



Secretariat, Quality of Advice Review
Financial System Division, Treasury
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23 September 2022

To whom it may concern,

Consultations Paper – Review of the quality of financial advice

The Profession of Independent Financial Advisers is pleased to provide a submission on the Secretariat's consultations paper dated August 2022.

Background

The Profession of Independent Financial Advisers (PIFA) is a public, not-for-profit association formed in 2010 for the purposes of promoting, encouraging, sponsoring and assisting in the development of independent financial advisers and independent financial advice to consumers.

PIFA has been an active and vocal advocate of genuine independence in financial advice; in 2014 it established the *Gold Standard of Independence*TM, a recognisable symbol for consumers and the financial advisory community, and in 2019 PIFA lodged an application with the Professional Standards Authority to operate a Professional Standards Scheme.

PIFA sets the standard on conflict-free advice to which the rest of industry is encouraged to aspire.

Moving from prescription to principle

PIFA recognises the compliance burden of the current regulatory framework and supports the QoA Review (QoAR) Secretariat's proposal to move from a process-based approach that polices conduct to a principles-based approach that polices content and outcomes. This shift in accountability is an assumed norm and prerequisite for any recognised profession.

The professionalisation of financial advice under professional standards legislation is long overdue.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry observed that "I do not believe the practice of giving financial advice is yet a profession" and that advisers must act as professionals, rather than "something between a salesperson and a professional adviser"¹.

There have been three applications from the financial services sector to the Professional Standards Councils (PSC) in the last twenty years; none of these applications has progressed to public consultation. In 2014 the PSC called on the financial services industry to seek professionalisation publishing a whitepaper that identified the obstacles that prevent the industry from professionalising and provided a roadmap to bridge

¹ <https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf>, p119

the performance gap². Last year the PSC published its Strategy 2021³ objectives to target improvements in financial services, to enhance consumer protections.

Consumer protections

The consumer experience and consumer protections are paramount in contemplating reform.

PIFA has previously stated that the over-arching consideration of this block of work by Treasury should be consumer protections. It was decades of grossly unsatisfactory consumer experiences that gave rise to the Hayne Royal Commission, despite numerous reforms during that time. If any reforms are considered from the standpoint of industry or regulator efficacy this will inevitably lead to consumer harms.

In the QoA Review Secretariat's explanatory webinar on the Review's proposals⁴ the comment was made that this Review's intended beneficiary is the consumer and that is achieved by making it easier for industry to give good advice by "trying to balance accessibility and affordability with good quality advice". This approach was also applied by previous legislative reviews.

The question as to whether advisers and product issuers should be able to provide personal advice without having to comply with the current obligations is entirely a question of whether the individual provider is prepared and capable of being held to account as a professional adviser. A principles-based approach is going to be less effective when applied to the wrong party ... the adage 'he who pays the piper calls the tune' is relevant here.

What is good advice?

Good advice – in any professional realm, let alone financial services – has four recognisable traits. Remove any one element and quality is at risk ...

1. Unconflicted. The provider should be genuinely impartial, the hallmark of the traditional professions.
2. Objective. The advice should be supported by rational argument drawn from a body of knowledge.
3. Technically sound. Recommendations should be developed using peer-recognised standards.
4. Fit-for-purpose. Advice delivery should be tailored to the purposes and circumstances of the recipient.

The ASIC has long documented the connection between quality of advice and independence of advice. Conflicted advice is potentially more dangerous than no advice at all because advice – well-intentioned or not – that is delivered from a conflicted standpoint is not what it appears to be. The fact is it's not advice at all, it's a sales pitch.

Independence in the provision of financial advice is critically important, a clear finding of the Hayne Royal Commission. It could be argued that independence of advice is a centre pin of the whole of Chapter 7 of Corporations Act.

The section of the Act that deals with independence was inserted over 20 years ago and yet the subject is not promoted by the regulator on its website nor in its consumer education materials. In our view this lack of transparency has contributed directly to consumer harms that were well documented by Hayne, who devoted significant attention to addressing this in a transparent and emphatic way.

The pink elephant

² <https://www.psc.gov.au/professional-standards-research/professionalisation-financial-services>

³ https://www.psc.gov.au/sites/default/files/Strategy%202021_Updated%20-%20HelveticaNeueLT%20Std%20Lt.pdf

⁴ <https://youtu.be/dS7z57bhuOU>

For well over a decade the Profession of Independent Financial Advisers has advocated that the most effective and efficient way to improve the quality of advice is to outlaw conflicts of interest, an issue that the traditional professions have always confronted head-on.

The QoAR proposal paper says “The current regulatory framework focuses on disclosure, remuneration, education and conduct” and “...the Future of Financial Advice legislation introduced bans on conflicted remuneration ...”, p6. However the endemic problem of conflicted remuneration remains largely unaddressed because the purported ban has been rendered ineffective due to numerous exclusions and concessions.

Whereas Corporations Act Part 7.7A, ‘Best Interests Obligations and Remuneration’ provides bans on conflicted remuneration⁵, several sections carve-out exemptions to limit the applicability of the ban⁶. Further, ASIC permits financial planners who charge conflicted remuneration like ‘asset fees’⁷ to describe their advice services as ‘independent’, ‘unbiased’ and ‘impartial’⁸.

PIFA is not alone in its views on the dangers of conflicts of interest ...

- Numerous other consumer interest groups, notably CHOICE⁹, have lobbied for decades on the abolition of conflicts of interest in financial services.
- The industry regulator, ASIC, for nearly thirty years now¹⁰, has consistently expressed the view that an indisputable causal relationship exists between conflicts of interest and poor quality advice.
- Commissioner Hayne took great care to ensure consumers were aware of the risks in dealing with conflicted advisers: “A financial adviser who does not meet the requirements [of independence] and who provides personal advice to a retail client should be required to bring that fact to the client’s attention, and to explain, prominently, clearly and concisely, why that is so.”¹¹

Due to intense lobbying, legislative reforms to date have failed to deal with the elephant in the room.

Polarising the advice community

The proposals differentiate between personal advice offered by an individual who is subject to professional standards, and other parties who are not.

If the regulation of personal advice is to be differentiated for the sake of accessibility and affordability, it ought to be for reasons that improve consumer protections and advance the professionalisation of financial advice. If we know that conflicts of interest degrade the quality of advice then we must start there.

While the proposed distinction makes room for institutions like Banks and Superannuation funds to give digital and intra-fund advice, hopefully making personal advice more accessible and affordable, it reduces consumer protections by improperly and incorrectly grouping conflicted advice into the same category as unconflicted advice. It also does nothing to foster the evolution of the financial services industry into a profession.

⁵ Division 4 Subdivision C, ‘Ban on Conflicted Remuneration’, and Division 5, ‘Other Banned Remuneration’

⁶ See s963B, s963C, 964D

⁷ Defined at s964F

⁸ Refer s923A and RG175.74

⁹ Since 1990 but refer to <https://www.choice.com.au/money/financial-planning-and-investing/financial-planning/articles/fofa-financial-adviser-reform> for a succinct overview of its stance and public submissions.

¹⁰ Refer https://download.asic.gov.au/media/1310437/AIAspeech_120603.pdf

¹¹ <https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf>, p176.

Given that the biggest obstacle to good quality financial advice is conflicts of interest, consumer protections can be enhanced significantly by using this lens to correctly distinguish between the various channels available to the consumer:

- **product issuers** (including their employees and in-house and/or licensed financial advisers),
- **conflicted advisers** (relevant providers who – while they are self-licensed and have no product providers as their shareholders – choose to retain the conflicts described above because they charge fees that are contingent), and
- **independent advisers** (relevant providers who choose to operate without conflicts).

This will ensure good advice is accessible and affordable while empowering the consumer.

Simplifying the paper trail

Doing away with redundant or unnecessary documentation (eg simplifying the process of obtaining consent to ongoing fees, and removing the requirement for advisers to provide a statement/record of advice) appears appealing on the surface however great care needs to be taken to avoid unintended consequences.

The ASIC's requirements about the content of written advice are intended to inform and empower the consumer. The prescriptions are not just about the advice itself but also issues like its costs, potential risks, and any conflicts of interest that might have been relevant to the formulation of the advice. The consumer might not prioritise issues of this nature but they are critically important nonetheless.

If these prescriptions are abandoned in the interests of affordability and accessibility, quality is immediately placed at risk.

While it is true that professional standards relating to education and ethical conduct are intended to mitigate the risk of poor advice, a culture of professionalism is not yet evident right across industry. The standards have been in operation since January 2020 and industry still debates how they are to be applied (especially the very controversial 'Standard 3'), and none has yet been tested in the Courts. The industry, as a whole, is a long way from behaving culturally as a profession.

The intent of this proposal is a sound one but placing its power in the hands who choose not to operate in a conflict-free, professional manner is to risk consumer harm.

Members of PIFA, however, are long-time advocates for professionalisation in financial advice, and encourage all of industry to voluntarily take the decision to act as a professional, bound by professional standards legislation¹². The Profession of Independent Financial Advisers strongly recommends to the Secretariat to exercise caution and limit the availability of this concession to those who operate as true professionals, without conflict, embracing a culture of professionalism, as described above.

Please feel free to contact me should our association be able to assist the Secretariat further in this consultation.

Yours sincerely



Daniel Brammall
President

¹² <https://pifa.org.au/hymn-sheet/>