

Appendix 1: Consultation template

Organisation: Actuaries Institute

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. The current obligations focus on the processes to be followed, not on the content of the advice, and so do not necessarily benefit customers.

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, although there may need to be greater clarity around what it means for a provider to have or hold information about the client's objectives, needs or any aspect of their financial situation. For example, what if the provider only holds partial information?
- b)** Yes, but only if the other aspects of the proposals proceed.
- c)** Yes, as the change in definition (coupled with the changes to the obligations when providing personal advice) will encourage providers to assume they are providing personal advice when in doubt, to the benefit of consumers.

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, provided that other consumer protections that applied for general advice are amended as set out in the proposals paper (e.g. Corporations Act amendment to ensure conflicted remuneration provisions continue to apply when an AFS licensee provides information about a financial product). The Design and Distribution Obligations are other important protections.

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) We believe that the replacement of the best interest obligations with the obligation to provide 'good advice' is unlikely to materially diminish the quality of advice provided to consumers, acknowledging there is an inherent tension between quality, cost and affordability. As mentioned in the proposals paper, a 'good advice' lens is already applied by the courts and AFCA when assessing the quality of advice. Other than the overarching obligation to act in the best interest of the client in providing the advice, the Chapter 7 best interest obligations focus on process not outcomes. The requirement to act in the best interest of the client would continue to apply under the proposals for AFS licensees as they must also comply with the financial adviser professional standard Code of Ethics, and the more complex the advice, the more likely it is to be provided by a relevant provider under the proposals. We believe that consumers would value knowing when the best interest of the client have also been considered as an extra safeguard for complex advice, and the proposals could be extended to make it clearer to consumers where a best interest lens has also been applied.

In addition, we believe that appropriate guidance will need to be given to help individual providers and institutions determine what 'good advice' is. This is important as there is a danger under the proposals that 'good advice' becomes 'good enough advice' in a desire to balance quality versus affordability. In the proposal paper, 'good advice' is defined as advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided. The meaning of 'likely to benefit the client' is open to interpretation. This is not a new issue. It will be too costly and inefficient to leave to the judicial system to interpret the meaning of good advice and this may also create further uncertainty for practitioners.

Guidance could be through ASIC issuing reports and guidance to provide examples of what it believes constitutes 'good advice'. This approach does however shift the onus of determining what constitutes good advice from the industry onto the regulator, with the accompanying difficulties of having to ensure that their guidance is indeed good practice

and up-to-date. Alternatively, ways could be found to foster collaboration between the various industry professions to identify and reconcile alternative points of view, leading to the development of industry standards as to what constitutes ‘good advice’.

One additional suggestion to assist is to require all providers (including superannuation fund trustees and AFS licensees) to have a ‘good advice governance framework’, similar to the ‘investment governance framework’ currently in place for superannuation fund trustees. The ‘good advice governance framework’ could include requirements for providers to state:

- What principles are applied when defining ‘good advice’. The Institute suggests going one layer down under the overarching definition that is specific to the topics of advice provided and the scope of considerations.
- How they determine appropriate measures of ‘good advice’. It could be quantitative measures, qualitative measures, or both.
- How they determine that employees who provide personal advice (relevant providers or not) are qualified to provide ‘good advice’ in the circumstances. This could include, but is not limited to, the qualification, experience, education, and training requirements for the individuals. If these individuals are members of a professional body, they should rely and refer to relevant professional standards and other professional practice documents to support them providing the appropriate personal advice with high standard of practice.
- How they determine digital advice tools (with and without an individual using it to provide personal advice) were designed to be qualified to provide ‘good advice’. This could include, but is not limited to, the qualification of the individuals (whether internal or external to the providers) developing these tools. Similarly, if these individuals are part of some professional bodies, they should rely and refer to relevant professional standards and other professional practice documents to support them providing the appropriate advice with a high standard of practice in developing the tools.

b) We believe their removal will reduce the time and cost required to produce advice given the reduction in compliance and procedure driven documentation requirements.

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, as the focus can be on outcomes not processes, and with a reduced compliance burden.

b) Yes, subject to ASIC also simplifying other related instruments (see 6b) below). The best interest obligations assume that there is an individual providing the advice – clearly not the case for digital advice.

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

- a) limited advice?**

b) digital advice?

- a)** It will be important to ensure consumers understand it is limited advice and not all aspects of their individual relevant circumstances have been considered or explored. This requires brief and clear disclosure in plain English, making it clear what information has been considered, and what other information would be relevant if the provider had access to this.
- b)** The new ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603 released on 30 June 2022 covers statement projections and superannuation calculators which form part of digital advice provided to members. The new instrument moved to a more principles-based approach, which aligns with the direction of the Quality of Advice proposal paper. However, there are still areas that require further alignment. For example, providers should be able to provide statement projections incorporating the personal information they know about the member/s, as opposed to ignoring them in preparing statement projections in order to comply with the ASIC relief.

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)** We believe the proposed changes are unlikely to impair the overall quality of financial advice as all providers (including digital providers) will be subject to the requirement to give 'good advice'. The more complex the advice sought, the more work the provider (and institution) will need to do to be satisfied the advice provided is 'good advice', and the more likely this will be carried out by a relevant provider, even if there is no fee charged.
- b)** We believe the proposed changes are likely to improve affordability as the costs of providing advice are likely to reduce. It is also likely to improve accessibility of financial advice as the scope of who can provide the personal advice has been expanded to include relevant providers and non-relevant providers, and make it easier to provide simple advice where the advice given follows the provider's guidelines or rules (and where the expertise of a relevant provider is not required).

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?**

Probably. It is important to ensure that the quality of advice provided to consumers by non-relevant providers are at least at a similar quality level to those provided by relevant providers. The implementation of the proposed change should trigger a review of the licensing obligations (for various providers, i.e. bank, superannuation and insurer) to assess whether their representatives are still adequately trained and competent to provide 'good advice' under the proposal. Those representatives may have been trained to provide

'general advice' in the past, but now would need to provide 'personal advice'. As noted in our response to Q4, this could be addressed if all providers are required to have a 'good advice governance framework' which includes the specific considerations involved for giving appropriate advice, determining the individuals qualified to provide the advice etc.

a) There might also be an obligation for the representative of the licensees to make reasonable inquiry for additional information prior to providing the personal advice to ensure the advice provided will not be misunderstood by the consumers. Such situations could be created due to certain characteristics of the product itself (e.g highly leveraged, risky or volatile) or due to certain vulnerabilities in the consumer (e.g. intellectual incapacity or old age). If insufficient information is obtained, no advice should be provided.

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, noting changes will be required to the anti-hawking provisions to make the change even more effective. For example, a superannuation trustee will still be prohibited from suggesting a new product to a fund member even when it is likely to be in the members' interests (e.g. moving to a tax free retirement product).

b) Yes, noting that some of the most common advice sought by members will still be excluded from collective charging – e.g. advising on retirement options where there is a need to consider the member's household situation.

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, but as a professional body we are not in a position to quantify the extent.

b) No, unlikely to negatively impact consumers.

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. As providers of personal advice can determine the form of the complete record of advice, there are certain formats such as videos, recordings and digital audit trails that are likely to significantly reduce the cost of maintaining 'complying' records of the advice as the need for additional administration and process driven documentation is significantly reduced.

b) No. The format and formality is not important as long as it is clearly communicated and understood by the consumer. Indeed, records of advice will likely be able to be provided on a timelier basis given the reduced prescription. Australian Privacy Principle 12 requires clients to be able to access all the information a provider has on them. Records of the advice will still need to be made available to consumers to access any time they need after the advice was given.

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) Yes, albeit not as materially as some of the other proposal suggestions.

b) No, unlikely to negatively impact consumers. Indeed, consumers are likely to be positively impacted as its removal may decrease the timeframe in which advice can be provided.

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?

The simplified requirements only require 'relevant providers' to report to product issuers where they have received a complaint in relation to a product.

a) This reduced reporting will still allow product issuers to know what 'not to do' in the design and development of financial products.

- b) This reduced reporting will still allow product issuers to develop a deeper understanding of the complaints of the consumers that have been poorly targeted and therefore enhance the quality of target market determinations.

Transition and enforcement

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

Please refer to our response to Q4 for the proposal of having a ‘good advice governance framework’ and our response to Q8 for the trigger of a review of the licensing to assess whether their representatives are still adequately trained and competent to provide ‘good advice’ under the proposal.

General

15. Do you have any other comments or feedback?

Definition of ‘relevant provider’

The proposal paper states that ‘A provider of personal advice should be a ‘relevant provider’ where the provider is an individual and the client pays a fee for the advice, the provider (or the provider’s authorising licensee) receives a commission in connection with the advice, there is an ongoing advice relationship between the adviser and the client or the client has a reasonable expectation that such a relationship exists.’

This should be worded to make it clearer that the definition only applies where the provider is an individual and the provider is either:

- paid by the client for that advice, including where there is a commission (to the individual or licensee); or
- there is an ongoing advice relationship.

Further, guidance will likely be required on what is considered an ‘ongoing advice relationship’ (e.g. treatment of advice that is collectively charged after year one and thus could still be offered by non-relevant providers), and what it meant by ‘the client has a reasonable expectation of such a relationship’.

Data and information available for giving ‘good advice’

The proposal defines ‘good advice’ as advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided. This may be problematic for a provider in practice since data and information about clients are being collected via different channels and interaction, and it remains rare for financial institutions to have data ecosystems where a client’s/consumer’s data across multiple platforms are being connected with a 360 degree view of their situation. By way of example, when consumers call the providers asking for limited advice, would the individual providing the personal advice be required to know the client’s interaction with a digital

tool they also provided? Furthermore, if the client came back for more advice after a first instance of personal advice was given, would the individual providing the future advice be required to know and incorporate what has been provided in the first advice if the clients do not mention it? If the answer is yes to one or both of these questions, then a key impediment for the implementation of the proposal would be the immaturity of the data capability of many financial institutions. Given that any advice should include a check with the client on the accuracy of the information on which it is based, despite not all the information available to the provider being used, we do not see this as a particular problem.

Need for myGov to be able to share the information necessary for holistic personal advice and the Consumer Data Right

The [Financial System Inquiry](#) (p.267) thought the Australian Taxation Office (ATO) could collect and provide some of the data necessary to give financial advice. While the ATO has no statutory power to provide data for financial advice, under [Australian Privacy Principle 12](#) – Access to personal information, an ‘entity that holds personal information about an individual’ has the obligation ‘to give the individual access to that information on request.’ Such a request could be channelled through myGov, which could inform people when it was available. It could then be made available (subject to appropriate privacy protection and the necessary release authority from the relevant individual) to providers to interpret, supplement and convert into appropriate personal advice. Bank balances and spending patterns could be collected at the same time using [Consumer Data Right](#) (CDR) powers. This is likely going to further reduce cost of providing advice as it automates the fact finding process, improves the accuracy of the data, and it is also likely to improve accessibility of advice to consumers as it simplifies their experience without the need to separately collect these data.

A further discussion of the implications of the CDR for the Superannuation sector, both as a recipient of customers’ information (i.e. as an Accredited Data Recipient) and as being subject to it is provided in the [Institute’s submission to the Treasury Consultation in September 2021](#). As noted in that submission, the implementation of the CDR framework will require a significant investment of resources (with associated cost) across the superannuation sector.

Issue of superannuation advice to employers

The actuarial profession has statutory responsibility for providing advice on matters relating to defined benefit schemes to trustees of large superannuation funds, who are classified as wholesale clients for the purpose of the financial advice legislation. In contrast, employers are retail clients for advice in respect of superannuation irrespective of their size. To provide such advice, superannuation actuaries must consider a range of complex factors to project future demographic changes, membership and benefit levels, cash flow movement, and investment outcomes. Typically, this type of advice could not be provided by anyone other than an actuary. However, if superannuation actuaries provide this advice to the employer sponsors (rather than the trustees), the advice is generally considered personal financial advice to a retail client under the Corporations Act. Actuaries are not legally permitted to provide such advice to employers unless they meet the professional standards (including education requirements) for financial advisers. The Actuaries Institute has been actively raising this issue over the past few years. We note that this issue is not in scope anywhere else, but we were advised by the previous Minister, Senator The Hon. Jane Hume, in a letter dated 22 June 2021, that this issue would be better considered as part of the Quality of Advice Review. We have also raised this issue in our submission to the financial adviser education [standards](#) consultation with two potential solutions through suitable legislative remedies:

- by reclassifying employers and relevant smaller superannuation trustees as wholesale rather than retail clients; or
- by legal carve-out that relevant advice provided by an actuary would not constitute personal advice to a retail client.