

## Appendix 1: Consultation template

Name/Organisation:

### 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?

It is vital that we increase the quantity of help, guidance and advice that can be provided to Australians. It will not be possible, and not financially viable for individuals, to have all the help, guidance and advice that consumers require provided under the current advice regime.

Reducing the regulatory burden of providing advice, particularly where that advice is in response to simple questions or on a single topic, is key to ensuring advice is accessible and affordable for all Australians. We support the intent of the Proposals to ensure that regulatory obligations are commensurate with the scale (and associated consumer risk) of the advice being provided.

Appropriate consumer protections do need to be in place to ensure that inappropriate or poor advice can be identified and rectified.

The current framework relies on disclosures to achieve client understanding. However, the complexity of disclosures has become prohibitive to providing simple advice at an affordable price-point, and the volume of disclosures does little to assist consumer comprehension.

Providing the right information to consumers should always be part of the process, but it's also important that poor outcomes can be identified where the client does not realise that they are not getting the right advice. Education standards for providers and protections to prohibit the mis-selling of products (including Design and Distribution Obligations, anti-hawking requirements, and others) will remain important controls.

As part of the next stage of the Review process, the consumer protection frameworks already in place should be mapped against the Review's proposals to help identify any gaps or weaknesses and enhancements.

**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’ will meet all three of these goals if implemented appropriately.

While more (and likely most) of the conversations Aware Super has with our members will be considered personal advice, this will remove the uncertainty currently associated with providing general advice and allow us to take a more member-centric view of how we structure our interactions.

Under the proposed regime, we would be more likely to:

- make simple personal advice available to members making contact through our call centres;
- make more advice available through other channels;
- make use of digital advice tools, both for direct use by members and for providers to guide members using the tool through different channels (in person, over the phone or virtually).

Removing friction that currently occurs when a conversation needs to move from general advice to personal advice will also be key to members being more likely to receive advice.

We note that these outcomes rely on the proposals to reduce the regulatory burden associated with providing personal advice (including reducing the disclosure burden and allowing non-relevant providers to provide advice) also being implemented, and the associated ability to improve the efficiency and member experience associated with receiving 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?**

As noted in q1, it will be important that policymakers and regulators assess whether the consumer protections currently in place are sufficient to protect consumers under this new regime.

In general, we note that the broadening of the personal advice definition means that more of what would previously be considered general advice would be regulated as personal advice, offering a higher standard of protection. However, we also note the need to ensure that conversations that occur outside of the personal advice framework are appropriate and that the changes do not leave consumers at risk.

In reality, we expect that most conversations that currently happen under a general advice framework in our business will likely become personal advice conversations, offering additional protection to consumers. From an Aware Super perspective, we see this as a genuine opportunity to have better conversations with our members and help them make better decisions about their superannuation. Our member research has shown us that our members have a clear preference for tailored and personalised information over generic interactions.

From a consumer outcomes perspective, it will also be important to ensure that institutions such as superannuation funds do not move away from offering any support to members because they deem it too expensive or risky to provide personal advice under this framework.

We note that as a superannuation trustee, we would still be required to comply with all our existing duties, whether providing personal advice or the types of information that would not be regulated as a financial service under the Proposals.

## 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 current Best Interests Duty (BID) with a 'good advice' obligation will reduce the time and cost associated with advice provision, which will have a positive impact on consumer outcomes. The retention of a BID in the Code of Ethics for relevant providers is key to ensuring that the obligations associated with advice are commensurate with the scale of the advice being provided.

As noted in the Proposals Paper, the 'good advice' obligation is a shift from regulating process to regulating the outcome for consumers. In practice, this means that the quality of the advice received by the individual should not change. However, the consumer experience of the process is likely to significantly improve and the cost of the service will be reduced.

The framing of the 'good advice' obligation should ensure that it is clear to consumers what they can expect. This will likely require consumer testing. Thought will also need to be given to how advice is assessed, to ensure the right guardrails are in place to ensure consumer protection without inappropriately constraining licensees and re-creating the problem that this change is trying to solve.

While the most material reduction in time and cost to provide advice will come from changes to disclosure obligations, the removal of the process obligations associated with the Best Interests Duty will allow for organisations to determine governance and process frameworks that better align with the type and scale of advice being provided.

It will be important that there is a clear, common understanding of the standard of "good" advice and what this looks like in practice, including through clear (but not overly prescriptive) regulator guidance. If the governance of this regime is not aligned with the intent, much of the intended benefit could be lost. Key matters that will require consistency include:

- at the individual consumer level, what are the minimum standards of 'good' advice, and how will it be monitored? For example, where advice involves trade-offs (eg increasing insurance coverage at the expense of superannuation balance), how will it be determined whether the end result is "good"?
- at the system level, how will we know whether we are meeting the objective of the shift to 'good advice'?

We expect licensees would need to develop their own governance frameworks to ensure the different types of advice they provide to consumers all result in good outcomes within the bounds of regulator expectations – particularly for organisations like Aware which will provide a broad range of services at different levels of complexity. This would ensure that appropriate processes were in place to ensure good conduct by advice providers and good outcomes for clients.

**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)?**

The Best Interest Duty obligations were a positive step for the advice industry and have played an important role in the transition toward professionalism.

The replacement of the process-based BID with an outcomes-focused ‘good advice’ obligation will make it easier to provide limited, single-topic and/or digital advice to consumers, and better align services to their expectations given the information institutions know about their personal circumstances in many instances.

Importantly, this is not because the advice will be of a poorer quality. As noted above, in most circumstances it is likely that the advice we would provide under both obligations would be similar. It is because it will reduce the risk, and the compliance burden, associated with answering simple questions or providing advice on a specific topic, where this is what a client is seeking at a particular time.

When a member contacts a superannuation fund with a question about their super for example, ‘good advice’ is their expectation. For a member with a question about making additional contributions, it makes sense to ask questions about their relevant circumstances (whether they have debts, for example), and this would be required in order to ensure the advice is “good”. An onerous tick-a-box compliance process will not improve the quality of that advice, but will make it more difficult to access and more expensive to provide – both of which make it less likely that advice will be provided.

Regulator guidance may assist advisers and institutions to understand the extent of their obligations when providing limited advice, and the circumstances when it would be expected that additional conversations should be undertaken (see q6 below).

**Digital advice tools**

The BID significantly increases the difficulty, complexity and cost of developing digital advice tools, because it is harder to meet the BID through algorithm-based digital tools compared to a face-to-face interaction. This is because digital tools need to pre-empt and code all elements of the BID into the tool. This increases the business and compliance risks of providers seeking to provide personal advice through digital tools, and has contributed significantly to the lower level of digital advice provision in Australia (compared to the use of technology-driven solutions for administrative functions).

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

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

Overall, the proposals significantly improve our confidence to provide both limited and digital advice, and are likely to improve consumer experiences of both.

Limited advice

Additional regulator guidance on scoping of advice will be important to support licensees and trustees in designing their advice offerings and the governance frameworks surrounding them.

Currently, there is significant uncertainty around the ability to scale advice, particularly narrowly scoping advice to be provided. The proposed changes to the regulatory framework will go some way to easing these concerns, but consumer outcomes are likely to be improved by some guidance around the expectations of advisers or institutions when scoping advice conversations.

We refer to the FASEA standards 2, 6 and 9 as examples, where adviser obligations include broad ranging investigation of client situations and long term interests. This is time consuming and inhibits the ability to address simple, explicit advice needs of clients in an affordable way.

Additional guidance may also help to create a more consistent experience for consumers across different providers, to ensure they understand the limits of the advice they are receiving.

As we note below, this would be particularly helpful in the context of the reframing of obligations around collectively charged advice. Clear examples will be a key part of the guidance provided.

Digital advice

We note that the proposals in relation to digital advice are moving in the same direction as ASIC's recently updated relief for superannuation calculators and retirement estimates (RG 276), offering a principles-based regulatory framework that allows providers to determine the best approach for delivering guidance and advice to clients.

It will be necessary for ASIC to continue evolving this approach to ensure that digital advice could be provided in innovative ways that meet the needs of users in light of the broadening of "personal advice" under the Proposal Paper. For example, under the current RG276, providers are still not allowed to incorporate



personal information they know about the consumers in providing statement projections. This is inconsistent with the Proposals Paper as members will be expecting to get “personal advice” in their interaction with their financial institutions.

Digital Advice solutions also rely on the use of assumptions about user needs or behaviour in the absence of a professional adviser. Assumptions can be technical in nature or based on qualitative and quantitative research. Guidance on the role of assumptions, and how they should be developed and managed by organisations developing digital tools, would be very beneficial to providers looking to offer digital advice solutions.

**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?**

Allowing some advice to be provided by non-relevant providers will significantly increase the affordability and accessibility of more basic financial advice. This recalibration is the only way to meaningfully expand the availability of advice at a reasonable cost.

This proposal does not diminish the value of professional standards and the advice provided by relevant providers. We see the proposals as additive to the services consumers will be able to access, and an important way to streamline the consumer experience.

From a consumer perspective, allowing non-relevant providers to provide personal advice will improve their experience of seeking help and support from super funds and other financial institutions, as it will be easier for those organisations to ensure they can answer questions without having to provide less-helpful general advice or triage consumers to comprehensive advice services they may not want or need.

In practice, there will be a clear progression of the complexity of advice and the associated training and education that an organisation would require a staff member have in order to provide that advice. This also creates a career path for individuals working toward meeting the requirements of being a relevant provider. Further guidance on the types of advice which would fall into different parts of this spectrum could assist licensees and trustees to build efficient processes and teams, and minimise costs to consumers.

It would be helpful for the Review's final report to provide further context around the proposal to use fees as the determinant of where advice must be given by a relevant provider. This could include discussion of alternative options and the relative advantages and disadvantages, as well as identifying any additional criteria that might be considered to ensure appropriate consumer protections are in place to prevent poor advice. For example, it may be worth considering whether certain complex product types should only be dealt with by relevant providers.

- 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?**

In general, we believe existing obligations provide sufficient obligation to ensure licensees take responsibility for the advice they provide.

However, it will be important to embed an understanding of the expected approach across all providers under a substantially new regulatory framework.

Aware Super would envisage regulator guidance being provided to help set minimum standards for licensees providing advice through non-relevant providers, including minimum expectations for education and training. This should be provided at a high level, with examples, rather than as a prescriptive process. It would be inappropriate for the regulator to excessively narrow the approaches that licensees could take.

As noted in q4, we would also imagine it would be necessary for licensees having a governance framework in place to ensure that non-relevant providers meet sufficient standards of education and training. This would also ensure appropriate monitoring to ensure the 'good advice' obligation continues to be met. It will be in the interests of licensees to ensure anyone providing advice is appropriately skilled, and has the resources to provide good advice to ensure ongoing compliance and minimise risk to the provider. It would be helpful for the Review to provide some indication of how the oversight of these matters could occur under the proposed approach.

Given the importance of consumer protections, this may be another area where a comprehensive map of obligations and risks should be undertaken, as recommended above.

**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?**

Aware Super sees the proposed changes to superannuation trustee obligations as a positive step.

The scope of advice permitted to be collectively charged is currently not defined, leading to Trustees making different interpretations of what intra-fund advice can cover. The removal of S99F will allow Trustees to confidently provide more advice and help to members.

We see the value in the additional flexibility created by the proposals. On balance, this reform will make it easier to provide good advice to members, at times when they need it.

We note that as a superannuation trustee, we will still need to comply with existing obligations, including the Sole Purpose Test and the Best Financial Interests Duty, when determining the extent of collectively charged advice. These obligations should ensure that trustees do not inappropriately extend advice outside superannuation-related matters, and do not pass through excessive advice costs to member fees.

The ability to collectively charge for advice delivered outside the relevant provider framework will be a key element of the success of these proposals. This is because it is likely to be cheaper to provide simple advice to members, making it more likely that it is in the best financial interests of the fund's members for the collectively charged service to be available. Many of the members who would benefit from simple personal advice are unlikely to have their needs met today, as advice fees are prohibitive.

As noted in q6 above, additional guidance on the scoping of advice would be particularly relevant to scoping conversations under updated collective charging approach. This should include appropriate consideration of the FASEA Standards to ensure they do not prevent appropriate scoping of advice. We refer to the FASEA standards 2, 6 and 9 as examples, where adviser obligations include broad ranging investigation of client situations and long-term interests. While appropriate in the context of comprehensive advice, this is time consuming and inhibits the ability to address simple, explicit advice needs of clients in an affordable way.

**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?**

Aware has already moved away from ongoing fee arrangements to an “Advice on Demand” model which provides a more flexible fee-for-service offer.

That said, we can see that the proposed changes are likely to deliver benefits in terms of reducing the administration and complexity for those offering these services, and appear to meet the intent of ensuring clients do not have fees deducted from their accounts on an ongoing basis without knowing what they are paying for and having the option to opt in or out.

**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 provide a Statement of Advice (SOA) will significantly reduce the cost of providing advice. The fees charged for personal advice today are directly linked to the costs to produce that advice. This has led to advice being unaffordable for many consumers. Reducing the disclosure and regulatory burden will reduce fees and allow more consumers to access personal advice.

This proposal is particularly important to support the proposed broader definition of personal advice. This definitional change would not be practical if an SOA needed to be generated around every personal advice interaction. As a guiding principle, it is sensible to assume that the documentation or other record of the advice provided should align with the complexity of the advice provided, as well as the needs and preferences of the client.

We note concerns that removing this requirement completely risks leaving consumers without an understanding of the advice they are receiving. However, our understanding of 'good advice' is that this would include ensuring the consumer understands the advice and is able to refer back to what they agreed in an appropriate form.

For digital tools, removing the requirement to generate an SOA is likely to significantly reduce friction for users. Currently it can take up to one minute for our online tools to generate and publish an SOA following a member interaction, which makes it less likely the member will follow through to view the outcomes of the tool. Removing SoA requirements also allows us to deliver outcome information in a way that is easy and simple, and informs member decisions, rather than in a way that is compliant with disclosure requirements. As noted above, opportunities to make it easier to deliver digital advice tools to support common decisions (such as making additional contributions and determining appropriate drawdown rates) are key to increasing the amount of advice that can be provided to superannuation members at a low cost.

We also see this change as an opportunity to explore new and more client-centric approaches to providing a record of the advice a client has received that can lift client comprehension.

**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 to provide a financial services guide (FSG) will reduce the regulatory burden on providers of advice, but will also improve the client experience by reducing the volume of disclosure documents they are expected to process – particularly where this information is easily accessible elsewhere and the client can be directed to that information.

The potential value-add of the FSG is not in handing over a document, but in a client understanding the key content. This can be achieved through a high-quality conversation rather than the tick-and-flick approach that can sometimes be taken with mandated disclosures like the FSG.

As with the above proposals, it may be useful for consumer testing to be undertaken to determine whether there is any information that consumers see as genuinely valuable to have directly provided upfront for different types of advice interactions, and in what format. We would be happy to help facilitate consumer testing with our Advice clients, who are generally in older age demographics.

## 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?**

The current reporting obligations around dealings outside target markets are confusing and it is not clear they benefit consumers, so it would be helpful for this area of the law to be clarified in line with any changes to the advice regulatory framework.

We support the proposal to remove some of the reporting burden on distributors (ie advisers) under the DDO regime by limiting reporting to instances of complaints about products.

Retaining the requirement for non-relevant providers to take reasonable steps to ensure financial products are issued to consumers in the relevant target market is a sensible step to help ensure consumers are protected from being mis-sold products that are not suitable to them.



## Transition and enforcement

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

As noted in the Proposals Paper, it will be important that sufficient time is provided for industry to implement these reforms. This is particularly important given there will need to be sufficient time for regulators to update guidance and processes.

We would support the concept of a transition period with an option to opt-in early. However, we note that the period of overlap may introduce confusion for consumers. It will be important that changes that impact consumers are well-communicated.

At a minimum, 2 years of transition from finalisation of the reforms will be necessary for industry to make the necessary changes to deliver advice under the new regime.

Given the interdependencies in the reforms, it would be difficult to implement them in a staged fashion. However, we note that it may be possible to implement disclosure reforms ahead of the broader changes to advice definitions and obligations.

**General****15. Do you have any other comments or feedback?**Relationship between proposals

When assessing the proposals, we have considered them as a package. It is important to note that it is difficult to assess many of the proposals individually, as their workability relies on the entire package being implemented. Any alterations to the proposals, either in finalising the Review's recommendations or through the legislative process, will need to be considered in terms of the impact on other elements of the package, and the likely overall impact on the accessibility and affordability of quality advice.

We would welcome the opportunity to provide feedback on any further proposals being developed by the Review.

Regulatory impact and consumer protection

As noted above, we recommend a full regulatory impact assessment be undertaken on the Review's final proposals.

We also note again the importance of ensuring robust consumer protections are in place to safeguard consumers. While the regulatory frameworks around providers such as large superannuation funds provide an extra layer of protection, 'bad actors' still have the potential to cause significant consumer harm (particularly those providing advice on complex or high-risk products).

This is not to say that the intent and substance of the proposals is not appropriate – however we reiterate that it will be important to ensure the consumer protection framework is appropriately mapped against proposed reforms and any gaps or issues addressed.

Assessment of regulatory impact should also include analysis to identify existing compliance regimes that will need to be amended to operate appropriately alongside changes to the scope and delivery of advice. For example, the current breach reporting regime already creates a significant reporting burden for minor, technical breaches which are not material to the outcomes of the client. It will be important to ensure that compliance requirements are not increased where there is no consumer benefit.