

3 June 2022

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

By email: [AdviceReview@treasury.gov.au](mailto:AdviceReview@treasury.gov.au)

Dear Michelle and Secretariat

### **ISSUES PAPER: Treasury Quality of Advice Review**

Vanguard welcomes the opportunity to comment on Treasury's Issues Paper on the Quality of Advice Review to explore legal and regulatory barriers to the provision of affordable, accessible, good quality financial advice in Australia.

Vanguard responds as an advice stakeholder in the Australian market and a global participant in several advice markets including the US, UK and Germany. Vanguard is also due to launch a superannuation fund in the Australian market and is an interested stakeholder in considering the intersection of superannuation and financial advice laws and providing Australians with the necessary retirement support and advice.

Vanguard has long advocated for the value of financial advice and champions an advice landscape that allows more clients to access good quality advice at an affordable cost.

### **Background**

With more than 30 million clients and AUD \$11 trillion in assets under management globally as of 31 March 2022, Vanguard is one of the world's largest global investment management companies, offering a total of 410 managed funds and exchange-traded funds. In Australia, Vanguard has been serving financial advisers, retail clients and institutional investors for over 25 years.

Vanguard believes that advice can help clients achieve better outcomes, whether it is delivered directly by a product issuer offering guidance, or through intermediated channels by advisers. We believe advice should be accessible in different ways to suit diverse consumer needs, preferences and circumstances; and that advice should be affordable in terms of delivering long-term value for the cost incurred.

Advice has long been a focus for Vanguard in the US market, and while we do not offer advice in the Australian market we work closely with approximately 10,000 Australian financial advisers to assist them in serving their clients. In Australia, Vanguard has invested significant time and resources to support the delivery of high quality, affordable advice through advice intermediaries. We provide access to tools, thought leadership, and other services to support advice businesses and help them better serve their clients and articulate the value they deliver.

While good quality advice is certainly available in Australia, Vanguard is advocating for a marketplace in which more Australians can access levels of information, personalised guidance and limited and comprehensive advice appropriate to their preferences, needs and circumstances. To support Australians' diverse needs, we believe advice and guidance should be available from multiple different sources and in different formats, including directly from product issuers, digital platforms and ecosystems or through a financial adviser.

Vanguard believes that financial advisers have an enduring and important role in wealth management<sup>1</sup>, fulfilling the advice needs of clients with more complex arrangements who require holistic advice on insurance, estate planning, tax and social security and the management of multi-asset investment portfolios against their goals and objectives.

However, the persistent advice gap in Australia shows that many people are priced out of receiving financial advice to the detriment of their financial outcomes. There remain legal and regulatory barriers to advice and guidance models that are fully digital, or digitally enabled hybrids that prevent these mass market, scaled models from gaining broad adoption. In this regard, the Australian regime is out of step with the current state and future direction of law reform in other jurisdictions.

To remove these barriers and promote increased access to high-quality, affordable fiduciary advice, we propose several significant legal and regulatory reforms which we discuss in the body of our submission, including how they will better align the Australian regime to its US and UK counterparts. The increased scale and take-up of new advice models in other jurisdictions, including the US, has shown innovation-friendly policy and regulation can assist in enabling consumer access to helpful guidance and advice that they otherwise would not have been able to receive.

The following recommended changes to the Australian financial product advice laws are intended to better balance the desired outcomes of the regime to provide Australians greater access to helpful guidance and quality advice at an affordable cost that is better suited to meet their needs, preferences and circumstances.

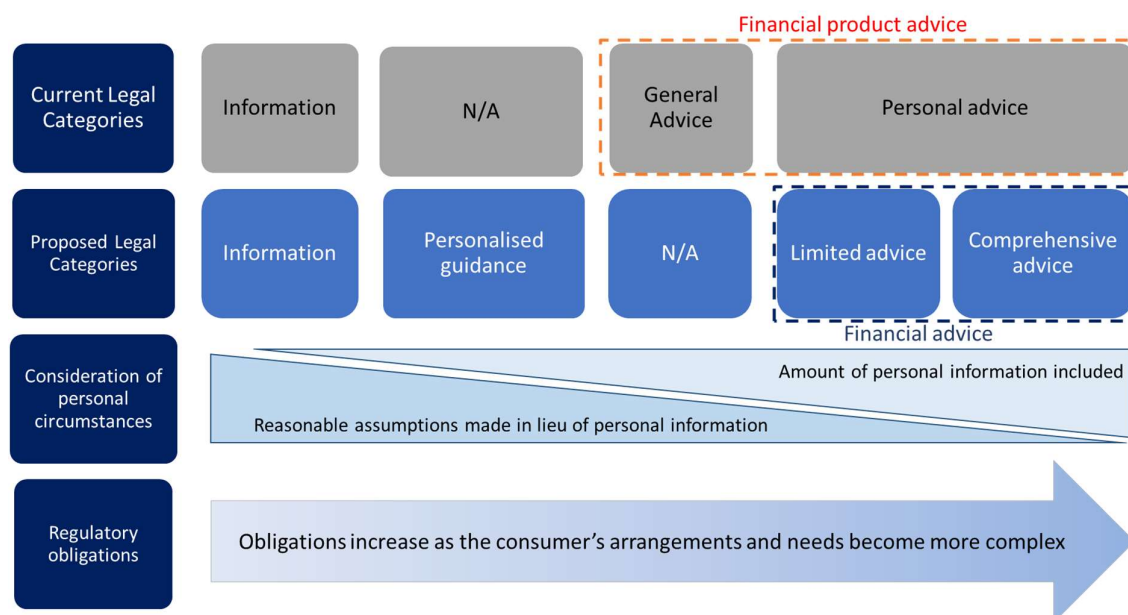
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<sup>1</sup> Our reference to “wealth management” includes wealth creation, protection and management.

## Summary of Recommendations

- 'Types of advice' and legal definition recommendations:
  - Remove the concept of *general advice* from the law.
  - Remove the current definition of *financial product advice* – in its place add a new concept of *personalised guidance*; and add and a new definition of *financial advice* (comprising *limited advice* and *comprehensive advice*) that is broader than advice on financial products.
    - That is, introduce a scale of regulatory compliance ranging from unregulated information, to lightly regulated personalised guidance with increasing consumer protections for limited advice<sup>2</sup> through to comprehensive advice (see figure 1 below).
    - *Personalised guidance* by product issuers should be introduced into law as a regulated activity to significantly improve financial literacy and enhance consumer engagement with their superannuation or investments and support the delivery of the policy intent of the Retirement Income Covenant.
- The best interests duty should be retained as an overarching duty but the prescriptive safe harbour steps<sup>3</sup> should be removed to better foster innovation and the development of different digital and hybrid guidance and advice models.
- The statement of advice should be replaced with shorter, less prescriptive disclosure (covering the scope of advice and recommendations, the customer information supporting the recommendations and the reasons underpinning them), which should be able to be delivered in different formats and in technologically neutral ways to improve customer understanding and implementation of the advice.

Figure 1 – Proposed advice boundaries



<sup>2</sup> This is advice where the scope is limited either by the client or the advice provider and incorporates the concept of "restricted advice" under the UK regime.

<sup>3</sup> FASEA Code of Ethics Standard 6 should also be changed to reflect these recommendations.

Our recommendations will better align the Australian financial advice regime to the US and UK regimes where there have been greater offers and take up of innovative digitally enabled guidance and advice models and should increase the likelihood of the scale up of advice innovation in the Australian market to support and improve the financial wellbeing of Australian clients.

We would be happy to discuss further any area of our submission in more detail.

Kind regards,

A handwritten signature in black ink, appearing to read "Robin Bowerman". The signature is fluid and cursive, with the first name "Robin" being more prominent than the last name "Bowerman".

Robin Bowerman  
Head of Corporate Affairs  
Vanguard Australia

## Vanguard submission

### Quality, Affordable and Accessible Advice

#### What is the value of quality advice?

Vanguard believes financial advice is valuable and can significantly improve outcomes for clients. As demonstrated through our extensive research, advice adds value to client investment returns and advisers can add significant financial and emotional returns by acting as behavioural coaches. Further, we believe there is a place in the market for a full spectrum of advice, including human, digitally enabled financial guidance, and advice based on consumer preferences, needs and circumstances, as we describe below.

We believe that digital advice<sup>4</sup> can provide access to professional portfolio solutions matched to the risk profiles and investment goals of investors who cannot afford or do not wish to access comprehensive advice. However, we believe there is, and always will be, an important place for "comprehensive" or "holistic" advice and the human element of advice is not always replicable digitally or able to be automated.

Vanguard is committed to serving comprehensive advisers in Australia and provides tools, thought leadership, and other services to support advice businesses. We have a long history of working with advisers to help them better serve their clients and demonstrate the value they deliver. Vanguard firmly believes that financial advisers play an important role in wealth management in fulfilling the advice needs of clients with more complex arrangements and advice needs.

#### Vanguard Advice Research

Underlying our advocacy for advice, Vanguard has engaged in research to understand the value it can provide. We have approached this from several directions including from the perspective of the adviser and from the perspective of the client.

Our "Adviser's Alpha" research looks to quantify the benefit that advisers can contribute and takes a normative approach which can demonstrate how advisers value quality advice by quantifying individual components of the advice services provided to their clients. It shows that advisers act as behavioural coaches, an area where they add significant value.

The research finds that advisers can play a valuable role in helping clients understand personal financial needs, construct and manage a portfolio for those goals, and maintain discipline to help achieve them. Vanguard research suggests the value-add of following certain best practices in wealth management can be about 3% in net returns to an advised-client portfolio. (See: Putting a value on your value: Quantifying Vanguard Advisor's Alpha®)<sup>5</sup>.

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<sup>4</sup> ASIC RG 255.1: "Digital advice (also known as 'robo-advice' or 'automated advice') is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser".

<sup>5</sup> <https://www.vanguard.com.au/adviser/en/advisers-alpha/what-is-advisers-alpha-tab>

In contrast to the prior normative approaches, Vanguard has also conducted research into the perceptions of clients about the value of advice. Using administrative and survey data from Vanguard's US-based Personal Advisor Service (PAS) our research identified different types of value that clients see in advice, with emotional outcomes being a significant component of the value derived by US investors. (See: Assessing the value of advice). Further research<sup>6</sup>, with a blind study of US investors using advice, also found that human and digital advisers were perceived to add 5% and 3% respectively in annual investment returns. Additionally, the research finds that clients prefer emotional support from financial advisers with digital advice preferred for portfolio management services such as diversification and tax optimisation (See: Quantifying the investor's view on the value of human and robo advice).

Among our findings from 'Quantifying the investor's view on the value of human and robo advice':

- **Advice adds value across the board:** Regardless of the method of delivery, clients believe advice provides substantially higher investment returns versus "going it alone." The perceived value-add to annual investment performance was 5% for human advice and 3% for digital advice.
- **Preference for financial advisers is enduring:** While more than 90% of human-advised clients say they would not consider switching to a digital service, 88% of digital-advised clients would consider switching to a human adviser in the future. However, time, willingness, and ability to manage investments seem to play a critical role in determining the choice of advice delivery.
- **Clients prefer emotional support from human advisers:** Investors using human advisers estimate being \$160,000 closer to achieving their financial goals. Three times as many investors report having strong peace of mind when working with a human adviser as compared to going it alone.
- **Digital also serves a role for clients:** Our findings also uncovered specific areas where investors prefer digital advice, such as for certain portfolio-management services (e.g., diversification and tax optimization).
- **Preference for advice service delivery is not dictated by client age or wealth:** Contrary to popular belief, we do not find that millennials have distinct preferences from other generations regarding the digital delivery of advice services. Across all generations, wealth levels, and advice-delivery types, clients suggest that human advisers should consider automating some portfolio management services. Advisers should leverage technology to scale their business while strengthening their uniquely human value.

In conclusion, the outcomes, investment and emotional returns for clients from high-quality, low-cost financial advice are significant when measured by both those who give advice and those who receive advice.

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<sup>6</sup> <https://corporate.vanguard.com/content/dam/corp/research/pdf/quantifying-the-investors-view-on-the-value-of-human-and-robo-advice.pdf>

## Vanguard Advice Models

In different jurisdictions around the world, Vanguard offers several advice models utilising technology at various levels in the delivery of advice. We have a combination of both digital-only<sup>7</sup> and hybrid<sup>8</sup> offers to suit different consumer preferences, circumstances and needs, with both utilising a significant amount of technology to provide quality advice at scale.

A key driver of the growth in digital advice models globally has been the development and sophistication of the ETF market which has allowed portfolio allocation to be personalised, traded and rebalanced digitally and facilitated diversified portfolio models online.

While ASIC and other industry research has shown that clients are keen to access 'point in time' or topical advice, our experience in the US has shown that such advice models were not always entirely successful despite the clients' best intentions. For example, clients who were left with the responsibility to implement elements of the plan, rebalance their accounts periodically or follow-up with an adviser (e.g., for assistance with subsequent life events or for behavioural coaching support in the midst of sharply declining markets) did not always do so in an effective or timely manner based on inertia and other challenges.

Vanguard's hybrid model in the US, Personal Advisor Services (PAS)<sup>9</sup>, has proven much more successful in terms of helping clients to stay on track towards achieving their goals. With a 30 basis point annual advisory fee, PAS provides ongoing access to a human adviser and a digital experience that continuously monitors and updates the client's progress relative to their goals. The service was formally launched in May 2015 and is the largest hybrid digital advisory service by AUM of this nature in the US market.

In Vanguard's hybrid advice model, active engagement by an advice professional to recommend solutions based on the customer's personal circumstances, relies heavily on technology for capturing insights on the customer's risk tolerance, investing timeline and goals, portfolio construction, plan implementation and management, and leverages digital tools for ongoing communications through phone, email or video-chats.

The use of this technology is critical to providing low-cost advice and is enabled by a US advice regime of technology-neutral laws and regulations that foster innovation, while maintaining consumer protections. Barriers to a similar up-take in Australia include, for example, the breadth of the "financial product advice" definition, the prescriptive safe harbour steps and the rigid statement of advice requirements that are designed for traditional face to face advice with a human adviser. These barriers and suggested law reforms to remove them are considered in more detail below.

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<sup>7</sup> See note 4 for a description of digital advice as provided by ASIC.

<sup>8</sup> Digital advice with some element of human support.

<sup>9</sup> Digital advice engine undertaking the fact find, risk profiling and generating the advice recommendations with human support in the form of call centre operators, para planners and financial adviser support.

## The advice gap in Australia

Advice plays a vital role in assisting Australians with their wealth creation, protection and management, and improving their retirement outcomes and financial wellbeing. However, the persistent advice gap in Australia has shown that many clients are unfortunately priced out of receiving quality advice to the detriment of their financial wellbeing. We describe the primary factors driving this "advice gap" below.

Vanguard has a global approach of not paying for investment product distribution in any market we operate in, and we strongly supported the FOFA reforms and removal of conflicted remuneration in Australia. Several policy and regulatory reforms enacted over the last 10 years, and the associated shift in the industry dynamics, have meant that many of the undesirable incentives in the advice industry have been removed and consumer protection significantly strengthened. The counterpoint is that arguably, the legal and regulatory framework has now become too prescriptive and compliance focussed to allow affordable financial wellbeing and advice models to be brought to market or achieve commercial success.

There have also been several recent reforms including the Design and Distribution Obligations (DDO), Your Future Your Super and the Retirement Income Covenant that have strengthened consumer protections and are designed to deliver better outcomes for clients. These reforms arguably overlap with some elements of the current financial product advice laws.

There is increasing concern that the legal and regulatory regime has a level of complexity and duplication that is adding compliance costs, hindering innovation, and preventing the development of commercially viable advice models and, consequently, is reducing the accessibility and affordability of advice for clients leading to potentially poorer financial outcomes for Australians.

For example, has resulted in robust product governance and distribution arrangements with the aim of ensuring the right products are distributed to retail clients, which together with the product issuers' fiduciary best interests obligations overlap with the requirements of financial product advice laws. We believe these external reforms provide an opportunity to revisit elements of the financial product advice laws that present barriers to making helpful guidance and advice more accessible and affordable without reducing consumer protections.

A more flexible regime could replace the current prescriptive one to assist in closing the advice gap for Australians. While we acknowledge that strong consumer protection measures are essential (and Vanguard is highly supportive of these), the current complex legal and regulatory regime in Australia is preventing access to affordable advice for the vast majority of Australians.



## Redefining advice boundaries to better align to consumer needs

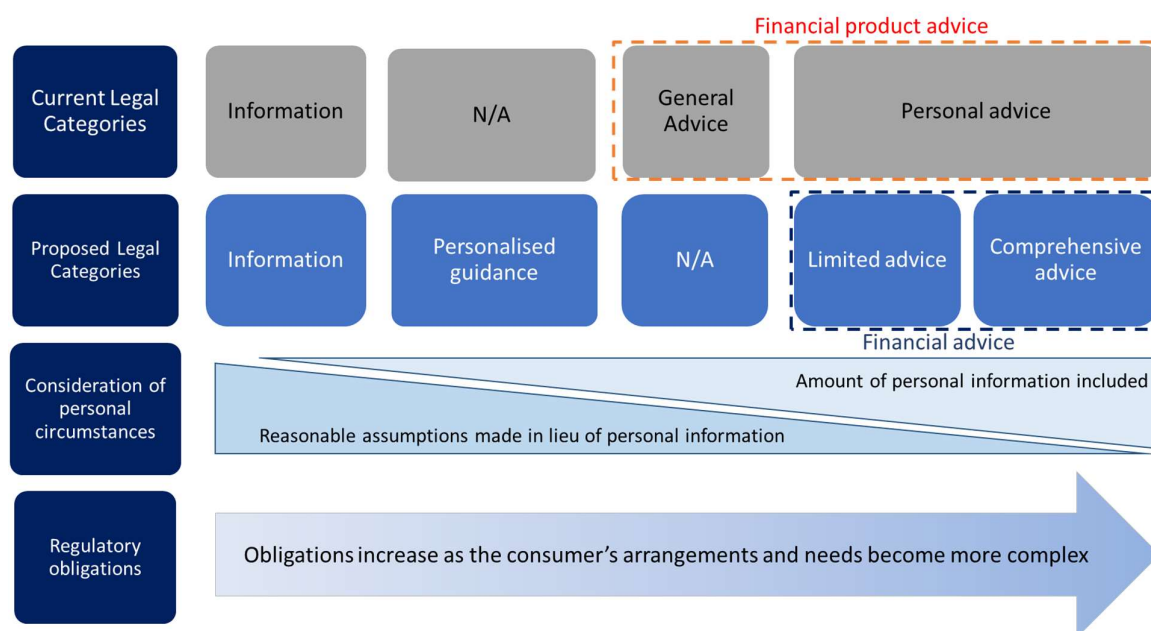
### Definition of financial product advice

To increase the accessibility and affordability of advice and foster innovation, we believe the law should redefine the general and personal advice boundaries.

We recommend that the concept of *general advice* should be removed from the law as it has been a key contributor to regulatory uncertainty between industry, ASIC and the courts (as highlighted in recent court proceedings).

We recommend replacing the current definition of *financial product advice* with a new concept of *personalised guidance* and a new definition of *financial advice* comprising *limited advice* and *comprehensive advice* that is broader than advice on financial products.

**Figure 1 – Proposed advice boundaries**



### Redefining boundaries of advice for regulatory compliance

We recommend the law be changed to incorporate a "sliding scale" of regulatory compliance ranging from unregulated information, to lightly regulated personalised guidance with increasing consumer protections for limited advice<sup>10</sup> through to comprehensive advice.

As a general principle, it should be possible to provide guidance and limited advice based on the data sourced by the product issuer, platform provider or financial adviser and information provided by the customer. As more information is offered

<sup>10</sup> This is advice where the scope is limited either by the client or the advice provider and incorporates the concept of "restricted advice" under the UK regime.

by the customer, or sought by the product issuer, platform provider or adviser, this could lead to more personalised guidance or limited advice with an increasing compliance burden with the increasing complexity of the customer's arrangements and the increasing need for comprehensive advice.

Under this redefining of the boundaries of guidance and advice, there would be flexibility to provide guidance and limited advice where the scope of the offering is set by agreement with the customer.

This will align the Australian regime to the US and UK regimes where there is flexibility given to the adviser to shape their advice offering but with a greater emphasis on ensuring the suitability of the resulting advice.

Consumer protection measures take the form of disclosure of the limited nature of the guidance, and limited advice, and the information on which it is based. This includes informing the customer that they may wish to consider obtaining more detailed advice (i.e. comprehensive advice).

Consumer protection measures in relation to the provision of personalised guidance include the conduct obligations imposed on product issuers, such as: the obligation to act in the best financial interests and comply with the other covenants under superannuation legislation for superannuation fund members, the annual member outcomes assessment, and the DDO suitability obligations and similar obligations imposed on other product issuers and platform providers.<sup>11</sup>

By contrast, limited advice must comply with the current overarching best interests duty (without the Safe Harbour Steps) and the related appropriate advice and conflicts priority obligations.

While this approach recognises that limited advice may involve some element of conflictual interests, it is balanced by improving the affordability and accessibility to advice with consumer protections in the form of disclosure regarding the limitations and conflicts inherent in the limited advice and enforcing the consumer protections through stringent suitability obligations.

Comprehensive advice would continue to be regulated in the same way as personal advice is currently regulated but under a more flexible, innovation-friendly regime that encourages financial advisers to exercise professional judgement.

Under this approach, new forms of information gathering (fact finds) and more limited product comparisons will need to be allowable under a redefined guidance and advice regime. These changes should better foster and facilitate the development of new models, including digital-enabled advice and hybrid models involving various kinds of human support, all of which should increase the accessibility and affordability of advice in Australia.

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<sup>11</sup> For example, the best interests obligation and other Chapter 5C obligations imposed on responsible entities and prioritising policyholders' interests imposed on life insurers.

This approach would also better facilitate the use of data from multiple sources under an open data economy and encourage investment in technology and the development and commercialisation of new helpful guidance and advice models. This includes digital platforms and ecosystems that are an increasing feature of our APAC neighbours but are difficult to launch under the Australian regime because of the concern that the personalisation of the customer engagement will cross the line into personal advice as was seen in recent Australian case law.<sup>12</sup>

The development of a range of product and platform guidance and advice models would better enable more Australian clients to receive the guidance and advice they require at a price they are prepared to pay, while still protecting clients' interests.

Each of the proposed legal categories of information, guidance and limited and comprehensive advice are described in more detail below.

### **Information**

As currently is the case, the provision of information should continue to be an unregulated activity that can be undertaken by anyone without the need to obtain an AFSL but is still subject to laws prohibiting misleading and deceptive conduct.

A helpful description of this category of activity is "objectively ascertainable information, the truth or accuracy of which cannot reasonably be questioned: see RG 36.23".<sup>13</sup> Good quality information provided through different channels and using different forms of media can assist clients to better understand their current and future needs as well as the strategies and financial and other products and services that may better meet them.

### **'Personalised guidance'**

As described above, we propose personalised guidance becomes a legal category, as well as a regulated activity with specified guardrails on disclosure, reporting, topics and data controls.

This is a category of customer engagement by product issuers and digital platform providers that is intended to help current and prospective customers in their decision-making process under an educational style self-directed model of providing guidance, including nudges and "next best actions" but not expert advice recommendations under a fiduciary relationship.

The difference between guidance and advice would be dealt with through disclosure to the customer rather than seeking to define the line between "general advice" and "personal advice", which has been extremely difficult to navigate under the current financial product advice definitions.<sup>14</sup> The other key distinction between guidance and advice is that guidance would provide options for a client to consider but would not deliver a singular recommendation as an advice service would.

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<sup>12</sup> Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA

<sup>13</sup> ASIC Regulatory Guide 255 Providing digital financial product advice to retail clients: RG255.21.

<sup>14</sup> See note 13 – Westpac/BT case.

The adoption of this approach will also align the Australian regime to the UK regime of providing guidance rather than advice, a concept that is currently in the process of being expanded in the UK.

We see a particular opportunity under this legal category of customer interaction through 'personalised guidance' to better utilise available transactional, behavioural, and other data to improve consumer outcomes, especially as we move towards an open data economy.

This touches on an issue that we consider to be critical to building a "future ready" financial advice framework to meet consumer needs at different points in their life stage and personal circumstances.

The emphasis of regulation (quite appropriately) is on the accountability of the expert intermediary (the adviser) for the suitability of the advice provided and recommendations made. There is no doubt that this framing of advice accurately describes interactions that can be classified as 'personal advice', even if that advice is 'limited' - and most certainly when it is 'comprehensive' or 'holistic'. However, we believe that this conceptualisation still leaves out a critical component of the customer experience, when their need is more accurately described as being for information, education and guidance (along the sliding scale of customer engagement) rather than 'advice', and their requirement is more to know what actions they 'can' take in their circumstances (not necessarily telling them what action they 'should' take, in terms of an expert recommendation).

This is a common concept in the United States and one that Vanguard has spent a lot of time and research on, in perfecting nudges and decision support to clients, to their financial benefit. It is important to note here that the 'personalised guidance' and nudges would still be a regulated activity, and if provided through a super fund, would be subject to the fiduciary duty of the trustee as well as the new regulated guardrails.

Under Australia's regulatory framework, this is the realm occupied by the notion of 'general advice' that easily crosses the line into 'personal advice'. In practice, the difficulty with the definitions of 'financial product advice' is the fact that general advice interactions cannot take into account an individual's personal objectives, financial situation or needs. The restrictive legislative framing of 'general advice', in our view, has the effect of inhibiting otherwise-helpful interactions that would improve customer experience without creating undue risk.

The most obvious example of this is in the superannuation system, where so many of the objectively ascertainable needs of fund members are in fact tied to personal characteristics of individual members or cohorts - for example:

- lower income earners (e.g., co-contributions),
- older accumulation members (Transition to Retirement),
- more affluent members (salary sacrifice, contribution caps, transfer balance cap, etc.),
- singles vs couples (age pension eligibility, contribution splitting)
- Homeowners' vs renters (downsizer contributions, age pension eligibility)

- Retirees (drawdown rates, replacement rate targets).

However, the concern under the current advice regime is that the use of the above information to engage with current or prospective members would cross the line into personal advice.<sup>15</sup>

If funds could, with greater legal and regulatory confidence, elicit additional objective information from members, it would allow for more appropriate and targeted communications and presentation of options that could be appropriate for their specific circumstances, whether in personalised communications, contact centre interactions or more generally.

Such 'personalised guidance' data and its targeted presentation to members would essentially be part of the service provided by funds within their existing remit (and fee base), with trustees being accountable for its responsible delivery under existing fiduciary and statutory obligations to act in the best financial interests of their superannuation fund members and to deliver better member outcomes.

The ability of superannuation trustees being permitted to provide this personalised guidance is wholly in line with the objectives of the Retirement Income Covenant (RIC). Introducing this concept into law will significantly improve member engagement in the pre and post retirement phase of superannuation fund membership and improve retirement outcomes.

Targeting of messages for those approaching retirement is possible if funds could utilise information about the member's marital status, home ownership, broader non-superannuation wealth, or other factors, where those factors are clearly material to the member's actual circumstances and experience.

If, as suggested by the Retirement Income Review and others, super funds move to representing members' benefits in terms of retirement income projections not lump sums, then there will inevitably be questions of the usefulness of those projections, absent any information on ways that individual members might themselves influence the outcome.

For example, for a member whose retirement projection envisaged that they are likely to fall short of an adequate replacement rate in retirement, it would be helpful for their fund to present actionable options for how to improve the situation while they still have capacity to do so. Such options might include changing investment strategy, making higher contributions, deferring retirement, or simply planning to live on a lower-than-expected retirement income – or actually seeking personal advice on which of these options (or combination) they would be best placed to adopt. It would in turn most likely assist the member if these options and their implications could be presented to the member in a proactive way by the product issuer, along with facilities for whichever option or combination (if any) to be easily actioned by the member through a simple instruction back to the fund.

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<sup>15</sup> As was experienced in the Westpac/BT High Court case (note 13).

These types of helpful consumer interactions can be efficiently implemented (and readily capable of being audited) by modern data analytics technology. However, to be fully effective, they necessarily entail reference to transactional, demographic, or other data that is particular to the individual. The current definition of 'general advice' in the Corporations Act is an undue inhibitor to such data being mobilised to its full potential to assist super fund members in this way. Under the current regulatory regime, the provision of this personalised guidance would be classified as personal financial product advice.

For this reason, we suggest the right framing for this type of customer engagement would be to introduce a new category of customer interaction called "personalised guidance", having regard to adult learning principles of timeliness, relevance, and goal setting, rather than the traditional notion of 'advice'. In other words, a means of empowering clients to make informed decisions for themselves based on objective information that is relevant to their specific needs and circumstances.

Vanguard's defined contribution pension business in the US has made significant advances in the use of advanced data analytic techniques to create more personalised customer experiences along these lines, and we would be happy to share further details of this with the Review.

The introduction of this legal category of 'personalised guidance' that is not regulated as advice will also foster and facilitate the development of digital platforms and ecosystems. These digital offerings are flourishing in the US, UK, Europe and Asia but are not evident in the Australian market beyond simple product portals and embedded finance applications (e.g. Uber). Seen as an integral part of the future of banking and wealth management globally, the introduction of these platform offerings in Australia is hampered by the concern that the personalised nature of the customer engagement will cross the line into 'personal advice' because of the restrictive nature of the Australian financial product advice definitions.

### **Limited v comprehensive advice**

Under our proposed sliding scale in Figure 1, 'limited advice' can be contrasted to 'comprehensive advice' in a similar way as 'restricted advice' is contrasted to 'independent advice' under the UK regime.<sup>16</sup> However, we prefer the label of comprehensive advice rather than independent advice. Disclosure of independence should be separate to the definition of the different types of guidance and advice.

Comprehensive advice would be unchanged conceptually from the current definition of 'personal advice' and would be expected to undergo a similar process to that described under the current Safe Harbour Steps (but without those steps been prescribed and enshrined in the legislation) and still subject to an overarching best interests duty and related appropriate advice and conflicts priority obligations. This more flexible approach (discussed below) will also encourage the exercise of professional judgement by financial advisers rather than a focus on tick a box compliance-based process.

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<sup>16</sup> See International Comparative Review in Appendix A for further details of the different licensing and conduct and disclosure obligations under the Australian, the US and UK regimes.

We are proposing that the concept of comprehensive advice would be defined within a new "financial advice" definition and all advice other than comprehensive advice would be "limited advice". The difference between the two types of advice would not be determined by the consideration of the customer's objectives, financial situation or needs ("relevant circumstances"), which is the current basis of the distinction between general advice and personal advice.

Rather, "limited advice" would be any advice that is limited in scope, limits the extent of the customer's relevant circumstances that are considered in giving the advice or limits the products that are considered and compared in formulating the advice recommendations. Again, adopting this approach will align the Australian regime to the UK restricted advice regime.<sup>17</sup>

There remains a lack of certainty as to legal and regulatory expectations when it comes to what is required information under a 'limited/scaled advice' model. It appears advice providers continue to be reluctant to launch advice offerings other than comprehensive personalised advice for fear of being deemed to have collated insufficient personal information for the advice provided. We believe that this one issue alone is the most significant cause of why limited or simpler advice models have not developed and why firms can end up deciding not to offer 'personal recommendations' at all (arguably to the detriment of consumer demand for simpler forms of advice or guidance).

Our recommendation to allow financial advisers to agree the scope of the advice and tailor their services under a limited advice offering will significantly reduce this uncertainty. Under this approach, consumer protection is afforded through the disclosure of the limitations of the advice offering. Again, this will align the approach in Australia to the approach in the US and UK.

We also recommend that the new definition of 'financial advice' extend beyond recommendations of financial products to bring within the regulatory net any expert recommendations by a fiduciary that advise to the financial wellbeing of the customer.

#### **Recommendations**

1. Remove the concept of general advice from the law.
2. Replace the current definition of financial product advice with the following legal categories and guardrails:
  - Information, which is only subject to misleading and deceptive conduct laws
  - Personalised guidance, which is subject to disclosure and product issuer conduct obligations
  - Financial advice comprising:
    - Limited advice, which is subject to disclosure and best interests, appropriate advice and conflicts priority obligations
    - Comprehensive advice, which is regulated in the same way as personal advice is currently regulated but under a principles-based regime that encourages the exercise of professional judgement by financial advisers

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<sup>17</sup> See note 17 [above]

## Best Interests Duty

The financial advice regime should continue to be technologically neutral, but less prescriptive to ensure it is flexible enough to foster and facilitate the development of simpler and affordable guidance and advice offerings, including digitally enabled and hybrid models.

This approach will also enable financial advisers to exercise professional judgement in determining the scope of advice, the client's relevant circumstances, the product comparisons that should be undertaken and the appropriateness of the advice that is ultimately provided to the client.

Compliance with the best interests duty<sup>18</sup>, the safe harbour steps<sup>19</sup> and the FASEA Code of Ethics (Standard 6) are a key driver of higher advice costs and restrict the ability to offer affordable advice to clients.<sup>20</sup> They provide a prescriptive set of requirements for advice providers to meet when giving personal advice. Single issue advice or limited advice is commercially unviable for many advice providers. For this type of advice to be fully compliant, it would need to have considered any other circumstances relevant to the client to comply with the prescriptive safe harbour steps in section 961B (2) of the Corporations Act 2001. Hence undertaking an extensive client fact finding is required to meet the legislative requirements and Code of Ethics.

As discussed above, consumer protection in the form of the new Design and Distribution Obligations will create a baseline of consumer protection with respect to financial product suitability for clients. We believe this should allow for a more flexible best interest duty to operate without the need for the prescriptive safe harbour steps. This was also one of the recommendations of the Hayne Royal Commission. It will also align the approach in Australia with the approaches in the US and UK, which have seen the growth of different digitally enabled advice and hybrid models, which are discussed above.

The best interest duty, as an overarching duty, will enable the development of different advice models that can cater for the different preferences, needs and circumstances of different clients.

Industry based research indicates that the removal of the safe harbour steps should lower the cost of providing comprehensive advice.<sup>21</sup> While we recognise that clients with complex arrangements may require an advice process that includes a robust fact find and product comparisons, a principle based best interests duty is flexible enough to require the adoption of different advice processes of increasing complexity commensurate with the increasing complexity of the arrangements and advice needs of different clients.

More importantly, the prescriptive safe harbour steps impose too high a compliance burden on many types of advice offerings (e.g., limited digital advice models)

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<sup>18</sup> Section 961B(1) Corporations Act 2000.

<sup>19</sup> Section 961B(2) Corporations Act 2000.

<sup>20</sup> FSC White Paper on Financial Advice 2021 and accompanying research by KPMG.

<sup>21</sup> See note 12.



without necessarily increasing consumer protection or improving the quality of the advice sought by the customer, especially where the customer is not seeking comprehensive advice. The removal of the safe harbour steps will encourage the development of more affordable advice models that meet the specific needs of clients who are not looking for comprehensive advice.

The removal of the prescriptive safe harbour steps and the application and interpretation of the best interests duty as a flexible overarching principle that allows the development of different advice models that focus on the different advice needs of different customers will better align the Australian regime with the approach taken in the US and UK to the regulation of advice, and better foster innovation to enable the delivery of more accessible and affordable advice in Australia.

#### **Recommendations**

- **Safe Harbour Steps:** Vanguard believes that the best interests duty should be retained as an overarching principle and the Safe Harbour Steps should be removed.
- **Code of Ethics:** we believe that the Code of Ethics should be updated to reflect the removal of the Safe Harbour Steps with more flexible guidance for advice providers under the overarching best interests duty that is less prescriptive. By making these changes, the fact find data required to meet the "broad effects" standard (standard 6) should be reduced in line with the type and complexity of advice the client is seeking.

#### **Disclosure and the Statement of Advice**

The current regulatory regime for advice is still arguably designed and interpreted primarily with a traditional and paper-based model in mind. While the aim is to provide a technology-neutral legal and regulatory framework, applying the existing advice obligations for different advice models is not working in practice. As more services are automated and clients of all ages look to interact digitally with these services, current laws and regulations (and how they are interpreted) increasingly prevent the provision of more accessible technology-enabled advice in any meaningful way.

We believe that the Statement of Advice requirements outlined in section 947B of the Corporations Act and the accompanying regulations and regulatory guidance should be changed to introduce greater flexibility to enable the delivery of a customer's financial plan in more user friendly and accessible ways under different advice models.

Onerous disclosure requirements and the risk of penalties for breaching requirements are also restricting the ability for statements of advice to be clear, concise, and effective.

We recommend replacing the Statement of Advice and Records of Advice requirements with a flexible content requirement that can be delivered in different

technologically neutral formats. We believe this change will improve a client's understanding of the recommendations and increase the likelihood of making an informed decision about whether to implement the recommendations.

Under this approach, we recommend disclosure of the advice sought (scope), the client's circumstances relevant to the scope (client data), the recommendations and the rationale for those recommendations (advice provided in the client's best interests).

Disclosure regarding potential conflicts and remuneration and other influences on the quality or suitability of the advice are equally important but there should be a reconsideration of how each of those disclosures should be made in a more flexible way that is going to improve the customer experience by permitting the disclosures to be delivered through different ways and using different media.

By adopting a more flexible approach to the advice disclosures, we believe this will reduce the cost to deliver advice and ensure that advice is accessible, affordable and easy to understand for Australian clients.

#### **Recommendation**

Replace the Statement of Advice and Record of Advice requirements with technologically neutral content requirements that allows flexibility and should improve customer understanding and implementation of the advice.

#### **Concluding remarks**

As outlined in this submission, significant legal and regulatory reform is required to the Australian financial product advice laws to remove the barriers that we have outlined in the body of our submission and better align the Australian regime to its US and UK counterparts.

The increased scale and take-up of new advice models in other jurisdictions, including the US, has shown innovation-friendly policy and regulation can assist in enabling consumer access to helpful guidance and advice that they otherwise would not have been able to afford.

Our recommended changes to the Australian financial product advice laws are intended to better balance the desired outcomes of the regime to provide greater access to Australian clients to helpful guidance and quality advice at an affordable cost that is better suited to meet their needs, preferences and circumstances.

Our recommendations are designed to foster the development of innovative digitally enabled guidance and advice models and should increase the likelihood of similar models entering the Australian market to support and improve the financial wellbeing of Australian clients.