

# Licensing and Regulations for Aged Care Advice Providers

Discussion Paper

## Background

Older Australians (and their families) who need to access aged care services face various challenges in accessing appropriate advice on their choices and funding options. The range of funding options, variety of providers, rush to make immediate decisions, cost of advice, conflicts of interest, and raw emotions are just a few of the issues at stake. Moreover, aged care legislation, choices and costs associated with aged care are constantly changing, enhancing the difficulties with planning and education.

This confusion complicates the objective set out by the government to increase the sustainability and funding mix of the aged care industry for the ultimate benefit of older Australians. Achievement of this objective will require legislative change, enhancing financial literacy, and access to advice for older Australians and their families to support navigating the aged care industry. A better understanding of the funding choices may drive an increased willingness for consumers to pay a more significant share of costs and reduce the instances and impact of elder abuse.

Providing personal advice about aged care funding options needs to be clarified and more consistently applied to protect older Australians and their families. Personal advice, which leads to investment into specific financial products, is clearly regulated under the Corporations Act 2001 as personal advice; however, a range of contrasting views exist about personal advice on aged care, which focuses on strategic outcomes, albeit strategic outcomes which include advice on financial products including basic deposit products.

When older Australians and their families seek advice on aged care, the current outcome often fails to extend beyond the immediate considerations at the outset of aged care services engagement. This myopic focus overlooks the crucial strategic nature of aged care advice and how it encompasses financial product advice, even in seemingly straightforward scenarios like utilising funds from a bank account to pay a refundable accommodation deposit (RAD).

Despite the strategic and financial complexity inherent in aged care advice, a worrying trend has emerged. Financial advice on aged care is increasingly provided to older Australians by unlicensed and unregulated businesses and services. The outcome is a prevalence of superficial, often conflicted advice, no regulatory oversight and a lack of essential consumer protections, thereby putting the client at substantial risk. Unlicensed and unregulated advice also opens opportunities for greater incidence of elder abuse. This situation underscores the need to reassess the regulatory framework governing aged care advice, ensuring that where financial options and outcomes are considered by an "advice provider", the advice is holistic rather than solely strategic, legally compliant, and consumer-focused.



This discussion paper explores the imperative that individuals who provide aged care advice must be authorised under an Australian Financial Services License (AFSL) as a financial advice provider and comply with financial advice laws, regulations and ethical codes.

## **Purpose**

### **Background**

The background to this discussion paper is not to focus on the aged care industry's challenges for care delivery, but instead to focus on the hurdles faced by older Australians and their families when making decisions on aged care funding options and the longer-term implications these decisions have on the affordability and accessibility of care options, and estate planning outcomes. We aim to gather insights from a broad range of stakeholders, including aged care service providers, government and regulatory bodies, businesses aiding Australians in making aged care funding decisions, and most importantly, older Australians and their families.

The current landscape shows a proliferation of unlicensed advice in relation to aged care funding decisions, raising significant concerns for the welfare of older Australians. This trend not only undermines the government's objectives for enhancing financial literacy and consumer engagement in aged care fee structures and funding options, but also presents a grave risk of elder abuse.

Following the release of this discussion paper and the feedback we receive, we aim to develop a white paper to highlight the importance of comprehensive strategic advice for clients when making aged care funding decisions, to clarify whether an Australian Financial Services License (AFSL) should be mandatory for providing aged care funding advice and whether the regulation of financial product laws should apply to Refundable Accommodation Deposits (RADs). Additionally, we aim to explore the limitations on what aged care advice funding can be given without an AFSL, the implications if aged care funding advice becomes licensed, and propose potential legislative changes to protect consumers.

### **Aim**

In this discussion paper, we delve into the complexities older Australians and their families face in accessing advice as they navigate the aged care system. Our focus is on understanding current practices in the provision of financial advice as it relates to aged care funding choices for consumers, including:

- evaluating the current solutions available
- identifying the challenges in accessing accurate and professional advice and
- understanding the effectiveness of these solutions in protecting consumers.

Specifically, the focus is whether advice on aged care funding options should be regulated as a financial service under an AFSL and whether additional measures, including specific funding mechanisms, such as RADs, should be regulated by defining them as a financial product.



## Issues with Aged Care Funding Advice

Navigating the transition to residential aged care is often stressful and complex for older Australians and their families, requiring immediate and well-informed decisions. This process includes obtaining an assessment from an Aged Care Assessment Team/Service, selecting the best-suited care provider and determining the most appropriate funding method.

The costs of care for an older person encompass accommodation payments, daily care fees, and additional service fees and often necessitate financial, tax, social security, and estate planning considerations and advice to consider all the interactions when accessing care services and ongoing as situations change. Furthermore, these decisions are often made by another person on the older person's behalf under an Enduring Power of Attorney or financial management order, requiring greater protection of the older person's rights and best interest.

Because of this, the decision-making process involves various organisations, including government agencies like My Aged Care and Centrelink, community organisations, commercial placement services, professional service providers - such as financial advisers, accountants, and lawyers - and the aged care service providers. The diversity in expertise and focus, obligations, consumer protections, and potential conflicts and biases when interacting with this many providers makes finding the proper support challenging.

Many of these services offer assistance and advice to help clients understand financial options. However, they may leave the ultimate decision-making to individuals or families, who are generally ill-prepared and prone to poor decisions about funding their aged care. Where the services assist decision-making, the unregulated providers often focus decision-making on immediate outcomes without considering the full implications for the client. Unregulated advice services may need checks to monitor conflicts and biases in their advice and assistance as well as valid expertise, but without a regulatory framework, there is no oversight to ensure this occurs. Both advice types (when sitting outside a licensed environment) are shallow, need more regulatory oversight and consumer protection, and often lead to poor consumer outcomes.

The Royal Commission into Aged Care Quality and Safety highlighted many examples of adverse consumer outcomes and areas where the system needed improvements, focusing on access to aged care services and quality improvements. For example, the Commission noted, *"The complex capital financing arrangements for residential aged care accommodation can distort incentives for older people and providers, and can impose a large cost burden on older people and their families."* Further, the Commission noted, *"We have heard there is a power imbalance during payment negotiations between providers and incoming residents."* For these reasons, properly trained, registered, and regulated service providers can support those with aged care needs and their families in making the right decisions for their financial position and care needs around how to fund aged care service purchases.

The best outcomes for older Australians and their families arise when decision-making, particularly around financial, tax, social security, and estate planning, is provided to achieve the right outcome for day one as well as through the care and after-care phases. While aged care advice is predominantly strategic advice (i.e. investment into specific financial products is less likely to be recommended), it does cover classes of financial products, and advice is provided, even in simple scenarios such as where the recommended (or implied) strategy suggests taking money out of a bank account to pay a RAD (or daily accommodation payment - DAP) and fund ongoing fees. The Corporations Act 2001 defines 'product advice' as including a class of



product advice which involves taking money out of, holding, or putting money into a specific financial product or asset class. The lack of a recommendation for a specific product option does not preclude the individual advising from providing personal advice, therefore capturing that advice under the Corporations Act.

There is a perception that health care and accommodation are the primary functions of a well-operating aged care system. However, financial security and positive outcomes for customers and their families are also critical. Where financial security is not evident, this can lead to significant detriment and financial stress. In short, the current unregulated aged care advice system puts older Australians and their families, the government and the aged care system at considerable risk of adverse financial outcomes through higher funding costs, an inability to access needed services due to economic constraints and a further perception of a sector which doesn't look after the very people who are most vulnerable in our society.

The alternative is to limit unlicensed services to factually explaining how the aged care system works, how to access care, the available care options, and generic fee information. However, consumers will often trust anyone explaining options clearly, not realising that the information may be conflicted and not in their best interest. As seen in other parts of the financial services industry, the distinction as to when an explanation contains only information and not personal financial product advice, which includes calculations and strategy analysis to ensure it is in the client's best interest, needs to be transparent to consumers, clarified in law, and regulated to ensure compliance.

## **Purpose of the Discussion Paper and Next Steps**

As noted in the introduction, this discussion paper aims to consider the right solution to regulate the provision of personal advice for aged care funding decisions by older Australians who are accessing care services, better protecting the community, government, and sustainability of the aged care system.

This paper invites feedback from stakeholders and users of aged care services on the effectiveness and challenges of the current system supporting financial decisions. The input will inform a white paper highlighting the findings of this consultation process and proposing improvements in the regulation of personal advice and education. Our focus is ensuring that aged care advice is provided in the best interests of older Australians and their families, not only on day one of their aged care needs but also throughout their aged care period and the impact on families afterwards.

The thesis we are exploring is that it should be a requirement for the providers of advice to older Australians (and their families) on the financial implications of aged care funding to be provided under an AFSL as financial advisers to ensure appropriate consumer protections and professional advice obligations are present. Further, given the financial nature and impact of RADs (or equivalent DAPs), classifying them as a class of financial products. Both licensing and classification as financial products will ensure that any financial advice is provided in the client's best interests through a comprehensive and appropriate strategy by AFSL-authorized, ASIC-registered individuals and assist in addressing the prevalence of unlicensed advice that fails to meet the consumer's or their family's best interests.



In saying this, there are aspects of aged care funding strategies that don't impact the financial position of older Australians or their families, such as those that are legal in nature (such as Wills, powers of attorney or enduring guardianships) or relate to aged care needs assessments or health care. It is essential to distinguish when licensed financial advice is necessary versus education and information that is easily understandable for consumers.

When considering the delivery of aged care advice, enforcing and strengthening the oversight of personal advice that falls under the Corporations Act requirements is crucial to improving the outcome for older Australians and their families.

Given these objectives, we are seeking feedback on the following consultation questions.

## **Consultation Questions**

Please click this [link](#) to access the consultation questions and provide feedback. You can also contact [consultation@agedcaresteps.com.au](mailto:consultation@agedcaresteps.com.au) for more information.