



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:** Michael Smith, Managing Partner, Halpin Wealth Partners Pty Ltd,  
Patrick Anwandter, Financial Planner and Managing Director, Strategy First Financial Planning Pty Ltd,  
Jonathan Elliot, Managing Director, SBA Advice Pty Ltd,  
Alison Smith, Executive Director and Senior Financial Adviser, ASET Wealth Management Pty Ltd, and  
Andrew Creaser, Partner and Financial Planner, Kaizen Wealth Pty Ltd.

With support from the Principal's Community, which consists of 127 self-licensed businesses that collectively authorise over 1260 advisers across Australia.

### Questions

#### Intended outcomes

1. Do you agree that advisers and product issuers should be able to provide personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?

We are supportive of the flexibility the proposals seek to achieve that will enable relevant providers to act as professionals and provide professional personal advice and services as agreed with Australians.

Product issuers should be afforded the same opportunity as relevant providers to provide personal advice, subject to product issuers operating within the same advice framework as a relevant provider, especially where such personal advice is more complex.

## 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) We would expect that the proposal will reduce regulatory uncertainty. The only aspect that requires additional clarity relates to how far the requirement associated with '...the provider has or holds information about the clients' objectives needs or any aspect of their financial situation' may be taken. Such as will this extend to information held by related parties, such as an accounting business, or businesses that may hold demographic information such as retirement objectives where that business is running a retirement seminar.
- b) In reviewing the proposals, it appears reasonable to assume that more personal advice may be available for consumers through institutions, or via digital advice providers where the advice is more objective and measurable, though unlikely to see such a change within an advice business that is typically focused on providing personal advice. Whether more personal advice is made available will be a matter for each financial institution to determine.
- c) This will be subject to the financial institutions individual risk appetite, and capacity to provide an appropriate framework to support the provision of personal advice or otherwise. In addition, whether their providers of personal advice will be required to operate under the code of ethics.

### 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?

The existing provisions should be sufficient where conduct is appropriate. It may be worth considering Australians be offered/afforded the chance to seek personal advice and include a small-time frame between receiving the general advice and making any purchasing decisions to ensure Australians have the chance to make free, prior, and informed decisions about any general advice they receive. Whilst we recognise that cooling off periods may apply, unwinding such arrangements can be difficult. It would be prudent to have appropriate checks and balances in place to ensure the remaining general advice provisions are monitored closely.

### 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) This should improve the receipt of the personal advice provided to Australians. Clients are confused by the complexity and length in the advice documentation provided today. The quality of the actual advice may remain substantially unchanged, though the ability to present advice in a client centric manner, in a format agreed with Australians will lead to better, informed, and clearer decisions being made.

b) The time and cost saving will likely be limited to the production of the relevant advice documents (final outputs) as the advice process may remain substantially similar with data gathering, client education and understanding, risk assessment, and modelling and analysis still necessary to give good advice, where the advice required is more complex. This may also enable very simple personal advice to be provided, where historically the cost to provide such simple personal advice was economically unviable.

#### 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) For institutions that don't have relevant providers, this is likely to be the outcome as there is no best interest obligations. For advice businesses that have relevant providers this is likely to remain unchanged with the best interest and related obligations that remain unchanged in the code of ethics. It is unclear how the two separate provisions would operate, and it would be ideal for the relevant minister to review the code of ethics to ensure it operates consistently with the intention of this recommendation. Otherwise, it is likely that relevant providers will retain the current approach and operate to the higher standard where ambiguity remains.

b) The recommendations are digital neutral, with any constraints relevant to the prior point made.

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

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

- a)** To assist facilitating limited advice, which we fully support, we would recommend alignment of the good advice duty and best interest and related obligations of the code of ethics to reduce complexity and cost. Breaches of the code of ethics can lead to actions such as administrative sanctions, warnings or reprimands, and restricted civil penalty provisions. These actions have a material impact to relevant providers and where ambiguity exists there will be reluctance to fully implement the intentions of these recommendations.
- b)** No comment to add.

**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 would expect that there is no meaningful change for existing relevant providers. We do hold concerns associated with non-relevant providers providing personal advice and whether this may lead to a lower level of quality of financial advice without appropriate minimum standards being in place to protect consumers, especially where the personal advice is more complex. It is difficult to see how more complex advice could be provided by a party that isn't a relevant provider, and how an Australian will be able to tell the difference between a relevant provider or other providers of personal advice.
- b)** For relevant providers given the professional standards obligations remain unchanged, this has no impact. For other providers of personal advice, this may well create additional access to the provision of personal advice, such as general advice providers becoming personal advice providers who aren't relevant providers. These providers would need to review their current models to determine the cost differential to provide such personal advice, and whether they may be inadvertently caught as relevant providers as their clients have a reasonable expectation that an ongoing advice relationship exists, such as for superannuation trustees providing personal advice and continuing to deduct fees (even if it is a collective charging model) from member accounts.

**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?**

**a)** As personal advice needs and requirements can range from very basic needs to often complex needs, should consideration be made that personal advice provided by a person who is not a relevant provider be limited to simpler, low risk or low complexity advice and/or products. The level of education and supervision significantly varies depending on the complexity of the personal advice and products being advised upon. In addition, Australians that have more complex personal advice needs will likely need an ongoing advice relationship, and should the provider not be a relevant provider they would not cater for this ongoing service.

### **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)** We would expect that this is the case, though noting the broader advice that is proposed to be allowed by trustees, and the greater level of complexity in providing such advice, it will likely be that trustees will need to recruit relevant providers to provide this more comprehensive and complex advice. Or alternatively recruit a mixture of relevant providers (or outsource this advice to a 3<sup>rd</sup> party to provide the personal advice on their behalf) and other personal advice providers.

**b)** Superannuation trustees are better placed to make comments on this question.

## 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, it will lead to reduced administration, as this removes duplication of information and disclosure already provided. We note with interest that collective advice fee charging by superannuation trustees across their member base currently does not require an annual fee consent form to be given or consented too. If the fee consent form must be retained, and we would query if this is necessary, the proposals will reduce time in the production of these documents, though the extent of this change and savings will be subject to how flexible it is to engage Australians on the signing of these forms. Additional flexibility is needed to ensure the fee consent forms can be provided when it is suitable for Australians to receive them, such as up to 90 days before or up to 90 days after the anniversary date. Australians often travel, and any proposal should ensure it is flexible, efficient, and centred on the needs of Australians in continuing their ongoing advice relationship.
- b) We can't see any consumer impacts, as the information on fees is already being disclosed on multiple fronts and relevant providers discuss their advice fees as part of the annual review process.

### 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) The likely time and cost saving is in the production of the advice, and possible reduction in the amount of time required of a financial adviser in explaining the advice, given the documentation and advice can be produced as agreed with those seeking the advice.
- b) For relevant providers that continue to adhere to the code of ethics and professional obligations, there should be no negative impact to consumers. The proposal is akin to an Australian seeking professional legal advice, where they engage a lawyer and agree how the legal advice is to be provided. The lawyer must still fulfill their professional obligations in giving such advice. It is not clear whether the lack of professional obligations for other providers of



personal advice, subject to the complexity of the advice they are allowed to provide, may lead to variable outcomes if the other providers aren't suitably trained and supervised without conflict or self-interest.

**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)** We would expect that the proposal will lead to a reduction in costs to provide, track, and ensure updated FSG versions are provided at client reviews or where personal advice is provided. This proposal leads to a sensible balance in the provision of these upfront disclosures.
- b)** We can't foresee any negative impacts to Australians given they were rarely read in any great detail, noting that a significant number of recipients are not able understand the legalistic and complex nature of the advice documents in the first instance.

**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)** Product issuers are better placed to make comments on this question.
- b)** We expect that this is unlikely to have any material impact given relevant providers already review these products as part of developing an investment portfolio where often multiple products are being brought together to ensure the client has an appropriately balanced portfolio suitable to their risk appetite/risk profile. We question more broadly whether TMDs need to be reviewed by relevant providers at all. Relevant providers already access significant information through other sources (such as PDS's, research houses, engagement with the relevant product providers) as part of fulfilling their best interest obligations.

**Transition and enforcement****14. What transitional arrangements are necessary to implement these reforms?**

We would suggest 4 areas for consideration:

1. That ASIC adopts a no action position for a minimum of 12 months or longer depending on the final proposals adopted. That this position be subject to Licensees and relevant providers taking reasonable steps to comply during the relevant period,
2. That an allowance for an early adoption be made, based on Licensees undertaking a self-assessment on their relevant provider readiness,
3. AFCA documenting how it intends to approach future complaints, and that it will operate consistent with the proposals, and
4. Early research be undertaken and led by Treasury to identify and share any insights that may assist Licensees and relevant parties in fulfilling their obligations. Where thematic insights are identified that have occurred due to a misunderstanding of the obligation vs reckless behaviour, that provisions such as a further ASIC No Action position are taken to support these specific matters.

**General****15. Do you have any other comments or feedback?**

In respect to the legislative framework that may ultimately be created to support the recommendation to provide good advice. We would recommend consideration be applied to the concept of how the legislative and regulatory penalties and actions be applied to financial advisers and Licensees. Relevant providers deal with complex matters and take reasonable steps to meet the relevant obligations and professional standards expected. However, at times things may not go as expected. These relevant providers should not need to be fearful of the consequences of their actions where they have taken reasonable steps and sought to act in the best interests of their clients, and where things have gone wrong and taken action to put the client right. It would be worth considering that such legislative and regulatory penalties and actions focus on relevant providers who act recklessly or intentionally. This would create significant benefit and confidence to relevant providers that if they apply themselves professionally and reasonably against these proposals that they can act with confidence and certainty.