

QSuper Submission

ASIC Consultation Paper 254: Regulating Digital Advice

QSuper is the default fund for Queensland's public sector employees and has around 540,000 members. It is Queensland's largest superannuation fund, with approximately \$90 billion in funds under administration.

QSuper has a 'member for life' philosophy and is committed to continually improving its products and services. QSuper provides numerous services to members, including general and personal advice through QInvest.

QSuper has embraced digital advice as a valuable tool for members who are looking for simple, cost effective advice. As such QSuper welcomes the opportunity to comment on ASIC Consultation Paper 254: Regulating Digital Advice (CP254).

For convenience and to aid understanding, comments are provided using the relevant question reference numbers provided in the "List of proposals and questions" section of CP254 released in March 2016

A1Q1 Overall, is the proposed guidance helpful? If not, why not?

Yes, the proposed guidance is helpful. CP254 covers most matters expected and provides QSuper with comfort that its digital advice strategy is consistent with ASIC guidance.

Further clarity in relation to some existing obligations and how these obligations can be met in a digital advice context would however be of assistance. Suggestions where additional clarity would be of assistance are provided.

1. *Flexibility to accommodate different kinds of devices and user interface options*

We ask ASIC to consider whether its expectations of licensees:

- Are practical when applied across different digital devices a customer use to access digital advice tools.
- Recognise that different user interface options can be used for effective communication through digital mediums. For example, pop up messaging, layered architecture (e.g. links), text on screen, interactive charts or tables.
- Recognise that a combination of digital and human interaction may be needed during the advice process. A member's advice journey may not be 100% digital. For example, members may receive guidance from employees during the advice process through live-chat, or may require a representative to review outcomes before producing a Statement of Advice. We feel it is important that ASIC consider how the requirements may differ in these proposed circumstances.

2. Filtering

Proposed paragraph 000.100 includes “A digital advice model that results in all clients receiving advice would raise serious concerns and would prompt close scrutiny from ASIC”.

We ask that the proposed Regulatory Guide recognise that the filtering of clients can occur outside of the digital advice tool. For example, QSuper filters member access to digital advice based on certain criteria being met. This results in a higher percentage of member’s being eligible to receive advice from the tool.

3. Reconstructing changes to the tool

Proposed paragraph 000.69 includes ASIC’s expectation that Digital Advice Providers (DAP) will “be able to control, monitor and reconstruct any changes to algorithms over a seven-year timeframe” [emphasis added].

We support that licensees must keep records describing changes made to algorithms. These records must explain the impact of the change on the output.

We ask ASIC to clarify that it is not expecting licensees to be able to “reconstruct” a former version of an algorithm. We understand that this is not ASIC’s intention but ask ASIC to clarify this in the Regulatory Guide to avoid confusion.

Reconstructing algorithms would be difficult in most circumstances. For example, if a change were made to an algorithm due to a change in the data source, it may not be possible to ‘reconstruct’ the output.

4. Disclosing the algorithm

QSuper acquired its digital advice capability from an online advice developer. The commercial value of the tool includes the unique algorithm powering it. The algorithm developer has spent considerable time and financial resources developing, testing and refining the algorithm to produce a unique experience that can be offered to a number of licensees. Therefore, the algorithm is highly confidential and valuable intellectual property.

We fully support the proposition that each licensee must understand the purpose, scope and design of the algorithm and have documented test and rectification strategies for the output of the digital advice tool. However, we ask that ASIC clarify its expectations of licensees in the proposed regulatory guide that the full algorithm is not required to be disclosed.

A1Q2 Is our proposed guidance (in Section D of the draft regulatory guide) helpful in assisting digital advice providers to provide scaled advice that is in the best interests of clients? If not, why not?

At the outset, there is a common feature of digital advice offerings that needs to be highlighted and which is recognised by ASIC’s proposed regulatory guide. It relates to the fact that where advice is provided through a digital medium, the ability to scope the subject matter of the digital advice will be subject to the limitations of the computer program that delivers it and it will be rigid beyond those limitations.

1. **Scoping**

It is clear that the digital advice lends itself to being scaled in nature. In determining the requirements to provide scaled advice, RG 175.387 to RG 175.390 and RG 244.65 to RG 244.84 provide important and valuable guidance.

It is clear that the subject matter and scope of the advice contemplated under the RG's is ultimately determined through a robust interaction between a representative and their client to determine the final subject matter and scope of the advice to be provided.

In a digital environment, it is difficult to mutually determine the subject matter and scope of advice to be provided. In most cases, DAP will offer advice on distinct topics, requiring users to answer a series of questions, and if eligible to obtain advice, agree to the limitations of the digital advice tool

2. **Exclusion of other subject matter**

It follows from the above, that subject matter means that:

- consideration of other subject matter is excluded;
- consideration of the client's objectives and financial situation is limited to the subject matter to be advised on; and
- consideration is not given to other client circumstances except where advice on the agreed subject matter would not be able to achieve the client's relevant objectives, financial objectives and needs without taking this other information into account.

Through preliminary filtering, our digital advice tool is not made available to all members. Furthermore, depending upon the responses received to secondary filtering questions, the digital advice tool will exclude additional members from using the digital advice tool and will direct them to other advice channels to receive appropriate advice.

Most DAP advice reviewed to date, only provide intra-fund advice on products already held by the client. Clients could potentially achieve a better outcome through the use of other financial products not within the subject matter of the advice, meaning that the advice may not be appropriate or in the best interests of the client. In most cases, this limitation is raised with the user and acknowledged before entry into the digital advice tool is permitted.

3. **Other required steps**

Section 961B(2)(g) requires an adviser to take other steps when the advice is provided if they would reasonably be regarded as in the interests of the client.

Given the rigidity that applies to the scoping of advice in a digital medium (as outlined above) additional steps may need to be built into digital advice models in order to enable the DAP to discharge their best interests obligation. A key issue in this context is to identify the types of additional steps that may be specifically relevant to digital advice. The industry has an imperative for certainty in this regard as understandably the digital tools need to be set up correctly and comprehensively from inception.

Examples of steps that seem applicable and which are raised in the draft ASIC Regulatory Guide are:

- a) appropriate disclosure as to limitations in the advice due to the use of scoped subject matter (for example, 'We have not considered any type of financial

product that might meet your needs other than superannuation products on our approved product list.’); and

- b) appropriate disclosure as to limitations in the advice due to the use of the digital tool (for example, ‘This advice engine relies on your responses to the various inputs requested and does not and cannot take into account information that does not fit with any of the inputs requested’).

It would be helpful to the industry if ASIC provided further guidance as to the types of additional steps that may be effective in meeting the best interest obligation in the digital context. In this regard, it would be helpful if ASIC acknowledged that the additional steps could involve (without limitation):

- only allowing access to certain types of customers;
- filtering out clients based on answers to questions as part of the fact find;
- warnings using graphics, pop ups and animation as well as any other form of media or technology (rather than worded disclosures and disclaimers);

Defining the level of flexibility to adapt and modify the different types of steps, media and technological functionality for different devices, will be important.

B1 We propose to require that a digital advice licensee has at least one responsible manager who meets the minimum training and competence standards for advisers. To assist existing AFS licensees that may not have a responsible manager who meets these standards, we propose a transition period of six months. Note: See RG 000.44–RG 000.51 of the draft regulatory guide for more details

B1Q1 Do you agree with this proposal? Please provide supporting arguments.

We support high competence, experience and education requirements being applied to DAP and the appointment of a Responsible Manager (RM). The proposed requirements as they currently stand are however inconsistent with those set out in RG 105. Please refer to the next question for proposed requirements for RMs. These standards should be applied with a level of consistency across licensees.

B1Q2 Do you agree that, if the changes proposed in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 become law, at least one responsible manager should: (a) meet the new higher training and competence standards (i.e. have a degree or equivalent, pass an exam, complete a professional year and undertake continuing professional development); and (b) comply with the proposed ethical standards (i.e. comply with a code of ethics and be covered by an approved compliance scheme)?

With respect to digital advice RM competence, we are of the opinion, the RM assigned to a digital advice tool by the DAP should be sufficiently trained and experienced to be appointed as a practicing adviser (though not necessarily practicing) as is the approach with our non-digital financial planning RM’s. We also believe it appropriate for ASIC to consider enhancing RG105 to ensure such a requirement is consistently applied throughout the industry.

B1Q3 Are there any aspects of the proposed higher training and competence standards in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 that should not apply to at least one responsible manager of a digital advice licensee?

Please refer to B1Q2 response above.

B1Q4 Is the proposed transition period of six months long enough for existing AFS licensees to comply with the requirement to have a responsible manager who meets the minimum training and competence standards? If not, why not?

B1Q5 Please provide feedback on any costs or benefits that may apply to your business under the proposal.

Given our existing organisational competence, meeting the proposed requirement would not result in additional cost and no transition period would be required.

C1Q1 Do you think we should be more detailed in our guidance on the ways in which we think digital advice licensees should monitor and test algorithms? If so, what additional guidance should we provide?

We support ASIC's expectation that the DAP must have robust compliance arrangements in place to monitor and test the quality of advice provided to clients. The proposal in paragraph RG000.70 and RG000.101 is that the digital advice should be reviewed by a human adviser for compliance with the law. Similar to the feedback provided under question B1Q2, the key objective is to ensure the digital advice provided meets financial services laws. As we have stated, our position is that the Digital RM needs to have the requisite skills to provide financial advice so that they can determine whether the advice produced is appropriate, and engage those with the necessary skills to make changes if required. We also think there is a distinction to meeting financial services law and what is an acceptable output and standard of Statement of Advice, hence the need for someone to have financial advice skills.

C1Q2 Please provide feedback on any costs or savings to your business as a result of this proposed guidance.

If, as proposed, the self-certification proposal is not introduced as a requirement, then the proposed monitoring and testing requirements will not introduce a material increase to operational costs.

C1Q3 Do you think we should introduce a self-certification requirement which would require digital advice licensees to certify that their algorithms have been adequately monitored and tested?

We are of the opinion that a self-certification requirement should not be introduced. Of concern to us is the potential administrative burden should we be required to self-certify each time there is a vendor release to the Digital Advice Tool.

C1Q4 Should we require independent third-party monitoring and testing of algorithms? If so, in what circumstances would this be warranted?

We believe independent third-party monitoring and testing of algorithms should be required where the licence does not operate a robust three lines of defence compliance approach. Having a periodic independent review of the technology provider's algorithm and testing processes is especially prudent considering the volume of advice that may be provided through this medium.