

## **Agenda Item 10(a) Summary of Quality of Advice Review Final Report and Recommendations**

The Quality of Advice Review commenced on 11 March 2022 and was led by Ms Michelle Levy as the independent reviewer.

The Quality of Advice Final Report (QA Final Report) was issued to the Government on 16 December 2022 and [publicly released](#) on 8 February 2023. The Government is still considering its response to the recommendations in the QA Final Report.

The purpose of the review was “*to ensure Australians have access to high quality, accessible and affordable advice*” and to determine how the regulatory framework could better achieve this outcome. The QA Final Report states the current system is flawed because it requires all advice to be comprehensive, there are too few financial advisers to provide such advice, and that financial institutions should be able to give advice on their products in a way that is safe and in clients’ interests.

The QA Final Report expresses the view that conflicts of interest can be managed, and as such, all commissions should not be banned and financial advisers should be permitted to provide advice in a safe way and in the interests of clients. This would be achieved by “*focussing on the content and merits of the advice rather than the conduct of the provider*”.

The QA Final Report contends that its recommendations will result in more financial product advice being ‘personal advice’ which must be ‘good advice’ which “*is advice that is fit for the purpose for which it is given and is in all circumstances good*”. If an employee of a financial institution is not a financial adviser, the institution is responsible for ensuring it is good advice.

The recommendations preserve an exclusive role for financial advisers, financial planners and stockbrokers, who can receive a fee for their advice (including commissions in relation to insurance products), and are personally responsible to ensure it is good advice and in the best interests of the client.

Most disclosure requirements are recommended to be removed and instead, the financial advisers are to ask themselves and their clients how they would like the advice to be provided.

The QA Final Report states that its recommendations align with the six principles in the Hayne Royal Commission; obey the law; do not mislead or deceive; act fairly; provide services that are fit for purpose; deliver services with reasonable care and skill; and when acting for another, act in the best interests of that other.

The QA Final Report recommends broadening the definition of personal advice so more advice is captured and is delineated better from general advice (Recommendation 1). However, this is tempered by recommending the removal of the requirement for a general advice warning (Recommendation 2) and allowing non-relevant providers (i.e., individuals that are not financial advisers) to provide personal advice in certain circumstances (Recommendation 3). The latter is meant to make such advice more accessible and affordable but is likely to come with risks to consumer protection (noting that the AFSL is required to ensure it is good advice and not the provider in this instance).

The QA Final Report recommends the introduction of a ‘good advice duty’ where the advice is fit for purpose (Recommendation 4) and that the current ‘best interest duty’ is replaced by a

statutory duty based on a fiduciary duty with the removal of the safe harbour provisions (Recommendation 5).

Some of the recommendations in the QA Final Report could result in efficiencies and reduction in unnecessary compliance costs, for example:

- Statement of Advice - provide written advice on request from the client (replacing statement of advice or record of advice) (Recommendation 9); and
- Providers of personal advice continue to give a FSG or include details on their website remuneration, other benefits and dispute resolution procedures (Recommendation 10);

However, other recommendations include maintaining conflicted remuneration in the form of commissions on life, general and consumer credit insurance products (recommendations 13.7 to 13.9).

The QA Final Report recommendations are summarised below. The complete recommendations can be found [here](#).

**Recommendation 1 – Personal advice** – broaden the definition of personal advice to capture all financial product advice if given in a personal interaction/communication by a provider who has information about the client’s financial situation or objective(s)/need(s). This aims to create better quality advice taking into account personal circumstances, more personal interactions subject to greater obligations, and to increase regulatory certainty by better delineating the boundary between general and personal advice.

**Recommendation 2 – General advice** – remove the requirement for a general advice warning to reduce unnecessary prescriptions and remove confusion for consumers.

**Recommendation 3 – Relevant providers** – require personal advice to be provided by a ‘relevant provider’ (financial adviser) where the provider is an individual and either the client pays a fee, or the product issuer pays a commission. In all other instances, the advice can be provided by a person who is not a relevant provider. This aims to increase the supply of personal advice, making it more accessible and affordable.

**Recommendation 4 – Good Advice Duty** – personal advice to a retail client must be good advice, which at the time provided it is fit for purpose (client’s purpose or benefit to the client; scope, content and nature of advice; and client’s relevant circumstances). This duty belongs to the relevant provider if they provide the advice; otherwise, it belongs to the AFSL. This aims to redirect the focus to the advice content, not the process taken.

**Recommendation 5 – Statutory Best Interests Duty** – replace the current ‘best interest duty’ with a statutory ‘best interests duty’ being a fiduciary duty reflecting general law without a safe harbour. This would only apply to relevant providers. This aims to ensure relevant providers are motivated only to act in their client’s best interests.

**Recommendation 6 – Superannuation advice** – enable superannuation fund trustees to provide personal advice about interests in funds and transitioning to retirement so long as the trustees consider personal circumstances (including family situation and social security entitlements if relevant). The restriction on collective charging of fees should be removed, allowing trustees to decide how to charge members for personal advice. This aims to give super funds more confidence about the scope of the advice they can provide and encourage trustees to allocate the cost of advice.

**Recommendation 7 – Deduction of adviser fees from superannuation** – enable trustees to pay a fee from members’ accounts to an adviser for personal advice on the direction of the member. This aims to provide trustees more certainty about paying fees without breaching the SIS Act.

**Recommendation 8 – Ongoing fee arrangements and consent requirements** – still require providers to obtain client consent annually to renew ongoing fee arrangements using a single prescribed ‘consent form’. The form should explain the services to be provided, the fee proposed for 12 months and authorise the deduction of advice fees from the client’s financial product. This aims to streamline requirements whilst ensuring customer agreement is obtained.

**Recommendation 9 – Statement of advice** – require providers of personal advice to retail clients to maintain complete records of advice or provide written advice on request from the client (replacing statement of advice or record of advice). This aims to allow financial advisers and AFSL more flexibility to provide advice to suit clients and reduce compliance costs.

**Recommendation 10 – Financial Services Guide (FSG)** – Providers of personal advice continue to give FSG or include details about remuneration and any other benefits and internal and external dispute resolution procedures on their website. This aims to increase flexibility and efficiency and ensure clients retain access to important information.

**Recommendation 11 – Consent requirements for wholesale clients** – Require clients who meet the assets and income threshold and have an accountant’s certificate to provide written consent to being treated as a wholesale client (and amendments for sophisticated investors), containing an acknowledgment before given financial product or service that:

- not required to be a relevant provider or have to comply with professional standards;
- no duty to give good advice or to act in the best interests of the client;
- not required to give a product disclosure statement or financial services guide; and
- not be entitled to complain under internal dispute resolution procedures or to AFCA.

This aims to ensure wholesale clients/sophisticated investors are aware of and agree to the protections they lose.

**Recommendation 12.1 – Design and Distribution Obligations** – limit the exception to take reasonable steps that distribution of a financial product is consistent with its target market to personal advice by relevant providers. If personal advice is not from a relevant provider, AFSL is to comply with the distribution obligations and take reasonable steps. This aims to ensure where not provided by a relevant provider, the financial product is distributed to clients within the target market.

**Recommendation 12.2 – Design and Distribution Obligations (DDO Reporting Requirements)** – All providers of personal advice (including relevant providers) are to report the number and nature of any complaints during a reporting period to the product issuer. But remove the requirement for relevant providers to report to the product issuer:

- significant dealings outside the target market;
- additional reporting obligations in the target market determination; and
- where there have been no complaints during the specified reporting period.

This aims to ensure appropriate DDO reporting requirements and not impose unwarranted compliance burdens.

**Recommendation 13.1 – Benefits given by a client** – explicitly provide that both monetary and non-monetary benefits given by a client to an AFSL/representative are not conflicted remuneration. Therefore the prohibition on accepting monetary and non-monetary benefits only applies to those from a product issuer. This clarifies that conflicted remuneration aims to ban benefits from a product issuer and removes unnecessary exceptions.

**Recommendation 13.2 – Client directed payments from superannuation funds** – Permit superannuation fund trustees to pay an AFSL/representative a fee for personal advice where the client directs the payment from their super (and remove 963B(1)(d)(ii) and 963C(1)(e)(ii) of the CA exception). This aims to enable clients to pay for advice from the fund where it relates to their interest in the fund.

**Recommendation 13.3 – Removing exceptions for benefits given by clients for issues, sales or dealings in financial products** – If recommendation 13.1 is accepted, remove the following exceptions to conflicted remuneration in the Corporations Act/Regulations:

- s963B(1)(d)(i) & s963C(1)(e)(i) – monetary and non-monetary benefits from the client for the issue/sale of a financial product; and
- Reg 7.7A.12E– monetary benefits from the retail client in relation to the provider dealing in a financial product on the client’s behalf.

This aims to remove likely redundant exceptions.

**Recommendation 13.4 – Removing the exception for the issue of financial products where advice has not been provided in the previous 12 months** – Remove the exception (s963B(1)(c) of the CA), which allows monetary benefits for the issue/sale of a financial product where the AFSL/representative has not given financial product advice for at least 12 months. This aims to ensure consistent operation of conflicted remuneration provisions.

**Recommendation 13.5 – Exception for agents or employees of Australian authorised deposit-taking institutions** – Remove the exceptions in (s963D of the CA and reg 7.7A.12H) for benefits given to an agent/employee of an ADI for financial product advice about basic banking products, general or consumer credit insurance. This aims to ensure consistent operation of conflicted remuneration provisions.

**Recommendation 13.6 – Time-sharing schemes** – Undertake a separate review of time-sharing schemes and their distribution to determine whether the regulatory framework is appropriate, including consideration of whether the exception to the ban on conflicted remuneration should be removed. This aims to ensure there is a more holistic consideration of time-sharing schemes.

**Recommendation 13.7 – Life insurance** – retain the exception to conflicted remuneration for commissions on life insurance products and maintain clawback rates at the current levels (60% upfront commissions and 20% trailing commissions, with a 2-year clawback). In addition, the provider must obtain informed consent (one-off for the duration of the policy), including disclosure of:

- upfront and trailing commissions as a percent of the premium; and
- the nature of any services the adviser will provide in relation to the product.

This aims to assist clients in accessing personal advice about life insurance. Other recommendations encourage more providers to provide life insurance advice and that commissions will play less of a role in life insurance distribution over time.

**Recommendation 13.8 – General insurance** – Retain the exception to conflicted remuneration for commissions on a general insurance product. The provider must obtain informed consent (one-off for the duration of the policy) in writing and before the issue or sale of the product. The provider must disclose details of the commission (including for subsequent renewals) and any services to be provided. This aims to assist clients in accessing personal advice about general insurance.

**Recommendation 13.9 – Consumer credit insurance** – Retain the exception to conflicted remuneration for commissions on consumer credit insurance and the current cap of 20%. The provider must obtain the client's informed consent before accepting a commission. This aims to improve the transparency of such insurance is sold.