

Appendix 1: Consultation template

Name/Organisation: Link Advice

Questions

Intended outcomes

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

Yes, on the premise that the regulations and laws that remain are sufficient to hold advisers and product issuers to account for misconduct and bad advice. Link Advice's focus is on ensuring that:

- The remaining laws and regulations are sufficient to ensure that consumers can have confidence in the advice sector. If they are the victim of poor advice, then they have the appropriate protections in place to be remediated and the Adviser and/or product issuer is held to account.
- Adviser and product issuer conduct is regulated with the appropriate oversight and laws that can impose penalties commensurate with the any transgression.

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?

Yes. The proposed changes to the definition of 'personal advice' will:

- a) reduce regulatory uncertainty by removing the complexity and risk of conflict that currently exists between general advice and personal advice, by expanding the definition of personal advice to include the current topics covered under the labels of general advice, intra fund advice and simple retirement advice. In practical terms this removes the residual risk that currently exists when providing what may be currently considered general advice to consumers, especially when a product provider has access to member data and records.
- b) Enable us to provide personal advice to more everyday Australians in two ways:
 - I. the simple broadening of the definition of personal advice will make it easier for us to provide more relevant general advice and education to consumers without the fear of inadvertently straying into personal advice.
 - II. expands our ability to provide simple retirement advice, including the age pension, to consumers which, when coupled with the proposed changes to the SIS Act, will be able to be paid for by the product provider
- c) remove the uncertainty and associated residual risk of providing more help and guidance to consumers about their interest in the product. This is a critical enabler to broaden the engagement in the retirement savings of everyday Australians by increasing their financial capabilities and ultimately improving their financial outcomes in retirement.

The only area of uncertainty relates to providing what is general advice in consumer workshops and seminars and how to deal with any one-on-one questions post the seminar from attendees. These conversations will move into the broader definition of personal advice but, in practice, will be difficult to manage, especially with respect to record keeping.

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?

Our interpretation of the de-regulation of 'general advice' is that some recommendations and opinions that currently would be considered general advice, would now fall under the broader definition of personal advice and will therefore be subject to the protections afforded to that definition. Based on this understanding, we are broadly comfortable with the safeguards.

Whilst we acknowledge that ASIC will still regulate 'non-regulated general advice' by way of the prohibition against engaging in misleading or deceptive conduct under the ASIC Act, we do maintain some concerns that the safeguards may not extend to participants that are currently acting on the lower edges of 'general advice'. In particular, we maintain concerns for consumer safeguards for market participants that are either providing 'informed' comments (or implied recommendations) to an individual or large audiences (e.g. some influencers) and product providers that seek to sell sophisticated products to unsophisticated consumers (e.g. Bitcoin).

We believe additional safeguards could include:

1. regulator activities and penalties to ensure that any participants that seek to unfairly or unconscionably take advantage of the proposed changes are held to account;
2. A form of registration to participate in the provision of advice and guidance including acknowledgement of participant responsibilities.

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?

Our view on the introduction of 'good advice' to replace the best interest obligations is as follows;

- a) Quality of financial advice provided to consumers: it will have a negligible impact on the quality of advice from existing advisers. Due to the reforms to date, the remaining participants have achieved a level of understanding and education that has set a new base line. We do have some concerns on how this definition could be exploited or misunderstood by new participants and would expect the existing laws and regulations to be sufficient to maintain the high level of quality reached by the advice sector.
- b) Time and cost required to produce advice: in isolation this change will have a marginal effect on the production of advice itself, however, coupled with the proposed changes to the disclosure documents, and removal of complicated backend processes (such as adherence to the safe harbour steps framework), this will have significant impact on the time and cost to produce advice. The potential for cost saving may occur in the ongoing monitoring and compliance reviews of advice, although more time will be required initially to categorically make this conclusion.

We are supportive of the introduction of the obligation to provide 'good advice' changing the focus from the process of advice to the outcome of the advice. The repealing of the best interest obligations and the safe harbour steps helps to reduce the complexity of advice and importantly removes the conflict with the Code of Ethics. This is a significant step forward and will make it easier for advisers to provide advice to everyday Australians.

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)?**

Yes, for the following reasons:

- a)** in conjunction with the broadening of the definition of 'personal advice' we believe these changes will enable us to provide more relevant limited advice to consumers because it facilitates the provision of more nuanced advice-based responses as opposed to product centric responses to simple enquiries being made by the everyday consumer. Under the current regime, the point at which a consumer's question move from being either factual or general advice to intra fund or personal is very unclear. The effect of this is that there are a lot of consumers who are not being provided with the appropriate guidance and advice around what is otherwise very simple concepts and aspects of their superannuation. The introduction of a 'good advice' obligation removes this uncertainty and will make it much easier to train advisers and apply the rules accordingly.
- b)** as a digital advice provider, this change will make it a lot easier for Link Advice to provide simple digital advice. The broadening of the definition of personal advice and the deregulation of general advice will enable us to develop new technology solutions that combine education with guidance and, where required, simple personal advice. Under the current regime the point at which education moves into the realm of personal advice is unclear and therefore elevates the regulatory risk of providing the service.

In supporting this change we have some questions in relation to replacement product advice. The current process for replacing a financial product is overly onerous and focused on the process instead of the outcome. A balanced approach to replacement product advice is required which on the one hand reduces the risk of 'mis-selling' but balances this with the need to improve access to simple retirement advice. An example is at the time of retirement which may require the consolidation of a personal superannuation accounts prior to moving into the decumulation stage.

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

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

In our view the changes proposed go a long way to improving the provision of both limited and digital advice, as outlined in our response to question 5 above regarding replacement product for limited advice.

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?

The application of professional standards across all forms of personal advice is important and an area of concern for us. We are comfortable with the provision put in place for 'relevant providers', however, we do have some concerns relating to 'non relevant providers' (here after referred to as simple personal advice).

Whilst we accept that the safeguards are in place for providers of simple personal advice, the omission of professional standards and education requirements may lead to a reduction in the quality of advice over time. This may be driven by a number of factors, including competition. Whilst competition is encouraged to improve access and affordability, the absence of a professional standard may attract new entrants or encourage existing participants to significantly down grade their expectations on quality and education in order to either reduce the costs to adhere to other controls (e.g. member best financial interest) or create a price led market position.

In our experience, as a current provider of simple personal advice, the application of the professional standards has:

- added to the cost of providing advice through additional requirements and safeguards required by the business to ensure that our advisers adhere to the appropriate standard; and
- reduced access to advice through the additional obligations imposed by the code of ethics that restricted some of the simpler pieces of advice that could otherwise be provided under proposed changes. This is particularly evident with the application of standard 6 of the Code of Ethics which adds additional complexity to the provision of simple personal advice.

The proposed changes to the application of professional standards will increase affordability and accessibility by removing some of the cost of developing new advisers, however, at the same time it may also reduce the quality of advice. This needs to be balanced very carefully to ensure that there remains a duty of care on the provider of the advice (both the individual adviser and AFSL) to have professional standards that are commensurate with the community expectations.

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 our view, the legal obligations for licensees to ensure that they provide advice appropriate to the need of the consumer exists. We do, however, have concerns that over time the education, training and competency requirements to provide personal advice may deteriorate over time. Furthermore, we are concerned that there will be no central register of people 'authorised' to act as a non-relevant provider in order to monitor individual standards. This removes some of the formality and prestige in the broader industry of financial advice, let alone accountability. In some respects it takes us back to the pre-Financial Advice Register (FAR) period where there wasn't one central record of 'advisers' that provide personal advice.

- We propose that non relevant providers that are on a career path towards becoming a relevant provider are centrally registered (e.g., FAR) once they enter a defined stage of their development.
- All non-relevant providers are licensed by an AFSL
- AFSL holders adopt a similar code of conduct that is akin to the Advisers Code of Ethics to establish a mechanism extending across professional standards and education requirements to set and manage outcomes to the community standards.

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?**

Link Advice is not a superannuation trustee, so we do not have firm views on the changes to collective charging. Our initial thoughts and queries have been whether:

- the removal of collective charging, which provides a degree of comfort to trustees on what can be covered by the provision, lead to less advice being provided as Trustees become more conservative over time; and
- additional Trustee responsibilities like best financial interests of the member may take precedence over the provision of advice and reduce the provision of advice to members over time.

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?**

Link Advice does not have any ongoing fee arrangements, so we will not provide a response to this question.

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?**

- a)** The removal of the statement of advice (SOA) will significantly reduce the cost of providing advice. Whilst we will still maintain technology to support advice modelling and record keeping, removing the requirement to write up a statement of advice for every client will reduce the fixed costs of our business. Link Advice's initial estimate is this could reduce the cost of providing an advice service by up to 30%.
- b)** The removal of the SOA, in itself, will not have a negative impact on consumers. We have a view that it is important for consumers to have a document that outlines the advice provided to them, especially in areas where there is asymmetrical information bias. Proposal 9 of the Interim Report still requires providers of personal advice to maintain complete records of advice provided, and we would continue to provide a written summary of customers to assist with the experience and their understanding where required.

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?**

- a)** Yes, the removal of the FSG would reduce the regulatory burden for advisers and licensees. This is equally as important as a progressive step forward for disclosure by embracing technology as a viable means to communicating and disclosing information with consumers.
- b)** We can see no major negative impact on consumers.

Design and distribution obligations

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

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

We do not have a strong view on the impact of the changes to the DDO obligations on the design and development of financial products or TMDs.

Transition and enforcement

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

Our major concern relate to the transitional arrangements is how the regulators will manage the transition. On the surface we see many benefits on being an early adopter of the new proposals but seek confirmation from the regulators on how they will approach surveillance including aspects such as;

- Grace periods
- Early opt in
- Guidance for existing advisers and AFSL holders.

General

15. Do you have any other comments or feedback?