

GUIDANCE NOTE: ADVISING ON AGED CARE

GUIDANCE FOR CPA AUSTRALIA PUBLIC PRACTITIONERS

FINANCIAL ADVISORY SERVICES

Aged care advice is becoming an increasingly important area for accountants offering professional advice. The combination of an ageing population and a complex set of rules for accommodation choices also further create opportunities for those willing to offer advice.

According to an [Australian Government discussion paper](#) in 2019, the average age of a person moving into a Residential Aged Care Facility is approximately 82 for men and 84 for women.

For this reason, the person needing care is less likely to be your client and more likely to be their children.

The following are examples of the key questions clients may ask when seeking aged care advice.

- What options are available for aged care?
- What are the potential costs?
- What alternatives are there for paying the Accommodation Payment?
- Should I retain sell or rent the family home?
- Will my social security entitlements be affected by my choices?
- Will I have enough cash flow to sustain aged care costs?
- Are there any strategies to reduce costs?
- Could it impact my estate planning?

The complex rules around aged care means this is the area in which most clients will seek assistance. In many cases, the need for residential care requires fast action and decisions at a time when family members are under considerable stress, meaning the need for reliable advice from a trusted adviser.

A range of advice can be provided outside of the Australian Financial Services (AFS) licensing regime. However, inappropriate advice can have adverse effects on the client's ability to access subsidised aged care services and the level of age pension as well as other government entitlements. It is, therefore, imperative that before you provide advice in this area you have a thorough understanding of your professional advice boundaries and of the subject matter, including impacts and consequences of certain actions.

This guidance note focuses on:

- the need for specialist knowledge when providing aged care advice
- licensing and aged care advice
- advice you can provide if you are not licensed
- providing licensed advice.

KEY CHANGES

A number of important changes to the aged care system took effect on 1 July 2014. Clients who were admitted into a residential aged care service as a permanent resident before 1 July 2014 will continue to be assessed under the pre-1 July aged care rules.

From 1 January 2016, all new Residential Care recipients have rental income from their former principal home included in their aged care means test.

Before you provide any advice with regard to aged care you must first ensure you are proficient with these changes and the potential impact on the client.

More information is available on the [Commonwealth Department of Social Services](#) website.

SPECIALIST KNOWLEDGE IN AGED CARE

The complexities of aged care accommodation are at the end of the continuum of aged care choices, which need to be understood by anyone advising in this area.

Understanding Centrelink eligibility is also critical, such as the treatment of continued ownership of the family home in calculating eligibility for the Age Pension. There are also different impacts on entry costs and on ongoing fees in residential care related to assessment for the pension.

Financial decisions taken throughout retirement require an analysis of the implications for current or future Age Pension eligibility as well as being aware of concessions available.

CPA Australia recommends that if you are working with retiree clients that you develop the specific skills and knowledge required to ensure the provision of appropriate professional advice.

LICENSING AND AGED CARE ADVICE

Australian Financial Services licence

The *Corporations Act 2001* does not specifically capture advice regarding aged care accommodation as financial product advice. Therefore, not all aged care advice will require you to be licensed under an AFS licence, provided the advice:

- is restricted to information and advice about fees and services in aged care
- is restricted to factual information about any financial products or strategies
- does not lead to any specific or implied recommendations to purchase, sell or retain a financial product.

Provided you have the knowledge and skills, you can advise a client on the process to be assessed for entry to a aged care facility and calculate the fees that may be payable. Factual information can also be provided about the impact of investments on these fees without being licensed. However, you cannot recommend strategies to rearrange investments or one funding option over another, unless you are appropriately licensed.

Australian Credit licence

Advice regarding consumer credit facilities is regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act) and you must hold an Australian Credit licence (ACL) or be a credit representative of an ACL to provide consumer credit advice, products and services, as well as comply with responsible lending conduct requirements.

This includes reverse mortgages, which are only available to people over the age of 55.

Property

Advice on buying or selling property, including the family home, is exempt from both AFS and consumer credit licensing provisions. However, advice on or the provision of credit to purchase, renovate or refinance a residential investment property is regulated under the National Credit Act.

Centrelink advice

The provision of information about Centrelink entitlements is not restricted to licensed financial advisers. However, care needs to be taken to ensure you do not provide any advice or recommendations that may be related to financial products when providing such advice if you are not appropriately licensed under an AFS licence.

If you do provide information in this space it is also critical that you ensure your knowledge is current.

ADVICE YOU CAN PROVIDE IF YOU ARE NOT LICENSED

CPA Australia members must always be mindful that unless they are appropriately licensed, their ability to consider all the issues and provide comprehensive recommendations is limited.

The following section provides guidance on what advice you can provide if you are not licensed, noting that licensing refers to the AFS licensing or the ACL regime.

Accommodation options

YOU CAN	YOU CANNOT
<ul style="list-style-type: none">• Discuss the choices in aged care accommodation:<ul style="list-style-type: none">• staying in their own home• granny flat rights• retirement village• aged care facility.• Provide tax and factual cash flow calculations relating to specific financial product investments holdings to aid the client's decision making.• Provide simple aged care fee calculations based on factual information to provide options for the clients.	<ul style="list-style-type: none">• Discuss the sources of funding from a financial product (for example superannuation, investments).• Provide advice or recommendation based on the conclusions of any calculations undertaken.• Focus on any one option over others.

TIP: Encourage clients to talk to their family and GP

While the decision to go into an aged care facility is based on the level of care needed, clients have a lot more choice (and less urgency) when considering other accommodation options such as remaining in their own home, granny flats and retirement villages.

It is important that you encourage clients to consider all the issues of their decision, not just the financial implications. There is no point in a client deciding to stay in their own home if they do not have a carer who will be able to support them with that choice.

Eligibility to enter residential care is made by an Aged Care Assessment Team (ACAT/ACAS). Assessments can be arranged through the customer service centre of My Aged Care.

Private accommodation

YOU CAN	YOU CANNOT
<ul style="list-style-type: none">• Advise on issues relating to aged care housing in private accommodation.• Discuss government subsidised home care packages for independent living services.• Explain how the home is treated under the asset test.• Discuss the concept of creating a 'granny flat right' and its implication for Centrelink entitlements, as well as possible capital gain tax.• Downsizing options.• Options of selling the house to their children.• Provide a description of how a reverse mortgage works and refer to the ASIC MoneySmart website.• Provide factual information regarding the pension loan scheme.• Provide mathematical calculations resulting in various options based on known costs and expenses.	<ul style="list-style-type: none">• Provide a recommendation to buy or sell a financial product to meet any shortfall.• Discuss any financial product to invest the proceeds from the sale of a house.• Provide advice regarding using a reverse mortgage to release equity and pay for care costs.• Cannot recommend or imply one option over another where financial products or consumer credit products are involved.

Residential villages

YOU CAN	YOU CANNOT
<p>Advise on retirement village housing including:</p> <ul style="list-style-type: none"> • Ownership structures, noting there are at least eight different legal structures. • Lifestyle questions, including the impact of one partner needing residential aged care. • Impact of entry contributions when determining Centrelink entitlements, homeowner versus non-homeowner classification. 	<ul style="list-style-type: none"> • Advise on the sale of financial products, such as shares, to fund retirement housing. • Recommend financial product investment opportunities with surplus funds from sale of property.
<p>TIP: Be sure you understand the ownership structure of the village and contractual obligations</p> <p>Buying into a retirement village gives rise to a number of different issues that need to be considered from the client's perspective that don't normally exist with other housing choices, for example, automatic redecorating fees charged irrespective of the ownership period or forced sale when moving to higher care. Some villages operate on strata title while others have lease arrangements.</p> <p>To illustrate some areas that may have different issues from other housing questions, consider: financial arrangements, services, fees; location and local services; contracts; entry contribution and conditions to refund; time wait for refunds; rules, for example, pets, visitors; insurance and maintenance; and access to hostel and nursing home care.</p> <p>With granny flat rights, it is important to determine how entering a retirement village will affect their Age Pension. For example, if homeowner status is determined for the retirement village, a family home that is retained will be treated as an investment property.</p> <p>Different states and territories have different rules regarding the sale of a retirement village interest and assistance with funds for accommodation payments.</p>	

Residential Aged Care: entry costs

YOU CAN	YOU CANNOT
<p>Advise on entry costs of Residential Aged Care, including:</p> <ul style="list-style-type: none"> • Organize an ACAT assessment. • Choose a facility and put name on waiting list. • Complete a combined assets and income form (SA457) from client's information. • Provide information regarding entry costs and payment options (RAD/DAP or combination). Entry costs can be paid as a lump sum (RAD) or as an interest only loan paid daily, $RAD/365 \text{ days} \times \text{interest rate}$; or a combination of part RAD and part DAP. • Prepare cash flow statement of all income, including pension, and all expenses including basic daily care fee and means tested fee. • Provide calculations on selling/retaining or renting the home for the client to decide how to pay for the RAD and ongoing fees and charges. • Who is a protected person and who can qualify. • Factors to consider when joint ownership is with someone other than a spouse. • Calculate capital gains tax where restructuring investments. 	<ul style="list-style-type: none"> • Recommend the sale or purchase of a financial product to improve Age Pension entitlements or reduce fees. • Provide a 'strategy paper' for example if you suggest or imply one option over another you are providing financial product advice. • Make recommendation based on analysis, whether implied or actual. The calculation for the various payment options can only be used to provide information to the client.
<p>TIP: Estate planning</p> <p>The family home is often contemplated in the will and the sale may require the client to review his estate planning.</p> <p>Also, any RAD amounts will generally be returned to the client's estate upon passing. Therefore, relatives that may have lent money to help with the RAD could be caught out unless appropriate documentation is in place.</p>	

Concession Cards

YOU CAN	YOU CANNOT
<ul style="list-style-type: none"> • Discuss concession card eligibility such as Seniors cards, Commonwealth seniors health cards or low income health card. • Discuss age pension eligibility and benefits such as: <ul style="list-style-type: none"> • eligibility and the means test • rates of payment • pharmaceutical allowance • rent assistance • pension bonus scheme • issues of gifting and deprivation. 	<ul style="list-style-type: none"> • Recommend selling, gifting or buying any assets as part of a restructuring of an investment portfolio in order to meet the Asset Test. • Recommend restructuring an investment portfolio of financial products to increase pension entitlements.
<p>TIP: Consult with Centrelink for assistance on social security payments</p> <p>For every \$1000 over the Assets test threshold, the pension is reduced by \$3.00. If assisting clients in this area, be aware that rates and thresholds change every quarter.</p>	

PROVIDING LICENSED ADVICE

Following the Future of Financial Advice (FoFA) reforms, a financial adviser must act in the best interests of the client and give priority to the interests of the client when providing personal advice to a retail client.

ASIC has formulated a number of basic policy principles as stated in Regulatory Guide 175 (RG 175.214), which guide its administration of the best interests duty and related obligations and include:

- the provisions should lead to a higher quality of advice being provided compared to the general standard of advice previously being provided under s945A and 945B
- a reasonable advice provider should believe that the client is likely to be in a better position if the client follows the advice (for more information, see RG 175.224–RG 175.231)
- the best interests duty in s961B, the appropriate advice requirement in s961G and the conflicts priority rule in s961J are separate obligations that operate alongside each other and apply every time personal advice is provided.

Furthermore, if the advice provided does relate to a financial product(s) with an investment component, ASIC consider the 'relevant personal circumstances' of the client will normally include, but not limited to, the client's:

- a) need for regular income (e.g. retirement income)
- b) need for capital growth
- c) desire to minimise fees and costs
- d) tolerance for the risk of capital loss, especially where this is a significant possibility if the advice is followed
- e) tolerance for the risk that the advice (if followed) will not produce the expected benefits. For example, in the context of retirement advice, this may include considering longevity risk, market risk and inflation risk

- f) existing investment portfolio
- g) existing debts
- h) investment horizon
- i) need to be able to readily 'cash in' the investment
- j) capacity to service any loan used to acquire a financial product, including the client's ability to respond to any margin call or make good any losses sustained while investing in leveraged products
- k) tax position, social security entitlements, family commitments, employment security and expected retirement age.

As a licensed financial adviser you must:

Know your client

Work out their situation, objectives, needs and their financial literacy level.

Have a reasonable basis for advice

Know your product and the consequences of your advice, and ensure the advice is appropriate for the client.

Comply with statement of advice (SOA) requirements

The SOA must clearly and in simple terms set out your advice, the basis for your advice, the costs, benefits and any significant consequences for your client should they act upon the advice. Remember your disclosure requirements under s.947D (additional requirements when the advice recommends the replacement of one product with another). Incomplete client information does not negate your obligation to know your client and have a reasonable basis for your advice.

Act in the best interests of your client

Part 7.7A of the Corporations Act as well as APES 110 *Code of Ethics for Professional Accountants* require that you act in the best interests of your clients.

REFERENCES

CPA Australia

- [Regulation of consumer credit](#)
- [Regulation of SMSF advice](#)
- [Become a financial adviser](#)
- [Superannuation, tax and social security guide](#)

CPA Australia and the Third Age Network have also compiled [guidance](#) to help practitioners with the awareness, recognition, prevention and remediation of the financial abuse of older people.

Australian Government and financial services regulator

- [Corporations Act 2001](#)

Commonwealth Department of Health

- [Aged Care Australia](#)
- [My Aged Care](#) portal

Services Australia

- [Centrelink](#)

Australian Securities and Investment Commission (ASIC)

- [RG 175 Licensing: financial product advisers – conduct and disclosure](#)
- Information and resources for the [National Credit Act](#)

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