10 June 2022

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

By email: AdviceReview@treasury.gov.au

Dear Ms Levy,

Submission to Quality of Advice Review Issues Paper

TAL Life Limited (TAL) welcomes the opportunity to provide a submission to the Quality of Advice Review Issues Paper (the Issues Paper).

The Australian community needs financial advice to help individuals and families live their best life, but the existing structure and regulations supporting financial advice fails them. Australians need access to high quality affordable advice in many forms, whether it be comprehensive or limited Personal Advice from a financial adviser, advice provided by superannuation funds to their members, or services provided under simplified advice frameworks (as General Advice is intended) by product issuers like TAL.

Unfortunately, regulatory complexity and uncertainty in markets and in regulatory interpretation and application, are all combining to restrict the supply of financial advice. The high costs involved in producing Comprehensive and Limited Personal Advice makes it an expensive process and purchase, pushing it out of reach for most Australians on low and average incomes. At the same time, regulatory uncertainty and risk is causing financial institutions to limit the supply of most forms of financial advice, including General Advice. Where General Advice services remain available, the need for providers to take extraordinary care to manage risk makes the experience a wholly unsatisfactory one for most customers.

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An urgently needed review
The excessive regulatory complexity and uncertainty results in a very limited supply of financial advice, at exorbitant opportunity cost and monetary cost to customers. Change is urgently needed, and it is our hope the Quality of Advice Review charts a bold way forward for quality, accessible and affordable financial advice in Australia.

TAL supports the scope and goals of the Review. We believe focusing on the advice regulatory framework through the lens of quality, affordability and accessibility will help policy makers address the challenges besetting the sector, and damaging consumer outcomes. A balance must be struck between maintaining the high standard of comprehensive Personal Advice some Australians currently receive on financial strategy and products, with reforms that make it easier for all Australians to receive affordable advice, with choice as to what is covered by that advice and how it is delivered.

The financial services sector has implemented reform and cultural change from the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* and that work continues. Simultaneously, the trend for customers to utilise online services to meet their needs across all aspects of consumption is accelerating. This trend is as present in financial services as it is in other industries, and is driving ever higher customer expectations as to what constitutes good service and experience. In this context, the Review's focus on how financial advice regulations facilitate digital advice that meets customer needs is important and timely.

Key issues for examination

The Quality of Advice Review is rightly broad in focus, and no aspect of financial advice should be ignored. Consumers expect to have a choice in the type of financial advice they access, with each channel being capable of meeting customer need – be it via Comprehensive Advice, Limited Advice or General Advice or any form of advice delivered digitally.

TAL is a strong believer in, and supporter of, Comprehensive Personal Advice provided by financial advisers. It is critical more consumers have the choice to access life insurance through a financial adviser, where their needs (including life insurance) can be appropriately assessed as part of a comprehensive financial plan. Accordingly, we look forward to the Review making recommendations that enabling consumer access to affordable, high quality financial advice, and supporting advisers to be able to supply this important service efficiently and professionally.

Notwithstanding this, TAL has identified broader issues we believe are of particular importance to advised and non-advised Australians alike. This is why we bring a particular focus to Limited Advice, General Advice, and digital advice in our submission. Improving access and affordability to these types of advice will produce benefits to all participants in the advice process, including consumers, advisers, product issuers and distributors. These elements are summarised below and addressed in our responses to relevant questions from the Issues Paper.

Key issue: reforms to make advice more responsive to customer need and improve access
TAL recommends the current advice regulatory framework be reformed to be more customer centric and to meet customer demands for quality, accessible and affordable advice. TAL believes this could be achieved by:

1. **Streamlining the delivery of Comprehensive Advice**. Intended for customers wanting detailed strategic advice or who have more complex needs, Comprehensive Advice is of vital importance. This is the service Australia's highly trained financial advisers are best placed to deliver, but there are needs for regulatory reforms to enable lower cost production to make it

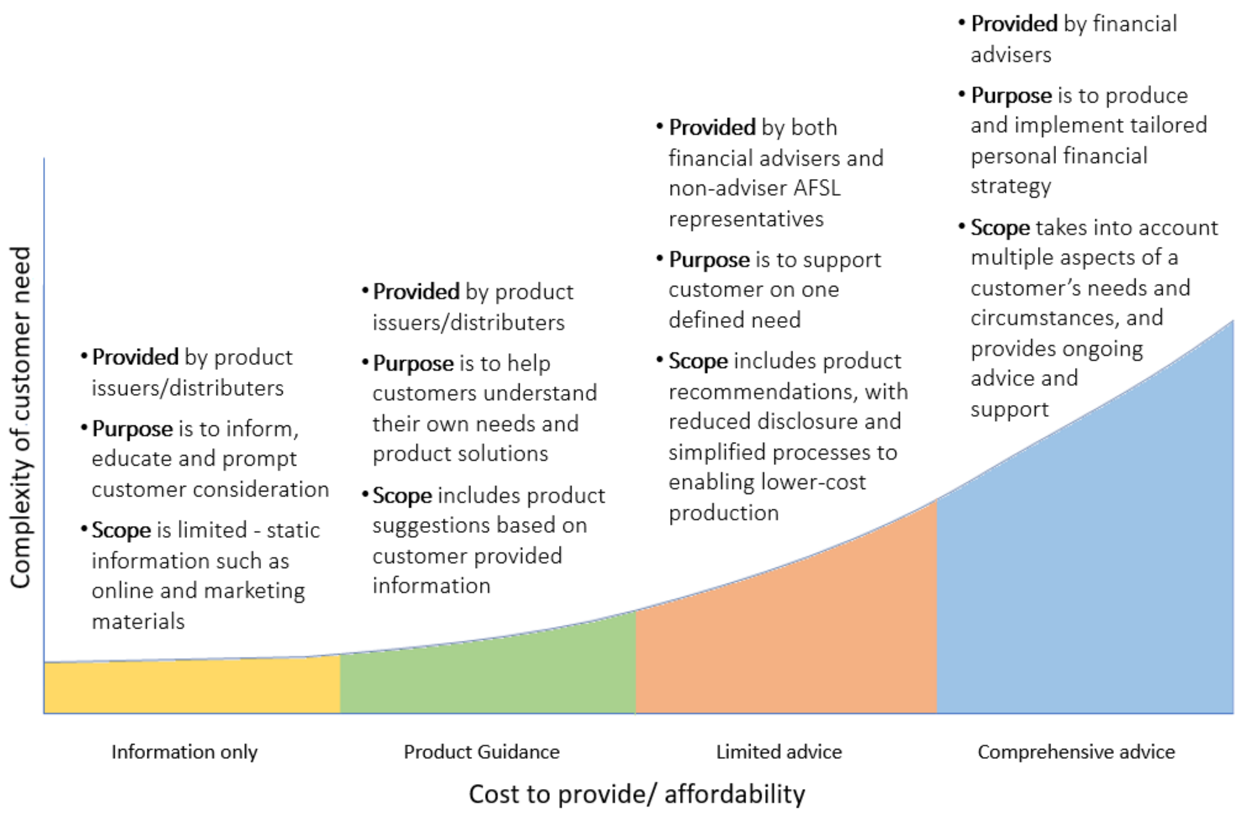
more accessible. We comment on some of these in our submission, and more generally note and support reform recommendations made by the Financial Services Council (FSC) and the Association of Financial Advisers (AFA).

2. **Redefining and adapting Limited Advice to provide advisers with better support to confidently deliver it in a cost-effective manner, and therefore increase customer access to it**. Including a clear definition in the legislation of Limited Advice and prescribing how it can be delivered would make Limited Advice a more certain concept, aimed at customers requiring detailed advice and support on narrower or single issues. The scope should be capable of being limited in both product category and in product range, while the types of AFSL representatives permitted to provide it should be enlarged. Supporting reforms addressing the economics of limited advice production are also required to enable greater access to this type of advice through financial advisers and qualified AFSL representatives.

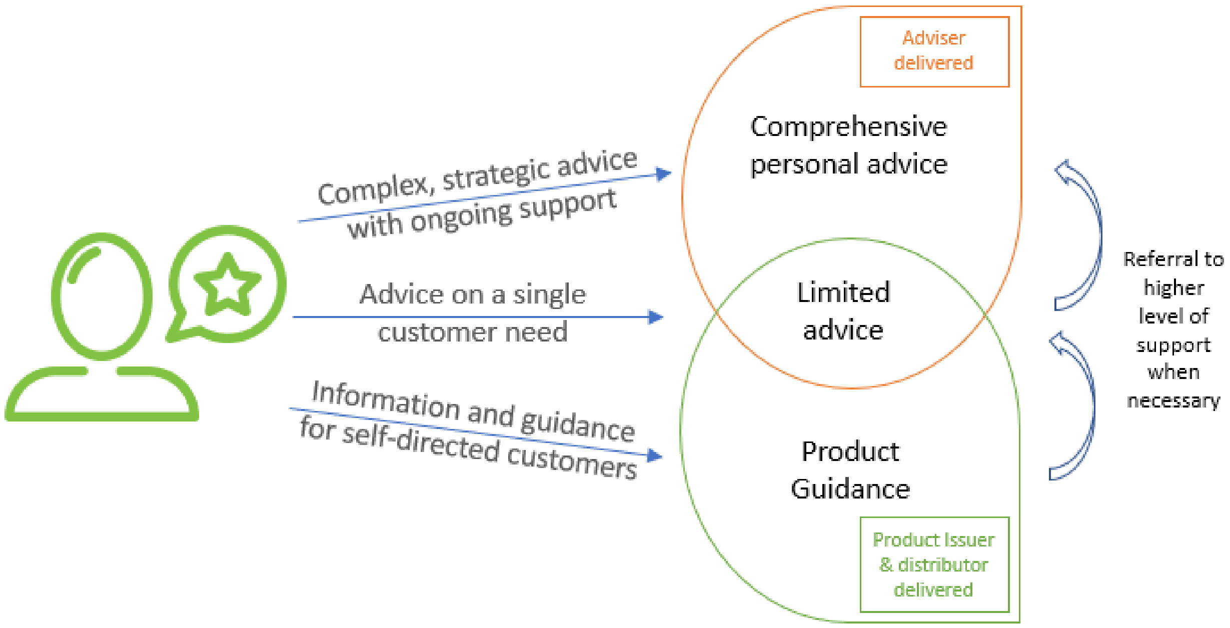
3. **Clarifying the purpose and scope of General Advice** (re-termed as Product Guidance for the purpose of this submission). This category of advice would permit product issuers and distributers to better support self-directed customers than they are able to today. Providers would be permitted to ask customers relevant questions, to provide guidance based on customer responses and to provide examples of choices that are relevant to the profile of the customer; ultimately, helping customers make more informed decisions.

   Simply, General Advice should work and benefit consumers, but it doesn't. The extreme regulatory risk of stepping over the boundaries of General Advice, lead most natural providers to General Advice not to provide it all.

The chart below illustrates how these types of financial advice fit into an advice system that we believe would better respond to customer needs.



From a customer's perspective, we believe this approach provides clearer pathways and access to the financial advice they need and want.



Key issue: LIF and supporting consumer access to independent financial advice
An important feature of the Review is its incorporation of the review of the Life Insurance Framework (LIF), and the question whether there is a continued role for commissions as a funding mechanism for life insurance advice.

As we make clear in our submission, TAL strongly believes consumers should have a choice in whether they pay an upfront fee for life insurance advice, or whether the fee is paid by the product issuer in the form of a commission. Because an upfront fee deters many people from seeking life insurance advice, our conclusion is commissions facilitate access to the benefits of life insurance advice, while the LIF instrument acts to better align the interests of customers, advisers and life insurers. Consumers can currently choose between a fee or commission, and TAL supports consumers continuing to have that choice, and the continuation of LIF.

With customer access to life insurance advice already under pressure, any reductions in LIF commission rates will inevitably result in further material decreases to the accessibility of life insurance advice provided by financial advisers. This would have damaging consequences, undermining outcomes for individuals while exacerbating Australia's underinsurance challenge.

Key issue: enhancing access to advice via superannuation
A critical issue for the Review to also consider is the role of superannuation funds in delivering financial advice. Superannuation funds are a trusted and logical avenue for Australians to seek advice on financial issues, particularly their superannuation settings, the insurance provided by their superannuation fund, and their retirement options.

In respect of retirement, the Retirement Income Covenant explicitly recognises the role superannuation funds can play in assisting their members prepare for retirement. Retirement decisions are one of the most complex yet important financial decisions most Australians will ever make, so it is imperative the

Review deeply consider how advice regulation facilitates superannuation funds confidently and sustainability stepping into this role.

For superannuation funds to be able to appropriately meet the advice needs of their members, there needs to be policy and regulatory change that supports them in doing so. Superannuation funds face the same difficulties with the General Advice and Personal Advice regulatory shortcomings as outlined above. There are also challenges with the limited scope of intra-fund advice, and TAL notes there is an opportunity for this type of advice to be made more useful for customers.

About TAL

TAL is one of Australia's leading life insurers. Together with our partners, we protect 4.5 million Australians against the risks of death, disability, and illness. In the TAL financial year 1 April 2021 to 31 March 2022, we paid more than $2.7 billion in claims to 39,628 customers and their families. We provide life insurance cover in several different ways – through our partnerships with superannuation funds, via financial advisers, and directly to customers through digital and other platforms.

TAL is a part of the Japan based Dai-ichi Life Group. Starting with the Dai-ichi Life Insurance Company, which was established in 1902 as Japan's first mutual insurance company, today the Dai-ichi Life Group is one of the world's largest life insurance groups. Dai-ichi Life Group is also one of the world's leading providers of retirement income products.

For further information

Should you have any questions regarding the information in this submission, or about TAL generally, we would be pleased to assist. Please contact in the first instance Mr James Connors, Head of Corporate and Government Affairs, on 0484 083 208, or by email at james.connors@tal.com.au.

Yours sincerely,

Brett Clark
Group CEO and Managing Director

TAL is pleased to respond to the following questions from the Quality of Advice Review Issues Paper

1. What are the characteristics of quality advice for providers of advice?

Quality advice is advice that meets customer needs, while also being compliant with the advice provider's regulatory obligations and is cost effective to deliver.

The current legislative and regulatory environment has made the provision of advice in any form very challenging.

Financial Advisers are being forced to demonstrate their compliance with various laws and professional standards, including the best interest obligation, through lengthy Statements of Advice (SOAs). The prescriptive steps set out in the best interest 'safe harbour' means advisers feel the need to demonstrate evidence of compliance to all steps in the SOA, while the final 'any other step which would be reasonably be regarded in the client's best interest', creates uncertainty and removes the 'safe' from 'safe harbour', effectively negating the protection the provision is designed to provide. This compliance is making the provision of quality Personal Advice increasingly expensive resulting in the benefits of financial advice being out of reach for many Australians.

The complexity and uncertainty imposed by the blurred line between Personal Advice and General Advice is also creating poor customer experiences. The current Personal Advice/General Advice legislative framework, including the recent guidance by the High Court[1], significantly restricts the ability or willingness of General Advice providers to assist customers in a way either the customer or provider would prefer (see Case Study 1).

For fear of straying into Personal Advice, General Advice providers are forced into stilted, information-only conversations that frustrate the customer's experience, that lead to poor customer outcomes. The effects of recent changes to anti-hawking laws (which now extend beyond *outbound* telephone calls to also apply to inbound calls) also inhibit natural conversations with customers, as explained in our response to question 3.

Case study 1: good help is hard to ~~find~~ provide

Customers shopping for insurance with TAL often start their journey using digital services and tools provided under General Advice. As they learn more about the product and move toward making a purchasing decision, customers often move between digital and human-delivered channels.

At various points in the process, the customer may want to ask questions, receive assurance on their approach, or seek validation of their decisions on product features.

For example, a customer may call wanting to check the level of cover they have selected fits their need. Customers quite reasonably expect TAL to be able to give this assistance, and we would like to meet this expectation.

Unfortunately, the risk of straying into Personal Advice when answering these questions means our staff are unable to directly answer. Instead they are restricted to highly scripted conversations that may leave customers feeling unsure about their decisions.

2. What are the characteristics of quality advice for consumers?

For customers, quality advice, regardless of its type or delivery mechanism, should be accessible, easily understood, simple to follow and helpful to a customer. It should be fit for purpose, taking into

[1] Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA 3, Date of Judgment: 3 February 2021, S69/2020.

consideration a customer's wants and needs, while being relevant to their circumstances. Importantly, quality advice needs to balance outcomes against cost, and ultimately customer affordability.

The current Personal Advice/General Advice legislative framework obstructs customers from obtaining what they want, which detracts from quality. TAL sees this in several ways:

- Personal Advice clients frequently only seek Limited Personal Advice, covering just a single aspect of their financial circumstances. Because the current regulatory framework leads advisers towards broader inquiries and scope, customers must either accept more expensive comprehensive Personal Advice (that is safer but more costly for the Personal Advice provider to provide), or to forgo Personal Advice altogether.
- Advisers sometimes feel regulatory pressure to recommend financial products that are feature rich, even where there may be more cost effective and sustainable options available. See Case Study 2 for an example. In the current economic environment of high inflation and increasing interest rates, price and value for money may be key considerations for customers and further regulatory guidance which gives advisers comfort to recommend less costly, feature rich products and still meet their best interest obligations would be welcomed.
- We regularly help customers using tools and services provided under General Advice to understand and compare their product options. However, at various points in the process, the customer may want to receive assurance on their approach, or validation of their decisions[2]. The current regulatory framework, including the recent guidance by the High Court[3], has made more

Case study 2: effect of regulatory settings on consumer outcomes

As a result of APRA's intervention in the Australian individual disability income insurance market, a new generation of more sustainable and therefore more affordable products have been launched.

As at the date of writing, up to 50% of all product recommendations made by advisers are for products with more generous benefits for largely low probability personal disability related events. As would be expected, the extra benefits involve a higher premium cost.

Research undertaken by TAL in March 2022 compared the products with generous terms with less fully featured product designs, finding:

- the more generous product features provide greater benefit outcomes for just two out of 1000 customers on average
- the generous product features represent a total overall cost in excess of 48% of the cost of less fully featured products.

As an example, the cumulative lifetime cost for a 47 year old, male non-smoker client, to acquire a less generous IDII product was $68,787 versus the average cost of the more generous products of $132,938.

Despite this significant cost difference, which would only result in better outcomes in a very small minority of customers, advisers still feel that the way the best interest duty will be interpreted by AFCA and ASIC requires them to opt for the most generous benefits regardless of the higher cost.

[2] For example, consumers in other markets are used to, and feel comfortable with, 'people like you' examples where providers reference products and services considered by people in similar circumstances. If General Advice providers were permitted to utilise similar examples customer experience and understanding would be improved, and confidence in outcomes boosted. Presently usage is not widespread due to ASIC expressing a negative view of 'social proofing' tools, including in its application to the High Court (see following footnote). This is stifling innovation for consumers.
[3] Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA 3, Date of Judgment: 3 February 2021, S69/2020.

difficult to provide this sort of assistance due to uncertainty on the divide between the statutory definitions of General Advice and Personal Advice.

Apart from producing a good financial outcome for customers, quality advice also results in people who are more satisfied with their life circumstances and confident about their futures. While less tangible than the financial outcome, this sense of security and wellbeing that advice can provide is nonetheless an important marker of a quality advice system.

3. Have previous regulatory changes improved the quality of advice (for example the best interests duty and the safe harbour (see section 4.2))?

The safe harbour provisions have led to advice clients being presented with disclosure documents that, instead of being proportionate to the clients' needs and the advice provided, are forced to address adviser compliance obligations.

Our concerns are principally focused on section 961B(2)(g) of the Corporations Act 2001 - the requirement to take any other step that, at the time the advice is provided, would reasonably be regarded in the client's best interest. The ambiguous, open-ended nature of this obligation is in practice hard to meet, resulting in adviser processes and disclosure documents becoming further unwieldy for the client, and expensive to produce for the adviser.

As noted in our response to question 22, one solution to this issue would be to remove 961B(2)(g). Alternatively, the entirety of safe harbour could be replaced with a clearer, principles based articulation of the best interests duty.

If this were to be done, TAL also suggests there should be revision of ASIC Class Order 14/923 - *Record-keeping obligations for Australian financial services licensees when giving personal advice*. This class order should recognise any changes made to the safe harbour provision in principle legislation, otherwise advisers may continue to be faced with uncertainty around demonstrating compliance with the best interest duty.

Adviser Code of Ethics
TAL acknowledges the Financial Planners and Advisers Code of Ethics (Code) is designed to encourage higher standards of behaviour and professionalism in the financial services industry. We support this objective. However, aspects of the Code introduce uncertainty into the advice production and delivery process and should be reformed. These include:

- The wording of Standard 3 should be amended to encourage advisers to identify and carefully manage any conflicts of interest. This would be consistent with other aspects of regulation such as the best interest duty and the Life Insurance Framework, which each help ensure the alignment of customer and adviser interests.
- Standard 6 suffers from the same problems as 961B(2)(g), being open ended and resulting in confusion for advisers. Most concerningly, Standard 6 creates barriers to consumers having access to good-quality Limited Advice.

General Advice regulatory changes
TAL considers it important for the Review to also consider how prior regulatory changes affect the provision of assistance to the vast majority of Australians who:

- want general information and guidance on basic financial decisions; and/or
- cannot afford or do not want to pay for comprehensive personal financial advice.

In response to recommendations made by the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, the Australian Government introduced legislative changes to restrict how financial services firms can approach customers and sell products to them under General Advice. Key changes include:

- Strengthened anti-hawking provisions, designed to prevent customers being offered, invited or asked to apply for any financial product, unless the customer consented prior to the contact to discussing that product. These provisions apply whether the contact is an in-bound call to a financial services provider by a customer, or an out-bound cold call as identified in the Royal Commission.
- The introduction of a deferred sales period for add-on insurance products, intended to address pressure selling and poor customer value as was occurring in some markets, such as tyre-and-rim insurance sold by car dealers in car yards after a car purchase[4].

TAL supports the intent of these regulatory changes. Nevertheless, there are aspects of these reforms which severely limit the quality of assistance which can be lawfully provided to customers, frustrating their experience, and leading to poor customer outcomes. We draw attention to two of these.

Anti-hawking provisions
Section 992A of the Corporations Act 2001 prohibits financial services providers from offering a financial product to customers in the course of, or because of unsolicited, real-time contact. These sections are intended to protect customers from being sold products that do not meet their needs and that they were not interested in. However, our experience since the laws commenced in October 2021 is they:

- prevent customers from learning about and becoming aware of products that may better meet their needs
- inhibit the ability of providers to bring to the attention of even self-directed customers (i.e. customers who have taken the step to reach out to the provider, and who have not been cold-called by any provider) products and solutions which may be relevant to the customer.

These issues result in a poor customer experience and may lead to poor outcomes.

In our view the hawking prohibition would appear to assume a customer will contact an insurer to confidently inquire about, discuss, or acquire a specific product or products they have identified and self-assessed to be of benefit to them. While this may occur in certain product categories, in practice this is rarely the case for life insurance – a broad category that includes several product and benefit types responding to different risks.

As explained in Case Study 3, in our experience, customers may contact us to seek product information and guidance or assistance, but may not sufficiently understand the products and benefits to the point that they identify the product most appropriate to their objectives, including because they are unaware of the range of options that are available. From a regulatory perspective, if the customer has provided clear and specific consent at the outset of the call to discuss the first product type only, it may be that we are unable to discuss an alternative product. This depends on whether the second product is within the scope of the customer's consent. Determining this requires fine and nuanced analysis (about what

[4] See ASIC Report 470: *Buying add-on insurance in car yards: Why it can be hard to say no* (February 2016)

is reasonably within the scope of the customer's consent) discussed in ASIC Regulatory Guide 38.87 and 38.101. Such analysis often produces opposite but equally reasonable conclusions, and is essentially very difficult to perform with a customer in the course of real time contact.

For the customer, this is a poor experience, one which would not occur in other markets in which the customer participates. It inhibits a provider's ability to actively assist or guide the customer, in doing so detrimentally impacting a customer's ability to make an informed choice.

Based on our experience, we believe in some circumstances and settings customers would benefit if anti-hawking laws permitted more natural conversations between customers and financial product providers[5]. Specifically, we consider it should not be deemed hawking if in the course of real time contact a customer is asked whether they want to hear more about another product that may be appropriate to their expressed needs. Where the customer responds with positive and clear consent to receive this information, a provider should be able to meet this request.

Case study 3: impact of anti-hawking on customer experience in life insurance

TAL frequently provides General Advice to customers who have contacted our in-bound call centre to learn about or purchase life insurance. While providing information about the product the customer specified when they called TAL, as the conversation progresses, we may discover the customer may better benefit from considering an alternative product. This may be because they may fit within the target market of an alternative product, so are likely to obtain a greater benefit from it.

For example, a customer may contact us in respect of Total and Permanent Disability cover. However, as the conversation progresses, it becomes apparent they may not be aware of Income Protection cover, which provides an income stream (rather than a lump sum) in the case of their disablement. Due to regulatory uncertainty and the risk of making an incorrect judgement, the level of assistance available to a customer in this situation is restricted.

Customers may also ask for product features which are unsuited to them. For example, a customer may request a two-week waiting period for income protection insurance, but then mention they have six months accrued sick leave, implying a longer waiting period (at lower premium cost) is more appropriate. Any suggestion by a provider for the customer to consider a longer waiting period risks becoming Personal Advice, leaving the customer to buy a product more expensive than their apparent need.

Deferred sales model for add-on insurance

Sections 12DO–12DZA of the *Australian Securities and Investments Commission Act 2001* set out the deferred sales model for add-on insurance. Amongst other things, this sales model:

- Mandates a clear four-day pause between when a customer enters a commitment to acquire a principal product or service, and when they are offered or sold an add-on insurance product.
- Sets out the scope of the sales model, including which products are subject to it, which are not, and how products may be exempted. TAL notes the scope includes classes of add-on insurance products where there is little evidence to support issues of pressure-selling and poor customer value, such as mortgage linked life insurance.
- Defines various communication requirements covering the type of information that customers must receive and how they may be contacted.

[5] We would limit the setting to an inbound call centre where the customer has initiated contact. We do not seek or recommend reconsideration of restrictions to out-bound (cold) calling practices - a dire practice well traversed in the Royal Commission.

The deferred sales model commenced in October 2021.

TAL acknowledges the circumstances that led to the deferred sales model being introduced and generally supports its goals. However, we believe there are some elements which combine to negatively impact the customer experience, forcing customers to behave differently in add-on insurance markets than virtually any other market in which they participate. Key concerns include:

- As noted in Case study 4, Customers are not permitted to bring forward the purchase of in-scope products during the pre-deferral or deferral periods. This unnecessarily restricts customers from acting in accordance with their own preferences, frustrating a customer who wants to proceed with the add-on cover, rather than being left to the stand-alone market (which the customer is free to choose)[6].
- Prohibitions on providers making offers, requests or invitations otherwise than in writing during the post-deferral period. Upon the expiry of the deferral period, it is an offence for a provider to offer the customer the insurance by contacting the customer by telephone, even where the customer has indicated this to be their preference prior to the deferral period.

Case study 4: customer impacts of the deferred sales model

For most Australians, taking out a home mortgage is the largest and most important financial transaction they will ever undertake. Given this importance, consumers often stand to benefit from taking out a mortgage protection life insurance product that helps them meet their mortgage obligations in the event of death, disability or illness.

As it currently stands, despite life insurance covering residential or investment property mortgages not being shown to have been the subject of systematic mis-selling called out for other add-on insurance practices (e.g. certain credit card protection), mortgage protection is included in the scope of the add-on insurance deferred sales model. This makes for a poor customer experience.

By way of example, a customer could be well advanced in the approval process of a home loan and contemplating the significant financial risk they are undertaking to enable a home or investment property purchase. If they were to make enquiries about life insurance through their lender, they would be asked to defer any further progress in applying for cover due to the deferral period.

Similarly, if a customer was to initiate contact to request life insurance cover during the deferred period, they would be reminded by the provider that during the four-day period the customer is not permitted to buy the cover.

8. How much is the cost of meeting the regulatory requirements a result of what the law requires and how much is a result of the processes and requirements of an AFS licensee, superannuation trustee, platform operator or ASIC?

TAL has commented on our approach to meeting our General Advice regulatory compliance requirements in our response to question 9.

There is a large body of law and regulations an organisation providing any form of advice is required to understand, implement and comply with. An AFS licensee must not only comply with these laws, they

[6] While this restriction may be appropriate in relation to tyre-and-rim insurance - where poor sales practices, poor claims ratios and poor conflicts management (including flex-commissions) were demonstrated by ASIC Report 470, it is an unnecessary constraint for consumers interested in life insurance after having taken out a significant financial commitment constituted by a mortgage, particularly given the design and distribution obligations applying to credit. Also see *ASIC Credit (Flexible Credit Cost Arrangements) Instrument 2017/780 dealing with the specific poor consumer practices in the add-on insurance market distributed by car dealers* - practices which do not occur with life insurance covering mortgages.

also need to put in place policies, procedures and assurance processes to give them comfort they comply and be able to evidence this to regulators. For example, there is no doubt that the length of SOAs can in part be attributed to a demonstrated compliance exercise, with advisers evidencing compliance with best interest and other legal obligations.

The expectations of regulators have also increased in recent years so demonstrating compliance across all laws and regulations has become more onerous and costly, with the enhanced breach reporting obligations also resulting in increased reporting and costs.

For example, in relation to breach reporting, organisations are now required to report breaches of a non-material nature under the deemed significant test. This test requires a provider of General Advice to report one-off breaches such as failing to provide a General Advice warning on a single telephone call. This obligation applies even in circumstances where this oversight has been quickly identified by the quality assurance process, and the customer has then been provided with the correct information.

9. Which elements of meeting the regulatory requirements contribute most to costs?

Ultimately the question of compliance cost is less one of which element costs the most, and more what the totality of regulatory requirements in combination means to the complexity and cost of operating an advice business, to the customer experience, and to the availability of assistance or advice.

Quality assurance and compliance costs
Focusing on financial costs, the greatest driver of regulatory related costs for TAL as a provider of General Advice is compliance monitoring, assurance and supervision. We operate a contact centre receiving approximately 600,000 customer contacts per annum, with tasks including providing information and assisting customers to apply for life insurance.

In order to ensure we consistently meet our regulatory obligations, TAL has a comprehensive technology based compliance process in place that involves:

- Recording 100% of calls for quality and training purposes.
- Monitoring 100% of calls via an automatic, artificial intelligence-based monitoring system that monitors for key words, phrases and tone of voice. The system checks for the presence of mandatory elements of the call being delivered, such as the General Advice warning and other scripted fundamentals.
- All calls flagged for review by the automatic system are manually checked by our quality assurance team, along with a random sample of other calls. All told, 20% of calls are manually checked.
- 100% of calls are stored and available for compliance review by TAL or by a regulator, and can be used to help confirm customer decisions or to resolve disputes.
- Compliance analysis of all digital content, scripting and resources prior to deployment.

Our compliance process also informs and drives other components of the quality assurance system, including customer remediation, consequence management, process reengineering and employee training.

Costs of producing Limited Advice
For financial advisers involved in the production of Limited Advice and Comprehensive Personal Advice, the time and financial cost required to comply with regulatory obligations is a significant driver of

overall production costs. Research by KPMG indicates that reforming safe harbour and disclosure obligations, including producing SOAs, would drive cost reductions of up to 37%[7].

In addition, further costs for advisers' regulatory and professional requirements include FASEA and other training fees and ASIC levies.

If the reforms indicated in this paper, by KPMG and in the Financial Services Council's whitepaper on advice reform were implemented, TAL believes the cost to produce advice could be substantially addressed. This is particularly important for the future of Limited Advice, for even if the current regulatory uncertainties limiting consumer access were addressed, production will remain economically non-viable without supporting reforms that also address the costs of production.

Regulatory change drives costs
Regulatory change itself is a driver of compliance costs. Recent legislative and regulatory changes have required significant capital and project costs as firms respond to new obligations, such as (but not limited to) the introduction of target market determinations, strengthened anti-hawking requirements and new breach reporting requirements. In the case of TAL alone, our own implementation program in respect of these and other recent regulatory changes cost in excess of $10m in addition to significant increased ongoing operating costs. Assuming a similar cost would apply to other large providers of General and Personal Advice, then the total cost the industry, and ultimately customers, is significant.

From a pure financial cost perspective, each of these changes requires capital outlay to cover the development and integration of new systems, including project and change management expenses. They also create ongoing operations and management costs, with financial services providers needing to employ new risk and compliance personnel.

11. Could financial technology (fintech) reduce the cost of providing advice?

Global experience indicates that financial technology (fintech) promises to reduce the cost of financial services, but that its impact is uneven across industry sectors[8]. In respect of financial advice in Australia, fintech has the potential to reduce costs, but to do so it needs to be mature and able to be utilised at scale in a supportive regulatory environment.

TAL notes technology works best where there is a standardised, replicable process to apply technology to. For this reason, TAL sees the greatest potential for technology to reduce costs in connection to Product Guidance (General Advice), as well as the potential to deliver Limited Advice digitally.

A good example of how fintech can reduce General Advice costs is the use of generic financial calculators. When employed in a thoughtful and customer orientated way, calculators are an extremely useful tool for customers to obtain information about financial products and to understand how their choices can affect outcomes. This is particularly the case with self-directed customers.

From a cost perspective, calculators incur an upfront development cost but have an extremely low marginal cost, therefore making them available at scale to low and average-income Australians, who are not served well under the current regulation of financial advice. Calculators are also relatively easy to implement from a compliance perspective, with compliance embedded as part of development. As noted elsewhere in this submission, TAL sees opportunities for the benefits of calculators to be expanded – please see response to question 40 for further information.

TAL sees potential for technology to also play a greater role in Limited Advice focusing on a single aspect of customer need. Limited Advice is more amendable to a standardised process and tools – for

[7] KPMG, The Cost profile of Australia's Financial Advice Industry, 2021, p.6, https://www.fsc.org.au/resources/2299-kpmg-the-cost-profile-of-australia-s-financial-advice-industry-final-research/file
[8] See PWC, *Blurred lines: How FinTech is shaping Financial Services, Global FinTech Report*, March 2016

example a specialist life insurance advice system that integrates data collection, advice development and disclosure, product comparison and quoting, and application into a single platform. We note the innovative work currently under way by the Lifebid consortium[9], which seeks to reduce costs to serve by up to 90%.

Data access
All customers and advisers would benefit if advisers could directly access (with client consent) Government held information stores, including information held by the Australian Taxation Office and Centrelink. We also note the potential of the emerging Consumer Data Right, which could streamline access to customer information – if designed in a way that overcomes current access and authentication barriers.

Technology enabled compliance processes have de-risked General Advice
TAL's comprehensive technology based compliance process demonstrates it is still possible for some digital and telephone based services to be provided under a General Advice model in a compliant manner. In fact, the demonstrably transparent and enduring nature of technology enabled compliance systems of this sophistication sets the standard for all advice. We see systems of this standard as being of undoubted benefit to customers, while helping ensure community confidence in the sector.

12. Are there regulatory impediments to adopting technological solutions to assist in providing advice?

As noted in our response to question 11, TAL sees potential for technology to play a greater role in Limited Advice focusing on a single aspect of customer need. However, this is impeded due to the Personal Advice regulatory framework tending to force advisers to deliver Comprehensive Advice, even where a customer's preference is for Limited Advice only. If Limited Advice were to be separated from Personal Advice, defined, and placed into its own distinct regulatory category making it a more certain concept (as we suggest in our response to question 22), then it could lead to greater adoption of technology in Limited Advice production.

In respect of financial calculators, constraints in existing regulatory relief and guidance impede calculators from being as useful for customers as they could be. We expand on this issue in our response to question 40, however in summary:

- The requirement to clearly separate calculators from other digital tools impacts the flow of the customer journey and therefore their customer experience.
- Calculators may not draw on personal information already held by a product provider.
- Customers are unable to connect a calculator to personal information about themselves stored by a third party.
- In their output, calculators are not permitted to refer to the products used in the calculation.

14. In what circumstances do people need financial advice but might not be seeking it?

There are several groups in the Australian community who would benefit from advice, but who do not seek it. These groups are essentially disenfranchised as a result of the current regulatory framework creating access and affordability barriers, as expanded upon in our response to question 15.

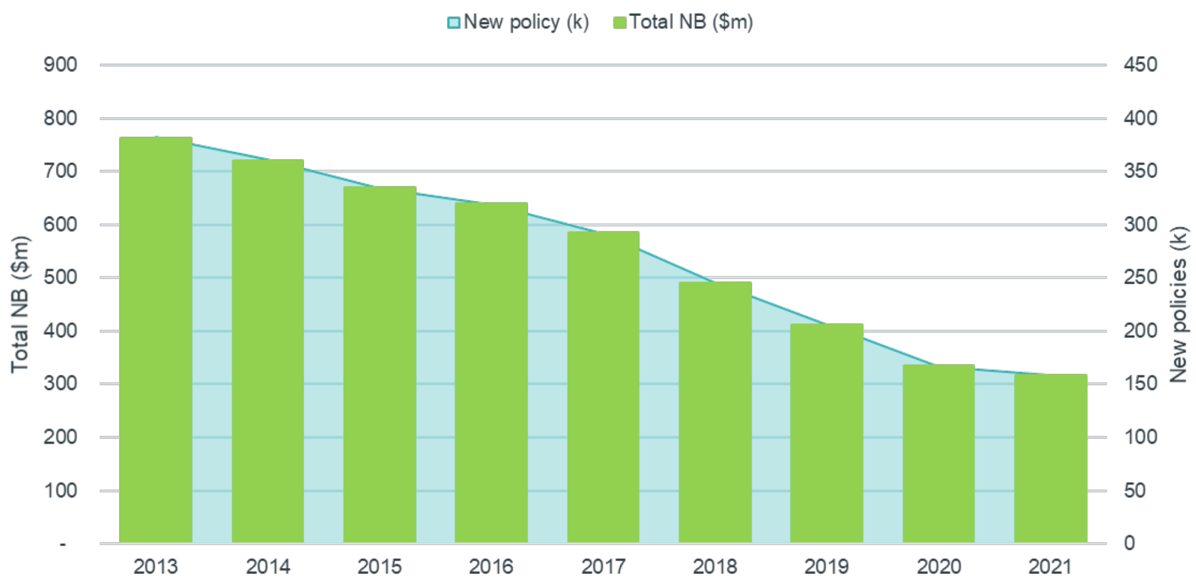
[9] See https://lifebid.com.au/ for information on this important project.

Key groups missing out on the benefits of advice include:

- **Customers who want/need advice, but are unable to find an adviser or an advice provider willing to take them on**. For example, there is a growing cohort of young to middle aged people with increasing mortgage debt and/or dependents, who would like to obtain life insurance advice, but who are unable to find an adviser.

  Advisers are suffering from capacity constraints and are less likely to take on younger, lower complexity clients. This is because the revenues associated with these clients are insufficient to cover the costs of providing Personal Advice under current regulations. Where advisers do take on new clients, they tend to be people with more complex needs than young to middle aged people. Additionally, advisers are generally less active in life insurance – this is due to a multitude of reasons including the growing compliance complexity and revenue challenges (in part due to the significant compliance and other costs and complexity attending provision of an advice business).

  The growing advice gap in life insurance can be seen in the chart below, which illustrates the decline in Retail Financial Adviser and Bank Advice generated new life insurance policies issued since 2013 in both raw numbers and value of new business.



  Source: NMG IFA and Bank Advice NB

  This decline is despite a backdrop of 68 per cent growth in average mortgage value across the same period – a key indicator of insurance need. TAL also notes recent research making it clear demographic drivers have placed Australia on the cusp of an unprecedented intergenerational wealth transfer over the two decades to 2040, with people aged 60 and over set to transfer some $3.5 trillion to younger generations[10]. Many of the people receiving this wealth would benefit from advice, however current indications are they will struggle to obtain it or afford it.

- **Financial costs deter some customers from seeking advice**. For example, Australia has a large population of people approaching retirement who would benefit from financial advice, and who know they would benefit, but are dissuaded by the actual or perceived cost to do so.

- **Some customers lack the awareness of how they may benefit from advice, so do not seek it**. Until recently, customers taking on mortgages or transitioning from simple to complex needs (for example starting a business) were often prompted by their bank to consider obtaining advice.

[10] The Productivity Commission has recently released a comprehensive fact base on the looming wealth transfer. See *Wealth Transfers and their Economic Effects*, https://www.pc.gov.au/research/completed/wealth-transfers/wealth-transfers.pdf

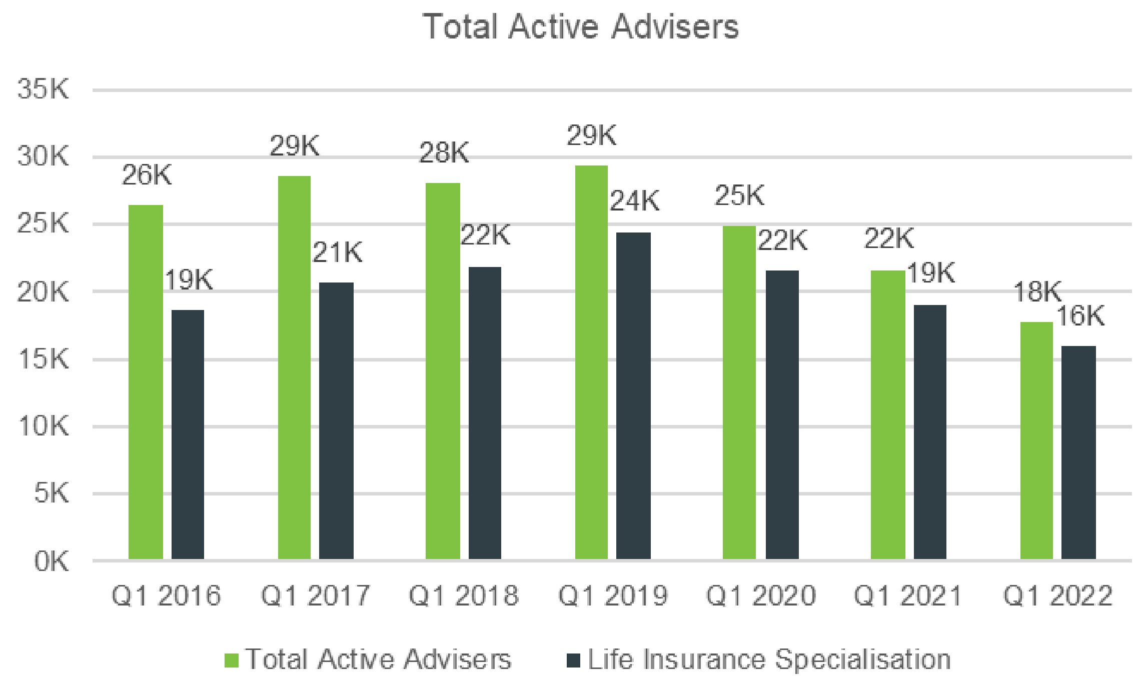
Changes to the structure of the adviser market following the exit of banks from the industry make such prompting less likely.

- **Many superannuation members who have not adjusted their default insurance cover may well benefit from some level of advice**. While default cover levels provide an important safety net, many people may be underinsured compared to their need so would often benefit from the assistance of an adviser to review and adjust their cover to better reflect their circumstances.

15. What are the barriers to people who need or want financial advice accessing it?

Barriers to people who need or want personal financial advice accessing it include:

- Availability/supply of financial advice. Numbers of registered advisers are in decline, and within the speciality of life insurance advice more so. The chart below illustrates this trend:



Source: ASIC Financial Advisers Dataset, May 19, 2022

- Actual and perceived financial cost of obtaining Personal Advice.
- Lack of awareness of the benefits of advice.

Other barriers for customers include:

- Customers are unsure how to find an adviser or advice provider.
- Perceptions that obtaining advice is time consuming and difficult.
- The role of superannuation funds in providing advice is presently limited by regulations, including regulations about intra-fund advice.

Economic barriers restrict access to life insurance advice

Focusing on life insurance advice, the economics of providing life insurance advice effectively limits who can obtain it. The reality for life insurance advice is that it is presently expensive to produce, requiring a full fact find and SOA for what is essentially a limited scope outcome, while also being subject to the same extensive and costly compliance obligations as for Comprehensive Personal Advice. At the same time, customers remain reluctant to pay fees for life insurance advice, with commentary from advisers suggesting customers prefer to fund advice by insurer paid commission rather than a large upfront fee covering the costs of obtaining his advice.

Barriers to General Advice
In respect of General Advice, regulation itself is a barrier to customers obtaining the advice they need or want.

Theoretically, Australia's General Advice laws should assist customers to make informed decisions about the financial products made available under General Advice. In TAL's experience however, as part of their purchasing decision, customers frequently seek confirmation or reassurance that the product (or benefit type) suits their expressed need. Or alternatively, customers may want to receive validation, assistance or guidance that a decision they are making is the right one. As it currently stands, product providers operating under a General Advice model are often prevented from providing this assistance, or even to answer simple questions, for fear of straying into what is considered to be Personal Advice. We note the following concerns:

- The recent High Court judgment on Personal Advice versus General Advice[11] has increased the risks in providing General Advice and has made it even more difficult to provide General Advice in circumstances where an organisation has knowledge about some of a customer's individual circumstances.
- The enhanced anti-hawking laws, which rightly banned cold calling customers, also inhibits natural conversations with customers making in-bound calls to an insurer, in seeking to elicit the customer's need (and so guide the customer in the customer's decision making).

As a result, the "advice" component of General Advice is something of a misnomer with providers limited to offering factual product information only, which may not suit the customer's needs or desire for more help from their product provider.

For customers, this situation often leaves them in the frustrating position of having questions or concerns about a product that no one is able to assist them with. They are annoyed at being left to figure everything out for themselves, and uncomfortable bearing all the risk of getting an important life decision wrong. Some customers choose not to proceed with a product due to this experience, while others do proceed and only find out later they chose a product less suited to meet their needs. We consider that only fundamental reform of the advice regulatory framework can address this situation, as proposed in our response to question 22.

Put simply, General Advice should work, but it doesn't. The extreme regulatory risk of stepping over the boundaries of General Advice, lead most natural providers of General Advice not to provide it all.

16. How could advice be more accessible?

Building on our responses to questions 14 and 15, TAL observes advice could be made more accessible to customers if:

- **The cost of providing Personal Advice should be reduced**. A large share of production costs is created by regulatory compliance requirements, and this should be the number one priority for reform. TAL notes and supports the recommendations of the Financial Services Council in this regard[12]. We also note past recommendations to make advice tax deductable, which proponents say would reduce the cost of advice.

[11] Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA 3, Date of Judgment: 3 February 2021, S69/2020
[12] The FSC whitepaper states supply side reforms could reduce the cost of providing advice by almost 40 per cent. See https://fsc.org.au/resources/2298-fsc-white-paper-on-financial-advice/file

- **More financial advisers**. Being a financial adviser is a rewarding career and there is substantial demand for the services they provide. If this opportunity was better understood more people may opt to become an adviser. Accordingly, industry and Government should spend more time educating prospective advisers as to the benefits of pursuing an advice career. From a structural perspective, TAL notes the current professional year is widely considered as laborious by new advisers and advice licensees, and this has acted as a deterrent to new industry entrants. While TAL believes the professional year concept is a good one, it does need to be more practical to manage.
- **More institutions providing General Advice.** As noted in our response to question 15, regulation itself is a barrier to customers obtaining General Advice. If providing General Advice were less risky, and more useful to customers, more product issuers and distributors would provide more products and services under General Advice.
- **Limited Advice is made more available**. Reforms to Personal Advice regulations would be needed to achieve this. For more information please see TAL's response to questions 22 and 33.
- **Financial calculators made more flexible for customers.** Currently constraints in existing regulatory relief and guidance impede calculators from being as useful for customers as they could be. We expand on this issue in our response to question 40, however in summary:
  - The requirement to clearly separate calculators from other digital tools impacts the customer experience.
  - Calculators may not draw on personal information already held by a product provider.
  - Customers are unable to connect a calculator to personal information about themselves stored by a third party.
  - In their output, calculators are not permitted to refer to the products used in the calculation.
- **Referrals from non-advice financial services firms** (such as banks, mortgage brokers and accountants) would drive awareness of financial advice and give direction to those customers who wanted to access it. TAL understands that a fear of breaching Personal Advice rules and FASEA Code of Ethics Standard 3 impedes referring from occurring.
- **Online and other resources supporting customers** to find an adviser appropriate to their needs were available and promoted.

Role of superannuation funds
TAL notes superannuation funds and wealth managers stand ready to play a greater role in the provision of advice. We support funds being empowered to do this, and the expanding role they are poised to play in developing retirement income strategies for their members. Moreover, superannuation funds typically have the reach, infrastructure, expertise, and motivation to support their members with certain advice needs.

By way of example, from 1 July 2022 the Retirement Income Covenant will oblige superannuation funds to have in place a retirement income strategy that outlines how they plan to assist their members in retirement. Funds will need to consider how to assist their members to maximise their retirement income and to manage risks (e.g. longevity risk) during retirement. Reform of General Advice, Limited Advice and Comprehensive Advice regulations are needed to facilitate funds fully addressing this need.

Superannuation funds could also play a role in meeting the need for life insurance products that are matched to customer need. While funds are well positioned to meet their member needs, the challenges of doing so under either General Advice or Limited Advice makes it less prevalent than it could be. TAL believe there is a role for superannuation funds and financial advisers to work more closely together to meet advice needs of superannuation fund members.

17. Are there circumstances in which advice or certain types of advice could be provided other than by a financial adviser and, if so, what?

As we make clear in our response to question 22, TAL believes the financial advice regulatory framework needs to be overhauled to enable General Advice and Limited Advice to better meet customer needs. One element of this overhaul is for Limited Advice to be separated from Comprehensive Personal Advice and placed into its own distinct category. This would make Limited Advice a more certain concept, with proportionately lower requirements on fact finding and disclosure compared to Comprehensive Personal Advice, amongst other changes.

To permit as broad-based access to Limited Personal Advice as possible, a new Limited Advice regulatory framework ought to allow Limited Advice to be provided by both advisers and non-advisers (who have received appropriate specialist training). This would see appropriately qualified and trained ASFL representatives (a current licensee obligation in any event) being permitted to provide advice on a single product. Examples of products appropriate to this approach include:

- life insurance representatives providing limited advice on the insurer's life insurance products
- superannuation fund representative providing limited advice on issues relevant to superannuation, such as insurance arrangements and the fund's retirement income strategy and products.

To facilitate this change, life insurance and other relevant products could be reclassified from a Tier 1 financial product to a Tier 2 financial product, similar to the classification of general insurance products and Consumer Credit Insurance (which embeds a life insurance component in any event). AFSL licensees would be responsible for ensuring their representatives have appropriate qualifications, consistent with RG 146 *Licensing: Training of financial product advisers* and ensuring that customers were provided with appropriate warnings on the limited nature of the advice provided.

22. What types of financial advice should be regulated and to what extent?

TAL believes the full advice spectrum, from General Advice to Comprehensive Personal Advice, should be regulated in a clear manner enabling customers to obtain what they want from advice, while minimising advice delivery costs and giving more certainty to financial advice providers. However, the current regulatory regime does not encourage this, and needs to be fundamentally reformed if assistance, guidance and advice on financial products and services is to be accessible and affordable to most Australians.

It is increasingly evident that the current division of advice into General Advice and Personal Advice is no longer serving the interests of customers. This is particularly the case following guidance on the divide in the recent High Court judgment in relation to Personal Advice in 2021[13].

The divide between general and Personal Advice is unclear, creating challenges for providers in knowing with certainty whether or not the Personal Advice line has been crossed. Given these matters can be assessed well after the assistance or advice is provided, it is not surprising providers of General Advice are wary and uncertain in the current advice realm.. To avoid any risk of straying into potential Personal Advice, providers of General Advice have been reduced to essentially providing factual information (or not much more assistance than that), leaving the customer to decide for themselves whether a product

[13] Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA 3, Date of Judgment: 3 February 2021, S69/2020

may fit within their needs or not. Customers can become frustrated as reasonable questions cannot be answered due to the restrictions placed upon the provider as they negotiate a legal minefield.

TAL also has concerns around customer ability to access Limited Advice, which can be costly, time consuming and not necessarily fit for purpose. Under current regulatory settings, customers seeking assistance and guidance in relation to a specific need or product can be forced by the regulatory framework to either accept Comprehensive Personal Advice or to forgo advice altogether. Even where available, Limited Advice can still be cost and time prohibitive for customers, who are often seeking simple and quick help that can be delivered in brief, including within a single phone call.

Reforming advice regulations to better meet customer need
TAL considers there is a need to dramatically overhaul the current regulatory framework to allow financial services guidance and advice to be:

- for customers, accessible and affordable to all Australians, including people of low to moderate socio-economic means
- for providers, produced cost-effectively and with certainty of the regulatory guardrails.

To do this we suggest changes to what currently constitutes General Advice, so that product issuers and distributers are permitted to ask customers questions, to provide guidance based on customer responses, and to provide examples that are relevant to the customer and help them make decisions. We also suggest Limited Advice be separated from Comprehensive Personal Advice, placed into its own distinct category, and made a more certain concept. Table one below outlines the scope of each level of information, guidance or advice.

Table one: proposed advice categories and scope

<table>
<tr><th>Consumer need</th><th>Information only</th><th>Product Guidance</th><th>Limited Advice</th><th>Comprehensive Advice</th></tr>
<tr><td>Regulated as financial advice?</td><td>Not financial advice</td><td>Financial advice</td><td>Financial advice</td><td>Financial advice</td></tr>
<tr><td>Scope</td><td>Static information, e.g. online and marketing materials</td><td>Product issuers/distributers permitted to ask questions to help customers establish and understand their own needs
Product issuers/distributers permitted to explain the product types from own product suite suiting the customer’s stated need; to explain product options (benefit and premium structures; and to provide examples e.g. what similar customers in similar circumstances have chosen)
Appropriate warnings would be provided to customers about the basis on which the assistance is provided, and the need to obtain Limited Advice or Comprehensive Advice if the customer wants to receive advice on other providers’ products
For life insurance, information and assistance services may be commission funded, with the option for a customer to pay a fee if preferred
Super funds able to soft-default unengaged customers into retirement strategy/products (utilising intra-fund funding mechanism)
Generic financial calculators regulated under this category</td><td>Support on one defined aspect of customer’s needs, excluding all others
Advice scope can be limited in both category and product suite
Reduced disclosure and simplified process to enable low-cost production
Limited advice can be provided by both financial advisers and non-adviser ASFL representatives (with appropriate training, educational standards and supervision)
Appropriate warnings would be provided to customers about the narrow basis on which the advice is provided and the need to obtain Comprehensive Advice if the customer wants to receive advice on a broader range of needs
For life insurance, advice may be commission funded, with the option for a customer to pay a fee if preferred
Examples of the sort of services offered include insurance advice, superfund offered retirement strategies and products</td><td>Tailored personal financial strategy taking into account two or more aspects of a customer’s needs and circumstances
Ongoing advice and support
For life insurance, advice may be commission funded, with the option for a customer to pay a fee if preferred
Comprehensive advice providers stand to benefit from reforms to Limited Advice making it easier for them to provide this type of advice.</td></tr>
</table>

Within this concept, for some types of products Limited Advice should also be able to be provided by appropriately trained and supervised non-adviser ASFL representatives. We expand on this idea in our response to question 17.

In calling for reform, TAL notes Product Guidance and Limited Advice would well suited to delivery via both digital and telephone based channels. These channels enable highly sophisticated quality assurance and compliance monitoring processes. For example, telephone based channels permit all conversations to be recorded and subject to what are arguably the highest and most transparent levels of compliance assurance in the entire advice sector.

The suggested model seeks to make advice and assistance available to more Australians, in comparison to the current approach that is increasingly restricting it to higher net worth people only. It would also address the significant challenges that the murky General Advice/Personal Advice divide creates, supporting a better customer experience and outcome. Comprehensive Advice licensees and advisers would also benefit, as it would provide them with similar certainty when scaling down form Comprehensive Advice to Limited Advice.

Legislative changes required to implement the reform model
TAL has given some consideration to legislative changes needed to help deliver the redefined categories of advice we recommend. Focusing on the Corporations Act 2001, changes could include:

Advice type	Legislative changes
Guidance	**S. 949A** – references to 'general advice' should be replaced with 'product guidance'. The existing warning should be adapted to make the practical implications of product guidance clearer to consumers. This could include making it clear that because the product guidance is general in nature there is no guarantee that it is necessarily suitable for the client, and telling the client they should seek personal advice if they need advice that considers their objectives, financial situation and needs.
	S. 766B (3) – should be amended to make the test for personal advice more certain such that providers can implement controls to prevent its unintended provision. This could include by: • making the first limb of the test subject to the condition that the person's objectives, financial situation and needs were considered for the purpose of providing financial product advice; • making the second limb of the test subject to the condition that the provider of the advice had also not warned the client of the matters in s 949A(2); and • deeming advice to be personal advice where the provider tells the client the advice is Personal Advice. This will allow a greater control and certainty for providers, and in turn should result in better quality General Advice being provided to consumers.
	S. 766B (3A) – should be used as the provision to list situations where asking for information about or considering a person's objectives, financial situation and needs will not be Personal Advice.

	• The AML/CTF exception currently in s 766B(3)(a) should be moved to this section. • A new exception should be added to specify that asking for information about or considering a person's objectives, financial situation and needs will not be Personal Advice where it is for the purpose of clarifying the scope of the person's consent as defined in s 992A(5)(b) (the anti-hawking provisions). • A new exception should be added to specify that asking for information about or considering a person's objectives, financial situation and needs will not be Personal Advice where it is for the purpose of giving a person information about other persons in cohort or group of people similar to them(for example, telling a superannuation member how their superannuation balance compares to the average balance of others who are in the same age group, or how many other members make additional contributions above their employer SG; or telling a mortgage holder the average proportion of mortgage debt mortgage holders protect with life insurance or what life insurance products are most commonly acquired by mortgage holders). This type of comparative information can help inform a customer's decision but should not be considered to amount to personal advice • The word 'solely' should be removed from the target market exception to Personal Advice.
Limited advice	**S. 961B(2)(g)** - the Best Interest Duty safe harbour includes the safe harbour requirement to take any other step that, at the time the advice is provided, would reasonably be regarded in the client's best interest. While TAL supports the Best Interest Duty, we believe the open-ended and circular aspect of the "any other step [that] would reasonably be regarded" requirement has created significant challenge and uncertainty in the provision of Limited Advice. This could be ameliorated by providing a client a clear warning that the Personal Advice is limited in scope, rather than the regulatory uncertainty as to what is the "any other step" that is required to meet the duty. This would be an approach consistent with the existing General Advice Warning, and reflect that many Personal Advice services are limited to some degree (i.e. is not comprehensive covering all aspects of the client's circumstances). **Alternative approach -** the Best Interest Duty safe harbour should be removed in its entirety and meeting best interest obligations should be principles based and be determined by the process and outcome at the time the advice is provided, rather than by later outcomes.
	S 944A - the requirement to give a Statement of Advice (SOA) when Personal Advice is provided. TAL supports the Financial Services Council's recommendation for a simplified advice document to be developed for use in Limited Advice. For more information please see our response to question 68.
	TAL would like to see the development of an appropriate Limited Advice warning that can be provided to customers to make it clear their personal circumstances are being considered in connection to the issue covered by the advice only. Customers would then consent to proceeding based on this

	understanding. This disclosure and consent would reduce uncertainty which may emerge from a subsequent assessment as to what scope was agreed or needed to satisfy the adviser's legal and regulatory obligations.
Comprehensive advice	**S. 961B(2)(g)** - the Best Interest Duty safe harbour includes the safe harbour requirement to take any other step that, at the time the advice is provided, would reasonably be regarded in the client's best interest. While TAL supports the Best Interest Duty, we believe the open-ended and circular aspect of the "any other step [that] would reasonably be regarded" requirement has created significant challenge and uncertainty in the provision of Personal Advice. **Alternative approach -** the Best Interest Duty safe harbour should be removed in its entirety and meeting best interest obligations should be principles based and be determined by the process and outcome at the time the advice is provided, rather than by later outcomes.
	S 947B (and related sections/regulations) - Requirements for the content of an SOA. The current prescribed requirements for an SOA are lengthy, very detailed and complex. In many circumstances, customers are not likely to read such a comprehensive document due to its length and complexity. Simplifying the SOA requirements for limited personal advice in line with the Financial Services Council's recommendation would provide a higher level of client trust and a greater likelihood of engaging with, comprehending, understanding and therefore proceeding with the advice. In addition, simplifying the content required will also reduce the cost to a licensee to produce this document for clients and make personal advice more accessible to more Australians

27. How does applying and considering the distinction between General and Personal Advice add to the cost of providing advice?

Maintaining the distinction between General Advice and Personal Advice is of vital importance for General Advice providers, although the name should certainly change to avoid customer confusion that they are being provided with Personal Advice. With unintentional or inadvertent provision of Personal Advice a serious regulatory and customer risk, providers must carefully and correctly distinguish between General Advice and Personal Advice. Managing this risk is complex, uncertain and generates various costs, which are ultimately borne by customers.

Training costs
Managing the distinction between General Advice and Personal Advice is technical, nuanced and involves extensive training. Training is conducted both internally by providers and externally by registered training organisations, and includes ongoing refreshment of knowledge and skills. See Case study 5 for further information.

Case study 5: training required to manage risk of providing Personal Advice

Learning to restrict a service to the level permitted under General Advice can produce an unnatural and stilted conversation.

Representatives must learn to carefully limit the questions they ask so as not to elicit more information from the customer than is necessary to establish the products they are interested in (to meet anti-hawking obligations) and to test whether the customer is in the target market for that product (for design and distribution obligations).

Representatives also must learn to restrict what they say so as not to specifically acknowledge the customer's financial situation, objectives, or needs, or make or imply recommendations or opinions which could be inferred to be based on any one or more of these. They must also learn to deflect requests for Personal Advice that may be made by the customer, who is very unlikely to understand the distinction between advice types. This can be quite an unnatural experience for both providers and customers.

Compliance costs
Comprehensive quality assurance monitoring of phone recordings is required to identify and assess potential, inadvertent Personal Advice.

Where an interaction could be considered to be close to the line, the matter is escalated for assessment by compliance specialists and lawyers, often over single sentence remarks which could lend themselves to an inference a customer's individual circumstances might have been considered. These assessments are often complex and involve the weighing up of factors including the General Advice Warnings the client was provided with and the overall context of the real-time phone conversation.

Customer outcome and experience costs
As well as financial costs, applying the distinction between General Advice and Personal Advice creates customer outcome and experience costs as well. To manage the risk of inadvertently providing Personal Advice, a provider may choose not to provide customers with General Advice at all, or may not be able to provide General Advice that is genuinely useful to a customer. Where no (or no useful) General Advice has been received, customers who might otherwise have had the confidence to decide about a financial product can be left feeling unsure and may forego acquiring it. Alternatively, lacking suitable General Advice a customer may make decisions that are not in their best interest, but which a General Advice provider may not be able to steer the customer away from, for fear of crossing into Personal Advice and breaching law.

28. Should the scope of intra-fund advice be expanded? If so, in what way?

The compulsory nature of superannuation, including insurance in superannuation and a growing range of retirement income products, means superannuation funds should have a role in advice. In fact, through a combination of fund delivered services and working with financial advisers, superannuation funds may be one of the keys to making quality financial advice more affordable and accessible than it has been before.

Demand for superannuation delivered advice set to grow

Demographic drivers mean an increasing number of superannuation members are either moving, or soon to move, from the accumulation phase of superannuation into decumulation phase. As a result, funds are likely to encounter more and more members seeking information and advice on their superannuation savings and retirement income options.

These members want easy access to affordable advice that addresses their needs, and are approaching their superannuation fund to either obtain advice directly, or by seeking a referral to an appropriate financial adviser. This need is likely to increase even more given the Retirement Income Covenant obliges funds to have a documented strategy to identify and meet the retirement income needs of members by July 2022, which will drive more retirement income products into the market.

For superannuation funds to be able to appropriately meet the advice needs of their members, there needs to be policy and regulatory change that supports them in doing so. In respect of General Advice and Limited Advice, superannuation funds are caught by the same regulatory shortcomings as outlined elsewhere in this submission[14]. There are also challenges with the limited scope of intra-fund advice. If there was the type of reform to the regulatory framework as set out in our recommendation in response to question 22, superannuation funds would be better placed to assist their members with advice relating to their superannuation, insurance in superannuation and retirement income needs.

Expanding intra-fund advice

The key defining feature of intra-fund advice is that the cost of advice provided by a superannuation fund to an individual can be shared across all members of the fund. This creates a low-cost source of advice for the member, but with a trade off in that intra-fund advice is limited to simple, non-ongoing Personal Advice relating to the member's interest in the fund only: matters outside the superannuation environment are unable to be considered.

These constraints make intra-fund advice of only limited benefit to members. For example, for members seeking retirement advice, matters such as tax and the age pension are important considerations that fall outside the scope of intra-fund advice, and this limits advice quality. TAL considers there is an opportunity to create better outcomes for members through reforms enabling superannuation members to have universal access to quality advice on superannuation, insurance in superannuation and retirement income via their superannuation fund with costs borne by members collectively. To achieve this, superannuation funds should be permitted to provide, or facilitate the provision of advice, in relation to any matter relevant to superannuation. This would enable members to have access to affordable advice that explicitly considers relevant aspects of their circumstances outside of the superannuation environment, so they benefit from more holistic advice.

Again, using retirement income as an example, members would benefit if the legislative framework permitted the following to be considered:

- assets and income outside of superannuation, to the extent it impacts age pension eligibility
- the retirement income needs of an entire household, notably a spouse.

This approach could be accompanied by enhanced financial calculators that would allow members to better understand their strategy and product options, and to implement them. TAL's submission highlights changes that would support the provision of more useful calculators in our response to question 40.

[14] See for example TAL's responses to questions 1, 3, 22, and 40.

These reforms would have dual benefits of helping funds better guide members to make effective decisions around their retirement plan, while also supporting the policy goal of increased member participation in retirement income streams.

30. Are any other changes to the regulatory framework necessary to assist superannuation trustees to provide intra-fund advice or to more actively engage with their members particularly in relation to retirement issues?

In addition to legislative certainty, existing regulatory guidance on calculators and retirement estimates could be expanded in recognition of the important role these tools can play in helping members understand the options available to them. More flexible retirement calculator tools would help members think about their superannuation as income and to see the effects of their choices over time. We expand on reforms that would support the provision of more useful calculators in our response to question 40.

Access to data would assist customers and trustees

A further obstacle to the provision of guidance is the limited member data that trustees have access to. Generally, trustees will have access to broad member information only, such as age, gender and account balance. Trustees do not usually have access to other member data that may otherwise have a major influence on retirement goals and strategy, such as retiree health status, partnered status, home ownership status, non-superannuation assets and income, and spending patterns, to name a few. Reliably collecting these types of information at the individual level can be difficult and expensive.

These issues could be eased if trustees were able to access, with member consent, Government collected data such as held by Australian Taxation Office and Department of Human Services. TAL notes the roll out of the Consumer Data Right (CDR) could, over time and with member consent, help trustees to address the current data discrepancy. The CDR could assist trustees to gain streamlined access to relevant information from a wide variety of sources, adding both richness and fidelity to trustee guidance, and ultimately enabling the mass-customisation of retirement solutions for the needs of different member cohorts.

32. Do you think that limited scope advice can be valuable for consumers?

TAL strongly believes Limited Advice can be valuable for customers. In fact, if the advice regulatory framework can facilitate quality Limited Advice being produced economically, it will go a long way to addressing the affordability and access issues this Review is tasked with examining.

Personal Advice clients frequently seek Limited Advice, covering a specific single need. Because the current regulatory framework makes it difficult for advisers to provide Limited Personal Advice due to uncertainty around how to compliantly provide it, too often customers must either accept more expensive Comprehensive Advice, or forgo advice altogether. Reforming regulations to enable cost effective and safe delivery of Limited Advice, with legal and regulatory certainty, would help address this challenge.

Benefits of increased access to Limited Advice

Opportunities to grow value for customers with Limited Advice include:

- **Personal life insurance advice.** Customers seeking Personal Advice on life insurance have generally already determined they want cover but seek advice to ensure they obtain the most appropriate outcome for them. This includes determining the type and quantity of cover, assistance through the application process, and competitiveness and appropriateness of current cover. Customers want this sort of focused advice to be low cost and easy to access. The lower production costs and streamlined process associated with Limited Advice are therefore important, as is the option of funding the advice by commission.

- **Life insurance advice from product issuers.** As noted in our response to question 27, self-directed customers interested in acquiring life insurance can be frustrated by the limitations associated with General Advice. If product issuers could safely and economically transition from General Advice into Limited Advice when relevant to customer need, customers would benefit from a better experience and outcome. Achieving this would require a re-examination of education standards and qualifications, to allow non-adviser AFSL representatives to provide the advice.
- **Advice from superannuation funds.** Superannuation members would benefit if they could access low cost Limited Advice relating to their superannuation account. Examples of areas where members would benefit from Limited Advice includes assisting them to make changes to their insurance in superannuation arrangements and supporting them to choose and implement a retirement income strategy[15].
- **Advice from banking and financial service providers (e.g. banks, credit unions, friendly societies, general insurers) and health insurers.** Customers stand to benefit from life insurance advice during key life events and where significant financial commitments are being made (for example following marriage, the birth of a child, or purchasing a home). In these moments, Limited Advice would support customers to make the most appropriate financial decisions.

33. What legislative changes are necessary to facilitate the delivery of limited personal scope advice?

TAL has concerns around customers' ability to access Limited Advice, which can be costly, time consuming and not necessarily fit for purpose. Under current regulatory settings, customers seeking assistance and guidance in relation to a specific need or product can be forced by the regulatory framework to either accept Comprehensive Personal Advice or to forgo advice altogether. Even where available Limited Advice can still be cost and time prohibitive for customers, who are often seeking simple and quick help that can be delivered in brief, including within a single phone call.

As noted in our response to question 22, TAL recommends Limited Advice be separated from Personal Advice, placed into its own distinct category, and made a more certain concept. Regulations should specify that Limited Advice may:

- Support on one defined aspect of customer's needs, excluding all others.
- Be limited in scope in both category (e.g. advice covering life insurance only) and product suite (e.g. need only provide advice relating to one product issuer although Limited Advice would also frequently compare products from a number of product issuers).
- Involve reduced disclosure and simplified fact find processes to enable low-cost production.
- Be provided by both financial advisers and non-adviser ASFL representatives (with appropriate training, educational standards and supervision).

[15] The retirement question is particularly pressing. From 1 July 2022 the commencement of the Retirement Income Covenant will oblige superannuation funds to put in place a retirement income strategy that outlines how they plan to assist their members in retirement. Funds will need to consider how to assist their members to maximise their retirement income and to manage risks (e.g. longevity risk) during retirement. Reform of general, limited, and Personal Advice regulations are needed to facilitate funds fully addressing this need.

- Call on appropriate customer warnings making clear the narrow basis on which the advice is provided and the need for customers to obtain Comprehensive Advice if they want to receive advice on a broader range of needs, or to consider more factors.
- In the case of life insurance advice, be commission funded, with the option for a customer to pay a fee if they prefer.

Examples of the sort of services that should be available to customers as Limited Advice include insurance advice and superannuation strategies and products. We acknowledge there would need to be detailed policy design underpinning this approach, and stand ready to assist in this regard.

Supporting reforms

Apart from creating a distinct and separate category of advice, there are several areas of additional legislative reform that would be needed to facilitate the delivery of Limited Advice.

Corporations Act

- **S. 961B(2)(g)** - the Best Interest Duty safe harbour includes the safe harbour requirement to take any other step that, at the time the advice is provided, would reasonably be regarded in the client's best interest. While TAL supports the Best Interest Duty, we believe the open-ended and circular aspect of the "any other step [that] would reasonably be regarded" requirement has created significant challenge and uncertainty in the provision of Limited Advice. This could be ameliorated by providing a client a clear warning that the Personal Advice is limited in scope, rather than the regulatory uncertainty as to what is the "any other step" that is required to meet the duty. This would be an approach consistent with the existing General Advice warning, and reflect that many Personal Advice services are limited to some degree (i.e. is not comprehensive covering all aspects of the client's circumstances).
- **S 944A** - the requirement to give a Statement of Advice (SOA) when Personal Advice is provided. We support the Financial Services Council's recommendation for a simplified advice document to be developed for use in Limited Advice. For more information please see our response to question 68.
- **S 947B (and related sections/regulations)** - Requirements for the content of an SOA. The current prescribed requirements for an SOA are lengthy, very detailed and complex. In many circumstances, customers are not likely to read such a comprehensive document due to its length and complexity. Simplifying the SOA requirements for Limited Advice in line with the Financial Services Council's recommendation would provide a higher level of client trust and a greater likelihood of engaging with, comprehending, understanding and therefore proceeding with the advice. In addition, simplifying the content required will also reduce the cost to a licensee to produce this document for clients and make Personal Advice more accessible to more Australians.

Limited Personal Advice warning

- TAL would like to see the development of an appropriate Limited Advice warning that can be provided to customers to make it clear their personal circumstances are being considered in connection to the issue covered by the advice only. Customers would then consent to proceeding based on this understanding. This disclosure and consent would reduce uncertainty which may emerge from a subsequent assessment as to what scope was agreed or needed to satisfy the adviser's legal and regulatory obligations.

35. Do you agree that digital advice can make financial advice more accessible and affordable?

By digital advice, TAL means the use of digital tools to produce or receive General Advice and Personal Advice. In recent years it is evident some customer preferences and behaviour have shifted to become increasingly self-directed, with digital tools facilitating this. There are several benefits to this: like other sectors, in financial services digital tools have boosted competition, fostered innovation, and encouraged diversity of supply.

TAL strongly agrees digital advice can make financial advice more accessible and affordable, but the ability to achieve this could be improved with supporting reforms to how advice is regulated. Presently, advice is accessible for people who can afford to pay for Personal Advice, and at the other end of the spectrum, for people accessing the support of financial counselling services. For the vast bulk of Australians who lie between these poles, there is a lack of affordable and accessible advice. As we make clear in our response to question 22, TAL believes fundamental reform is needed to address this need; however we also see an important role for digital tools particularly in connection to products offered under General Advice.

Digital improving accessibility and affordability of advice

In life insurance the trend to digital services is clearly evident and is having a positive effect on accessibility and affordability of life insurance. TAL observes that, as a result of digital services like comparison services and calculators, the quality of life insurance products directly available to customers has improved. Full featured, fully underwritten, price competitive products are now readily accessible to many more Australians.

Other observations relating to how digital advice can make financial advice more accessible and affordable:

- Digital services operating under General Advice allow customers to easily compare products. More than one in five life insurance policies purchased direct in Australia are via General Advice online comparison, with an estimated 1.5 million Australians commencing an online life insurance comparison journey every year.
- Free generic financial calculators are a proven type of digital advice, provided under specific regulatory relief applying to calculators, that work based on customer inputs and other conditions of the relief. The widespread provision of free calculators demonstrates:
    1. it is possible to cost effectively provide guidance and advice to customers through digital tools
    2. customers are prepared to use digital advice services
    3. digital tools can reduce the cost of key advice steps, including collecting personal data, disclosing information, delivering documents, and pre-filling templates
    4. providers are prepared to develop digital advice tools when there is regulatory certainty (as provided by ASIC's calculator relief).
- Given the general unwillingness for many customers to pay a fee for advice, especially General Advice, under current regulatory settings digital advice may be the only way to provide advice cost effectively for people in middle Australia.

36. Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?

TAL sees all types of financial advice as amendable to digitalisation, which is already improving the quality, affordability and accessibility of advice.

Digitalisation of advice does not necessarily mean every step in the advice chain, from client acquisition or contact through to actioning advice, needs to be performed digitally – this will be a matter for customer preference. Digitalisation is more likely to occur (and is occurring) in a blended manner, by way of digitalisation of specific steps in the chain for the purpose of supporting or streamlining the overall process. Already there are various digital tools available to customers and advisers to support or streamline the production and provision of advice, be it General Advice or Personal Advice. The financial advice regulatory framework should encourage and support this development.

General Advice well suited to digitalisation

Focusing on TAL's experience of providing financial services under General Advice, in our experience digital services are well suited to General Advice. We see them as making life insurance products more easily accessible to customers while supporting innovation. However, the blurred line between General Advice and Personal Advice, emphasised by the recent judgment from the High Court[16], has made it more difficult to provide the assistance customers are asking for. This results in sub-optimal customer outcomes and experiences.

A potential solution to this problem is to make simple, single issue Personal Advice (Limited Advice) easier and more certain (from a regulatory perspective) to deliver via digital means. This would require a re-think in relation to the binary General Advice versus Personal Advice regulatory structure[17], which is stifling the ability and willingness of providers to help customers. Ideally digital Limited Advice providers should be able to limit their advice in two ways:

- Limit advice to just the product category in question – for example just to life insurance, without considering other advice needs the customer may have.
- Digital tools should be able to recommend products from the provider's product suite only, without regard to other products.

The customer would need to be informed of the limitations of Limited Advice through a regulated statement similar in function to the General Advice warning, before advice proceeds.

40. Are any changes to the regulatory framework necessary to facilitate digital advice?

TAL notes the emergence of digital advice tools is a relatively recent development, one that has occurred within Australia's existing financial advice policy and regulatory framework. This recency means there are several improvements that ought to be made to encourage the provision and uptake of digital tools, and there are clear opportunities for regulatory reform to facilitate digital services becoming more useful for customers.

[16] Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA 3, Date of Judgment: 3 February 2021, S69/2020

[17] TAL recommends a fundamental overhaul of the advice regulatory framework, including reframing, renaming and expanding the scope of General Advice and creating a new category of advice facilitating the provision of Limited Personal Advice (Limited Advice). Please see our response to question 22 for more information.

Overarching regulatory certainty
The complexity and uncertainty imposed by the blurred line between Personal Advice and General Advice frustrates the customer experience. The blurring negatively impacts the ability or willingness of General Advice providers to assist customers. Fundamentally, customers who want fairly basic assistance and guidance, and who do not wish to or need to pay for full Personal Advice, should be able to receive the help they need under General Advice[18].

Within life insurance offered under General Advice, customers want guidance on key aspects of insurance such as the typical amount of cover that suits people like them (see boxed text), and on the benefit and premium options available to them. This should be able to be facilitated by digital advice under the reframed General Advice model we suggest in our response to question 22.

Greater regulatory certainly and a more facilitative regime for information, assistance and guidance will encourage the development of scaled, cost-efficient digital advice systems. Such systems may be the only way for many people in middle Australia who do not want to pay a fee to access the benefits of advice.

Maximising the benefits of generic financial calculators
TAL presently makes generic insurance needs calculators available online via our own website and those of our partner superannuation funds. The purpose of these tools is to support customers to think through their insurance needs and to plan for different scenarios.

Calculators depend on ASIC relief to operate, with the relief instrument (*ASIC (Generic Calculators) Instrument 2016/207*) and related regulatory guide (*RG 167 Licensing: Discretionary powers*) setting out the requirements and limitations of calculators.

Case study: value of social proofing to help consumers

In digital marketplaces, customers are frequently invited to consider products which have been selected by other customers whom, based off current purchasing preferences, may resemble themselves. Termed "social proofing", this is often an effective way to help consumers to consider goods and services that might suit their needs.

Consumers considering financial services via digital advice tools stand to benefit if providers were permitted to explain practices of consumer cohorts. Digital General Advice tools should be able to assist customers by collecting basic, cohort level customer information and using it to present to the customer products and services typically selected by people like them. This approach can provide customers with the confidence and assurance they often seek before proceeding with a product choice.

Because it involves the use of a small number of customer characteristics, currently financial services regulators are not supportive of the use of social proofing. Strong consideration should be given to a revision of this position.

Interestingly, the regulatory relief provided for digital generic financial calculators already makes digital advice potentially more useful than assistance provided under General Advice by a human being[19]. Notwithstanding this, TAL sees further opportunities for calculators which could encourage customers to undertake self-directed research, planning and implementation. To achieve this, limitations adversely impacting the customer experience would need to be addressed. Examples include:

- There is a requirement to clearly separate insurance needs calculators from digital application tools. In the case of life insurance, this means that customers must often re-enter information at

[18] Ibid – see response to question 22 for more information.
[19] Information communicated through a financial calculator provided under the relief can answer some questions a natural person cannot. For example, a natural person operating under General Advice and who is assisting a customer choose an income protection waiting period could not ask the customer how much sick leave they have. In contrast a calculator could ask a user to input how much sick leave and savings the user has and then give them an estimate of how long they could go without income protection payments.

application they have already provided to a calculator to generate a quote. Should a customer then require assistance from a person, they are likely to be asked this information a third time. Customers should be permitted to commence an application for a product from the calculator, importing the results directly into the application.

- Calculators should be permitted to draw on information held by a product provider. This is especially the case where the customer is an existing customer and the calculator is offered in a member secured area/portal. Importing relevant information held by a provider about a customer (that would otherwise need to be manually entered) helps improve the customer experience and ensures accuracy and consistency in information provided to customers. It also makes the process easier, and so more engaging for customers who may otherwise be deterred by needing to input information manually.
- As reforms such as the *Consumer Data Right* expand across the economy, regulations should permit customers, should they consent, being able to import data about themselves drawn from a variety of sources. For example, the user of a superannuation retirement calculator may benefit if the calculator was able to draw on information sources such as the user's bank records, their pension entitlements, information from a third-party investment provider and life insurance policy information.
- Calculator outputs should be able to refer to the specific products that are used in the calculation once the calculation is finished. Allowing calculator outputs to do this will assist customers to find out more about the product used, investigate alternative products that address similar objectives, and take more informed next steps, including deciding if they want to acquire a product. Calculators should also link to the relevant product application process and, as noted above, pre-populate it with relevant information[20].
- All this should be regulated outside of the current Personal Advice regime, to be workable, affordable and accessible for customers. As we note in our suggested reform model in our response to question 22, calculators should be regulated as General Advice or its successor regime.

Development of digitally enabled limited Personal Advice

TAL sees the future of digital advice and limited Personal Advice as linked. In our experience, while customers like using self-directed digital advice tools provided under General Advice to plan their strategy, understand and compare their options and to monitor performance, at various points they may want to receive some assurance on their approach, or to validate their decisions. Providers would like to assist with this need, but are faced with uncertainty as to the level of assistance permitted under the advice framework.

If providers were able to transition easily into digital Limited Advice it would meet this customer demand for assurance and validation. To do this, providers would need be able to deliver Limited Advice simply, directly and at a low cost, which implies having relief from many of the usual Personal Advice requirements such as needing to consider topics beyond a customer's expressed need (even where they might be potentially relevant) and reduce existing disclosure obligations to enable efficient, affordable and accessible provision.

A potential solution to this problem is to make simple, single issue Personal Advice easier, simpler and more certain in its regulatory treatment, including when delivered via digital means. As noted in response to question 36, digital advice tools should be able to:

[20] Customer safeguards such as notices/warnings and the ability for the user to alter the amounts populated into the application from the calculator could be implemented as conditions to this linking.

- Limit advice to just the product category in question – for example just to life insurance, without considering other advice needs the customer may have.
- Digital tools should be able to recommend products from the provider's product suite only, without regard to other products (with an appropriate warning informing them only the provider's product have been considered).

The customer would need to be informed of the limitations of Limited Advice through a regulated statement similar in function to the General Advice warning, before advice proceeds.

Regulatory Guidance review to encourage accessible advice
Regulatory guidance shaping the provision of digital advice should be updated to include more examples of how its requirements should apply in practice:

- ASIC Regulatory Guide 255 *Providing digital financial product advice to retail clients* should be updated to provide more detail and guidance on how to provide compliant digital advice, under either the current or any reformed framework arising out of this Review.
- Other ASIC regulatory guidance not specifically about digital advice (that is, is technologically neutral guidance) should also be updated to assist further with how the Personal Advice obligations could be compliantly met by a digital advice offering[21], noting digital advice typically involves limited Personal Advice. We mention this as RG 255 focuses more on the resources and organisational competency aspect of providing advice, digitally; rather than what is required (in terms of process, scoping and content of the advice) to provide compliant limited scope Personal Advice digitally. Whether this is implemented by an update to RG 255 or other ASIC Guidance[22] is a matter of form.

While not specific to digital channels, we note that under the current law there is significant uncertainty as to how to provide non-comprehensive Personal Advice (i.e. how to compliantly scope what is now described as Limited Advice). This is evident in the detail provided in ASIC Information Sheet 267 which discusses what may be scoped in (or out) or not of any Limited Advice offering. We consider a law change is necessary in order to provide confidence to providers of Limited Advice (whether digital or not) that Limited Advice can be scoped in a manner supporting its accessibility and is able to be provided affordably (and without regulatory uncertainty). Currently, the scoping down of any Personal Advice involves inherent regulatory uncertainty and risk.   This is why we have suggested a new model for limited advice in our response to question 22.

42. In what ways can digital advice complement human-provided advice and when should it be a substitute?

Focusing on General Advice, TAL seeks to provide our customers with an omnichannel experience that allows them to choose the method and time of advice, sales and service delivery that best reflects their preferences.

From a practical perspective, this means that rather than being confined to a single channel or medium, such as online or human-provided only, the customer can choose to move within and between channels or medium as is convenient to them. This applies at all stages of the customer experience, from

[21] For example, ASIC Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure*, ASIC Regulatory 244 *Giving information, General Advice and scaled advice*, and ASIC Information Sheet 267 INFO 267 *Tips for giving limited advice*, would be useful documents to review with a view to better explaining how compliant digital Personal Advice can be provided.
[22] ASIC RG 175, ASIC RG 244 and ASIC Information Sheet 267.

information gathering, benefit and cover selections and quoting, through to application and to underwriting. Customers may also submit claims digitally and via human assisted means.

In our experience, most people prefer a hybrid experience (particularly for financial services), finding the digital and human-assisted channels complementary to one another. However, some people opt for an entirely digital experience, while others want to be assisted by humans throughout. Ultimately it is important the regulatory environment, and advice and product providers themselves, are sufficiently flexible to meet the preferences and needs of all customers.

48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?

TAL's focus and area of expertise in respect of the effect of the ban on conflicted remuneration is in respect of life insurance advice, where the ban is governed via the Life Insurance Framework (LIF).

LIF allows for commissions to be paid by product issuers to advisers when their client acquires a life insurance policy. LIF limits upfront commissions to 60% of policy cost and ongoing commissions to 20% per cent, while imposing commission clawback provisions for the two years following policy issue. LIF also allows level commissions without clawback. Apart from those commission exemptions, LIF bans the payment of volume-based payments by product issuers to licensees and advisers.

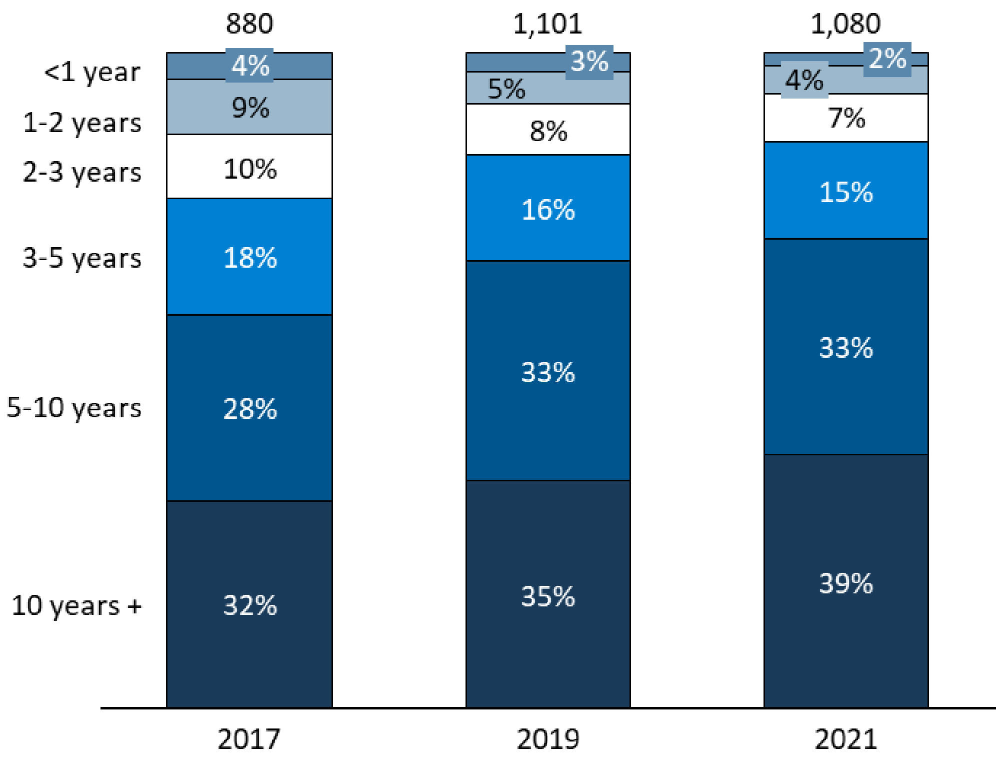
TAL considers that LIF has assisted in aligning adviser and customer interests and supports its continuation in its current form. LIF aligns adviser and customer interests in the following ways:

- Allows the high upfront costs for life insurance advice to be funded by a mechanism other than a large out-of-pocket fee to be paid by the customer to their adviser
- Imposes an upper cap across all insurers and life insurance products, regulating away any financial incentives for financial advisers to place business with one insurer over another.
- Reduces the gap between upfront commissions and ongoing commissions, emphasising the benefits of advisers and customers focusing on life insurance placement and long term needs.
- The LIF upfront commission cap and clawback provisions combine to address any conflict of interest that may arise due to commissions, supporting advisers to clearly focus on meeting their best interest duty.
- The 20% ongoing commission level introduced with LIF incentivises long term adviser-client relationships and financially supports ongoing service provision and support. This is especially relevant to policy holders at claim time, who may value the support of their adviser. It also supports advisers conducting reviews of client circumstances and needs, and to keep them appraised of changes brought about by legislative and regulatory change, without recourse to additional fees.

Policy lapse reductions since LIF commencement

The effect of LIF in aligning adviser and customer interests is supported by industry data. Analysis of industry data conducted by NMG Consulting on behalf of the life insurance industry demonstrates that since the commencement of LIF in 2018 the proportion of policies lapsing early in their lifecycle has decreased.

Advised Retail Life Insurance Lapse by Policy Age
(Rolling 12m, AUD $m, 2017, 19, 21)



Lapsing policies of <2 years duration	13%	8%	6%

49. Has the ban contributed towards improving the quality of advice?

Focusing on the Life Insurance Framework (LIF), TAL considers that LIF has contributed towards improving the quality of advice.

TAL supports LIF, together with other multiple regulatory and industry initiatives intended to improve quality of advice that have been in effect over the same period since LIF commenced. These have included:

- The commencement and roll out of new financial adviser professional and education standards.
- The actions of legislators and regulators, often in cooperation with advisers and advice licensees, to improve advice quality and customer outcomes.
- ASIC investigating those advisers who did not meet their legal requirements and banning them from the industry.
- The actions of product issuers to improve services delivered under General Advice, including in digital advice.
- Adviser and advice licensee investments into tools and processes that support a good client experience.

These forces and trends will continue to improve quality of advice in the future, including in life insurance advice where they will continue to work together with LIF.

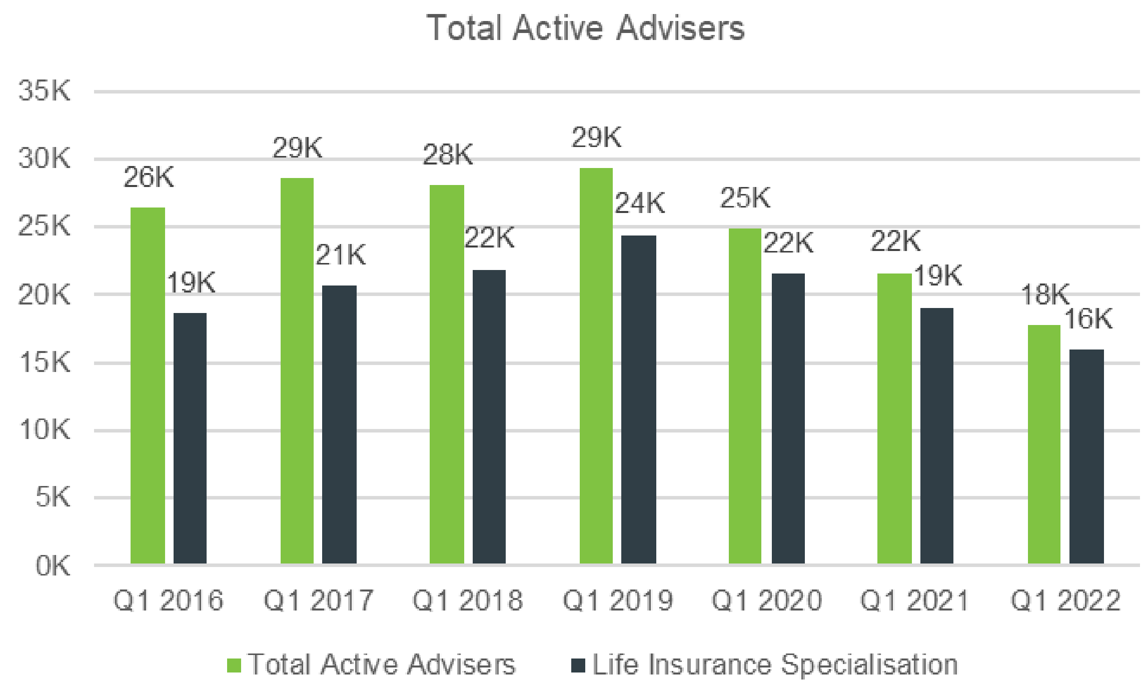
50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

Focusing on the Life Insurance Framework (LIF), there is little doubt that in achieving its goals of better aligning adviser and customer interests there have been impacts to customer, financial advisers and life insurers.

In capping the upfront commission to 60% of policy cost, LIF has made a direct impact on adviser commercial sustainability. With upfront commission revenue decreased, but customers generally unwilling to pay a fee for life insurance advice[23], advisers are receiving less income when preparing the advice with no concomitant decrease in work complexity or regulatory requirements. This has reduced the financial viability of many advice practitioners and advice firms. There are several flow on effects from this reduction.

Less advisers providing life insurance advice
A consequence of the challenging commercial realities in life insurance advice, along with the change in adviser education standards, has been a drop off in the number of advisers providing it. The decrease in total registered financial advisers has been well documented, but less discussed is the effect on the subset of life insurance advice. Shrinkage in life insurance adviser numbers is driven by some advisers switching to focus on more economically viable forms of advice where customers are more willing to pay a fee (such as retirement planning or wealth management), while others have exited or left the industry altogether. The chart below demonstrates that as total adviser numbers have dropped; so have advisers practicing in the specialisation of life insurance.

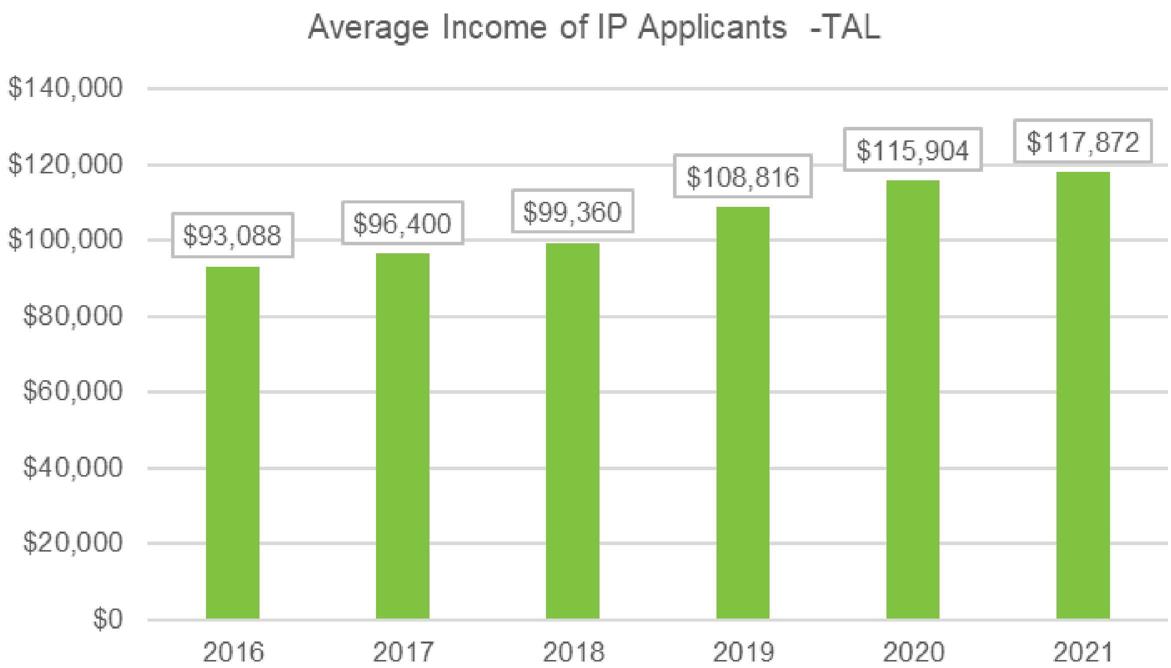
[23] There is significant research that demonstrates most Australians are unwilling to pay a fee for life insurance advice that is anywhere near the cost of production. For example 2019 research by the Financial Planning Association of Australia's found on average, FPA members charge $2,671 to prepare an SOA for new clients (The Financial Planning Association of Australia, *CoreData FPA Member Research*, 2019). Yet research the same year by Investment Trends found that people were prepared to pay only $340 on average for advice (Investment Trends, *Advice and Limited Advice Report*, 2019)



Source: ASIC Financial Advisers Dataset, May 19, 2022

Advisers focusing on higher need clients

For life insurance advisers to be commercially viable at a 60% commission rate with the current cost structure, advisers need to focus on insurance advice for higher need, higher net worth clients. This makes it harder for customers on average or below average incomes – i.e. middle Australia – to access a financial adviser and for financial advisers to provide financial advice economically to this customer segment, as much as they would like to do so. While there is no specific data on the income levels of advised life insurance customers, it can be inferred from the average income protection sum insured[24]:



[24] Average income is calculated utilising the average income protection sum insured and applying an assumption the sum insured is 75% of total income.

In addition to the access and affordability issues for customers, the challenge life insurance advice practices have faced in generating a sustainable return to cover the costs of running a compliant advice business during the LIF transition has been a cause of significant anxiety and distress for some advisers.

Reform needed to restore sustainability of life insurance advice
For current LIF commission rates to be sustainable in the long term, and so maintain access to life insurance advice, it is important there be reforms that result in a meaningful and sustainable reduction in the cost of advice delivery. TAL suggests fundamental reform to how life insurance is regulated, including making limited advice its own type of advice and a more certain concept. More information on this proposal can be found in our response to question 22.

Supporting reforms leading to simplified regulation, lowered compliance costs and uptake of technology will also help return life insurance advice to a sustainable model, and so alleviate the issues listed above. We note and support the reforms proposed by the Financial Services Council in its recent whitepaper on financial advice[25], which are aimed at these outcomes.

TAL also notes that any further reduction in LIF commission caps beyond 60% would exacerbate the effects listed above and be adverse for customers, financial advisers who provide life insurance advice and for life insurers.

51. What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.

Existing exemptions from the ban on conflicted remuneration are important, support good customer outcomes and should be maintained. There are two main categories of exemption:

- The first category are benefits specifically exempt from the ban on conflicted remuneration in the *Corporations Act 2001* and subordinate legislation. These exemptions permit benefits to be given for specific purposes. TAL supports the retention of these exemptions. Examples include:
  - non-monetary benefits with an educational or training purpose
  - non-monetary benefits for information technology software or support related to providing advice to clients about financial products issued by the benefit provider, or giving information on or dealing in life risk insurance products.
- The second category of exemption to the ban on conflicted remuneration is for benefits relating to life insurance products. This exemption is necessary for the operation of LIF and TAL supports the retention of this exemption in its current form.

Implications of removing the exemption for benefits relating to life insurance products
Were the life insurance exemption be removed, TAL contends there would be severe effects for customers, including:

- **Customers would need to pay a fee for life insurance advice.** Research suggests this is something most are unwilling to do[26]. The effect would be to place life insurance Personal Advice outside the reach of most Australians, accessible only to the wealthy.

[25] FSC claims its reforms would decrease the cost of providing advice by almost $2000, or by 35-37 per cent. See https://www.fsc.org.au/policy/advice/white-paper-advice.
[26] 2019 research by Investment Trends found people were prepared to pay only $340 on average for advice (Investment Trends, *Advice and Limited Advice Report*, 2019). Similarly, Rice Warner in 2020 found that 60 per cent of consumers were unwilling to pay anything for advice and only a very small percentage more than $250 (Rice Warner, *Future of Advice*, 2020).

- **Customers who want life insurance but who are unwilling to pay a fee would not be able to receive Personal Advice.** This means those customers who felt that they required Personal Advice would need to invest significant time in research and product education to understand their own needs, how products address these needs, the types of products available and to choose between products.
- **Customers without a financial adviser would need to complete their insurance application without the specialist knowledge and assistance advisers bring**. Some customers are deterred by the application and underwriting process, and without the assistance and guidance of their adviser may not follow the process to completion.
- **Customers would not have the choice to draw on the support of their adviser** when claiming on their life insurance. As a general rule, a person claiming on a life insurance product, such as Total and Permanent Disability Insurance or Trauma Insurance is experiencing significant personal stress given their illness or injury. Some customers find having access to the knowledge and support advisers provide to be a significant and valuable benefit.

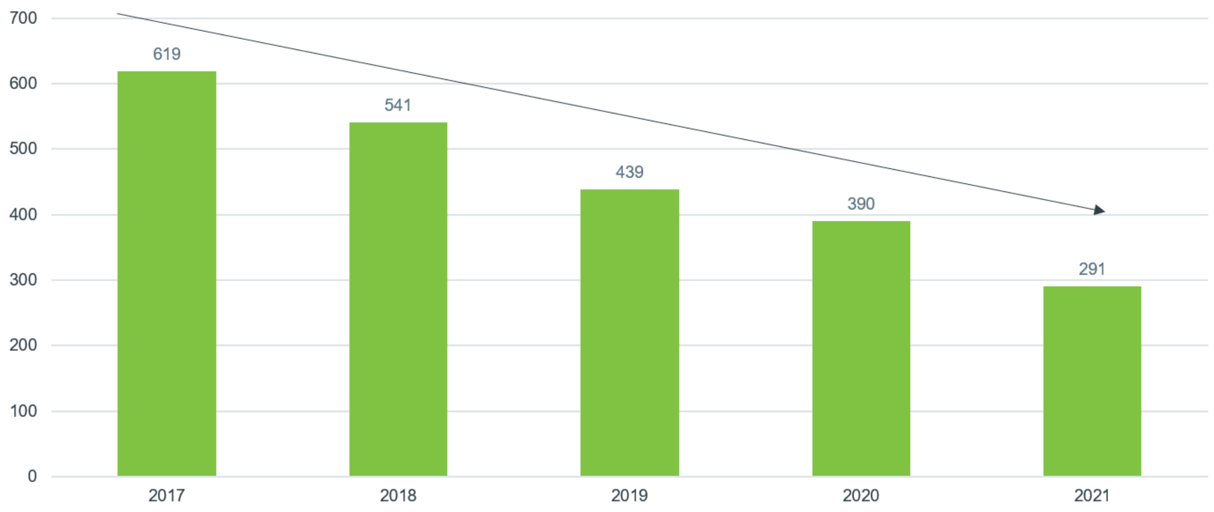
In addition to the above, TAL notes that in the absence of life insurance advice, many people will fail to consider or respond to the mortality and morbidity risks that life insurance exists to address. This failure will exacerbate existing underinsurance in Australia – a problem more fully described in our response to question 54.

53. Has the capping of life insurance commissions led to a reduction in the level of insurance coverage or contributed to underinsurance? If so, please provide data to support this claim.

Industry data makes it clear there has been a decrease in new life insurance sales since the introduction of LIF commission caps in July 2018. TAL believes LIF has contributed to this decrease.

The chart below clearly demonstrates the value of new life insurance business issued through financial advisers has been decreasing since 2017:

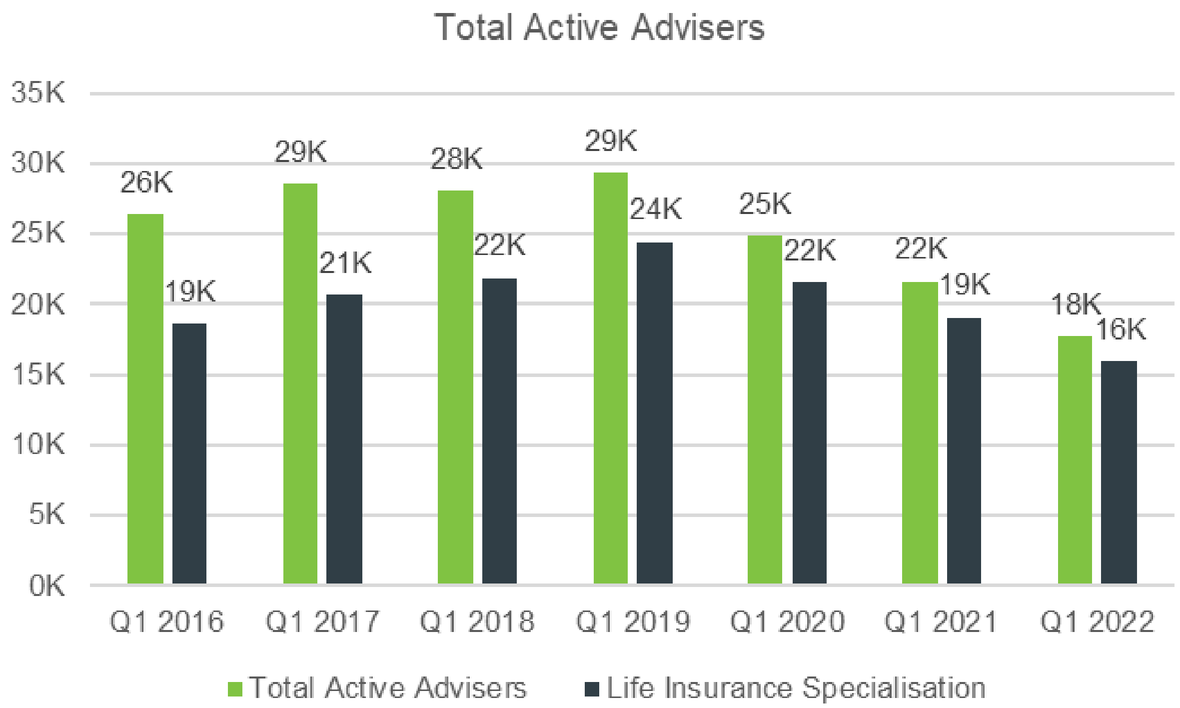
Retail New Business Premium ($m, Q2 2017 –2021)



Source: NMG RDM Study, NMG Market Model

Apart from LIF, there are many other factors involved in the decrease of life insurance new business over the period covered by NMG's analysis, including but not limited to:

- Less financial advisers active in life insurance advice, including less advisers specialising in the category. The chart below demonstrates the change in advisers practicing in the specialisation of life insurance since 2016, with numbers dropping by a third since their peak in 2019.

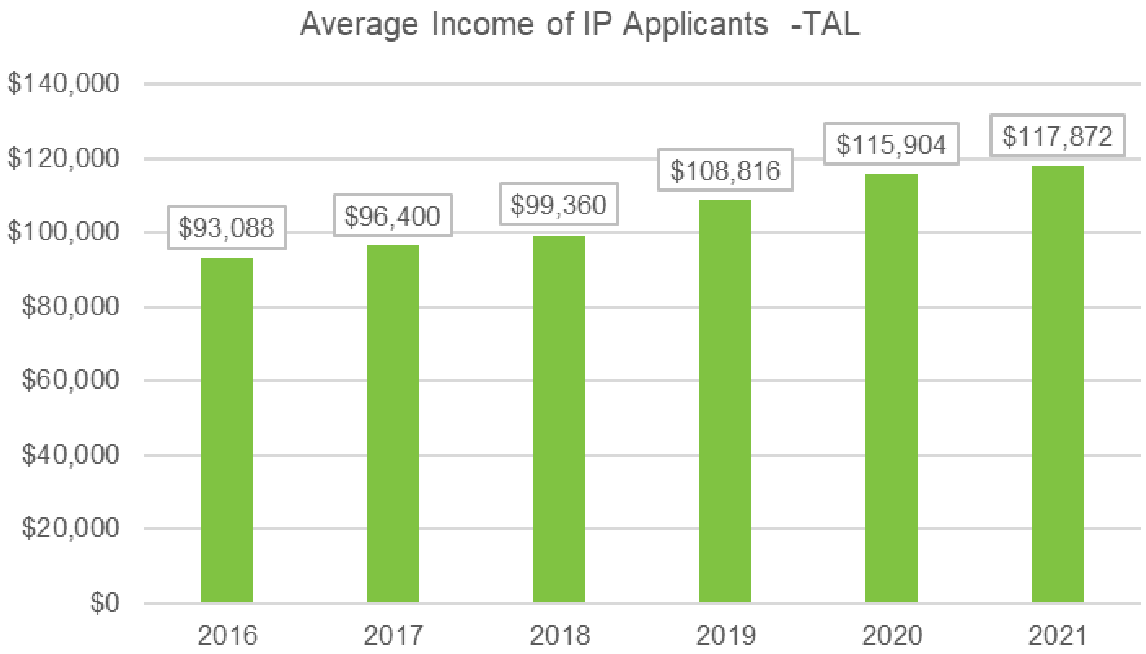


- Increasing compliance complexity, and the operating costs that complexity drives, leading to lower volumes among remaining advisers.

- Price increases in the life insurance industry, as insurers seek to manage product sustainability risks[27].

Nevertheless, the economics of life insurance advice are a real contributing factor to the decline in decreasing purchases of life insurance, effectively limiting who can obtain it. The reality for life insurance advice is that it is presently expensive to produce, requiring a full fact find and Statement of Advice for what is essentially a limited scope outcome, while also being subject to the same extensive and costly compliance obligations as for Comprehensive Advice. At the same time, customers remain reluctant to pay fees for life insurance advice, with most preferring for the adviser to be remunerated by insurer paid commission.

For life insurance advisers to be commercially viable at a 60 per cent commission rate with the current cost structure, advisers need to focus on insurance advice for higher need, higher net worth clients[28]. While there is no specific data on the income levels of advised life insurance customers, it can be inferred from the average income protection sum insured, as indicated in the chart below.



TAL believes the decline in life insurance sales can be reversed under the current LIF policy settings, but doing so will require reforms to significantly, meaningfully and sustainably reduce the cost of life insurance advice production and delivery. Simplifying regulation, including by making limited advice a separate type of advice and a more certain concept[29] will help return life insurance advice to a sustainable model, as well as reforms to lower compliance costs and encourage the uptake of technology[30].

[27] Note some rises have been in response to APRA's intervention designed to encourage sustainable and affordable cover in the Individual Disability Income Insurance market. The intervention also lead to products with generous benefit terms being removed from market.
[28] TAL notes that, over time, renewal commissions will ameliorate the impact of decreased upfront commissions.
[29] See TAL's response to question 22 for more information.
[30] We note and support the compliance and disclosure reforms proposed by the Financial Services Council in its recent whitepaper on financial advice, which are aimed at these outcomes.

55. What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be retained?

In respect to the future of the LIF instrument and the exemption to the ban on conflicted remuneration for life insurance commissions, TAL suggests the primary factor the Review should have regard to is the effect that further reductions to LIF caps would have on the supply of financial advice and also community underinsurance.

Underinsurance: breadth vs adequacy
There are two ways to understand insurance coverage – breadth and adequacy.

- **Breadth** refers to the level of customer participation in insurance.
- **Adequacy** refers to whether the insurance in place is matched to the individuals needs and circumstances. Matching of cover to needs requires time and expertise, and has traditionally been achieved with the assistance of a financial adviser.

Addressing adequacy
One important way consumers access life insurance is by way of life insurance obtained through a financial adviser, delivered under Personal Advice. In this model of insurance, the client's specific cover requirements and risk profile are calculated, and the most appropriate cover located. Advised people are thus well equipped to make an informed choice and obtain the cover that suits their needs and budget.

Advisers also play an important role in prompting customers to consider the possibility of life insurance. To obtain life insurance customers sometimes need to overcome certain cognitive barriers (including acknowledging mortality and morbidity) which combine to give the product lower customer appeal[31]. By promoting consideration and supporting adoption, advisers help overcome these barriers.

Taking these two issues together, TAL has significant concerns that any decrease in LIF commission caps, would accelerate the decline in life insurance advice accessibility and affordability. This would only result in advised life insurance becoming less accessible than it already is. Most Australians will not be able to, or want to, pay for Personal Advice for life insurance and will therefore not be able to obtain advised insurance cover matched to their individual need.

Pockets of underinsurance already emerging
The broad coverage of insurance in superannuation conceals a material access gap impacting lower to middle income Australians. In its 2020 analysis of the Australian life insurance market, NMG Consulting established an objective measure of insurance adequacy it calls the Community Standard[32]. When NMG applied the Community Standard to demographic data, it found that:

[31] There is a large body of relevant evidence that shows humans are not very good at understanding the risks that life insurance protects against, or making the decisions to mitigate these risks. This includes:
- Individuals are not good at trading off short-term against long-term, accurately assessing low probabilities, or appropriately navigating low incidence events and transactions (Kahneman & Tversky, 1979) and (Kahneman, et al., 1986)
- Individuals prefer to experience rewards sooner and delay costs until later (O'Donohue & Rabin, 1999) and tend to heavily discount future benefits (Ainslie & Haslam, 1992)
- Individuals have a clear aversion to ambiguity and preference for controllable/familiar over uncontrollable/unfamiliar options (Klein, Cerully, Monin, & Moore, 2010)
- Individuals tend to be overconfident in the sense that they overestimate the accuracy of their predictions (Heller, 2010), and underrate the likelihood of negative events. (Sharot, 2012).

[32] NMG's research found there is a relatively uniform expression of the community standard, being the level of cover required providing mid-term security and the opportunity to re-set following an insurable event, but not providing financial security for life. See *Australian Life Insurance Market Research Report*, NMG Consulting, July 2020.

- 21% of Australians aged 25 – 35 (predominantly middle income, with children or non-working spouses) have less insurance than the community standard to provide for dependents, and significantly less should they also have a mortgage.
- Similarly, 20% of middle-aged Australians (35 – 44) have less life insurance than the community standard, predominantly middle-income households with children and mortgages.

Reducing LIF caps would impact supply of advice, and increase underinsurance
Further reductions to LIF commission caps risks causing large numbers of financial advisers to cease providing life insurance advice. Decreasing caps would prompt advisers to leave the sector altogether, or to refocus on other types of advice where customers are more prepared to pay a fee. This would negatively affect the supply of life insurance advice, and lead to shrinking rates of life insurance coverage.

The more difficult access to advised life insurance becomes for Australians, the more prevalent underinsurance will become. Apart from the effects on individuals, underinsurance impacts family and community cohesion and results in greater reliance on Government provided support services. As it considers the future of LIF, the Review ought to have regard to these indirect effects of decreasing commission caps.

65. To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information they need to make an informed decision?

TAL supports the position put forward by the Financial Services Council in respect of adopting a shorter letter of advice, in lieu of an SOA or ROA. In summary the FSC recommends financial advisers be allowed to rely on their professional judgement to determine the correct scope of the advice, with disclosure and other obligations, including disclosure, scalable and flexible in response to customer need. This approach would allow for the costs of producing Limited Advice to be lowered.

Customers seeking life insurance advice are an example of the type of advice users who could benefit from the FSC's approach. The information customers need to make an informed insurance decision should be straightforward, incorporating an appraisal of their insurance risks and needs, an enunciation of the strategy recommended for them, and an evaluation of their product options. If disclosure documentation could be streamlined to match this requirement it would reduce the cost to produce the advice.

68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?

TAL is a strong supporter of the concept of Limited Advice where the advice received is not holistic and all-encompassing, but relates to specific issues and topics within a customer's life. We strongly believe this type of advice is not only better suited to reduced disclosure, but in fact reduced disclosure is a necessary step towards enabling the provision, accessibility and affordability of Limited Advice, as well as engagement and understanding of that advice by the end customer.

To make Limited Advice viable for financial services providers to provide, and for customers to readily afford, it would need to have a lower cost to produce. To this end, TAL supports the introduction a reduced disclosure document such as the Financial Services Council's concept of a Letter of Advice, which KPMG says would reduce the time taken to produce advice by 17 per cent, from 23.9 hours to 19.9 hours[33].

We also consider intra-fund advice (which can be Personal Advice or General Advice) as being better suited to reduced disclosure documents. This is for similar reasons as above – if superannuation funds were required to produce a full Statement of Advice in respect of advice provided on superannuation investment, contribution issues or retirement products, it would deter the provision and uptake of this advice and also increase the costs of providing the advice. This will ultimately be borne by all members of the fund.

[33] Financial Services Council, White paper on financial advice, 2021, p. 12, https://www.fsc.org.au/policy/advice/white-paper-advice, accessed 27 May 2022