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: Vanguard Investments Australia

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, we agree. The current regime is complex and duplicative. It doesn't work for consumers, as evidenced by the large advice gap, and also doesn't work for industry as evidenced by the lack of innovation and digital offerings in Australia, as well as overly burdensome compliance obligations for advisers.
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?**
In our view, we think the proposed changes would make a significant positive step for consumers accessing affordable and good-quality advice – whether that be through advisers offering traditional, comprehensive advice or through financial institutions such as super funds. Advisers will incur reduced complex and duplicative obligations, allowing them to serve their clients more efficiently. The proposed changes would also improve the ability of financial institutions to help their clients.

We believe the concept of 'guidance', 'nudges' or 'next best actions' (largely through financial institutions) will fall within the definition of personal advice (albeit very simple personalised guidance) and will be of significant benefit for consumers. While we agree and understand this sits within the definition of personal advice, this type of guidance does not necessarily follow the same structure as personal advice – for example, it may not require a fee or holistic information gathering in order to provide a positive member outcome. In a digital context, the record of personalised guidance provided may also look different as these could be real-time, algorithm based, and would change as the client situation changes. In addition, not all nudges or guidance may be seen by the client – for example, if they didn't open an email or log-on to their account. Client actions taken could be recorded, but attributing these to specific 'nudges' or 'guidance' will require assumptions based on the timing of the guidance versus the time of the action. Important in this context would be recording and evidencing the methodology, frameworks and controls established around this form of guidance.

In a system without default retirement solutions, and with a large, disengaged member base, providing simple actions, nudges or recommendations to super members would greatly assist them in retirement. This in no way would replace comprehensive advice where this is required for the client/member.

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, the misleading and deceptive conduct safeguards are sufficient within the previous definition of 'general advice', which is currently mislabelled as it is not advice.

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?

We agree with the premise that the law should change to focus on the content of the advice. We work with third party advisers in Australia and we believe this will have a positive impact on their ability to provide advice to clients through reduced time and cost to serve.

We believe the conduct of advice providers is highly regulated through other laws and regulations, and have become complex and duplicative. The onus shifting to the advice provider to determine how best to comply with the law and how to produce good quality financial advice should increase the efficiency of producing the advice, thus having a positive impact on clients.

We do think this will be a shift in ASIC's regulatory and enforcement approach and it will be important that ASIC are on board with the change in approach. It will also be important for policy makers to think through, and consult with industry, as to how to regulate and measure 'good advice' in a flexible and principles based way, particularly in a digital context or in 'guidance' scenarios.

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, as above we believe this change will assist advice providers to increase the provision of limited advice to clients more efficiently and with reduced regulatory uncertainty.

Whether provided face-to-face or via digital solutions, we believe all guidance and advice should have sound methodology that can be pointed to as rationale for why any specific recommendations are proposed to a client/member. On this basis, we agree with the premise of regulating 'good advice'. In some cases, technology simply makes it easier to highlight best practices and to clients/members and enable them to take action quickly, rather than trying to educate and then motivate them to do the same. For example, offering an easy auto-invest capability can instill a strong financial habit of saving versus seeking to inform clients/members why this is valuable and then instructing them in how to set up this type of service.

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

a) limited advice?

b) digital advice?

As discussed above, the concept of ‘guidance’, ‘nudges’ and ‘next best actions’ do not necessarily sit neatly within the traditional structure of personal advice in terms of how this guidance would be delivered to clients and members. While we understand this does fit in the legal definition of personal advice as it would use information known about the client to assist them in making better decisions, it doesn’t require the same concepts as described in the paper (i.e. charging fees, gathering holistic client data) in order to be beneficial to long-term client/member outcomes.

In terms of digital enablement of both advice and personalised guidance, it will be critically important that regulations and implementation of the law allows innovation and varied approaches from industry. On this basis, we support principles-based regulation in an environment where advice providers can demonstrate reasoned thinking, robust governance and sound frameworks for the type of advice being offered.

Regulator examples of how a provider can evidence “good advice” and a sandbox or innovation friendly approach to developing limited or digital advice solutions would also be worthwhile.

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?

N/A

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?

N/A

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?

We believe the changes will make it easier to provide advice and for members to access it. We support the notion that super funds should be able to provide more personal advice or guidance to their members, especially in the transition to retirement.

The removal of the restriction on collective charging and the proposal to amend the sole purpose test support a broader scope of advice to members, based on their circumstances, and supports greater access to advice and guidance to members for improved retirement outcomes.

While not opposed to collective charging, we believe there should be certain principles and governance arrangements to adhere to - including low-cost, member benefits and member outreach about the services. Collective charging should be fair and equitable to all members, meet the members best financial interests test and there should be transparency of the fee charged (or if provided for free).

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?**
Yes, we support these changes to streamline and standardise fee disclosure, while maintaining client consent.
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?**
Yes, we believe the removal of Statements of Advice will greatly assist in the reduction of the cost of giving advice for advisers (on behalf of our third-party advisers and based on feedback we have received from them). SOA's were lengthy and not consumer friendly, and added a huge regulatory burden to advisers arguably without providing value to consumers. Being able to record the advice given and why (either paper based or digitally) will be much more efficient.
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?**
N/A

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?

We support the streamlining of this process and don't believe the amendments are likely to have material impacts on either target market determinations or design and development of products.

Transition and enforcement

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

As discussed earlier, we think a large part of these changes (following law reform) will be implemented through a change in ASIC's regulatory approach to financial advice, and so ASIC needs to be on board with the reforms and a large part of the transition arrangements. Early and constructive industry dialogue with ASIC will be key to the success of the reforms. Following implementation, again early engagement and 'sandboxing' of new advice models (including by established players), innovation and digital approaches will be imperative.

General

15. Do you have any other comments or feedback?

It will be important to ensure that the reforms are implemented as a package – particular the changes to definition of personal and general advice.
It also will be fundamental to consumer protection that the implementation does not compromise the ban on conflicted remuneration.