appendix 1: Consultation template

Name/Organisation: Michael Rice, self-employed actuary

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?
I support the proposal to remove much of the existing documentation and compliance for providing personal advice. However, it is important to replace this with sensible rules. The proposed Good Advice is too vague, subjective, and open to abuse. It is a low bar to state that Good Advice would be reasonably likely to benefit the client, having regard to the information that is available at the time the advice is provided. For example, recommending that a consumer begins to save money by investing in an expensive average-performing product would meet the definition as the act of saving itself makes the consumer better off. However, the strategy is deficient when far more appropriate products are available. I agree that “best (financial) interests” is subjective and difficult to quantify, so Good Advice is a better measure. However, the proposal could be improved by considering categorisation of advice into areas relating to the risk of harm for consumers (as set out in my submission in June). Compliance can then be much lighter for relatively harmless advice but more stringent where the risks are higher.
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 – While the proposed definition would remove much current regulatory uncertainty, the replacement needs to be thought through. Good Advice is highly subjective and needs more clarity than set out in the Proposals Paper. By limiting the definition of Personal Advice to recommendations/opinion about financial products (or classes thereof), it completely excludes strategic advice. We regard this as an enhancement as it will allow people to give (unregulated) advice on savings and budgeting *inter alia.* The change does not address existing exclusions in the definition of Financial Products. For example, investment properties, savings via ADIs, investing in cryptocurrency, or assisting with Aged Care or access to the Age Pension. These are areas where consumers can be exposed to harm if they receive poor advice. B – Yes, the changes will increase the number and types of entities providing Personal Advice. C – Yes.
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?**
There may be examples of consumers obtaining general advice and, based on the new information, then seek to purchase a product directly from an institution without seeking Personal Advice. Once again, the risks of harm are low with many simple products, but it is dangerous for a consumer to be self-directed in riskier areas. Perhaps some riskier products should not be sold without accompanying Personal 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) In general, the change should have little impact on the quality of advice. However, riskier investments which are potentially harmful need more explanation and it is not clear that the change as proposed will prevent (say) another Storm Financial debacle. Elaboration of what is Good Advice by relating it to potential harm (categorisation by risk) would be a major improvement.

b) The time and cost should reduce dramatically, particularly for simple pieces of generic 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)?

a) Yes.
b) Yes.

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

a) limited advice?

b) digital advice?

It will be a lot simpler to deliver limited advice and digital advice under the proposals.

Thought needs to be given to educational standards applying in these areas. It is likely that the advice will be simple (though not necessarily free of risk for consumers). The delivery of simple advice, usually related to a single topic, does not require a qualified financial adviser. It might require an independent expert to verify the accuracy of the calculations – for example, an actuary might sign-off on the accuracy and soundness of a retirement calculator.

Once again, if Personal Advice was categorised by risk, it would be relatively easy to set out the requirements for different types of limited and digital advice.

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?

The proposed changes will open the marketplace for Australian consumers to access simple advice at a reasonable cost.

If the definition of Good Advice is tight enough, we expect that consumers would be able to purchase one-off simple pieces of financial advice readily at a direct cost ranging from free for some forms of intra-fund advice (as happens today) to costs ranging up to $500.

There may be arbitrage of some advice services, given they can be delivered cheaper digitally or by super funds relative to advice provided by financial advisers.

This could lead to a new marketplace of low-cost efficient personal advice on many simple topics, provided by institutions which will scale up the service.

A separate segment of advisers will focus on clients prepared to pay much higher fees due to the size of their assets at risk or the complexity of their personal affairs. In essence, the adviser market has already moved to these clients and away from middle Australia.

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?

Without professional standards, there is a risk that an institution or a financial adviser will issue inappropriate investments under the veil of Good Advice.

For example, an adviser is asked by a client whether they should buy Cryptocurrency or invest in start-up technology stocks. The adviser states that this is a great diversification strategy, and they should put up to 20% of their portfolio into these areas as "it is the way of the future". On the surface, this appears to be Good Advice as the client has shown an interest in these asset classes, and the adviser is not recommending too large a stake. However, these are speculative investments with high probabilities of significant losses. It is questionable whether a retail investor should have any exposure to this class. When losses occur later, the adviser seems protected by claiming it was good advice at the time.

Similarly, should a financial adviser recommend superannuation on an investment platform for any retail investor? The chance of outperforming a strong industry fund like AustralianSuper is remote – without taking risks which expose the retail customer. The defence to this situation will be that an adviser does not need to offer Best Advice, merely Good Advice. Therefore, finding the optimum outcome for consumers is not necessary.

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) Yes.
b) Yes.

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?

The proposed structure is sensible. Note that other professionals such as accountants can explain their fees much more easily, so this brings financial advice into a similar structure.

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?**
Yes. Much of the existing disclosure is based around compliance. There is a widespread fear of being caught on a minor misdemeanour by ASIC. The compliance regime adds greatly to the cost of delivering advice to retail consumers. For simple advice, the documentation should be brief and comprehensible for the consumer. There should be guidelines provided for the contents of any written advice to endure that consumers are not negatively impacted by not fully understanding the advice.
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?**
It makes sense to provide an FSG on a website as that enables the provider to update it every time there is a change. At present, some changes are deferred until the FSG is reprinted (usually annually). The key is to allow consumers to access the information they need. A website is a suitable vehicle.

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?

It is relevant for an adviser to explain why they believe a product is suitable for a consumer outside the TMD.

A high-risk product with potential for investment losses might be aimed at sophisticated investors who can accept some losses. Allowing other consumers to purchase this product could be very risky, and an adviser should explain why they have chosen this vehicle notwithstanding the consumer is outside the TMD.

Transition and enforcement

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

Most of the changes could be implemented immediately the legislation is passed.

General

15. Do you have any other comments or feedback?
The Proposals Paper is deficient in some areas. For example, you exclude education as that is being handled separately, but imply that existing educational standards will still be needed for professional financial advisers. You ignore the fact that current educational standards are deficient and assume everyone is a face-to-face planner needing skills in all areas including those in which they don't work. For example, stockbrokers must learn about life insurance and life brokers must know about investments. Further, there is little credit given for those with post-graduate qualifications (such as actuaries or accountants) even though they could make valuable advisers.