

## Appendix 1: Consultation template

Name/Organisation: AIA Australia

### Questions

#### Intended outcomes

- 1. Do you agree that advisers and product issuers should be able to provide to personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?**

Yes, we agree that advisers and product issuers should be able to provide personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice. Current obligations are onerous, particularly when servicing customers that require relatively simple or single-issue advice. The obligations can create unnecessary complexity and cost, making the provision of accessible and affordable advice challenging.

We see the most significant impacts of the proposed changes being to current providers of general advice – either by shifting them to providing ‘personal advice’ or limiting them to factual information. We understand the key driver of the proposal to allow personal advice to be provided by those who are not ‘relevant providers’ is to encourage banks, super funds and life insurers to provide more advice to their customers about their own products. This is likely to mean that more Australians will be able to access personal advice.

The likely outcome for product issuers, at least in the immediate future, is that the ability to provide personal advice will be directed at servicing existing customers who have relatively simple needs. Many customers hold financial products they’ve purchased directly without the assistance of an adviser, or they may have received advice in the past but no longer have an advice relationship. The proposals will allow product issuers to provide meaningful assistance and advice to these customers, as well as support those that seek assistance from their financial institutions, who are currently constrained in providing the support desired.

The proposal will also allow advisers to service existing clients more simply.

## What should be regulated?

### 2. In your view, are the proposed changes to the definition of 'personal advice' likely to:

- a) reduce regulatory uncertainty?
- b) facilitate the provision of more personal advice to consumers?
- c) improve the ability of financial institutions to help their clients?

As the proposal paper notes, the change to the 'personal advice' definition is intended to address uncertainty.

Our view is that the proposed changes will reduce some of the regulatory uncertainty. As the proposal paper notes, this uncertainty often manifests itself in customers being channelled down a general advice path because of the cost, complexity and consequences of providing 'personal advice'. The proposals will not only reduce uncertainty for the providers of advice, but also for consumers as to what they can receive from a financial institution. This may increase their confidence in, and the likelihood that they will rely on, the advice provided.

We believe the proposed changes will facilitate access to personal advice for more consumers because under the current regulatory settings, advice providers often limit advice to clients with more complex needs as this is the only way to remain economically viable. This leaves a significant number of consumers without limited alternatives.

However, there remains uncertainty about the breadth of the information that an advice provider holds about the client's objectives, needs or financial situation, that they must take into account in providing personal advice.

We understand that the amended definition of personal advice is intended to reduce the likelihood of advice providers imposing a 'Chinese wall' to ignore information it may hold about a client to drive a conversation down a general advice channel. However, there are a number of circumstances where a financial institution may hold information about a customer, that advice providers should not be expected to have considered.

For example, a life insurer will often hold personal information, including health information, about an existing customer when they had earlier applied for a life insurance policy. Access to this information is limited by privacy provisions – its use restricted to the purpose for which it was collected.

In another example, a large financial institution might provide customers with different products provided by distinct businesses, such as a life insurer who also operates as a health insurer, where the above information may have been recorded for the purpose of providing advice on the suitability of the health insurance product to their needs.

This is in direct contrast to an example where a client spoke with Adviser A last year about a particular issue for which they received personal advice. In speaking with Adviser B, a representative of the same AFSL, about further advice (whether on a related topic or not), it is reasonable to expect Adviser B to consider the information available to them from that earlier engagement.

The extent to which access to information extends could be clarified in the Explanatory Memorandum accompanying any legislative change, or by amending the proposed definition of personal advice or good advice, to make clear the scope of the information which must be considered by the advice provider (which we have suggested in our response to Question 4 below).

On the basis that there is greater certainty, the overall impact of the proposed 'personal advice' definition is likely to mean more conversations between product issuers and their customers will be personal advice. We agree this will improve the ability of product issuers to help their customers, so long as the other reforms that are intended to reduce the compliance burden are also implemented. In isolation, this change might have the unintended impact of causing product issuers to reduce the help they provide customers, because it will impose heightened obligations on more conversations.

**3. In relation to the proposed de-regulation of 'general advice' - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?**

**a) If not, what additional safeguards do you think would be required?**

We have elected not to respond to this.

## How should personal advice be regulated?

### 4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide 'good advice' have on:

- a) the quality of financial advice provided to consumers?
- b) the time and cost required to produce advice?

Replacing the best interest obligation with the obligation to provide 'good advice' is unlikely to materially impact the quality of advice; however, it has the potential to reduce the time and cost to provide advice. We are aware that the Joint Associations Working Group (JAWG) has recently commissioned research to quantify the expected impact of the proposals.

In our view, one measure of quality is whether the advice meets the needs of customers. The proposal to replace the existing best interests duty (in many instances) with the obligation to provide 'good advice' is likely to lead to more customers accessing personal advice, which will be less complex and cheaper to produce. Personal advice is also more likely to be more useful to them than general advice because the advice provider can have a more meaningful conversation with their customers, rather than the 'arm's length' discussions that are symptomatic of general advice scenarios today. It will also facilitate more personal advice for consumers who have simpler needs, such as single issue advice.

We are aware of concerns that consumer protections may be eroded. We don't believe this to be the case and agree with the reasons set out in the proposals paper. In any case, as financial institutions will be responsible for any poor behaviour by their employees and will have to provide remedies for poor customer outcomes, it's in their interest that employees providing personal advice are competent, appropriately trained and supervised.

It will be important that the difference between the advice provided by a product issuer under the 'good advice' obligations and that provided by a 'relevant provider' with best interest obligations under the Code of Ethics, is clearly articulated so that customers can make informed decisions. This shouldn't suggest that one is of better quality; simply that, a product issuer may be providing advice only about their own products, whereas a 'relevant provider' will be providing advice that considers the broader market. The best interest obligation for a 'relevant provider' provides that point of differentiation and should be clearly articulated as part of the value proposition to their clients (and in other relevant disclosure to ensure that customers are not confused or misled about which obligations apply to an advice provider in any situation). Similarly, advice providers that are not required to be 'relevant providers' should clearly articulate the type of advice they can provide and any limitations of their offering. In practice we'd expect that any properly formulated 'good advice' process would result in customers being directed to a 'relevant provider' if that outcome is more appropriate for their needs.

We believe the good advice definition could be amended slightly so its intent is clearer. We understand the intention is that the information referred to as being available to the provider is not all information that is available, but instead all information relevant to the scope of the advice that is available.

To provide clarity, we propose that the 'good advice definition is amended:

*'Good advice' is advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider **that is relevant to the agreed scope of the advice** at the time the advice is provided.*

If all information available needs to be considered, we are concerned that this perpetuates the current scoping and scaling issues that require detailed investigation by advisers – complicating the advice, increasing the time to produce it and the cost of delivering it. For example, an existing customer who has previously had advice on superannuation, is now seeking a review of their personal insurance needs and wants to consider funding the cost of the premiums through superannuation because of cash flow limitations. Scoping challenges would arise here if the information held regarding the customer's superannuation meant that their superannuation fund, its appropriateness, contributions and investment options needed to be considered, and not solely their needs and funding for personal insurance as requested. It is suggested that the proposed 'good advice' model should enable consideration of insurance with potential for superannuation funding without the need to fully consider the superannuation fund itself beyond considering the impact on retirement savings by drawing premiums from there.

The amended definition attempts to provide further clarity for both advice providers, in clarifying the information that must be considered in providing good advice, and consumers of advice, in making clear that only information relevant to the scope of the advice will be considered. This will require advice providers to accurately record information relating to that agreed scope in the event there was a complaint about whether the advice satisfied the good advice requirement.

**5. Does the replacement of the best interest obligations with the obligation to provide 'good advice' make it easier for advisers and institutions to:**

- a) **provide limited advice to consumers?**
- b) **provide advice to consumers using technological solutions (e.g. digital advice)?**

It would be reasonable to expect that the 'good advice' obligation will make it easier for limited advice to be provided to consumers, on the basis that the following is clear:

- the extent to which information is required to be considered is limited only to what is relevant to the agreed scope of the advice; and

- Standard 6 of the Code of Ethics, which currently requires consideration of a client’s broader, long-term interests and likely circumstances, is amended to reflect the obligations under the proposed ‘good advice’ test.

Subject to the above, the ability to scale advice more simply, and reduce the complexity and fear of providing advice on a limited scope, will enable more advice providers to explore digital advice offerings. Such an offering will enable a customer to receive their advice more readily and for a lower cost as there will be less complexity in the process for an adviser.

It is appropriate that relevant providers must be individuals, as the comprehensive advice process requires a higher level of professional judgement than solely digital advice can provide. However, it is more likely that an advice provider that is not a relevant provider will be able to effectively enable a digitally led advice process for existing customers with respect to their products. For example, a super fund will be able to offer a simple digital process which enables a customer to be guided through and receive a recommendation on the appropriate investment option for them.

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

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

The most important support towards enablement of limited and/or digital advice offerings is consistency between legislation, regulation, the Code of Ethics, and regulatory and complaint body oversight. Without consistency and alignment across all channels, licensees will be unable to act in alignment with the full intention of the reforms.

**7. In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:**

- a) the quality of financial advice?**
- b) the affordability and accessibility of financial advice?**

As noted in our response to Question 4, we do not believe that a change in the application of professional standards will reduce the quality of advice.

However, we believe this will improve both the affordability and accessibility of financial advice.

In terms of accessibility, this is likely to mean that banks, super funds and life insurers create additional advice capability, largely made up of people who are not relevant providers, who will provide advice about their own products to customers with relatively simple needs.

Combined with other proposals in the paper, which should allow existing relevant providers to service more clients, we consider that these changes improve accessibility to personal advice for many more Australians.

We don't believe that the ability for product issuers to develop increased in-house advice capabilities creates any conflict with the existing financial advice market. We expect that the advice provided by product issuers will be for relatively simple needs and servicing a cohort of customers that are likely to be outside of the target market of relevant providers, even with an anticipated reduction in the cost to produce advice, which is expected if all of the proposals are implemented.

In term of affordability, many of the proposals are likely to improve this. However, this specific measure is likely to encourage greater development of digital channels, including greater use of hybrid models where human advice is supplemented by digital channels.

**8. In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?**

**a) If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?**

As noted in Question 4, we do not see that the absence of professional standards for those providing 'good advice' reduces the quality of advice provided, because financial institutions will be responsible for any poor behaviour and will have to provide remedies for poor customer outcomes; it is therefore in their interest that employees are competent, appropriately trained and supervised.

### **Superannuation funds and intra-fund advice**

**9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):**

**a) make it easier for superannuation trustees to provide personal advice to their members?**

**b) make it easier for members to access the advice they need at the time they need it?**

We have elected not to respond to this.



## Disclosure documents

### 10. Do the streamlined disclosure requirements for ongoing fee arrangements:

- a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, how and to what extent?

We have elected not to respond to this.

### 11. Will removing the requirement to give clients a statement of advice:

- a) reduce the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, to what extent?

Removing the requirement to give clients a statement of advice (SOA) is likely to materially reduce the cost of providing advice. As noted, the JAWG has commissioned research that will provide greater insight into the quantum.

In our view, this is unlikely to negatively impact consumers as advisers still have obligations to communicate the advice in a form that is appropriate for their client. This is likely to result in more engaging delivery of advice that will be better understood. A move away from compliance and process-driven disclosure to information that is more relevant to the client will likely improve the value of the advice.

The removal of a formal SOA is to be encouraged. However, it's important that this is monitored over time to ensure that complexity doesn't find its way back into the advice process. A contributing factor to the size and complexity of the current SOA document relates to its evolution. Over time, licensees have responded to ASIC file audits and the outcomes of complaints and disputes by AFCA and its predecessors by adding additional disclosures to the SOA. Disclosure has been driven by a risk-averse approach rather than the letter of the law or client expectations.

To ensure that the good intent of this proposal isn't lost, it will be important that ASIC and AFCA and others that have input into judgements about advice and disclosure have a collective understanding about what is reasonable in terms of disclosure. As noted, this might be better achieved through the use of case studies and examples in the primary legislation, for example in the Explanatory Memorandum, rather than in Regulatory Guidance or in AFCA Rules. This should include



several simple life insurance scenarios, such as buying a policy following the purchase of a home or making changes to an existing policy due to a change in circumstances.

To the extent that the Code of Ethics and its associated guidance creates an expectation about the provision of an SOA, it should be amended to align with the proposed changes.

**12. In your view, will the proposed change for giving a financial services guide:**

- a) **reduce regulatory burden for advisers and licensees, and if so, to what extent?**
- b) **negatively impact consumers, and if so, to what extent?**

The proposal allows for a provider to not provide a financial services guide (FSG) and instead direct a customer towards content on a website (which is similar to how privacy terms are often handled). This will reduce the regulatory burden for advisers and licensees and is unlikely to negatively impact consumers.

To the extent that the Code of Ethics and its associated guidance creates an expectation about the provision of an FSG, it should be amended to align with the proposed changes.

## **Design and distribution obligations**

**13. What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:**

- a) **the design and development of financial products?**
- b) **target market determinations?**

We welcome Proposal 11 which simplifies the reporting requirements under the design and distribution obligations for relevant providers. We do not believe this will have an adverse impact, as relevant providers will still report complaints received.

Separately, a person who provides personal advice is currently exempted from some of the design and distribution obligations because of their best interests duty. It is unclear what the scope of the exemption will be if the proposal to replace the best interests duty and other associated duties with the 'good advice' obligation is implemented.

## Transition and enforcement

### 14. What transitional arrangements are necessary to implement these reforms?

The proposals paper contemplates whether industry should be permitted to opt in to certain aspects of the reforms before the hard start date. We support this in principle, but believe that it would be cleaner if reforms were grouped together such that advice providers could opt in to groups of reforms rather than each one individually. For example, combining those related to disclosure (Proposals 8, 9 and 10) for opt-in purposes.

Any transition period needs to consider the timing of the enabling legislation and the guidance which will accompany the legislation. Our view is that a 12-month transition period would be required at a minimum to implement the reforms. The transition timeframe should commence from the later of the finalisation of any regulatory guidance (or guidance on the Code of Ethics as relevant).

A key lesson that can be taken from the reform agenda in the years since the Royal Commission is that final regulatory guidance has often been delivered just before obligations commence. Examples include those related to breach reporting and the hawking prohibition, which commenced in October 2021 with final regulatory guidance delivered in the month prior, making timely and effective implementation extremely difficult. This is reflective of a significant reform agenda and should not be seen as a criticism of ASIC, but rather an opportunity to learn from these lessons.

In practice, this has meant that industry is implementing reforms without knowing how regulators will enforce the law, leading to inevitable conservatism. Despite the usual practice of consultation on draft guidance, it is not uncommon for final guidance to have been materially rewritten. Therefore, developing compliance plans based on draft regulatory guidance is often fraught with risk. This risk could be mitigated if the Explanatory Memorandum provided more clarity to advice providers, reducing the need for regulatory guidance.

## General

### 15. Do you have any other comments or feedback?

#### 1. 'Relevant provider' definition

On page 8, proposal 4 sets out when a provider of personal advice should be a 'relevant provider':

*"A provider of personal advice should be a 'relevant provider' where the provider is an individual and the client pays a fee for the advice, the provider (or the provider's authorising licensee) receives a commission in connection with the advice, there is an ongoing advice relationship between the adviser and the client, or the client has a reasonable expectation that such a relationship exists. The professional standards would not apply to a body corporate nor to an individual who is not a relevant provider."*

Our assumption is that a provider is a 'relevant provider' if any of the circumstances are met - for example, the client pays a fee for the advice or there is an ongoing relationship between the adviser and the client. For the avoidance of doubt, this should be clearly articulated.

There are also some areas that would need further clarity which could be addressed in later consultation. These include clarity on what defines an ongoing advice relationship. For example, does this require there to be an ongoing fee arrangement in place, or would an offer that the client can call the adviser if they have questions about the advice provided constitute an ongoing advice relationship? Additionally, what grounds exist for an adviser to form the view that the client has a reasonable expectation that a relationship exists?

Our expectation is that there would need to be something more than a mere offer that the client can call if they have questions for there to be an ongoing relationship. As noted earlier, aiming to address these circumstances in the Explanatory Memorandum, rather than in regulatory guidance, would provide early direction to personal advice providers and avoid circumstances where guidance is inconsistent.

#### 2. Cost of providing advice by people who are not relevant providers

The proposals do not make clear how the cost of advice provided by someone other than a 'relevant provider' can be funded (outside of the collective charging of fees for advice by super trustees).

Our view is that proposals that support the provision of personal advice by people other than ‘relevant providers’ should acknowledge that the cost of that advice may be recovered through the cost of the products that are being recommended. This is distinct from commission, which would be paid to a ‘relevant provider’ but is a cost nonetheless that must be recovered in some way.

### **3. Distinguishing between ‘good advice’ and information about a financial product**

Section 1 of the proposals paper sets out the proposal to expand the definition of ‘personal advice’ and to deregulate ‘general advice’ with diagram 1 on page 14 setting out the interplay between ‘personal advice’ and information about a financial product.

It would be helpful if the exposure draft provides clear distinction to assist providers in navigating this interaction. While the proposal paper does suggest that if there is uncertainty about whether you are providing ‘personal advice’ then you should assume that you are, it’s also reasonable that not all conversations need to be personal advice and there should be clear demarcation between advice and information.

### **4. Broadening the scope of advice that can be charged to a client’s super fund**

Currently, a client may direct their advisers to charge some or all of the advice fee to their super fund. In broad terms, this is limited to advice about the member's interest in the fund provided the cost of the advice is reasonable.

The intent of this is to ensure that the cost of advice about unrelated matters isn’t deducted from super in breach of the sole purpose test. However, retirement planning is often broader than solely a client’s interest in superannuation; for example, providing advice to a customer about all of their retirement savings both inside and outside super. This still aligns to the achievement of a retirement purpose broadly, as it targets improved outcomes throughout life and in retirement.

In our view, the circumstances in which an advice fee can be deducted from a client’s super fund should be expanded beyond solely their interest in the fund, to include matters that relate to their retirement.

### **5. Addressing known issues with Standard 3 of the Code of Ethics**

While we are aware that the Code of Ethics is outside the remit of the review, we do not believe that advice reforms should be considered without taking into account issues in the Code. One clear area of concern is the scope of Standard 3, which currently requires advisers not to act where there is a conflict of interest. This goes further than the law and is a clear example of regulatory overreach. In practice, advisers manage conflicts appropriately as part of their duties to their clients and the Code should not muddy this commonly understood legal requirement.