

23 September 2022

Mr Jordan George
Secretariat, Quality of Advice Review
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

By email: advicereview@treasury.gov.au

Dear Mr George

Quality of Advice Review – Proposals for Reform

CPA Australia represents the diverse interests of more than 170,000 members, working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia strongly support the proposals for reform in the Quality of Advice Review Consultation Paper.

Collectively, we believe the proposals will support the financial planning sector to better service the community's financial advice needs, improve accessibility to affordable quality advice and address current issues of regulatory complexity, duplication and burden.

Importantly, we believe the proposals will strengthen consumer protection. Consumers will be better engaged in the advice process as it can be tailored and delivered to their individual needs and preferences. This will also provide the opportunity to further improve the consumer's financial literacy and empower them to make informed decisions about their financial needs and goals.

However, the proposals form only part of broader reforms needed to truly address the issue of consumer access to affordable quality advice.

Changes are also needed to the competency requirements and entry pathways to become a financial adviser and to the current AFS licensing framework.

While we acknowledge the competency and entry requirements to become a financial adviser are outside of the scope of this review, and are being considered under a separate consultation process, they remain an important pillar of the regulatory framework that must be amended to improve the accessibility and affordability of advice to the community.

Further, while there is a trend towards smaller practices applying for their own AFS licence, noting that the majority of larger AFS licensees including the institutional banks have left the sector, holding an AFS licence still requires considerable commitment and resources.

Individual registration of professional advisers would remove a regulatory framework that has largely been designed to regulate large AFS licensees and networks, which for the most part no longer exist in the sector. It would also recognise and support the bulk of remaining financial advisers, who are small business owners.

We believe addressing the competency and entry pathways, licensing framework and the regulatory framework governing the provision of financial advice collectively will ensure the community can access affordable quality advice to meet their financial needs both now and in the longer term.

Our detailed responses are contained in the Attachment.

If you have any queries about this submission, please contact Keddie Waller, Head of Public Practice & SME on 0401 716 083 or keddie.waller@cpaaustralia.com.au.

Yours sincerely

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CPA Australia

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?

CPA Australia supports this proposal in principle.

We believe that it is important that a consumer who seeks financial advice can be confident that the advice they are seeking is in their interests and meets their needs. The requirements and obligations to provide this advice should be scalable, reflecting the complexity of the advice being sought.

Importantly, the key obligation is to ensure that the advice provider has the competency to provide the advice the client is seeking and therefore whether the advice should be provided by a relevant provider.

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?

CPA Australia supports this proposal.

We believe that the proposed changes will help to reduce regulatory uncertainty when personal advice is provided.

Given the contracting size of the pool of financial advisers and the growing number of individuals seeking advice, it is important that opportunities to open different channels to access affordable advice are considered.

Importantly, a consumer seeking personal advice should still be confident that the advice they are seeking is in their interests and will be appropriate for their needs.

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?

CPA Australia supports this proposal.

We have concerns that the terms 'general advice' can be confusing for a client, as the nature of the advice being provided is not always clear to the individual seeking advice. For this reason, we support the proposal to remove the definition of 'general advice'.

We believe that the general consumer protections that exist should be sufficient to protect consumers who receive these types of recommendations or opinions. However, we recommend that should this proposal be implemented a post-implementation review will need to be undertaken to determine if additional safeguards may be needed.

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?

CPA Australia supports the proposal to replace the best interests obligations with the obligation to provide 'good advice', which would apply to any advice provider who provides personal advice to a retail client.

We believe that this proposal, coupled with proposals such as the removal of the current statement of advice obligations, will reduce the current regulatory complexity and burden of providing financial advice, including the time and cost associated with providing personal advice.

These changes acknowledge that the obligations to provide this advice should be tied to the scope and complexity of the advice being sought. Further, it ensures that the focus is on servicing the advice needs of the client, while still considering the broader circumstances of the client relevant to the advice being provided.

We believe that the proposed 'good advice' test would be complementary to existing obligations under the Code of Ethics for relevant providers and other general provisions, such as to ensure that financial services are provided efficiently, honestly and fairly by all advice providers.

Further, we also believe consideration should be given to extending the obligation to provide 'good advice' to advisers providing wholesale advice, given this proposal is ultimately aimed at improving the quality of advice provided to consumers.

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)?

We believe that this proposal should make it easier for advisers and institutions to provide limited advice to consumers.

CPA Australia supports the intention to remove the prescriptive way in which financial advice is currently provided under the regulatory framework. Relevant providers should be able to exercise their professional judgement and service their clients in a manner that best fits their needs.

We believe this proposal, coupled with the existing AFS licensee obligations to ensure that staff are competent, appropriately trained and supervised, ensures consumer protection mechanisms are maintained regardless of whether the advice provided is by an individual who is, or is not, a relevant provider.

However, we caution that given that the AFS licensee will still be ultimately responsible for the advice being provided it is likely that some AFS licensees will continue to prescribe the advice process for relevant providers, meaning this proposal may not have as broad an impact as intended.

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

a) limited advice?

b) digital advice?

A single Code of Ethics is essential for a profession, as it not only informs professionals of the shared values and behavioural expectations, but it also communicates these expectations to the community. However, feedback from the sector is that the current Code of Ethics can add complexity to the advice process because of the use of undefined terms or broad statements that can be difficult to interpret and apply in practice.

It should also be acknowledged that after many years of significant reform, the sector has developed a very conservative approach to compliance. Therefore, while the Code of Ethics arguably provides the flexibility to provide limited advice, fear of non-compliance is resulting in a less flexible approach being taken.

For example, while advice by a relevant provider should consider the client's broader, long-term interests and likely circumstances when providing scaled or limited advice, the literal application of this standard results in advisers often being required to consider every possible scenario and seek more client information than is necessary for the advice requested, which can in turn impact the cost of the advice.

We believe the Code of Ethics should be reviewed to clarify or remove undefined terms, and to address and clarify broad statements that are being found to be difficult to interpret and apply in practice.

For the sector to feel confident in adopting a more principles-based approach to advice, we believe a facilitative approach to enforcement is also needed. This would need to include building a stronger engagement model with the sector to aim to be more “on top of” any emerging issues and trends in the sector and to support its ability to be responsive to changing circumstances.

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?

CPA Australia believes that, collectively, the proposals could positively impact the affordability and accessibility of advice while maintaining the quality of the advice provided.

Further, removing the prescriptive process for the provision of advice, along with the proposed streamlined disclosure requirements, provides the opportunity for the adviser to tailor the provision of advice to their client’s specific needs and circumstances. This could be the provision of cost-effective simple advice, such as a young worker needing guidance on choosing a superannuation fund, through to providing advice in a video format at the client’s request given the client’s poor literacy skills.

We believe that these changes should strengthen, not weaken, consumer protections as the client should be more engaged in the advice process, informed about the advice they are receiving and empowered to make financial decisions. In comparison, the current one-size fits all advice process is followed by excessively lengthy disclosure documents.

However, this is also dependent on AFS licensees adopting the proposals as intended and allowing their relevant providers to exercise their professional judgement to provide advice in a manner fit for their client, rather than retaining the current prescriptive approach to providing advice.

Further to improve accessibility of financial planning advice, further capacity is needed in the sector beyond the broadening of channels proposed in the consultation paper.

This not only requires a rethink of the regulatory framework that governs the provision of advice, but also the current entry pathways to becoming a financial adviser.

While we acknowledge the education requirements to becoming a financial adviser is outside of the scope of this review, and is being considered under a separate consultation process, it remains an important pillar of the regulatory framework that must be amended to improve the accessibility and affordability of advice by the community.

This requires the current one-size-fits all education pathway to provide financial planning advice to be replaced with a model that is built on core knowledge and education skillsets that reflect the scope and advice being provided by the adviser. The focus should be on supporting the provision of quality, compliant advice to consumers through developing the required learning outcomes to provide such advice, while providing the flexibility needed to support scoped and specialist advisers, as well as holistic advisers.

We also believe that the requirement to be licensed under an AFS licence must be replaced with an individual registration model. Individual registration of professional advisers would lead to greater responsibility and accountability, requiring a personal commitment to integrity, competence and ethics. This would foster and strengthen the relationship between client and adviser and also reduce or remove conflicts of interest between consumers, advisers and licensees that may arise in the current regulatory context.

These changes, coupled with the proposals in the consultation paper, would attract like-minded professionals, such as professional accountants, to become registered to provide personal financial planning advice and provide capacity in the sector to meet the community’s advice needs.

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?

We believe that it is important that a consumer who seeks financial advice can be confident that the advice they are seeking is in their interests and meets their needs. Importantly, the key obligation is to ensure that the advice provider has the competency to provide the advice the client is seeking and therefore whether the advice should be provided by a relevant provider.

The existing licensing obligations to ensure representatives are adequately trained and competent to provide financial services, coupled with the obligation to ensure financial services are provided effectively, honestly and fairly should ensure quality of advice provided to consumers.

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?

CPA Australia supports, in principle, the proposals to broaden the channels of advice to the community, including making it easier for superannuation trustees to provide personal advice to their members. However, we reiterate that paramount to consumer protection is ensuring that the advice provider has the competency to provide the advice the client is seeking and therefore whether the advice should be provided by a relevant provider.

We also support, in principle, superannuation trustees having discretion on how to change for advice. However, we have concerns with how the proposed mechanism may work in practice and believe it warrants further discussion and consideration.

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?

CPA Australia support the proposals to streamline disclosure documents for ongoing fee arrangements.

Currently consumers can receive many fee reports and requests for fee consent if they have investments across multiple products, which can be confusing and even overwhelming.

Streamlining the disclosure requirements for ongoing fee arrangements will reduce regulatory burden and result in a better client experience.

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?

CPA Australia supports this proposal, which should support a professional adviser to provide advice in a form – which may not necessarily be in writing – that meets the client's needs and preferences.

This should, in turn, reduce the cost and potentially the time taken to provide advice, as well as ensure the client receives the advice in a form that meets their needs and empowers them to make a financial decision. Should this be a written record, the record should be meaningful to the client.

We believe this should positively impact the consumer, by ensuring the advice and form provided is tailored to their needs. In fact, it could lead to better consumer protection as the client should be better informed compared to receiving the current long

and complex document, even in the event of scaled or simple advice, to ensure it is evident that all possible considerations, from alternative strategies to alternative products, have been taken into account when providing the advice.

However, the risk is that AFS licensees may still require their relevant providers to prepare a statement of advice and retain this on record, even if the client does not request it at the time of receiving the advice. Further, it is likely that the statement of advice will still include all of the current legal protections that are currently required.

Consideration will need to be given to how AFS licensees can be encouraged to adopt this proposal, including how they can still demonstrate compliance through appropriate file notes and other records in the event of a potential complaint or review by ASIC.

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?

We do not believe that the current obligation to provide a financial services guide (FSG) is a key driver of regulatory burden and cost when providing financial advice. Rather, our concern is that the current form and obligations may not align with the consumers expectations when seeking professional advice.

For example, the requirement to provide a client with an FSG that details how to make a complaint and what compensation arrangements are in place, before even providing financial service, could be both perplexing and concerning for a client, especially if they have not previously sought financial planning advice.

Given this, we support the proposed flexibility for providers of personal advice to continue providing a FSG in its current form or making this information about remuneration and other benefits that may be received, their internal dispute resolution procedures and details about AFCA, available on their website.

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?

CPA Australia supports the proposed simplified reporting obligations to only require a relevant provider to report to the product issuer where they have received a complaint in relation to a product.

We believe this proposal should reduce the time and associated cost in comparison to the current reporting obligations.

We have no specific comments on the potential impact regarding design and development, nor target market determinations of financial products.

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

If implemented, we believe the combined proposals in the consultation paper will have many positive impacts and importantly should address some of the current barriers to providing affordable, accessible advice.

However, it will also require a significant change in mindset from AFS licensees to adopt these changes and empower their relevant providers to exercise professional judgement, noting the highly prescriptive and compliance driven environment in which financial advice is currently provided.

As the regulator of the financial services sector, ASIC will also have an important and critical role to play. We acknowledge the breadth and complexity of this responsibility and that it may take some time for ASIC to be in a position to provide both guidance and facilitative support to transition to a new regulatory environment for the provision of financial advice.

We therefore support a longer transitional period, with the option to elect early adoption. However, this should be on the condition that the AFS licensee adopts all proposals collectively given that the proposals are intended to work together.

General

15. Do you have any other comments or feedback?

CPA Australia strongly supports the proposals in the Quality of Advice consultation paper. We believe, if implemented, they will improve the consumer experience when seeking financial advice, as well as address the significant issue of regulatory burden impacting the affordability and accessibility of advice.

However, we believe that this is only part of the reforms needed to truly address the issue of affordable, accessible advice.

As noted earlier in this submission, changes are needed to the competency requirements and entry pathways to become a financial adviser and to the current AFS licensing framework.

While there is a trend towards smaller practices applying for their own AFS licence, noting that the majority of larger AFS licensees including the institutional banks have left the sector, holding an AFS licence requires considerable commitment and resources.

Individual registration of professional advisers would remove a regulatory framework that has largely been designed to regulate large AFS licensees and networks, which for the most part no longer exist in the sector. Individual registration would also recognise and support the bulk of remaining financial advisers who are small business owners.