



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?
Yes
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?
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?

Yes, sufficient

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?**

This is the only way to enable institutions to deliver personal advice at scale, and thus help reduce Australia's advice gap. I do not see why such a change should result in any reduction in the quality of advice to consumers.

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)?**

Yes and Yes.

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

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

I comment on three areas where I believe the right changes to the law will lead to greater availability of good advice and better information, to more people, at lower cost:

1. I think greater clarity is required as to the extent to which a provider of personal advice is allowed to have a conflict of interest in so doing, and if so, what processes must be followed and client consents obtained. Given the broad and sweeping nature of the proposed change in the standard required of personal advice, from "best interests" to "good advice", I recommend going back to first principles and asking whether and in what way the law ought to intervene in this area.

If the law requires a party to act in the “best” interests of a party then it follows that even absent any specific legislative requirements about conflicts of interest, there is an implicit recognition that it is an issue that a provider has at a bare minimum to think about. However, if a provider of personal advice has to provide “good advice”, on what basis should the law intervene at all? It’s up to the provider to satisfy itself that its advice is good, and it should be free to construct and recommend its own products, or work with any party it chooses, even related parties. And it should be free to enter into any commercial agreements and receive any conflicted remuneration in order to put itself in a position to provide this good advice. I just cannot think of the public policy rationale for interfering in any such arrangements.

Thus, I don’t think there should be any legislative prohibition on a provider of good advice having a conflict of interest. If the provider wishes to construct a product using component parts made by a subsidiary, they should be free to do so (in the same way car manufacturers are allowed to do so). If a provider wishes to offer only its own products, they should be free to do so. Yes, they can do so now, but providers of personal advice have to jump through hoops to do so - which is logical where they are required to act in the “best” interests of their consumers.

I can see a role for requiring clear disclosure so that a customer is aware of the conflicts of any interests involved, and can therefore form their own views as to whether they wish to accept the advice or not: thus, if Bank A gives investment advice and the portfolios it is able to recommend from are all managed by its subsidiary company *with its own brand*, it should clearly highlight this relationship. But if Stockbroker B or Asset Manager C give personal advice relating to their own products, offered under the same name, then prima facie the relationship is inherent and obvious to everyone. Thus, if you sign up online to access an investment portfolio via the “Stockbroker B Digital Managed Portfolio Solution”, the only surprising thing to a consumer would be if they ended up with a portfolio managed by *someone other than* Stockbroker B! (And yet, this is what happens today with at least two providers I am aware of, such is the distorting and confusing nature of current conflicts of interest rules in the Act).

Hence, I disagree with the statements made in your Proposals paper on this issue to the effect conflict prohibitions including bans on conflicted remuneration should continue to apply:

- “The conflicted remuneration provisions would also need to be adjusted so that they continue to apply to conduct which is currently general advice”. – Para 2 in the Short Form proposals section.
- “The proposal should not permit the provision of benefits which would influence a person to recommend a product (irrespective of whether the recommendation constitutes personal advice).” – 1.9 Consequences of General Advice ceasing to be a financial service. Actually, are you suggesting the prohibition should apply even if personal advice is not provided?

How would this work if General Advice was no longer a category and the entity was merely providing financial information? And more importantly, what is the public policy rationale for interfering in this area?

- You have a statement in section 2.14 Digital Advice Providers that I think highlights the philosophical differences in our thinking in this area: “I do not dismiss the real possibility that a digital advice provider may provide advice that serves the interests of the provider” (page 23). My question is: Why would any digital advice provider provide advice unless they too in so doing were to receive a benefit, whether financial payment and/or a belief that it would lead to a better, and hence, “stickier”, long-term relationship with the client? Why does *any* provider provide *anything*, unless it believes there’s something in it *for the provider* (And I mean to include not-for-profits in this rhetorical question)?

You have gone back to first principles in suggesting a shift to good advice, and it follows that the same fresh thinking is required in determining in what ways if at all the law should intervene regarding the issue of conflicts of interest.

2. Similar to the above point, in recommending a shift to a good advice standard, I suggest the Review ask the question: what is the rationale for the law continuing to interfere in commercial matters between product providers and investment platforms – the prohibition on so-called shelf space fees. I refer back to our comments in our original submission.
3. And thirdly, I also refer back to our comments in our original submission regarding the logic of allowing accountants to be able to speak more freely and naturally with their clients without the need to be licensed under the AFS regime.

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 are logical and sensible.

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?

Yes.

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?

No comment.

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) Yes
- b) No, I can't see why they should.

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) Yes.
- b) No.

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?

No comment

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?

No comment

Transition and enforcement

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

No comment.

General

15. Do you have any other comments or feedback?

I look forward to seeing

