



CHARTERED ACCOUNTANTS™
AUSTRALIA + NEW ZEALAND

26 September 2022

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

By email: AdviceReview@treasury.gov.au

Dear Sir/Madam,

Quality of Advice Review – Consultation paper- Proposals for Reform (August 2022)

Chartered Accountants Australia and New Zealand (CA ANZ) has long advocated for industry reform to ensure that more consumers are able to access high quality, ethical and professional financial advice.

We welcome the opportunity to comment on this Consultation Paper.

CA ANZ's detailed comments are on the appendix one, using your template as advised.

If you would like to discuss our submission, please do not hesitate to contact Tony Negline (Superannuation Leader) on (02) 8078 5404 or at tony.negline@charteredaccountantsanz.com.

Yours faithfully

**Tony Negline CA CA SMSF Specialist
Superannuation Leader
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Appendix 1: Consultation template

Name/Organisation: Chartered Accountants Australia & New Zealand (CA ANZ)

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?

CA ANZ agrees that advisers should be able to provide to personal advice to their clients without having to comply with all the obligations that currently apply to the provision of personal advice.

We have concerns about product providers providing advice to customers, often through related parties, given the problems that have arisen in recent times. The findings of the Royal Commission into misconduct in the banking, superannuation and financial services as well as the considerable amounts of compensation paid is clear justification for our concern.

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 are hopeful that this will be the case. Much will depend on how the rules are drafted in the law and how the new regime is regulated by the Australian Securities and Investments Commission and how it is implemented by financial institutions. Regulatory certainty is required for Licensees to have comfort their compliance processes are in line with the law, otherwise we will have Licensees imposing a more risk averse interpretation of the law onto advisers which increases compliance costs thereby increasing the cost of financial advice.

b. see 2.a. above

c. see 2.a. above. However, for financial institutions to be able to provide over-the-counter personal advice, clarity between a relevant provider and a non-relevant provider is critical for both consumer expectations and protections.

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?**

CA ANZ agrees that the concept of 'general advice' should be removed from Chapter 7 of the *Corporations Act* and that the provision of general or factual information about financial products should be regulated by the general consumer law and hence be regulated by the Australian Competition and Consumer Commission. Any misrepresentations in advertising or general product discussions should face the penalties that apply to similar commercial interactions under the consumer law.

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. CA ANZ hopes that replacing the *best interests duty* with an obligation to provide good advice will not impact the quality of advice provided to consumers. We do however hope that it will simplify the advice process thereby leading to lower costs for advice providers that will in turn be passed onto consumers.

That said, we note that the FASEA Code of ethics includes several obligations to act in the best interests of a client. A similar obligation applies in the Code of Ethics for many professional associations, including CA ANZ, so many advisers currently operate under multiple best interest obligations.

This is an ideal time to also review the appropriateness of advice to wholesale clients which currently does not need to be provided applying any best interest duty. Every provider of personal advice should fall under the same Code of Ethics, disclosure requirements and responsibilities to clients.

b. We are hopeful that this will be the case. See our concerns in 2.a. above.

This is particularly true for this area of compliance – many Licensees like the current best interest safe harbour provisions as they are used as a checklist.

If we are to move to true professionalism, best interest obligations should be the responsibility of the advice provider and be de-linked from the Licensee. If advisers took responsibility for their own advice, underpinned by the (FASEA) Code of Ethics as well as Codes from other professional member associations, then compliance costs would be significantly reduced and financial advisers would be more quickly likened to other professionals such as doctors, lawyers and accountants.

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. CA ANZ agrees that yes, the proposed 'good advice' obligation will make it easier to provide limited advice because would only have to consider the information that is available to the advice provider at the time the advice is provided rather than the current much broader obligations.

This proposal if it is implemented well may lead to a focus on clearly scoping advice work, which CA ANZ strongly advocated for in our ASIC CP332 submission around affordable advice.

A move to more specific Engagement Letters would be welcomed by CA ANZ to enable a clear focus on the scope of the limited advice to be provided.

b. Digital advice has been successfully built under the current regulatory regime however its take-up has been slow for a variety of reasons including a clear consumer preference to receive financial advice from a human being and a reluctance of financial advice firms to use such services. Digital advice providers should be subject to normal Chapter 7 obligations.

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

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

a. Clearly written law that is easy to comply with and easy to regulate. In addition, there should be disincentives for financial advice compliance teams to add additional requirements to the advice process including documentation requirements. As outlined above, professional advisers should be obligated to take responsibility for the advice they provide, thus moving the onus of compliance responsibility from the Licensee to the advice provider. If this was to occur, the temptation for the compliance teams to add unnecessary 'checklists' would be removed, thus lowering costs of compliance. Additionally, the further development of a financial advice 'profession' would likely gain momentum.

b. See 5.b above

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. CA ANZ hopes that the quality of financial advice will not be adversely impacted by the proposed changes. Given advice providers will be able to address specific clients' objectives and needs (rather than the current requirement to investigate a much broader range of client issues, we expect clients will receive the targeted, needs driven advice they want.

b. In our response to ASIC CP332 (Affordable advice), CAANZ strongly advocated for suitably qualified professionals to be able to provide limited or scoped advice to clients who need targeted advice in areas such as superannuation, particularly as this is simply an extension of many client-accountant engagements. Accountants are highly qualified with a degree at AQF 7 (and in our case, Chartered Accounting Diploma studies at AQF 8), have completed three years of mentored supervision, must abide by a Code of Ethics which is backed by a rigorous Quality Review program and are required to complete 120 hours of relevant CPD over a three-year period.

It is widely that there are many unmet consumer advice needs. One the other we have a highly qualified, ethical, ready-made Australia-wide workforce that is currently prohibited from giving limited superannuation advice due to current legislative and regulatory impediments.

A good outcome of the Quality Advice Review must be that suitably qualified professionals take responsibility for the carefully scoped advice they provide thus allowing more Australians to access affordable advice in a consumer protected environment.

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. CA ANZ believes that the same obligations should apply to all advice providers and strongly disagrees that the responsibility to have advisers adequately trained and competent should rest with the licensee See 7.b above.

CA ANZ advocates for professional advisers to take responsibility themselves. As an additional layer of consumer protection, we also support and encourage the idea of professional member associations playing a part in ensuring financial advisers have high professional standards.

Those who satisfy the requirements we outlined in 7.b, above should , at their own discretion, be able to be de-linked from licensees, thus fast-tracking the lowering of the costs of producing advice whilst at the time driving individual professionalism within the financial advice industry.

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?

CA ANZ agrees that both these statements are correct. However, we do not agree that the current trustee obligations should be changed.

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. The current ongoing fee arrangement disclosures are beset by unnecessary complexities and urgently need to be improved. For example, the disclosure should be based on what has been paid to an advice provider on a cash versus accruals basis.

b. Altering the disclosures as noted above will be easier and cheaper to prepare. They will also be easier for a client to understand.

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. CA ANZ agrees that in theory removing the need to provide a Statement of Advice will reduce the cost of providing advice. However, as we noted above, much will depend on how the law is amended, how it is regulated and how it is implemented by advice providers. We expect that many advice providers will still choose to provide some or all of their advice in writing. We also note that good, clear guidance on what is acceptable record-keeping should be provided by the regulator, and we also recommend that record-keeping requirements of other professionals such as doctors, lawyers and accountants should be considered in this review.

As an example, in some cases, a one page pictorial flowchart using PowerPoint provides a clearer and more concise summary than a 70+ page Statement of Advice, yet the latter is currently the only option.

b. Current Statement of Advice documents are not providing information that is client friendly and useful to clients, and can be considered to be a compliance document rather than an advice document.. However, unless an advice provider is competent, is required to adhere to a strict Code of Ethics that is enforced, has ongoing CPD requirements and can be the subject of disciplinary action, the Statement of Advice will continue to be seen as a compliance protecting document.

Financial advisers should be empowered to be professionals and for them to embrace the responsibility of being one. We understand this is not an overnight process.

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. CA ANZ believes that the changes should be made to the Financial Services Guides (FSGs) and also to the process by which the law currently imposes on the delivery of them. Yes, the regulatory burden on advice providers would be minimised if these could be kept on a website and referred to in a Letter of Engagement and yes, the current levels of prescriptive detail should be reduced which would further reduce regulatory burden.

b. The current FSG process is currently highly detrimental to the adviser-client relationship. We know of no other professional who is required to explain how the client can take action against that professional before the two parties determine the matters in question are discussed.

There will be very little, if any, negative impact on the proposed changes to the FSG, providing they are required to be provided prior to the engagement commencing and the most logical place for them to be either included or referred to is in a Letter of Engagement.

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. The current design and distribution obligations require reform and we support the suggested changes contained in the Proposal Paper. We believe that these suggestions will reduce compliance costs.

b. CA ANZ does not believe that the suggested changes will have any negative impact on target market determinations.

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

Transitional arrangements should be implemented in tranches or stages, with full early opt-in to be encouraged with appropriate ASIC guidance provided in a timely manner to assist with early opt-in.

Transitioning to being a true profession is critical for consumer confidence, and that will only be obtained when individuals are responsible for their own advice. As per 7.b above:

For those advisers who belong to a professional member association who satisfy the requirements we noted above should, at their own discretion, be able to be de-linked from licensees, thus fast-tracking the lowering of the costs of producing advice whilst at the time driving individual professionalism within the financial advice industry.

General

15. Do you have any other comments or feedback?

1. Regulated personal advice

Chapter 7 of the *Corporations Act* requires that financial services be provided “efficiently, honestly and fairly”.

We agree with the recommendation in the Australian Law Reform Commission (ALRC) Interim Report on financial services regulation - <https://www.alrc.gov.au/wp-content/uploads/2021/11/ALRC-FSL-Interim-Report-A.pdf> - that states that this obligation should be amended: see recommendation A20.

We note that from 13 March 2019 a failure to comply with this obligation became a civil penalty obligation with potential substantial penalties.

Further we note that the Financial Planners and Advisers Code of Ethics 2019 (FP Code of Ethics) – as published by the then Financial Adviser Standards and Ethics Authority Ltd (FASEA) – remains current. This code of ethics contains best interest duties and contains a requirement to avoid conflicts of interest.

We are therefore of the view that the current best interest duty in the *Corps Act* – see Part 7.7A – should be repealed to avoid duplication.

We would prefer that duplicating, slightly different and overlapping regulatory environments should be avoided.

We note that in relation to the Australian Financial Complaints Authority that it must vary a decision of the super fund trustee if that decision has been unfair or unreasonable or both – see Sec 1055 of the *Corps Act*.

A review of all these similar obligations is necessary to remove duplication.

The QoAR proposal paper says that “it will be a breach of the law to give poor advice or harmful advice” (page 21).

We believe these requirements already exist if an advice provider breaches the FASEA Code of Ethics.

Finally, we note that if the law imposes obligations to act efficiently, honestly and fairly then that obligation should also apply to the legislator and regulator. At present it would be fair to say that the regulatory environment acts as significant impediments to industry participants achieving these worthwhile objectives. That is, it is neither efficient nor fair and is also not clear.

2. Relevant providers

We do not support the concept of “relevant providers” as described in the Proposal Paper. Anyone who provides personal advice to clients needs to be suitably qualified and authorised.

In short all those providing advice should meet the same standards.

Those wishing to be licensed to manufacture and distribute products should not be permitted on the same licence to be able to provide advice to retail or wholesale clients. We have seen examples where this has led to significant conflicts of interest via so-called vertical integration – most recently in The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry where advice licensees owned by banks and other financial institutions provided incentives to sell in-house financial products that were not in the best interests of their customers

Manufacturers and distributors of financial products should also not be permitted to own directly or indirectly advice licensees. Indirect ownership should only be permitted for minority shareholdings (less than 20% of issued ordinary shares).

3. Intra-fund advice

We note that the Retirement Income Covenant (RIC) demands that APRA regulated superannuation fund trustees assist their members to balance three objectives – maximise expected retirement income, manage expected risks to the sustainability and stability of their expected retirement income and have flexible access to expected funds during retirement.

The RIC was first proposed in May 2018. We have consistently argued that this covenant is unnecessary and would prefer for it to be repealed from the *Superannuation Industry (Supervision) Act 1993*.

We note that the QoAR Proposal Paper suggests that perhaps the sole purpose test should be amended – see Sec 3.3. We do not support this suggestion.

As noted above we do not support vertical integration.

Our preferred model is as follows:

- If a fund member would like simple information – that does not consider a person’s personal circumstances – then this could be provided via a pooled charging mechanism
- Any additional advice that takes into account a member’s personal circumstances should be paid for by the specific member; this could be paid for from their member account balance but cost sharing arrangements should not be permitted

4. Disclosure documents

We agree that information about a financial adviser should be provided to the client before any advice is provided. The delivery mechanism should be flexible – that is, in whatever way the adviser and client agree this information should be provided. The current FSG content requirements need to be reviewed. We note that the FP Code of Ethics will apply to this requirement.

5. Wholesale and sophisticated investors

The provisions around determining if an investor is a wholesale or sophisticated investor require significant amendment. For example, the various thresholds (\$250,000 income test, \$2.5 million asset test, \$500,000 investment threshold) have not been adjusted for over 20 years.

In the meantime:

- Sydney established dwelling house prices have increased by 340%
- Melbourne established dwelling house prices have increased by 350%
- South Australia non-Adelaide established dwelling house prices have increased by 285%
- ASX 200 All Ordinaries Accumulation index has increased by 500%
- ASX 200 All Ordinaries index has increased by 220%
- Dividends paid by ASX 200 All Ordinaries listed companies have increased by 265%
- Average Weekly Ordinary Time Earnings have increased by 200%

(Various sources available upon request.)

There is an argument that each of the thresholds mentioned above should be doubled and facility for them to be regularly indexed in a similar way to the General Transfer Balance Cap.

We also recommend that those seeking to use a certificate – either product providers and/or financial advisers – should have to make an assessment of a client’s capacity to be a wholesale or sophisticated investor. That is, they are satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess:

- the merits of the product or service;
- the value of the product or service;
- the risks associated with holding the product;
- the client’s own information needs; and
- the adequacy of the information given by the licensee and the product issuer.

We do not believe this to be the responsibility of the accountant signing off what they believe to be factual information about a client’s financial situation, primarily available to an accountant for tax purposes – not investment purposes.