

Treasury Responses to QA Financial Report Recommendations

QUALITY OF ADVICE REVIEW		AUSTRALIAN GOVERNMENT RESPONSE		
Recommendations	QA Financial Report Recommendations	Australian Government — Treasury Responses	Govt response stream	Govt to accept QA Recom
Recommendation 1 — Personal advice	<p>The definition of personal advice in the Corporations Act should be broadened so that all financial product advice will be personal advice if it is given to a client in a personal interaction or personalised communication by a provider of advice who has (or whose related body corporate has) information about the client's financial situation or one or more of their objectives or needs.</p> <p>Personal advice means financial product advice prepared or adjusted for or directed to a particular client in circumstances where:</p> <ul style="list-style-type: none"> a) the client tells the provider of the advice their financial situation or one or more of their objectives or needs; or b) the licensee responsible for the advice, or a related entity of the licensee, if the licensee is a body corporate, holds information about the client's financial situation or one or more of their objectives or needs. 	In conjunction with implementing recommendation 6, the Government will explore expanding the provision of advice by other institutions by consulting industry and consumer stakeholders on recommendations to broaden the definition of personal advice (recommendation 1).	Stream three - exploring new channels for advice	Maybe <i>(Further consultation required)</i>
Recommendation 2 — General advice	General advice should continue to be a financial service, but the requirement for a general advice warning to accompany general advice should be removed.	In conjunction with implementing recommendation 6, the Government will explore expanding the provision of advice by other institutions by consulting industry and consumer stakeholders on recommendations, including removing the general advice warning (recommendation 2)	Stream three - exploring new channels for advice	Maybe <i>(Further consultation required)</i>
Recommendation 3 — Relevant providers	Amend the Corporations Act to provide that personal advice must be provided by a relevant provider where:	In conjunction with implementing recommendation 6, the Government will explore expanding the provision	Stream three - exploring new channels for advice	Maybe

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	<p>a) the provider is an individual; and</p> <p>b) either:</p> <ul style="list-style-type: none"> i) the client pays a fee for the advice; or ii) the issuer of the product pays a commission for the sale of the product to which the personal advice relates. <p>In all other cases, personal advice can be provided by a person who is not a relevant provider.</p>	<p>of advice by other institutions by consulting industry and consumer stakeholders on recommendations, including allowing non-relevant providers to provide personal advice (recommendation 3)</p>		<p><i>(Further consultation required)</i></p>
<p>Recommendation 4 — Good advice duty</p>	<p>A person who provides personal advice to a retail client must provide the client with good advice. Good advice means personal advice, that is, at the time it is provided:</p> <ul style="list-style-type: none"> a) fit for purpose having regard to: <ul style="list-style-type: none"> i) if the advice is: <ul style="list-style-type: none"> 1) given in response to a request, question or inquiry from the client, the purpose of the client that the provider is aware of or should reasonably be aware of; or 2) volunteered by the provider, the reason the provider reasonably considers the advice might be of use or benefit to the client; ii) the scope, content and nature of the advice; and iii) the likely relevant circumstances of the client; and b) in all the circumstances, good. 	<p>In conjunction with implementing recommendation 6, the Government will explore expanding the provision of advice by other institutions by consulting industry and consumer stakeholders on recommendations, including introducing a good advice duty (recommendation 4).</p>	<p>Stream three - exploring new channels for advice</p>	<p>Maybe</p> <p><i>(Further consultation required)</i></p>

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	If the advice is provided by a financial adviser (relevant provider), this duty applies to the financial adviser. In all other cases, this duty applies to the AFS licensee.			
Recommendation 5 — Statutory best interests duty	<p>The existing best interests duty and related obligations (the duty to give appropriate advice assuming the best interests duty is satisfied, the duty to warn the client if the advice is based on inadequate or insufficient information and the duty of priority if there is a conflict) should be replaced with a new statutory best interests duty.</p> <p>The new best interests duty would be a true fiduciary duty that reflects the general law and will not include a safe harbour.</p> <p>This duty will apply only to financial advisers (relevant providers).</p>	<p>The “Safe Harbour” steps, originally designed to protect financial advisers, will be removed from the Best Interest Duty with a consultation to determine implementation details and the implications of adopting the remaining parts of recommendation 5.</p> <p><i>(accept in principle part of recommendation 5).</i></p>	Stream one- Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes — in principle
Recommendation 6 — Superannuation advice	<p>Superannuation fund trustees should be able to provide personal advice to their members about their interests in the fund, including when they are transitioning to retirement. In doing so, trustees will be required to take into account the member’s personal circumstances, including their family situation and social security entitlements, if that is relevant to the advice.</p> <p>Superannuation fund trustees should have the power to decide how to charge members for personal advice they provide to members and the restrictions on collective charging of fees should be removed.</p>	<p>The restrictions on collective charging will be amended to allow superannuation funds to provide more retirement advice and information to their members.</p> <p><i>(accept in principle recommendation 6).</i></p>	Stream two - expanding access to retirement income advice	Yes — in principle
Recommendation 7 — Deduction of	Superannuation trustees should be able to pay a fee from a member’s superannuation account to an adviser for personal advice provided to the member about the	Superannuation trustees will be provided with legal clarity around	Stream two - expanding access	Yes — in principle

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adviser fees from superannuation	member's interest in the fund on the direction of the member.	current practices for the payment of adviser service fees. <i>(accept in principle recommendation 7).</i>	to retirement income advice	
Recommendation 8 — Ongoing fee arrangements and consent requirements	The current provisions, which require a provider of advice to give a fee disclosure statement to the client to obtain the client's agreement to renew an ongoing fee arrangement and the client's consent to deduct advice fees, should be replaced. Providers should still be required to obtain their client's consent on an annual basis to renew an ongoing fee arrangement, but they should be able to do so using a single 'consent form'. The consent form should explain the services provided and the fee the adviser proposes to charge over the following 12 months. The consent form should also authorise the deduction of advice fees from the client's financial product and should be able to be relied on by the product issuer. The form should be prescribed.	Ongoing fee renewal and consent requirements will be streamlined into a single form, and the requirement to provide a fee disclosure statement will be removed. <i>(accept recommendation 8).</i>	Stream one-Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes
Recommendation 9 — Statement of advice	The requirement to provide a statement of advice (or record of advice) should be replaced with the requirement for providers of personal advice to retail clients to maintain complete records of the advice provided and to provide written advice on request by the client. Clients should be asked whether they would like written advice before or at the time the advice is provided, and a request for written advice is required to be made before or at the time the advice is provided. This requirement will not apply to a person currently exempt from the requirement to provide statements of advice (e.g., a person who provides personal advice about general insurance products).	Statements of Advice will be replaced with an advice record that is more fit-for-purpose, with consultation to determine the final design of the replacement. <i>(accept in principle recommendations 9).</i>	Stream one-Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes — in principle

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	ASIC should provide guidance on how advice providers may comply with their record-keeping obligations.			
Recommendation 10 — Financial Services Guide	Providers of personal advice should either continue to give their clients a financial services guide or make information publicly available on their website about the remuneration and any other benefits the provider receives (if any) in connection with the financial services they provide and their internal and external dispute resolution procedures (and how to access them).	More flexibility will be provided in how financial service guide requirements can be met. <i>(accept recommendation 10).</i>	Stream one-Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes
Recommendation 11 — Consent requirements for wholesale clients	The Corporations Act should be amended to require a client who meets the assets and income threshold and has an accountant's certificate to provide written consent to be treated as a wholesale client. The written consent should contain an acknowledgment that is given before they are provided with a financial product or service that: <ul style="list-style-type: none"> the advice provider is not required to be a relevant provider, and accordingly, they will not have to comply with the professional standards; the advice provider will not have a duty to give good advice or to act in the best interests of the client under the Corporations Act; the advice provider is not required to give the client a product disclosure statement or financial services guide; and the client will not be entitled to complain about the advice under the AFS licensee's internal dispute resolution procedures or to AFCA. 	Standardised consumer consent requirements will be introduced to classify consumers as wholesale or sophisticated clients. <i>(accept in principle recommendation 11).</i>	Stream one-Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes — in principle

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	The existing consent requirements for sophisticated investors should be amended to require a written acknowledgement in the same terms.			
Recommendation 12.1 — Design and Distribution Obligations (Distribution Requirements)	<p>Amend the DDO distribution obligations in the Corporations Act to limit the exception to the requirement to take reasonable steps to ensure the distribution of a financial product is consistent with its target market to personal advice provided by relevant providers.</p> <p>Where personal advice is provided by someone who is not a relevant provider, the AFS licensee should, like any other distributor, be required to comply with the distribution obligations and take reasonable steps to ensure the financial product is only recommended in accordance with the target market determination.</p>	In conjunction with implementing recommendation 6, the Government will explore expanding the provision of advice by other institutions by consulting industry and consumer stakeholders on recommendations, including amending the Design and Distribution Obligations (recommendations 12.1 and 12.2).	Stream three - exploring new channels for advice	Maybe <i>(Further consultation required)</i>
Recommendation 12.2 — Design and Distribution Obligations (DDO Reporting Requirements)	<p>Amend the DDO reporting requirements in the Corporations Act to remove the requirement for relevant providers to:</p> <ul style="list-style-type: none"> report significant dealings outside the target market to the product issuer; comply with the additional reporting obligations specified by the product issuer in the target market determination; and report to the product issuer where there have been no complaints during the specified reporting period. <p>These exceptions will not apply to someone who is not a relevant provider.</p>	In conjunction with implementing recommendation 6, the Government will explore expanding the provision of advice by other institutions by consulting industry and consumer stakeholders on recommendations, including amending the Design and Distribution Obligations (recommendations 12.1 and 12.2).	Stream three - exploring new channels for advice	Maybe <i>(Further consultation required)</i>

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	All providers of personal advice (including relevant providers) will need to report the number of complaints received during a reporting period (if there have been any) and describe the nature of these complaints to the product issuer.			
Recommendation 13.1 — Benefits given by a client	<p>Amend the conflicted remuneration provisions in the Corporations Act to explicitly provide that both monetary and non-monetary benefits given by a client to an AFS licensee or a representative of a licensee are not conflicted remuneration.</p> <p>This means that the prohibition on AFS licensees or their representatives accepting monetary and non-monetary benefits would only apply to benefits given by a product issuer, not to benefits given by a client.</p>	<p>Certain exemptions to the ban on conflicted remuneration will be simplified and some removed, including:</p> <p>Clarifying that monetary or non-monetary benefits given by a client are not conflicted remuneration along with the removal of consequential exceptions.</p> <p><i>(accept recommendations 13.1 and 13.3);</i></p>	Stream one- Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes
Recommendation 13.2 — Client directed payments from superannuation funds	Remove the exception in section 963B(1)(d)(ii) and 963C(1)(e)(ii) of the Corporations Act and replace it with a specific exception that permits a superannuation fund trustee to pay an AFS licensee or its representative a fee for personal advice where the client directs the trustee to pay the advice fee from their superannuation account.	<p>The restrictions on collective charging will be amended to allow superannuation funds to provide more retirement advice and information to their members.</p> <p><i>(accept in principle recommendation 6).</i></p> <p>This will work with the industry to consider adopting, and tailoring as needed, recommendation 13.2 to implement recommendation 6.</p>	Stream two - expanding access to retirement income advice	Maybe <i>(Further consultation required)</i>

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Recommendation 13.3 — Removing exceptions for benefits given by clients for issue, sales or dealings in financial products	<p>If the recommendation that permits benefits (monetary and non-monetary) given by clients to an AFS licensee or a representative is accepted, the following exceptions to the conflicted remuneration provisions are no longer required and should be removed:</p> <ul style="list-style-type: none"> • section 963B(1)(d)(i) of the Corporations Act – monetary benefits given by the client for the issue or sale of a financial product; • section 963C(1)(e)(i) of the Corporations Act – non-monetary benefits given by the client for the issue or sale of a financial product; and • regulation 7.7A.12E of the Corporations Regulations – monetary benefits given to the provider by a retail client in relation to the provider dealing in a financial product on behalf of the client. 	<p>Certain exemptions to the ban on conflicted remuneration will be simplified and some removed, including: Clarifying that monetary or non-monetary benefits given by a client are not conflicted remuneration, along with the removal of consequential exceptions</p> <p><i>(accept recommendations 13.1 and 13.3);</i></p>	Stream one- Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes
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 in paragraph 963B(1)(c) of the Corporations Act, which provides for monetary benefits given for the issue or sale of a financial product where the AFS licensee or representative has not given financial product advice about the product (or class of product) for at least 12 months prior to the date the benefit is given.	<p>Certain exemptions to the ban on conflicted remuneration will be simplified and some removed, including:</p> <p>Removing an exception to conflicted remuneration rules for the issue of financial products where advice has not been provided in the previous 12 months.</p> <p><i>(accept recommendation 13.4)</i></p>	Stream one- Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes
Recommendation 13.5 — Exception for agents or	Remove the exceptions in section 963D of the Corporations Act and regulation 7.7A.12H of the Corporations Regulations for benefits given to an agent	Certain exemptions to the ban on conflicted remuneration will be	Stream one- Removing regulatory red tape	Yes

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employees of Australian authorised deposit-taking institutions	or employee of an Australian authorised deposit-taking institution for financial product advice about basic banking products, general insurance products or consumer credit insurance.	simplified and some removed, including: Removing an exception to conflicted remuneration rules for agents or employees of Australian Authorised Deposit-Taking Institutions <i>(accept recommendation 13.5).</i>	that adds the cost of advice without benefiting consumers.	
Recommendation 13.6 — Time sharing schemes	The Government should undertake a separate review of time-sharing schemes and their distribution to determine whether the regulatory framework for time-sharing schemes under Chapter 7 of the Corporations Act is appropriate. As part of this review, consideration should be given to whether the exception to the ban on conflicted remuneration for time-sharing schemes should be removed.	The Government will defer consideration of a review of time-sharing schemes (recommendation 13.6) until after the completion of the Treasury's review of the regulatory framework for Managed Investment Schemes. <i>Defer consideration of recommendation 13.6</i>	Stream one-Removing regulatory red tape that adds the cost of advice without benefiting consumers.	No — Consideration deferred
Recommendation 13.7 — Life insurance	Retain the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a life risk insurance product. Commission and clawback rates should be maintained at the current levels (60 percent upfront commissions and 20 percent trailing commissions, with a 2-year clawback). A person who provides personal advice to retail clients in relation to life risk insurance products and who receives a commission in connection with the issue or sale of the life risk insurance product must obtain the client's informed consent before accepting a	Standardised consumer consent requirements for life, general and consumer credit insurance commissions will be introduced. <i>(accept recommendations 13.7 – 13.9).</i>	Stream one-Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes

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	<p>commission. This consent should be recorded in writing and should be obtained prior to the issue or sale of the life risk insurance product. In order for the client to make an informed decision, the advice provider must disclose:</p> <ul style="list-style-type: none"> the commission the person will receive (upfront commission and a trailing commission) as a percent of the premium; and the nature of any services the adviser will provide to the client (if any) in relation to the life risk insurance product (such as claims assistance). <p>Consent will be one-off and apply for the duration of the policy.</p> <p>This requirement will only apply to life risk insurance products purchased after the commencement of this recommendation.</p>			
Recommendation 13.8 — General insurance	<p>Retain the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a general insurance product.</p> <p>A person who provides personal advice to retail clients in relation to a general insurance product who receives a commission in connection with the issue or sale of the general insurance product must obtain the client's informed consent before accepting a commission. This consent should be recorded in writing and should be obtained prior to the issue or sale of the general insurance product. Consent is not required for any renewals of the same type of cover provided the client's original consent applied to the commission payable on any renewed cover.</p>	<p>Standardised consumer consent requirements for life, general and consumer credit insurance commissions will be introduced.</p> <p><i>(accept recommendations 13.7 – 13.9).</i></p>	<p>Stream one-Removing regulatory red tape that adds the cost of advice without benefiting consumers.</p>	Yes

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	The advice provider must disclose details of the commission the provider will receive for the issue or sale of the general insurance product (including subsequent renewals) and any services the provider will provide to the client (if any). The disclosure of the commission amount can be set out in the form of a percent range of the premium.			
Recommendation 13.9 — Consumer credit insurance	<p>Retain the exception to the ban on conflicted remuneration for benefits given in relation to consumer credit insurance. The current cap on commissions in relation to consumer credit insurance (of 20 percent) should continue to apply.</p> <p>A person who provides personal advice to retail clients in relation to consumer credit insurance who receives a commission in relation to consumer credit insurance must obtain the client's informed consent before accepting a commission.</p>	<p>Standardised consumer consent requirements for life, general and consumer credit insurance commissions will be introduced.</p> <p><i>(accept recommendations 13.7 – 13.9).</i></p>	Stream one- Removing regulatory red tape that adds the cost of advice without benefiting consumers.	Yes

Stream Three - Exploring new channels for advice

In conjunction with implementing recommendation 6, the Government will explore expanding the provision of advice by other institutions by consulting industry and consumer stakeholders on recommendations to:

- Broaden the definition of personal advice (recommendation 1)
- Remove the general advice warning (recommendation 2)
- Allow non-relevant providers to provide personal advice (recommendation 3)
- Introduce a good advice duty (recommendation 4)

- Amend the Design and Distribution Obligations (recommendations 12.1 and 12.2)

This consultation will also finalise implementation details for:

- the design of the replacement for statements of advice
- the implementation details and the implications of adopting the remaining parts of recommendation 5.
- the Financial Adviser Code of Ethics
- expanding access to affordable retirement advice.

Government consultation will test how these proposals might operate under different advice models, including digital advice models, and across sectors. The consultation will also consider practical policy design and implementation issues, including in relation to consumer protections. The Government will issue its final response on the Delivering Better Financial Outcomes package later in 2023.