

From the Desk of Director Marija Pajeska



22 September 2022

Quality of Advice Review Secretariat  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [AdviceReview@treasury.gov.au](mailto:AdviceReview@treasury.gov.au)

### **Response to Treasury Consultation Paper titled 'Quality of Advice Review'**

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to Treasury in respect of the Consultation Paper titled 'Quality of Advice Review'.

ASDAA represents the interests of its members, who are from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors, or employees, of small to medium sized firms which hold an Australian Financial Services Licence (AFSL), but are not a Participant Member of the Australian Stock Exchange.

In order to ensure that an appropriate regulatory framework is defined one needs to understand and take into consideration the advice process and what consumers are seeking from an adviser as a client.

The advice process, in most cases involves the following steps:

- a consumer conducts research (ie. speaks to friends and colleagues, has a look at an adviser's website and/ or consumer reviews about an adviser available on the internet, etc) to find a financial adviser or a firm that can assist them with their query;
- the consumer meets the adviser to either discuss their needs, objectives and circumstances and/ or the services that the adviser can provide;

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#### **ASDAA**

ASDAA is the trading name of the Association of Securities & Derivatives Advisers of Australia Ltd  
ABN 41 609 160 321  
307 / 2 Creek Street Coolangatta QLD 4225 – PO BOX 1323 Coolangatta QLD 4225  
Telephone 07 5657 3620 Web: [www.asdaa.com.au](http://www.asdaa.com.au)

- once the consumer has found an adviser they have a connection with and feel they can trust and work with, an agreement is entered into and the adviser starts to work with the client.

A client would generally fall into one of the following categories:

- specific advice about a particular financial product, eg. insurance products, term deposits, superannuation products. etc
- investment advice or wealth management advice – client seeks help with investing in the markets and either has a portfolio of assets or an amount of money that they wish to invest in the markets as they feel they can get better returns in the market as opposed to investing it in a bank and receiving interest.
- Financial planning advice – advice that covers a number of areas which seeks to assist a client to achieve certain goals, predominantly related to achieving sufficient funds for retirement.
- General advice and/ or execution only advice

If we consider the above categories it is important to note that investment advice, wealth management advice, general advice and execution only advice (throughout the remainder of this letters known as 'market based advice') take into consideration different information to the other forms of advice mentioned above.

In providing market based advice, an adviser takes into consideration general market information (such as, market research, company data, economic statics and information) to put together a portfolio of assets that are likely to generate capital growth and/ or income for the client. The argument to date has been that this type of advice is considered personal advice. However, the reality is that in most cases it is not, as the portfolio set up for the client is the same, if not similar, to that recommended to other clients the financial adviser works with, as the recommendations the adviser makes are formulated on their opinion of the markets. It is not reliant on any particular objectives or goals of the client other than they want to make money.

This is the core of the argument as to why financial advice is expensive because most people seeking this type of advice are unable to access it as the red tape and regulatory burden makes it too expensive and the liability associated with providing personal advice in this sector is so high (eg. a lot of clients blame an adviser for incurring losses when the markets go down) that advisers and firms are not willing to take the risk and provide such advice to clients. The end result is that clients are unable to access the advice they seek.

This is where change is required and the proposals in the paper do not address these requirements. In fact the proposed changes will cause more consumer harm (ie. increased cost of advice) and make advice within this sector less accessible as merely having knowledge of a client's portfolio assets or the amount of money they have to invest will be captured by the proposed definition of personal advice due to the wording 'any aspect of their financial situation'.

In the proposal the emphasis is on the provision of good advice. To achieve the proposed outcomes one of the proposals is to change the definition of personal advice to be 'broader so that it is clear it applies whenever a recommendation or opinion is provided to a client about a financial product (or class of financial products) and, at

the time the advice is provided, the provider has or holds information about the client's objectives, needs or any aspect of their financial situation.'

The problem is that almost all advice would, under the proposed definition, be personal advice and this in itself will not result in achieving an environment where good quality and affordable advice can be provided. The cost of providing advice (including the risk associated with providing advice) versus the amount that consumers are prepared to pay under the current circumstances and the proposal are not likely to align.

Other matters we wish to draw to your attention are:

1. A number of organisations use customer service staff to be the initial point of contact for a client when it comes to acquiring a financial product such as insurance products, etc. These staff members will obtain various information from a client which would be captured by the definition of personal advice as a result of the wording 'any aspect of their financial situation'. These staff members currently do not meet the educational requirements and as such this implies that costs will increase as these firms will need to get higher skilled staff.
2. We refer to the discussion regarding relevant providers and the charging of fees in Section 2.8. A lot of the work has been done to improve the qualifications and skills of financial advisers and we note that in section 2.8 it implies that individuals who charge ongoing fees would be relevant providers and would need to meet these requirements. From a practical perspective individuals do not directly charge clients fees for the provision of personal advice so further consideration needs to be given as to whether the proposal totally removes the need for anyone to be registered as a relevant provider on the basis that no individual engages directly with a client for the provision of advice, it's usually the company (ie. the licensee or authorised representative) they work for that enters into these agreements with clients.
3. We note the proposed changes relating to best interests duties and are of the view that for any of these changes to benefit advisers, the industry in general and consumers, similar changes need to be reflected in the Code of Ethics.
4. We do not agree with the proposal for digital advice providers to be able to provide advice to a consumer for a fee without a provider (or any of its employees) being a relevant provider or having the need to comply with the Code of Ethics, nor do we see how this would benefit consumers. Digital advice is a function of a person's ideas that have been programmed by another person into a platform, application, etc. Someone needs to be held responsible and/ or accountable for the advice provided via the platform or application. It gives rise to the question, if things go wrong who is held accountable, who can the client have recourse against. The duty remains with governments and regulators to ensure that markets are efficient, fair and equitable. If digital advice results in actions which lead to an inefficient, unfair or inequitable market and/ or consumer harm the developers and advisers behind the advice and the strategy that forms the basis of the advice need to be held accountable. People should not be able to legally hide behind a computer or application and have no recourse in doing so.
5. The reporting obligations under the design and distribution obligations should be limited to those persons who have entered into a distribution agreement with the product issuer. This will exclude advisers who provide market based advice as they do not receive any incentive from the product issuer to promote or distribute their product. They use their own analysis to determine whether the product is

suitable to include in the proposed portfolio for the client or the model portfolio they work off.

6. The proposal paper focuses on Quality of Advice Review and based on the points of discussion it can be assumed that these changes will apply to the provision of advice to retail clients. However, we note that this is not specifically stated in the proposal paper and question how the proposal will impact the provision of advice to wholesale clients.

We note that a substantial amount of work has been done to get to this point, however note that it seems the impact of these changes on the providers of market based advice (ie. stockbrokers, futures brokers, wealth managers, etc) has not been fully considered and possibly overlooked. Would it have been too much to ask that one of Cameo's in Attachment A applied to this industry.

Our specific comments to the questions outlined in the consultation paper are detailed in Annexure A.

ASDAA appreciates the opportunity to provide this Submission to Treasury on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Director of Communications, on (07) 5532 3930 or email [brad@asdaa.com.au](mailto:brad@asdaa.com.au).

Yours Sincerely

Marija Pajeska  
Compliance Director

## Annexure A: Consultation template

Name/Organisation: Association of Securities and Derivatives Advisers of 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?**

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

However, and more importantly, we do not agree with the proposed definition of personal advice as it will have unwanted impacts on the provision of investment advice, wealth management advice, general advice and execution only advice (throughout the remainder of this paper known as 'market based advice') which will most likely make market based advice less accessible and more costly.

The proposed definition of personal advice would capture all market based advice provided by a broker purely as a result of the fact that a broker has knowledge of a client's financial situation. This inadvertently will increase red tape, adviser obligations and consumer costs.

The other matter worth noting is that if a broker chooses to provide market based advice using a digital means then they will benefit from various exemptions and exclusions under this proposal. This may result in market based advice being more accessible and cheaper but time will tell whether quality advice is provided via digital advice solutions.

## 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?**

We do not agree with the proposed definition of personal advice as it will have unwanted impacts on the provision of investment advice and/ or wealth management advice which will most likely make such advice less accessible and more costly.

The proposed definition of personal advice would capture all market based advice provided by a broker purely as a result of the fact that a broker has knowledge of a clients financial situation. This inadvertently will increase red tape, adviser obligations and consumer costs.

We need to remember that market based advice is a function of the following factors:

- the information/ assistance/ advice being sought by the client;
- at times, the personal information provided by the client; and
- the information and research considered by the adviser in providing their opinion/ recommendation/ advice, this may or may not include the consideration of personal information provided by a client.

We do not believe that a client's objective of wanting to make money or a higher return than that offered by the bank combined with the provision of personal information to an adviser, which then may be used as part of the advice process, should be captured by the definition of personal advice.

**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?**

We agree with the de-regulation of general advice, however we are concerned that the general consumer protections may not be a sufficient safeguard for consumers.

This has been highlighted over the recent years as regulators have been struggling to protect consumers against harm arising as a result of the activities engaged in by influencers (also known as finfluencers) in the financial sector (eg. the Gamestop incident in 2021). Influencers, under currently law, are considered as providing a financial service (ie. general advice) if they carry on a financial services business (ie. in simple terms, receive fees as a result of providing a financial service). An influencer could be providing a financial service when they provide their opinion of what markets are doing and/ or trade recommendations.

Regulators are concerned about the actions of influencers that are causing consumer harm as a result of giving mis-information. The regulators are struggling to regulate this sector and it appears that the de-regulation of general advice will remove any powers that regulators may currently have resulting from an influencer having to be authorised under an AFS Licence.

We note the commentary in section 1.9 where it is stated that providers would be subject to relevant provisions under the Competition and Consumer Act, in particular not to engage in misleading and deceptive conduct. If it was that easy then regulators would currently have the laws available to them to take action against influencers which have engaged in misleading and deceptive conduct, and this does not appear to be the case.

## 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?**

### Impact of quality of financial advice

Consumers should be able to receive financial services and advice which is more aligned with the financial services and advice they seek. By replacing the best interest obligations with the obligation to provide 'good advice' (provided that the same requirements are reflected in the Code of Ethics) advisers will be able to work with clients to meet the needs of clients without fear that the advice they provided did not meet the clients needs because the paperwork held on file suggests otherwise.

We need to be mindful that we do not fall into the same trap we are in now whereby an independent adviser can come along and scrutinise the advice provided to the client, with the benefit of hindsight, utilising the information held on file and form an opinion or judgement on the quality of advice provided. The paperwork is important but what is more important is the advice provided at the time and the actions taken by the client at the time. If a client is not sure as to whether or not the advice provided meets their needs they should be getting a second opinion.

### Impact on time and cost required to produce advice

The time and cost of advice should reduce for those who are already subject to the provisions of providing personal advice.

As for those who will be captured by the proposed definition of personal advice and have not been captured in the past, it is likely that time and cost will increase as they work towards implementing safeguards to protect themselves and to retain evidence on file that the advice provided was good advice at the time it was provided.



**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)?**

Limited advice

The concept of limited advice should be removed from the law and discussions in general as all advice is limited advice on the basis that the advice is limited to the scope of advice defined by the client. The school of thought around the subject of limited advice needs to change.

Digital advice

The obligation to provide 'good advice' does not make it easier to provide advice to consumers using technological solutions (ie. digital advice), as in most cases any financial information input into the digital advice tool would result in such advice being captured by the definition of personal advice.

We note that the proposal includes various exemptions and exclusions for digital advice providers and have provided our specific comments in this regard in point 4 of our cover letter.

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

**a) limited advice?**

**b) digital advice?**

The main change that needs to be considered is differentiating personal advice from market based advice, whereby market based advice is advice provided to a consumer where the adviser has knowledge of a clients financial situation (eg. portfolio holdings and money available for investment), however the advice itself is a function of market conditions, market research, the mapping of the clients portfolio to a model portfolio managed by the advice provider, etc.

**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?**

Based on the information provided in the proposal the number of persons who will be captured as a relevant provider and hence be required to meet the professional standards will change (ie. reduce) and it appears that this may be to the detriment of consumers.

Currently, a number of highly skilled people have been working hard to meet the professional standards and upskill.

Some of the proposals (in particular, those suggested in Section 2.8, which we discuss in point 2 of our cover letter) suggest that a person would be captured as a relevant provider if they charge a fee directly to the client. This in itself does not make sense.

The requirement to meet the professional standards should be governed by the service provided by an individual to the client and not whether they charge a fee to the client.

Will these changes improve the quality of advice and make advice affordable and accessible is a loaded question which will be answered over time.

However, if we move through history we can see:

- when industry and self regulatory exchange set professional standards and educational requirements, quality of advice was of no or limited concern;
- when ASIC set professional standards and educational requirements via RG146, quality of advice became a problem;
- when the law set professional standards and educational requirements via FASEA, quality of advice became expensive and inaccessible.

**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?**

The professional standards (subject to the separate review currently underway) define the training and competency standards applicable to a relevant provider (ie. a person authorised to provide personal advice) and should be retained to some degree.

The licensing obligations that require a licensee to ensure that their representatives are adequately trained and competent to provide financial services (ie. the wording in the corporations act) are adequate however, we feel that ASIC's interpretation of these standards as documented in RG146 are not adequate. We believe that the standards in RG146 degraded the educational requirements set by industry and self regulated exchanges that were in place prior to the implementation of RG146. Examples of such standards (which were appropriate) are:

- SIA Graduate Diploma in Applied Finance and Investments
- SFE Registered Representative Certificate
- SDIA Accreditation
- FPA Certification

There needs to be a balance between appropriate educational standards which provide for a platform for New Entrants and Existing service providers to evidence that they have the skills and knowledge to provide financial advice (ie. regardless of whether its general or personal), and yet encourages young people to enter the industry and experienced service providers to stay in the industry to be mentors for the young.

### **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?**

Our members are not directly involved with the provision of such advice.

As members of superannuation funds we are concerned about the increase in administrative costs (ie. hidden costs) that will be passed onto all members as a result of services (ie. personal advice) received by one member that is of no benefit to other members. Why should all members of the superfund be charged a fee for a service they have not received (ie. fee for no service).

## 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?**

We agree with the proposed changes.

We are of the view that annual consent should be given to the advice provider and should be as simple as a fee schedule or tax invoice which details the fees to be charged for the following 12 months and how such fees will be deducted and / or are payable.

The client would then need to advise how they wish to pay the invoice, effectively consenting to the payment terms.

This will have the effect of documenting the arrangement between the client and the entity/ person that they are engaging with to provide the advice, whilst making it easier for the client to understand and the entity/ adviser to manage.

### **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?**

It should reduce the cost of providing advice and allow industry to develop documentation that clearly details the advice being provided, the risks associated with implementing the advice and investing or acquiring the recommended products and the costs involved.

What we need to promote is transparency and consumer awareness and neither of these are necessarily achieved through an SOA or ROA.

### **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?**

Certain information needs to be provided to clients so that clients can find the information as and when required. The FSG is a document which can be used to describe the services that a providing entity can provide as authorised under its licence or the authorisation held.

There is a strong argument that the prescribed requirements (ie. minimum information that needs to be included in an FSG) should be relaxed as clients don't need to receive the same information over and over again.

Making the information available to clients and advising clients as to how they can source this information would be more beneficial than having a requirement to give the FSG to a client every time something changes or they acquire a new service.

## 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 do not feel that the proposal is practical. The design and distribution obligations and any reporting requirements should only apply to persons and entities that have a distribution agreement in place with a product issuer. All other advisers/ entities should be exempt, as the regime is impractical to implement.

In the case of investment advisers and wealth managers, the products acquired by a client are usually traded on an exchange and/ or subject to a PDS and TMD requirements, however the investment adviser and/ wealth manager do not receive any incentives for recommending the product to their clients. Their decision to recommend a product is usually based on market conditions and economic factors. These advisers, generally do not have micro-management tools that monitor which client holds a product which is subject to TMD requirements and then allow for the assessment of significant dealings or complaints. This is just an additional layer of reporting that adds cost to the end customer for no benefit.

## Transition and enforcement

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

It all depends on how extreme the reforms are.

If the proposal goes ahead as documented then a substantial amount of time (ie. minimum 3 years) will be required to allow individuals who will, under the proposal, be captured as providers of personal advice and as such will need to ensure that they complete the educational requirements and national exam that financial advisers need to complete.

As for the other changes, time will be required to develop new types of documents and to allow for the education of staff on how things need to be changed and/ or be done going forwards. At a minimum a 2 year transition would be required.

## General

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

The only other comments we have are those detailed in our cover letter.