

# **ClearView response to Quality of Advice Review Proposals Paper**

**Organisation: ClearView Wealth Limited**

**Date: 23 September 2022**

## Questions

### Intended outcomes

**1. Do you 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?**

ClearView broadly supports the proposals contained in the Quality of Advice Review (**QAR**) Consultation Paper.

We agree that advisers and product issuers should be able to provide personal advice to their customers without having to comply with all current obligations, however, it is important to ensure that people are appropriately qualified to give that advice, and adequately monitored and supervised, in a way that is appropriate to their role and the nature of the advice they are giving.

Within the category of personal advice there are different levels of complexity.

Financial advisers have the specialist knowledge, technical skill and experience to provide comprehensive strategic personal advice, and personal advice that involves a comparison of different product issuers' products.

There will be limitations on the personal advice that less experienced, less qualified product issuer representatives can provide. This is also likely to be the case given the nature and breadth of the personal information they will have access to.

Representatives of product issuers should only be able to provide limited personal advice regarding the products they issue. A triage advice model is one option, where simple queries are addressed by their customer service representatives and more complex queries are escalated to more experienced personal advice-authorized employees. Consequently, the expectations of and obligations imposed on product issuer representatives and financial advisers will differ, and should be proportionate and appropriate to the complexity of the personal advice they are giving.

Furthermore, in the same way that financial advisers (relevant providers) must meet minimum professional, ethical and education standards, product issuers and their representatives (non-relevant providers) should also meet minimum education and training requirements, appropriate to their role.

A debate currently underway in the industry relates to whether Australia should mirror the UK's model of regulating relevant and non-relevant providers, including clear definitions and labelling. For example, in the UK, there are independent advisers and restricted advisers. There is a clear delineation between the two categories.

We believe a similar model here would make it easier for personal advice providers to clearly understand and manage their obligations to their clients and customers.

## 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?

The proposed changes to the definition of personal advice are likely to reduce regulatory uncertainty, facilitate the provision of both limited and scoped personal advice, as well as more complex personal advice, and improve the ability of financial institutions to help their customers.

With regard to the reduction in regulatory uncertainty, the proposed definition makes an important change which relates to what is taken into account when the advice is provided. Introducing into the definition, the fact that the advice will be expected to be based on information the provider of the advice has or holds, provides more certainty as to the expectations of that provider.

That said, customers will still be unable to get the comprehensive personal advice, including strategic advice, many of them need from their financial institutions and product issuers. They will still need to see a knowledgeable, qualified financial adviser.

We broadly agree that the potential benefit of more customers receiving some form of *good advice*, whether from their product issuer or a financial adviser, outweighs the disadvantages of them receiving no advice at all.

Product issuers must be required to clearly disclose the limitations of their advice. Consumers should be given this information upfront to allow them to make informed decisions. In addition, there must be a clear and concise record of the disclosures and advice that have been given.

Proposed changes to the definition of personal advice also present new challenges for organisations in terms of record keeping, privacy and the efficient sharing of customer data across the business.

As an example, product issuers may hold a significant amount of personal customer information but a product issuer representative inside an organisation's call centre may not have easy access to that data for a range of reasons including siloed structures, restricted access and lack of multiple systems integration resulting in limited combined records.

A simple operational framework for a financial adviser could be: conduct a fact find and needs analysis; make a recommendation, based on a customer's personal situation; and implement that recommendation. A product issuer can choose an alternative model so long as they can justify their advice.

**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?**

The 'misleading and deceptive' conduct, anti-hawking, unconscionable conduct, and efficient, honest and fair provisions cover many conduct issues but not all.

Additional consumer protection safeguards may be necessary to prevent parties from blatantly pushing products onto customers without holding information about their personal circumstances, and pressure selling, in light of the removal of the 'general advice' authorisation (the removal of which, ClearView supports).

The market conduct regulator must ensure it has appropriate monitoring and supervision tools to ensure all provisions are enforced.

The risk of product issuers recommending products without holding personal customer information should be anticipated and mitigated.

### 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?**

ClearView supports the proposal to replace the best interest obligations with the obligation to provide 'good advice', noting that financial advisers continue to have a best interest duty under the general law and reiterated in the Code of Ethics.

The safe harbour steps add significant complexity and cost to the advice process but do not guarantee good advice in the client's best interest. The assessment of good advice should not be based on following a checklist process but, as the Consultation Paper proposes, whether the advice is reasonably likely to benefit the client, based on the information available at the time.

Good advice is a reasonable threshold which will enable advisers, using the information they hold or have access to, to provide advice that is fit for purpose and, as such, should be cheaper and quicker to deliver. The advice should also be easier for clients to understand and access. If a client requires more complex advice, a more detailed standard should be expected, including greater record keeping and documentation.

**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)?**

Replacing the best interest obligation and safe harbour steps with the obligation to provide good advice would make it easier, and provide more options on how advisers and institutions can provide limited advice and digital advice.

While the formal requirement to produce a SoA is removed, advisers should be required to keep detailed records.

Customers should also receive advice in writing, whether that is in an email, a one-page document or an entry in a client portal.

It would be a significant change to move from substantial detail required in an SoA, to no legal requirement to provide advice in writing. Accordingly, ClearView would support a mid-point solution and believes it is in the customer's interest to be provided a timely record of the advice given.

To minimise information asymmetry, where the provider of advice holds all the records and information and the client has none, clients should still receive some form of documentation they can refer to.

This document could help educate clients. It could also help protect both consumers and advisers should queries, disputes or complaints arise in the future.

It is common for two parties to interpret information and recall conversations differently. The obligation to provide advice in writing, if only during a transition period, is an important discipline and safeguard.

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

**a) limited advice?**

**b) digital advice?**

Advice providers should be able to access a client's Centrelink and MyGov accounts, subject to proper client authorities.

This would make the process of gathering and updating information, such as a person's income and pension entitlements, more efficient and convenient for both parties.

Regarding digital advice, there should be greater understanding of digital advice algorithms and how recommendations are arrived at.

The compliance burden aside, a key reason why digital advice has not taken off in Australia could be attributed to a lack of regulatory engagement. Additional guidance around the expectations on digital advice providers would be helpful.

**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?**

Relevant providers should meet higher standards than non-relevant providers, as they will be providing more comprehensive and complex advice.

This will create two classes of adviser.

Relevant providers will effectively be today's financial adviser.

To enter the financial advice profession, a new entrant must:

- Hold an approved bachelor's degree or higher qualification;
- Undertake a professional year;
- Pass the Financial Adviser Exam;
- Maintain 40 hours of CPD per year; and
- Register on the FAR.

The product issuer representative (for example customer service representatives) of non-relevant providers will effectively be junior advisers.

To become a product issuer representative, they should undertake education and training set by their employer.

This distinction may not be clear to customers. It should be a requirement that product issuer representatives make it clear that they are not fully qualified financial advisers.

We are concerned that a product issuer representative could complete basic in-house training and start advising customers unsupervised. This was considered in the 2014 *Parliamentary Joint Committee Inquiry into proposals to lift professional, ethical and education standards in the financial services industry* and deemed completely inadequate.

ClearView is keen to ensure that the chasm between the education and training standards of financial advisers versus product issuer representatives does not expose consumers to sub-optimum advice so a careful balance needs to be set, requiring the advice to be appropriate to the role.

Product issuer representatives should also complete education and training courses, approved by an independent body, to close the gap.

Where a customer's needs exceed the training of a product issuer representative, customers should be referred to a relevant provider, whether within the institution or externally.

The model is currently employed by many super funds, where members with complex personal advice needs are referred to an approved third party financial adviser.

**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 stated previously, we believe that there must be consistent professional, education and training standards.

ClearView agrees with the Financial Services Council's (FSC) position that the professional standards framework should continue to allow providers and advisers to move around the industry, drawing from a common body of technical knowledge and qualifications.

Product issuer representatives providing financial product advice should hold minimum qualifications and skills. These requirements should be a subset of the qualifications and standards held by relevant providers.

There should also be some acknowledgement that product issuer representatives may not have access to all the information an organisation has on a customer. Institutions commonly hold a significant amount of customer data on different technology systems. Even if data is recorded and stored on the same system, product issuer representatives may not have access for privacy reasons.

While changes to the definition of personal advice make it clear that any organisation that holds personal information about a client's objectives, needs or any aspect of their financial situation is providing personal advice, product issuer representatives should make it clear to the customer that they may not have access to all of an organisation's customer data. This increases the need for an operational framework that guides representatives through a basic advice process, including gathering or confirming relevant customer information before providing advice.

### 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?**

Product issuers and super funds routinely get asked relatively simple questions by customers. These changes would give them greater confidence to answer questions and deliver a better service.

The parameters of intra-fund advice must be clearly defined and communicated to the member. There should be no doubt in a customer's mind that any advice they receive is limited to the product they are in. They will not get a comprehensive view of the market. It should be clear that a product issuer representative is not a financial adviser. Their function is to help customers understand the features and benefits of the product they are already invested in.

## 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?

The streamlining of disclosure requirements for ongoing fee arrangements would significantly reduce the regulatory burden on financial advisers and help reduce the cost of providing advice.

This would have no material adverse impact on consumers.

We support removing the current requirement on advisers to provide an annual Fee Disclosure Statement in favour of a simplified, streamlined approach.

We agree that providers of personal advice should still seek annual written consent from their clients to deduct ongoing fees from a financial product/s. They should also provide details of the services to be provided over the course of the coming 12 months.

### 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 produce a SoA would significantly reduce the time and cost of providing advice.

It would create greater scope for innovation and new forms of advice, as advice could be more easily delivered in different formats.

We believe advice providers should still be required to keep records of client meetings and discussions including a client's personal situation, the scope of advice, advice recommendations and how the advice will be implemented.

Clients should also receive personal advice in writing, be that an email, one-page document or entry in a portal.

While we recognise that other professionals including doctors and accountants provide advice verbally only, either in person or on the phone, financial advice is unique, as it relates largely to the future and may require long-term actions.

Therefore, financial advice warrants a higher requirement.



The requirement to give clients advice in writing will ensure advice providers are engaged and disciplined.

We know that recollections can vary and may even change over time, making documentation important. This may only need be a transitional requirement, until financial advice is established as a bona fide profession.

**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?

Removing the requirement on advisers and licensees to provide a Financial Services Guide (**FSG**) would have little to no impact. This is standard practices across the industry.

The change could, however, create opportunities for advisers and licensees to get more creative about how they present and distribute important information.

**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?

AFSLs and financial advice businesses should monitor and report complaints.

**Transition and enforcement**

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

We support the FSC's suggestion of a 24-month transition period to give the industry adequate time to prepare.

The financial services industry has experienced an enormous amount of regulatory and structural change in the past decade and further reform should not provide any unintended disruption.

Another potential consideration when determining transitional arrangements should be the introduction of higher Financial Adviser Education Standards.

From 1 January 2026, existing advisers will be required to comply with higher standards of education and competency.

Those who fail to comply, or choose not to undertake further study, will exit the industry.

The proposals contained in the Quality of Advice Consultation Paper mark a major shift to principles-based regulation, signifying the industry's transition to a profession. Five years ago, they would have been unimaginable and are only possible now because of the industry's hard work to lift professional, ethical and education standards.

Despite a desire to ease the compliance burden on advisers and give more Australians access to affordable personal advice as quickly as possible, if the proposed changes are not implemented properly and the industry is not given adequate guidance and time to get ready, there is a risk it could set back the industry's progress to professionalism.

Implementing these reforms gradually, starting with relatively simple changes like the removal of the Fee Disclosure Statement requirements, would give the industry time to adjust and prepare for major changes like removal of the best interest duty and safe harbour steps.

It is important to note that many advisers will also be undertaking further study, leading up to 1 January 2026, and therefore may have limited capacity to implement changes.

A generous transition period will help ensure the industry's long journey to professionalism is not undermined.

## General

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

Thank you for the opportunity to provide feedback on the Quality of Advice Consultation Paper.

Overall, ClearView is supportive of the proposed changes. We thank Michelle Levy and the Treasury team for taking the bold steps required to reduce regulatory complexity in order to make personal advice more accessible and affordable to more Australians.

While we naturally have some questions and concerns, given the bold nature of the proposed changes, we believe financial advice is on the verge of becoming a recognised profession and, therefore, principles-based regulation that empowers advisers to use their professional judgement is appropriate.

Furthermore, as Australia's baby boomers rapidly approach retirement, if they are not retired already, they will need help protecting, managing and growing their wealth in order to achieve a comfortable lifestyle in retirement.

We must find a way to make quality personal advice more affordable and accessible to more Australians.

We agree with the observation that the potential benefits of making it easier for product issuers to provide personal advice outweigh the potential risks.

To ensure a smooth, successful transition, Treasury, ASIC and the industry should work closely together to set clear expectations and develop any necessary guides and explanatory memoranda to support advisers and product issuers.

Finally, ClearView looks forward to reading Treasury's findings on the quality of life insurance advice.

As stated in our response to the QAR Issues Paper, we believe that the quality of advice in Australia has improved significantly in the past few years, due primarily to:

1. Institutional exit from personal advice, which has accelerated the separation of products from advice and challenged the viability of vertical integration;
2. Better systems and processes; and
3. Higher adviser education and training standards.

We also believe that life insurance commissions play a crucial role in making personal life insurance advice affordable for more Australians.

Research conducted by ClearView shows that 95% of financial advisers accept life insurance commissions, and almost 70% of advisers do not believe consumers will pay a fee for life insurance advice.

ClearView believes consumers should be able to choose how they pay for risk insurance advice be that commissions, fees, or a combination of both.

Further changes to life insurance commission caps would only push more advisers out of the industry and force those left to focus only on affluent clients who can afford to pay fees.