

23 September 2022

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

By email: AdviceReview@treasury.gov.au

Dear Ms Levy,

Submission to Quality of Advice Review Proposals Paper

TAL Life Limited (TAL) welcomes the opportunity to provide a submission to the Quality of Advice Review Proposals Paper.

TAL appreciates the consultative nature of the Review, its insights into complex problems and we strongly support the bold but necessary solutions in the Proposals Paper. While we acknowledge there will be more detail to work through and different stakeholder views to consider, we believe that the bold vision of reform proposed is a significant step towards providing access to quality and affordable advice for more Australians.

To meet this objective of broader access to quality advice for Australians, it is important that different parts of the financial services system play a role. The Proposals Paper recognises this requires regulatory reforms that support the provision of advice through financial advisers, product issuers, and superannuation funds. Together, these providers will increase advice coverage and, importantly, deliver better customer outcomes than the current regulatory settings enable. As a financial services institution that works with financial advisers, superannuation funds and direct consumers, TAL strongly believes industry regulation should facilitate this better access to financial advice for all Australians. Importantly better access is only a good thing, if better access is provided to better quality and good financial advice. TAL strongly supports the proposals as a pathway to provide for these outcomes which will ultimately deliver better and enhanced financial outcomes for Australians.

Access to financial advisers for advice on complex matters is of vital and growing importance for Australians and should not be exclusively available to the wealthiest within our community. There is no doubt the current regulatory framework and the complexity and cost it brings to the production of advice, hampers this access for many Australians. They are underserved and we recognise the significance of the reform proposals within the paper to enable better access to independent financial advice.

TAL Life Limited

ABN 70 050 109 450 | AFSL 237848
GPO Box 5380, Sydney NSW 2001
Level 16, 363 George Street
Sydney NSW 2000

P +61 2 9448 9000
F +61 2 9448 9100
W.tal.com.au

Customer Service
P 1300 209 088
E customerservice@tal.com.au

Financial advice is a profession where advisers build up qualifications, knowledge and experience over many years to support their clients. It is therefore vital that the regulatory environment enables advisers to be able to, safely and efficiently, exercise their professional judgement for the benefit of their clients – much as other professions such as accountants and lawyers do. We feel the Proposals Paper is firmly on the right path here, and we also support the feedback being developed through the Financial Services Council.

The Proposals Paper also outlines the role that product issuers should be able to play in advising customers on their simpler and more specific product needs. This is a complex and difficult task to achieve with the current regulatory settings, that largely leaves customers receiving no advice or help at all.

While supporting the reforms proposed to improve the quality, access and affordability of financial advisers and advice provided by superannuation funds, TAL's submission paper is also prepared from our perspective of a life insurance product issuer who currently interacts with our customers under general advice. The current complexity and uncertainty imposed by the blurred line between personal advice and general advice significantly restricts the ability or willingness of product issuers like TAL to be able to assist customers in a way that either the customer or product issuer would prefer.

To illustrate how customers can be negatively impacted by current regulatory complexity, consider the following example. An existing income protection insurance policy holder who does not have an adviser, calls their life insurer to seek help with managing product affordability. There are several solutions available for the customer that a life insurer can offer, such as reducing the benefit amount, or changing benefit options and waiting periods.

In this example, the insurer should be able to gather the relatively limited and simple information about the customer's situation, talk openly through the different options with them, and to help them to arrive at an outcome that meets their needs. However, today's reality is that, in order to stay within the bounds of general advice, the insurer must resist learning about the customer's circumstances, and at best can speak only vaguely about the possible approaches to support the customer. The sad result of this regulatory model is the customer is not provided with any advice, and may choose an option which is sub-optimal for them, or make no decision at all.

We therefore strongly support proposals in the paper that would lead to more efficient and scalable delivery of personal advice by product issuers, both digitally and through human interaction.

Opportunities to promote customer experience and welfare

Fundamentally, TAL sees the Proposals Paper as a pivot in the way that advice regulation is conducted, supporting a focus towards achieving good advice outcomes for consumers versus the existing regulatory focus on the advice process itself and often "tick-a-box" compliance processes. It is important to note that despite this proposed shift in regulatory focus, the extensive protections embedded elsewhere in financial services regulation will continue to apply – consumers will continue to have comprehensive protection within the existing law, strong regulators to enforce it, and remedies available in the event it is breached.

TAL believes these proposals will also help reduce the existing amount of regulatory overlap which benefits neither consumers nor providers of advice. For example, there are currently different versions of the best interests duty in both the FASEA Code of Ethics and Corporations Act - this current regulatory overlap and misalignment is not helpful to anyone.

Nonetheless, shifting away from prescriptive regulation of the advice process to a principles-based approach to the regulation of advice outcomes, is a significant change and will require careful implementation. We expand on our views on the Proposals Paper and our response to the consultation questions below. We look forward to further engagement with the Review on these issues.

About TAL

TAL is one of Australia's leading life insurers. Together with our partners, we protect 4.9 million Australians against the risks of death, disability, and illness. In 2020-21 we paid more than \$2.7 billion in claims to 39,000 customers and their families. We provide life insurance cover in several different ways – through our partnerships with superannuation funds, via financial advisers, and directly to consumers through digital and other platforms.

TAL is a part of the Japan based Dai-ichi Life Group. Starting with the Dai-ichi Life Insurance Company, which was established in 1902 as Japan's first mutual insurance company, today the Dai-ichi Life Group is one of the world's largest life insurance groups. Dai-ichi Life Group is also one of the world's leading providers of retirement income products.

For further information

Should you have any questions regarding the information in this submission, or about TAL generally, we would be pleased to assist. Please contact in the first instance Mr James Connors, Head of Corporate and Government Affairs, on 0484 083 208, or by email at james.connors@tal.com.au.

Yours sincerely,



Brett Clark

Group CEO and Managing Director

Questions

Intended outcomes

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

TAL strongly supports advisers and product issuers being able to provide good quality personal advice to new and existing customers, and to meet customers' service needs and expectations.

For this reason, we support the reform proposals made in the Proposals Paper to streamline aspects of the current personal advice regulatory framework. We endorse the Review's proposal to introduce a principle for personal advice to be "good advice", an emphasis on regulating advice outcomes rather than the advice processes, and for this to be the basis for personal advice regulation. This change will move the regulatory focus from the process to produce advice, to instead focus on good outcomes for the customer, and support both advisers and product issuers to better respond to customer needs. It would also support a reduction of process-orientated regulation, which in its present form greatly increases the production costs of personal advice and makes it both unaffordable and not fit for purpose for most customers.

In our view, the proposed new, simplified structure of "good advice" would encourage financial services product issuers to provide customers with less complex needs-based personal advice, creating a better quality, more accessible and more efficient customer experience.

However, we also think that, in practice, consumers would benefit if advice providers continue to undertake certain aspects of the advice process currently hardcoded into regulation. For example, while we entirely support the Review's proposal to remove the requirement to provide a Statement of Advice, we also believe consumers do benefit from being able to request a record of the advice they have received, and the assumptions or information informing it. Similarly, while we support the abolition of Section 961B of the Corporations Act (which contains the best interests duty and the so-called safe harbour provisions), it is reasonably obvious that to meet the obligation to provide good advice a provider is likely to address, to the extent relevant to the advice sought, paragraphs 961B(2)(a) (identifying the client's objectives, financial situation and needs), 961B(2)(b) (identifying the subject matter of the advice and client's relevant circumstances) and 961B(2)(c) (making inquiries to obtain complete and accurate information from the client where it is apparent the client's relevant circumstances are incomplete or inaccurate for the advice sought).

Protecting consumers

We note some commentary about the removal of existing regulations being argued to potentially expose consumers to additional risk. This is an understandable reaction to any form of regulatory simplification, particularly regulations which were primarily put in place to address poor conduct.

The current extensive and prescriptive approach to advice regulation is an attempt to manage these risks, but it has resulted in significant unintended consequences on consumers the regulation is designed to protect, and their access to advice that have been well described in the Proposals Paper. We also observe there are areas of regulatory overlap, such as in the two different versions of the best interests duty (one in the FASEA Code of Ethics, and one in the Corporations Act) which benefits neither consumers or providers of advice. TAL agrees that a fundamentally new approach is needed to better meet the advice needs of consumers.

TAL notes that the vast body of consumer protection regulation elsewhere in financial services law would remain. We detail this in our response to question 3 below, but in summary we strongly believe the reforms suggested in the Proposals Paper will clarify regulatory obligations and reduce overlap. Moreover, it will not diminish the comprehensive protections consumers have within the law, the strong regulators to enforce it, and remedies available to them in the event it is breached.

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?

TAL believes the suggested reforms in the Proposals Paper will, once developed further and implemented in totality, reduce regulatory uncertainty for all advice providers and facilitate product issuers like TAL to provide improved levels of service to our customers both new and existing.

However, for product issuers the proposed definition of personal advice – i.e. a recommendation or opinion provided to a client about a financial product where, at the time the advice is provided, the provider has or holds information about the client's objectives, needs or any aspect of the client's financial situation – would **not on its own** reduce regulatory uncertainty or improve a financial institution's ability to help their customers, due to:

- the risks that currently impede product issuers from providing effective advice to customers under general advice, are mainly a product of the boundary issues between general advice and personal advice; and
- the reluctance of the same product issuers to move to a personal advice model to help their customers is due to regulation-driven complexity and the cost of providing quality personal advice efficiently and at scale.

Therefore, for this to work the new definition of personal advice needs to be implemented with all the other supporting proposals made in the Proposals Paper, such as the deregulation of general advice (which would remain regulated under the ASIC Act) and the streamlining of process orientated financial advice regulation. If the change to the definition of personal advice is not implemented in totality with all the other proposals in the Proposals Paper, the change to the personal advice definition would not be sufficient in our view to reduce regulatory uncertainty, facilitate more accessible and affordable personal advice or meaningfully improve the ability of financial institutions to help their clients.

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?

TAL notes that there is an **existing** significant body of consumer protective legislation and regulation that applies to the customer services we provide. This includes protections common to most or all financial services sectors, as well as life insurance specific consumer protections. These are listed in the table below:

Legal category	Provision
<p>General financial services protections</p>	<ul style="list-style-type: none"> • General AFS licensee obligations in section 912A and 912B of the Corporations Act. • The design and distribution obligations in Part 7.8A of the Corporations Act – these require issuers to design products for, and take steps to ensure distribution occurs to, customers within an identified target market for the product, and to continuously monitor that this is occurring, and the product is performing as expected. • Product intervention orders in Part 7.9A of the Corporations Act (e.g. ASIC can stop products from being distributed where there is a likelihood of consumer harm). • Financial services disclosure, advertising, and cooling-off period requirements in Part 7.9 of the Corporations Act (i.e. Product Disclosure Statements, ongoing disclosure) – these ensure customers receive information that will allow them to make an informed decision, as well as change their mind if they wish. • Prohibitions on misconduct in Part 7.10 of the Corporations Act (e.g. false or misleading statements, misleading inducements to deal, and dishonest conduct). • External dispute resolution in Part 7.10A of the Corporations Act (i.e. AFCA) so consumers can have their complaints heard and determined by an independent, free, third party body.

	<ul style="list-style-type: none"> • The consumer protection provisions in relation to financial services in Part 2 Division 2 of the ASIC Act – these are extensive and include: <ul style="list-style-type: none"> – The voiding of unfair contract terms – The prohibition on unconscionable conduct – The prohibition on misleading or deceptive conduct and false or misleading representations – Rules concerning rebates, gifts, prizes, bait advertising, referral selling, pyramid selling – The prohibition on harassment and coercion. • The anti-hawking provisions described in Section 992A of the Corporations Act. • The deferred sales model for add-on insurance described in Sections 12DO–12DZA of the <i>Australian Securities and Investments Commission Act 2001</i>. • The regulation of conflicted remuneration in Part 7.7A of the Corporations Act – these address conflicts of interest in the distribution of products.
<p>Life insurance specific protections</p>	<ul style="list-style-type: none"> • The duty of utmost good faith in Section 13 of the Insurance Contracts Act 1984. • Introduction of Claims as a Financial Service.

We consider this **existing** body of protection as being comprehensive and, in conjunction with strong regulators to enforce it, capable of a) acting as a shield preventing consumers from harm, and b) offering consumers remedies in the event it is breached.

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?

TAL supports the proposal for good advice to be the regulatory basis for personal advice, and for the concept of good advice being legislated as a principle, rather than being overly prescribed in law, regulation or a regulatory guide. That said, should the Government opt to legislate good advice as a principle, we also recommend for the accompanying Explanatory Memorandum to elaborate on the intention of the principle, including providing some examples of what may constitute good advice. This will provide greater certainty to advice providers at implementation, while also helping establish a consistent experience for consumers.

As noted in our response to question one, the principal effect of the good advice obligation will be to shift the regulatory focus from the process to produce advice, to the need to deliver good outcomes for the customer. Bringing the needs of the customer to the fore in the way suggested should result in an increase in the quality of advice available to consumers by:

- Making limited personal advice more cost effective to provide, which we expect would lead to product issuers moving to providing products and services under personal advice. This would allow the product issuer to act on the information they hold about the customer, to directly answer customer questions, and to make recommendations should customers require. This will be a much better experience for customers than the current state, and more consistent with the experience customers are accustomed to when they buy other services, including general insurance or health insurance.
- Greatly increasing the number of providers of personal advice, improving access to quality financial advice that meets the different needs of consumers.
- Encouraging the development of digital advice tools that are more consumer friendly and personalised, so improving access to quality advice.

Consumers of complex and holistic advice not disadvantaged

Importantly, we do not consider these benefits to come at the expense of those people who already access personal advice from a relevant provider (i.e. an Independent Financial Adviser). This is because, while the Proposals Paper suggests repealing the Best Interests Duty obligations listed in Chapter 7 of the Corporations Act, the adjacent Best Interest Duty obligation found in the FASEA Code of Ethics would continue to apply in most circumstances where a relevant provider is engaged.

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)?**

From the perspective of a product issuer, TAL believes the good advice obligation, and the simultaneous removal of the best interests obligations specified in Part 7.7A of the Corporations Act, will make it easier to provide quality limited advice through both human and digital advice interactions, for three main reasons:

- The principles-based description of good advice as being advice that would be likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided, should make it less difficult to provide limited advice while retaining confidence that the obligation is met.
- By repealing Section 961B(2)(e) of Part 7.7A, empower product issuers to provide good advice relating only to the products they issue, without the operational, legal and commercial risk of also needing to provide good advice on products issued by other firms.
- By repealing Section 961B(2)(g) of Part 7.7A, remove what is widely considered to be an overly vague, open and poorly defined ‘catch all’ provision that has implications for compliance processes and is open to legal challenge.

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

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

If the Proposals Paper reforms were implemented, life insurers may look to provide customer service to new and existing customers as a form of limited personal advice, and/or through digital advice. While we would need to carefully consider and plan for this, it is our view that to permit insurers like TAL to meet the good advice obligation there would need to be other supporting regulatory legislative changes that go beyond just the repeal of the best interest obligations and other Chapter 7 obligations.

Some aspects of the anti-hawking laws may be inconsistent with good advice obligations

A clear example where the good advice obligation may conflict with other elements of financial services law is in the consent requirements of the anti-hawking provisions described in Section 992A of the Corporations Act. This section prohibits financial services providers from offering a product to customers in the course of, or because of unsolicited, real-time contact, and is intended to protect customers from being sold products that do not meet their needs.

At first glance this intention may seem consistent with the goals of good advice. However, our experience since the laws commenced in October 2021 is they significantly inhibit the ability of providers to bring to a customer's attention products that may better meet their needs. This is because, from a regulatory perspective, if the customer has provided clear and specific consent to discuss one product, it may be that we are unable to discuss an alternative product, even where the information available to us at the time the advice is provided suggests the alternative product may be better suited to the customer. This interferes with the obligation to provide good advice.

In the absence of an amendment to Section 992A to remove this inconsistency, the product issuer would need to carefully consider whether the alternative product is within the scope of the customer's consent. Determining this requires fine and nuanced analysis based on considerations discussed in ASIC Regulatory Guide 38.87 and 38.101. Such analysis often produces opposite but equally reasonable conclusions and is difficult to perform with a customer during real time contact.

Digital advice innovation sandbox

TAL notes the Australian Government's *enhanced regulatory sandbox* (ERS) was created in 2020 with the goal of encouraging financial services firms to innovative services and activities. To encourage the development of digital advice tools in the proposed new regulatory environment, TAL considers it would be useful for the ERS to be reviewed from the standpoint of personal advice. If the Review finds that the ERS is not optimised for the digital advice, then we would further recommend the establishment of a regulatory sandbox focused solely on digital advice, at least for a period of time.

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?

TAL has confidence in Australia's professional financial advisers to provide quality advice to their clients, under the good advice obligation. However, we appreciate the standards expressed in the FASEA Code of Ethics are an important source of guidance and consumer protection, the benefits of which would be triggered when the adviser:

- has an ongoing advice relationship with their client, or
- receives a commission, or
- charges a fee.

From the perspective of TAL as a product issuer, reserving the relevant provider requirements to advice provided in these circumstances will support product issuers to cost-effectively provide limited advice directly to consumers.

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?

TAL strongly supports the obligation for financial services licensees to ensure representatives and employees are competent, appropriately trained and supervised. We consider this essential to the delivery of good customer outcomes, and integral to the general obligations to provide our products and services efficiently, honestly and fairly. These important obligations represent the frontline of consumer protection, and consumers and regulators should feel they may rely upon them as a means to ensure quality advice is provided to customers.

The law is clear that licensees have a general licensee obligation (section 912A) to ensure representatives (including employees) are adequately trained and competent. This regime has been in place since the introduction of the Financial Services Reforms in 2001 and licensees should be well attuned to their obligations, and ASIC has given some guidance. Nonetheless, to ensure clarity and some minimum standards for the provision of personal advice by product issuers where provided by a representative who is not a relevant provider (that is who is not subject to the Code of Ethics etc.), it may be appropriate for further guidance (or even minimum expected requirements) to be provided to product issuers on how they can ensure representatives and employees (who are not relevant providers, i.e. who are not professional financial planners subject to the Code of Ethics, professional year, CPD and exam) are competent, appropriately trained and supervised. This should be a matter for further consultation and would support confidence in personal advice provided by product issuers (outside of the professional financial adviser cohort).

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?**

TAL has not responded to this question.

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?**

Our submission is from the perspective of TAL as a product issuer. Nonetheless, we make the observation based on our experience with the financial adviser community, that streamlining the disclosure requirements for ongoing fee arrangements (which are very technical and complex) would go some way towards alleviating the cost of providing advice by professional financial advisers. Therefore, we see merit in this change as it supports the Review's objectives of improving access to advice for those seeking advice from a financial adviser (i.e. a relevant provider) by making the ongoing advice process simpler, clearer for customers and more cost effective.

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?**

TAL considers clear communication with advice customers of the advice provided to be an important part of overall advice delivery. Regardless of the channel through which advice is received, we consider customers should typically have a right to receive a record of the advice received upon request, incorporating a clear plan of action for its implementation, plus relevant considerations that have been used to formulate the advice. This should be provided in a concise form that will be easily digestible and understood by customers. This clearly benefits the customer, who can take the time to properly comprehend and consider the advice, and to make changes where needed. We also believe that, by establishing a shared understanding of the advice and actions to be taken, it benefits and protects the provider. We also agree with the flexibility (such as for simple advice queries) to not mandate a written record of the advice – this could be a matter for the product issuer to determine based on the nature of the customer’s query.

Our comments above on written communications of advice to customers (where the product provider considers it appropriate to confirm the advice in writing, or the customer requests a written record) does not equate to support for the current regulatory requirement to give personal advice clients a Statement of Advice (SOA). The shortcomings of the current approach for both customers and providers, and the time and cost benefits available if it were to be reformed, have been well documented elsewhere and do not need to be repeated here. Suffice to say that, if every Proposals Paper recommendation for the reform of advice regulations were implemented *except* Proposal 9 (abolition of requirement to provide an SOA), then this alone would be a significant deterrent to product issuers moving from general advice into personal advice.

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

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

The proposed change to allow the financial services guide (**FSG**) content to be included on a website is a sensible move in our view as it will reduce the regulatory burden relating to the provision to all clients directly of what is a fairly generic document, albeit the content is important. We support the ability to provide the FSG (or FSG content) on the website and inform the client when providing personal advice that an FSG is available and it covers the services, fees and complaints process, and that a copy is available on the website.

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?

As an issuer of life insurance products distributed by relevant providers, TAL does not anticipate negative effects from this proposal. In the process of issuing life insurance to a client of a relevant provider, TAL obtains sufficient information to determine whether changes are necessary to the product design or the target market determination (TMD). We therefore deem Proposal 11 a sensible, if limited, reform.

Transition and enforcement

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

In TAL's experience, it would be beneficial for any supporting regulations and regulatory guides (if required) to be produced and available to regulated entities well in advance of regulations becoming effective. Given the principles-based approach in relation to providing 'good advice', it would also be useful for a detailed Explanatory Memorandum to accompany any legislation, providing some examples of what may amount to good advice in various circumstances, particularly for advice provided by product issuers. This would be of significant assistance for providers of advice, but it would also be important for regulators and dispute resolution bodies, to ensure each participant has the same understanding of the intent of the legislation. It may even eliminate the need for a regulatory guide.

In respect of timing, TAL considers transition arrangements should permit entities to transition earlier than the legislated date of the reforms. For example, if Statements of Advice are to be deregulated, advice providers should be able to change their disclosure practices in advance of the final date for transition.

General

15. Do you have any other comments or feedback?

TAL has observed a potential conflict between good advice obligations and the current deferred sales model for add-on insurance. The deferred sales model for add-on insurance is described in Sections 12DO–12DZA of the *Australian Securities and Investments Commission Act 2001*. It mandates a clear four-day pause between when a customer enters a commitment to acquire a principal product or service, and when they are offered or sold an add-on insurance product associated with the principal product or service.

The model is already intended not to apply to personal advice provided by relevant providers¹, but TAL recommends it should also not apply to personal advice under any circumstances, including personal advice provided by product issuers and distributors.

If the deferred sales model were to apply to personal advice provided by product issuers and distributors, there would be two areas of inconsistency with the obligations to provide good advice and other proposals made in the Proposals Paper:

1. As currently written, the deferred sales model prevents customers from bringing forward the purchase of in-scope products during the pre-deferral or deferral periods. Where a customer's decision to purchase an in-scope product is based on personal advice that meets the good advice standard, (i.e. the advice is reasonably likely to benefit the client), then the customer should be able to proceed with the purchase immediately, or on any other schedule they choose.
2. The deferred sales model also prohibits providers making offers, requests or invitations *otherwise than in writing* during the post-deferral period. Upon the expiry of the deferral period, it is an offence for a provider to offer the customer the insurance by contacting the customer by telephone, even where the customer has indicated this to be their preference prior to the deferral period. This is inconsistent with the good advice obligation, and with the principle behind Proposal 9 that says the law should encourage and allow providers to provide advice in the way that best suits their customers.

How the deferred sales model can interfere with consumers receiving – and acting on – good advice

For most Australians, taking out a home mortgage is the largest and most important financial transaction they will ever undertake. Given this importance, consumers often stand to benefit from taking out a mortgage protection life insurance product that helps them meet their mortgage obligations in the event of death, disability or illness.

As it currently stands, despite life insurance covering residential or investment property mortgages not being shown to have been the subject of systematic mis-selling called out for other add-on insurance practices (e.g. certain credit card protection), mortgage protection is included in the scope of the add-on insurance deferred sales model. This makes for a poor customer experience and leaves customers in perilous and vulnerable circumstances when often a customer's single largest asset and liability is not adequately protected.

By way of example, a customer could be well advanced in the approval process of a home loan. Their lender, working under personal advice and to the good advice obligation, may provide information on the risk the customer is exposed to through their mortgage, and suggest a mortgage protection product to address it. As the laws stands, providing further verbal information on this product during or after the deferral period, or proceeding immediately with the product where the customer wants to, are both prevented by existing law.

¹ The application of the model in the current law is determined by whether or not the Chapter 7 best interest duty applies to the person providing the advice. Presumably, if the Chapter 7 repeal goes ahead as proposed, a consequential amendment would be made to the ASIC Act in order to preserve the original intent of the add-on insurance model to not capture relevant providers.