



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: Sky Summit Financial

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?

Product issuers/providers should only be allowed to provide and be clearly labelled “Product Recommendations”. This ought to be distinctly different from “Professional Advice” which can only be provided by a suitably qualified Financial Adviser who ought to be completely independent of any product provider/issuer. Any reasonable person should be able to discern that a “professional financial adviser” cannot be connected with or controlled by a product provider. I doubt people would value and trust their doctor as much, if they knew the doctor was employed by Panadol?

In some areas yes, but others no – some of the obligations, while onerous are beneficial for both the client and adviser.

For example: Requirements such as consideration of the client’s entire unique situation when providing ‘personal advice’ is good for all parties. It helps all parties gain the most value out of the interaction. Reduction of this obligation to be just a ‘reasonable’ or ‘limited’ consideration of the client’s situation may lead to cutting corners and assumptions that may cause inaccurate or detrimental advice being provided.

Additionally, allowing product providers to re-enter the advice space may create an unavoidable conflict of interest as there may be a tendency to move all clients towards their branded product whether or not this would be the most suitable in the market and if there is no obligation to do more than believe the move would be reasonably beneficial or take a limited consideration of the client’s situation it may compound the issue.

It may be beneficial to have a distinction between what is ‘product recommendations’ (recommendations provided by the product aligned staff) and ‘personal advice’ which is provided by professional financial advisers who have to consider the holistic position of the client.

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) Yes, but only so far as if there is no or limited regulation to be ‘certain’ about then uncertainty will by default be reduced.
- b) Again, this will depend on the situation this is applied to – yes, where you have a highly ethical and knowledgeable adviser who is willing to self-regulate and set their own high standards then yes the reduced compliance and paperwork may help them provide clients more personal advice. On the other hand, it may reduce the level of ‘personal advice’ if the advice given is sub-par. Product related employees should not be able to give advice, customers should know this is biased product recommendations. Calling this advice is harmful to the advice providers and consumers.
- c) Yes it will, it seems to be designed to do this, however how ‘helpful’ that advice is will likely vary.

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?

General advice in a way has always been problematic in that in many instances it can be confused for personal advice or it can be misleading as it is usually presented in a way that highlights the benefits and downplays the disadvantages. Therefore, removing the current regulations will likely have little impact on that

issue regardless.

However, safeguards that act in similar ways to advertising regulations might be a good starting point, i.e. regulations that require the advice to not be unsolicited with the motive of selling a product. Mainly as this may prevent vulnerable individuals from being targeted under the guise of being provided with 'general advice'.

There would need to be a process explaining to the client what product advice is and what professional advice is (assuming we do away with the General and Personal distinctions?). If a client at any time expresses uncertainty about understanding product advice or wanting boarder or personal advice, then the customer must be referred to a professional adviser and any product transaction be prohibited.

The best to deal with his is to do away with general and personal distinctions. Advice and to be called advice can only come from an independent professional adviser, otherwise it is biased and conflicted if coming from a product provider.

Additionally, requiring those who are providing 'limited' or product aligned advice to disclose in each transaction that the advice is limited and product aligned to the client.

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) As with most things this will likely depend on the adviser. Those who are motivated to provide quality advice will do so regardless of the regulations. Those who are not will generally work to the lowest required level – this is in essence human nature. If the bar is lowered many will adjust accordingly. Additionally, the good advice or the best interest duty need only apply to product advice. Personal advice or "professional advice" should have a fiduciary duty as a regulation.
- b) The proposal seems to be designed to reduce the time and cost of advice which is a good goal, however the method of achieving this goal is important. Simply eliminating all aspects of advice that are time consuming and costly is not a good answer. Sometimes it is good to have a little pain to avoid complacency and laziness. You want individuals in the industry who have the right motivation.

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 – however is this a good thing if we are eliminating the distinction between personal and general advice? Is it going to be explained to the client that the advice is limited? If not, how does this serve the client? It only makes it easier for product providers. The advice by professional advisers would remain the same.
- b) Yes – and again while this is good in a way of making advice cost effective, caution should be exercised when entering this space – will the client be made aware of the limitations of this sort of advice. Also how do you ensure robo advice is independent? It seems it would be easy for product providers to build robo advice software that had biases towards their own product and at the end of the day who is then responsible if it turns out this wasn't the best for the client?

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

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

- a) Ensuring the client is fully aware that it is limited, product based advice.
- b) Ensuring there is sufficient regulation to prevent robo advice software from being product biased or at least having to disclose if the software is biased to a product.

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?

- a) As per the above answer this will likely depend on the adviser. Those who are motivated to provide quality advice will do so regardless of the regulations. Those who are not will generally work to the lowest required level – this is in essence human nature. If the bar is lowered many will adjust accordingly.
- b) For those new to advice (both clients and advisers) it will likely mean advice is more affordable – however how often do existing providers change their fee model whether or not their costs reduce? Clients already paying high advice fees will likely continue to do so as unless it is pointed out to them that the cost to provide advice is now less and they ask to have their fees reduced. What is the motivation for advisers to reduce existing clients' fees if there is no requirement to do so?

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, there is ample historic proof that simply meeting 'training requirements' is not sufficient. An adviser who is providing personal advice at any level (limited or not) should be required to be a professional with a wide knowledge base that is independent of product. Anything that is product aligned (as would be the case in the 'limited' advice scenario where personal advice is being proposed to be allowed without being a relevant provider) is open to bias which reduces the quality of advice received by the client, as the underlying agenda is sales not advice.

- a) A level of accountability for the advice provided should be enforced on the licensee – this was evident in the royal commission where front line staff were essentially thrown under the bus by the institutions who claimed they did not encourage the toxic sales driven environments. This industry is complex and constantly changing – without motivation for licensees to keep their staff up to date and across the changes, a simple 'tick box' training requirement does

little. Especially if the training is designed and controlled by the institution as they can in-build their own product biases to further reinforce the sales agenda.

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, it makes it more expensive for the collective with very little benefit to the collective – it is essentially legalising ‘fee for no service’ as if a client is being charged an advice fee as a standard fee for holding an account but then is not seeking advice how is this beneficial for them. Further, a collective fee does not exclude the right of the trustee to then charge another separate ongoing/one off advice fee to those clients who do seek advice at a set time, with no regulated amount or proof that the fees is less because of the collective fee. It seems like double dipping.

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, likely significantly as there will be less work, therefore less staff costs (and related costs) and less software costs.
- b) If this cost saving is passed on and it doesn't come at the quality of the advice then it should benefit the client due to the reduced cost of advice. However, if the cost saving does not get passed on the client will pay the same high fee for less service.

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?**

As in question 10.

- a) Consider PI costs for the adviser and the then impact on the cost of advice? As insurers may be reluctant to cover advisers if the advice is no longer documented in any way.

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?**

- a) No change, this is what most IFAs already do in that the FSG is required to be given to the client and it is required to be on the website – it just removes the burden of making sure the client understands it.
- b) It will negatively impact clients who may not be motivated to go out and gain their own understanding the provision of advice and related costs.

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?**

- a) Given the fact these are relatively new requirements and that the vast majority of products were designed prior to these requirements it will likely have little impact on the future design and development of products. However, if they are only required to be applied when a complaint has already been received about a product is it not too late?

- b) While these documents are not perfect, if these are simplified too much or eliminated entirely at the same time as 'product based' advice is re-introduced it may make it harder for individuals to gain simply structured explanations on the product for which they have received 'limited' advice on. If used as designed TMD may aid clients in understanding the advice they have been provided if it is only based on a 'limited' basis.

Transition and enforcement

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

General

15. Do you have any other comments or feedback?

1, Consider the impact of Advisers obtaining PI cover.

2, Allowing product providers to provide advice is what lead us to terrible outcomes for both consumers and advisers in the first place. Advice and product must be separate as these conflicts can never be adequately managed, if we really take a good hard look at the situation. Product providers being allowed to give advice in any way, shape or form just opens the door for large organisations to increase their distribution methods while leaving consumers more vulnerable.

